

# PUBLIC MATTER

**FILED**  
**JAN 17 2017**  
**STATE BAR COURT**  
**CLERK'S OFFICE**  
**LOS ANGELES**

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos. 15-O-12436 (15-O-13498;
	)	15-O-13499; 15-O-13500;
RALPH RICARDO MARTINEZ-AGAMENON,	)	15-O-14531)-YDR
	)	
A Member of the State Bar, No. 235107.	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
		ENROLLMENT

### Introduction<sup>1</sup>

Respondent Ralph Ricardo Martinez-Agamenon (Respondent) is charged with 25 counts of misconduct in five client matters. The charges include allegations that Respondent abandoned a client, failed to perform with competence, failed to refund unearned fees, failed to cooperate in disciplinary investigations, and asked his clients to deceive judges. The Office of Chief Trial Counsel of the State Bar of California (OCTC) has the burden of proving these charges by clear and convincing evidence.<sup>2</sup> Respondent has stipulated that he committed the alleged misconduct in all 25 counts. Based on the stipulated facts and other admitted evidence, this court finds clear and convincing evidence that Respondent is culpable of 24 counts of misconduct and recommends that Respondent be disbarred.

<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

<sup>2</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

and convincing evidence that Respondent is culpable of 24 counts of misconduct and recommends that Respondent be disbarred.

### **Significant Procedural History**

OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case numbers 15-O-12436, 15-O-13498, 15-O-13499, 15-O-13500, and 15-O-14531 on April 19, 2016. Respondent filed a response to the NDC on June 20, 2016.

Trial was set for August 19, 2016, and September 14 through September 27, 2016. OCTC was represented by Deputy Trial Counsel Timothy G. Byer. Respondent represented himself. The first day of trial was not held on August 19, 2016, but was continued to September 14, 2016. The parties filed Waivers and Stipulation to Facts and Conclusions of Law (stipulation) on September 14, 2016, but Respondent did not appear for trial. The court entered Respondent's default on September 15, 2016.

Respondent filed a motion to set aside the default on September 20, 2016. OCTC filed its opposition to the motion on September 21, 2016. On October 4, 2016, the court granted Respondent's motion and vacated the default.

A one-day trial was held on October 18, 2016. The matter was submitted for decision on October 18, 2016. On November 7, 2016, OCTC filed its closing brief. Respondent filed his closing brief on November 8, 2016.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 2, 2004, and has been a member of the State Bar of California at all times since that date.

The following findings of fact and conclusions of law are based on the September 14, 2016 stipulation, admitted documents, and evidence admitted at trial.

**Case No. 15-O-12436 – The Franco Matter**

**Stipulated Facts**

On February 21, 2014, Graciela Franco, an undocumented immigrant, filed a dissolution of marriage action against Ruben Arteaga in Los Angeles Superior Court, case No. KD089070 (*Graciela Franco vs. Ruben A. Arteaga*). On December 18, 2014, the court set the trial for March 16, 2015. On February 10, 2015, Franco's daughter Iran went to Respondent's firm to hire Respondent for Franco's divorce. Iran informed Respondent's secretary that the judge wanted to end the case on March 16, 2015, and that he had previously ruled that no continuances of the trial date would be granted. The secretary showed and explained certain documents to Respondent who was with his paralegal. The secretary reiterated to Respondent that the hearing date was on March 16, 2015, and Respondent said "let's get working."

The next day on February 11, 2015, Franco and Iran went to Respondent's office to sign the fee agreement and pay the advance fee of \$3,000 in cash. Franco gave Respondent's secretary, Terry Garcia, all of her court paperwork and evidence. Iran again explained to Garcia and to Respondent's paralegal, Viviana Jimenez, that the judge in the matter wanted to end the case on March 16, 2015. Garcia told Iran not to worry, and that Respondent knew what he was doing. On February 12, 2015, Franco went to Respondent's office by herself and discussed the case with Jimenez.

On March 10, 2015, Franco and her daughter Addis went to Respondent's office to inquire about trial preparation. They were told by Jimenez that Respondent would speak with the judge on March 12, 2015, to request a three to four month continuance of the trial date. Franco reiterated to Jimenez that the judge wanted to end the case and had denied a continuance requested by her previous attorney. The judge had informed the parties that no further continuances would be granted.

