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ORIGINAL

State Bar Court of California  
Hearing Department

Los Angeles **PUBLIC MATTER**  
DISBARMENT

<p>Counsel For The State Bar</p> <p><b>Patrice Vallier-Glass</b> Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1180</p> <p>Bar # 305900</p>	<p>Case Number(s): 17-N-00911-YDR 17-O-00967</p> <p>kwiktag® 226 163 372</p> 	<p>For Court use only</p> <p><b>FILED</b> P.B. <b>OCT 02 2017</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Barry Steven Jorgensen</b> PO Box 439060 Pmb 162 San Ysidro, CA 92143</p> <p>Bar # 79620</p>	<p>Submitted to: <b>Settlement Judge</b></p>	
<p>In the Matter of: <b>BARRY STEVEN JORGENSEN</b></p> <p>Bar # 79620</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p><b>DISBARMENT</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**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 2, 1978**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(11)** 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."

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- (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):
- Costs to be awarded to the State Bar.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case **13-O-13309, 13-O-13455, 13-O-13662, 13-O-13665, 13-O-13744**
  - (b)  Date prior discipline effective **November 11, 2016**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Civil Code section 2944.7, Rules of Professional Conduct, rules 1-300(A) and 1-320(A)**
  - (d)  Degree of prior discipline **Two years' stayed suspension, two years' probation, six months' actual suspension**
  - (e)  If respondent has two or more incidents of prior discipline, use space provided below:  
**State Bar Court case # of prior case: 14-O-05703**  
**Date prior discipline effective: July 26, 2017**  
**Rules of Professional Conduct/State Bar Act violations: Rules of Professional Conduct, rules 1-300(A), 1-311(D); Business and Professions Code, section 6106**  
**Degree of prior discipline: Two years' stayed suspension, two years' probation, nine months' actual suspension**  
**See attachment, page eight.**
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

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- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7)  **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.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page eight.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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.

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- (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 objectively 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 subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

See "Pretrial Stipulation," page eight.

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**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **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.
  
- (2)  **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
  
- (3)  **Other:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                   BARRY STEVEN JORGENSEN

CASE NUMBERS:                   17-N-00911, 17-O-00967

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**FACTS:**

1. On October 12, 2016, the California Supreme Court filed an order in Supreme Court case no. S235946 imposing discipline against respondent in State Bar Court case nos. 13-O-13309, 13-O-13455, 13-O-13662, 13-O-13665 and 13-O-13744. The ordered discipline included a two years' suspension, stayed, two years' probation, and six months' actual suspension. The Supreme Court also ordered respondent to pay restitution to five clients and to comply with California Rules of Court, rule 9.20.

2. Respondent's discipline became effective on November 11, 2016.

Case No. 17-N-00911 (State Bar Investigation)

3. Respondent had actual knowledge of the Supreme Court's orders, including the requirement to comply with California Rules of Court, rule 9.20.

4. The Supreme Court order required respondent to file, with the Clerk of the State Bar Court, a declaration showing that he had fully complied with the provisions under rule 9.20, no later than December 21, 2016.

5. On November 10, 2016, the Office of Probation ("Probation") uploaded onto respondent's State Bar website membership portal a letter reminding respondent of his probation and conditions.

6. On November 10, 2016, Probation emailed respondent to advise respondent that Probation had previously uploaded a letter to respondent's membership portal. Respondent received the email.

7. On December 28, 2016, Probation mailed respondent a letter regarding his non-compliance with rule 9.20 requirements. Respondent received the letter.

8. On December 28, 2016, Probation emailed respondent a letter regarding his non-compliance with rule 9.20 requirements. Respondent received the email.

9. Respondent failed to file a declaration of compliance with California Rules of Court, rule 9.20, in conformity with the requirements of rule 9.20(c) with the Clerk of the State Bar Court by December 21, 2016.

10. To date, respondent has not filed a 9.20 declaration of compliance with the Clerk of the State Bar Court.

CONCLUSION OF LAW:

11. By failing to file with the Clerk of the State Bar Court a declaration showing that he had fully complied with rule 9.20, California Rules of Court, as required by subdivision (c) of rule 9.20, within the time prescribed by the Supreme Court order filed on October 12, 2016 in Supreme Court case no. S235946, respondent willfully violated rule 9.20, California Rules of Court.

Case No. 17-O-00967 (State Bar Investigation)

FACTS:

12. Respondent had actual knowledge of the Supreme Court's order and of all conditions of probation.

13. As a condition of his probation, the Supreme Court required respondent to schedule and hold a meeting with his probation deputy within 30 days of the effective date of discipline.

14. As a condition of his probation, the Supreme Court required respondent to submit quarterly reports to Probation on each January 10, April 10, July 10, and October 10 of the period of probation.

15. On November 10, 2016, Probation uploaded onto respondent's State Bar website membership portal a letter reminding respondent of his probation and conditions.

16. On November 10, 2016, Probation emailed respondent to advise respondent that Probation had previously uploaded a letter to respondent's membership portal. Respondent received the email.

17. On February 7, 2017, Probation mailed respondent a letter regarding his non-compliance with conditions of probation. Respondent received the letter.

18. On February 7, 2017, Probation emailed respondent a letter regarding his non-compliance with conditions of probation. Respondent received the email.

19. Respondent failed to hold the initial meeting with his probation deputy by December 11, 2016, or at any time thereafter.

20. Respondent failed to submit a quarterly report due by January 10, 2017.

21. Respondent failed to submit a quarterly report due by April 10, 2017.

22. Respondent failed to submit a quarterly report due by July 10, 2017.

CONCLUSION OF LAW:

23. By failing to submit to the Office of Probation the quarterly reports due on January 10, 2017, April 10, 2017, and July 10, 2017, and by failing to schedule and hold the required meeting with his probation deputy, respondent failed to comply with the conditions attached to his disciplinary probation

ordered in Supreme Court case no. S235946, in willful violation of Business and Professions Code section 6068(k).

### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has two prior records of discipline. In State Bar case nos. 13-O-13309, 13-O-13455, 13-O-13662, 13-O-13665 and 13-O-13744, the Review Department found respondent culpable of charging and collecting fees in five client matters for loan modifications or other loan forbearances in violation of Civil Code section 2944.7; aiding and abetting the unauthorized practice of law; and sharing fees with a non-lawyer. Respondent's misconduct occurred from 2011 to 2012. Based upon the Review Department's recommendation, the Supreme Court filed an order in case no. S235946 and imposed a two-year suspension, stayed, two years' probation, six months' actual suspension, and ordered respondent to pay restitution to five clients. The discipline became effective on November 11, 2016.

On December 13, 2016, the Hearing Department issued its decision in case no. 14-O-05703. The court found respondent culpable of moral turpitude by concealing from a superior court judge the fact that a former attorney who sat at the counsel table with respondent was not licensed to practice in any jurisdiction. The court also found respondent culpable of aiding in the unauthorized practice of law and failing to give the State Bar written notice of his engaging the services of a person who resigned with charges pending from the State Bar. The misconduct occurred in 2014. Based upon the Hearing Department's recommendation, the Supreme Court filed an order in case no. S240193 and imposed a two-year suspension, stayed, two years' probation, and nine months' actual suspension. The discipline became effective on July 26, 2017.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent failed to comply with three separate conditions of probation in that respondent failed to contact his probation deputy to schedule a required meeting and failed to submit quarterly reports by their due dates of January 10, 2017, April 10, 2017 and July 10, 2017, or at any time thereafter. Respondent also failed to file his 9.20 compliance declaration. Thus, respondent committed multiple acts of wrongdoing that collectively are an aggravating circumstance.

### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (See *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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

### **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 Silverton* (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).)

In this matter, respondent failed to comply with California Rules of Court, rule 9.20, and failed to comply with conditions attached to his disciplinary probation. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

Actual suspension is the presumed sanction for failing to comply with a condition of discipline. (Std. 2.14). However, suspension or disbarment is the presumed sanction for a violation of California Rules of Court, rule 9.20. Furthermore, Standard 1.8(b) applies to cases in which a respondent has two or more prior records of disciplines. It states:

If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigation circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;
2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct;
3. The prior disciplinary matters coupled with the current record demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.

Disbarment is the appropriate level of discipline in the instant matter. Respondent has two prior records of discipline, both of which imposed lengthy periods of actual suspension - six months and nine months. In addition, respondent’s two prior records of discipline coupled with his current record of noncompliance with probation and failure to file a 9.20 compliance declaration demonstrate his unwillingness or inability to conform to ethical responsibilities of attorneys.

Case law also supports disbarment. In *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, the Review Department found that deviation from disbarment was not appropriate

under Std. 1.8(b) where the attorney's past and current misconduct demonstrated his unwillingness or inability to fulfill his ethical obligations, where the mitigation was not compelling and did not predominate over the significant aggravation, and where the attorney had two prior impositions of discipline which included actual suspensions. Furthermore, disbarment is generally the appropriate sanction for a willful violation of rule 9.20, formerly rule 955. (See *Bercovich v. State Bar* (1990) 50 Cal. 3d 116, 131; *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131.)

Respondent's pretrial stipulation is not compelling mitigation, and it is significantly outweighed by respondent's prior disciplinary record and his multiple acts of misconduct. Respondent's behavior evidences his lack of effort, his failure to take any rehabilitative steps, and his ongoing problem with conforming his conduct to the requirements of court orders. Accordingly, disbarment here is appropriate and is necessary in order to protect the public, the courts and the legal profession, maintain the highest of professional standards, and preserve public confidence in the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**


Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 16, 2017, the discipline costs in this matter are \$10,466. 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.

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In the Matter of: <b>BARRY STEVEN JORGENSEN</b>	Case number(s): 17-N-00911-YDR, 17-O-00967
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**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>8-21-17</u>		<u>Barry Steven Jorgensen</u>
Date	Respondent's Signature	Print Name
_____	Respondent's Counsel Signature	Print Name
_____	Deputy Trial Counsel's Signature	<u>Patrice Vallier-Glass</u>
Date		Print Name

(Do not write above this line.)

In the Matter of: BARRY STEVEN JORGENSEN	Case number(s): 17-N-00911-YDR, 17-O-00967
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**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.

\_\_\_\_\_  
Date Respondent's Signature Barry Steven Jorgensen  
Print Name

\_\_\_\_\_  
Date Respondent's Counsel Signature Print Name  
8/25/17 Patrice Vallier-Glass  
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: BARRY STEVEN JORGENSEN	Case number(s): 17-N-00911-YDR, 17-O-00967
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**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.

9/8/17            Barry Steven Jorgensen  
Date      Respondent's Signature      Print Name

\_\_\_\_\_  
Date      Respondent's Counsel Signature      Print Name

\_\_\_\_\_  
Date      Deputy Trial Counsel's Signature      Patrice Vallier-Glass  
Print Name

(Do not write above this line.)

In the Matter of:  
**BARRY STEVEN JORGENSEN**

Case Number(s):  
**17-N-00911-YDR, 17-O-00967**

### DISBARMENT 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.

Respondent resides in a remote area of Mexico. Challenges and delays in exchanging documents have resulted. The instant stipulation was received on September 6, 2017, bearing respondent's electronic signature dated August 21, 2017, submitted by respondent via electronic mail. Respondent thereafter provided his original signature, dated September 8, 2017, to the court on September 14, 2017. The original signature is attached to the instant stipulation.

This order approves the foregoing stipulation regarding facts, conclusions of law, and disposition as supplemented by the Office of Chief Trial Counsel's supplement regarding prior disciplinary matters, which the court filed on October 2, 2017, and that is attached to this order.

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.)**

Respondent Barry Steven Jorgensen 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 (3) 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 Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Oct. 2, 2017  
Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
Judge of the State Bar Court

ORIGINAL

1 STATE BAR OF CALIFORNIA  
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8 ASSISTANT CHIEF TRIAL COUNSEL  
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10 SUPERVISING ATTORNEY  
11 PATRICE VALLIER-GLASS, No. 305900  
12 DEPUTY TRIAL COUNSEL  
13 845 South Figueroa Street  
14 Los Angeles, California 90017-2515  
15 Telephone: (213) 765-1071

FILED

OCT 02 2017 P.B.

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT  
HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of: ) Case Nos. 17-N-00911, 17-O-00967  
14 )  
15 BARRY STEVEN JORGENSEN, ) SUPPLEMENT TO STIPULATION RE  
16 No. 79620, ) FACTS, CONCLUSIONS OF LAW  
17 ) AND DISPOSITION AND ORDER  
18 ) APPROVING  
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A Member of the State Bar.

The State Bar of California ("State Bar"), by and through Deputy Trial Counsel Patrice Vallier-Glass submits the following Supplement to the parties' Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving ("Supplement") and stipulates to the authenticity of the following attached documents:

- 1) Respondent's prior record of discipline in Supreme Court case no. S235946 (State Bar Court case nos. 13-O-13309, 13-O-13455, 13-O-13662, 13-O-13665, 13-O-13744) (attached hereto as Exhibit 1); and

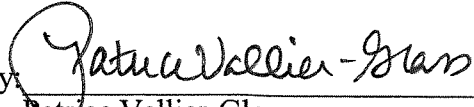
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2) Respondent's prior record of discipline in Supreme Court case no. S240193 (State Bar Court case no. 14-O-05703) (attached hereto as Exhibit 2).

Respectfully submitted,  
THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: 8/25/17

By:   
Patrice Vallier-Glass  
Deputy Trial Counsel





State Bar Court Nos. 13-O-13309/13-O-13455/13-O-13662/13-O-13665/13-O-13744

S235946

**IN THE SUPREME COURT OF CALIFORNIA**

En Banc

SUPREME COURT  
**FILED**

OCT 12 2016

In re BARRY STEVEN JORGENSEN on Discipline. **Jorge Navarrete Clerk**

**Deputy**

The petition for review is denied.

The court orders that Barry Steven Jorgensen, State Bar Number 79620, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Barry Steven Jorgensen is suspended from the practice of law for a minimum of the first six months of probation, and he will remain suspended until the following requirements are satisfied:

a. He makes restitution to the following individuals (or to the Client Security Fund to the extent of any payment from the Fund to any of them, in accordance with Business and Professions Code section 6140.5);

i. Delfino Ramirez in the amount of \$5,250 plus 10 percent interest per year from April 8, 2012; and

ii. Heriberto and Maria Garcia in the amount of \$20,995 plus 10 percent interest per year from December 21, 2012; and

iii. Angelina and Luis Maldonado in the amount of \$9,295 plus 10 percent interest per year from August 23, 2012; and

iv. Michael Herrera in the amount of \$10,645 plus 10 percent interest per year from April 17, 2012; and

v. Consuelo Sanchez de Uribe in the amount of \$15,450 plus 10 percent interest per year from August 24, 2012.

b. If he remains suspended for two years or more as a result of not satisfying the preceding conditions, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Barry Steven Jorgensen must also comply with the other conditions of probation recommended by the Review Department of the State Bar Court in its opinion filed on May 10, 2016.

3. At the expiration of the period of probation, if Barry Steven Jorgensen has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Barry Steven Jorgensen must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order, or during the period of his suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Barry Steven Jorgensen must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension.

Costs are 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.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

\_\_\_\_\_ day of OCT 12 2018  
Month

By:  Deputy

**CANTIL-SAKAUYE**

*Chief Justice*

PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

**FILED**

**MAY 10 2016** JE

**STATE BAR COURT OF CALIFORNIA**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**REVIEW DEPARTMENT**

In the Matter of	)	Case Nos. 13-O-13309 (13-O-13455;
	)	13-O-13662; 13-O-13665; 13-O-13744)
BARRY STEVEN JORGENSEN,	)	
	)	OPINION
A Member of the State Bar, No. 79620	)	
_____	)	

A hearing judge found Barry Steven Jorgensen culpable of sharing fees with a non-attorney and of charging and collecting illegal advance fees for loan modification services in one client matter. The judge dismissed charges that Jorgensen collected illegal advance fees in four other client matters and also dismissed a charge that he aided and abetted a paralegal in the unauthorized practice of law (UPL). The judge recommended discipline, including a 30-day actual suspension, after considering one aggravating circumstance (multiple acts) and three mitigating circumstances (no prior record, cooperation, and community service).

OCTC seeks review, arguing that Jorgensen is culpable on all counts, and requests a six-month actual suspension. Jorgensen does not seek review.

Upon independent review of the record (see Cal. Rules of Court, rule 9.12), we find that the hearing judge erred in her culpability analysis; Jorgensen is culpable on all counts. The fees he collected in the five client matters were illegal because all services he provided were for the sole purpose of obtaining a loan modification or other form of loan forbearance, and the law prohibits an attorney from collecting advance fees for such services. Further, Jorgensen clearly aided and abetted UPL. Finally, we find more aggravation than the hearing judge found.

In light of our conclusions, increased discipline is warranted. We recommend that Jorgensen be suspended for six months and until he pays restitution according to proof.

### I. PROCEDURAL SUMMARY

Jorgensen was admitted to practice law in California in 1978 and has no prior record of discipline. On April 24, 2014, OCTC filed a seven-count Notice of Disciplinary Charges (NDC). The parties filed a Stipulation of Facts and a Stipulation Regarding Admission of Exhibits. At the three-day trial, OCTC presented witness testimony, including that of three former clients, their family members, and the paralegal with whom Jorgensen shared fees. Jorgensen testified on his own behalf. The hearing judge issued her decision on March 5, 2015, amended on March 6, 2015. The record clearly and convincingly supports the judge's material factual findings,<sup>1</sup> which we adopt, except where noted, and summarize below, supplementing additional facts from the record. (Rules Proc. of State Bar, rule 5.155(A) [great weight given to hearing judge's findings of fact].)

