

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of ) Case Nos.: **11-O-12052-LMA (11-O-12586;**  
) **11-O-12769)**  
**BRION LEIGH ST. JAMES,** )  
) **DECISION; ORDER OF INVOLUNTARY**  
**Member No. 181977,** ) **INACTIVE ENROLLMENT; AND**  
) **ORDER VACATING STIPULATION**  
A Member of the State Bar. )

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**Introduction**<sup>1</sup>

In this disciplinary matter, respondent Brion Leigh St. James stipulated to culpability in nine counts of professional misconduct involving loan modifications in three client matters, including (1) sharing legal fees with nonlawyers; (2) failing to perform services; and (3) failing to promptly refund unearned fees. Respondent and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) stipulated to disposition and the State Bar Court approved the stipulation.

In June 2012, the California Supreme Court returned this disciplinary matter for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

Thus, the sole issue in this matter is the level of discipline. Respondent has harmed the public, damaged public confidence in the legal profession, and failed to maintain the high

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<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.

professional standards demanded of attorneys. After further consideration of the recommended discipline in light of the applicable attorney discipline standards, case law, and aggravating factors, the court concludes that the level of discipline of 30 days' actual suspension, as recommended in the original stipulated disposition, must be increased. Accordingly, the court recommends, among other things, that respondent be disbarred from the practice of law and make restitution.

### **Significant Procedural History**

On September 28 and October 3, 2011, respondent and the State Bar, respectively, signed a Stipulation Re Facts, Conclusions of Law and Disposition. State Bar Court Hearing Judge Lucy Armendariz approved the stipulation on October 12, 2011. The Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving was filed on October 12, 2011.

On June 21, 2012, the Supreme Court issued an order that returned the stipulation for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

In August 2012, the court denied the State Bar's motion to consolidate this matter with three other respondents' pending matters. In October 2012, the court denied the State Bar's request to withdraw from the stipulation, but granted its motion for limited modification. Respondent did not file responses to these motions.

Respondent also did not appear at several court proceedings, including this hearing, which was held on November 14, 2012. His default was not entered for failure to appear at trial because a notice of disciplinary charges was not filed and he had previously participated by entering into the stipulation. (Rules Proc. of State Bar, rule 5.81(A).)

Even though the parties were bound by the factual stipulations, the court allowed the State Bar to supplement the stipulation with evidence that did not contradict the stipulation.

(Rules Proc. of State Bar, rule 5.58.) Accordingly, the State Bar's proposed supplemental facts filed November 1, 2012, are approved to supplement the facts set forth in the stipulation.

The State Bar was represented by Senior Trial Counsel Robin Brune. The case was submitted for decision on November 14, 2012.

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

Respondent was admitted to the practice of law in California on May 28, 1996, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the October 2011 stipulation and the November 2012 supplemental facts.

#### ***Stipulated Facts (Background)***

At all relevant times herein, "US Loan Auditors, LLC," "US Loan Auditors, Inc." and "My US Legal Services" (hereinafter "My US Legal") were companies owned, in part, by non-attorneys. Homeowners hired My US Legal to file predatory lender lawsuits and paid advanced attorney's fees in monthly installments to My US Legal. Thereafter, My US Legal hired outside attorneys ("contract attorneys") to handle the predatory lender lawsuits. My US Legal paid the contract attorney \$250 per month per client as attorney's fees. The \$250 was paid from the monthly installments paid to My US Legal by the homeowners as advanced attorney's fees.

From July through October 2010, My US Legal hired respondent to handle predatory lender lawsuits on behalf of its clients. During that period, My US Legal paid respondent a total of \$25,500<sup>2</sup> as fees from a portion of the monthly installments paid to My US Legal by the

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<sup>2</sup> The October 2011 stipulation provided that respondent agreed to pay restitution in the amount of \$23,500 to Susan K. Smith, Trustee for My US Legal Services, Inc., U.S. Bankruptcy Court, Eastern District, Sacramento Division, case No. 10-51750. The correct amount of restitution is \$25,500 and not \$23,500, a typographical error.

homeowners as advanced attorney's fees. The \$25,500 represented an impermissible fee split with a non-attorney.

***Supplemental Facts (Background)***

Respondent received the \$25,500 in three monthly installments from USLS<sup>3</sup> as follows:

<i>Date</i>	<i>Amount</i>
August 13, 2010	\$8,500
September 15, 2010	\$8,000
October 15, 2010	<u>\$9,000</u>
Total	\$25,500

USLA/USLS referred more than 200 clients to respondent. But USLA/USLS was not a legal referral service. USLS did not register their lawyer referral service with the State Bar or meet or operate in conformity with the minimum standards established by the State Bar for a lawyer referral service, as required under Business and Professions Code section 6155.