On March 12, 2015, Respondent filed an ex parte application for a continuance, which the judge denied in a minute order issued the same day. Later that day, Iran and Franco went to Respondent's office and were informed by Garcia that Respondent had asked for a continuance that was denied by the court. Jimenez then informed Franco that Respondent stated that Franco was at fault for failing to provide the documentation necessary for trial. Franco replied that she had given the materials to Respondent on February 11, 2015. Garcia then conveyed Respondent's demand that Franco sign a substitution of attorney allowing his withdrawal (with trial four days away) and told her that Respondent would not return Franco's complete file until she signed the form. Franco refused and told Respondent that he was hired to complete her divorce.

On March 13, 2015, Franco filed her own declaration in court explaining that Respondent was attempting to abandon her case and was pressuring Franco to sign a substitution of attorney for his withdrawal as counsel.

On March 15, 2015, Respondent called Franco again pressuring her to sign the substitution of attorney. When Iran explained to Respondent that Franco's blood pressure was elevated because of the stress she was experiencing from the trial approaching with no preparation by Respondent, Respondent advised Iran to take Franco to the hospital so Franco could get a document to show she had been seen. This would enable Respondent to represent to the court that she was ill, unable to assist Respondent with trial preparation, and serve as a basis for a renewed continuance motion. Franco refused. Respondent then asked her to misrepresent to the court that she had only hired him to seek a continuance, and that if she did so, he would fully refund her fee. Franco again refused.

On March 16, 2015, Respondent failed to appear for the 8:30 a.m. trial, but called the court and asserted that he was in trial that morning in another courtroom. The clerk delayed the

hearing until 1:30 p.m. that afternoon. At 1:30 p.m., Respondent again failed to appear. The court found Franco unprepared and granted opposing counsel's request to reopen discovery. The court set an order to show cause for April 27, 2015, as to why sanctions in the amount of \$1,500 should not be imposed against Respondent for his failure to appear for trial.

On March 18, 2015, Franco received a call from Respondent. Respondent's secretary acted as an interpreter and informed Franco that Respondent was willing to continue representing Franco but would need more money. At that point, Franco requested a complete refund of her money but Respondent refused. Respondent told Franco that if she signed a substitution of attorney, Respondent would give a refund of \$1,000; but if Franco did not sign, Respondent would file a motion to withdraw and charge Franco \$900 for the motion. Respondent also told Franco that she could complain to the State Bar but that, as between her statements and his, the State Bar would believe him because he was an attorney.

On March 20, 2015, opposing counsel Norma Nogueta sent a "meet and confer" letter to Respondent regarding discovery because he had not provided any discovery responses. On March 23, 2015, Nogueta filed a Notice of Trial Setting Conference. On March 26, 2015, Nogueta spoke by phone with Respondent regarding the discovery. He informed Nogueta that he was not Franco's attorney and refused to provide discovery responses. Respondent was still Franco's attorney of record at the time.

On April 27, 2015, Respondent appeared before the judge and explained to the court that Franco had refused to sign the substitution of attorney. On May 1, 2015, Franco sent a certified letter to Respondent, which he received, requesting an accounting of her advanced fees and a complete refund. Respondent did not respond to Franco's request for an accounting and refund, and to date still has provided neither.

On May 6, 2015, Respondent filed a Motion to be Relieved as Counsel. When Franco

learned that no other attorneys she consulted were willing to take the case while Respondent remained attorney of record, Franco signed the substitution of attorney to represent herself and filed it on June 2, 2015. Franco suffered high degrees of stress, anxiety, and fear of Respondent from March 10, 2015 through June 2, 2015.

### **Culpability**

#### ***Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent stipulated that he failed to prepare for the March 16, 2015 trial; failed to appear at trial on March 16, 2015 at 8:30 a.m.; failed to appear at trial on March 16, 2015 at 1:30 p.m.; failed to respond to opposing counsel's discovery requests; and performed no legal services on Franco's behalf. Thus, Respondent is culpable of repeatedly failing to perform with competence, in willful violation of rule 3-110(A).

#### ***Count Two - (§ 6106 [Moral Turpitude])***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Respondent stipulated that on March 15, 2015, he told Franco that he would fully refund her fee if she would falsely represent to the superior court that she employed Respondent for the limited purpose of seeking a continuance of her March 16, 2015 trial date. Respondent committed an act of moral turpitude by asking his client to deceive the superior court, in willful violation of section 6106.

#### ***Count Three - (§ 6106 [Moral Turpitude])***

Respondent stipulated that on March 15, 2015, he advised Franco to obtain a medical report so he could make a false statement to the court that Franco had been ill the weekend prior to her March 16, 2015 trial and that Franco's illness had prevented her from assisting him with trial preparation. By asking his client to obtain a medical report so that he could deceive the

superior court, Respondent committed an act of moral turpitude, in willful violation of section 6106.