### II. LEGALLY YOURS, LLC

Paralegal Andrea Dubois aka Andrea Franchino (Franchino) owned and operated Legally Yours, LLC (Legally Yours). Legally Yours solicited business by sending mailers to people whose properties were in foreclosure. In relevant part, the mailers offered property owners the following: "Your first mortgage . . . may be **RESTRUCTURED** to a 30 year fixed rate mortgage with an interest rate as low as 2%. . . . Even if you have been denied for a loan modification we may be able to help." (Emphasis in original.) When homeowners contacted Legally Yours, they would meet with Franchino or a staff member, and sign a retainer agreement for litigation services.

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<sup>1</sup> Clear and convincing evidence leaves no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

These agreements designated Legally Yours as “Attorney,” and provided that Legally Yours would assign clients’ legal matters to attorneys it hired. The agreements also stated that Legally Yours maintained supervision of the clients’ legal matters, was authorized under a special power of attorney to settle and compromise claims, and required clients to pay attorney fees directly to Legally Yours.

Legally Yours hired attorney Joseph Renteria to represent its clients in foreclosure proceedings. In September 2011, Renteria contacted Jorgensen about making special appearances for him. Later that month, Renteria became ill and could no longer work.

In October 2011, Jorgensen entered into an agreement with Legally Yours whereby it would provide paralegal services for a fee, and allow Jorgensen to operate his law practice without charge out of the business location that Legally Yours leased. Legally Yours hired Jorgensen to assume Renteria’s responsibilities for approximately 300 cases.

In the five matters before us, the clients had signed a retainer agreement with Legally Yours as described above. These clients made initial and ongoing payments for attorney fees directly to Legally Yours. From October 2011 to October 2012, Legally Yours paid Jorgensen a monthly salary from the fees it collected. Based on the advice of Jorgensen’s counsel, the business was restructured in October 2012, and clients were thereafter instructed to pay fees directly to Jorgensen.

### **III. ADVANCE FEES FOR LOAN MODIFICATION SERVICES**

#### **A. Loan Modification Laws**

On October 11, 2009, Senate Bill No. 94 (SB 94) became effective.<sup>2</sup> The Legislature enacted the law to regulate attorneys’ performance of loan modification services. One safeguard prohibits an attorney from collecting any fees until all loan modification services are completed.

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<sup>2</sup> SB 94 added sections 2944.6 and 2944.7 to the Civil Code and section 6106.3 to the Business and Professions Code (Stats. 2009, Ch. 630, § 10).

(Civ. Code § 2944.7, subd. (a).)<sup>3</sup> The intent was to “prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No, 94 (2009-2010 Reg. Sess.) as amended Mar. 23, 2009, pp. 5-6.) A violation of the Civil Code provision constitutes a misdemeanor (Civ. Code § 2944.7, subd. (b)), and is cause for imposing attorney discipline. (Bus. & Prof. Code § 6106.3, subd. (a).)

OCTC charged Jorgensen with violations of Civil Code section 2944.7 (section 2944.7), for charging and collecting fees in five client matters for loan modification or other forms of mortgage loan forbearance services before he had performed each and every service he had been contracted to perform or represented he would perform. The hearing judge dismissed the charges in four matters, reasoning that Jorgensen did not violate the law because he was hired to perform, and did perform, litigation services, rather than loan modification services, and the advance fees he collected were for those litigation services. In one matter (the Garcia matter), the hearing judge found Jorgensen culpable, but only because he received payments for loan modification services after the litigation ended.

As detailed below, the evidence establishes that although the retainer agreements stated that the services were limited to litigation, we find that *all* services Jorgensen agreed to provide, and in fact did provide, in the five client matters were for the sole purpose of obtaining loan modifications or other loan forbearances. Under section 2944.7, Jorgensen was not permitted to collect any advance fees for these loan modification services, and he therefore violated the

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<sup>3</sup> In relevant part, section 2944.7, subdivision (a), provides that “it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to . . . [¶] . . . [c]laim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.”

statute by doing so. There is no evidence that Jorgensen has refunded the illegal fees he collected.

**B. The Ramirez Matter—Count One (Case No. 13-O-13309)**

**1. Facts**

Delfino Ramirez (Ramirez) owned two properties in Santa Ana, California, that were in foreclosure—one on S. Linda Way and the other on S. Rene Drive. Ramirez contacted Legally Yours after receiving a flier from the company advertising its mortgage restructuring services. Ramirez testified that because he did not read English or Spanish and had very little formal schooling, his daughter, Otelia, accompanied him to many of the meetings with Legally Yours or she met alone with Franchino. Ramirez testified that Franchino told him Legally Yours would lower his mortgage payment.

Ramirez signed two retainer agreements with Legally Yours before Jorgensen was hired. The first retainer agreement, dated March 1, 2011, provided that Legally Yours was retained for the “sole and limited purpose of litigation” regarding the first mortgage loan secured by the S. Linda Way property, which included defending against any unlawful detainer action. Attorney Sarah Golden signed the agreement as she was working for Legally Yours at the time. The retainer agreement required Ramirez to pay a monthly fee of \$750 commencing in March 2011.

The second retainer agreement, dated August 22, 2011, also provided that Legally Yours was hired “for the sole and limited purpose of litigation” related to the first and second mortgages secured by the S. Rene Drive property. It stated that Renteria, or any attorney Legally Yours chose to substitute, would handle the litigation. The agreement required a \$4,000 initial fee and a \$750 monthly fee commencing October 15, 2011.



Jorgensen began providing legal services to Ramirez beginning in late October 2011. Ramirez did not sign a separate retainer agreement with Jorgensen. Jorgensen sent letters to Ramirez about both properties, thanking him for “selecting Legally Yours for your legal matters,” and explaining that he had been retained as the “new attorney in substitution for Joseph R. Renteria.”

As to the S. Linda Way property, a civil complaint had been filed by Golden in March 2011 for, among other things, wrongful foreclosure. Thereafter, Renteria, and then Jorgensen, substituted in and continued to litigate the case. In early 2012, the superior court sustained a demurrer to the second amended complaint without leave to amend. The case was dismissed and Jorgensen was unsuccessful in negotiating a loan modification.

As to the S. Rene Drive property, Jorgensen’s initial letter to Ramirez informed him that he was conducting a forensic loan audit and evaluating the status of the foreclosure proceedings in order to prepare a complaint for filing. Jorgensen advised that a trustee’s sale for the property had been cancelled and all foreclosure activity had ceased. Jorgensen litigated the case, which included filing a lawsuit against the lender and other defendants. A demurrer was filed, and in January 2012, Jorgensen successfully negotiated a loan modification. Ramirez rejected it, however, because the proposed payments were too high.

Between October 6, 2011 and April 8, 2012, Otelia Ramirez paid Legally Yours at least \$5,250 in attorney fees.<sup>4</sup>

## **2. Culpability**

The hearing judge dismissed Count One because “there is not clear and convincing evidence that Mr. Ramirez and Respondent contracted for Respondent to perform any services

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<sup>4</sup> Otelia Ramirez testified that she also made one or two cash payments of \$750 to Legally Yours between November 2011 and April 2012, but could not remember whether she paid once or twice. This testimony does not establish by clear and convincing evidence that she made a cash payment during that time period.

other than the litigation services performed.” Jorgensen asserts that charging for or collecting advance fees for foreclosure litigation is not proscribed by section 2944.7. OCTC maintains that the judge and Jorgensen are incorrect because litigation services whose goal is to achieve a loan modification are included under section 2944.7.

We find that Jorgensen is culpable for collecting \$5,250 in illegal advance fees from Ramirez in violation of section 2944.7. He undertook all services, including litigation, for the sole purpose of obtaining a loan modification for Ramirez. Testifying generally about his practice, Jorgensen revealed that he would file a complaint as a tactical move to get the lenders to offer a loan modification: “You’ve got to have a complaint that survives or gets the [lender’s] attorney’s attention . . . before you can get anything done about a loan mod.” Moreover, Ramirez testified he hired Legally Yours to have his mortgage payments lowered.

Contrary to Jorgensen’s argument, we did not hold in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, that section 2944.7 applies only to pure loan modification work and not to litigation work. Litigation services were not at issue in *Taylor*. Instead, we concluded that the statute “plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed. [Citation.]” (*Id.* at p. 232, italics in original.) The statute does not specifically exclude litigation services and defines “service” broadly to include “each and every service the person contracted to perform or represented that he or she would perform.” Thus, Jorgensen’s litigation services, which he provided for the sole purpose of obtaining a loan modification, violated the statute. (*Id.* at pp. 231-232.)

**C. The Garcia Matter—Count Two (13-O-13455)**

**1. Facts**

Heriberto and Maria Garcia owned a primary residence in Norwalk, California. The Garcias testified that they contacted Legally Yours to obtain a loan modification after receiving a letter from the company regarding loan restructuring. They signed a retainer agreement on September 27, 2011, which provided that Legally Yours was hired “for the sole and limited purpose of litigation” related to the Norwalk property. The services included litigation related to the first mortgage loan and settlement of the second mortgage. The agreement provided that Renteria, or any licensed attorney Legally Yours chose, would represent them. It also stated that the Garcias would pay an initial fee of \$5,000 “for the purpose of litigation” for the property and a monthly fee of \$1,200, continuing until “settlement and/or resolution is reached in this case.”

On October 28, 2011, Jorgensen explained in a letter to the Garcias that he had been retained to act as their attorney in place of Renteria, effective immediately. The Garcias did not sign a separate agreement with Jorgensen. From September 28, 2011 through September 24, 2012, the Garcias paid \$17,395 directly to Legally Yours. From November 5, 2012 until December 21, 2012, the Garcias paid an additional \$3,600 in monthly fees to Jorgensen.

Jorgensen testified that the goal all along was to obtain a loan modification for the Garcias. He informed the Garcias by letter that he told opposing counsel that “our main goal in this matter is that you be given a modification of your loan so that you can afford the monthly payment.” In December 2011, Jorgensen filed a lawsuit against the lenders for, among other things, their failure to refinance the Garcias’ loan. In May 2012, Jorgensen advised the Garcias that the court had sustained the lenders’ demurrer without leave to amend, but that their financial information would be submitted in hopes of obtaining a more affordable mortgage payment. In an August 2012 letter, Jorgensen reassured the Garcias that the end of the lawsuit “is not the end

of the road, we are currently in the process of collecting your financial information so we can get a review of your loan directly with your lender.” The Garcias did not obtain a loan modification during Jorgensen’s representation. Maria Garcia testified that Jorgensen stopped working for her because she refused to pay more until the modification was obtained. On April 11, 2013, the Garcias requested a refund.<sup>5</sup>

## **2. Culpability**

The hearing judge concluded, and Jorgensen concedes, that fees the Garcias paid *after* the foreclosure prevention litigation was dismissed in May 2012 were advance fees for loan modification services, and thus violated section 2944.7. On this basis, the hearing judge found Jorgensen culpable and ordered that he pay \$8,400 in restitution.

We find that all services Jorgensen provided were for the sole purpose of obtaining a loan modification, including the foreclosure litigation. Under the statute, Jorgensen was not permitted to collect fees until he had fully performed each and every service he contracted or agreed to perform. He is therefore culpable for collecting \$20,995 in illegal advance fees from the Garcias in violation of section 2944.7, and must refund the entire amount.<sup>6</sup>

### **D. The Maldonado Matter—Count Three (13-O-13662)**

#### **1. Facts**

Angelina and Luis Maldonado contacted Legally Yours after receiving its flier advertising loan restructuring services. Luis Maldonado testified that he hired Legally Yours to obtain a loan modification. On March 19, 2012, the Maldonados executed a retainer agreement with Legally Yours and with Jorgensen, personally. The agreement provided that Legally Yours

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<sup>5</sup> The record does not reflect whether the clients in the other matters discussed herein requested refunds.

<sup>6</sup> We reject Jorgensen’s assertion that fees paid by the Garcias before October 2011 were not paid to him. Jorgensen testified, and his ledger shows, that the Garcias paid a total of \$20,995 in fees to him.

was hired "for the sole and limited purpose of litigation" related to their first mortgage lien on their primary residence in La Puente, California. The agreement also stated that the Maldonados would pay an initial fee of \$5,000 "for the purpose of litigation for the above referenced property," and then pay an "ongoing retainer fee" of \$1,200 per month commencing on May 18, 2012 until "settlement and/or resolution is reached in this case." The Maldonados paid Legally Yours \$9,295 in fees from March 23, 2012 through August 23, 2012.

By April 18, 2012, Jorgensen had filed a complaint in superior court for, among other things, wrongful foreclosure, fraud, and unfair business practices against the Maldonados' lender. In an August 20, 2012 letter, Jorgensen informed the Maldonados that he told opposing counsel (the lender's attorney) that "the purpose of this law suit [sic] is to have your financial information diligently reviewed in the hopes of getting you into a more affordable payment." The letter further stated that "[o]pposing counsel has agreed to allow us to submit a modification package." The lender ultimately approved the loan modification to settle the case, contingent upon the Maldonados agreeing to dismiss the complaint filed by Jorgensen. The Maldonados testified they were satisfied with the loan modification they received.

## **2. Culpability**

Contrary to the hearing judge's finding that Jorgensen is not culpable, we conclude he violated section 2944.7 as charged. He collected \$9,295 in advance fees from the Maldonados for legal services that he admitted in his correspondence to the clients was for the purpose of obtaining a loan modification or other type of loan forbearance. Under these circumstances, he was not permitted to collect fees until he had fully performed each and every service he contracted or agreed to perform, including filing lawsuits against lenders for the sole purpose of obtaining a loan modification.

**E. The Herrera Matter—Count Four (13-O-13665)**

**1. Facts**

On September 18, 2011, Michael Herrera executed a retainer agreement with Legally Yours. The agreement provided that Legally Yours was hired “for the sole and limited purpose of litigation” related to Herrera’s property in Moreno Valley, California, and that Renteria, or any other licensed attorney that Legally Yours chose, would represent him. The litigation services included litigation related to the first mortgage loan, and the retainer provided that Herrera would pay an initial fee of \$5,000 “for the purpose of litigation for the above referenced property,” and an “ongoing retainer fee” of \$1,000 per month commencing November 5, 2011, until “settlement and/or resolution is reached in this case.”

On October 28, 2011, Jorgensen wrote a letter—as he had done in other client matters—explaining that he had been retained as the new attorney in place of Renteria and had filed a lawsuit on his behalf. Herrera did not sign a separate agreement with Jorgensen. Between September 16, 2011 and April 17, 2012, Herrera paid Legally Yours \$10,645 in fees.

In March 2012, Jorgensen updated Herrera about the status of the civil complaint and his efforts to obtain a loan modification. He told Herrera that his “loan modification package” had been submitted to the lender. On April 25, 2012, the bank sent Herrera a letter accepting him for a trial loan modification plan, and Herrera later obtained a loan modification.

**2. Culpability**

The hearing judge found Jorgensen not culpable because he accepted fees for foreclosure litigation, and the loan modification was negotiated as a settlement of the litigation. We find Jorgensen culpable as charged because he collected approximately \$10,645 in illegal advance fees for loan modification services. As noted, because we find that all litigation work Jorgensen

performed was for the sole purpose of obtaining a loan modification or other type of loan forbearance from the outset of the litigation, his actions violate section 2944.7.

**F. The Sanchez Matter—Count Five (13-O-13744)**

**1. Facts**

Consuelo Sanchez de Uribe (Sanchez) signed a retainer agreement with Legally Yours on September 10, 2011 with respect to her primary residence in Riverside, California. The agreement provided that Legally Yours was hired “for the sole and limited purpose of litigation” related to the property and that Renteria, or any other licensed attorney that Legally Yours chose, would represent her. The services included litigation related to the first mortgage loan and settlement of the second mortgage. The retainer provided that Sanchez would pay an initial fee of \$4,500 “for the purpose of litigation for the above referenced property,” and an ongoing retainer fee of \$1,000 per month for the first two months, commencing on October 24, 2011, and \$1,200 per month thereafter until “settlement and/or resolution is reached in this case.”

On October 28, 2011, Jorgensen wrote to Sanchez explaining that he had been retained as the new attorney in place of Renteria, and had filed a complaint on her behalf. Sanchez did not sign a separate agreement with Jorgensen. From September 9, 2011 through August 24, 2012, Sanchez paid Legally Yours \$15,450 in advance fees.

Jorgensen sent several letters to Sanchez updating her on the status of the lawsuit he had filed. In one letter, he stated that he had spoken with “opposing counsel (your lender’s attorney) and informed him that the purpose of this law suit [sic] is to have your financial information diligently reviewed in the hopes of getting you into a more affordable payment.” Another letter, dated May 31, 2011, reflected that Jorgensen had commenced efforts to obtain a loan modification for Sanchez while continuing to litigate the foreclosure issues. He advised her that the lender had agreed to allow him to submit a loan modification package, which he did.

Sanchez stopped communicating with Jorgensen in February 2013, and no loan modification was obtained.

## **2. Culpability**

We find Jorgensen culpable as charged for collecting \$15,450 in illegal advance fees for loan modification services. The hearing judge concluded that Jorgensen was not culpable, reasoning that he did not demand or receive fees from Sanchez for loan modification services after the contracted-for litigation ended. Jorgensen admitted at trial, however, that litigation services were a tactic he used to obtain a loan modification, and he attempted to obtain a loan modification throughout the litigation. Just as in the other client matters, we find that all litigation was for the sole purpose of obtaining a loan modification or other type of loan forbearance. Thus, no advance fees were permitted under section 2944.7.