As to each of the client matters that respondent received from USLA or USLS, respondent received an illegal referral.

The sales people at USLA, misleadingly called "fraud investigators," received a commission for each client they signed up for a loan audit and legal services through USLS. The commissions they received for the audit were reduced if the client did not subsequently sign up for the legal services.

Respondent did not inform his clients of the fee splitting arrangement that he had with USLS.

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<sup>3</sup> USLS refers to US Legal Services. USLA refers to US Loan Auditors. These two were sister companies, both owned by James Donald Sandison, Shane Barker, and Jeffrey Allen Pulvino. Sandison was an attorney but the other two partners were not attorneys. The court takes judicial notice that Sandison was disbarred on October 9, 2011.

Different clients had different understandings of respondent's fee arrangement with USLS. As discussed below, one client's fee agreement specified that respondent would get a contingency fee while another client believed that respondent got the entire monthly payment.

Respondent entered into a MOU agreement in which he agreed not to interfere with the relationship between USLS and the homeowner clients. Respondent did not advise his clients of his conflicted MOU agreement.

The non-attorney partners on the fee splitting, USLA/USLS ("fraud investigators"), routinely gave false information to the clients in order to induce them to sign up for USLA/USLS's services. These false statements included, but were not limited to, the following:

- the clients did not have to pay the mortgage during the pendency of their suit;
- the mortgage payments would be reduced by half during the suit;
- the lawsuit would "freeze" the mortgage;
- the banks would be precluded from foreclosing upon their home once a suit was filed; and
- the lawsuit would be a likely means to obtain a loan modification.

The non-attorney partners on the fee splitting, USLA, which is a sister company to USLS, would provide clients with a forensic loan audit as a means to induce them to sign up for legal services. The audit consists largely of a boilerplate rendition of laws, it was created by a non-attorney using a computer software program, and it provided negligible value to the client. The client would be charged several thousand dollars or more for the audit.

While the forensic audit generally detailed alleged violations of federal laws, such as Real Estate Settlement Procedures Act (RESPA) or Truth in Lending Act (TILA), respondent generally filed suit in state court with state causes of action.

Respondent did not explain to the client the discrepancies between the violations as identified in the forensic loan audit and the allegations as alleged in the state filed complaints.

Respondent did not draft the pleadings for the client matters he received from USLS. The complaints filed by respondent on behalf of USLS clients had virtually identical causes of action, and were generally boilerplate complaints prepared by non-attorneys at USLS. Respondent did not obtain any positive resolution for his clients.

### **Case No. 11-O-12052 – The Torres Matter**

#### **Stipulated Facts**

Prior to March 2010, Victoria Torres ("Torres") hired My US Legal to file a predatory lender lawsuit on her behalf. In July 2010, My US Legal hired respondent to handle the Torres matter. At all relevant times herein, Torres paid My US Legal advanced attorney's fees in monthly installments. My US Legal forwarded \$500 (paid in installments of \$250 per month) to respondent for the Torres matter. The \$250 represented attorney's fees and was paid from a portion of the advanced attorney's fees paid by Torres to My US Legal. The \$500 represented an impermissible fee split with a non-attorney.

My US Legal filed a complaint on behalf of Torres. Thereafter, respondent failed to perform any work on behalf of Torres. Respondent did not earn the \$500 paid as advanced fees.

#### **Supplemental Facts**

Victoria Torres met with a non-attorney USLA representative named Raquel in or about December 2009 or January 2010. She was responding to an advertisement that had been sent to her 75-year old father. Her father had signed papers for seven to eight mortgage loans with an adjustable mortgage rate. As a result, the payments kept going up.

Raquel told her: (1) that USLS would modify the loan, lower their mortgage payments, and lower their interest rate; (2) that USLS would file a lawsuit that would have a great chance of

success and during the lawsuit their mortgage would be frozen and no payments would be necessary during the lawsuit; and (3) that the bank could not foreclose during the lawsuit, the lawsuit would help her obtain a loan modification, and the lawsuit would take about six months to complete.

Torres hired USLS because they promised a loan modification, lower interest rates, and a fixed interest rate loan. Torres paid \$4,220 for the loan audit and made monthly payments of \$1,250 thereafter.