***Count Four - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Franco terminated Respondent when she signed the substitution of attorney on May 1, 2015. Respondent failed to provide Franco with the legal services for which he was retained. He failed to earn the \$3,000 advance fee that Franco paid. By failing to refund the \$3,000 in advance fees to Franco, Respondent failed to promptly refund a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

***Count Five - (Rule 4-100(B)(3) [Render Appropriate Accounts])***

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. Respondent stipulated that he never provided Franco with an accounting of the \$3,000 advance fee that Franco paid. Thus, Respondent is culpable of willfully violating rule 4-100(B)(3).

***Count Six - (Rule 3-700(D)(1) [Failure to Release File])***

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not. Respondent stipulated that he failed to respond to Franco's request for her file on May 1, 2015, and failed to provide her with her file after she terminated his employment on June 2, 2015. Thus, Respondent is

culpable of willfully violating rule 3-700(D)(1).

**Case No. 15-O-13498 – The Valdivia-Marquez Matter**

**Stipulated Facts**

On April 23, 2013, Brissa Valdivia-Marquez employed Respondent to file an immediate relative petition on her behalf as a spouse of a United States citizen. According to the fee agreement, Respondent was hired to file an I-130 (for the adjustment of status of an alien relative), and to attend the master hearing scheduled for October 10, 2013. On the same day, Valdivia-Marquez paid a deposit of \$1,000 toward an advance fee of \$3,000. Respondent provided Valdivia-Marquez with a receipt for her payment.

On May 21, 2013, June 21, 2013, July 23, 2013, and August 22, 2013, Valdivia-Marquez paid four additional payments of \$500 each to Respondent on her debit card, and each time she received a receipt.

On October 8, 2013, Respondent called Valdivia-Marquez and demanded that she come to his office immediately. Valdivia-Marquez met with Respondent where they discussed the hearing scheduled for October 10, 2013. Respondent asked Valdivia- Marquez to tell the judge that she “had just retained him.” Valdivia-Marquez refused to lie for Respondent. A letter advising her of the October 10, 2013 hearing was mailed to her that same date.

On October 10, 2013, Valdivia-Marquez went to court, but it was closed due to a partial shutdown of the federal government. Respondent did not appear at the courthouse, and Valdivia-Marquez called Respondent’s office to tell them about the shutdown. The next hearing was set for June 5, 2014.

On June 5, 2014, Respondent appeared with Valdivia-Marquez at the hearing. Respondent told Valdivia-Marquez to tell the judge that Valdivia-Marquez just hired Respondent to get an extension. Valdivia-Marquez refused to lie for Respondent. Respondent requested,



and the court granted, a continuance of the hearing.

In mid-October 2014, Valdivia-Marquez enlisted the help of Chaim Magnum, a neighbor and friend whom she knew to be an attorney, in speaking to Respondent. Valdivia-Marquez told Magnum she was afraid of Respondent because he had been verbally abusive to her in prior meetings. Valdivia-Marquez and Magnum then visited Respondent's office together to obtain a status report on her matter. Respondent was not present, but they met with his paralegal, who informed them nothing would happen unless Valdivia-Marquez first paid an additional \$1,500 in cash. Magnum told Valdivia-Marquez that this did not sound like a legitimate request and advised her to request her file materials. Respondent's employee asserted to Valdivia-Marquez that her file would not be returned to her until she first paid Respondent the cost of copying the file. Valdivia-Marquez paid the copying charges, and Respondent's employee said she would receive a phone call when the file was ready for pickup.

On November 11, 2014, Valdivia-Marquez mailed Respondent a letter terminating his services, and requesting a complete refund. On December 3, 2014, when Valdivia-Marquez had not received a response from Respondent, Magnum and Valdivia-Marquez returned to Respondent's office to pick up her file and to discuss her refund request. Magnum was told by Respondent's employees that Respondent was not present and to leave a phone number for Respondent to contact him. About three hours later, Magnum received a phone call from Respondent. He accused Magnum of showing up at his office "under false pretenses" because Magnum did not identify himself as an attorney. Respondent told Magnum to "come to my office again and see what happens to you" and began berating Magnum and swearing at him. When Magnum replied that he did not believe Respondent should behave so unprofessionally, Respondent told him "no one gives a shit what you think! As for her money, she can go to the Bar, not that it will do her any good."

On December 24, 2014, Valdivia-Marquez received her files back from Respondent. On December 10, 2015, Respondent sent a letter to OCTC which falsely alleged that he had attended the hearing in immigration court on October 10, 2013, (which never took place due to the federal government shutdown).