## **IV. AIDING AND ABETTING UPL AND FEE-SHARING**

### **A. Aiding and Abetting UPL (Count 6)**

OCTC charged Jorgensen with violating rule 1-300(A) of the Rules of Professional Conduct<sup>7</sup> for aiding and abetting UPL in the five client matters by knowingly allowing Franchino to: (1) provide legal advice; (2) evaluate legal needs; and (3) set legal fees relating to loan modification services. The hearing judge found Jorgensen not culpable because Franchino “credibly testified that she did not draft the foreclosure defense complaints and did not set the legal fees for the services provided to the complaining witnesses.”<sup>8</sup> The judge also found that OCTC did not rebut Franchino’s testimony and “proffered no evidence in support of its rule 1-300(A) charging allegations.” We disagree.

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<sup>7</sup> All further references to rules are to this source unless otherwise noted. Rule 1-300(A) provides that “[a] member shall not aid any person or entity in the unauthorized practice of law.”

<sup>8</sup> OCTC’s argument that timecards show that Franchino and other paralegals drafted the complaints is unsupported by the record.



Whether Legally Yours set the fees or paralegals drafted complaints is not wholly dispositive in this case. To determine Jorgensen's culpability for UPL, the entire pattern of conduct as charged in the NDC must be examined. Legally Yours, a paralegal service entered into agreements to furnish others with legal services and identified itself in those agreements as "Attorney." (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes merely holding out as entitled to practice].)<sup>9</sup> In addition, Legally Yours, not Jorgensen, controlled the supervision of the clients' cases, evaluated the legal needs of the clients, and undertook decision-making regarding legal matters. The agreements permitted Legally Yours to hire attorneys to work on the client cases, specified that Legally Yours would maintain supervision of the client's legal matter, reserved to Legally Yours the right to make tactical and procedural decisions, and granted to Legally Yours a special power of attorney to settle client claims. (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 543 [activity constitutes practice of law if it involves application of legal knowledge and technique]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603-604 [negotiating settlement with opposing counsel constitutes practice of law].)<sup>10</sup> Legally Yours engaged in UPL.

Jorgensen aided and abetted this UPL for a year. As a salaried employee of Legally Yours, he provided certain services for its clients, thereby helping non-lawyers carry out the business of practicing law. Moreover, under the agreement, he was precluded from performing

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<sup>9</sup> Section 6450, subdivision (b)(1), provides that a paralegal cannot give legal advice, and section 6451 provides in relevant part that it is unlawful for a paralegal to perform services for a consumer except under direction and supervision of an attorney.

<sup>10</sup> While Legally Yours is defined as "Attorney" in the opening paragraph of the retainer agreements, we note that later provisions state: "Legally Yours, LLC . . . is not licensed to give legal advice," and "[a]ttorney employs LEGALLY YOURS, LLC for paralegal services." Even if we were to conclude that the reference to Legally Yours as "Attorney," was careless drafting, other provisions stated unequivocally that Legally Yours reserved the exclusive right to make tactical decisions, supervise the cases, and settle claims—actions that clearly constitute the practice of law. (*Morgan v. State Bar, supra*, 51 Cal.3d at pp. 603-604.)

the essential duties of an attorney, such as supervising the case or settling client matters. Instead, he assisted Legally Yours in performing these duties. (See *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar. Ct. Rptr. 615, 625 [attorney aided UPL by permitting non-lawyer staff to accept clients in his name and conduct negotiations with little or no input from him].)

We reject Jorgensen's argument that he is not culpable of UPL because he was ignorant of the relationship between Legally Yours and its clients before he commenced work for them. Jorgensen agreed to replace Renteria and did so knowing that Legally Yours had contracted with the clients to render legal services to them. Further, he wrote to the clients thanking them for choosing Legally Yours for their legal matters and in the Ramirez, Garcia, Herrera, and Sanchez matters, he informed them he was substituting in for Renteria. In the Maldonado matter, Jorgensen personally executed the retainer agreement and therefore knew firsthand that Legally Yours had contracted with the clients to perform services that involved the practice of law. Jorgensen was obligated to disavow the agreements and prepare new retainer agreements designating himself as the attorney and reserving to himself all the rights and responsibilities of an attorney.

We further reject Jorgensen's argument that OCTC's Opening Brief regarding its UPL argument "goes far afield of the allegations set forth in the NDC." OCTC's contentions are consistent with the charge, and we have considered only those facts that support the charged misconduct.

We conclude that clear and convincing evidence establishes that Legally Yours engaged in UPL, and that Jorgensen aided and abetted that UPL. In doing so, he undermined the well-established public policy that "California prohibits the unlawful practice of law . . . to afford protection against persons who are not qualified to practice the profession." (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 918.)

**B. Fee-Sharing (Count 7)**

Jorgensen stipulated that he shared legal fees with Franchino in each of the five client matters, in violation of rule 1-320(A).<sup>11</sup> We adopt the hearing judge's finding that Jorgensen is culpable as charged in Count 7 for fee sharing.

**V. AGGRAVATION AND MITIGATION**

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>12</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Jorgensen to meet the same burden to prove mitigation.

**A. Aggravation**

**1. Multiple Acts**

The hearing judge found, and Jorgensen concedes, he committed multiple acts of wrongdoing. (Std. 1.5(b) [multiple acts of wrongdoing constitute circumstance in aggravation].) Although the judge did not state the weight to be assigned to this factor, we find Jorgensen's multiple acts substantially aggravate this case because he engaged in various types of misconduct in five client matters, including violating loan modification laws, aiding and abetting UPL, and engaging in fee-sharing.

**2. Significant Harm**

Although the hearing judge did not find this factor, OCTC requests aggravation for significant harm to the client, the public, or the administration of justice. (Std. 1.5(j).) We assign substantial aggravating weight because Jorgensen exploited his clients' financial

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<sup>11</sup> Rule 1-320 (A) provides, with certain exceptions not relevant here, "[n]either a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer."

<sup>12</sup> All further references to standards are to this source. The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards.

desperation and his fiduciary position by charging and collecting advance fees in violation of section 2944.7, and by not providing refunds. (*Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at p. 235 [significant harm where attorney repeatedly charged up-front fees for loan modification services from financially desperate clients and failed to provide refunds]; *Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [parties in fiduciary or confidential relationship do not deal on equal terms because trusted person is in superior position to exert unique influence over dependent party].)

**B. Mitigation**

**1. No Prior Record of Discipline**

Jorgensen may receive mitigation if he proves he has no prior record of discipline over many years of practice coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) He practiced law for 33 years without discipline. Because his misconduct in the five client matters essentially involved a single issue—his interpretation of section 2944.7—we find, like the hearing judge, that his lengthy discipline-free record merits substantial mitigating credit. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational].)

**2. Cooperation**

The hearing judge found that Jorgensen’s stipulation to culpability for one count of sharing fees “warrants consideration in mitigation.” (Std. 1.6 (e) [“spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar”].) We agree and assign Jorgensen moderate mitigating weight for stipulating to some facts and some culpability. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

### 3. Pro Bono Work and Community Service

Jorgensen is entitled to mitigation credit if he proves he engaged in pro bono work or community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned “some mitigation” for Jorgensen’s credible testimony about his volunteer work with a youth radio station. Jorgensen testified that he works for a Newport Beach nonprofit public radio station, which he started and built five or six years ago. He spends five to 10 hours a week working for the station, hosts a two-hour program every Sunday, and attends all the events. Jorgensen also noted that the station hosted a Christmas party for underprivileged children, and works directly with the mayor to help the community and the children. We agree with the hearing judge that Jorgensen is entitled to limited mitigating credit for his brief description of his volunteer service. (See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little mitigation for minimal testimony regarding pro bono activities].)

### VI. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession. (Std. 1.1.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) We also look to the standards and decisional law for guidance in recommending the appropriate discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 91; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Several standards apply here. Standard 2.18 instructs that disbarment or actual suspension is the presumed sanction for collecting illegal fees in violation of section 6106.3.<sup>13</sup> Standard 2.8 recommends actual suspension for sharing fees with a non-lawyer, and

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<sup>13</sup> Standard 2.18 provides that “[d]isbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in the Standards.”

standard 2.19 recommends suspension not to exceed three years or reproval for aiding UPL. We apply standard 2.18 because Jorgensen's most serious ethical violations result from collecting advance fees for loan modification work. (Std. 1.7(a) [most severe sanction must be imposed]; see *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628 [applying standard most relevant to gravest aspect of attorney's misconduct].)

Given the broad range of discipline suggested by standard 2.18, we look to the guiding case law addressing violations of loan modification laws: *In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. 221. Taylor was culpable of charging pre-performance loan modification fees in eight matters and one count of failing to provide the required loan modification disclosures. His misconduct was aggravated by multiple acts of misconduct, significant client harm, and lack of remorse; his single mitigating factor was good character. He was suspended for six months and ordered to pay restitution of about \$15,000.

Jorgensen's misconduct is as serious as Taylor's. Jorgensen charged pre-performance fees totaling more than \$60,000 in five client matters, in violation of loan modification laws. He has issued no refunds even though at least one client has requested it. While Taylor had more aggravation and less mitigation than Jorgensen, given the overall misconduct and the amount of restitution Jorgensen owes, we find *Taylor* instructive as to the proper level of discipline. Further, Jorgensen's mitigation, when weighed against the aggravation, does not establish that a more lenient sanction is warranted. (Rules Proc. of State Bar, title IV, Part B [presumed sanction is starting point for imposition of discipline; may be adjusted up or down depending on mitigating and aggravating circumstances].) We recommend the discipline urged by OCTC, which is consistent with our decision in *Taylor*—a six-month actual suspension.<sup>14</sup> We also order

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<sup>14</sup> We note that Jorgensen is culpable of other serious misconduct involving aiding and abetting UPL and sharing fees in five client matters. (See *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 326-328 [sharing fees with non-lawyer is serious

that his suspension continue until he pays restitution in full. (*Coppock v. State Bar* (1988) 44 Cal.3d 665, 685-686 [restitution order appropriate to compensate victims of wrongdoing, discourage dishonest and unprofessional conduct, protect the public and further integrity of profession, and encourage high professional standards of conduct].)

## VII. RECOMMENDATION

We recommend that Barry Steven Jorgensen be suspended from the practice of law for two years, execution stayed, and that he be placed on probation for two years on the following conditions:

1. He is suspended from the practice of law for a minimum of the first six months of probation, and he will remain suspended until the following requirements are satisfied:
  - a. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:
    - (1) Delfino Ramirez in the amount of \$5,250 plus 10 percent interest per year from April 8, 2012;
    - (2) Heriberto and Maria Garcia in the amount of \$20,995 plus 10 percent interest per year from December 21, 2012;
    - (3) Angelina and Luis Maldonado in the amount of \$9,295 plus 10 percent interest per year from August 23, 2012;
    - (4) Michael Herrera in the amount of \$10,645 plus 10 percent interest per year from April 17, 2012;
    - (5) Consuelo Sanchez de Uribe in the amount of \$15,450 plus 10 percent interest per year from August 24, 2012; and
  - b. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of rehabilitation, fitness to practice and present learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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misconduct generally resulting in actual suspension of six months to two years, but recommending 60-day actual suspension for Smithwick due to significant mitigation].)

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
5. He 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, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
8. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **VIII. PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Jorgensen be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter, or



during the period of his suspension, whichever is longer, and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

#### **IX. RULE 9.20**

We further recommend that Jorgensen 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. Failure to do so may result in disbarment or suspension.

#### **X. COSTS**

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

HONN, J.

**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. 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 May 10, 2016, I deposited a true copy of the following document(s):

**OPINION FILED MAY 10, 2016**

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


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

**EDWARD O. LEAR  
CENTURY LAW GROUP LLP  
5200 W CENTURY BLVD #345  
LOS ANGELES, CA 90045**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**ALLEN BLUMENTHAL, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 10, 2016.



\_\_\_\_\_  
Jasmine Guladzyan  
Case Administrator  
State Bar Court

# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

FILED

MAR 06 2015

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of )  
 ) Case Nos.: 13-O-13309-YDR  
 ) (13-O-13455; 13-O-13662  
BARRY STEVEN JORGENSEN, )  
 ) 13-O-13665; 13-O-13744  
 )  
Member No. 79620, )  
 )  
 ) AMENDED DECISION  
A Member of the State Bar. )

## Introduction<sup>1</sup>

BARRY STEVEN JORGENSEN (Respondent) is charged with seven counts of professional misconduct for his involvement in mortgage loan modification or forbearance cases involving five former clients. The charged misconduct includes: (1) violation of Civil Code section 2944.7(a)(1)<sup>2</sup> and Business and Professions Code section 6106.3<sup>3</sup> (accepting illegal advanced fees); (2) aiding in the unauthorized practice of law; and, (3) sharing legal fees with a non-lawyer. The court finds by clear and convincing evidence that Respondent is culpable in

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<sup>1</sup> The original decision, filed March 5, 2015, has been amended to delete any reference to or recommendation that Respondent comply with Rule 9.20 of the California Rules of Court.

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.

<sup>2</sup> Civil Code section 2944.7(a)(1), effective October 11, 2009, in relevant part provides: "(a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

<sup>3</sup> Business & Professions Code section 6106.3 provides: "(a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 or 2944.7 of the Civil Code."

one matter for collecting an illegal advanced fee. In addition, Respondent admitted culpability to sharing fees with a non-lawyer as to the five former clients.

After careful consideration of the applicable attorney discipline standards and in view of aggravating and mitigating factors, including no prior disciplinary record in over 33 years of practice and cooperation with the State Bar, the court recommends, among other things, that Respondent be suspended from the practice of law for one year with execution of suspension stayed, that Respondent be placed on probation for two years and that he be actually suspended for the first 30 days of probation.

#### **Significant Procedural History**

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on April 24, 2014. Respondent filed a response May 21, 2014. A hearing in this matter was held November 20-21, 2014 and December 8, 2014. Senior Trial Counsel, Anthony Garcia and Deputy Trial Counsel, Sherell N. McFarlane, represented the State Bar. Edward O. Lear, Century Law Group LLP, represented Respondent. The court took this matter under submission December 8, 2014 and the parties filed closing briefs, January 9, 2015.

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

Respondent was admitted to the practice of law in California on June 2, 1978, and has been a member of the State Bar of California at all times since that date.

These findings of fact are based on the record and the evidence admitted at trial. The facts set forth below are common to the five matters on which Respondent was charged with misconduct.

During September or October 2011, Respondent was asked by attorney Joseph Renteria to make special court appearances on various matters where he represented clients of Legally

Yours, LLC in foreclosure cases. In late September 2011, Mr. Renteria suffered a heart attack and advised his clients he was fully disabled and could no longer handle their litigation matters. Subsequently, Andrea Franchino aka Andrea DuBois, a paralegal who owned and operated Legally Yours, asked Respondent to represent Legally Yours' clients in connection with foreclosure defense litigation against their mortgagors.

On October 5, 2011, Legally Yours and Respondent entered into an Attorney/Paralegal Services Agreement which provided that Respondent would engage Legally Yours as an independent contractor to provide paralegal services, including but not limited to: 1) drafting legal pleadings, discovery, jury instructions, letters, etc.; 2) interviewing Respondent's clients and performing legal research; 3) handling client billing and collections; 4) bookkeeping and payroll services; 4) case management, scheduling and calendaring services; 5) office management, including providing a receptionist, legal secretary and marketing. Respondent was allowed to operate his law practice out of Legally Yours' offices without charge or apportionment of rent. Respondent agreed to pay Legally Yours \$300 per hour for its services. Legally Yours paid Respondent a monthly salary from the legal fees it collected from each of the five former clients.

Four of the five former clients involved in this proceeding entered into a retention agreement with Legally Yours which referred to Legally Yours as "Attorney." However, four sets of former clients entered into retention agreements that identified Mr. Renteria as counsel who would represent the clients by providing "litigation services" with respect to a mortgage loan on their respective properties. The fifth set of former clients, Luis and Angelina Maldonado, entered into a retention agreement with Legally Yours which referred to it as "Attorney" but identified Respondent as the counsel who would represent them in connection

with "litigation regarding 1<sup>st</sup> Mortgage." Each former client paid initial fees and monthly payments to Legally Yours for litigation services.

When Respondent first began to represent the former clients, each of them had a home that was in some stage of foreclosure, e.g., each had already received a recorded notice of default or a notice of pending trustee's sale.

#### **Case No. 13-O-13309 – The Ramirez Matter**

##### **Facts**

Delfino Ramirez received a flyer from Legally Yours and contacted them when two of his properties were in foreclosure. He entered into a March 1, 2011 retainer agreement that was executed by Mr. Ramirez<sup>4</sup>, Andrea DuBois and attorney Sarah Golden.<sup>5</sup> The first retainer agreement did not specifically require an initial fee but did require monthly payments of \$750. According to Receipt #1, dated February 10, 2011, Mr. Ramirez made a partial payment of \$1,774 to Legally Yours for a "[b]ankruptcy filing fee Chapter 13" and for "mortgage litigation," leaving a balance due of \$2,000.

