

Filed January 12, 2021

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	15-O-13353
	)	
JAMES HSIAOSHENG LI,	)	OPINION AND ORDER
	)	
State Bar No. 176662.	)	
_____	)	

This is James Hsiaosheng Li’s third discipline case since his admission to the California Bar on June 12, 1995. A hearing judge found him culpable of eight counts of misconduct related to nine years of filing meritless challenges to superior court rulings in a real property matter. The judge found Li maintained unjust actions, engaged in acts of moral turpitude that interfered with property ownership, employed means inconsistent with the truth, and failed to obey court orders to pay sanctions. The superior court eventually found Li to be a vexatious litigant. The hearing judge recommended that Li be disbarred after finding five factors in aggravation and one factor in mitigation.

Li appeals. He challenges the hearing judge’s findings, contends that any legal errors he made were in good faith, and argues that disbarment is too severe. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s findings and disbarment recommendation. Li engaged in abusive litigation tactics and disobeyed court orders. Disbarment is necessary to protect the public, the courts, and the legal profession.

## I. PROCEDURAL BACKGROUND

On March 15, 2016, OCTC filed a Notice of Disciplinary Charges (NDC) charging Li with 10 counts of misconduct, including violations of Business and Professions Code sections 6068, subdivision (c),<sup>1</sup> 6106,<sup>2</sup> 6068, subdivision (d),<sup>3</sup> and 6103.<sup>4</sup> On April 7, 2016, Li filed a response and moved to abate the case pending resolution of a related civil matter in superior court. The hearing judge abated the case on May 12, 2016. At OCTC's request, the judge terminated the abatement on May 14, 2019, and set the case for trial.

On July 8, 2019, the parties filed an extensive Stipulation of Facts and Admission of Documents (Stipulation). Trial was held on August 1 and 2. The hearing judge filed her decision on October 21, recommending disbarment and placing Li on involuntary inactive status effective October 24, 2019.<sup>5</sup>

## II. FACTS

The facts are largely undisputed and are taken from the Stipulation, trial testimony, and trial exhibits admitted into evidence.<sup>6</sup>

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<sup>1</sup> All further references to sections are to this source. Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense.

<sup>2</sup> Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

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

<sup>4</sup> Section 6103 provides that a willful disobedience or violation of an order of the court constitute a cause for disbarment or suspension.

<sup>5</sup> Li is also currently suspended from the practice of law for failure to pay his annual fees. Additionally, he owes discipline costs that he must pay before he can be reinstated.

<sup>6</sup> The hearing judge's factual findings are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

**A. Rulings Related to the Disputed Real Property**

The present disciplinary action arises from a civil case regarding ownership of real property in Rosemead, California (the property). Cindy Kin Mi Tsui and her husband, Kwok Kwong Lo (Tsui plaintiffs), sued Tsui's brother, Michael Kin Wing Chui, in a case entitled *Cindy Kin Mi Tsui et al. v. Michael Kin Wing Chui et al.*, Los Angeles Superior Court Case No. GC038906 (the partition action). Li represented Chui in the partition action and agreed to receive partial compensation in the form of five deeds of trust, totaling \$170,000, as secured against Chui's interest in the property.

On September 17, 2010, the superior court issued a statement of decision in favor of the Tsui plaintiffs, finding that they had a 50 percent ownership interest in the property. The court ordered partition of the property and directed that it be sold with the proceeds distributed according to each party's interests. The court found that all sums due to satisfy the deed of trust in favor of Li were chargeable to defendant Chui's share. When the property was sold, senior lienholders were paid out of escrow before Li, who was paid only \$300 as a junior lienholder. On October 6, the superior court issued its judgment, incorporating the September 17 decision. Shortly thereafter, the court granted Li's motion to withdraw from representing Chui.

As of September 20, 2010, Li attempted to assign \$140,000 of his rights in the deeds of trust to his sister, Poshan Lee. On September 29, on behalf of Poshan and himself, Li filed a motion to vacate the judgment in the partition action and recorded a lis pendens on the property. On November 9, 2010, the superior court denied Li's motion to vacate the judgment. On December 14, Li filed a notice of appeal in the Second Appellate District, Division One (Second District Court of Appeal), challenging both the October 6 judgment and the November 9 order denying Li's motion to set aside the judgment (Case No. B229644). On September 26, 2011, the appellate court issued an opinion concluding that Li "lack[ed] standing to appeal from the

judgment and his motion to vacate was properly denied.” The appellate court dismissed the appeal of the judgment, affirmed the order denying Li’s motion to vacate, and ordered respondents to recover costs on appeal.

