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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Ashod Mooradian Senior Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1004 Bar # 194283	Case Number(s): 14-O-00594-DFM	For Court use only <div style="text-align: center;"> FILED MAR 26 2015 <i>Jrc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent James I. Ham, Esq. Pansky Markle Ham LLP 1010 Sycamore Ave., Unit 308 South Pasadena, CA 91030 Bar # 100849	<div style="font-size: 2em; font-weight: bold; margin: 0;">PUBLIC MATTER</div>	
In the Matter of: DENNIS SCOTT CARRUTHERS Bar # 68745 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 25, 1976**.
- (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 **14** 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 January 1, 2014)

BY
3-6-15



- (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: **2016, 2017.** (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(f) & 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) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **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.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment at page 9.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating 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 reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See Attachment at page 9-10.

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 present fitness to practice and present learning and ability in the 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 **sixty (60) days**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the 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 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.

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- (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:
- | | |
|---|---|
| <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:

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- (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: DENNIS SCOTT CARRUTHERS
CASE NUMBERS: 14-O-00594-DFM

FACTS AND CONCLUSIONS OF LAW.

Dennis Scott Carruthers (“Respondent”) admits that the following facts are true and that he is culpable of violations of the specified statutes.

Case No. 14-O-00594 (Complainant: Fred W. Schwinn)

FACTS:

1. Respondent was admitted to the practice of law in the State of California on June 25, 1976, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. On November 2, 2006, Mountain Lion Acquisitions, LLC was established as a California limited liability corporation engaged in the business of purchasing delinquent debts from lenders and investors and at all relevant times was controlled and operated by Respondent.
3. On July 23, 2010, Mountain Lion Acquisitions, LLC and CashCall entered into a Purchase and Sale Agreement (“PSA”) for a specified number of CashCall’s delinquent customer loan accounts. Respondent executed the PSA on behalf of Mountain Lion Acquisitions, LLC, and Louis Ochoa executed the PSA on behalf of CashCall, in his capacity as Vice President of CashCall.
4. In section 9.1 of the PSA, in relevant part, CashCall agreed to cooperate, at [Mountain Lion Acquisitions, LLC’s] cost, with [Mountain Lion Acquisitions, LLC’s] attempt to enforce any obligation pursuant to this [PSA], including providing necessary affidavits or such other legal documents.
5. In section 12.15 of the PSA, in relevant part, CashCall agreed to irrevocably appoint Mountain Lion Acquisitions, LLC and its representatives as CashCall’s “limited attorney-in-fact to endorse [CashCall’s] name upon (a) checks or other forms of payment received with respect to the Loans, and (b) any other notes, instruments and other documents necessary to carry out the intent of this [PSA] and the transfers provided for herein.” On July 23, 2010, CashCall, pursuant to the terms of the PSA, executed and delivered to Mountain Lion Acquisitions, LLC a limited power of attorney (“LPOA”).
6. The LPOA provided, in relevant part, that Mountain Lion Acquisitions, LLC was CashCall’s lawful attorney and that Mountain Lion Acquisitions, LLC could, in CashCall’s name, place and stead, take or cause to be taken “...any action necessary to convey to [Mountain Lion Acquisitions, LLC] all right, title and interest of [CashCall] in, to and under the Loans and the related documentation, including without limitation:...[¶]...to...sign,...any and all notes, checks, money orders or monies due on any Loan sold to [Mountain Lion Acquisitions, LLC] and to...sign,...any orders, certificates, insurance policies and all benefits under an instrument or documents as may from time to time be necessary or

appropriate to accomplish the sales and transfers provided for the [PSA]...[¶]... to exercise or perform any act, power or duty that [CashCall] has or would have in connection with the Loans purchased by [Mountain Lion Acquisitions, LLC], or which are reasonable in order to protect [Mountain Lion Acquisitions, LLC's] interest in the collateral securing any Loan.”

7. On March 11, 2011, Mountain Lion Acquisitions, Inc. was established as a California Corporation primarily engaged in the business of collecting debts in this State and at all relevant times was also controlled and operated by Respondent.

8. In 2011, Mountain Lion Acquisitions, LLC assigned the delinquent accounts it purchased from CashCall to Mountain Lion Acquisitions, Inc. which subsequently retained Respondent to file suit to collect on the outstanding accounts.

9. On February 23, 2012, Respondent filed a lawsuit against Alicia G. Skinner in the Superior Court of Contra Costa County entitled *Mountain Lion Acquisitions, Inc. v. Alicia G. Skinner, et al.*, bearing case no. CIVMSL12-01150 (“Skinner lawsuit”), which sought to collect \$2,141.31 in damages. Ms. Skinner’s loan account was one of many delinquent loan accounts that Mountain Lion Acquisitions, LLC purchased from CashCall on July 23, 2010 and thereafter assigned to Mountain Lion Acquisitions, Inc.