Legally Yours was retained for "the sole and limited purpose of litigation" regarding the first mortgage loan secured by Mr. Ramirez's property located on Linda Way (Linda Way Property) where his daughter lived. A notice of default had been recorded on the Linda Way Property before Mr. Ramirez contacted Legally Yours. On March 21, 2011, Sarah Golden, an attorney working for Legally Yours, filed a wrongful foreclosure action against Mr. Ramirez's

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<sup>4</sup> Mr. Ramirez testified at trial with the assistance of an interpreter. However, it did not appear that Mr. Ramirez reads or writes Spanish or English. He credibly testified that he can only recognize and read his initials and his name.

<sup>5</sup> Ms. Golden substituted out of the Ramirez case. Joseph Renteria became the attorney managing the Ramirez litigation during July 2011.

Linda Way lender, GMAC, and other defendants. (Orange County Superior Court, Central Justice Center, case no. 30-2011-00459542-CU-OR-CJC.)

Mr. Ramirez executed a second retainer agreement with Legally Yours on August 22, 2011, which identified Joseph Renteria as the attorney handling the first mortgage loan/settlement of the second mortgage with respect to the property located at Rene Drive (Rene Drive property) where Mr. Ramirez lived. Mr. Ramirez was the only signer on this retainer agreement. This agreement required an initial fee of \$4,000 and a monthly fee of \$750. Mr. Ramirez paid the last \$2,000 due for the initial fee of \$4,000 on September 21, 2011.

Respondent did not begin to provide legal services to Mr. Ramirez with regard to either property until late October 2011. By letter dated October 26, 2011, Respondent advised Mr. Ramirez that he had been retained to represent him in the Linda Way litigation in place of Joseph Renteria. He further advised Mr. Ramirez that the trustee's sale of the Linda Way property had been cancelled, a civil complaint had been filed on his behalf in Orange County Superior Court and all defendants had been served. Defendants demurred and Respondent caused a first amended complaint to be filed. After Defendants demurred to the first amended complaint, Respondent filed and served a second amended complaint. Subsequently, the court in the Linda Way litigation sustained the GMAC Mortgage LLC and ETS defendants' demurrer without leave to amend the Ramirez's second amended complaint on February 28, 2012.

The record does not reflect that Respondent negotiated a loan modification with Mr. Ramirez's lenders after the Linda Way second amended complaint was dismissed with prejudice.

As to the Rene Drive property, Respondent forwarded a letter to Mr. Ramirez dated October 28, 2011, which stated that Respondent had substituted in for Mr. Renteria and was conducting a forensic loan audit and evaluating the status of the foreclosure proceedings in order to prepare a complaint which Respondent anticipated filing by November 14, 2011. Respondent

further advised Mr. Ramirez that the trustee's sale for his Rene Drive Property had been canceled and all foreclosure activity regarding the property had ceased. During January 2012, counsel for the Rene Drive property lender, Ocwen, contacted Respondent to negotiate resolution of the litigation against Ocwen by offering to modify Mr. Ramirez's loan by reducing the monthly payment by almost 50%. Ms. Ramirez testified that although Ocwen offered a loan modification, Mr. Ramirez did not accept it because he did not consider the payment amount to be affordable.

### **Conclusions**

#### ***Count One – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

Mr. Ramirez's retention contract reflected that Legally Yours was to provide mortgage loan foreclosure litigation services, not loan modification services, in connection with Mr. Ramirez's properties that were in various stages of foreclosure in late October 2011, when Respondent began to represent Mr. Ramirez. The fees that were paid were for Respondent's representation of Mr. Ramirez in foreclosure prevention litigation against GMAC and Ocwen, respectively. There is not clear and convincing evidence that Mr. Ramirez and Respondent contracted for Respondent to perform any services other than the litigation services performed. Accordingly, the court does not find a violation of Civil Code section 2944.7(a)(1) and section 6106.3.

#### **Case No. 13-O-13455 – The Garcia Matter**

### **Facts**

On September 27, 2011, Heriberto and Maria Garcia, executed a retainer agreement with Legally Yours which identified Joseph Renteria as the attorney handling the first mortgage loan/settlement of second mortgage with respect to the Garcias' primary residence located at



Graystone in Norwalk, CA. (Graystone property). In the agreement, Mr. Garcia indicated that he had received notices of default and sale for the Graystone property.

Respondent's March 15, 2012 letters to the Garcias stated: "On March 13, 2012, I spoke with opposing counsel (your lender's attorney) and informed her that our main goal in this matter is that you be given a modification of your loan so that you can afford the monthly payments."

Respondent also informed the Garcias that the trustee's sale had been cancelled.

The May 31, 2012 letter from Respondent to the Garcias advised that the court sustained mortgage defendant's demurrer without leave to amend and stated that the Garcias' financials would be submitted in hopes of obtaining a more affordable mortgage payment under a new program. In August 2012, Respondent sought to reassure the Garcias that the culmination of the lawsuit "is not the end of the road, we are currently in the process of collecting your financial information so we can get a review of your loan directly from your lender."

From September 28, 2011 through December 21, 2012, the Garcias paid Legally Yours and Respondent about \$20,995, comprised of an initial payments of \$3,000 and \$2,000 and monthly payments of \$1,200. From May 24, 2012 through December 21, 2012, the Garcias paid Legally Yours and Respondent \$8,400 (\$1200 per month for 7 months.)

The Garcias did not get a loan modification from the lender while Respondent represented them. They eventually hired another lawyer who, according to Ms. Garcia, "stopped the bank from taking the house" after Respondent fired her for refusing to pay more money until after the modification was obtained.

### **Conclusions**

#### ***Count Two – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

While Respondent represented the Garcias in foreclosure prevention litigation that they originally contracted for, Respondent represented that his goal was to obtain a more affordable

monthly payment for the Garcias. After the foreclosure prevention litigation was dismissed in May 2012, Respondent charged the Garcias an advance fee for loan modification services. The Garcias paid advanced fees to Respondent from May 24, 2012 through December 21, 2012 for loan modification services which Respondent never obtained for them. Accordingly, by charging the Garcias advanced loan modification fees from May 24, 2012 through December 21, 2012, Respondent violated Civil Code section 2944.7(a)(1) and willfully violated section 6106.3.

**Case No. 13-O-13662 – The Maldonado Matter**

**Facts**

On March 19, 2012, Luis and Angelina Maldonado executed a retainer agreement with Legally Yours<sup>6</sup> which identified Barry Jorgensen as the attorney handling the Maldonados' representation in "litigation regarding [their] first mortgage lien" on their Stimson Avenue home (Stimson property).<sup>7</sup> At the time the Maldonados retained Legally Yours, they had received a notice of default on the Stimson property and a trustee's sale was projected for June 19, 2012.

By April 18, 2012, Respondent had filed a complaint against the Maldonados' lender, Bank of America. During May 2012, in an effort to settle the litigation, opposing counsel agreed to allow the Maldonados to submit a loan modification package for review and to postpone the Stimson property foreclosure sale while the review was pending. Subsequently, while the litigation was pending, the Maldonados' lender approved the loan modification contingent upon

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<sup>6</sup> From March 2012 through August 2012, the Maldonados paid Legally Yours fees comprised of a complaint filing fee of \$395, "retainer" payments totaling \$ 5,000 and monthly payments of \$1,200. Respondent advised the Maldonados in September 2012, to start endorsing and forwarding monthly payments directly to himself.

<sup>7</sup> The court notes, however that Respondent subsequently indicated that in a conversation with the lender's attorney, he "informed him that the purpose of this law suit is to have your financial information diligently reviewed *in the hopes of getting you into a more affordable payment.*" (Emphasis added.). According to Respondent, opposing counsel responded by agreeing to allow the Maldonados to submit a modification package.

the Maldonados agreeing to dismiss without prejudice the foreclosure prevention complaint filed by Respondent.

The case settled and the action was dismissed. Mr. and Mrs. Maldonado both credibly testified that they eventually obtained a loan modification from their lender, Bank of America, and, they are both satisfied with the loan modification obtained for them and with Respondent's representation of their interests during the foreclosure litigation.

### *Conclusions*

#### *Count Three – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]*

The Maldonados' retention contract reflected that Respondent was to provide mortgage loan foreclosure litigation services in connection with the Maldonados' Stimson property that was already in foreclosure and scheduled to be sold at a trustee's sale. As a result of the foreclosure prevention litigation Respondent filed on their behalf, opposing counsel agreed to modify the Maldonados' home loan in an effort to resolve the litigation. This court finds that Respondent did not violate Civil Code section 2944.7(a)(1) and section 6106.3 because Respondent and the Maldonados' lender negotiated a loan modification in an effort to resolve the pending litigation that Respondent contracted to perform.

#### **Case No. 13-O-13665 – The Herrera Matter**

### **Facts**

The Notice of Disciplinary Charges alleges that Respondent collected about \$10,645 from Michael Herrera<sup>8</sup> before Respondent had fully performed each and every service he had been contracted to perform or represented to the client Respondent would perform in violation of Civil Code, section 2944.7 and, in willful violation of Business and Professions Code, section

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<sup>8</sup> Notwithstanding the service of a trial subpoena on Mr. Herrera, he did not appear at trial. The information reflected here with respect to Count Four was obtained as a result of the parties' stipulation of facts and admissible evidence proffered by others.

6106.3. The retainer agreement entered into between Legally Yours and attorney Joseph Renteria on September 15, 2011, states that the legal services to be provided under the retainer agreement include "litigation regarding First Mortgage Loan." No other legal services are specified in the agreement.

By letter dated October 28, 2011, Respondent explained to Mr. Herrera that he had been retained as the new attorney, substituting in for Joseph Renteria. Respondent touted his experience in real estate, business law and civil litigation. Respondent also noted, "I have extensive experience with foreclosure defense matters." Nowhere did Respondent mention his skills vis-à-vis loan modifications or the negotiation of loan modifications. Respondent did, however, update Mr. Herrera regarding the status of the civil complaint filed on his behalf in Riverside Superior Court. On January 12, 2012 and March 9, 2012, Respondent forwarded additional case update letters which apprised Mr. Herrera of the status of the lawsuit<sup>9</sup> and subsequently, that a loan modification package which was being reviewed by opposing counsel.

#### **Conclusion**

#### ***Count Four – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

There is not clear and convincing evidence that Respondent violated Civil Code section 2944.7 and willfully violated Business and Professions Code section 6106.3. Respondent did not accept an illegal advanced fee to perform a mortgage loan modification or other form of loan forbearance. Rather, Respondent accepted fees to defend Mr. Herrera in the foreclosure prevention action he actively litigated against Mr. Herrera's lenders, South Pacific Financial Corporation and JPMorgan Chase. Moreover, Mr. Herrera's loan modification was negotiated at the suggestion of and with Mr. Herrera's lender's counsel who sought to settle the foreclosure

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<sup>9</sup> Specifically, Respondent advised Mr. Herrera about the filing of a first amended complaint on January 12, 2012, the filing of a demurrer, Respondent's opposition to the demurrer and, a case management conference scheduled for April 25, 2012.

litigation by agreeing to give Mr. Herrera a permanent loan modification. The loan modification was obtained for Mr. Herrera and, as the parties agreed, a Request For Dismissal of the foreclosure litigation was filed.

**Case No. 13-O-13744 – The Sanchez de Uribe Matter**

**Facts**

On September 10, 2011, Consuelo Sanchez de Uribe executed a retainer agreement with Legally Yours which identified Joseph Renteria as the attorney handling the first mortgage loan/settlement of second mortgage with respect to her Opal Street primary residence (Opal Street property). In the agreement, Ms. Sanchez stated that she had previously received a notice of default and a notice of trustee's sale for the Opal Street property.<sup>10</sup> The property was scheduled to be sold on November 18, 2011.

In a series of client report letters, Respondent advised Ms. Sanchez that during late October 2011, he caused a complaint to be filed and served on Ms. Sanchez's lenders who subsequently demurred to the complaint. The hearing on the demurrer was initially set to be heard January 31, 2012 and then was continued to March 26, 2012. By letter dated March 16, 2012, Respondent further advised Ms. Sanchez that an opposition to the demurrer had been filed on her behalf and that he would seek postponement of the trustee's sale of the Opal Street property that had been previously been rescheduled to go forward April 9, 2012.

Respondent's March 16, May 31, and August 24, 2012 letters to Ms. Sanchez all contained the following statement: "I spoke with opposing counsel (your lender's attorney) and informed him that the purpose of this law suit is to have your financial information diligently

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<sup>10</sup> Ms. Sanchez also indicated that she had previously received a loan modification.

reviewed in the hopes of getting you into a more affordable payment.”<sup>11</sup> Respondent’s May 31, 2012 letter also reflected that while continuing to litigate the foreclosure issues, Respondent had commenced efforts to obtain a loan modification for Ms. Sanchez. He advised her that “[o]pposing counsel has agreed to allow us to submit a modification package, of which his office and our office will facilitate the review process to ensure it is handled properly. The completed modification package was submitted to opposing counsel and as of May 30, 2012, no updated documents or information has been requested.”

On July 23, 2012, defendant Bank of America, N.A. (BANA)’s demurrer to the second amended complaint was sustained without leave to amend. A week later, BANA’s counsel advised Respondent that Ms. Sanchez’s loan modification was denied due to her failure to provide certain requested documentation. By August 24, 2012, not only had Ms. Sanchez’s modification review been denied, but her Opal Street property was set for a trustee’s sale on October 10, 2012. Subsequently, according to Respondent’s October 18, 2012 client update letter to Ms. Sanchez, the sale was rescheduled to go forward December 20, 2012.

Although Ms. Sanchez’s second amended complaint had been dismissed as to her primary lender, Bank of America, the litigation was still pending with respect to lender defendant PMC Bancorp (PMC). On September 13, 2012, Respondent filed a request for entry of default as to PMC Bancorp. However, Respondent did not pursue the default judgment against PMC because sometime around February 2013, Ms. Sanchez ceased to communicate with Respondent regarding the lawsuit.

Respondent was never able to obtain a loan modification or more affordable mortgage payment for Ms. Sanchez.

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<sup>11</sup> Respondent testified that he did not recall telling opposing counsel what the true purpose of the law suit was but he did recall sharing that information with the client.

## **Conclusions**

### ***Count Five – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

Ms. Sanchez contracted for foreclosure prevention litigation which Respondent pursued against her lender, Bank of America, on her behalf until April 3, 2013, when the court dismissed the complaint. There is not clear and convincing evidence that Respondent made a “claim, demand, charge, collect[ed] or receive[d] any compensation” from Ms. Sanchez for loan modification services after the contracted-for foreclosure litigation ended.<sup>12</sup>

**Case Nos. 13-O-133090; 13-O-13455; 13-O-13662; 13-O-13665; 13-O-13744**

### ***Count Six – Rule 1-300(A) [Aiding the Unauthorized Practice of Law]***

Rule 1-300 (A) provides that an attorney shall not aid any person or entity in the unauthorized practice of law. In Count Six, the State Bar charges Respondent with knowingly allowing Andrea Franchino to practice law by “providing legal advice, evaluating legal needs, and setting legal fees relating to loan modification services” in the aforementioned five client matters. However, Ms. Franchino credibly testified that she did not draft the foreclosure defense complaints and did not set the legal fees for the services provided to the complaining witnesses. The State Bar did not rebut Ms. Franchino’s testimony and proffered no evidence in support of its rule 1-300 (A) charging allegations. Accordingly, there is not clear and convincing evidence that Respondent willfully violated rule 1-300(A).

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<sup>12</sup> From September 10, 2011 through August 2012, Ms. Sanchez paid Legally Yours and Respondent about \$15,450, comprised of initial payments of \$2,000 and \$2,500 and monthly payments of \$1,000 for the first two months and \$1,200 thereafter. The only evidence regarding payments made by Ms. Sanchez to Respondent after September 2012 is Respondent’s November 8, 2012 letter to Ms. Sanchez, advising that her monthly payment of \$1,200 would be due November 24, 2012 and a late fee of \$50 would be charged if not received with 15 days of the due date.

**Count Seven – Rule 1-320 (A) [Sharing Legal Fees with a Non-Lawyer]**

Subject to certain exceptions which are not applicable here, rule 1-320(A) provides that a lawyer shall not directly or indirectly share legal fees with a person who is not a lawyer. In the November 17, 2014, Stipulation of Facts, Respondent admitted that he “shared legal fees with Legally Yours, LLC, a non-lawyer” in the aforementioned five client matters. Accordingly, by splitting legal fees with Legally Yours, Respondent shared a legal fee with a non-attorney entity, in willful violation of rule 1-320(A).

**Aggravation<sup>13</sup> --**

**Multiple Acts (Std. 1.5(b).)**

Respondent’s commission of multiple acts of misconduct is an aggravating factor.

**Mitigation**

**No Prior Record (Std. 1.6(a))**

Respondent’s 33 years of discipline-free practice up to the time of his misconduct in 2011, is a significant mitigating factor. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

**Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

By stipulating to culpability of fee-splitting in five client matters, Respondent saved court resources which warrants consideration in mitigation.

**Other**

Respondent credibly testified to performing volunteer work with a youth radio station. This community service is entitled to some mitigation. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840.)

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<sup>13</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.



## 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. 1.1.)

Standard 1.7 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 must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.14 and 2.15 apply in this matter, allowing a range of disciplinary recommendations from suspension to disbarment. The more severe sanction is prescribed by standard 2.14 which indicates that disbarment or actual suspension is appropriate discipline for a violation of section 6106.3.

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 Silvertan* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190; std. 1.1.) 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; std. 1.1.)

