PUBLIC MATTER—DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-23-O-30827
	)	
GREGORY DANIEL TRIMARCHE,	)	OPINION
	)	
State Bar No. 143686.	)	
	)	

Gregory Daniel Trimarche is charged with misconduct relating to a nationwide operation that provided debt relief services to clients seeking to negotiate or reduce their private student loan debt (the Debt Relief Operation) that he initiated and partook in between April 2015 and May 2020. The hearing judge found that he was culpable of all four counts and recommended Trimarche be suspended for two years, stayed, and placed on probation for two years, with conditions to include a one-year actual suspension. Trimarche appeals, contending that the case should be dismissed because (1) his misconduct was based on his reasonable, good faith belief in the legality of his business's operations, and (2) he was prejudiced as a result of the Office of Chief Trial Counsel of the State Bar of California's (OCTC) delay in filing charges in this disciplinary matter. OCTC does not appeal and supports the discipline recommended by the judge.

After an independent review of the record (Cal. Rules of Court, rule 9.12), we agree with and affirm the hearing judge's culpability findings with some modifications. We also affirm

most of the judge's aggravation and mitigation findings. Given Trimarche's serious misconduct, involving moral turpitude and occurring over a five-year period, and the applicable disciplinary standards and case law, we uphold the judge's disciplinary recommendation.

I. PROCEDURAL BACKGROUND

On August 3, 2023, OCTC filed a Notice of Disciplinary Charges (NDC) alleging four counts of misconduct: failing to support the law in violation of Business and Professions Code section 6068, subdivision (a)[1] (counts one and two), assisting others to violate the State Bar Act and the Rules of Professional Conduct (count three), and committing acts of moral turpitude in violation of section 6106 (count four). Trimarche filed a response on August 24, which he amended on January 23, 2024.

The parties filed a Stipulation as to Facts (stipulation) on January 16, 2024, and trial was held on January 24 and January 25. Posttrial briefing followed, and the hearing judge issued her decision on May 9. Trimarche filed his request for review on June 6. Oral arguments were heard on December 18, and the matter was submitted that day.

II. FACTUAL BACKGROUND

The facts are based on the stipulation, trial testimony, documentary evidence, and the hearing judge's factual and credibility findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) Trimarche challenges two facts underlying several of the culpability findings by the judge. His primary arguments on review are that all charges should be dismissed because his business did not violate the Telemarketing Sales Rule (TSR), title 16 Code of Federal Regulations (C.F.R.) part 310, and even if it did, he held an honest, good faith belief as to the legality of the business. He further contends that he believed in good faith that

[1] All further references to sections are to the Business and Professions Code unless otherwise noted.

the attorneys involved in the Debt Relief Operation could provide debt relief legal services in states in which they were not licensed to practice law.

After independently examining the record and the weight of the evidence, we affirm the hearing judge's findings of fact and conclusions of law with some modifications. We provide in this section those facts from the record pertinent to the arguments made by Trimarche on appeal. (See *Coppock v. State Bar* (1988) 44 Cal.3d 665, 676-677 [sufficiency of evidence].)

A. Overview of the Debt Relief Operation

In April 2015, Trimarche[2] and two non-attorneys, Rick Graff and Buddy Sievers, initiated the Debt Relief Operation to provide private student loan debt relief.[3] This venture was comprised of several parts, including (1) GST Factoring, Inc. (GST),[4] a factoring[5] company formed by Trimarche, Graff, and Sievers as equal shareholders; (2) the Debt Attorneys, consisting of California-licensed attorneys Amanda Johanson and Jacob Slaughter, Arizona-licensed attorney David Mize, and Florida-licensed attorney Daniel Ruggiero; (3) Champion Marketing Solutions, LLC (CMS), owned by Scott Freda; and (4) various debt counseling or debt relief companies (Affiliates).[6]

GST recruited and contracted with the Affiliates, which were using nationwide telemarketing to solicit potential customers seeking to reduce their student loans. When

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[2] Trimarche was admitted to the practice of law in California on December 11, 1989, and has been a licensed attorney of the State Bar of California at all times thereafter.

[3] In his opening brief, Trimarche disputes characterizing this as a "debt relief operation." We reject his claim as this is a stipulated fact. (Rules Proc. of State Bar, rule 5.54(B) ["Evidence to prove or disprove a stipulated fact is inadmissible"].)

[4] "GST" stands for Graff, Sievers, and Trimarche.

[5] "Factoring" is defined as "[t]he buying of accounts receivable at a discount." (Black's Law Dict. (12th ed. 2024).)

[6] Trimarche did not have an ownership interest in any of the entities aside from GST.

Affiliates encountered individuals with private student loans, as opposed to federally guaranteed loans, the Affiliates informed them that the Debt Attorneys offered debt relief legal services and referred them to the Debt Attorneys. Trimarche helped edit the telephone scripts the Affiliates used to communicate with potential customers. CMS provided support staff services and acted as the customer service arm of the Debt Relief Operation, including maintaining client communications on behalf of the Debt Attorneys.

GST—specifically, Trimarche—also recruited the Debt Attorneys, who generated income for the Debt Relief Operation by providing debt relief services, which were marketed as legal services, to the Affiliate-referred clients.[7] Trimarche testified that securing a large number of clients would allow the Debt Attorneys to have greater leverage in negotiating with the lenders. GST entered into an Attorney Factoring Agreement with each Debt Attorney, in which GST agreed to purchase all accounts arising from providing "legal services to clients in matters relating to student debt elimination." In effect, the monthly fees paid by the Debt Attorneys' clients were collected by GST for distribution to the various entities in the Debt Relief Operation.[8] Clients could be charged 15 days after signing a retainer agreement and were assured that the attorney would start working on their case upon "first payment." Trimarche stipulated that the Debt Attorney fee agreements with clients "omitted any reference to the

[7] All of the Debt Attorneys' clients were referred by the Affiliates.

[8] The Debt Attorneys charged their clients a fee—typically 40 percent of a client's outstanding debt—which was paid through a monthly payment plan, along with a $10 processing fee. The Debt Attorneys did not collect the monthly payments directly from the clients. Rather, GST, which owned the accounts receivables, collected the payments and distributed them monthly to the entities involved in the Debt Relief Operation. Specifically, GST gave (1) each of the Debt Attorneys approximately 10 to 20 percent of the payments from the clients assigned to them—the more clients a Debt Attorney had, the greater the percentage of payment that Debt Attorney received; (2) CMS approximately 10 percent of all payments received; and (3) the Affiliates approximately 30 to 40 percent of the payments from the clients they referred to the Debt Attorneys. GST retained approximately 40 percent of the monthly client payments.

division of legal fees paid by the clients and thereby represented to the clients that all of the legal fees were paid to the Attorneys."

Between April 2015 and May 2020, GST collected approximately $11.8 million in "legal fees" from approximately 2,600 clients across the United States, including some of whom were located outside the jurisdictions in which the Debt Attorneys were licensed to practice law. For instance, Slaughter, who was only licensed to practice in California, represented clients in Florida and Washington, among other states.

GST oversaw the administration of the Debt Relief Operation. As the only attorney in GST, Trimarche's role consisted of, among others, (1) recruiting the Debt Attorneys to perform debt relief services; (2) negotiating and drafting agreements among the parties of the Debt Relief Operation (such as the factoring agreements between GST and the Debt Attorneys, the nondisclosure agreements, and the Affiliate agreements); (3) communicating with the Debt Attorneys regarding their respective business operations (such as drafting agreements, including the retainer agreement[9] used by the Debt Attorneys to enroll clients, setting forth the fees, and drafting a script for calls to a new client); (4) creating, editing, and/or providing scripts for use in advertising the attorneys' debt relief services to prospective clients; and (5) monitoring the Affiliates, including what representations they were making to potential clients about the Debt Attorneys' services, and ensuring those representations were consistent with the retainer agreement.

B. Application of the TSR

The TSR regulates "telemarketing," defined as "a plan, program, or campaign which is conducted to induce the purchase of . . . services . . . by use of one or more telephones and which

[9] The retainer agreement is also referred to in the record as a fee agreement or an attorney engagement agreement.

involves more than one interstate telephone call." (16 C.F.R. § 310.2(gg) (2016).)[10] While inbound calls (i.e., calls from customers responding to advertisements) are generally exempt from the TSR, there are several exceptions to that exemption, including inbound calls responding to an advertisement "relating to . . . debt relief services . . . ."[11] (16 C.F.R. § 310.6(b)(5)(i), (6)(i).)