10. On June 28, 2012, Respondent drafted and caused to be filed in the Superior Court of Contra Costa County a pleading entitled *Prepared Testimony in Lieu of Direct Testimony* (“Prepared Testimony pleading”) in the Skinner lawsuit that was signed under penalty of perjury purportedly by Louis Ochoa, in his capacity as Vice President of CashCall. In the Prepared Testimony pleading, it was declared that Louis Ochoa stated he was personally familiar with the books, records and account of Ms. Skinner and went on to state all the facts legally necessary to establish that Ms. Skinner owed \$2,141.31 on the account for the purposes of obtaining a money judgment. The Prepared Testimony pleading also declared, in relevant part, “[t]hat I [Louis Ochoa] have reviewed the complaint in this matter and find that all the allegations contained therein are true and accurate.”

11. Prior to filing the Prepared Testimony pleading, Respondent executed the Prepared Testimony pleading by simulating Louis Ochoa’s signature to make it look as if the signature affixed was the actual signature of Mr. Ochoa. In addition, there was no notation or indication on the Prepared Testimony pleading, either next to the purported signature of Mr. Ochoa or anywhere else in the document, that would indicate in any way that the signature affixed was not in fact the actual signature of Louis Ochoa.

12. Respondent simulated Mr. Ochoa signature as described above because he believed at that time that pursuant to section 9.1 and 12.15 of the PSA and the provisions in the LPOA, CashCall had agreed that he could endorse the name of Vice President Louis Ochoa on documents such as the Prepared Testimony pleading. Respondent’s subjective belief regarding the legal authority conferred by the PSA and LPOA was not reasonable and Respondent made no effort to confirm whether or not his belief was correct. Respondent now knows that his belief that the PSA and LPOA authorized him to simulate Mr. Ochoa’s signature was incorrect.

13. At the time the Prepared Testimony pleading was filed in the Superior Court of Contra Costa County in the Skinner lawsuit, Respondent knew that the Prepared Testimony pleading did not have the actual signature of Louis Ochoa affixed.

14. Prior to the execution or filing the Prepared Testimony pleading, Respondent did not provide Louis Ochoa a copy of the Prepared Testimony pleading for his review or approval as to its contents. Also, at no time prior to the execution or filing the Prepared Testimony pleading, did Louis Ochoa in fact review the complaint in the Skinner lawsuit or any of the allegations contained in the Prepared Testimony pleading.

15. Respondent did not provide Louis Ochoa a copy of the Prepared Testimony pleading for his review or approval as to its contents because he believed at that time that pursuant to section 9.1 and 12.15 of the PSA and the provisions in the LPOA, CashCall had agreed that it was not necessary for Respondent to provide Louis Ochoa a copy of the Prepared Testimony pleading for his review or approval as to its contents. Respondent's subjective belief regarding the legal authority conferred by the PSA and LPOA was not reasonable and Respondent made no effort to confirm whether or not his belief was correct. Respondent now knows that his belief that the PSA and LPOA obviated the need for him to provide Louis Ochoa a copy of the Prepared Testimony pleading for his review or approval as to its contents was incorrect.

16. At the time the Prepared Testimony pleading was filed in the Superior Court of Contra Costa County in the Skinner lawsuit, Respondent knew that he had not provided Louis Ochoa a copy of the Prepared Testimony pleading for Mr. Ochoa's review and approval as to its contents and that Mr. Ochoa had not in fact reviewed or approved the contents of the Prepared Testimony pleading.

17. On January 8, 2014, Mr. Ochoa was shown a copy of the Prepared Testimony pleading. It was the first time that Mr. Ochoa had seen the Prepared Testimony pleading. Mr. Ochoa also confirmed that the signature affixed to the pleading was not his signature.

CONCLUSIONS OF LAW:

18. By filing or causing to be filed, in the Skinner lawsuit, the Prepared Testimony pleading that was purportedly signed under penalty of perjury by Louis Ochoa, when Respondent knew that the Prepared Testimony pleading did not bear the actual signature of Mr. Ochoa and that, prior to the time of filing the Prepared Testimony pleading, Mr. Ochoa had not reviewed or approved the contents of the Prepared Testimony pleading, Respondent was grossly negligent in committing an act or acts involving dishonesty in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): In the current matter, Respondent's filing of the Prepared Testimony pleading in court to collect on a consumer debt that was not signed by the purported declarant but rather was simulated by Respondent harmed the public and the administration of justice. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913 [collecting illegal fees by giving false information to State agencies significantly harmed the public, the administration of justice and clients].)