This case involved violations of section 6106.3 (one count) and rule 1-320 (A) (five counts). The court considered multiple acts of misconduct in aggravation. Mitigating factors

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 30 days after 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.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. During the probation period, Respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, Respondent must state in each report whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of Respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether respondent is complying or has complied with Respondent's probation conditions.
7. It is recommended that during the period of probation, respondent must make restitution to Heriberto and Maria Garcia in the amount of \$8,400.00 plus 10 percent interest per year from December 21, 2012 (or reimburse the Client Security Fund to the extent of any payment from the fund to Heriberto and Maria Garcia, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).
8. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE)

requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

9. At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

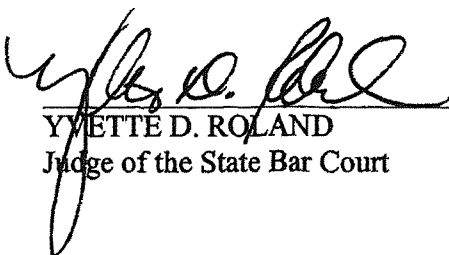
#### **Multistate Professional Responsibility Examination**

It is recommended that Respondent be ordered to take, pass and provide satisfactory proof of passage of the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter. Respondent's proof of passage shall be provided to the State Bar's Office of Probation in Los Angeles.

#### **Costs**

This court recommends 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.

Dated: March 6, 2015

  
\_\_\_\_\_  
YVETTE D. ROLAND  
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 6, 2015, I deposited a true copy of the following document(s):

**AMENDED DECISION**

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:


EDWARD O. LEAR  
CENTURY LAW GROUP LLP  
5200 W CENTURY BLVD #345  
LOS ANGELES, CA 90045

BARRY STEVEN JORGENSEN  
750 N DIAMOND BAR BLVD # 224  
DIAMOND BAR, CA 91765

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SHERELL MCFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 6, 2015.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court

FILED

MAR 05 2015

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: 13-O-13309-YDR
	)	(13-O-13455; 13-O-13662
BARRY STEVEN JORGENSEN,	)	13-O-13665; 13-O-13744)
	)	
Member No. 79620,	)	
	)	DECISION
A Member of the State Bar.	)	

### Introduction<sup>1</sup>

BARRY STEVEN JORGENSEN (Respondent) is charged with seven counts of professional misconduct for his involvement in mortgage loan modification or forbearance cases involving five former clients. The charged misconduct includes: (1) violation of Civil Code section 2944.7(a)(1)<sup>2</sup> and Business and Professions Code section 6106.3<sup>3</sup> (accepting illegal advanced fees); (2) aiding in the unauthorized practice of law; and, (3) sharing legal fees with a non-lawyer. The court finds by clear and convincing evidence that Respondent is culpable in one matter for collecting an illegal advanced fee. In addition, Respondent admitted culpability to sharing fees with a non-lawyer as to the five former clients.

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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.

<sup>2</sup> Civil Code section 2944.7(a)(1), effective October 11, 2009, in relevant part provides: "(a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

<sup>3</sup> Business & Professions Code section 6106.3 provides: "(a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 or 2944.7 of the Civil Code."

After careful consideration of the applicable attorney discipline standards and in view of aggravating and mitigating factors, including no prior disciplinary record in over 33 years of practice and cooperation with the State Bar, the court recommends, among other things, that Respondent be suspended from the practice of law for one year with execution of suspension stayed, that Respondent be placed on probation for two years and that he be actually suspended for the first 30 days of probation.

#### **Significant Procedural History**

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on April 24, 2014. Respondent filed a response May 21, 2014. A hearing in this matter was held November 20-21, 2014 and December 8, 2014. Senior Trial Counsel, Anthony Garcia and Deputy Trial Counsel, Sherell N. McFarlane, represented the State Bar. Edward O. Lear, Century Law Group LLP, represented Respondent. The court took this matter under submission December 8, 2014 and the parties filed closing briefs, January 9, 2015.

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

Respondent was admitted to the practice of law in California on June 2, 1978, and has been a member of the State Bar of California at all times since that date.

These findings of fact are based on the record and the evidence admitted at trial. The facts set forth below are common to the five matters on which Respondent was charged with misconduct.

During September or October 2011, Respondent was asked by attorney Joseph Renteria to make special court appearances on various matters where he represented clients of Legally Yours, LLC in foreclosure cases. In late September 2011, Mr. Renteria suffered a heart attack and advised his clients he was fully disabled and could no longer handle their litigation matters.

Subsequently, Andrea Franchino aka Andrea DuBois, a paralegal who owned and operated Legally Yours, asked Respondent to represent Legally Yours' clients in connection with foreclosure defense litigation against their mortgagors.

On October 5, 2011, Legally Yours and Respondent entered into an Attorney/Paralegal Services Agreement which provided that Respondent would engage Legally Yours as an independent contractor to provide paralegal services, including but not limited to: 1) drafting legal pleadings, discovery, jury instructions, letters, etc.; 2) interviewing Respondent's clients and performing legal research; 3) handling client billing and collections; 4) bookkeeping and payroll services; 4) case management, scheduling and calendaring services; 5) office management, including providing a receptionist, legal secretary and marketing. Respondent was allowed to operate his law practice out of Legally Yours' offices without charge or apportionment of rent. Respondent agreed to pay Legally Yours \$300 per hour for its services. Legally Yours paid Respondent a monthly salary from the legal fees it collected from each of the five former clients.

Four of the five former clients involved in this proceeding entered into a retention agreement with Legally Yours which referred to Legally Yours as "Attorney." However, four sets of former clients entered into retention agreements that identified Mr. Renteria as counsel who would represent the clients by providing "litigation services" with respect to a mortgage loan on their respective properties. The fifth set of former clients, Luis and Angelina Maldonado, entered into a retention agreement with Legally Yours which referred to it as "Attorney" but identified Respondent as the counsel who would represent them in connection with "litigation regarding 1<sup>st</sup> Mortgage." Each former client paid initial fees and monthly payments to Legally Yours for litigation services.

When Respondent first began to represent the former clients, each of them had a home that was in some stage of foreclosure, e.g., each had already received a recorded notice of default or a notice of pending trustee's sale.

**Case No. 13-O-13309 – The Ramirez Matter**

**Facts**

Delfino Ramirez received a flyer from Legally Yours and contacted them when two of his properties were in foreclosure. He entered into a March 1, 2011 retainer agreement that was executed by Mr. Ramirez<sup>4</sup>, Andrea DuBois and attorney Sarah Golden.<sup>5</sup> The first retainer agreement did not specifically require an initial fee but did require monthly payments of \$750. According to Receipt #1, dated February 10, 2011, Mr. Ramirez made a partial payment of \$1,774 to Legally Yours for a “[b]ankruptcy filing fee Chapter 13” and for “mortgage litigation,” leaving a balance due of \$2,000.

Legally Yours was retained for “the sole and limited purpose of litigation” regarding the first mortgage loan secured by Mr. Ramirez’s property located on Linda Way (Linda Way Property) where his daughter lived. A notice of default had been recorded on the Linda Way Property before Mr. Ramirez contacted Legally Yours. On March 21, 2011, Sarah Golden, an attorney working for Legally Yours, filed a wrongful foreclosure action against Mr. Ramirez’s Linda Way lender, GMAC, and other defendants. (Orange County Superior Court, Central Justice Center, case no. 30-2011-00459542-CU-OR-CJC.)

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<sup>4</sup> Mr. Ramirez testified at trial with the assistance of an interpreter. However, it did not appear that Mr. Ramirez reads or writes Spanish or English. He credibly testified that he can only recognize and read his initials and his name.

<sup>5</sup> Ms. Golden substituted out of the Ramirez case. Joseph Renteria became the attorney managing the Ramirez litigation during July 2011.



Mr. Ramirez executed a second retainer agreement with Legally Yours on August 22, 2011, which identified Joseph Renteria as the attorney handling the first mortgage loan/settlement of the second mortgage with respect to the property located at Rene Drive (Rene Drive property) where Mr. Ramirez lived. Mr. Ramirez was the only signer on this retainer agreement. This agreement required an initial fee of \$4,000 and a monthly fee of \$750. Mr. Ramirez paid the last \$2,000 due for the initial fee of \$4,000 on September 21, 2011.

Respondent did not begin to provide legal services to Mr. Ramirez with regard to either property until late October 2011. By letter dated October 26, 2011, Respondent advised Mr. Ramirez that he had been retained to represent him in the Linda Way litigation in place of Joseph Renteria. He further advised Mr. Ramirez that the trustee's sale of the Linda Way property had been cancelled, a civil complaint had been filed on his behalf in Orange County Superior Court and all defendants had been served. Defendants demurred and Respondent caused a first amended complaint to be filed. After Defendants demurred to the first amended complaint, Respondent filed and served a second amended complaint. Subsequently, the court in the Linda Way litigation sustained the GMAC Mortgage LLC and ETS defendants' demurrer without leave to amend the Ramirez's second amended complaint on February 28, 2012.

The record does not reflect that Respondent negotiated a loan modification with Mr. Ramirez's lenders after the Linda Way second amended complaint was dismissed with prejudice.

As to the Rene Drive property, Respondent forwarded a letter to Mr. Ramirez dated October 28, 2011, which stated that Respondent had substituted in for Mr. Renteria and was conducting a forensic loan audit and evaluating the status of the foreclosure proceedings in order to prepare a complaint which Respondent anticipated filing by November 14, 2011. Respondent further advised Mr. Ramirez that the trustee's sale for his Rene Drive Property had been canceled and all foreclosure activity regarding the property had ceased. During January 2012, counsel for

the Rene Drive property lender, Ocwen, contacted Respondent to negotiate resolution of the litigation against Ocwen by offering to modify Mr. Ramirez's loan by reducing the monthly payment by almost 50%. Ms. Ramirez testified that although Ocwen offered a loan modification, Mr. Ramirez did not accept it because he did not consider the payment amount to be affordable.

### **Conclusions**

#### ***Count One – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

Mr. Ramirez's retention contract reflected that Legally Yours was to provide mortgage loan foreclosure litigation services, not loan modification services, in connection with Mr. Ramirez's properties that were in various stages of foreclosure in late October 2011, when Respondent began to represent Mr. Ramirez. The fees that were paid were for Respondent's representation of Mr. Ramirez in foreclosure prevention litigation against GMAC and Ocwen, respectively. There is not clear and convincing evidence that Mr. Ramirez and Respondent contracted for Respondent to perform any services other than the litigation services performed. Accordingly, the court does not find a violation of Civil Code section 2944.7(a)(1) and section 6106.3.

#### **Case No. 13-O-13455 – The Garcia Matter**

### **Facts**

On September 27, 2011, Heriberto and Maria Garcia, executed a retainer agreement with Legally Yours which identified Joseph Renteria as the attorney handling the first mortgage loan/settlement of second mortgage with respect to the Garcias' primary residence located at Graystone in Norwalk, CA. (Graystone property). In the agreement, Mr. Garcia indicated that he had received notices of default and sale for the Graystone property.

Respondent's March 15, 2012 letters to the Garcias stated: "On March 13, 2012, I spoke with opposing counsel (your lender's attorney) and informed her that our main goal in this matter is that you be given a modification of your loan so that you can afford the monthly payments." Respondent also informed the Garcias that the trustee's sale had been cancelled.

The May 31, 2012 letter from Respondent to the Garcias advised that the court sustained mortgage defendant's demurrer without leave to amend and stated that the Garcias' financials would be submitted in hopes of obtaining a more affordable mortgage payment under a new program. In August 2012, Respondent sought to reassure the Garcias that the culmination of the lawsuit "is not the end of the road, we are currently in the process of collecting your financial information so we can get a review of your loan directly from your lender."

From September 28, 2011 through December 21, 2012, the Garcias paid Legally Yours and Respondent about \$20,995, comprised of an initial payments of \$3,000 and \$2,000 and monthly payments of \$1,200. From May 24, 2012 through December 21, 2012, the Garcias paid Legally Yours and Respondent \$8,400 (\$1200 per month for 7 months.)

The Garcias did not get a loan modification from the lender while Respondent represented them. They eventually hired another lawyer who, according to Ms. Garcia, "stopped the bank from taking the house" after Respondent fired her for refusing to pay more money until after the modification was obtained.

### **Conclusions**

#### ***Count Two – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

While Respondent represented the Garcias in foreclosure prevention litigation that they originally contracted for, Respondent represented that his goal was to obtain a more affordable monthly payment for the Garcias. After the foreclosure prevention litigation was dismissed in May 2012, Respondent charged the Garcias an advance fee for loan modification services. The

Garcias paid advanced fees to Respondent from May 24, 2012 through December 21, 2012 for loan modification services which Respondent never obtained for them. Accordingly, by charging the Garcias advanced loan modification fees from May 24, 2012 through December 21, 2012, Respondent violated Civil Code section 2944.7(a)(1) and willfully violated section 6106.3.

**Case No. 13-O-13662 – The Maldonado Matter**

**Facts**

On March 19, 2012, Luis and Angelina Maldonado executed a retainer agreement with Legally Yours<sup>6</sup> which identified Barry Jorgensen as the attorney handling the Maldonados' representation in "litigation regarding [their] first mortgage lien" on their Stimson Avenue home (Stimson property).<sup>7</sup> At the time the Maldonados retained Legally Yours, they had received a notice of default on the Stimson property and a trustee's sale was projected for June 19, 2012.

By April 18, 2012, Respondent had filed a complaint against the Maldonados' lender, Bank of America. During May 2012, in an effort to settle the litigation, opposing counsel agreed to allow the Maldonados to submit a loan modification package for review and to postpone the Stimson property foreclosure sale while the review was pending. Subsequently, while the litigation was pending, the Maldonados' lender approved the loan modification contingent upon the Maldonados agreeing to dismiss without prejudice the foreclosure prevention complaint filed by Respondent.

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<sup>6</sup> From March 2012 through August 2012, the Maldonados paid Legally Yours fees comprised of a complaint filing fee of \$395, "retainer" payments totaling \$ 5,000 and monthly payments of \$1,200. Respondent advised the Maldonados in September 2012, to start endorsing and forwarding monthly payments directly to himself.

<sup>7</sup> The court notes, however that Respondent subsequently indicated that in a conversation with the lender's attorney, he "informed him that the purpose of this law suit is to have your financial information diligently reviewed *in the hopes of getting you into a more affordable payment.*" (Emphasis added.). According to Respondent, opposing counsel responded by agreeing to allow the Maldonados to submit a modification package.

The case settled and the action was dismissed. Mr. and Mrs. Maldonado both credibly testified that they eventually obtained a loan modification from their lender, Bank of America, and, they are both satisfied with the loan modification obtained for them and with Respondent's representation of their interests during the foreclosure litigation.

### *Conclusions*

#### *Count Three – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]*

The Maldonados' retention contract reflected that Respondent was to provide mortgage loan foreclosure litigation services in connection with the Maldonados' Stimson property that was already in foreclosure and scheduled to be sold at a trustee's sale. As a result of the foreclosure prevention litigation Respondent filed on their behalf, opposing counsel agreed to modify the Maldonados' home loan in an effort to resolve the litigation. This court finds that Respondent did not violate Civil Code section 2944.7(a)(1) and section 6106.3 because Respondent and the Maldonados' lender negotiated a loan modification in an effort to resolve the pending litigation that Respondent contracted to perform.

#### **Case No. 13-O-13665 – The Herrera Matter**

##### **Facts**

The Notice of Disciplinary Charges alleges that Respondent collected about \$10,645 from Michael Herrera<sup>8</sup> before Respondent had fully performed each and every service he had been contracted to perform or represented to the client Respondent would perform in violation of Civil Code, section 2944.7 and, in willful violation of Business and Professions Code, section 6106.3. The retainer agreement entered into between Legally Yours and attorney Joseph Renteria on September 15, 2011, states that the legal services to be provided under the retainer

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<sup>8</sup> Notwithstanding the service of a trial subpoena on Mr. Herrera, he did not appear at trial. The information reflected here with respect to Count Four was obtained as a result of the parties' stipulation of facts and admissible evidence proffered by others.

agreement include "litigation regarding First Mortgage Loan." No other legal services are specified in the agreement.

By letter dated October 28, 2011, Respondent explained to Mr. Herrera that he had been retained as the new attorney, substituting in for Joseph Renteria. Respondent touted his experience in real estate, business law and civil litigation. Respondent also noted, "I have extensive experience with foreclosure defense matters." Nowhere did Respondent mention his skills vis-à-vis loan modifications or the negotiation of loan modifications. Respondent did, however, update Mr. Herrera regarding the status of the civil complaint filed on his behalf in Riverside Superior Court. On January 12, 2012 and March 9, 2012, Respondent forwarded additional case update letters which apprised Mr. Herrera of the status of the lawsuit<sup>9</sup> and subsequently, that a loan modification package which was being reviewed by opposing counsel.

#### **Conclusion**

#### ***Count Four – § 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

There is not clear and convincing evidence that Respondent violated Civil Code section 2944.7 and willfully violated Business and Professions Code section 6106.3. Respondent did not accept an illegal advanced fee to perform a mortgage loan modification or other form of loan forbearance. Rather, Respondent accepted fees to defend Mr. Herrera in the foreclosure prevention action he actively litigated against Mr. Herrera's lenders, South Pacific Financial Corporation and JPMorgan Chase. Moreover, Mr. Herrera's loan modification was negotiated at the suggestion of and with Mr. Herrera's lender's counsel who sought to settle the foreclosure litigation by agreeing to give Mr. Herrera a permanent loan modification. The loan modification

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<sup>9</sup> Specifically, Respondent advised Mr. Herrera about the filing of a first amended complaint on January 12, 2012, the filing of a demurrer, Respondent's opposition to the demurrer and, a case management conference scheduled for April 25, 2012.

was obtained for Mr. Herrera and, as the parties agreed, a Request For Dismissal of the foreclosure litigation was filed.

