

# ORIGINAL

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<p align="center"><b>State Bar Court of California</b>  <b>Hearing Department</b>  <b>Los Angeles</b>  <b>ACTUAL SUSPENSION</b></p> <p align="right"><b>PUBLIC MATTER</b></p>		
<p>Counsel For The State Bar</p> <p><b>Drew Massey</b>  <b>845 S. Figueroa Street</b>  <b>Los Angeles, CA 90017</b>  <b>Tel: (213) 765-1204</b></p> <p>Bar # <b>244350</b></p>	<p>Case Number(s):  <b>16-J-14166</b></p>	<p>For Court use only</p> <p align="center"><b>FILED</b></p> <p align="center"><b>MAR 09 2017</b> <i>[Signature]</i></p> <p align="center"><b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b></p>
<p>Counsel For Respondent</p> <p><b>James Ham</b>  <b>1010 Sycamore Ave Unit 308</b>  <b>South Pasadena, CA 91030</b></p> <p>Bar # <b>100849</b></p>	<p>Submitted to: <b>Settlement Judge</b></p>	
<p>In the Matter of:  <b>MARLON BRENT MESSER</b></p> <p>Bar # <b>230984</b></p> <p>A Member of the State Bar of California          (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND          DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**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 1, 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 **12** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective July 1, 2015)



Actual Suspension

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

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

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
  - (b) ☐ Date prior discipline effective
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☐ Degree of prior discipline
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See page 8.
- (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 page 8.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

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

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- (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:**

**Profiling stipulation, absence of prior misconduct, candor and cooperation, and remorse. See pages 8-9.**

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

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

### E. Additional Conditions of Probation:

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

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - ☐ No Ethics School recommended. Reason: .
- (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:

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- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

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

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

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

IN THE MATTER OF:                      MARLON BRENT MESSER

CASE NUMBER:                              16-J-14166

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 16-J-14166 (Discipline in Other Jurisdiction)

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. On September 17, 2004, MARLON BRENT MESSER ("Respondent") was admitted to the practice of law in the State of North Carolina.
2. On May 4, 2016, Respondent entered into a Consent Order of Discipline with the North Carolina State Bar in case no. 15DHC53 admitting that Respondent had committed violations of rules 1.4(a), 1.4(b), 1.5(a), 1.5(e), 5.3(b), 5.5(a), 5.5(f), 7.1(a), 7.3, and 8.4(b) of the North Carolina Rules of Professional Conduct.
3. On August 2, 2016, the Consent Order of Discipline became final.
4. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

**FACTS FOUND IN OTHER JURISDICTION:**

5. On November 18, 2015, the State Bar of North Carolina filed a Complaint before the Disciplinary Hearing Commission of the North Carolina State Bar naming Respondent as the defendant. Respondent filed an Answer on December 17, 2015. A Consent Order of Discipline was filed May 4, 2016. As part of the Consent Order, the Hearing Panel made findings by "clear, cogent and convincing evidence."
6. On July 9, 2013, Respondent incorporated Legal Help Group, APC ("LHG") in Texas. Although Respondent was the president of LHG, another party, Brent Phillips, was the beneficial owner and made decisions regarding the actions of the company.
7. From July 2013 to November 2014, LHG provided legal services to residents of Florida, North Carolina, Virginia, Texas, and Maryland. Respondent is not authorized to provide legal services in Florida, Virginia, or Maryland. LHG was not authorized to provide services in North Carolina.
8. On August 19, 2014, Respondent executed a declaration in which Respondent stated that he "was personally responsible for representing Legal Help Group's clients in the state of North Carolina."

9. In the retainer agreements between LHG and its clients, LHG represented that it was authorized to work in the relevant jurisdiction, even though it was not. The agreements further guaranteed approval for a mortgage reduction, listed new monthly payments that would be obtained, and further listed various percentages that would result.

10. The Consent Order describes the particulars of seven matters (six in North Carolina and one in Virginia). In each case, LHG solicited the individual through mailing that was not marked as an "advertisement." In each case, LHG agreed to provide legal services in the form of negotiating for a loan modification or other loan forbearance. In each case, the client had no contact with Respondent, but instead dealt with non-attorney employees who provided legal advice. And, in each case, the client received no beneficial result.