Torres signed the papers in February 2010. Torres made repeated efforts to speak to her attorney, but was told that she had to wait for the letter assigning her an attorney. She waited from February to July 2010 to find out who was her attorney. She was notified that respondent was her attorney in July 2010, by way of a letter from USLS.

Torres signed a legal services agreement for respondent but never got a copy. She never received any billing statements from respondent.

Torres thought the full payment of \$1,250 was going to respondent. She was not informed that respondent would receive \$250 per month.

Torres never met with respondent until after she stopped making her payments. He never spoke to her about her goals for the lawsuit.

Torres did not review any pleadings filed on her behalf and did not see the lawsuit before it was filed.

Torres sent respondent emails to an email address provided by USLS, but the emails were returned to her as undeliverable. She received very little information from respondent regarding her suit.

Torres first spoke to respondent after USLS shut down. She went to Sacramento to meet with him. He requested that she bring all their papers, the same ones she had given Raquel at the

beginning. Respondent wanted more money to continue the lawsuit but she refused. At this point she had paid \$9,300 to USLS.

A complaint was filed on behalf of Torres by respondent on September 8, 2010, in state court. No one explained to Torres the discrepancy between the federal causes of action identified in her forensic audit and the fact that USLS was not pursuing any federal cause of action on her behalf.

Respondent never advised Torres that her causes of action in state court would not result in rescission of her mortgage or loan modification.

Torres hired a new attorney, Lou Ginnini. She does not know the status of her lawsuit. She has not received any mortgage relief at this time.

### **Conclusions**

#### ***Count One – (Rule 1-320(A) [Sharing Fees with Non-Lawyers])***

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a non-lawyer.

By splitting the legal fees with My US Legal and receiving the \$250 monthly fee in the Torres matter, respondent shared a legal fee with a nonattorney entity, in willful violation of rule 1-320(A).

#### ***Count Two – (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.

By failing to perform any work of value and by failing to properly advise his client regarding her lawsuit in the Torres matter, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

***Count Three – (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.

By failing to refund \$500 in unearned fees to Torres, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

**Case No. 11-O-12586 – The Avila Matter**

**Stipulated Facts**

Prior to January 2010, Jesus Avila ("Avila") hired My US Legal to file a predatory lender lawsuit on his behalf. In July 2010, My US Legal hired respondent to handle the Avila matter. Avila paid My US Legal advanced attorney's fees in monthly installments. My US Legal forwarded \$750 (paid in installments of \$250 per month) to respondent for the Avila matter. The \$250 represented attorney's fees and was paid from a portion of the advanced attorney's fees paid by Avila to My US Legal. The \$750 represented an impermissible fee split with a non-attorney.

Respondent failed to perform any work on behalf of Avila. Respondent did not earn the \$750 paid as advanced fees.

**Supplemental Facts**

Jesus Avila is a 77-year old widower with a 15-year old son. He lives on a limited income of \$3,110.62 a month from retirement and social security for both himself and his son.

Avila's mortgage took up \$1,251.87 of his income. His primary purpose in hiring USLS was to reduce his mortgage payment. He was also persuaded by USLA's representation that once the lawsuit was filed, he could "refrain from making [his] mortgage payments without having the lender putting [his] credit in jeopardy or foreclosing on [him]." He wrote a letter to this effect to Tony Colson at USLS on April 14, 2010.

When Avila first signed up for USLS, he paid about a third of his income, \$1,251.87 a month, to USLS. Later the payment was reduced due to his claim of hardship. He paid \$12,300 to USLA/USLS. He and his sister, Mary Severe, also paid \$4,000 for a forensic loan audit.

On January 28, 2010, Avila was assigned another USLS attorney (not respondent) to represent him in a lawsuit. A suit was filed on his behalf, *Jesus J. Avila v. Franklin Loan*, case No. CV000853, in Merced County Superior Court.

On or about August 23, 2010, Avila received a letter from USLS informing him that respondent was his new attorney on the case.

Respondent signed a substitution into the case on September 15, 2010.

The parties executed a fee agreement in September 2010. The fee agreement specified that respondent would get a contingency fee: "Absent a favorable outcome in the Litigation, Client will not have any responsibility for the attorney's fees due to the Attorney."

The fee agreement further specified that the client would pay all "costs" in connection with the litigation, including, but not limited to, document preparation, court filing fees, deposition costs, expert fees and expenses, investigation costs, long-distance telephone charges, messenger service fees, photocopying expenses, and process server fees.