Here, the parties stipulated that the Debt Relief Operation used "telemarketing" to sell the Debt Attorneys' "debt relief services," which "primarily consist[ed] of debt settlement negotiation . . . ." They also stipulated that "GST and the [Debt Attorneys] were subject to the TSR, because the services . . . provided by the [Debt Attorneys] on behalf of the Debt Relief Operation, marketed by the [Affiliates] hired by GST, and finalized over the telephone by CMS, were debt relief services under the TSR insofar as they were services represented, directly or by implication, to renegotiate, settle, or alter the terms of payment or other terms of clients' private student loans . . . ." They further stipulated that GST, the Debt Attorneys, and CMS were both "seller[s]" and "telemarketer[s]" as defined in the TSR.[12]

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[10] The TSR was amended in September and October of 2010 to prohibit the telemarketing of debt relief services requiring an advance fee. (See 75 Fed.Reg. 48458 (Aug. 10, 2010).) While the language in the provisions pertinent to the issues here remained unchanged since 2010, some of those provisions were redesignated when the rule was amended again, effective February 2016, to ban certain payment mechanisms often used in fraudulent transactions. (See 80 Fed.Reg. 77520 (Dec. 14, 2015).) In 2024, the TSR was twice amended to address matters not relevant to the instant case, but which altered some of the section paragraph designations in the Code of Federal Regulations. (See 89 Fed.Reg. 26760 (Apr. 16, 2024); 89 Fed.Reg. 99069 (Dec. 10, 2024).) As the Debt Relief Operation ran between April 2015, and May 2020, further references are to the 2016 Code of Federal Regulations.

[11] "Debt relief service" means "any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector." (16 C.F.R. § 310.2(o).)

[12] We discuss these terms in the culpability section.

C. Trimarche Was Repeatedly Alerted to TSR's Advance Fee Ban

The TSR regulations contain an advance fee ban that prohibits any seller or telemarketer from "[r]equesting or receiving payment of any fee . . . for any debt relief service until and unless . . . [t]he seller or telemarketer has . . . altered the terms of at least one debt . . . [and] [t]he customer has made at least one payment" on that altered debt. (16 C.F.R. § 310.4(a)(5)(i)(A), (B).)

Prior to the commencement of the Debt Relief Operation in April 2015, Trimarche had been an experienced environmental lawyer and commercial business litigator for approximately 25 years. As he was not familiar with debt relief services, he researched the internet to learn about the student debt crisis and he read various materials to determine strategies that could be useful for the Debt Attorneys in rendering their debt relief services. Yet, for several years, Trimarche did not inquire about any rules that GST or the Debt Attorneys were obliged to follow when rendering nationwide debt relief services, even when concerns about the legality of the operation were repeatedly brought to his attention.[13]

1. April to November 2015: Email, Calls, News Article, and Paralegal

At the early stages of the Debt Relief Operation, Trimarche was alerted multiple times that the TSR may be a potential roadblock. Three days after GST was incorporated, on April 24, 2015, Mike Miles, who worked closely with Freda, emailed Trimarche and Graff, stating that he had scheduled a call with Debt Pay Pro (DPP),[14] in part, to address DPP's concern "that [the

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[13] According to Trimarche's Second Declaration, dated November 2, 2023, his consultation with his counsel prior to joining the Debt Relief Operation was limited to discussing any prohibitions under California law or State Bar ethical rules relating to the contemplated (1) referral arrangement between GST and the Affiliates and (2) factoring transactions between GST and the Debt Attorneys.

[14] DPP is a third-party vendor for software, called "the CRM," which was ultimately used by CMS and the Debt Attorneys to process documents and monitor client communications.

Debt Relief Operation] may fall under the TSR regarding Debt Adjustment." Trimarche responded to the email, stating that it sounded like the same conversation GST just had with the electronic payment processing company used by GST to collect fees from clients and distribute the money to the various entities in the Debt Relief Operation. Despite knowing that DPP had concerns about complying with the TSR, Trimarche did not familiarize himself with the rule, nor did he address DPP's concerns about the TSR.[15]

On September 17, 2015, Graff emailed Trimarche a recently published article by the CFPB. The article described CFPB's lawsuit against a law firm, World Law Group, for allegedly making misrepresentations to clients and demanding unlawful fees, including illegal upfront fees prohibited by the TSR, that resulted in a preliminary injunction against its debt relief business. Trimarche read the article.[16] Still, he did not research the TSR even though the World Law Group's monthly attorney service fees and bundled legal services fees, calculated based on a percentage of the customer's outstanding loans, resembled the monthly legal fees charged by the Debt Attorneys based on a percentage of their clients' outstanding loans.

Two months later, in November of 2015, Johanson's paralegal Rachel Gilson[17] emailed Trimarche, expressing, among other issues, her concern that they were violating the law. Specifically, Gilson stated that she had conducted some research and determined that by law,

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Trimarche and Graff had logins to the CRM. The Affiliates also used the CRM to input information about the referred customers.

[15] Trimarche acknowledged during his September 2019 deposition by the Consumer Financial Protection Bureau (CFPB) that he had likely seen multiple references to the TSR during the four-plus years he worked in the debt relief business.

[16] After receiving the email from Graff with no content aside from a link to the CFPB article, Trimarche replied, "As the saying goes, that's no way to run a railroad. Those guys were greedy fools that didn't care at all about serving clients. They're getting what they deserve." Accordingly, we do not find credible Trimarche's assertion at trial that he did not read the article.

[17] Gilson worked at Johanson's law firm from at least approximately May to November 2015.

companies must renegotiate, settle, or reduce at least one debt before collecting fees from clients, which tracks the language of the TSR's advance fee ban. Trimarche dismissed her concern as "bad legal analysis of issues that she knew very little about," and did not do anything in response to the letter, except to admonish Gilson for not conveying her concerns to him verbally.

2. February 2017 to May 2020: State Bar of California and CFPB Investigations and Proceedings

Around late 2015 or early 2016, the State Bar of California commenced disciplinary investigations against Johanson pertaining to her work as a Debt Attorney in the Debt Relief Operation. In connection with these investigations, Trimarche was deposed on February 15, 2017, wherein an OCTC attorney repeatedly asked him about and explained to him the TSR, although the attorney inadvertently referred to it as the "Telemarketing Sales Act," which does not exist. The OCTC attorney quoted the TSR's provision banning advance fees and examined Trimarche about it and the steps taken for Johanson to comply with it. Subsequently, Trimarche did not take any steps to ascertain whether there was a law that prohibited businesses in the debt relief service industry from charging or collecting fees before altering the customers' debt. Business as usual continued, and on March 9, 2017, Slaughter joined the Debt Relief Operation as a Debt Attorney.

In July 2017, OCTC filed an NDC against Johanson. One of the counts charged Johanson with collecting illegal fees in violation of the TSR's advance fee ban. Five months later, in December, OCTC filed a second NDC against Johanson alleging, among other charges, that she (1) collected illegal fees in violation of the TSR's advance fee ban and (2) failed to comply with the laws by violating the TSR's advance fee ban. The NDCs were publicly available, and Trimarche knew that the disciplinary proceedings against Johanson pertained to her work as a Debt Attorney. Yet, he testified that he never read the NDCs and had been

unaware that she was charged with violating the TSR's advance fee ban. A month after the second NDC was filed, Ruggiero joined the Debt Relief Operation as a Debt Attorney.

Sometime in 2018 or 2019, Trimarche learned that the CFPB was investigating GST, including himself, for potentially violating the TSR's advance fee ban. In connection with that investigation, the CFPB examined Trimarche under oath on September 24, 2019, wherein he was again questioned at length about the TSR's advance fee ban. It was not until after this examination that Trimarche claimed he read the TSR for the first time; however, he concluded that the TSR did not apply to his business, and he stayed the course in his Debt Relief Operation.

The CFPB subsequently issued a Notice of Regulatory Action (NORA) alleging that the Debt Attorneys, GST and its principals, and others in the Debt Relief Operation were violating the TSR's advance fee ban. On March 4, 2020, GST's counsel, who also represented several other parties identified in the NORA, sent a response letter setting forth GST's position that the TSR did not apply to the Debt Relief Operation and that the business operation did not otherwise violate the TSR (NORA Response).

On July 13, 2020, the CFPB commenced a federal lawsuit against the Debt Attorneys,[18] CMS, GST, Trimarche, and others, alleging that they were violating the TSR's advance fee ban. The following month, the federal court accepted a stipulated final judgment between Trimarche and the CFPB, in which Trimarche agreed, among other things, to cease any involvement in providing debt relief products and services, engaging in telemarketing, and collecting payments from Debt Relief Operation clients.

[18] By this point, Johanson had been suspended from the practice of law.

III. CULPABILITY

OCTC has the burden of proving culpability by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) Trimarche was found culpable of four counts of misconduct. On review, he proffers three defenses challenging his culpability findings. They are: (1) he held a reasonable, good faith belief that GST's business did not involve telemarketing and otherwise did not violate the TSR, and therefore, any noncompliance was neither intentional nor grossly negligent; (2) he held a reasonable, good faith belief that the Debt Attorneys were not engaging in the unauthorized practice of law (UPL); and (3) he suffered substantial, actual prejudice due to OCTC's delayed prosecution, warranting dismissal of the entire matter. As discussed below, none of these has merit.