### **Culpability**

#### ***Count Seven - (§ 6106 [Moral Turpitude])***

Respondent committed an act of moral turpitude on October 8, 2013, by telling Valdivia-Marquez to misrepresent to the immigration judge that she “had just retained him,” even though Valdivia-Marquez employed him nearly six months earlier. By asking Valdivia-Marquez to deceive the immigration judge, Respondent willfully violated section 6106.

#### ***Count Eight - (§ 6106 [Moral Turpitude])***

Respondent stipulated that Valdivia-Marquez employed him to file an immediate relative petition on her behalf, but on June 5, 2014, Respondent told her to misrepresent to the immigration judge that she only hired Respondent to get an extension. Respondent committed an act of moral turpitude, in willful violation of section 6106, by telling his client to make a false representation to a judge.

#### ***Count Nine - (§ 6106 [Moral Turpitude])***

Respondent stipulated that in his December 10, 2015 letter to OCTC, he misrepresented that he attended the October 10, 2013 hearing in immigration court. The hearing never took place due to the federal government shutdown. By making a false misrepresentation to OCTC, Respondent committed an act of moral turpitude, in willful violation of section 6106.

### **Case No. 15-O-13499 – The Hernandez Matter**

#### **Stipulated Facts**

On September 25, 2013, Julio Hernandez contacted Respondent’s law office by calling a

phone number listed in the City of Riverside Explore Magazine under the title "Senior Legal Hotline." Hernandez talked to the secretary who made an appointment for Hernandez to come to Respondent's office.

Hernandez went to Respondent's office and talked to Respondent and Respondent's assistant, Terry Garcia, regarding his concerns about his loan modification. Hernandez's bank had made an offer of a permanent loan modification which Hernandez wanted explained to him. Hernandez informed Respondent about the terms that he could accept. Respondent told Hernandez that Respondent would call the bank about the loan modification offer, and if the bank did not accept Hernandez's terms, Respondent would file a bankruptcy petition on his behalf. Respondent charged Hernandez \$4,000 for the services, which Hernandez paid with a check.

Respondent signed a fee agreement for loan modification and "Chapter 13 back-up." Respondent's fee agreement with Hernandez did not include a separate written statement, in 14-point or larger bold type that, "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)."

On October 4, 2013, Hernandez's check was returned for insufficient funds. Hernandez issued a cashier's check to Respondent's firm for \$4,150 (the additional \$150 was to cover the bounced check). The check was received by Lily from Respondent's office on the same day.

In November 2013, Hernandez decided to call the bank himself for the explanation of

their offer, and the bank was able to explain the terms of their loan modification to his satisfaction. Hernandez determined that the bank's offer was suitable and accepted it. At this point, Respondent had not called the bank regarding Hernandez's loan modification.

Hernandez informed Respondent that he had accepted the bank's offer. Since he had obtained the answers he needed without Respondent's assistance, Hernandez requested a refund of his fees, but Respondent refused to return the money. Instead, Respondent told Hernandez that he would give him credit for bankruptcy services since Hernandez had a second mortgage he wanted to negotiate with the lender. It may have become necessary for Respondent to file a bankruptcy petition on Hernandez's behalf.

From December 2013 to February 2014, Hernandez called Respondent six times and left messages for Respondent to return his call. Hernandez received no return calls from Respondent or his staff. Hernandez went to Respondent's office and discovered that Respondent had moved his office without informing Hernandez. A realtor in the same building gave Hernandez a phone number at which Respondent could be reached. When Hernandez contacted Respondent's office, an employee of Respondent's informed Hernandez that they had moved to a new address at 12838 Central Ave. in Chino, CA. Hernandez told the person that Respondent should have informed him of the move in advance.

On April 10, 2014, Hernandez went to Respondent's new office, and Respondent told him to talk to Vanessa Perez (Respondent's paralegal/notary) to discuss the bankruptcy. Perez gave Hernandez a website at which he could obtain free bankruptcy counseling. Hernandez complied and finished the counseling course. On April 28, 2014, Hernandez spoke by phone with Perez, and she told him she had received the confirmation that Hernandez had completed the counseling course.

Hernandez did not hear from Respondent again. Respondent did not file a bankruptcy

petition for Hernandez.

On October 5, 2015, and November 24, 2015, OCTC sent letters to Respondent at his State Bar membership records address, which he received, requesting Respondent's responses to the allegations in Case No. 15-0-13499. Respondent did not respond to either letter.

### **Culpability**

#### ***Count Ten – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

Respondent stipulated that he failed to contact Hernandez's bank to discuss Hernandez's loan modification, and he failed to file a bankruptcy petition on Hernandez's behalf. These were the legal services for which Respondent was hired. As such, Respondent willfully violated rule 3-110(A). (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action toward purpose client retained him to accomplish].)