On or about December 3, 2010, respondent wrote and advised Avila that he terminated his relationship with USLS. He sought to negotiate a new fee agreement with Avila, wherein Avila would pay him the monthly payments. The new fee agreement specified he was charging \$350 an hour and a monthly payment of \$1,000 to cover fees and costs. In addition, respondent was entitled to elect between retaining the monthly payments; collecting a cost award minus the client's total monthly payments; and/or receive a contingency fee minus the monthly payments. Respondent also sought authorization for automatic debit of the monthly fee from the client's checking account.

On December 13, 2010, Avila wrote back to respondent and affirmed the original September 2010 contract. Avila told respondent that, contrary to respondent's statement that he had terminated his relationship with USLS, Avila was aware that the Attorney General had shut down USLS.

In or about February 2011, respondent moved to be relieved as counsel for Avila, claiming "Attorney is no longer able to adequately represent the client."

On or about March 18, 2011, Avila wrote to the court, in pro per, opposing respondent's motion to be relieved as counsel.

On April 6, 2011, the court granted a judgment of dismissal in Avila's case. This dismissal was related to a prior court order. The court had previously granted a motion to strike without leave to amend.

### **Conclusions**

#### ***Count One – (Rule 1-320(A) [Sharing Fees with Non-Lawyers])***

By splitting the legal fees with My US Legal and receiving the \$250 monthly fee in the Avila matter, respondent shared a legal fee with a nonattorney entity, in willful violation of rule 1-320(A).

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

By failing to perform any work of value in the Avila matter, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

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

By failing to refund \$750 in unearned fees to Avila, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

**Case No. 11-O-12769– The Ritchie Matter**

**Stipulated Facts**

Prior to January 2010, Darlin Ritchie ("Ritchie") hired My US Legal to file a predatory lender lawsuit on her behalf. In July 2010, My US Legal hired respondent to handle the Ritchie matter. Ritchie paid My US Legal advanced attorney's fees in monthly installments. My US Legal forwarded \$750 (paid in installments of \$250 per month) to respondent for the Ritchie matter. The \$250 represented attorney's fees and was paid from a portion of the advanced attorney's fees paid by Ritchie to My US Legal. The \$750 represented an impermissible fee split with a non-attorney.

My US Legal then filed a complaint on behalf of Ritchie. Thereafter, respondent failed to perform any work in the Ritchie matter. Respondent did not earn the \$750 paid as advanced fees.

**Supplemental Facts**

In May 2010 Darlin Ritchie hired another USLA attorney (not respondent) to represent her in a lawsuit. On May 26, 2010, a suit was filed on her behalf, *Ritchie v. JP Morgan Chase Bank*, case No. VG10516928, in Alameda County Superior Court. The complaint alleged state causes of action for fraud and deceit, negligent misrepresentation, breach of fiduciary duty, aiding and abetting, breach of contract, tortuous interference with contractual relations, negligence, and financial elder abuse.

Ritchie was 75 years old in March 2011.

Ritchie made payments of \$500 per month to USLS and estimates she paid them over \$10,000.

On or about July 13, 2010, Chase Bank wrote Ritchie a letter, offering to convert her adjustable mortgage rate to a fixed mortgage rate at 5 percent. She had only to sign and return the agreement form to obtain the new fixed rate.

On or about July 21, 2010, USLS wrote to Ritchie and advised her that respondent had agreed to accept her case. Ritchie executed the fee agreement on July 26, 2010; respondent executed it on August 2, 2010.

On or about August 23, 2010, Ritchie's prior attorney with USLS, Timothy O'Connor, wrote to her and asked her to sign a substitution of attorney. She signed it on August 27, 2010.

On or about August 23, 2010, defendants JPMorgan Chase Bank and Chase Home Finance filed a notice of demurrer to the complaint.

On or about September 7, 2010, USLS wrote to Ritchie and advised her that respondent had "reviewed your case and agreed to accept it."

On or about September 10, 2010, respondent signed a substitution into the suit on behalf of Ritchie; this document was filed with the court on or about October 18, 2010.

On or about September 15, 2010, the parties executed a fee agreement, which stated that respondent would get a contingency fee: "Absent a favorable outcome in the Litigation, Client will not have any responsibility for the attorney's fees due to the Attorney."

The fee agreement further specified that the client would pay all "costs" in connection with the litigation, including, but not limited to, document preparation, court filing fees, deposition costs, expert fees and expenses, investigation costs, long-distance telephone charges, messenger service fees, photocopying expenses, and process server fees.