A. Count One: Failure to Uphold the Law by Violating the TSR's Advance Fee Ban (§ 6068, subd. (a))[19]

OCTC alleged in count one that between April 2015 and May 2020, Trimarche violated section 6068, subdivision (a) (failure to uphold the law), by collecting fees for debt relief services paid by the Debt Attorneys' clients before the attorneys altered the terms of at least one of their debts and before the clients had made at least one payment to the lender on such altered debt, in violation of the TSR's advance fee ban (see 16 C.F.R. § 310.4(a)(5)(i)(A), (B)).

Based on the parties' stipulations—including that GST, CMS, and the Debt Attorneys were both sellers and telemarketers within the meaning of the TSR—we find the entities in the Debt Relief Operation were required to comply with the TSR's advance fee ban, which applies to

[19] Section 6068, subdivision (a), provides that "[i]t is the duty of an attorney to . . . support the Constitution and laws of the United States and of this state."

"any seller or telemarketer." As the Debt Attorneys' clients were charged and began paying their monthly attorney fees (collected by GST) before any terms of their debt were altered, the entities involved in the Debt Relief Operation, including GST and the Debt Attorneys, violated the TSR's prohibition against charging and collecting advance fees for debt relief services. (See 16 C.F.R. § 310.4(a)(5)(i)(A), (B).)

1. Good Faith Defense

An attorney's negligent, good faith mistake of law, even when it results in a violation of law, may be a defense to discipline under section 6068, subdivision (a). (See *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631-632.) In finding Trimarche culpable, the hearing judge rejected his defense that he held a reasonable, good faith belief that GST's Debt Relief Operation did not violate the TSR. Instead, she determined that he willfully blinded himself to the TSR's potential application to GST's activities, despite being generally aware that the rule existed.[20] She further determined that even after he realized that the TSR may apply, he failed to modify the business operations and continued to collect the illegal fees through at least May of 2020, which undercut any argument that he acted in good faith. We agree.

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[20] In one of his factual disputes, Trimarche incorrectly claimed the hearing judge concluded that he knew the GST business involved "telemarketing" based on his work on the Affiliate scripts used to communicate with potential clients. Rather, the judge found that Trimarche knew the Affiliates were selling debt relief services "over the telephone" because he drafted their sales scripts. The judge also clarified that she was not finding that Trimarche knew of the relevant TSR provisions early in the business, but that his good faith defense failed nonetheless because he willfully blinded himself to the rule. Given her finding of willful blindness, whether Trimarche knew the Affiliates were telemarketing as defined in the TSR is not relevant. As for the period after he read the TSR (i.e., September 2019 to May 2020), the issue of whether Trimarche knew the operation involved telemarketing for the purpose of establishing his reasonable, good faith defense, is also beside the point given his unreasonable interpretation of the rule's definition of "telemarketing."

On appeal, Trimarche maintains that he held a reasonable, good faith belief that the TSR did not apply to GST's business and that his business did not violate the TSR because (1) during his first and only visit to an Affiliate's office at the start of the operation, he "didn't see anything that looked like a telemarketing operation . . . ."; (2) after discussions with that Affiliate, he did not "understand that they were a telemarketing business"; (3) GST's referral agreements with the Affiliates did not require telephone solicitation; and (4) those agreements required the Affiliates to warrant that "performance under this agreement does not . . . violate any provision of any law[;] . . . it will comply with any and all laws and regulations applicable to it in connection with its performance under this agreement . . . ." And, once he read the TSR in September 2019, he still believed that the rule did not apply and the business was not violating the advance fee ban based on his years of experience reviewing federal regulations as an environmental attorney and his counsel's advice, as laid out in the NORA Response.

Trimarche's good-faith defense ignores that he was repeatedly alerted that his business may be subject to the TSR, and yet he unreasonably refrained from familiarizing himself with the law throughout 2015. More blatantly, in Trimarche's February 2017 deposition, the OCTC attorney questioned him enough times about a telemarketing law and its advance fee ban to impress upon any reasonable person that this law was relevant to the investigation. The text of the TSR's advance fee ban was read aloud to him, which should have prompted him to educate himself about this law as he knew that his business was collecting fees upon a client's enrollment or shortly thereafter—that is, before the terms of any loans were altered.

In July, and again in December 2017, when disciplinary charges were filed against Johanson, alleging violations of the TSR's advance fee ban, Trimarche failed to read either NDC, even though they were publicly available documents, and he knew they contained charges concerning a Debt Attorney's work in the Debt Relief Operation. As a principal and the only

attorney in GST, whose crucial role was to "observe and monitor the law firms that are performing legal services on the accounts that we own . . . [t]o make sure that nobody is doing anything that they shouldn't be doing," it is inexcusable and unreasonable that Trimarche did not read those NDCs despite knowing they were filed.[21]

These circumstances establish by clear and convincing evidence that from April 24, 2015, to at least September 24, 2019—over four years—Trimarche consciously avoided learning about the rule. (See *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 433 [willful blindness is equivalent to actual knowledge].) Thus, his ignorance of the applicable law cannot constitute a reasonable, good faith belief. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427 ["it is [not] appropriate to reward respondent for his ignorance of his ethical responsibilities"].)

2. NORA Response

In his opening brief, Trimarche relies heavily on his March 4, 2020 NORA Response as a basis for his good faith belief. After Trimarche read the rule following the CFPB's examination in September 2019, at which point he was aware of the CFPB's claim that the Debt Relief Operation was violating the TSR's advance fee ban, he concluded that the rule did not apply to his business and took no steps to address the potential compliance issue.[22] Instead, he continued

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[21] Trimarche's claim that he did not read the NDCs because he spoke with Johanson and her counsel, whom he claims did not mention the TSR charges, is unavailing.

[22] We reject as unsupported Trimarche's claim at oral argument that he made modifications to his business once he learned from the CFPB's investigation that the TSR may apply. To the contrary, he has repeatedly indicated that he did nothing. This included his assertions in: (1) his January 18, 2023 deposition ("When I ultimately became aware of the rule and read it, I still concluded that it didn't apply to us"; and also attesting that had he known the CFPB would file charges, he would have encouraged the business to comply with a "safe harbor provision rule."); (2) his trial testimony that even after CFPB filed charges, he believed the TSR did not apply and that CFPB would dismiss the action; and (3) his opening brief ("This deprivation of the opportunity to withdraw from GST and/or take other remedial or mitigative

collecting client payments for at least eight more months, based on his and his counsel's unreasonable interpretations of the TSR, as laid out in the NORA Response, which ignored the plain meaning of multiple TSR provisions. Because Trimarche cites to his NORA Response so extensively on review, we address the merits of those contentions here.

a. Ignoring the Plain Language of the TSR

GST, the Debt Attorneys, and CMS argued in the NORA Response that the TSR did not apply because the Debt Attorneys themselves did not advertise their services nor solicit clients over the telephone (and instead, received clients through referrals from Affiliates that received calls initiated by customers in response to the Affiliates' advertisements marketing their own debt relief services), and therefore, did not engage in telemarketing and are not telemarketers. However, that argument ignores the TSR's broad definition of "telemarketing" and "telemarketer"[23] without providing any legal authority for doing so. It also overlooks that another exception to the TSR's general exemption for inbound calls is any instance of upselling (16 C.F.R. § 310.6(b)(5)(iii), (b)(6)(iii)), including an "external upsell," which is a "solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer." (16 C.F.R. § 310.2(hh).) Their argument additionally disregards that both "telemarketer[s]" and "seller[s]"[24] must comply with the TSR's advance fee ban, even as GST, the Debt Attorneys, and CMS each fell within the plain meaning of the term "seller."

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measures for more than six years is a substantial and identifiable prejudice caused by the State Bar's delay in bringing this action.").

[23] "Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer . . . ." (16 C.F.R. § 310.2(ff).)

[24] "Seller" means "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration." (16 C.F.R. § 310.2(dd).)

(16 C.F.R. § 310.4(a)(5)(i)(A), (B).) Finally, it is inconceivable that an experienced litigator such as Trimarche could honestly believe that businesses could circumvent compliance with the TSR by simply outsourcing their client solicitation to another business.

GST and the other entities also argued in the NORA Response that the TSR did not apply because the Debt Attorneys provided legal services, as opposed to debt relief services and so, the inbound calls received by the Affiliates were exempt from the TSR. Again, their claim, unsupported by any legal authority, disregards the broad definition of "debt relief service." (See 16 C.F.R. § 310.2(o).) Their position in the NORA Response that they did not violate the TSR because the Debt Attorneys purportedly earned each of their monthly fees prior to charging them, again ignores the plain language of the TSR's advance fee ban. Further, their claim is contradicted by the documentary and testimonial evidence in this matter, which show that client payments were made pursuant to a monthly payment plan and began upon enrollment or shortly thereafter. The remaining argument that they did not violate the TSR because the Debt Attorneys' services did not violate the intent or the spirit of the TSR is conclusory and unsupported by any legal authority.

