

1 Marilyn S. Scheer (State Bar No. 132544)
2 5624 Ponce Avenue
3 Woodland Hills, CA 91367
4 Telephone: (323)336-2525

5 Respondent, *In Pro Per*

FILED

SEP 04 2013

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

8 STATE BAR COURT OF CALIFORNIA
9
10 HEARING DEPARTMENT -LOS ANGELES

11 In the Matter of:

12
13 Marilyn Sue Scheer
14 No. 132544

15
16 A Member of the State Bar

Case Nos.: 12-O-14071; 12-O-16633;
12-O-18068

**RESPONDENT'S RESPONSE TO
NOTICE OF DISCIPLINARY CHARGES**

[State Bar Rule of Procedure. 5.43]

Hearing Dept.: Judge Donald F. Miles
Status Conference: February 10, 2014
Time: 10:00 a.m.

21 Respondent Marilyn Sue Scheer ("Scheer") appearing *in pro per*, hereby
22 responds to the State Bar of California's ("State Bar") Notice of Disciplinary Charges filed
23 against her in these cases on July 19, 2013. Pursuant to State Bar Rule of Procedure 5.43(C),
24 all pleadings and other documents filed in these proceedings shall be served and/or mailed to
25 Scheer at the address appearing on the top of page 1 of this Response to Notice of Disciplinary
26 Charges ("NDC"). Scheer responds to the NDC as follows:
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PRELIMINARY STATEMENT

Contrary to the allegations of the NDC, Scheer did not commit any acts of professional misconduct. Scheer respectfully submits that the NDC should be dismissed. Any statement in this Response that is not a specific admission of an alleged fact should be considered as a denial of that alleged fact.

Contrary to the allegations of the NDC, Scheer did not commit any acts of professional misconduct. Scheer respectfully submits that the NDC should be dismissed. Any statement in this Response that is not a specific admission of an alleged fact should be considered as a denial of that alleged fact.

2. Scheer denies the allegations of paragraph 2 of the NDC.
3. Scheer denies as stated the allegations of paragraph 3 of the NDC.
4. Scheer denies as stated the allegations of paragraph 4 of the NDC.

-2-

1 5. Scheer denies as stated the allegations of paragraph 5 of the NDC because the
2 State Bar has not cited New Jersey law in full and has intentionally mislead the State Bar Court
3 as to the applicable law. Scheer never held herself out as “admitted” to practice law in New
4 Jersey. Scheer was at all times acting in accordance with the rules governing
5 multijurisdictional/ federal practice and the HAMP Guidelines governing “Authorized
6 Advisors” in providing loan modification services.
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8 6. Scheer admits the allegations of paragraph 6 of the NDC.

9 7. Scheer denies as stated the allegations of paragraph 7 of the NDC.
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12 COUNT TWO

13 8. Scheer denies the allegations of paragraph 8 of the NDC.

14 9. Scheer realleges her responses to Count One of the NDC as if fully set forth
15 herein.

16 10. Scheer denies as stated the allegations of paragraph 10 of the NDC.

17 11. Scheer denies the allegations of paragraph 11 of the NDC.
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20 COUNT THREE

21 12. Scheer denies the allegations of paragraph 11 of the NDC.

22 13. Scheer denies as stated the allegations of paragraph 13 of the NDC.

23 14. Scheer denies as stated the allegations of paragraph 14 of the NDC because the
24 State Bar has not cited Washington law in full and has intentionally mislead the State Bar Court
25 as to the applicable law. Scheer never held herself out as “admitted” to practice law in
26 Washington. Scheer was at all times acting in accordance with the rules governing
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1 multijurisdictional/federal practice and the HAMP Guidelines governing “Authorized
2 Advisors” in providing loan modification services.

3 15. Scheer admits the allegations of paragraph 15 of the NDC.

4 16. Scheer denies the allegations of paragraph 16 of the NDC.
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7 **COUNT FOUR**

8 17. Scheer denies the allegation of paragraph 17 of the NDC.

9 18. Scheer realleges her responses to Count Three of the NDC as if fully set forth
10 herein.

11 19. Scheer denies as stated the allegations of paragraph 19 of the NDC.
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13 20. Scheer denies the allegations of paragraph 20 of the NDC.
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15 **COUNT FIVE**

16 21. Scheer denies the allegations of paragraph 21 of the NDC.

17 22. Scheer denies as stated the allegations of paragraph 22 of the NDC.
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19 23. Scheer denies as stated the allegations of paragraph 23 of the NDC.

20 24. Scheer denies as stated the allegations of paragraph 24 of the NDC because the
21 State Bar has not cited Maryland law in full and has intentionally mislead the State Bar Court
22 as to the applicable law. Scheer never held herself out as “admitted” to practice law in
23 Maryland. Scheer was at all times acting in accordance with the rules governing
24 multijurisdictional/federal practice and the HAMP Guidelines governing “Authorized
25 Advisors” in providing loan modification services.
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27 25. Scheer admits the allegations of paragraph 25 of the NDC.

28 26. Scheer denies the allegations of paragraph 26 of the NDC.

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28. Scheer realleges her responses to Count Five as if fully set forth herein.