11. In several of the cases, the client attempted to call or e-mail staff at LHG and received no response. In the Virginia matter, Respondent allowed LHG to split its fee with a local Virginia attorney without obtaining informed client consent prior to the fee split.

12. Respondent agreed that he had committed numerous violations of North Carolina rules including: (1) aiding the unauthorized practice of law; (2) allowing employees to hold themselves out as authorized to provide legal advice; (3) sending unsolicited advertisements without the requisite disclaimer; (4) representing that LHG was authorized to practice law where it was not; (5) engaging in dishonesty, fraud, deceit, or misrepresentation in making false statements about LHG's services in the retainer agreements; (6) charging fees for loan modification services in jurisdictions in which he was not authorized to do so; (7) failing to keep LHG's clients reasonably informed about their cases; and (8) improperly splitting a legal fee with another lawyer.

#### CONCLUSIONS OF LAW:

13. As a matter of law, Respondent's culpability of professional misconduct determined in the proceeding in North Carolina warrants the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent is culpable of numerous instances of unauthorized practice of law, failing to supervise staff, and misrepresentation among other violations. These represent distinct and separate acts of misconduct. Multiple acts of wrongdoing are an aggravating factor. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

**Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)):** Respondent's actions have significantly harmed several clients. LHG took fees in excess of its authorization to do so and did not refund those fees in numerous instances. As a result, his clients are without those sums and have been harmed. Harm to the client is an aggravating circumstance. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217.)

#### MITIGATING CIRCUMSTANCES.

**Prefiling Stipulation (if the parties reach a resolution through a stipulation).** Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter prior to the filing of disciplinary charges. Respondent's cooperation at this early stage will save the State Bar significant



resources and time. Respondent's cooperation in this regard is a mitigating factor in this resolution (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 (where mitigation credit was given for entering into a stipulation as to facts and culpability).)

**Absence of Prior Misconduct.** Respondent has been admitted to practice law since June 2004 and has been active at all times since. Respondent has been discipline free for nine years of practice from admission to the earliest misconduct herein (2013) and is therefore entitled to mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

**Candor and Cooperation.** Respondent displayed candor and cooperation with the State Bar of North Carolina in their disciplinary investigation.

**Remorse.** Respondent displayed remorse during the North Carolina proceedings. In addition, he made restitution to one client when contacted. Such restitution was paid before the involvement of disciplinary authorities.

#### **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 was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law, and also to evaluate the facts of this case as compared to existing precedent in California. Specifically, Respondent's misconduct in the other jurisdiction demonstrates a violation of Rules of Professional Conduct, rules 1-300(A), 1-300(B), 1-400(E)(5), 2-200, 3-110(A), 4-200(A) as well as Business and Professions Code sections 6068(m) and 6106.

Standard 2.3(b) presumes suspension or reproof for charging and collecting an illegal fee.

Standard 2.7(b) presumes actual suspension for performance, communication, or withdrawal violations in multiple client matters.

Standard 2.11 presumes disbarment or actual suspension for an act of moral turpitude with the degree of sanction dependent on a number of factors including the extent to which it related to the practice of law. The retainer agreements, which included the misrepresentations, are central to Respondent's practice of law.

Standard 2.19 applies to Respondent's unauthorized practice of law and improper solicitation. It presumes suspension not to exceed three years.

Standard 1.7(a) states that where one or more Standards applies to the misconduct, the most severe should be imposed. In this matter, that is Standard 2.11 which presumes disbarment or actual suspension.

The misconduct involved more than one client – including at least the seven specified in the Consent Order. In each instance, misrepresentation was involved, as was the unauthorized practice of law. Respondent failed to supervise LHG's employees which ultimately lead to failures to communicate and the failure to provide any services of value in numerous instances. Each client was also improperly solicited.

While the misconduct does inure to Respondent, it is worth noting that Respondent had a good faith belief that his role was more akin to that of a contract attorney. Respondent relied on Phillips, a licensed attorney, to take the responsibility to supervise staff.