By this time, Trimarche had fully studied the TSR. Consequently, such wholesale dismissal of the plain meaning of not one, but multiple provisions of the rule, cannot be based on a good faith mistake of the law, but rather, on a conscious disregard of it. (*In the Matter of Jaurequi* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56, 59 [plain language of statute controlled where meaning lacked ambiguity, doubt, or uncertainty].)

b. GST's Warranty That It Would Not Violate the Law

Lastly, while pointing out in the NORA Response that the Affiliates were required to represent and warrant that no laws would be violated by performing their obligations under the Affiliate agreement (i.e., referring potential clients and their information to the Debt Attorneys)

as a basis for his good faith belief, Trimarche failed to acknowledge that same requirement applied equally to GST. In other words, GST was also required to represent and warrant that performing their obligations under the contract (i.e., paying Affiliates for their specified percentage of monthly fees GST collected from referred clients) would not violate any laws, which would include the TSR's advance fee ban. Because Trimarche had drafted this agreement, he was fully aware of this warranty made to each of GST's many Affiliates. Thus, his failure to (1) attempt to learn about the TSR from April 2015 to September 2019, despite the many opportunities to do so; and (2) his subsequent failure to make any changes to the Debt Relief Operation after realizing the high probability that the business was violating the TSR's advance fee ban, extinguishes any notion that his actions were based on a negligent, good faith mistake of the law.

3. Weight of Count One

In sum, from April 2015 to May 2020, GST collected from clients receiving debt relief services approximately $11.8 million in fees, of which Trimarche received around $1.5 million. As the clients' monthly payments began before the terms of at least one of their debts were altered, and before the client issued payment to the lender on the altered debt, GST and Trimarche violated the TSR's advance fee ban. We affirm the hearing judge's culpability finding under count one as supported by clear and convincing evidence.

The hearing judge, relying on *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127, also found that given the moral turpitude finding in count four, no additional weight in discipline would be assigned to count one. We modify the judge's finding on this point. OCTC charged, and we find, in count one that Trimarche's misconduct occurred from April 2015 to May 2020, but count four, alleging the same misconduct, identifies a more *limited* time period from November 1, 2018 to May 2020. Consequently, no additional weight is

given to Trimarche's misconduct in count one occurring *after* October 31, 2018, due to its overlap with our moral turpitude finding in count four.[25] (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520.)

B. Count Two: Failure to Uphold the Law by Substantially Assisting Others to Violate the TSR's Advance Fee Ban (§ 6068, subd. (a))

OCTC alleged in count two that between April 2015 and May 2020, Trimarche violated section 6068, subdivision (a) (failure to uphold the law), by providing substantial assistance or support to the Debt Attorneys and CMS (who were sellers and telemarketers) when he knew or consciously avoided knowing that they were violating the TSR's advance fee ban, in violation of title 16 C.F.R. section 310.3(b).[26] In finding him culpable, the hearing judge determined that Trimarche engaged in various activities (such as drafting and reviewing agreements and the scripts for use in the Debt Relief Operation) that substantially supported the Debt Attorneys and CMS in violating the TSR's advance fee ban when he knew or consciously avoided knowing that they were violating the rule. In so doing, the judge again rejected Trimarche's good faith argument.

On appeal, Trimarche does not specifically challenge the hearing judge's finding that he violated title 16 C.F.R. section 310.3(b), and instead, relies on his good faith defense, which we reject for the same reasons given in our discussion of count one. Accordingly, we affirm the judge's culpability finding. Likewise, as we stated in count one, no additional weight is given to

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[25] This distinction is not inconsequential, because we consider, *infra*, the length of time Trimarche committed misconduct in recommending the appropriate discipline.

[26] This regulation, in relevant part, provides that "[i]t is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice" that violates the TSR's advance fee ban.

Trimarche's misconduct occurring after October 31, 2018, considering our moral turpitude finding in count four. (See *In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 520.)

C. Count Three, Subparts (ii)[27] and (iii):[28] Violating Rules of Professional Conduct or the State Bar Act Through Others (Rules Prof. Conduct, rule 8.4(a))[29]

In count three, subparts (ii) and (iii), OCTC charged that between November 1, 2018, and May of 2020, Trimarche violated rule 8.4(a), which states it is misconduct for a lawyer to "violate these rules or the State Bar Act, knowingly assist, solicit, or induce another to do so, or do so through the acts of another[.]"[30] Specifically, subpart (ii) alleges that Trimarche aided the Debt Attorneys in violating rules 7.1(a)[31] (false communication about legal service) and 7.3(a)[32] (improper client solicitation) regarding prospective clients of the Debt Relief Operation.

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[27] We affirm the hearing judge's dismissal of the allegations in count three, subpart (ii), and the corresponding allegations in count four, that are based on the former Rules of Professional Conduct, which were in effect through October 31, 2018, and thus, outside the period of misconduct alleged in those counts. For ease of readability, the dismissed and uncontested charges based on the former rules are hereinafter omitted.

[28] Count three, subpart (i), was dismissed because rule 8.4(a) only applies to violations of the Rules of Professional Conduct or the State Bar Act, and not the TSR. OCTC does not contest this finding, and we affirm it.

[29] Unless otherwise stated, all further references to rules are to the Rules of Professional Conduct in effect since November 1, 2018.

[30] In the rules as published, defined terms are denoted with asterisks. The asterisks have been omitted when quoting the rules herein.

[31] Rule 7.1(a) provides that "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."

[32] Rule 7.3(a) provides that "[a] lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain," minus certain exceptions not applicable here.

Subpart (iii) alleges that Trimarche aided the Debt Attorneys in violating rules 5.5(a)(1) (UPL) and 5.5(a)(2) (assisting another to commit UPL).[33]

The hearing judge found Trimarche culpable of violating rule 7.3(a) in subpart (ii), because he assisted the entities in the Debt Relief Operation to improperly solicit potential clients through a nationwide telemarketing plan, whereby a significant motive for doing so was his pecuniary gain. The record supports this finding, and we affirm.

The hearing judge also held that Trimarche induced false and misleading communications with prospective clients in violation of rule 7.1(a), as alleged in subpart (ii), by (1) directing GST and the Affiliates to misleadingly market the Debt Attorneys' services as legal services when, in fact, they consisted mostly of debt settlement negotiation, which is not a legal service; and (2) causing the Debt Attorneys to use a retainer agreement that failed to disclose that the fees for the "legal services" would be divided among the various entities in the Debt Relief Operation.

On review, Trimarche disputes the hearing judge's factual finding concerning the misleading marketing of the Debt Attorneys' services. He claims that he understood the legal services provided were "traditional legal services," and debt settlement negotiation was a service of last resort. While we note that the parties stipulated that the Debt Attorneys provided "primarily" debt settlement negotiation services, we nevertheless reverse the judge's culpability finding under rule 7.1(a) as it pertains to misleading marketing, due to OCTC's failure to adequately allege the misconduct in the NDC. (*See In the Matter of Varakin* (Review Dept.

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[33] Rule 5.5(a) provides that "[a] lawyer admitted to practice law in California shall not: (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or (2) knowingly assist a person in the unauthorized practice of law in that jurisdiction."

1994) 3 Cal. State Bar Ct. Rptr. 179, 186 [respondent must not be "left to guess" as to why he is being charged with violating a specified statute].)

The NDC must (1) cite the statutes or rules an attorney allegedly violated; (2) contain facts comprising the violation in sufficient detail to permit the preparation of a defense; and (3) relate the stated facts to the authorities the attorney allegedly violated. (Rules Proc. of State Bar, rule 5.41.) Here, in alleging that Trimarche violated rule 7.1(a), OCTC did not relate any facts to that rule, aside from generally referencing the first 22 paragraphs in the NDC. The factual allegations in those 22 paragraphs fail to convey that the Debt Attorneys' services were not legal services. To the contrary, those paragraphs repeatedly refer to their services as "legal services" or "debt relief legal services." Paragraphs 4 and 12 in the NDC, which allege in the same breath that debt settlement negotiations were not legal services but nevertheless constituted legal services, are confusing. We further note that OCTC never identified this as misleading marketing in its pretrial statement or closing argument brief. Under these circumstances, we find that Trimarche did not have adequate notice to prepare a defense to this misconduct found by the hearing judge. (*In the Matter of Shkolnikov* (Review Dept. 2001) 5 Cal. State Bar Ct. Rptr. 852, 863 [attorney's right to fair proceeding includes adequate notice of rule or statute violated and manner in which attorney is alleged to have violated it].)

Trimarche did not otherwise contest the judge's second factual finding underlying rule 7.1(a)—the failure to disclose how the fees for legal services would be divided.[34] We conclude the record supports this finding and affirm it.[35]

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[34] We find that Trimarche had adequate notice of this charge, as supported by the facts alleged in paragraph 15 of the NDC, among others.

[35] The duty to be forthright under rule 7.1(a) is a rigorous one. Under comment three to the rule, even a truthful statement is misleading if it "omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading."