**Case No. 13-O-13744 – The Sanchez de Uribe Matter**

**Facts**

On September 10, 2011, Consuelo Sanchez de Uribe executed a retainer agreement with Legally Yours which identified Joseph Renteria as the attorney handling the first mortgage loan/settlement of second mortgage with respect to her Opal Street primary residence (Opal Street property). In the agreement, Ms. Sanchez stated that she had previously received a notice of default and a notice of trustee's sale for the Opal Street property.<sup>10</sup> The property was scheduled to be sold on November 18, 2011.

In a series of client report letters, Respondent advised Ms. Sanchez that during late October 2011, he caused a complaint to be filed and served on Ms. Sanchez's lenders who subsequently demurred to the complaint. The hearing on the demurrer was initially set to be heard January 31, 2012 and then was continued to March 26, 2012. By letter dated March 16, 2012, Respondent further advised Ms. Sanchez that an opposition to the demurrer had been filed on her behalf and that he would seek postponement of the trustee's sale of the Opal Street property that had been previously been rescheduled to go forward April 9, 2012.

Respondent's March 16, May 31, and August 24, 2012 letters to Ms. Sanchez all contained the following statement: "I spoke with opposing counsel (your lender's attorney) and informed him that the purpose of this law suit is to have your financial information diligently reviewed in the hopes of getting you into a more affordable payment."<sup>11</sup> Respondent's May 31, 2012 letter also reflected that while continuing to litigate the foreclosure issues, Respondent had

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<sup>10</sup> Ms. Sanchez also indicated that she had previously received a loan modification.

<sup>11</sup> Respondent testified that he did not recall telling opposing counsel what the true purpose of the law suit was but he did recall sharing that information with the client.

commenced efforts to obtain a loan modification for Ms. Sanchez. He advised her that “[o]pposing counsel has agreed to allow us to submit a modification package, of which his office and our office will facilitate the review process to ensure it is handled properly. The completed modification package was submitted to opposing counsel and as of May 30, 2012, no updated documents or information has been requested.”

On July 23, 2012, defendant Bank of America, N.A. (BANA)’s demurrer to the second amended complaint was sustained without leave to amend. A week later, BANA’s counsel advised Respondent that Ms. Sanchez’s loan modification was denied due to her failure to provide certain requested documentation. By August 24, 2012, not only had Ms. Sanchez’s modification review been denied, but her Opal Street property was set for a trustee’s sale on October 10, 2012. Subsequently, according to Respondent’s October 18, 2012 client update letter to Ms. Sanchez, the sale was rescheduled to go forward December 20, 2012.

Although Ms. Sanchez’s second amended complaint had been dismissed as to her primary lender, Bank of America, the litigation was still pending with respect to lender defendant PMC Bancorp (PMC). On September 13, 2012, Respondent filed a request for entry of default as to PMC Bancorp. However, Respondent did not pursue the default judgment against PMC because sometime around February 2013, Ms. Sanchez ceased to communicate with Respondent regarding the lawsuit.

Respondent was never able to obtain a loan modification or more affordable mortgage payment for Ms. Sanchez.

### **Conclusions**

#### ***Count Five –§ 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]***

Ms. Sanchez contracted for foreclosure prevention litigation which Respondent pursued against her lender, Bank of America, on her behalf until April 3, 2013, when the court dismissed



the complaint. There is not clear and convincing evidence that Respondent made a “claim, demand, charge, collect[ed] or receive[d] any compensation” from Ms. Sanchez for loan modification services after the contracted-for foreclosure litigation ended.<sup>12</sup>

**Case Nos. 13-O-133090; 13-O-13455; 13-O-13662; 13-O-13665; 13-O-13744**

***Count Six – Rule 1-300(A) [Aiding the Unauthorized Practice of Law]***

Rule 1-300 (A) provides that an attorney shall not aid any person or entity in the unauthorized practice of law. In Count Six, the State Bar charges Respondent with knowingly allowing Andrea Franchino to practice law by “providing legal advice, evaluating legal needs, and setting legal fees relating to loan modification services” in the aforementioned five client matters. However, Ms. Franchino credibly testified that she did not draft the foreclosure defense complaints and did not set the legal fees for the services provided to the complaining witnesses. The State Bar did not rebut Ms. Franchino’s testimony and proffered no evidence in support of its rule 1-300 (A) charging allegations. Accordingly, there is not clear and convincing evidence that Respondent willfully violated rule 1–300(A).

***Count Seven – Rule 1-320 (A) [Sharing Legal Fees with a Non-Lawyer]***

Subject to certain exceptions which are not applicable here, rule 1-320(A) provides that a lawyer shall not directly or indirectly share legal fees with a person who is not a lawyer. In the November 17, 2014, Stipulation of Facts, Respondent admitted that he “shared legal fees with Legally Yours, LLC, a non-lawyer” in the aforementioned five client matters. Accordingly, by

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<sup>12</sup> From September 10, 2011 through August 2012, Ms. Sanchez paid Legally Yours and Respondent about \$15,450, comprised of initial payments of \$2,000 and \$2,500 and monthly payments of \$1,000 for the first two months and \$1,200 thereafter. The only evidence regarding payments made by Ms. Sanchez to Respondent after September 2012 is Respondent’s November 8, 2012 letter to Ms. Sanchez, advising that her monthly payment of \$1,200 would be due November 24, 2012 and a late fee of \$50 would be charged if not received with 15 days of the due date.

splitting legal fees with Legally Yours, Respondent shared a legal fee with a non-attorney entity, in willful violation of rule 1-320(A).

**Aggravation**<sup>13</sup> --

**Multiple Acts (Std. 1.5(b).)**

Respondent's commission of multiple acts of misconduct is an aggravating factor.

**Mitigation**

**No Prior Record (Std. 1.6(a))**

Respondent's 33 years of discipline-free practice up to the time of his misconduct in 2011, is a significant mitigating factor. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

**Candor/Cooperation to Victims/State Bar (Std. 1. 6(e).)**

By stipulating to culpability of fee-splitting in five client matters, Respondent saved court resources which warrants consideration in mitigation.

**Other**

Respondent credibly testified to performing volunteer work with a youth radio station. This community service is entitled to some mitigation. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840.)

**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. 1.1.)

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<sup>13</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.

Standard 1.7 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 must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.14 and 2.15 apply in this matter, allowing a range of disciplinary recommendations from suspension to disbarment. The more severe sanction is prescribed by standard 2.14 which indicates that disbarment or actual suspension is appropriate discipline for a violation of section 6106.3.

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; std. 1.1.) 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; std. 1.1.)

This case involved violations of section 6106.3 (one count) and rule 1-320 (A) (five counts). The court considered multiple acts of misconduct in aggravation. Mitigating factors included no prior discipline in 33 years of practice, a very significant factor, as well as candor and cooperation and community service.

The court found instructive *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 232. Taylor was culpable of charging pre-performance loan modification fees in eight matters and one count of failing to provide the required loan modification disclosures.

Aggravating circumstances included multiple acts of misconduct, significant client harm, and lack of remorse; his single mitigating factor was good character. He did not provide full refunds to his clients upon their request. Taylor consistently maintained throughout the proceedings that section 2944.7 permitted him to charge for unbundled services. He was suspended for six months and ordered to pay restitution. The instant case is distinguishable from *Taylor* as it presents much less misconduct and aggravation and considerably more mitigation; therefore, Respondent merits less discipline than that imposed in *Taylor*.

Accordingly, having considered the nature and extent of the misconduct, the aggravating and mitigating factors, and the law, the court recommends 30 days actual suspension and restitution, among other things, as sufficient to protect the public in this instance.

#### Recommendations

It is recommended that Respondent Barry Steven Jorgensen, State Bar No. 79620, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation<sup>14</sup> for a period of two years subject to the following conditions:

1. Respondent Barry Steven Jorgensen is suspended from the practice of law for the first 30 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 30 days after 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.

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<sup>14</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18)

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. During the probation period, Respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, Respondent must state in each report whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of Respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether respondent is complying or has complied with Respondent's probation conditions.
7. It is recommended that during the period of probation, respondent must make restitution to Heriberto and Maria Garcia in the amount of \$8,400.00 plus 10 percent interest per year from December 21, 2012 (or reimburse the Client Security Fund to the extent of any payment from the fund to Heriberto and Maria Garcia, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).
8. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
9. At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

**Multistate Professional Responsibility Examination**

It is recommended that Respondent be ordered to take, pass and provide satisfactory proof of passage of the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter.

Respondent's proof of passage shall be provided to the State Bar's Office of Probation in Los Angeles.


**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, that he be ordered to perform the acts specified in subdivisions (a) and (c) of rule 9.20 within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

**Costs**

This court recommends 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.

Dated: March 5, 2015



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YVETTE D. ROLAND  
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 5, 2015, I deposited a true copy of the following document(s):

**DECISION**

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:


EDWARD O. LEAR  
CENTURY LAW GROUP LLP  
5200 W CENTURY BLVD #345  
LOS ANGELES, CA 90045

BARRY STEVEN JORGENSEN  
750 N DIAMOND BAR BLVD # 224  
DIAMOND BAR, CA 91765

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SHERELL MCFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 5, 2015.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court

**FILED**

**MAY 21 2014**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

1 **CENTURY LAW GROUP LLP**  
Edward O. Lear, SBN 132699  
2 5200 West Century Boulevard, Suite 345  
3 Los Angeles, California 90045  
Telephone: (310) 642-6900  
4 Facsimile: (310) 642-6910

5  
6 **Attorneys for Respondent**  
Barry Steven Jorgensen  
7

8  
9 **STATE BAR COURT**  
10 **HEARING DEPARTMENT – LOS ANGELES**  
11

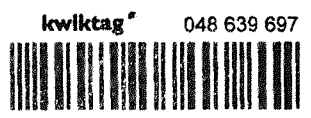
12 In the Matter of ) Case No.: 13-O-13309, 13-O-13455,  
13 ) 13-O-13662, 13-O-13665,  
14 **BARRY STEVEN JORGENSEN,** ) 13-O-13744  
No. 79620, )  
15 ) **RESPONDENT BARRY STEVEN**  
16 **A Member of the State Bar.** ) **JORGENSEN'S ANSWER TO THE**  
17 ) **NOTICE OF DISCIPLINARY CHARGES**

18  
19 **TO: THE STATE BAR COURT OF CALIFORNIA**  
20

21 Pursuant to Rule 5.43 of the Rules of Procedure of the State Bar of California, Respondent  
22 Barry Steven Jorgensen, by and through his attorney of record, Edward O. Lear, hereby submits the  
23 following in response to the Notice of Disciplinary Charges on file herein:

24 Respondent Barry Steven Jorgensen was admitted to the practice of law in the State of  
25 California on June 2, 1978, and at all relevant times herein, has been a member of the State Bar of  
26 California.

27 Under the provisions of Rules of Procedure of the State Bar of California, Respondent Barry  
28 Steven Jorgensen hereby generally denies each and every allegation of the Notice of Disciplinary





1 Charges and the whole thereof, and further denies that the Respondent has violated any Rule of  
2 Professional Conduct in any manner whatsoever.

3 In response to the specific allegations on information and belief set forth in the Notice of  
4 Disciplinary Charges on file herein, Respondent Barry Steven Jorgensen asserts:

5  
6 1. In response to Paragraph 1 of the Notice of Disciplinary Charges, Jurisdiction,  
7 Respondent admits said allegations.

8 2. In response to Paragraph 2 of the Notice of Disciplinary Charges, Respondent denies  
9 said allegations.

10 3. In response to Paragraph 3 of the Notice of Disciplinary Charges, Respondent denies  
11 said allegations.

12 4. In response to Paragraph 4 of the Notice of Disciplinary Charges, Respondent denies  
13 said allegations.

14 5. In response to Paragraph 5 of the Notice of Disciplinary Charges, Respondent denies  
15 said allegations.

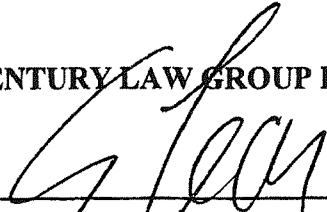
16 6. In response to Paragraph 6 of the Notice of Disciplinary Charges, Respondent denies  
17 said allegations.

18 7. In response to Paragraph 7 of the Notice of Disciplinary Charges, Respondent denies  
19 said allegations.

20 8. In response to Paragraph 8 of the Notice of Disciplinary Charges, Respondent denies  
21 said allegations.

22  
23 DATED: May 21, 2014

CENTURY LAW GROUP LLP

  
\_\_\_\_\_  
Edward O. Lear  
Attorney for Respondent  
Barry Steven Jorgensen

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**DECLARATION OF SERVICE BY PERSONAL SERVICE**

Re: In the Matter of Barry Steven Jorgensen

No.: 13-O-13309, 13-O-13455, 13-O-13662, 13-O-13665, 13-O-13744

I, Kathy Ferrera, declare:

I am over the age of 18 years and not a party to the within action. My business address is 5200 W. Century Blvd., Suite 345, Los Angeles, California 90045, in the County of Los Angeles.

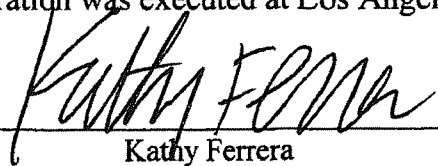
On May 21, 2014 I caused to be personally serve, the attached:

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

on:

Sherell N. McFarlane Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017	
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed at Los Angeles, California, on May 21, 2014.

  
Kathy Ferrera

**FILED**

**APR 24 2014**

**STATE BAR OF CALIFORNIA  
CLERK'S OFFICE  
LOS ANGELES**

1 STATE BAR OF CALIFORNIA  
 2 OFFICE OF THE CHIEF TRIAL COUNSEL  
 3 JAYNE KIM, No. 174614  
 4 CHIEF TRIAL COUNSEL  
 5 JOSEPH R. CARLUCCI, No. 172309  
 6 DEPUTY CHIEF TRIAL COUNSEL  
 7 MELANIE J. LAWRENCE, No. 230102  
 8 ASSISTANT CHIEF TRIAL COUNSEL  
 9 SHERELL N. McFARLANE, No. 217357  
 10 CONTRACT ATTORNEY FOR THE STATE BAR  
 11 845 South Figueroa Street  
 12 Los Angeles, California 90017-2515  
 13 Telephone: (213) 765-1288

8 STATE BAR COURT  
 9  
 10 HEARING DEPARTMENT - LOS ANGELES

11 In the Matter of: ) Case No. 13-O-13309, 13-O-13455  
 12 ) 13-O-13662, 13-O-13665, 13-O-13744  
 13 BARRY STEVEN JORGENSEN, )  
 14 No. 79620, ) NOTICE OF DISCIPLINARY CHARGES  
 15 )  
 16 A Member of the State Bar. )

**NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Barry Steven Jorgensen ("Respondent") was admitted to the practice of law in the  
4 State of California on June 2, 1978, was a member at all times pertinent to these charges, and is  
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 13-O-13309  
8 Business and Professions Code, section 6106.3  
9 [Violation of Civil Code, section 2944.7(a)(1) - Illegal Advanced Fee]

10 2. In or about October 2011, Respondent agreed to perform a mortgage loan  
11 modification or other form of mortgage loan forbearance for a fee for a client, Delfino Ramirez,  
12 and thereafter between in or about October 2011 through in or about April 2012, collected  
13 approximately \$6,000 from the client before Respondent had fully performed each and every  
14 service Respondent had been contracted to perform or represented to the client that Respondent  
15 would perform, in violation of Civil Code, section 2944.7, and in willful violation of Business  
16 and Professions Code, section 6106.3.

16 COUNT TWO

17 Case No. 13-O-13455  
18 Business and Professions Code, section 6106.3  
19 [Violation of Civil Code, section 2944.7(a)(1) - Illegal Advanced Fee]

20 3. In or about September 2011, Respondent agreed to perform a mortgage loan  
21 modification or other form of mortgage loan forbearance for a fee for clients, Maria and  
22 Heriberto Garcia, and thereafter between in or about September 2011 through in or about  
23 December 2012, collected approximately \$20,995 from the clients before Respondent had fully  
24 performed each and every service Respondent had been contracted to perform or represented to  
25 the clients that Respondent would perform, in violation of Civil Code, section 2944.7, and in  
26 willful violation of Business and Professions Code, section 6106.3.

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COUNT THREE

Case No. 13-O-13662  
Business and Professions Code, section 6106.3  
[Violation of Civil Code, section 2944.7(a)(1) - Illegal Advanced Fee]

4. In or about March 2012, Respondent agreed to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee for clients, Angelina and Luis Maldonado, and thereafter between in or about March 2012 through in or about August 2012, collected approximately \$9,295 from the clients before Respondent had fully performed each and every service Respondent had been contracted to perform or represented to the clients that Respondent would perform, in violation of Civil Code, section 2944.7, and in willful violation of Business and Professions Code, section 6106.3.