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

No Prior Discipline (Std. 1.6(a)): Respondent had been in practice for 36 years without a prior record when the first misconduct in this matter occurred. Although the misconduct in this matter is serious, involving misrepresentations of material fact, the significant period of time without discipline is

entitled to mitigation. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn.13.; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent has agreed to enter into this pre-trial stipulation to fully resolve this matter without the necessity of a trial, thereby saving the State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Here, Respondent committed misrepresentations of material fact with gross negligence in violation of Business and Professions Code section 6106. Consequently, the most severe sanction applicable to Respondent’s misconduct is found in Standard 2.7, which applies to Respondent’s violation of Business and Professions Code, section 6106.

Standard 2.7 provides that “[d]isbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.”

In this case, Respondent offered the prepared testimony of Louis Ochoa, the Vice President of CashCall, the creditor who originally owned the delinquent loan account of Ms. Skinner. The prepared testimony, like a declaration under penalty of perjury, averred that Mr. Ochoa, under penalty of perjury, had personal knowledge of the contents, had read the complaint in the case and asserted all the legally

necessary facts to permit a court to enter a default judgment for the amount of the debt against Ms. Skinner and would be accepted by the court as if Mr. Ochoa was testifying to those facts on the witness stand. However, at no time prior to the drafting, executing or filing of the Prepared Testimony pleading, had Mr. Ochoa seen, reviewed or approved the contents of the Prepared Testimony pleading. In addition, the signature affixed to the Prepared Testimony pleading was not Mr. Ochoa's but rather was "simulated" by Respondent.

Respondent's explanation and justification for his above-described conduct is that he believed at that time that pursuant to section 9.1 and 12.15 of the PSA and the provisions in the LPOA, CashCall had agreed that he could endorse the name of Vice President Louis Ochoa on documents such as the Prepared Testimony pleading. Respondent's subjective belief regarding the legal authority conferred by the PSA and LPOA was not reasonable and the fact that Respondent made no effort to confirm whether or not his belief was correct amounts to gross negligence. Respondent now knows that his belief that the PSA and LPOA authorized his conduct herein is incorrect.

The fact that Respondent claimed to be acting pursuant to a written agreement and power of attorney (*i.e.*, the PSA and LPOA) does not serve as a valid defense or justification in this matter. In *Palomo v. State Bar* (1984) 36 Cal.3d 785, the attorney had endorsed his client's signature to a pleading without the knowledge of his client but defended his actions as not amounting to misconduct by contending that he acted pursuant to a broad express power of attorney. The Supreme Court, finding that the attorney's reliance on the power of attorney did not prevent a finding that he committed misconduct, explained as follows:

Our past disciplinary cases have assumed that representational authority alone does not constitute the client's consent to simulation of his signature on a draft payable in his name. (*Silver*, supra, 13 Cal.3d at p. 144, 117 Cal.Rptr. 821, 528 P.2d 1157; *Himmel*, supra, 4 Cal.3d at p. 798, 94 Cal.Rptr. 825, 484 P.2d 993.) Since it is undisputed that Torres gave no actual consent to petitioner's endorsement, the finding of misconduct is valid.

(*Id.* at 795) (Footnotes omitted.)

There are several disciplinary cases that address situations where attorneys have signed pleadings or documents in the name of another. In these cases, the Supreme Court and the Review Department have both found that under similar factual circumstances as presented in the current matter, that an attorney's conduct of simulating a signature and an attorney's filing of a pleading that contains allegations of facts made by another person under penalty of perjury but where that third person has not seen, reviewed, approved or confirmed the accuracy of those allegations prior to the filing of the pleading with the Court are acts of moral turpitude. (See *e.g.*, *Aronin v. State Bar* (1991) 52 Cal.3d 276 [the attorney claimed that he had his client's oral authorization to sign a verification to an answer to an unlawful detainer making it appear that his client actually signed the pleading (*i.e.*, simulated signature.) (*Id.* at p. 286.); *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, ["We agree with the hearing judge that by having the Oggs sign blank pleading forms and then completing and filing those forms as having been executed under penalty of perjury, without first confirming with the client the accuracy of the information, respondent committed an act of moral turpitude in willful violation of section 6106." (*Id.* at pg. 29.)].)

On the other hand, Respondent's actions in this matter were not intentional or done with fraudulent intent because Respondent believed he was acting in a manner that was consistent with the authority given him in the PSA and the LPOA. There is no evidence that Respondent orchestrated the filing of

the Prepared Testimony pleading in the Skinner lawsuit as part of a scheme to defraud that debtor Ms. Skinner. It is undisputed that the account information and balances contained in the pleadings were accurate and correct. Rather, the evidence shows that, at the time, Respondent simply had a belief that he was entitled to take the actions described herein pursuant to the PSA and LPOA. Therefore, Respondent's misconduct herein was not intentional or fraudulent, but nevertheless was grossly negligent. In addition, Respondent's misconduct occurred in connection with his representation of Mountain Lion Acquisitions, Inc. and consequently was directly related to his practice of law.