On May 31, 2012, the Tsui plaintiffs filed a motion for a clerk’s reconveyance of Li’s five deeds of trust to facilitate sale of the property. The motion stated that it was necessary because Li had refused to reconvey the deeds unless he received more than he was entitled to under the court’s judgment. On July 24, 2012, the court granted the motion and ordered that the five deeds Li held be reconveyed to the Tsui plaintiffs. On September 5, 2012, the clerk signed the “Deed of Full Reconveyance” for all five deeds. The proceeds of sale were to be held in trust.

## **B. Li’s Litigation with Zhang**

In January 2013, David Zhang purchased the property.<sup>7</sup> On May 31, 2013, Li recorded a lis pendens that was signed by “James Hsiaosheng (SBA: 176662)” as “Attorney for Plaintiff James Li” in the *Li v. Zhang* case. By signing the document in this fashion, Li avoided the requirements of Code of Civil Procedure section 405.21, which prohibits a party acting in propria persona from filing a lis pendens without the approval of a judge. Li testified that he amended the document in this fashion after he learned from the clerk’s office that he could not file a lis pendens on his own behalf.

### **1. Li’s Unsuccessful Motions to Set Aside the Reconveyance**

Between May and October 2014, Li filed three motions to set aside the July 2012 order reconveying his five deeds of trust.

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<sup>7</sup> Li testified he did not believe Chiu’s interest in the property was sold to Zhang so on May 29, 2013, he filed a new lawsuit, *Li v. Zhang, et al.* in Los Angeles Superior Court (Case No. EC060584). He sued Zhang, the escrow agent, the real estate agent, and Ken Gross, the Tsui plaintiffs’ attorney in the partition action, alleging fraud and seeking to challenge the July 24, 2012 order reconveying the deeds of trust. On July 16, 2014, he filed a request to dismiss the case in its entirety.

Li filed his first motion on May 21, 2014. On June 23, Zhang's counsel, Candie Chang, filed a complaint-in-intervention against Li as a defendant-in-intervention in the partition action, seeking declaratory relief concerning the parties' rights and interests in the property. On July 10, the day before the hearing and after the court published its tentative ruling denying Li's motion, Li requested that his motion be taken off calendar.

Li filed his second motion on July 16, 2014. On October 21, the court denied it. On October 22, the court also denied Li's ex parte application for a temporary restraining order, which sought to stay execution of the reconveyance order.

Li filed his third motion on October 27, 2014, which was set to be heard on December 5. On October 29, Zhang served Li with a letter and proposed motion seeking sanctions based on Li's third motion. Li received the letter, but did not respond, and did not take his motion off calendar. Zhang filed the sanctions motion on November 20, seeking \$4,060. Li opposed Zhang's motion but took his opposition off calendar on the day of the hearing, after Zhang filed a 226-page opposition.

## **2. Li's Unsuccessful Attempts to Secure a Lis Pendens**

On September 22, 2014, Li recorded a second lis pendens captioned "Notice of Pendency of Action for Joinder to Motion and Independent Motion to Set Aside, Void or Nullify the 7/24/12 Order Directing Issuance of Clerk's Reconveyance Deeds." On October 30, 2014, Li recorded a third lis pendens captioned "Notice of Pendency of Action to Set Aside" pertaining to the underlying partition action. He again indicated on the document that it was being filed by attorney "James Hsiaosheng (SBA: 176662)" as "Attorney for interested party James Li."<sup>8</sup>

On November 13, 2014, Zhang filed a motion to expunge the lis pendens that was recorded on October 30, 2014. On December 12, the superior court judge issued a tentative

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<sup>8</sup> On November 4, Li also recorded five separate notices of default on the property.

ruling granting the motion and for sanctions.<sup>9</sup> The judge reasoned that Li did not offer any evidence to demonstrate that his claim to the property could be established. The judge also found that the *lis pendens* was void because Li filed in *propria persona* without obtaining the judge's approval, as required by Code of Civil Procedure section 405.21. The court held that Li engaged in a subterfuge to avoid the section 405.21 requirements by listing two variations of his name so it would appear that he was represented by an attorney. The court further noted it was objectively unreasonable for Li to think he could engage in such tactics. On December 30, 2014, the court finalized its December 12 tentative ruling and expunged the notices of *lis pendens* that Li filed on May 31, 2013, September 22, 2014, and October 30, 2014.