COUNT FOUR

Case No. 13-O-13665  
Business and Professions Code, section 6106.3  
[Violation of Civil Code, section 2944.7(a)(1) - Illegal Advanced Fee]

5. In or about September 2011, Respondent agreed to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee for a client, Michael Herrera, and thereafter between in or about September 2011 through in or about August 2012, collected approximately \$10,645 from the client before Respondent had fully performed each and every service Respondent had been contracted to perform or represented to the client that Respondent would perform, in violation of Civil Code, section 2944.7, and in willful violation of Business and Professions Code, section 6106.3.

COUNT FIVE

Case No. 13-O-13744  
Business and Professions Code, section 6106.3  
[Violation of Civil Code, section 2944.7(a)(1) - Illegal Advanced Fee]

6. In or about September 2011, Respondent agreed to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee for a client, Consuelo Sanchez de Uribe, and thereafter between in or about September 2011 through in or about August 2012, collected approximately \$15,450 from the client before Respondent had fully performed each

1 and every service Respondent had been contracted to perform or represented to the client that  
2 Respondent would perform, in violation of Civil Code, section 2944.7, and in willful violation of  
3 Business and Professions Code, section 6106.3.

4 COUNT SIX

5 Case No. 13-O-13309, 13-O-13455  
6 13-O-13662, 13-O-13665, 13-O-13744  
7 Rules of Professional Conduct, Rule 1-300(A)  
8 [Aiding the Unauthorized Practice of Law]

8 7. Between in or about September 2011 through in or about December 2012,  
9 Respondent aided Andrea Dubois aka Andrea Franchino (dba as Legally Yours, LLC), who is  
10 not licensed to practice law in California, in the unauthorized practice of law, by knowingly  
11 allowing Andrea Dubois aka Andrea Franchino (dba as Legally Yours, LLC) to practice law by  
12 providing legal advice, evaluating legal needs, and setting legal fees relating to loan modification  
13 services for clients Delfino Ramirez, Maria and Heriberto Garcia, Angelina and Luis Maldonado,  
14 Michael Herrera, and Consuelo Sanchez de Uribe, in willful violation of Rules of Professional  
15 Conduct, rule 1-300(A).

16 COUNT SEVEN

17 Case No. 13-O-13309, 13-O-13455  
18 13-O-13662, 13-O-13665, 13-O-13744  
19 Rules of Professional Conduct, Rule 1-320(A)  
20 [Sharing Legal Fees with a Non-Lawyer]

20 8. Between in or about September 2011 through in or about December 2012,  
21 Respondent shared legal fees with a person who is not a lawyer, namely, Andrea Dubois aka  
22 Andrea Franchino (dba as Legally Yours, LLC), in relation to Delfino Ramirez's loan  
23 modification and civil matters pending in Orange County Superior Court case numbers 30-2011-  
24 00459542 and 30-2011-00519765, Maria and Heriberto Garcia's loan modification and civil  
25 matter pending in Los Angeles County Superior Court case number VC060037, Angelina and  
26 Luis Maldonado's loan modification and civil matter pending in Los Angeles County Superior  
27 Court case number KC063622, Michael Herrera's loan modification and civil matter pending in  
28 Riverside County Superior Court case number RIC1117534, and Consuelo Sanchez de Uribe's

1 loan modification and civil matter pending in Riverside County Superior Court case number  
2 RIC1117922, in willful violation of Rules of Professional Conduct, Rule 1-320(A).

3 **NOTICE - INACTIVE ENROLLMENT!**

4 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR  
5 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
6 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL  
7 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO  
8 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN  
9 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE  
10 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE  
11 RECOMMENDED BY THE COURT.**

12 **NOTICE - COST ASSESSMENT!**

13 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC  
14 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS  
15 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING  
16 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND  
17 PROFESSIONS CODE SECTION 6086.10.**

18 Respectfully submitted,

19 THE STATE BAR OF CALIFORNIA  
20 OFFICE OF THE CHIEF TRIAL COUNSEL

21  
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28  
DATED: April 24, 2014 By: Sherell N. McFarlane

Sherell N. McFarlane  
Contract Attorney for the State Bar

DECLARATION OF SERVICE

by
U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 13-O-13309, 13-O-13455, 13-O-13662, 13-O-13665, 13-O-13744

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017-2515, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7196 9008 9111 1008 4623 at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to:.

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS).

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

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: April 24, 2014

SIGNED: Sandra Reynolds
Sandra Reynolds
Declarant





The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST July 24, 2017  
State Bar Court, State Bar of California,  
Los Angeles

By *Cynthia Datta*  
Clerk



SUPREME COURT  
FILED

JUN 26 2017

Jorge Navarrete Clerk

Deputy

(State Bar Court No. 14-O-05703)

S240193

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

In re BARRY STEVEN JORGENSEN on Discipline

The court orders that Barry Steven Jorgensen, State Bar Number 79620, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Barry Steven Jorgensen is suspended from the practice of law for the first nine months of probation;
2. Barry Steven Jorgensen must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on December 13, 2016; and
3. At the expiration of the period of probation, if Barry Steven Jorgensen has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Barry Steven Jorgensen must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension.

Costs are 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.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

day of JUN 26 2017


By: 

Deputy

**CANTIL-SAKAUYE**

Chief Justice

**FILED**

DEC 13 2016 

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

# **PUBLIC MATTER**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 14-O-05703
	)	
BARRY STEVEN JORGENSEN,	)	DECISION
	)	
A Member of the State Bar, No. 79620.	)	
<hr/>		

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

Respondent Barry Steven Jorgensen (Respondent) is charged with five counts of misconduct in a single client matter. The charges include misleading a judge by concealing a material fact and aiding another in the unauthorized practice of law (UPL). The Office of Chief Trial Counsel of the State Bar of California (OCTC) has the burden of proving these charges by clear and convincing evidence.<sup>2</sup> This court finds Respondent culpable of three counts of misconduct and recommends that he be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of two years subject to a nine-month actual suspension.

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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.

<sup>2</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

### **Significant Procedural History**

OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (“NDC”) in case number 14-O-05703 on October 30, 2015. Respondent filed a response to the NDC on December 4, 2015. The parties filed a Stipulation of Facts and Admission of Documents on September 9, 2016.

A two-day trial took place on September 14 and September 15, 2016. The State Bar was represented by Deputy Trial Counsel Sherell N. McFarlane. Respondent represented himself. The matter was submitted for decision on September 15, 2016. The State Bar and Respondent filed their respective closing briefs on October 6, 2016.

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

Respondent was admitted to the practice of law in California on June 2, 1978, and has been a member of the State Bar of California at all times since that date. These findings of fact and conclusions of law are based on the record, evidence admitted at trial, and facts set forth by the parties in their stipulation.

#### **Case No. 14-O-05703**

##### **Facts**

In 2012, Respondent was the attorney of record for the defendant in Los Angeles County Superior Court case number EC058142 entitled, *Edmond Feredonzadeh, et al. v. Tina Avakian*. A trial was set for September 23, 2014. The *Avakian* case was Respondent’s first jury trial as lead counsel.

Before the *Avakian* trial began, Respondent contacted Dave Barela, a former attorney who resigned with disciplinary charges pending, and asked him to assist with the trial. Barela resigned with charges pending effective May 13, 2004. Before his resignation, Barela had been disciplined twice. The misconduct in his priors included making false representations,

misappropriation of client funds, the failure to promptly pay client funds, and the failure to maintain client funds in trust. The charges pending when Barela resigned involved trust account violations involving \$30,000.

Respondent knew Barela had resigned with charges pending and was not licensed to practice law in California. Barela agreed to assist Respondent; he volunteered to oversee the trial documents and jury instructions, but he would not be compensated for his assistance. Respondent never informed the State Bar that Barela would be assisting him with the *Avakian* case. Barela was not licensed to practice law in any other jurisdiction.

When the trial proceedings began, Barela sat with Respondent at the counsel table. Respondent considered Barela his legal assistant. Later, on September 26, 2014, Superior Court Judge Elizabeth A. Lippitt noted that up until that morning, there were two attorneys representing the defendant Tina Avakian. Judge Lippitt was referring to Barela. When the court asked Respondent, "who was the gentleman that was with you?" Respondent replied "David Barela." Shortly thereafter Barela walked into the courtroom and the court asked, "And Mr. Barela, I understand, is an attorney but not licensed in California; correct?" In response, Barela replied, "Correct, your honor." Respondent then told the court that Barela was going to be his "paper chaser" and agreed with the court's characterization that Barela was going to be Respondent's "side kick, man Friday, everything above." The court then indicated that opposing counsel referred to Barela as a law clerk and stated, "I'm not comfortable with that title because he is a licensed attorney. . . . And I think law clerk is a little bit demeaning under the circumstances." The judge permitted Barela to sit at the defense counsel table because it was her understanding that Barela was an attorney licensed out-of-state.

As the court began to make preliminary decisions about exhibits and jury instructions, opposing counsel noticed that Barela was doing more than assisting Respondent. Opposing

counsel observed Barela directing Respondent and instructing him on which exhibits to admit. In addition, there were instances where opposing counsel objected to certain instructions and Barela advised Respondent what to argue in response. In addition to directing Respondent in court, Barela responded to the court's questions about certain jury instructions.

Based on Barela's actions in court, opposing counsel instructed his paralegal to Google Barela's name, which led the paralegal to check the State Bar website. At this point, opposing counsel discovered that Barela was a former attorney who was not entitled to practice law in California.

Later that morning, opposing counsel raised the issue of Barela's status with the court, stating, "Mr. Barela is a California suspended lawyer, not an outside California lawyer. He's sitting here. He's instructing this lawyer what to say and what not to say. He's practicing law illegally, your honor. He cannot be doing this." The court then stated, "I was given the representation that it [sic] was from out of state if I recall."

Opposing counsel addressed the court further by stating, "I understand, but I see this unlicensed person telling a licensed attorney sitting here what to do and what not to do. He's a suspended license [sic] with charges pending. That's where we stand, your honor . . . . He should not be sitting and instructing this lawyer what to say and what not to say."

The court responded and stated, "So Mr. Barela, from now on – I mean, it is – there's a lot of whispering going on between the two of you. Mr. Jorgensen's on the hook for this case. Mr. Jorgensen is the one that's got to make the calls on this, and during lunch time you all can flush out what the heck is going on on this. This is a completely different scenario than what was represented to me on Tuesday when this case came here."

After a short recess, the court again addressed the issue of Barela's State Bar license status after reviewing the information contained on the State Bar's website. The court stated in

part, "I know at least I have that ethical obligation as to inform the State Bar that Mr. Barela, quite frankly, is practicing law through Mr. Jorgensen . . . and for the record, he has continually been whispering in Mr. Jorgensen's ear with a stage whisper, and Mr. Jorgensen is not doing anything without consulting Mr. Barela."

Respondent then requested to be heard, stating in part, "Well, I mean my point is he's not – he's my legal assistant, and a legal assistant does not have to be a licensed attorney. He does my research and handles the paperwork. I don't understand why that's practicing law." The court stated in response, "He is sitting at counsel table and basically telling you what to do every step of the way. I think that's, you know, for all intents and purposes, practicing law."

The court subsequently addressed Respondent's client. The court stated, "Ms. Avakian, it has come to my attention today that the other gentleman that has been helping Mr. Jorgensen is not a licensed lawyer, do you understand that?" Respondent's client indicated that she understood, and she accepted that Respondent would be the only lawyer representing her on her case.

### **Conclusions**

*Count One - (§ 6068, subd. (d) [Seeking to Mislead a Judge])<sup>3</sup>*  
*Count Two - (§ 6106 [Moral Turpitude - Misrepresentation])<sup>4</sup>*

OCTC charged Respondent with willfully violating section 6106 by failing to inform the judge that a former California attorney who resigned with charges pending was not licensed to practice law in any other jurisdiction, when Respondent knew the court believed that the former attorney was licensed in another jurisdiction. OCTC charged Respondent with willfully

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<sup>3</sup> Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

<sup>4</sup> Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.



violating section 6068, subdivision (d) based on the same facts alleged in the section 6106 charge. Respondent is culpable of the charged misconduct.

Section 6106 applies to the misrepresentation and concealment of material facts. (*In the Matter of Crane and Depew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154-155; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 576.) The evidence clearly and convincingly demonstrates that Respondent knew the superior court judge believed Barela was an attorney licensed in another jurisdiction, yet Respondent concealed from the court that Barela was a former California attorney who resigned with charges pending and was not licensed in any jurisdiction. Respondent acknowledged that he heard the judge say that Barela was licensed outside of California, but Respondent never corrected the court's false belief. Moreover, Respondent's concealment was material. The superior court judge testified during the disciplinary hearing that if she had been aware that Barela was not licensed to practice, she would not have permitted him to sit at the counsel table.

Respondent argues that he is not culpable of violating section 6106 because the false impression was "nothing more than a misunderstanding by Judge Lippitt, and there was no intent . . . to mislead Judge Lippitt into believing that Barela was a licensed attorney in another jurisdiction." Respondent ignores that he had the ethical obligation to correct the superior court's false impression. Respondent had the opportunity to correct the judge's false belief, but failed to do so. "It is settled that concealment of material facts is just as misleading as explicit false statements, and accordingly, is misconduct calling for discipline. [Citations.]" (*Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163.) Respondent is culpable of committing an act of moral turpitude by concealing from the court that Barela was a former attorney who resigned with charges pending knowing that the court thought Barela was licensed to practice in another jurisdiction, in willful violation of section 6106.

Respondent's concealment of the truth also violated section 6068, subdivision (d). But this charge is dismissed as duplicative of the section 6106 charge because the same misconduct underlies both violations. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissal of § 6068, subd. (d), charge proper where underlying misconduct covered by § 6106 charge supporting identical or greater discipline].) Count One is dismissed with prejudice.

***Count Three - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])<sup>5</sup>***  
***Count Four - (Rule 1-311(B) [Employment of Resigned Member])<sup>6</sup>***

OCTC charged Respondent with aiding Barela, a resigned member, in the unauthorized practice of law by allowing Barela to participate in the *Avakian* trial and by giving Respondent directions regarding jury instructions, in willful violation of rule 1-300(A). OCTC charged Respondent with willfully violating rule 1-311(B) based on the same facts alleged in the rule 1-300(A) charge. Respondent is culpable of the charged misconduct.

Respondent knew that Barela was a former attorney who resigned with charges pending. Yet, Respondent permitted Barela to sit with him at the defense counsel table and respond to the judge's questions about the jury instructions. Additionally, Barela directed Respondent on how to respond to opposing counsel's jury instruction objections and which instructions to accept or

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<sup>5</sup> Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law.

<sup>6</sup> Rule 1-311(B) provides that "A member shall not employ, associate professionally with, or aid a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the member's client:

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client's funds; or
- (6) Engage in activities which constitute the practice of law."

reject. Barela's actions constitute UPL (*In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338, 344 [practice of law includes giving legal advice]), which Respondent aided.

Respondent maintains that there is a lack of clear and convincing evidence demonstrating that he aided Barela in UPL because Barela was acting as his legal assistant when the two had discussions at the counsel table. The court rejects Respondent's argument. First, as set forth above, Barela was responding to the judge's jury instruction questions. Next, Judge Lippitt observed Barela whispering in Respondent's ear with a "stage whisper;" loud enough so that words could be heard. During the *Avakian* trial, the court noted that "Mr. Jorgensen is not doing anything without consulting Mr. Barela." The judge testified that Respondent and Barela were in constant communication with Barela instructing Respondent how to proceed. This court finds Judge Lippitt's testimony credible. This credibility finding is based on Judge Lippitt's demeanor at trial and her thoughtful, consistent testimony. Moreover, opposing counsel also testified that Barela was instructing Respondent "what to do and what not to do," and "what to say and what not to say." Thus, this court finds clear and convincing evidence that Respondent aided Barela in UPL, in willful violation of rule 1-300(A).

Respondent's association with Barela during the *Avakian* trial also violated rule 1-311(B). However, because the same misconduct underlies the rule 1-300(A) charge, the court dismisses the rule 1-311(B) charge as duplicative. Count Four is dismissed with prejudice.

***Count Five – (Rule 1-311(D) [Employment of Resigned Member])<sup>7</sup>***

Respondent is charged with willfully violating rule 1-311(D) by failing to notify OCTC that he employed Barela, when he knew Barela was a former attorney who resigned with charges

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<sup>7</sup> Rule 1-311(D) provides that an attorney, on employing a disbarred, suspended, resigned, or involuntary inactive lawyer, must give the State Bar and clients written notice of the employment and the employee's status.

pending. OCTC has clearly and convincingly established that Respondent is culpable of the charges in Count Five.

Respondent asked Barela to assist him with the *Avakian* trial knowing that Barela resigned with charges pending. Pursuant to rule 1-311(A), “employ” under rule 1-311(D) “means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid.” Even though Respondent and Barela testified that Barela was not compensated for his assistance with the *Avakian* trial, Respondent is culpable of willfully violating rule 1-311(D) because he engaged Barela’s services without giving the State Bar written notice, as required by the rule.

#### **Aggravation<sup>8</sup>**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

#### **Prior Record of Discipline (Std. 1.5(a).)**

Respondent has one prior discipline record. On October 12, 2016, the Supreme Court ordered Respondent suspended for two years, stayed, and placed him on probation for two years with an actual suspension of six months. Respondent was culpable of collecting illegal advance fees for loan modification services in five client matters, and aiding UPL in all five of those matters. He was also culpable of splitting fees with a non-lawyer. Respondent was ordered to pay a total of \$61,635 in restitution to his clients. The period of misconduct was from October 2011 through October 2012. Respondent’s wrongdoing was aggravated by multiple acts of wrongdoing and significant client harm; but tempered by 33 years of discipline-free practice, cooperation, and community service. Respondent’s prior record of discipline involved serious

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<sup>8</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.

misconduct and harm to his clients. It also involved aiding UPL, which he is culpable of in this disciplinary proceeding. Thus, the court affords significant aggravating weight to Respondent's prior record.