29. Scheer denies as stated the allegations of paragraph 29 of the NDC.

30. Scheer denies the allegations of paragraph 30 of the NDC.

(Failure to State a Claim--As to All Counts)

31. Each and every Count of the NDC fails to state a disciplinable offense against Scheer. The NDC cites select portions of another state's law that are intentionally and blatantly misleading to the State Bar Court, while ignoring other provisions of state and federal law. The State Bar has filed the present proceedings merely in retaliation for Scheer's challenge of CAL. CIV. CODE §2944.7 on constitutional grounds in State Bar Case Nos. 11-O-10888 *et al.* The State Bar's conduct is outside prosecutorial norms and constitutes an abuse of its authority under the State Bar Act.

(Violation of Equal Protection--As to All Counts)

32. Providing loan modification services does not constitute the “unauthorized practice of law.” Third party “Authorized Advisors” (non-attorneys) are allowed to provide loan modification services under federal and state law without being admitted to the bars of the various states. To the extent that the State Bar of California is charging Scheer with professional misconduct, Scheer has been denied equal protection of the law in violation of her rights under U.S. CONST. AMEND XIV, §1.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Multi-jurisdictional/Federal Practice Rules--As to All Counts)**

3 33. Even if providing loan modification services could be considered the
4 practice of law (which Scheer disputes), Scheer was authorized to provide loan modification
5 services in accordance with the various states' versions of ABA Model Rules 5.5(c)(4) and
6 5.5(d)(2) governing multi-jurisdiction/federal practice. The State Bar has intentionally ignored
7 the multi-jurisdictional/federal practice rules in order to wrongfully commence this proceeding
8 against Scheer. The State Bar of California refuses to acknowledge the concept of multi-
9 jurisdictional practice adopted by other states. California is the only state that does not use
10 either set of professional responsibility rules developed by the American Bar Association.
11 Instead, the State Bar harbors parochial, out-dated views designed to protect the special
12 interests of only select groups (*e.g.*, the banking industry).
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16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(Federal Preemption --As to All Counts)**

18 34. The federal guidelines of the various federal programs (HAMP) governing
19 residential loan modification services provide for assistance to borrowers by "Authorized
20 Advisors." Such "Authorized Advisors" are not required to be attorneys or admitted to the
21 state bars of any state. Federal law has authorized assistance to homeowners by third parties
22 with respect to applying for and obtaining residential loan modification services. It is the State
23 Bar of California which erroneously characterizes such services as practicing law-- without any
24 authority for doing so. The State Bar has obviously not reviewed and/or ignored the HAMP
25 Guidelines prior to prosecuting attorneys (such as Scheer in this case) because the State Bar is
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1 improperly yielding to political pressure from the California State Legislature and other special
2 interests to eliminate attorneys from the loan modification process.

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5 **FIFTH AFFIRMATIVE DEFENSE**

6 **(Lack of Subject Matter Jurisdiction—As to All Counts)**

7 35. The State Bar Court lacks jurisdiction to discipline Scheer based on
8 allegations of the violation of another state's law when Scheer was not engaged in the unlawful
9 practice of law in that jurisdiction and further because her services were expressly authorized
10 by federal law. The State Bar Court would be acting *ultra vires* in doing so.
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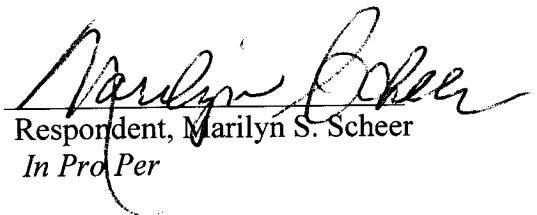
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13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Lack of Jurisdiction/Comity—As to All Counts)**

15 36. By providing professional services to residents of other states, Scheer
16 subjected herself to the laws of those other states; yet no State Bar of any other state has
17 commenced any action against Scheer for providing loan modification services. The State Bar
18 of California has exceeded/abused its authority by filing its NDC against Scheer, solely because
19 she was involved in providing loan modification services.
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21 WHEREFORE, Scheer respectfully requests that the NDC be dismissed against
22 her in its entirety at the State Bar's cost.
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24
25 Dated: September 4, 2013

26 
Respondent, Marilyn S. Scheer
In Pro Per
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3 **PROOF OF PERSONAL SERVICE**

4 **STATE OF CALIFORNIA)**
5 **)** SS
6 **COUNTY OF LOS ANGELES)**

7 I am a resident of the County of Los Angeles, State of California. My residence
8 address is 5624 Ponce Avenue, Woodland Hills, California 91367.

9 On September 4, 2013, I personally served the foregoing document described as:

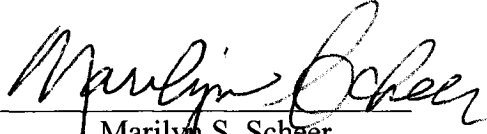
10 **RESPONDENT'S RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**
11 on the interested party in this action by placing a true copy thereof enclosed in a sealed
12 envelope addressed as follows:

13 Ashod Mooradian
14 Office of the Chief Trial Counsel
15 The State Bar of California
16 1149 S. Hill Street
17 Los Angeles, California 90015

18 **(By Personal Service):** I caused a copy of the **Respondent's Response to Notice of**
19 **Disciplinary Charges** to be delivered by hand to the offices of the addressee as indicated
20 above.

21 **(State):** I declare under penalty of perjury under the laws of the State of California that the
22 above is true and correct.

23 Executed on September 4, 2013 at Woodland Hills, California.

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Marilyn S. Scheer