### **C. Sanctions Orders Against Li**

The superior court issued four orders for sanctions against Li. On December 30, 2014, based on Zang's November 13, 2014 motion, the court ordered Li to pay \$3,375 in attorney fees and costs to Zhang within 20 calendar days. On January 9, 2015, the court also granted Zhang's motion for sanctions against Li for filing his third motion to set aside the reconveyance order; Zang was awarded \$4,060 in attorney fees as sanctions. Li received notice of the sanctions orders but did not pay them.

On February 2, 2015, Zhang filed a further motion for sanctions against Li based on Li's filing and refusal to dismiss his cross-complaint. While the motion was pending, on February 18, Li recorded a notice of trustee's sale under a deed of trust and set the sale of the property for March 24. Also, on March 4, and again on March 6, Li filed a first amended cross-complaint against Zhang alleging 11 separate causes of action, all based on his assertion that the reconveyance order was void. On March 20, the superior court granted Zhang's motion for

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<sup>9</sup> On the same date, Li filed a cross-complaint against Zhang again seeking to void the order reconveying the deeds of trust. Zhang demurred and the hearing was taken off calendar when Li filed a first amended cross-complaint.

sanctions against Li for filing the cross-complaint and ordered him to pay \$4,930 in sanctions within 10 days of notice of the order, which was filed on April 1, 2015. Li received the order but did not pay the sanctions.

On March 6, 2015, Zhang obtained an ex parte temporary restraining order enjoining Li from proceeding with the foreclosure sale of the property. On March 13, Zhang filed a motion for preliminary injunction to enjoin Li from proceeding with the foreclosure sale. On April 10, the court granted the preliminary injunction, holding that Li had no legal interest in or right to sell the property. On May 6, Li filed a motion to dissolve, or in the alternative, to modify the preliminary injunction order, again seeking to challenge the reconveyance order.

On April 10, 2015, Zhang filed a demurrer and motion to strike Li's first amended cross-complaint, along with an additional motion for sanctions for filing a meritless cross-complaint. On May 15, the superior court sustained Zhang's demurrer and granted the sanctions motion, ordering Li to pay \$6,180 to Zhang, which the court ordered collectable as a judgment. Li received notice of the sanctions. He self-reported them to the State Bar but did not pay them or seek relief from having to pay them.

#### **D. 2016 Judgment in Favor of Zhang / Li's Unsuccessful Challenges**

After a court trial, the superior court ruled in favor of Zhang in his complaint-in-intervention. On August 29, 2016, the court entered a declaratory judgment that Li was bound by the reconveyance order and had no interest in the property. The court also ruled that Zhang held title free of legal encumbrance. On September 21, Li filed a motion to vacate the judgment on the ground that the reconveyance order was void. On October 14, Li filed notices of motions "for reapplication of motion to set aside a void order" and "to set aside orders giving it effect as well as being independently void and set aside a judgment and deeds giving void orders effect." The notice indicated that the motions were set for November 10. On October 28, the court

denied Li's motion to vacate the declaratory judgment, finding that he was barred from challenging the reconveyance order by collateral estoppel.

On December 5, 2016, Li appealed this decision to the Second District Court of Appeal (Case No. B279399). On February 5, 2019, the appellate court issued an opinion affirming the trial court's denial of Li's motion to vacate, and ordering costs on appeal to respondents. On April 15, 2019, Li filed another motion in superior court to set aside the court's declaratory judgment, which was denied on May 10, 2019.

#### **E. Vexatious Litigant Order**

Chang filed a motion to declare Li a vexatious litigant on behalf of Zhang. Chang testified that this was the first time in 18 years of practice that she has filed such a motion and did so because she believed Li would not stop litigating ownership of the property. On June 13, 2019, the superior court issued a tentative ruling finding that Li was a vexatious litigant pursuant to Code of Civil Procedure section 391, subdivisions (b)(1), (b)(2), and (b)(3). On June 24, 2019, the court filed an order adopting its tentative ruling, including a pre-filing order prohibiting Li from filing litigation in pro per without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed.<sup>10</sup>

### **III. CULPABILITY**

On the first day of trial, OCTC moved to dismiss counts two and four of the NDC. Li did not object and the hearing judge dismissed them. The preceding factual summary supports the eight remaining charges alleged in the NDC. Those charges categorically fall into three areas of culpability: (1) maintaining only legal and just actions and moral turpitude (counts one, three, and five); (2) employing means inconsistent with the truth (count six); and (3) failing to obey

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<sup>10</sup> Li contends on review that this order is not final because he has appealed it, but he produced no evidence to support this contention.



court orders for sanctions (counts seven, eight, nine, and ten). The following culpability analysis is grouped in this fashion.

