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**FILED**

**FEB 26 2015**

4 Attorneys for Respondent  
5 ROBERT G. SCURRAH, JR.

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

6  
7 **STATE BAR COURT**

8 **HEARING DEPARTMENT- LOS ANGELES**

9 **In the Matter of:** ) **Case Nos.: 14-0-03260, 14-O-03986**  
10 )  
11 **ROBERT G. SCURRAH, JR.,** ) **RESPONSE TO NOTICE OF**  
**State Bar Number 82766,** ) **DISCIPLINARY CHARGES**  
12 ) **13-0-16884**  
**A Member of the State Bar.** )  
13 ) **[Rule of Procedure 5.43]**  
14 )

15  
16 **Address for Service**

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

19  
20 1. Respondent admits the allegations of paragraph 1.

21 **Count 1 - Case No. 14-0-03260 (Bus. & Prof. Code §6106.3)**

22 **Response to Allegations**

23  
24 2. Respondent denies the allegations of paragraph 2.

25 **First Affirmative Defense**

26  
27 The Notice of Disciplinary Charges (NDC) fails to plead a disciplinable offense.  
28

1 **Second Affirmative Defense**

2  
3 Imposition of Discipline would violate Respondent's Procedural Due Process  
4 rights because he had no notice that his conduct was actionable.

5 **Third Affirmative Defense**

6  
7 The State Bar of California is judicially estopped from contending that Civil Code  
8 section 2944.7 applies to "loan modification services" which precede negotiation with the  
9 lender servicer because of its position in *Duenas v. Brown*, case no. 10-CV-05884-RS,  
10 United States District Court, Northern District of California (attached document 1, 63:14-  
11 28, 7:1-5), which it successfully asserted to defeat Federal jurisdiction in that matter.

12  
13 **Fourth Affirmative Defense**

14  
15 Disciplining Respondent under the State Bar's current interpretation of Cal. Civil  
16 Code § 2944.7 will deprive him of a liberty interest without substantive due process  
17 because; 1) Respondent has a constitutionally protected liberty interest in pursuing his  
18 profession free from unreasonable government interference and 2) the State Bar's current  
19 interpretation of § 2944.7 prevents Respondent from representing clients seeking loan  
20 modifications to save their homes.  
21

22 **Fifth Affirmative Defense**

23  
24 The State Bar's interpretation of § 2944.7 lacks a rational basis because it  
25 contradicts the statute's text and, far from being rationally related to a proper legislative  
26 goal, actively thwarts it.  
27  
28

1 **Sixth Affirmative Defense**

2  
3 Even if § 2944.7 prohibits separation of legal services, the Bar's own actions  
4 rendered the statute unclear and highly debatable, thus precluding discipline.

5 **Seventh Affirmative Defense**

6  
7 The State Bar of California is barred from prosecuting Mr. Scurrah by its  
8 inequitable conduct including, but not limited to:

9  
10 (1) adopting a construction of Civil Code section 2944.7 for disciplinary purposes  
11 completely inconsistent with its position in *Duenas*;

12  
13 (2) misleading Mr. Scurrah that CDA's fee agreement was in compliance with  
14 applicable rules by closing several complaints (the Dise, Franjic and Fields matters)  
15 raising the identical issues as those in the NDC on the grounds that "this matter does not  
16 warrant further action" and then choosing to charge 2944.7 on the basis of taking phased  
17 fee payments pursuant to contracts that are identical in material respects;

18  
19 (3) advising him to separate his legal services into separate contracts;

20  
21 (4) refusing to negotiate in good faith during the Early Neutral Evaluation  
22 Conference (ENEC) held in September 2012 in retaliation for Mr. Scurrah's filing of a  
23 civil action against the State Bar and Jayne Kim personally seeking a judicial  
24 interpretation of Civil Code section 2944.7 and challenging the constitutionality of  
25 2944.7 as applied by the State Bar;  
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1 (5) disclosing confidential information concerning Mr. Scurrah to a former State  
2 Bar employee who had a been a client of CDA and encouraging her to file a complaint.  
3

4 **Count 2 - Case No. 14-O-03986 (Bus. & Prof. Code §6106.3)**

5 **Response to Allegations**

6 2. Respondent denies the allegations of paragraph 2.  
7

8 **First Affirmative Defense**

9 The Notice of Disciplinary Charges (NDC) fails to plead a disciplinable offense.  
10

11 **Second Affirmative Defense**

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

15 **Third Affirmative Defense**

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

24 Disciplining Respondent under the State Bar's current interpretation of Cal. Civil  
25 Code § 2944.7 will deprive him of a liberty interest without substantive due process  
26 because; 1) Respondent has a constitutionally protected liberty interest in pursuing his  
27 profession free from unreasonable government interference and 2) the State Bar's current  
28

1 interpretation of § 2944.7 prevents Respondent from representing clients seeking loan  
2 modifications to save their homes.

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4 **Fifth Affirmative Defense**

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6 contradicts the statute's text and, far from being rationally related to a proper legislative  
7 goal, actively thwarts it.

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9 **Sixth Affirmative Defense**

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11 Even if § 2944.7 prohibits separation of legal services, the Bar's own actions  
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14 **Seventh Affirmative Defense**

15 The State Bar of California is barred from prosecuting Mr. Scurrah by its  
16 inequitable conduct including, but not limited to:

17  
18 (1) adopting a construction of Civil Code section 2944.7 for disciplinary purposes  
19 completely inconsistent with its position in *Duenas*;

20  
21 (2) misleading Mr. Scurrah that CDA's fee agreement was in compliance with  
22 applicable rules by closing several complaints (the Dise, Franjic and Fields matters)  
23 raising the identical issues as those in the NDC on the grounds that "this matter does not  
24 warrant further action" and then choosing to charge 2944.7 on the basis of taking phased  
25 fee payments pursuant to contracts that are identical in material respects;

26  
27 (3) advising him to separate his legal services into separate contracts;

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(4) refusing to negotiate in good faith during the Early Neutral Evaluation Conference (ENEC) held in September 2012 in retaliation for Mr. Scurrah's filing of a civil action against the State Bar and Jayne Kim personally seeking a judicial interpretation of Civil Code section 2944.7 and challenging the constitutionality of 2944.7 as applied by the State Bar;

(6) disclosing confidential information concerning Mr. Scurrah to a former State Bar employee who had a been a client of CDA and encouraging her to file a complaint.

Dated: February 24, 2015

By   
Mark N. Zanides  
Attorney for Respondent  
ROBERT G. SCURRAH

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**CERTIFICATE OF SERVICE**

I, the undersigned, declare that I am over the age of 18 and am not a party to this action.

On February 24, 2014, I served a copy of the foregoing document in entitled:

**RESPONSE TO NOTICE OF DISCIPLINARY CHARGES  
14-O-03260 and 14-O-03986**

on all interested parties in said case as follows:

STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL  
ANTHONY J, GARCIA, No 171419  
SENIOR TRIAL COUNSEL  
8545 South Figueroa Street  
Los Angeles, California 90017-2515

**[X] BY MAIL: [ CCP sections 1013 and 1013(a)**

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. This declaration is executed in Dana Point, California, on February 24, 2014.



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Yamel Zanides