#### ***Count Eleven – (§ 6106.3 [Violation of Civ. Code, § 2944.7, subd. (a)(1)])<sup>3</sup>***

Respondent stipulated that he agreed to attempt to negotiate a mortgage loan modification or other mortgage loan forbearance for Hernandez. Respondent also collected \$4,000 from Hernandez before Respondent had fully performed each and every service he had been contracted to perform or represented to Hernandez that he would perform. Thus, Respondent violated Civil Code section 2944.7, in willful violation of section 6106.3.

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<sup>3</sup> Section 6106.3, subdivision (a), provides: "It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 or 2944.7 of the Civil Code."

Section 2944.7, subdivision (a), provides: "Notwithstanding any other law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

***Count Twelve - (§ 6106.3 [Violation of Civ. Code, § 2944.6, subd. (a)])<sup>4</sup>***

Respondent stipulated that he agreed to negotiate a loan modification on Hernandez's behalf, but he failed to provide Hernandez with a separate written statement in 14-point or larger bold type that, "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)." The facts clearly and convincingly establish that Respondent violated Civil Code section 2944.6, subdivision (a), in willful violation of section 6106.3.

***Count Thirteen - (§ 6068, subd. (m) [Failure to Communicate])***

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Respondent stipulated that between December 2013 and February 2014, he failed to return approximately six telephone messages that Hernandez left about his matter. By failing to

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<sup>4</sup> Section 2944.6, subdivision (a) provides: "Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

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)."

communicate with Hernandez, Respondent willfully violated section 6068, subdivision (m).

***Count Fourteen - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])***

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws. Respondent stipulated that he did not contact Hernandez, and he took no action on Hernandez's behalf after April 28, 2014. Respondent's abandonment of Hernandez constructively terminated his employment with Hernandez. Upon termination of employment, Respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to Hernandez, which was a willful violation of rule 3-700(A)(2).

***Count Fifteen - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

Respondent stipulated that he failed to contact Hernandez's bank to discuss the terms of the bank's loan modification offer to Hernandez, and he failed to file a bankruptcy petition on Hernandez's behalf. These were the legal services for which Respondent was retained. Respondent did not earn any of the \$4,000 advance fee that Hernandez paid, and he never returned the fees. The facts clearly and convincingly establish that Respondent failed to refund unearned fees, in willful violation of rule 3-700(D)(2).

***Count Sixteen - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])***

Respondent stipulated that he willfully violated rule 4-100(B)(3) by failing to provide Hernandez with an accounting for the \$4,150 advanced fees he received, but there is a lack of clear and convincing evidence establishing that Respondent willfully violated the rule. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410-411 [although parties entered into stipulation as to facts and conclusions of law, State Bar Court has an affirmative

duty to independently determine whether the parties' stipulated conclusions of law are supported by the record].) There is no evidence presented that Respondent failed to provide Hernandez with an accounting. Thus, Count Sixteen is dismissed with prejudice.

***Count Seventeen - (§ 6068, subd. (i) [Failure to Cooperate])***

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. Respondent stipulated that he failed to provide a response to OCTC's investigation letters dated October 5, 2015 and November 24, 2015. Respondent acknowledged that he received the two letters. Thus, the facts clearly and convincingly establish that Respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

**Case No. 15-O-13500 – The Mouchet Matter**

**Stipulated Facts**

In August 2014, Henry Mouchet wanted to reduce his two mortgage loans on his property located in Bell, California. He had gone to a mortgage company to ask for assistance. The mortgage company referred Mouchet to Respondent's office. Mouchet went to Respondent's office, explained his situation to Respondent, and Respondent agreed to attempt to negotiate a loan modification on Mouchet's behalf for a flat fee of \$3,500.

On August 29, 2014, Mouchet paid Respondent \$800 as a deposit toward Respondent's fee, and was given a receipt that described the services to be provided as "Negotiate Mortgage 1st and 2nd." There was no written fee agreement between Mouchet and Respondent.

Respondent did not provide Mouchet a separate written statement, in 14-point or larger bold type that, "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).”

In late September 2014, Mouchet called Respondent’s office on two separate days, left messages asking for the status of his case, and requested a callback. Respondent did not return his calls.

In early October 2014, Mouchet went to Respondent’s office and talked to Respondent’s employee Terry Garcia. Garcia informed Mouchet that he would receive a call within two weeks. Mouchet did not receive any communication from Respondent’s office.