The hearing judge also found Trimarche culpable of the two UPL allegations in subpart (iii). She held that Slaughter engaged in UPL in Washington and Florida by representing to clients that he would provide legal services in those states, both of which proscribe attorneys not licensed therein from "hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice law in [that state]." (Rules Regulating the Fla. Bar, rule 4-5.5(b); Wash. Rules Prof. Conduct, rule 5.5(b)(2).)[36] But she declined to find the other Debt Attorneys committed UPL, because there was no evidence identifying the specific states in which they practiced law without authorization.[37] (Rule 5.5(a)(1); *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 255 [to analyze whether an attorney is culpable of UPL in another jurisdiction, the court must look to the professional regulations in that jurisdiction].)

Here, Trimarche does not dispute the UPL findings relating to Slaughter but argues that he did not violate rule 8.4(a) because he had a reasonable, good faith belief that the Debt Attorneys were not engaged in UPL. Trimarche asserts that his experience as an environmental attorney and his observation of other experienced environmental attorneys offering federal statutory advice and legal services to clients who resided in states other than California, led him to believe that the Debt Attorneys could render their services nationwide. Specifically, Trimarche claims the Debt Attorneys (1) did not interpret or apply the law of the state in which the client resided, (2) did not appear in court or any other legal proceedings in a state in which they were not licensed, (3) would refer a case to outside local counsel in the event that an issue

[36] Slaughter admitted in a stipulation with the State Bar of California that he represented to the public that he was entitled to practice law in Florida and Washington in violation of the professional rules in those jurisdictions.

[37] We further note that because Mize and Ruggiero were not licensed in California, Trimarche could not induce them to violate or assist them in violating rule 5.5(a), which applies to lawyers admitted to practice law in California.

of state law arose or a legal proceeding commenced in the client's state of residence, and (4) engaged their own counsel to advise them on the UPL issue.

Trimarche's good faith argument is meritless. Unlike the TSR and its advance fee ban, he testified that around April 2015, the potential UPL issue was one he seriously considered. Yet, the extent of his due diligence was limited to discussing the issue with other lawyers at the start of his business. He did not review the UPL laws of any state, nor did he research the case law. Instead, he assumed, based on his experience in environmental law and discussions with other lawyers, that the Debt Attorneys could broadly circumvent the licensing regulations across the country by limiting their practice to federal law and not appearing in legal proceedings of the foreign jurisdictions. Given that his prior legal experience was unrelated to his private enterprise and that no attorney can authorize another to violate the rules, we are not persuaded by his argument. (*Sheffield v. State Bar* (1943) 22 Cal.2d 627, 632 [opinion of "fellow attorney" no defense to wrongdoing].)

Next, we do not find credible Trimarche's testimony that Johanson, Mize, and Slaughter each consulted with their own "State Bar counsel" on the UPL issue. Because they all decided to join the Debt Relief Operation at different times, the import of his testimony is that each attorney's unidentified "State Bar counsel" gave erroneous advice. His testimony is also contradicted by Slaughter, who testified that he relied on Trimarche's advice that he could accept clients from states in which he was not licensed.

Based on the evidence that Trimarche failed to conduct rudimentary due diligence for over five years on a legal issue that he knew since the start of his business could be problematic, we find that Trimarche consciously avoided learning about the laws governing UPL. (*In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 433 [willful blindness is equivalent to actual knowledge].) We reject his good faith argument and uphold the hearing judge's

culpability finding pertaining to rule 5.5(a)(1). (*Ables v. State Bar* (1973) 9 Cal.3d 603, 610-611 [ignorance of Rules of Professional Conduct does not excuse violation].) However, we decline to find culpability under rule 8.4(a) for violating rule 5.5(a)(2) because the evidence does not establish that Trimarche induced Slaughter to assist another person in committing UPL.[38] Like the judge, we assign no additional weight in discipline because most of the factual allegations underlying the misconduct proves culpability in count four. (See *In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 520.)

D. Count Four: Moral Turpitude (§ 6106)

OCTC alleged in count four that Trimarche violated section 6106 by intentionally engaging in the acts generally alleged in counts one, two, and three.[39] Section 6106 provides that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Generally, moral turpitude is an act that is contrary to honesty and good morals. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 888.) Affirmative misrepresentations as well as omissions of material facts can violate section 6106. (*In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154-155.) An attorney's intent can be established by direct or circumstantial evidence. (*Zitny v. State Bar* (1955) 64 Cal.2d 787, 792.) Willful blindness is evidence of specific intent. (*In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433.)

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[38] As previously noted, rule 5.5(a) only applies to California-licensed attorneys, and therefore the rule does not apply to Mize and Ruggiero. Count three also does not apply to Johanson because the misconduct as charged covers the period from November 1, 2018, and onwards, which is after Johanson's suspension.

[39] While charged under a single count, the allegations supporting the charge of moral turpitude are based on intentionally assisting others to violate the TSR, engage in improper solicitation and false communication with prospective clients, and to commit UPL.

Here, OCTC alleged that between November 1, 2018, and May 2020, Trimarche intentionally assisted the Debt Attorneys, CMS, and the Affiliates in running the Debt Relief Operation, by which they violated the TSR's advance fee ban (16 C.F.R. §§ 310.3(b), 310.4(a)(5)(i)(A) and (B)), and rules 7.1(a) (false communication about lawyer's services), 7.3(a) (improper solicitation), 5.5(a)(1) (UPL), and 5.5(a)(2) (assisting another to commit UPL). The hearing judge found Trimarche culpable of violating section 6106, and we agree with some modifications.

The hearing judge rejected Trimarche's good faith defense to the TSR and UPL violations.[40] Trimarche does not specifically challenge the judge's culpability findings, except that he renews his good faith arguments. We, too, reject his good faith claims as already discussed in counts one through three, wherein we determined that he consciously avoided educating himself about the TSR's advance fee ban and the laws governing UPL. (See *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610, 624 [finding moral turpitude where attorney engaged in loan modification operation with nonlawyer to collect illegal advance attorney fees]; *In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 433 [attorney culpable of moral turpitude by committing UPL through willful blindness, which is tantamount to actual knowledge]; *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 459 [knowing UPL constitutes act of moral turpitude].) And, once he familiarized

[40] Unlike earlier in the decision, the hearing judge states here: "Respondent knew the Debt Relief Operation solicited clients via telemarketing because he participated in the drafting of the scripts to be used." While this statement appears to have been made in error, as it is inconsistent with her earlier finding, we do not deem it fatal given that (1) we affirmed the hearing judge's factual finding that Trimarche knew the Affiliates sold debt relief services over the telephone; (2) Trimarche stipulated that the Debt Relief Operation, including the Affiliates, used telemarketing to sell debt relief services; and (3) both this panel and the judge determined that Trimarche willfully blinded himself from learning about the TSR, and therefore, whether or not he knew that the Affiliates were engaging in telemarketing is beside the point.

himself with the advance fee ban, he disregarded it based on an arbitrarily narrow reading of the TSR. Trimarche continued to insist at trial that his baseless interpretation of the regulation is correct.

With respect to Trimarche's assisting others to violate rule 7.1(a), we consider that Trimarche carefully crafted the retainer agreement to require payment of "Attorneys' fee[s]," which omitted a fact necessary to make the communication, considered as a whole, not misleading. That is, he failed to disclose that the entirety of the fee paid by the clients would go directly to GST, after which it was partially distributed to the pertinent Debt Attorney and entities in the Debt Relief Operation unknown to the client. Thus, the clients were misled into believing they were paying for conventional attorneys' fees when in truth, most of their money went to running the Debt Relief Operation. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [dishonesty includes concealment as well as affirmative misrepresentations].) Trimarche's role in drafting the retainer agreement is evidence that he acted intentionally. (*Gold v. State Bar* (1989) 49 Cal.3d 908, 914 ["an attorney who intentionally deceives his client is culpable of an act of moral turpitude"].) Additionally, Trimarche intentionally assisted others to solicit a high volume of clients, as evidenced by the business model that relied on a large number of clients, in contravention of rule 7.3(a), which we find violates section 6106. (See *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 652 [repeated breach of client solicitation rules violated § 6106].) Accordingly, we find that Trimarche's rule 8.4(a) violations found in count three rose to the level of moral turpitude.

In further support of our finding that Trimarche's misconduct was intentional, we note his pivotal role in administering the Debt Relief Operation in a way designed to violate the TSR and ethical rules. It was through this system and his close supervision of it, that Trimarche assisted the Debt Attorneys in engaging unlawful conduct.