Although there is aggravation in the form of multiple acts and substantial harm, such must be weighed against the mitigation in this matter. Respondent has nine years of discipline-free practice as a California attorney. Further, he demonstrated remorse, cooperation, and paid restitution in at least one instance prior to the involvement of disciplinary authorities. On balance, then, as found in North Carolina, the mitigation somewhat outweighs the aggravation. Therefore, Respondent should be suspended for a period of two years, with the execution stayed. He should also be placed on probation for two years with conditions including an actual suspension of one year. Doing so is necessary to protect the public, the courts, and the legal profession; maintain high standards; and ensure public confidence in the profession.

Case law is in accord. In *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, the attorney was found culpable of illegally collecting an advance fee for loan modification work in eight client matters. Although the *Taylor* attorney did not have prior discipline, he was not given mitigation credit because it was not a sufficiently lengthy prior practice. Instead, he was given "modest" credit for good character. In aggravation, there were multiple acts, lack of remorse, and significant harm.

Here, Respondent's culpability also stems from loan modification work. However, the misconduct is far more broad and includes moral turpitude, solicitation, and fee splitting. Because the misconduct is more serious and widespread, greater discipline is warranted. Nevertheless, Respondent's conduct is also more mitigated. Unlike the *Taylor* attorney, Respondent has demonstrated remorse, paid restitution to at

least one client, and has prior discipline-free practice. Given the mitigation, as well as Respondent's less-involved role in the business, discipline including a one year period of suspension is appropriate.

*Taylor* can be contrasted with *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296. There, the attorney started a loan modification practice with two non-attorneys who he hired as managers. He had non-attorney staff meet with potential clients and provide them with legal advice toward obtaining loan modifications. The Court found him culpable in eight client matters of failing to supervise in violation of Rules of Professional Conduct, rule 3-110(A), aiding the unauthorized practice of law in violation of Rules of Professional Conduct, rule 1-300(A), and collecting illegal fees in violation of Business and Professions Code, section 6106.3.

In aggravation, there were multiple acts and substantial harm was caused. In mitigation, Huang established good character, displayed remorse, and was cooperative. Limited mitigation was given for his three years of prior discipline-free practice. The Review Department found that the aggravation outweighed mitigation and recommended a two-year actual suspension and until a Standard 1.2(c)(1) showing.

While the charges are similar, it should be noted that Respondent's position is somewhat different than the *Huang* attorney's. In *Huang*, the attorney knew he was placing non-attorney staff in charge of attorney work. By contrast, Respondent believed that the staff was being supervised by another individual. Further, Respondent has somewhat greater mitigation. On balance, then, discipline less than that recommended in *In the Matter of Huang* is appropriate.

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of January 27, 2017, the discipline costs in this matter are estimated to be \$3,390.50. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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

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

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In the Matter of:  
**MARLON BRENT MESSER**

Case number(s):  
**16-J-14166**

### 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.

2-21-17

Date

Marlon Messer

Respondent's Signature

Marlon Messer

Print Name

2-24-2017

Date

James Ham

Respondent's Counsel Signature

James Ham

Print Name

2-27-17

Date

Drew Massey

Deputy Trial Counsel's Signature

Drew Massey

Print Name

(Do not write above this line.)

In the Matter of: <b>MARLON BRENT MESSER</b>	Case Number(s): <b>16-J-14166</b>
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### ACTUAL SUSPENSION ORDER

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

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

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.)**

March 9, 2016  
Date

Rebecca Meyer Rosenberg  
**REBECCA MEYER ROSENBERG, JUDGE PRO TEM**  
~~Judge of the State Bar Court~~

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 9, 2017, I deposited a true copy of the following document(s):

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

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


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

JAMES IRWIN HAM  
PANSKY MARKLE HAM LLP  
1010 SYCAMORE AVE UNIT 308  
SOUTH PASADENA, CA 91030

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

Drew D. Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 9, 2017.

  
Angela Carpenter  
Case Administrator  
State Bar Court