

1 Marilyn S. Scheer
2 5624 Ponce Avenue
3 Woodland Hills, CA 91367
4 Telephone: (323)336-2525

FILED *JP*

MAY 15 2015

5 Respondent, *In Pro Per*

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

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8 STATE BAR COURT OF CALIFORNIA
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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 No.: 14-O-05451

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

[State Bar Rule of Procedure. 5.43]

Hearing Dept.: Judge Patrice McElroy
Settlement Conference: June 9, 2015
Time: 11:30 a.m.

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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 this case on April 10, 2015. Pursuant to State Bar Rule of Procedure 5.43(C), all
24 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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1 **FIRST AFFIRMATIVE DEFENSE**

2 **(Lack of State Bar Court (agency) Jurisdiction)**

3 4. The State Bar court lacks jurisdiction under the California Supreme Court's
4 holding in *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, because Scheer was not engaged
5 in the "practice of law" under California's State Bar Act. The State Bar courts only has such
6 limited jurisdiction as is conferred on them by the State Bar Act. Actions taken in excess of an
7 agency's (such as the State Bar court) jurisdiction are *ultra vires*.
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10 **SECOND AFFIRMATIVE DEFENSE**

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

12 5. Each and every Count of the NDC fails to state a disciplinable offense
13 against Scheer. The NDC cites select portions of Maryland law that are intentionally and
14 blatantly misleading to the State Bar court, while ignoring other provisions of state and federal
15 law. The State Bar has filed the present proceedings merely in retaliation for Scheer's
16 challenge of CAL. CIV. CODE §2944.7 on constitutional grounds in State Bar Case Nos. 11-O-
17 10888 *et al.* and CAL. R. CT. 9.16(b) in an action currently pending before the Ninth Circuit
18 Court of Appeals as *Marilyn S. Scheer v. Patrick Kelly et. al.*, No. 14-55243. The State Bar's
19 conduct is outside prosecutorial norms and constitutes an abuse of its authority under the State
20 Bar Act.
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24 **THIRD AFFIRMATIVE DEFENSE**

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

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

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6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Multijurisdictional/Federal Practice Rules--As to All Counts)**

8 7. Even if providing loan modification services could be considered the practice
9 of law, Scheer was authorized to provide loan modification services in accordance with the
10 state of Maryland's version of ABA Model Rules 5.5(c)(4) and 5.5(d)(2) (including the Official
11 Comments thereto) governing multijurisdictional/federal practice. The State Bar has
12 intentionally ignored the multijurisdictional/federal practice rules and the Official Comments
13 thereto, adopted by the State of Maryland, in order to wrongfully commence this proceeding
14 against Scheer. The State Bar of California refuses to acknowledge the concept of
15 multijurisdictional practice adopted by the state of Maryland. California is the only state that
16 does not use either set of professional responsibility rules developed by the American Bar
17 Association. Instead, the State Bar harbors parochial, out-dated views designed to protect the
18 special interests of select groups.
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21 **FIFTH AFFIRMATIVE DEFENSE**

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

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24 8. The federal guidelines of the various federal programs (HAMP) governing
25 residential loan modification services provide for assistance to borrowers by "Authorized
26 Advisors." Such "Authorized Advisors" are not required to be attorneys or admitted to the
27 state bars of any state. Federal law has authorized assistance to homeowners by third parties
28 with respect to applying for and obtaining residential loan modification services. It is the State

1 Bar of California which erroneously characterizes such services as practicing law-- without any
2 authority for doing so. The State Bar has obviously not reviewed and/or ignored the HAMP
3 Guidelines prior to prosecuting attorneys (such as Scheer in this case) because the State Bar is
4 improperly yielding to political pressure from the California State Legislature and other special
5 interests to eliminate attorneys from the loan modification process.
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7 8 **SIXTH AFFIRMATIVE DEFENSE**

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

10 9. The State Bar Court lacks jurisdiction to discipline Scheer based on allegations
11 of the violation of another state's law when Scheer was not engaged in the unlawful practice of
12 law in that jurisdiction for purposes of Cal. RPC 1-300(B), and further because her services
13 were expressly authorized by federal law.
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15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Statute of Limitations—As to All Counts)**

17 10. The NDC should be dismissed because it was filed more than five years after
18 the parties entered into the Residential Loan Modification Agreement on March 10, 2010,
19 contrary to the provisions of State Bar of Pro. 5.21(A). The NDC was filed April 10, 2015.
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21 **EIGHTH AFFIRMATIVE DEFENSE**

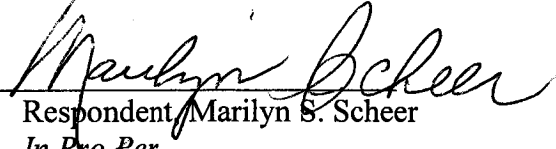
22 **(Laches—As to All Counts)**

23 11. The NDC should be dismissed because it was filed more than six months after
24 the initial complaint was received by the State Bar on September 8, 2014 from the Jones. The
25 State Bar did not file the NDC until April 10, 2015, more than seven months later, contrary to
26 the expressly stated legislative goal of CAL. BUS. & PROF. CODE §6094.5(a). Scheer has been
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1 unduly prejudiced by this delay because this NDC could have been tried with other pending
2 charges in December 2014. The State Bar engages in intentional dilatory, piecemeal litigation
3 in order to impermissibly increase penalties and expenses against indigent members.
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5 WHEREFORE, Scheer respectfully requests that the NDC be dismissed against
6 her in its entirety at the State Bar's cost.
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8 Dated: May 15, 2015
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Respondent Marilyn S. Scheer
In Pro Per

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5 **PROOF OF PERSONAL SERVICE**

6 **STATE OF CALIFORNIA)**
7 **) SS**
8 **COUNTY OF LOS ANGELES)**

9
10 I am a resident of the County of Los Angeles, State of California. My residence
address is 5624 Ponce Avenue, Woodland Hills, California 91367.

11 On May 15, 2015, I personally served the foregoing document described as:

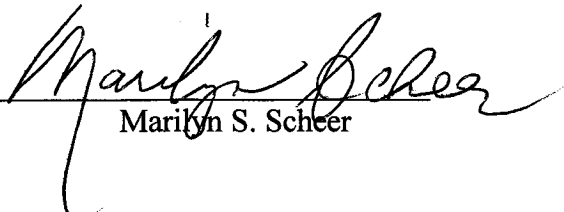
12 **RESPONDENT'S RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**
13 on the interested party in this action by placing a true copy thereof enclosed in a sealed
14 envelope addressed as follows:

15 Ashod Mooradian
16 Office of the Chief Trial Counsel
17 The State Bar of California
845 S. Figueroa Street
Los Angeles, California 90017-2515

18
19 **(By Personal Service):** I caused a copy of the **Respondent's Response to Notice of**
20 **Disciplinary Charges** to be delivered by hand to the offices of the addressee as indicated
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 May 15, 2015 at Los Angeles, California.

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25 
26 Marilyn S. Scheer
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