On October 10, 2014, Mouchet called Respondent’s office and left another phone message asking for news about his case. Mouchet did not receive any response from Respondent’s office.

On October 16, 2014, Mouchet sent a letter to Respondent, which Respondent received, asking Respondent to contact him as soon as possible about his case. Mouchet told Respondent that if Respondent was unable to handle his case, Mouchet wanted a return of his advance fee.

On October 30, 2014, Mouchet sent a certified letter to Respondent, which Respondent received, terminating Respondent’s services and asking for a refund of his fee by November 10, 2014. Mouchet received a certified receipt showed that the letter was received by “Eric” at Respondent’s office on October 31, 2014. Respondent never responded, nor refunded Mouchet’s fees. Respondent performed no legal services on Mouchet’s behalf.

On July 2, 2015, OCTC opened a disciplinary investigation against Respondent based on Mouchet’s complaint. On October 5, 2015 and on November 24, 2015, an OCTC investigator mailed letters to Respondent at his new membership record address at: 4959 Palo Verde St., Ste.

103C in Montclair, CA 91763, which he received. OCTC requested Respondent's responses to the allegations in Case No. 15-0-13500, but Respondent did not respond to either letter.

### **Culpability**

#### ***Count Eighteen - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

Mouchet retained Respondent to assist him with obtaining a loan modification. Respondent stipulated that he performed no legal services on Mouchet's behalf. As such, Respondent willfully violated rule 3-110(A).

#### ***Count Nineteen - (§ 6068, subd. (m) [Failure to Communicate])***

Respondent stipulated that in September and October 2014 Mouchet called him and sent him letters requesting the status of his case. Respondent failed to respond to Mouchet's inquiries. The facts clearly and convincingly establish that Respondent failed to promptly respond to reasonable status inquiries, in willful violation of section 6068, subdivision (m).

#### ***Count Twenty – (§ 6106.3 [Violation of Civ. Code, § 2944.7, subd. (a)(1)])***

Respondent stipulated that he agreed to attempt to negotiate a mortgage loan modification or other mortgage loan forbearance for Mouchet. Respondent also collected \$800 from Mouchet before Respondent had fully performed each and every service he had been contracted to perform or represented to Mouchet that he would perform. Thus, Respondent violated Civil Code section 2944.7, in willful violation of section 6106.3.

#### ***Count Twenty-One - (§ 6106.3 [Violation of Civ. Code, § 2944.6, subd. (a)])***

Respondent stipulated that he agreed to attempt to negotiate a mortgage loan modification on Mouchet's behalf, but he failed to provide Mouchet with a separate written statement, in 14-point or larger bold type that, "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).” The facts clearly and convincingly establish that Respondent violated Civil Code section 2944.6(a), in willful violation of section 6106.3.

***Count Twenty-Two - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

Respondent stipulated that Mouchet hired him to negotiate a loan modification with Mouchet’s bank, but Respondent failed to perform any legal services for Mouchet. Mouchet terminated Respondent on October 30, 2014. Respondent did not earn any of the \$800 advance fee that Mouchet paid. The facts clearly and convincingly establish that Respondent failed to refund unearned fees, in willful violation of rule 3-700(D)(2).

***Count Twenty-Three - (§ 6068, subd. (i) [Failure to Cooperate])***

Respondent stipulated that he failed to provide a response to OCTC’s investigation letters dated October 5, 2015 and November 24, 2015. Respondent acknowledged that he received the two letters. Thus, the facts clearly and convincingly establish that Respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

**Case No. 15-O-14531 – The Morales Matter**

**Stipulated Facts**

In early January 2015, Ana Morales went to Respondent’s office and met with Respondent, who spoke to her through a Spanish interpreter. Morales was seeking bankruptcy services. Respondent described the bankruptcy process to Morales, the payments for those services, and what would be included in the filing. Respondent informed Morales that she qualified for a Chapter 7 bankruptcy, but that the bankruptcy petition would not be filed until

Morales had paid his full \$1,300 fee. On February 5, 2015, Morales and her daughter, Vicky Morales, went to Respondent's office and talked to Teresa, Respondent's non-attorney assistant. Teresa explained the bankruptcy process for Chapter 7. Morales signed Respondent's fee agreement and gave Teresa an initial deposit of \$900. Teresa provided Morales with a receipt. Morales gave her paperwork to Teresa, who told Morales that the balance of \$400 had to be paid to Respondent within one month.