Further, in this matter, there is one aggravating circumstance and two mitigating circumstances. Specifically, Respondent's misconduct was aggravated by harm to the public and the administration of justice and was mitigated by no prior record of discipline over a lengthy period of time and cooperation for entering into a pre-trial stipulation. Overall, Respondent's misconduct in this matter is more mitigated than aggravated.

In addition to an analysis pursuant to Standard 2.7, 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).) These facts support the conclusion that Respondent's actions were aberrational and he will be able to conform to his ethical responsibilities in the future and the risk of recurrence is low.

Therefore, taking into account the magnitude of Respondent's misconduct, but also that Respondent's misconduct was more mitigated than aggravated, the appropriate level of discipline under Standard 2.7 that best serves the protection of the public, the courts and the profession, as well as the maintenance of high professional standards for attorneys and the preservation of public confidence in the legal profession should be on the lower end of the range suggested by the Standard, namely, a two year stayed suspension, two years' probation on standard terms and conditions, including a 60-day actual suspension, passage of State Bar Ethics School and the MPRE.

A 60-day actual suspension in this matter is also supported by case law. In *Drociak v. State Bar* (1990) 52 Cal.3d 1085, the attorney had answered interrogatories directed to a client and after obtaining several extensions of time to respond to discovery as well as sending several letters to his client, the attorney in *Drociak* attached thereto one of the client's presigned verifications because of the loss of contact with the client. The Supreme Court found that this misconduct violated Bus. & Prof. Code, § 6106 and imposed a 30 days' actual suspension. Similar to the instant matter, the clients in *Drociak* never saw the responses that their pre-signed verifications were attached prior to them being served them on opposing counsel. The Supreme Court also found several mitigating circumstances in *Drociak*, including that attorney in *Drociak* had been in practice for over 25 years without a prior record of discipline.

By comparison, in this matter, Respondent filed the Prepared Testimony pleading that contained allegations of facts purportedly made by Louis Ochoa under penalty of perjury but where Louis Ochoa person has not seen, reviewed, approved or confirmed the accuracy of those allegations prior to the filing of the pleading with the Court. Unlike in *Drociak*, Respondent did not make attempts to obtain Mr. Ochoa's signature legitimately. Thus, Respondent's misconduct is more serious than that of the attorney in *Drociak*. In addition, although the misconduct of both the attorney in *Drociak* and Respondent involved the presentation of facts in a lawsuit that were not seen, reviewed or approved by the persons under whose name the facts were sworn to be true, Respondent's misconduct also included the affixing of the simulated signature of Mr. Ochoa to the Prepared Testimony pleading. A pleading that was then not only served on an opposing party but was actually filed in court in an attempt to obtain

a money judgment against a consumer. Therefore, a 60-day actual suspension in this matter is appropriate because it is a more serious level of discipline than the discipline imposed in *Drociak*.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
14-O-00594	TWO	Business and Professions Code, section 6068(d)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of March 5, 2015, the prosecution costs in this matter are \$3,497. 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 MCLE CREDIT

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

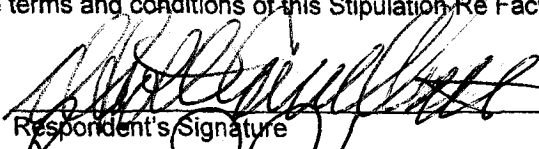
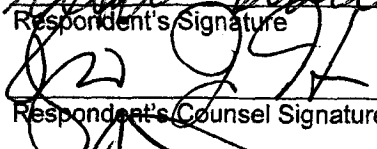
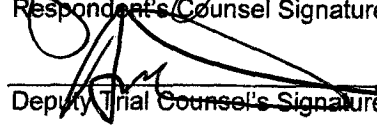
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In the Matter of:
DENNIS SCOTT CARRUTHERS

Case number(s):
14-O-00594-DFM

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation-Re Facts, Conclusions of Law, and Disposition.

<u>3/11/2015</u> Date	 Respondent's Signature	<u>Dennis Scott Carruthers</u> Print Name
<u>3/12/2015</u> Date	 Respondent's Counsel Signature	<u>James I. Ham</u> Print Name
<u>3/13/2015</u> Date	 Deputy Trial Counsel's Signature	<u>Ashod Mooradian</u> Print Name

(Do not write above this line.)

In the Matter of: DENNIS SCOTT CARRUTHERS	Case Number(s): 14-O-00594-DFM
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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.)**

3-23-15
Date



GEORGE E. SCOTT, 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 26, 2015, I deposited a true copy of the following document(s):

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

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

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

**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:

ASHOD MOORADIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 26, 2015.



Tammy Cleaver
Case Administrator
State Bar Court