In sum, the record shows that Trimarche knowingly assisted others to improperly solicit clients over the telephone, to charge and collect illegal fees, and to engage in the unauthorized practice of law. He also intentionally assisted others to mislead clients about the nature and purpose of the fees they were charged. As a result, the Debt Relief Operation collected approximately $11.8 million in illegal fees, from which Trimarche profited handsomely. We find that Trimarche intentionally committed the aforementioned acts that rose to the level of moral turpitude in violation of section 6106.[41]

E. No Specific Prejudice Due to Delay in Prosecution

Trimarche's remaining defense is that he suffered substantial prejudice as a result of OCTC's failure to file disciplinary charges against him sooner. (See *Yokozeki v. State Bar* (1874) 11 Cal.3d 436, 449.) According to Trimarche, OCTC deposed him in connection with Johanson's disciplinary investigation in February 2017, during which he discussed all aspects of the Debt Relief Operation and his involvement in it. He therefore contends that OCTC should have brought charges against him in or around February 2017, or at least alerted him of its intent to do so, rather than filing charges six-and-a-half years later in August 2023. He asserts two main reasons for his claim that the delay in prosecution caused him substantial prejudice.

First, Trimarche contends that his ability to adequately defend himself was significantly impaired because during the interim years, Johanson, whom he believes would have been a percipient and corroborating witness, passed away.[42] Specifically, he claims that she would have

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[41] However, consistent with our reversal of the hearing judge's findings of culpability in count three, subpart (ii), regarding rule 7.1(a) based on misleading marketing and count three, subpart (iii), regarding rule 5.5(a)(2), we decline to find moral turpitude based on the same alleged violations.

[42] The date Johanson died is not apparent from the record. Ruggiero assumed responsibility for Johanson's cases in 2018.

corroborated his testimony that (1) GST was not involved in telemarketing activity; (2) all entities in the Debt Relief Operation had a reasonable, good faith belief that GST and the Debt Attorneys were compliant with the law and never had reason to suspect the TSR might be applied against GST; and (3) she complied with Trimarche's advice to seek "State Bar counsel" regarding her concern about out-of-state practice. In his rebuttal to OCTC's argument that Johanson was just one of several Debt Attorneys, Trimarche argued that as the first Debt Attorney to join the Debt Relief Operation, only she would have been able to corroborate that he had no idea at the start of the Debt Relief Operation that the TSR existed and that it could be deemed applicable to GST's business.

As determined by the hearing judge, Trimarche's speculation as to what Johanson would have testified fails to demonstrate specific prejudice. (*Yokozeki v. State Bar*, *supra*, 11 Cal.3d at p. 449 [death of three witnesses during a seven-year delay in prosecution not a defense unless specific prejudice is shown].) And, as noted by OCTC, other individuals involved in the Debt Relief Operation were available to testify on those same issues,[43] although to the extent such testimony contradicted any stipulated facts, it would have been inadmissible. (Rules Proc. of State Bar, rule 5.54(B) ["Evidence to prove or disprove a stipulated fact is inadmissible"].) Further, we are unpersuaded that Johanson's status as the first Debt Attorney adds any value to Trimarche's defense. Our factual findings do not contradict his claim that at the very beginning of the Debt Relief Operation, Trimarche was ignorant of specific provisions in the TSR, despite being generally aware of the rule. Rather, it was his repeated disregard of the rule each time it was brought to his attention throughout the years that formed the basis of our finding that he consciously disregarded it. Put another way, Trimarche engaged in the found misconduct for the

[43] For example, Mize joined the Debt Relief Operation as a Debt Attorney around early August 2015, which is only three months after Johanson's start date.

entire period of five years during which the business operated. So, any testimony from Johanson corroborating what Trimarche believed or knew at the start of the business is largely irrelevant.

Second, Trimarche contends that OCTC's delayed prosecution caused him prejudice because had OCTC filed charges shortly after his February 2017 deposition, alerted him that they intended to do so, or even told him they believed GST was violating the TSR, he claims he would have implemented changes to his business to address the potential violations. Because OCTC allegedly failed to tell him that his business potentially ran afoul of the TSR, Trimarche claims he was prejudiced as he continued his business for three more years without taking available remedial measures.

Trimarche's argument is not persuasive and is belied by the evidence. Contrary to Trimarche's claim, OCTC *did* repeatedly convey during his February 2017 deposition that his business may be violating the TSR. Perplexingly, Trimarche refused to read the NDCs filed against Johanson notwithstanding that they alleged wrongdoing related to her work in the Debt Relief Operation. After repeatedly turning a blind eye to the numerous red flags that his business was violating the law, Trimarche may not now blame OCTC for not warning him more pointedly.

Moreover, Trimarche's claim that he would have taken remedial measures had he known sooner of the potential violation is greatly undermined by his failure to take any corrective steps upon learning that the CFPB was investigating GST, including himself, for violating the TSR's advance fee ban. We have no reason to believe he would have acted differently had OCTC explicitly told him the same.

For these reasons, we conclude that Trimarche has not shown any actual, specific prejudice warranting dismissal of this matter. (*In the Matter of Brimberry* (Review Dept. 1995)

3 Cal. State Bar Ct. Rptr. 390, 396 [mere lapse of time no defense unless attorney demonstrates specific, actual prejudice that denied a fair trial].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct[44] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Trimarche to meet the same burden to prove mitigation. Here, Trimarche does not challenge any of the hearing judge's findings in aggravation and mitigation. OCTC disputes some of those findings, which are addressed below alongside our de novo review.

A. Aggravation

1. Multiple Acts (Std. 1.5(b)) and Pattern of Misconduct (Std. 1.5(c))

The hearing judge assigned substantial weight for multiple acts of wrongdoing, but she declined to find aggravation for pattern of misconduct on the grounds that all of Trimarche's misconduct stemmed from his handling of the Debt Relief Operation and because she had already given substantial weight for multiple acts of misconduct. (Std. 1.5(b), (c).) Relying on *In the Matter of Thomas* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 944, 959 and *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 398, OCTC argues that Trimarche's repeated misconduct across 2,600 clients over a period of five years amounts to a pattern of misconduct.

We are not persuaded that Trimarche's collective misconduct arising from a single high-volume business involving multiple players necessarily constitutes a pattern of wrongdoing under the existing case law. It is well established that only the most serious instances of repeated misconduct over a prolonged period evidence a pattern of wrongdoing. (*Levin v. State Bar*

[44] All further references to standards are to the Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct.

(1989) 47 Cal.3d 1140, 1149, fn. 14.) Our review of such cases, including *Thomas* and *Romano* cited by OCTC, reveal that they tend to involve an attorney's vexatious conduct, typically amounting to harassment or an abuse of the legal process. (See, e.g., *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 368 [finding pattern of misconduct by engaging in vexatious litigation for over six years]; *In the Matter of Thomas*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 959 [finding pattern of misconduct where attorney maintained frivolous legal claims across multiple proceedings for a decade and failed to pay related sanctions]; *In the Matter of Romano*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 398 [finding pattern of misconduct where attorney filed 82 fraudulent bankruptcy petitions over three-year period].) While also serious, Trimarche's aggregate misconduct lacks the type of vexatious attributes apparent in the aforementioned cases. Accordingly, we do not find a pattern of misconduct in this matter and decline to give aggravating weight for this factor, but we affirm the hearing judge's finding of substantial weight for multiple acts.

2. Significant Client Harm (Std. 1.5(j)) and Highly Vulnerable Victims (Std. 1.5(n))

Significant harm to the client and a high level of victim vulnerability are aggravating circumstances. (Std. 1.5(j), (n).) Here, the hearing judge gave moderate weight for highly vulnerable victims on the basis that the clients of the Debt Attorneys were financially strained by their student loans at the time they were solicited into the Debt Relief Operation. The parties do not dispute this finding. The judge also declined to find clients were significantly harmed based on a lack of clear and convincing evidence of specific, cognizable harm. We disagree with both findings.

Standard 1.5(n) allows for aggravation where clear and convincing evidence establishes that the victim is *highly* vulnerable. We recognize that there are certain categories of per se

highly vulnerable victims established by case law, such as immigration clients and incarcerated criminal defendants. (See, e.g., *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 465 [incarcerated criminal defendants are highly vulnerable victims because they are necessarily limited in their ability to assist attorney or stay apprised of attorney's efforts]; *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 632, 642 [immigration clients are highly vulnerable because such proceedings can result in deportation].) However, OCTC provided no similar legal authority for individuals with financial debt. Without further evidence of their financial circumstances, such as income, loan amount, other assets, and other relevant factors, we decline to make a blanket finding here that the victims were highly vulnerable.

Next, OCTC disputes that there was no evidence of specific, cognizable harm to the clients of the Debt Relief Operation. OCTC points to Slaughter's stipulation (describing significant harm to three of Slaughter's debt relief clients, including deprivation of thousands of dollars from payment of fees and negative impacts on their credit scores); a Final Order to Cease and Desist issued by the Director of the Department of Consumer and Business Services for the State of Oregon (finding that Johanson collected about $60,000 from 10 clients in Oregon without any services rendered); and an email from a disgruntled client complaining no work was done despite receiving payments.