In late February 2015, Teresa started calling Morales and leaving voicemail messages instructing Morales to call her back. Teresa also called Vicky and gave her the same message. When Morales called back, Teresa told Morales that she had to pay the balance owed and that if she did not pay, Morales would be charged additional fees. Morales told Teresa that she had decided to terminate Respondent instead and requested a refund of her money. Teresa told Morales that Morales would have to speak to Respondent.

In early March 2015, Morales went to Respondent's office to discuss her refund request with Respondent. Morales met Teresa, who was leaving the office. Teresa told Morales that Respondent was not in the office. Morales again told Teresa that she was terminating Respondent, and again asked Teresa for her refund. Teresa told Morales that she was going to talk to Respondent about Morales's refund.

Morales went to Respondent's office on approximately 15 additional occasions to attempt to obtain her refund, but on those occasions when Morales could see Respondent's employees inside the office, they would not open the door. Morales was never allowed to speak to Respondent.

On March 23, 2015, Morales went to Respondent's office and personally delivered a letter, again communicating his termination and asking for her refund. Respondent's assistant, Viviana, signed for the receipt of the letter. Morales never received a refund or an accounting of

her fees.

### **Culpability**

#### ***Count Twenty-Four - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

Respondent stipulated that Morales signed a fee agreement for Respondent to file a Chapter 7 bankruptcy on Morales's behalf. Morales paid Respondent a \$900 advance fee. Before Respondent performed any work on Morales's behalf, Morales terminated Respondent. Morales repeatedly requested a return of the \$900 she had paid. By failing to refund the \$900 in advance fees to Morales, Respondent willfully violated rule 3-700(D)(2).

#### ***Count Twenty-Five - (Rule 4-100(B)(3) [Render Appropriate Accounts])***

Respondent stipulated that he never provided Hernandez with an accounting for the \$900 advance fee she paid him to file a bankruptcy petition on her behalf. Thus, Respondent is culpable of willfully violating rule 4-100(B)(3).

### **Aggravation<sup>5</sup>**

#### **Multiple Acts (Std. 1.5(b).)**

The parties stipulated that Respondent has committed multiple acts of misconduct. Respondent is culpable of 24 ethical violations concerning five client matters, which constitute multiple acts of wrongdoing.

#### **No Pattern of Misconduct (Std. 1.5(c).)**

Although the parties stipulated that Respondent made five separate attempts to persuade his clients to make or help him make misrepresentations to a court, this court finds clear and convincing evidence that Respondent asked two of his clients to make misrepresentations to a judge on three separate occasions. The court does not find that the three instances constitute a pattern and does not afford any aggravating weight to this factor.

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<sup>5</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

**Overreaching (Std. 1.5(g).)**

**High Level of Victim Vulnerability (Std. 1.5(n).)**

The parties stipulated that Graciela Franco was an undocumented immigrant who was highly vulnerable to Respondent's misconduct. She suffered a high degree of stress, anxiety, and fear of Respondent. Respondent's misconduct is also aggravated by his overreaching of Franco. Respondent refused to return her file unless Franco signed a substitution of attorney. He also stated that if she complained to the State Bar, she would not be believed. Respondent's statement was made to intimidate Franco and prevent her from submitting a complaint to the State Bar. Such conduct clearly violated Respondent's fiduciary duties to Franco. "The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party. [Citations.]" (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 243-244.) Respondent's overreaching of a vulnerable client is a significant aggravating factor.

**Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)**

Respondent stipulated that Franco, Hernandez, Mouchet and Morales suffered significant harm from Respondent's failure to refund their unearned fees. Without additional evidence regarding the specific harm each client suffered, the court affords minimal weight to this aggravating factor.

**Failure to Make Restitution (Std. 1.5(m).)**

Although Respondent stipulated that he failed to return the unearned fees to Franco, Hernandez, Mouchet, and Morales, he has not made restitution to any of his clients. The aggravating weight of his failure to make restitution is significant.

## **Mitigation**

### **No Prior Record (Std. 1.6(a).)**

The parties stipulated that Respondent has 11 years of discipline-free practice, which is a mitigating circumstance. Standard 1.6(a) provides, “absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur” is a mitigating circumstance. Here, Respondent engaged in several acts of dishonesty and abandoned numerous clients, which is serious misconduct. Respondent has not shown significant mitigation or demonstrated his rehabilitation, but has acknowledged his many unethical actions. Thus, Respondent is assigned moderate mitigating weight for his lack of a prior discipline record.

### **Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

By entering into a stipulation, Respondent has acknowledged misconduct. He 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 Spauth* (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].) Normally, Respondent would be entitled to significant mitigation for his pretrial stipulation, but this factor’s weight is reduced due to Respondent’s failure to cooperate during OCTC investigations.