**A. Counts One and Three (§ 6068, subd. (c) [Maintain Only Legal or Just Actions])  
Count Five (§ 6106 [Moral Turpitude])**

Count one alleges that Li failed to comply with his duty to maintain only legal or just actions. Specifically, it charges Li with filing three motions on May 21, July 16, and October 27, 2014, all of which challenged the court's July 2012 order reconveying the deeds of trust to facilitate the sale of the property in the partition action. Count three charged Li under the same statute for filing a cross-complaint for declaratory relief in the partition action, which also sought to invalidate the superior court's reconveyance order. Count five charged Li with acts of moral turpitude: the same misconduct as alleged in counts one and three and Li's additional acts of recording multiple lis pendens notices against the property, recording notices of default and commencing foreclosure proceedings, recording notices of trustee's sale and setting the trustee's sale, and filing a first amended cross-complaint against Zhang in the partition action. The moral turpitude charge alleges nine acts in total.

The hearing judge found Li culpable of counts one and three for violating section 6068, subdivision (c), and of count five for engaging in eight of the nine acts of moral turpitude in violation of section 6106. The judge did not find Li culpable of moral turpitude for filing his first motion to set aside the reconveyance order. The judge reasoned that the record did not contain clear and convincing evidence<sup>11</sup> to establish that the initial filing was frivolous, without merit, or prosecuted for improper purpose and for purpose of delay. We agree with the hearing judge's culpability findings in counts one, three, and five. We assess no additional weight in discipline for culpability under counts one and three, because the moral turpitude findings under

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<sup>11</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

count five are based on the same misconduct and support the same or greater discipline. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520.)

We reject Li's argument that he is not culpable because no superior court judge accused him of gross negligence for his filings.<sup>12</sup> The record establishes that Li has intentionally committed "serious, habitual abuse of the judicial system," which constitutes moral turpitude. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186; see also *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 366 [attorney culpable for bringing unjust actions and moral turpitude who pursued lawsuits after unqualified losses at trial and on appeals, filed unmeritorious motions, pleadings, and other papers, and engaged in tactics that were frivolous or intended to cause delay].) Li filed dozens of frivolous actions and oppositions, all fixated on overturning the superior court's July 2012 reconveyance order, repeatedly raising the same issues even after they had been decided. His persistence in filing harassing litigation supports a finding of moral turpitude. (See *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 147 [harassing phone calls to client constituted moral turpitude]; *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 166 [harassing voicemails to public administrator of attorney's father's estate constituted moral turpitude].)

We also reject Li's challenges to the merits of orders by the superior court and appellate court. Superior court orders are entitled to great weight where, as here, they are supported by substantial evidence in our record. (See *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947 [civil findings carry strong presumption of validity if supported by substantial evidence].) Moreover, we may rely on a court of appeal opinion to which an attorney was a party as a conclusive legal

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<sup>12</sup> In rearguing the merits of the underlying litigation, Li argues certain factual challenges that are not outcome-determinative. Having independently reviewed all arguments set forth by Li, those not specifically addressed have been considered and rejected as without merit

determination of civil matters “which bear a strong similarity, if not identity, to the charged disciplinary conduct.” (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117.) These are the circumstances before us. Li is charged with maintaining an unjust action—where the superior court ruled on multiple occasions that his pleadings were without merit and the appellate courts dismissed his appeals and awarded costs to the opposing party. The record, which includes these courts’ rulings, provides clear and convincing evidence of Li’s culpability.<sup>13</sup>

**B. Count Six (§ 6068, subd. (d) [Seeking to Employ Means Inconsistent with Truth])**

Count six alleged that Li was culpable for violating section 6068, subdivision (d), based on his recording of lis pendens with papers indicating they were being filed by attorney “James Hsiaosheng” with State Bar number 176662 on behalf of client “James Li.” In fact, Li was recording the lis pendens on his own behalf. Li testified that, based on what he knew about the law, he thought “it is legal that a person with multiple parts names [*sic*] can choose different parts of the names to express himself using his identity. . . .”<sup>14</sup>