Upon reviewing these documents, we agree that OCTC demonstrated specific cognizable significant harm.[45] We further note that in *Gordon*—where the attorney, like here, was found culpable of misconduct relating to his overall loan modification scheme that impacted thousands

[45] In limited circumstances, definitive evidence of harm may not be required. (*Kitsis v. State Bar* (1979) 23 Cal.3d 857, 867.) The court stated in *Kitsis*: "[T]he public and the profession . . . suffer the greater damage from solicitation practices. '[Because] the State's interest [is] in averting harm by prohibiting solicitation in circumstances where it is likely to occur, the absence of explicit proof or findings of harm or injury is immaterial [citation].'"

of clients, as opposed to any individual client matter—we found significant client harm based on the broader notion that the attorney exploited clients' financial desperation and deprived them of their funds through illegal fees. (*In the Matter of Gordon, supra*, 5 Cal. State Bar Ct. Rptr. at p. 628.) Accordingly, we assign substantial aggravating weight for this factor. (*Ibid.* [substantial weight for significant client harm]; *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574, 588 [substantial weight for significant harm to 11 clients deprived of funds they paid in illegal advance fees, some of whose financial situation worsened upon taking attorney's advice and ceasing payments on their mortgages].)

3. Indifference (Std. 1.5(k))

Under standard 1.5(k), indifference toward rectification or atonement for the consequences of the misconduct is an aggravating factor. The hearing judge declined to find Trimarche was indifferent, stating that although Trimarche zealously defended his case, he repeatedly acknowledged that he was careless for not researching the law and conceded that he made mistakes. Neither party challenges this finding; however, our review of the record shows evidence to the contrary.

In his second declaration filed in this proceeding on November 2, 2023, Trimarche attested that he continues to believe that CFPB's reading of the TSR and the resulting regulatory action were erroneous for the reasons set forth in the NORA Response, which we have determined were entirely baseless. At trial, he persisted that there had been no illegal conduct. He testified that he only entered into a stipulated judgment in the CFPB matter due to financial reasons, but believed he had meritorious defenses. He further testified that he still does not believe the Affiliates were engaged in telemarketing, even though this is a stipulated fact. Indeed, he reneged on many of the stipulated facts as described throughout this opinion. In light of this additional evidence, we find that moderate aggravation is warranted for Trimarche's

indifference and lack of insight. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647 [use of unsupported arguments to evade culpability revealed lack of appreciation for misconduct and obligations as attorney]; *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 793 [continued claims of innocence in face of overwhelming facts and legal authority demonstrates indifference]; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [the law does not require false penitence, but it does require that the respondent accept responsibility for wrongful acts and show some understanding of their culpability].)

B. Mitigation

The hearing judge assigned substantial mitigating credit for Trimarche's 25 years of discipline-free practice (std. 1.6(a)); no weight for lack of harm to clients, the public, or the administration of justice (std. 1.6(c)); moderate weight for cooperation (std. 1.6(e)); and limited weight for his good character evidence (std. 1.6(f)). Neither party disputed these findings, and we affirm them. The judge declined to give mitigating credit for Trimarche's good faith belief (std. 1.6(b)) and claim of excessive delay by the State Bar (std. 1.6(i)), which we affirm for the reasons discussed above.

Community Service / Pro Bono

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) At trial, Trimarche testified that between 1997 and 2015, he participated in an impressive list of pro bono and community service activities, including handling two to three pro bono litigation matters for Public Counsel in the 1990s. From 1997 to 2002, he volunteered at the State Bar Environmental Law Section, initially as a member of the Executive Community, but subsequently, he assumed the positions of Vice Chair and Chair. He also volunteered as the Chair of the Los Angeles County Bar Association Environmental Law

Section from 2002 to 2003; volunteered as a member of the Board of Trustees for the Laguna Park Museum from 2004 to 2007; volunteered as a member of the executive committee for Urban Land Institute from 2006 to 2008; served on the Board of Trustees for the Neighborhood Congregational Church from 2010 to 2011; and held a position on the Board of Directors for Clean Tech Orange County from 2010 to 2015. In assigning no weight in mitigation, the hearing judge noted that the evidence predates Trimarche's misconduct and that his only corroborating evidence were two plaques recognizing his service with the Environmental Law Sections for the State Bar and Los Angeles County Bar Association.

That Trimarche's community service work predates his misconduct is not necessarily detracting, especially where the attorney has dedicated a considerable number of years to such volunteer work, as is the case here. Although it is true that evidence of Trimarche's volunteer work is primarily based on his testimony, we still find his lengthy and impressive array of community service and pro bono work to be laudable and deserving of mitigation. Additionally, the plaques did not simply corroborate his community service, but rather, they applauded Trimarche's "outstanding leadership, dedication and contributions to the legal community" and recognized his "Dedicated Service and Contributions" while serving in multiple leadership positions. Accordingly, we believe moderate weight for his community service is appropriate in this case. (*In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185 [active participation in local bar associations and community associations promoting legal matters is a mitigative factor].)

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins

with the standards. While they are guidelines for discipline and are not mandatory, we give the standards great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

In considering the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Disbarment or actual suspension is the presumed sanction under standards 2.12(a) (violations of the law) and 2.11 (moral turpitude). Standard 2.11 further provides that "[t]he degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed 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 practice of law."

Upon applying standards 2.12(a) and 2.11, the hearing judge also found guidance from *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296 (two-year actual suspension and until restitution and rehabilitation for violating loan modification laws, failing to supervise non-lawyers, and aiding and abetting UPL, among others) and *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rtpr. 178 (six-month actual suspension where attorney's misconduct included, among others, forming a partnership with a non-lawyer, sharing legal fees with the non-lawyer, and using the non-lawyer as an illegal runner and capper, which amounted to moral turpitude). Comparing *Huang* and *Nelson* to the present matter, the judge determined discipline between that recommended in the two cases was appropriate.

Huang similarly involved misconduct arising from an attorney's operation of a high-volume loan modification practice, including collection of illegal pre-performance fees. (*In the*

Matter of Huang, supra, 5 Cal. State Bar Ct. Rptr. at pp. 299-300.) Although recognizing that Trimarche's misconduct is more serious and extensive than Huang's—whose misconduct occurred for about two years, involved hundreds of clients as opposed to thousands, and did not involve acts of moral turpitude, as is the case here—the hearing judge concluded that discipline less than the two-year actual suspension recommended in *Huang* was suitable because unlike Huang, Trimarche's aggravation did not outweigh mitigation and also, there was no demonstrable evidence that Trimarche's misconduct caused harm to any of the Debt Relief Operation's clients.

Our review of the circumstances in aggravation and mitigation in the instant case alter the balance so that Trimarche's aggravation now slightly outweighs his mitigation, as is the case in *Huang*. (*In the Matter of Huang, supra*, 5 Cal. State Bar Ct. Rptr. at p. 304.) Nevertheless, we find the analysis *Huang* provides in arriving at the recommended discipline of two years' actual suspension is unhelpful, and we decline to follow it. And, while we find some guidance in *Nelson*, with his acts of moral turpitude and solicitation of business through improper means, we find its usefulness somewhat limited as *Nelson* does not involve misconduct arising from an attorney's high-volume loan modification business. Nor does *Nelson* involve UPL or misrepresentations to clients. Instead, it concerns a variety of performance-related violations including five counts of improper withdrawal based on turning over a law practice to an inexperienced and unfamiliar attorney, which subjected his clients to foreseeable prejudice.[46] (*In the Matter of Nelson, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 188-189.)

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[46] In terms of the framework of the charges and the overall misconduct, we consider *In the Matter of Gordon, supra*, 5 Cal. State Bar Ct. Rptr. 610 (disbarment), which involves misconduct arising from an attorney's high-volume loan modification operation and did not relate to individual client matters. While *Gordon* is similar in many respects, there are also significant differences that make *Gordon* ultimately unhelpful for our analysis. These include

We find greater instruction in *In the Matter of Golden, supra*, 5 Cal. State Bar Ct. Rptr. 574 (one-year actual and until restitution and rehabilitation). Golden similarly charged and collected illegal advance fees from his clients for loan modification services that he had not completed. Like here, Golden's misconduct occurred over a five-year period, though his charges were specific to 11 clients matters, resulted in 25 counts of misconduct, and did not include acts of moral turpitude. Further, Golden collected over $283,000 in illegal advance fees, which is a large sum of money, but is dwarfed by the $11.8 million collected by GST and the $1.5 million collected by Trimarche from his involvement in the Debt Relief Operation.

Unlike here, where Trimarche's aggravation slightly outweighs his mitigation, Golden's aggravating circumstances far exceeded his mitigating ones. Specifically, we assigned significant aggravating weight for Golden's multiple acts of wrongdoing, overreaching, significant client harm, and failure to restitute over $278,000 to his clients. We further found "considerable" aggravation for his indifference. He continued to run his law firm in a similar fashion despite the established case law, OCTC's investigation, and the Civil Code's plain language against collecting pre-performance fees and requirement to disclose certain information. (*In the Matter of Golden, supra*, 5 Cal. State Bar Ct. Rptr. at p. 588.) For mitigation, Golden received minimal weight for his 17 years of discipline-free practice and significant weight for his cooperation with the State Bar. On balance, we find that discipline on par with that recommended in *Golden* is warranted.