On or about November 15, 2010, Ritchie called respondent in an effort to find out what was happening in her case; respondent informed her that USLS was shut down.

On or about December 10, 2010, respondent wrote to Ritchie and asked her to sign a new fee agreement; the new fee agreement specified he was charging \$350 an hour and a monthly payment of \$1,000 to cover fees and costs. In addition, respondent was entitled to elect between retaining the monthly payments; collecting a cost award minus the client's total monthly payments; and/or receive a contingency fee minus the monthly payments. Respondent also sought authorization for automatic debit of the monthly fee from the client's checking account.

On or about December 14, 2010, Ritchie replied, declining to renegotiate the contract and stating that respondent was still obligated to perform pursuant to the September fee agreement.

On or about January 11, 2011, the court issued an order, sustaining a demurrer to the complaint and noting that no opposition was filed to the demurrer. The court found that plaintiff had failed to file an opposition, "which essentially concedes defects in the complaint as currently drafted." The court gave Ritchie 20 days for leave to amend the complaint.

On or about January 27, 2011, Ritchie wrote a letter to respondent and stated, "I have been waiting for my day in court for over a year and hope that by now you have received some response from the courts regarding my claim and with a date to proceed further. I am 75 years old and know in my heart that this was wrong and I am depending on you for your best."

On or about February 7, 2011, defendants Susan Park and American Capital Funding served respondent with Special Interrogatories, Set One to Plaintiff, Darlin Ritchie.

Respondent forwarded the interrogatories to Ritchie on February 9, 2011, with directions to fill them out. Ritchie wrote back on February 12, 2011, and requested and/or instructed respondent to answer the questions using all the documentation that Ritchie had already submitted. "The interrogation papers have requests of information that is found in the audit papers that I paid \$4,800 for and I have enclosed a copy of it in total." She also provided a four-

page response with an effort to respond to the interrogatories. Respondent did not respond to the interrogatories.

On or about March 15, 2011, respondent filed a motion to be relieved as counsel.

On or about May 27, 2011, the court ordered that respondent could be relieved as counsel and further ordered that respondent provide Ritchie with an outline of anticipated hearings or proceedings, including deadlines, and information regarding the case management conference, motion to compel hearing, and responses to the second amended complaint, and to file notice with the court when he had done so.

Respondent did not file a pleading with the court indicating that he had complied with the court's May 27, 2011 order.

### **Conclusions**

#### ***Count One – (Rule 1-320(A) [Sharing Fees with Non-Lawyers])***

By splitting the legal fees with My US Legal and receiving the \$250 monthly fee in the Ritchie matter, respondent shared a legal fee with a nonattorney entity, in willful violation of rule 1-320(A).

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

By failing to perform any work in the Ritchie matter, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

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

By failing to refund \$750 in unearned fees to Ritchie, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

## **Aggravation<sup>4</sup>**

### **Prior Record of Discipline (Std. 1.2(b)(i).)**

Respondent has two prior records of discipline.<sup>5</sup> In his first prior record of discipline, he stipulated to a public reproof for filing a frivolous appeal and for failing to report judicial sanctions to the State Bar. (State Bar Court case No. 05-O-04521, effective November 28, 2006.)

In his second prior record of discipline, respondent stipulated to a one-year stayed suspension and two years' probation for violating the probation conditions attached to the public reproof. (Supreme Court order No. S170190; State Bar Court case No. 08-H-10473, effective May 3, 2009.)

The instant matter occurred during his probation period in 2010. Aggravating circumstance of prior misconduct is magnified by the fact that respondent committed the current misconduct while on probation in the prior disciplinary proceeding. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.)

### **Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)**

Respondent committed multiple acts of wrongdoing. He participated in an organization that defrauded hundreds of troubled homeowners under the pretense of foreclosure rescue. He took advantage of his vulnerable, elderly clients. He shared legal fees with nonlawyers, failed to perform services, and failing to promptly refund unearned fees in three client matters.

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<sup>4</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.

<sup>5</sup> The court takes judicial notice of the pertinent State Bar Court records regarding respondent's prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

**Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)**

Respondent's misconduct harmed the clients, the public and the administration of justice. Respondent's misconduct caused significant harm to his financially troubled clients. His elderly clients were desperate to keep their homes and respondent took advantage of their misfortune. Facing financial difficulties, these distressed homeowners fell prey to respondent, My US Legal, and USLS/ USLA and were further victimized by the loss of their savings.