**Multiple Acts (Std. 1.5(b).)**

Respondent concealed material information from a judge, aided in the UPL of Barela, and failed to report to the State Bar that he employed Barela for the *Avakian* trial. Respondent engaged in multiple acts of wrongdoing, which is an aggravating factor.

**Indifference Toward Rectification/Atonement (Std. 1.5(k).)**

Respondent fails to appreciate the wrongfulness of his misconduct. During this disciplinary proceeding, Respondent testified that he did not do anything wrong. Even though he knew Judge Lippitt believed that Barela was an attorney licensed in another jurisdiction, Respondent stated that it was not important to correct the judge's false impression. Respondent's attitude demonstrates a lack of understanding of his ethical responsibilities as an attorney. Significant weight is assigned to this factor because Respondent's lack of insight makes him an ongoing danger to the public and legal profession. (*In the Matter of Layton* (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct].)

**Mitigation**

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

**Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Respondent entered into a stipulation of facts that expedited the trial, but many of the admissions were easily proved. Thus, Respondent is afforded limited mitigating weight for his

cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

Respondent's significant aggravation for a prior discipline record, multiple acts, and lack of insight far outweighs the slight mitigating effect of his cooperation.

### Discussion

OCTC argues that a one-year actual suspension is the appropriate level of discipline for Respondent's misconduct. Respondent maintains that if he is found culpable of any wrongdoing, his misconduct warrants no greater than a 30-day actual suspension.

Our discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) Standards 1.8(a) and 2.11 are the most apt.

Standard 1.8(a) states that when a member has a single prior record of discipline, the "sanction must be greater than the previously imposed sanction," subject to certain exceptions that are not applicable here. Standard 2.11 provides that, "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude ... or concealment of a material fact. . . . The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Respondent's misconduct was serious. An attorney's concealment violates "the fundamental rules of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice." (*Alkow v. State Bar* (1952)

38 Cal.2d 257, 264, quoting *Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.) “It is the endeavor to secure an advantage by means of falsity which is denounced.” (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 145.) Respondent’s misconduct was central to the practice of law, and as a result of his concealment, the superior court permitted a former attorney who resigned with charges pending to sit at the counsel table. This diminishes the public’s confidence in the integrity of the legal system. Therefore, a period of actual suspension is appropriate.

To determine the appropriate level of discipline within the range provided, comparable case law is also considered. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.) The court finds guidance from two cases – *Bach v. State Bar* (1987) 43 Cal.3d 848 and *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151.

In *Bach v. State Bar*, *supra*, 43 Cal.3d 848, Bach intentionally misled a judge. He informed the judge that he had not been ordered to produce his client at a child custody mediation, or in the alternative that he had not been served with such an order. However, the evidence showed that Bach was informed of the order both orally and in writing. The Supreme Court found that this conduct was serious, involved moral turpitude and was the kind of behavior “that threatens the public and undermines its confidence in the legal profession.” (*Id.* at p. 857.) In ordering a one-year stayed suspension, with a three-year probation and 60 days’ actual suspension, the court noted there was no mitigation evidence. (*Ibid.*) Moreover, the attorney in *Bach* had previously been publicly reprimanded for communicating with an adverse party represented by counsel.

In *In the Matter of Downey*, *supra*, 5 Cal. State Bar Ct. Rptr. 151, Downey signed a verification on behalf of his clients stating that his clients were absent from the county. Downey never verified that they were actually out of the county, but made the assumption based on his inability to reach them. The court found that Downey was grossly negligent and violated section

6106 by signing the verification on behalf of his clients and misrepresenting they were absent from the county. (*Id.* at p. 155.) The court also found that Downey's misconduct was aggravated by dishonesty and concealment. Almost one month after filing the verification, Downey discovered that the verification was untrue, but instead of rectifying the error, he concealed it. He had the opportunity to correct the false statement in an opposition to a motion to strike the complaint, which alleged that the verification was untrue, but he never corrected the misrepresentation. Downey also had a prior discipline record where he was suspended for four months. Downey received limited mitigation for good character and cooperation, and received a 150-day actual suspension.

As in *Bach* and *Downey*, Respondent is an attorney with one prior record of discipline who has misled a court. Further, Respondent's limited mitigation is similar to the slight or absence of mitigation those cases. Both *Bach* and *Downey* received progressive discipline for their misconduct. Similarly, this court finds that the totality of the circumstances warrants progressive discipline as outlined in standard 1.8(a). In light of Respondent's six-month prior suspension for serious misconduct and his current lack of insight, the court concludes that a nine-month period of actual suspension is appropriate to protect the public, the courts and the legal profession; to maintain high professional standards; and to preserve public confidence in the legal profession. (Std. 1.1.)

#### **Recommendations**

It is recommended that respondent Barry Steven Jorgensen, State Bar Number 79620, be suspended from the practice of law in California for two years, that execution of that period of



suspension be stayed, and that Respondent be placed on probation<sup>9</sup> for a period of two years subject to the following conditions:

1. Respondent Barry Steven Jorgensen is suspended from the practice of law for the first 9 months of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Within 30 days after 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 of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.<sup>10</sup>

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

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<sup>9</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

<sup>10</sup> It is not recommended that Respondent be ordered to attend the State Bar's Ethics School and Client Trust Accounting School, as he has recently been ordered to do so, on October 12, 2016, by the Supreme Court in case No. S235946.

**Multistate Professional Responsibility Examination**

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on October 12, 2016, by the Supreme Court in case No. S227680.

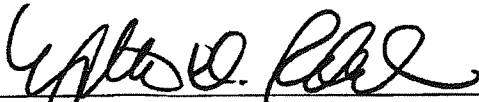
**California Rules of Court, Rule 9.20**

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. Failure to do so may result in disbarment or suspension.

**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.

Dated: December 12, 2016

  
YVETTE D. ROLAND  
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 December 13, 2016, I deposited a true copy of the following document(s):

### DECISION

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

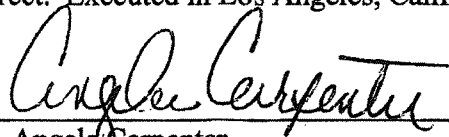
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BARRY STEVEN JORGENSEN  
750 N DIAMOND BAR BLVD # 224  
DIAMOND BAR, CA 91765

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Sherell N. McFarlane, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 13, 2016.



---

Angela Carpenter  
Case Administrator  
State Bar Court

1 CENTURY LAW GROUP LLP  
Edward O. Lear, SBN 132699  
2 5200 West Century Boulevard, Suite 345  
3 Los Angeles, California 90045  
Telephone: (310) 642-6900  
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5  
6 Attorneys for Respondent  
Barry Steven Jorgensen  
7

**FILED**

**DEC 04 2015**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

8  
9 STATE BAR COURT  
10 HEARING DEPARTMENT – LOS ANGELES  
11

12 In the Matter of:

Case No.: 14-O-05703

13 BARRY STEVEN JORGENSEN,  
14 No. 79620,

RESPONDENT BARRY STEVEN  
JORGENSEN'S ANSWER TO THE  
NOTICE OF DISCIPLINARY CHARGES

15 A Member of the State Bar.  
16  
17

18  
19 TO: THE STATE BAR COURT OF CALIFORNIA

20 Pursuant to Rule 5.43 of the Rules of Procedure of the State Bar of California, Respondent  
21 Barry Steven Jorgensen, by and through his attorney of record, Edward O. Lear, hereby submits the  
22 following in response to the Notice of Disciplinary Charges on file herein:

23 Respondent Barry Steven Jorgensen was admitted to the practice of law in the State of  
24 California on June 2, 1978, and at all relevant times herein, has been a member of the State Bar of  
25 California.

26 Under the provisions of Rules of Procedure of the State Bar of California, Respondent Barry  
27 Steven Jorgensen hereby generally denies each and every allegation of the Notice of Disciplinary  
28 Charges and the whole thereof, and further denies that the Respondent has violated any Rule of  
Professional Conduct in any manner whatsoever.

1 In response to the specific allegations on information and belief set forth in the Notice of  
2 Disciplinary Charges on file herein, Respondent Barry Steven Jorgensen asserts:

3 1. In response to Paragraph 1 of the Notice of Disciplinary Charges, Jurisdiction,  
4 Respondent admits said allegations.

5 2. In response to Paragraph 2 of the Notice of Disciplinary Charges, Respondent denies  
6 said allegations.

7 3. In response to Paragraph 3 of the Notice of Disciplinary Charges, Respondent denies  
8 said allegations.

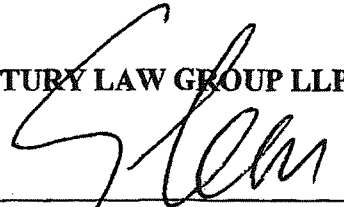
9 4. In response to Paragraph 4 of the Notice of Disciplinary Charges, Respondent denies  
10 said allegations.

11 5. In response to Paragraph 5 of the Notice of Disciplinary Charges, Respondent denies  
12 said allegations.

13 6. In response to Paragraph 6 of the Notice of Disciplinary Charges, Respondent denies  
14 said allegations.

15 DATED: December 4, 2015

CENTURY LAW GROUP LLP



Edward O. Lear  
Attorney for Respondent  
Barry Steven Jorgensen

**DECLARATION OF SERVICE BY PERSONAL SERVICE**

Re: In the Matter of Barry Steven Jorgensen

No.: 14-O-05703

I, Kathy Ferrera, declare:

I am over the age of 18 years and not a party to the within action. My business address is 5200 W. Century Blvd., Suite 345, Los Angeles, California 90045, in the County of Los Angeles.

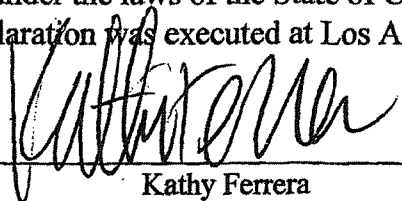
On December 4, 2015 I caused to be personally serve, the attached:

**RESPONDENT'S BARRY STEVEN JORGENSEN'S ANSWER TO NOTICE OF DISCIPLINARY CHARGES**

on:

SHERELL N. McFARLANE State Bar of California 845 S. Figueroa Street Los Angeles, CA 90017	
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed at Los Angeles, California, on December 4, 2015].

  
Kathy Ferrera

**PUBLIC MATTER**

STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL  
JAYNE KIM, No. 174614  
CHIEF TRIAL COUNSEL  
JOSEPH R. CARLUCCI, No. 172309  
DEPUTY CHIEF TRIAL COUNSEL  
MIA ELLIS, No. 228235  
ACTING ASSISTANT CHIEF TRIAL COUNSEL  
BROOKE A. SCHAFER, No. 194824  
SUPERVISING SENIOR TRIAL COUNSEL  
SHERELL N. McFARLANE, No. 217357  
DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
Los Angeles, California 90017-2515  
Telephone: (213) 765-1288

**FILED**

**OCT 30 2015**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of: ) Case No. 14-O-05703  
BARRY STEVEN JORGENSEN, ) NOTICE OF DISCIPLINARY CHARGES  
No. 79620, )  
A Member of the State Bar. )

**NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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28

1 The State Bar of California alleges:

2 JURISDICTION

3 1. Barry Steven Jorgensen (“respondent”) was admitted to the practice of law in the  
4 State of California on June 2, 1978, was a member at all times pertinent to these charges, and is  
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 14-O-05703  
8 Business and Professions Code, section 6068(d)  
9 [Seeking to Mislead a Judge]

10 2. In or about September 26, 2014, during trial proceedings in the matter of *Edmond*  
11 *Feredonzadeh, et al. v. Tina Avakian*, Superior Court of California, County of Los Angeles case  
12 number EC058142, in which respondent was being assisted in the presentation of the trial by a  
13 member who had resigned from the State Bar of California with charges pending and which  
14 member had represented to the court, by omission, that he was an attorney licensed in another  
15 jurisdiction, respondent failed to inform the court that the resigned member was not licensed in  
16 any other jurisdiction when respondent knew that the court believed that the resigned member  
17 was licensed attorney in another jurisdiction, and thereby sought to mislead the judge or judicial  
18 officer by an artifice or false statement of fact or law, in willful violation of Business and  
19 Professions Code, section 6068(d).

19 COUNT TWO

20 Case No. 14-O-05703  
21 Business and Professions Code, section 6106  
22 [Moral Turpitude - Misrepresentation]

23 3. On or about September 26, 2014, respondent stated to the court during trial  
24 proceedings in the matter of *Edmond Feredonzadeh, et al. v. Tina Avakian*, Superior Court of  
25 California, County of Los Angeles case number EC058142, that a member who had resigned  
26 from the State Bar of California with charges pending and which member had represented to the  
27 court, by omission, that he was an attorney licensed in another jurisdiction, respondent failed to  
28 inform the court that the resigned member was not licensed in any other jurisdiction when



1 respondent knew that the court believed that the resigned member was licensed attorney in  
2 another jurisdiction, and thereby committed an act involving moral turpitude, dishonesty or  
3 corruption in willful violation of Business and Professions Code, section 6106.

4

COUNT THREE

5

Case No. 14-O-05703

6

Rules of Professional Conduct, Rule 1-300(A)  
[Aiding the Unauthorized Practice of Law]

7

4. On or about September 26, 2014, respondent aided David Michael Barela, who  
8 resigned from the State Bar of California with charges pending and who is not authorized to  
9 practice law in California, in the unauthorized practice of law by allowing resigned member  
10 David Michael Barela, to participate in the trial of *Edmond Feredonzadeh, et al. v. Tina Avakian*,  
11 Superior Court of California, County of Los Angeles case number EC058142, on the record and  
12 by giving directions to respondent regarding jury instructions during the course of the trial, in  
13 willful violation of Rules of Professional Conduct, rule 1-300(A).

14

COUNT FOUR

15

Case No. 14-O-05703

16

Rules of Professional Conduct, Rule 1-311(B)  
[Employment of Resigned Member]

17

5. On or about September 26, 2014, respondent employed, associated professionally  
18 with, or aided a person, whom respondent knew or reasonably should have known was a  
19 resigned member, namely David Michael Barela, to appear on behalf of a client in any hearing or  
20 proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee,  
21 magistrate, commissioner, or hearing officer, and to engage in activities that constitute the  
22 practice of law namely, by allowing the resigned member to participate in the trial of *Edmond*  
23 *Feredonzadeh, et al. v. Tina Avakian*, Superior Court of California, County of Los Angeles case  
24 number EC058142, on the record and by giving directions to respondent regarding jury  
25 instructions during the course of the trial, in willful violation of Rules of Professional Conduct,  
26 rule 1-311(B).

27

28

COUNT FIVE

Case No. 14-O-05703

Rules of Professional Conduct, Rule 1-311(D)

[Failure to Notify State Bar of Employment of Resigned Member]

6. Respondent failed to serve upon the State Bar of California, prior to or at the time of such employment, written notice of respondent's employment on or about September 26, 2014, of a person, namely David Michael Barela, whom Respondent knew or reasonably should have known was a resigned member, in willful violation of Rules of Professional Conduct, rule 1-311(D).

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: October 30, 2015 By: Sherell N. McFarlane  
Sherell N. McFarlane  
Deputy Trial Counsel

DECLARATION OF SERVICE

by
U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 14-O-05703

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7196 9008 9111 1007 9452 at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to. Row 1: Edward O. Lear, Century Law Group 5200 W. Century Blvd. #345 Los Angeles, CA 90045, Electronic Address.

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

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

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: October 30, 2015

SIGNED:

Sandra Reynolds
Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST July 24, 2017

State Bar Court, State Bar of California,  
Los Angeles

By \_\_\_\_\_  
Clerk

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 17-N-00911, 17-O-00967

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

SUPPLEMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to:.

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS).

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

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: August 25, 2017

SIGNED:

Handwritten signature of Kim Wimbish and printed name KIM WIMBISH Declarant

**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 August 3, 2017, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT; SUPPLEMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING**

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:

**BARRY STEVEN JORGENSEN  
PO BOX 439060 PMB 162,  
SAN YSIDRO, CA 92143 - 9060**

**Courtesy copy:  
BARRY STEVEN JORGENSEN  
C/O LAW OFFICES OF GREGORY  
POLSTER  
2611 UNIVERSITY AVENUE  
SAN DIEGO, CA 92104**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**PATRICE N. VALLIER-GLASS, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 3, 2017.



Paul Barona  
Case Administrator  
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 October 3, 2017, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT; SUPPLEMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING**

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:

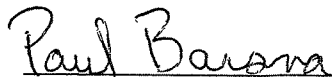
**BARRY STEVEN JORGENSEN  
PO BOX 439060 PMB 162,  
SAN YSIDRO, CA 92143 - 9060**

**Courtesy copy:  
BARRY STEVEN JORGENSEN  
C/O LAW OFFICES OF GREGORY  
POLSTER  
2611 UNIVERSITY AVENUE  
SAN DIEGO, CA 92104**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**PATRICE N. VALLIER-GLASS, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 3, 2017.



---

Paul Barona  
Case Administrator  
State Bar Court