Trimarche's serious misconduct impacted 2,600 clients from across the nation and resulted in the collection of $11.8 million in illegal fees. Given our findings on

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Gordon's more egregious and brazen misrepresentations and his serious and harassing threats to OCTC attorneys, which ultimately resulted in their obtaining a temporary restraining order against him. (*Id.* at pp. 623-624, 628.)

culpability—including that one-and-a-half years of the five-year period of misconduct constituted moral turpitude—aggravating factors that slightly outweigh mitigation, and guidance from the standards and comparable case law, we recommend that Trimarche be suspended for two years, stayed, with an actual suspension of one year as part of the probation period.[47]

VI. RECOMMENDATIONS

We recommend that Gregory Daniel Trimarche, State Bar Number 143686, be suspended from the practice of law for two years, execution of that suspension is stayed, and Trimarche is placed on probation for two years, with the following conditions:

1. **Actual Suspension.** Trimarche must be suspended from the practice of law for the first year of the probation period.

2. **Commencement of Probation/Compliance with Probation Conditions.** The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. Trimarche must complete all court-ordered probation conditions as directed by the State Bar's Office of Case Management & Supervision (OCMS) and at Trimarche's expense. At the expiration of the probation period, if Trimarche has complied with all probation conditions, the period of stayed suspension will be satisfied and that suspension will be terminated.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Trimarche must comply with the provisions of the California Rules of Professional Conduct, the State Bar Act (Business and Professions Code sections 6000 et seq.), and all probation conditions.

4. **Review Rules and Statutes on Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Trimarche must read the California Rules of Professional Conduct and Business and Professions Code sections 6067, 6068, and 6103 through 6126. Trimarche must provide a declaration, under penalty of perjury, attesting to Trimarche's compliance with this requirement, to the OCMS no later than the deadline for Trimarche's first quarterly report.

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[47] The hearing judge determined that monetary sanctions in the amount of $2,500 was appropriate. This amount was based on her consideration of all the facts and circumstances of this case, including the aggravating and mitigating circumstances as well as the seriousness of Trimarche's misconduct, which occurred over a period of five years, impacted thousands of clients, involved multiple acts of moral turpitude and was committed with the goal of obtaining substantial pecuniary gain. Neither party disputed this amount, and we affirm the judge's finding. (Rules Proc. of State Bar, rule 5.137(E)(2)(b) [up to $2,500 for actual suspension].)

5. **Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Trimarche must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Trimarche must provide a declaration, under penalty of perjury, attesting to Trimarche's compliance with this requirement, to the OCMS no later than the deadline for Trimarche's quarterly report due immediately after the 90-day period for course completion.

6. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Trimarche must make certain that the State Bar Office of Licensee Records and Compliance (LR&C) has Trimarche's (1) current office address and telephone number, or if none, an alternative address and telephone number; and (2) a current email address (unless granted an exemption by the State Bar by using the form approved by LR&C, pursuant to California Rules of Court, rule 9.9(d)), not to be disclosed on the State Bar's website or otherwise to the public without the licensee's consent. Trimarche must report, in writing, any change in the above information to LR&C within 10 days after such change, in the manner required by LR&C.

7. **Meet and Cooperate with the OCMS.**

   a. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Trimarche **must schedule**, with the assigned OCMS Probation Case Coordinator, a meeting or meetings either in-person, by telephone, or by remote video (at the OCMS Probation Case Coordinator's discretion) to review the terms and conditions of probation. The intake **meeting must occur** within 30 days after the effective date of the Supreme Court order imposing discipline in this matter.

   b. During the period of probation, Trimarche must (1) meet with representatives of the OCMS as directed by the OCMS; (2) subject to the assertion of applicable privileges, fully, promptly, and truthfully answer any inquiries by the OCMS and provide any other information requested by the OCMS; and (3) meaningfully participate in the intake meeting and in the supervision and support process, which may include exploring the circumstances that caused the misconduct and assisting in the identification of resources and interventions to promote an ethical, competent practice.

   c. If at any time the OCMS determines that additional probation conditions are required, the OCMS may file a motion with the State Bar Court to request that additional conditions be attached pursuant to rule 5.300 of the Rules of Procedure of the State Bar and California Rules of Court, rule 9.10(c).

8. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During the probation period, the State Bar Court retains jurisdiction over Trimarche to address issues concerning compliance with probation conditions. During probation, Trimarche must appear before the State Bar Court as required by the court or by the OCMS after written notice to Trimarche's official State Bar record address and e-mail address (unless granted an exemption from providing one by the State Bar as provided pursuant to condition 6, above). Subject to the assertion of applicable privileges, Trimarche must fully,

promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

9. **Quarterly and Final Reports.**

   a. **Deadlines for Reports.**

      i. **Quarterly Reports.** Trimarche must submit quarterly reports to the OCMS no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 45 days, that report must be submitted on the next quarter due date and cover the extended deadline.

      ii. **Final Report.** In addition to all quarterly reports, Trimarche must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of probation.

   b. **Contents of Reports.** Trimarche must answer, under penalty of perjury, all inquiries contained in the report form provided by the OCMS, including stating whether Trimarche has complied with the State Bar Act and the California Rules of Professional Conduct during the applicable period. All reports must be: (1) submitted on the written or electronic form provided by the OCMS; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury in a manner that meets the requirements set forth in the Rules of Procedure of the State Bar and the Rules of Practice of the State Bar Court; and (4) submitted to the OCMS on or before each report's due date.

   c. **Submission of Reports.** All reports must be submitted to the OCMS. The preferred method of submission is via the portal on Trimarche's "My State Bar Profile" account that is accessed through the State Bar website. If unable to use the portal, reports may be submitted via (1) email; (2) certified mail, return receipt requested (postmarked on or before the due date); (3) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date); (4) fax; or (5) personal delivery.

   d. **Proof of Compliance.** Trimarche must maintain proof of compliance with the above requirements for each submitted report for a minimum of one year after the probation period has ended. Trimarche is required to present such proof upon request by the State Bar, the OCMS, or the State Bar Court.

10. **State Bar of California Ethics School.** Within nine months after the effective date of the Supreme Court order imposing discipline in this matter, Trimarche must submit to the OCMS satisfactory evidence of completion of the State Bar of California 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 Trimarche will not receive MCLE credit for attending Ethics School.

Trimarche is encouraged to register for and complete Ethics School at the earliest opportunity. If Trimarche provides satisfactory evidence of completion of Ethics School and passage of the test given at the end of the session prior to the effective date of the Supreme Court order imposing discipline in this matter but after the date this Opinion is filed, Trimarche will receive credit for completing this condition.

11. **Proof of Compliance with Rule 9.20 Obligation.** Trimarche is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Trimarche comply with the requirements of California Rules of Court, rule 9.20 (a) and (c), as recommended below. Such proof must include: the name(s) and address(es) of all individuals and entities to whom Trimarche sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Trimarche with the State Bar Court. Trimarche is required to present such proof upon request by the State Bar, the OCMS, or the State Bar Court.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION (MPRE)

We recommend that Trimarche be ordered to do the following within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Trimarche's actual suspension in this matter, whichever is longer:

1. Take and pass the MPRE administered by the National Conference of Bar Examiners;
2. During registration select California as the jurisdiction to receive Trimarche's score report; and
3. Provide satisfactory proof of such passage directly to the OCMS.

Trimarche is encouraged to register for and pass the MPRE at the earliest opportunity. If Trimarche provides satisfactory evidence Trimarche passed the MPRE prior to the effective date of the Supreme Court order imposing discipline in this matter but after the date this Opinion is filed, Trimarche will receive credit for completing this requirement.

Failure to comply with this requirement may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We recommend that Trimarche be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.[48] (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order imposing discipline].) Failure to do so may result in disbarment or suspension.

IX. MONETARY SANCTIONS

We recommend that Trimarche be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar.[49] Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

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[48] Trimarche is required to file a rule 9.20(c) affidavit even if Trimarche has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).) The court-approved Rule 9.20 Compliance Declaration form is available on the State Bar Court website at <https://www.statebarcourt.ca.gov/Forms>.

[49] Monetary sanctions are payable through Trimarche's "My State Bar Profile" account. Further inquiries related to payment of sanctions should be directed to the State Bar's Division of Regulation.

X. COSTS

We further recommend 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, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of applying for reinstatement or return to active status.[50]

XI. MONETARY REQUIREMENTS

Any monetary requirements imposed in this matter shall be considered satisfied or waived when authorized by applicable law or orders of any court.

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.

[50] Costs are payable through Trimarche's "My State Bar Profile" account. Further inquiries related to payment of costs should be directed to the State Bar's Division of Regulation.

No. SBC-23-O-30827

In the Matter of
Gregory Daniel Trimarche

Hearing Judge
Hon. Yvette D. Roland

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