**Mitigation**

**Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)**

Respondent's candor and cooperation with the State Bar during disciplinary investigation and proceedings, including entering into a stipulation as to facts, conclusions of law and disposition, is given little weight in mitigation since he failed to participate in several of the proceedings after this matter was remanded by the Supreme Court. In particular, he failed to appear at this hearing.

**Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standard 1.7(b) provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. There are no compelling mitigating circumstances in this matter.

Standards 2.4 and 2.10 apply in this matter. Standard 2.4(b) provides that a member's culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member's culpability of willfully failing to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.10 provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of sharing legal fees with nonlawyers; failing to perform services; and failing to promptly refund unearned fees in three client matters.

The State Bar urges that respondent should be disbarred from the practice of law, arguing that respondent's misconduct was widespread and serious, that this was respondent's third disciplinary offense, and that there are no compelling mitigating circumstances.

“In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client’s money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

The court found instructive *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. In *Jones*, the attorney was relatively inexperienced and had been admitted about two years when his misconduct began. The attorney was a full-time associate at a law firm. At the same time and for a two-year period, he entered into an agreement with a nonlawyer to establish a law corporation and to split fees. The nonlawyer handled all aspects of the personal injury practice without appropriate supervision. The nonlawyer used illegal means to solicit clients and, without Jones’s knowledge, practiced law, collected over \$600,000 in attorney fees although no attorney had performed services and misused nearly \$60,000 in settlement funds withheld to pay medical providers, all in Jones’s name. Jones did not take realistic action to stop these practices even after receiving reliable information that they were occurring. Jones eventually reported the nonlawyer to the police, turned himself in to the State Bar and cooperated fully in the prosecution of his discipline case as well as the criminal case against the nonlawyer. Mitigating factors include substantial, spontaneous candor and cooperation, good character, community activities and paying \$57,000 from his own funds to lienholders unpaid by the nonlawyer.

The attorney was suspended for three years, stayed, placed on a three-year probation and was actually suspended for two years and until he complied with standard 1.4(c)(ii), Standards

for Attorney Sanctions for Professional Misconduct, for abdicating “basic professional responsibilities and allow[ing] a non-lawyer almost free rein to perform such responsibilities in the lawyer’s name.” (*Id.* at p. 415.) *Jones* is distinguishable from the present case by the significant mitigation offered by Jones, notably, his substantial, spontaneous candor and cooperation and restitution.

In *Hulland v. State Bar* (1972) 8 Cal.3d 440, 449, the Supreme Court observed that the legal profession is “more than a mere ‘money-getting trade.’” “[T]he right to practice law ‘is not a license to mulct the unfortunate.’” (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 564.)

In the present case, respondent along with My US Legal had clearly swindled vulnerable, desperate clients. Even after USLS was shut down by the Attorney General, respondent was still trying to renegotiate with his clients to continue the shenanigan of providing loan modification services. The serious nature of the misconduct as well as the self-interest underlying respondent’s actions suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar.

Accordingly, having further considered the evidence, the supplemental facts, the standards, the case law, and the aggravating factors, including respondent's two prior records of discipline and failure to fully participate in these proceedings after the Supreme Court’s remand, the court concludes that the 30 days’ actual suspension previously recommended in the original stipulated disposition was inadequate to protect the public, the courts and the legal profession. The court recommends that respondent be disbarred and make restitution to the three clients whom he harmed and to the trustee for the estate of My US Legal Services, Inc.

### **Recommendations**

It is recommended that respondent Brion Leigh St. James, State Bar Number 181977, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

### **Restitution**

It is also recommended that respondent make restitution to the following persons (or to the Client Security Fund to the extent of any payment from the fund, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation:

- (1) Victoria Torres in the amount of \$500 plus 10 percent interest per year from October 1, 2010;
- (2) Jesus Avila in the amount of \$750 plus 10 percent interest per year from October 1, 2010;
- (3) Darlin Ritchie in the amount of \$750 plus 10 percent interest per year from October 1, 2010; and
- (4) Susan K. Smith, Trustee for Estate of My US Legal Services, Inc., U.S. Bankruptcy Court, Eastern District, Sacramento Division, case No. 10-51750, in the amount of \$25,500.

### **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.

### **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.

**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.

**Order Vacating Stipulation**

The order filed October 12, 2011, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter is hereby vacated.

Dated: February \_\_\_\_\_, 2013

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LUCY ARMENDARIZ  
Judge of the State Bar Court