## **Discussion**

The disciplinary analysis begins with the standards, which provide guidance and are intended to promote consistent application of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Initially, the court considers standard 1.1, which acknowledges that the purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional

standards for attorneys. Respondent committed numerous acts of misconduct that vary in nature. Many standards apply here, but standard 2.11 is the most relevant because it calls for the most severe discipline. (Std. 1.7(a) [most severe sanction required where multiple sanctions apply].)

Standard 2.11 provides in part that “[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude . . . .” The degree of sanction depends on the magnitude of the misconduct, the extent of harm to the victim, the impact on the administration of justice, and the extent to which the misconduct is related to the practice of law. Respondent asked two different clients to make knowingly false representations to two separate judges in order to obtain a continuance or excuse his inaction. Honesty is critically important in the legal system. (*In re Menna* (1995) 11 Cal.4th 975, 989.) Respondent also made a false misrepresentation in writing to OCTC during its disciplinary investigation. “These are serious acts that directly pertain to [his] practice and warrant the harshest discipline.” (*Read v. State Bar* (1991) 53 Cal.3d 394, 426.)

Respondent’s misconduct warrants disbarment. In addition to his acts of dishonesty, Respondent has repeatedly disregarded “the high degree of care and fiduciary duty he owes to those he represents.” (*Stuart v. State Bar* (1985) 40 Cal.3d 838, 847.) He has ignored his clients’ interests in all five client matters, abandoning one of those clients. Respondent’s aggravating factors of multiple acts, overreaching a vulnerable victim, harm to four clients, and failure to make restitution far outweigh the limited mitigation weight of his lack of a prior record and cooperation by entering into a stipulation. In light of his inexcusable acts of dishonesty and other serious ethical violations, the court recommends that Respondent be disbarred to ensure adequate protection of the public, the courts, and the legal profession.<sup>6</sup>

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<sup>6</sup> See *Lebbos v. State Bar* (1991) 53 Cal.3d 37 (disbarment for multiple acts of moral turpitude and dishonesty); *Read v. State Bar*, *supra*, 53 Cal.3d at p. 426 (disbarment where attorney with no discipline record displayed “high degree of dishonesty”); *Cannon v. State Bar*



### **Recommendations**

It is recommended that respondent Ralph Ricardo Martinez-Agamenon, State Bar Number 235107, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

It is further recommended that Respondent make restitution to the following individuals (or to the Client Security Fund to the extent of any payment from the Fund to any of them, in accordance with Business and Professions Code section 6140.5):

- (1) Graciela Franco in the amount of \$3,000 plus 10 percent interest per year from May 1, 2015;
- (2) Julio Hernandez in the amount of \$4,000 plus 10 percent interest per year from April 28, 2014;
- (3) Henry Mouchet in the amount of \$800 plus 10 percent interest per year from October 30, 2014; and
- (4) Ana Morales in the amount of \$900 plus 10 percent interest per year from February 28, 2015.

### **California Rules of Court, Rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

### **Costs**

It is recommended that costs be 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.


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(1990) 51 Cal.3d 1103, 1115 (disbarment where attorney with no discipline record in six years of practice committed multiple acts of serious misconduct involving moral turpitude).

**Order of Involuntary Inactive Enrollment**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: January 13, 2017

  
YVETTE D. ROLAND  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 17, 2017, I deposited a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

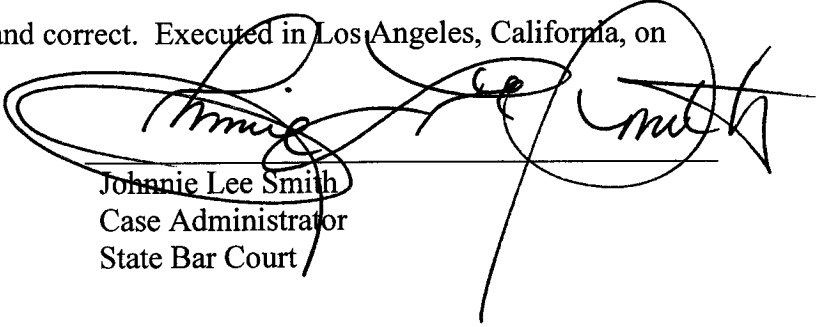
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**RALPH R. MARTINEZ-AGAMENON  
REPUBLIC LAW FIRM  
9513 CENTRAL AVE STE A  
MONTCLAIR, CA 91763 - 2413**

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

**TIMOTHY BYER, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 17, 2017.

  
Johnnie Lee Smith  
Case Administrator  
State Bar Court