We find Li’s explanation wholly unpersuasive. He used “James Hsiaosheng” as well as “James Li” in filing the lis pendens to circumvent the requirements of section 405.21 of the Code of Civil Procedure and an office rule in the Los Angeles County Recorder’s Office. He was told by the court clerks that the lis pendens would not be accepted if he represented himself. He left the clerk’s office and created the document with two versions of his name, which he then filed with the court. Li’s use of two names allowed him to engage in a subterfuge and record a notice

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<sup>13</sup> We reject Li’s argument that the judge who issued the vexatious order lacked authority to do so. Li contends that the judge may have intentionally issued the order for the purpose of unfairly prejudicing him in his disciplinary trial—conduct Li asserts is unbecoming of a superior court judge. We find no evidence in this record or any legal authority to support Li’s argument.

<sup>14</sup> In his response to the NDC, Li presented an affirmative defense that the charge based on the use of his name was “racially motivated in violation of equal protection clause of the 14th Amendment of the United States Constitution.” Li did not raise this argument on review and we find no support in the record for it.

of lis pendens without obtaining approval of the court as required in these circumstances. We find Li culpable of count six.

**C. Counts Seven Through Ten (Section 6103 [Failure to Obey a Court Order])**

Counts seven, eight, nine, and ten alleged that Li was culpable under section 6103 for failing to pay the four sanctions orders the superior court issued. The hearing judge found Li culpable on all counts for willfully disobeying orders to pay the sanctions of \$3,375, \$4,060, \$4,930, and \$6,180, in violation of section 6103. To establish a willful violation of this section, an attorney must know the orders were final and binding. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [attorney’s knowledge of final, binding order is essential element of § 6103 violation].) Li stipulated that he had notice of the sanctions orders, which are final, and he has not paid them. We find him culpable as charged.

Li argues that the superior court improperly used a negligence-based theory for these orders but he provided no persuasive argument or authority in support. Ultimately, Li testified that “in fact, in all those sanctions orders, with the benefit of hindsight, I agree with the judge.” An attorney’s willful violation of a court order, without more, constitutes a violation of section 6103. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 575; see also *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467 [willfulness does not require intent to violate law, injure another, or acquire advantage; only general purpose or willingness to commit act or permit omission is necessary].)

Li also argues he could not afford to pay the sanctions. Financial inability is not a defense to nonpayment of sanctions where, as here, Li knew about the orders and failed to successfully challenge them. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 [attorney with financial hardship culpable for failing to pay court-ordered sanctions where attorney did not seek relief from order in civil courts based on inability to pay].)

#### IV. AGGRAVATION GREATLY OUTWEIGHS MITIGATION

Standard 1.5<sup>15</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Li has the same burden to prove mitigation. (Std. 1.6.)

##### A. Five Factors in Aggravation

The hearing judge found five factors in aggravation. Li did not specifically challenge those findings. We agree with them and assign substantial aggravating weight to each factor.

First, Li committed multiple acts of misconduct. (Std. 1.5(b).)

Second, Li demonstrated a pattern of misconduct by engaging in meritless litigation for at least nine years. (Std. 1.5(c) [pattern of misconduct is aggravating]; *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14, citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 [most serious instances of repeated misconduct over prolonged period of time characterized as pattern of misconduct]; *In the Matter of Kinney, supra*, 5 Cal. State Bar Ct. Rptr. at p. 368 [pattern where attorney repeatedly engaged in vexatious litigation over six-year period]; and *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217 [pattern where attorney engaged in deception for personal gain or to cover up mismanagement over 10-year period].)

Third, Li significantly harmed the public and the administration of justice. (Std. 1.5(j).) His litigation required the courts to consider, reconsider, and rule on meritless lawsuits, motions, and appeals, thereby wasting judicial resources.<sup>16</sup> Chang, Li's opposing counsel, testified she spent 936 hours on filings in the trial court and court of appeal, which cost her client close to \$250,000. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75 [harm

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<sup>15</sup> Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

<sup>16</sup> In the May 10, 2019 ruling on Li's motion to stay/set aside the judgment, the superior court judge stated: "As the Court of Appeal has upheld this Court's August 29, 2016, Judgment declaring 'that Li was bound by the July 2012 order and had no legal interest in the property, and Zhang held title free of legal encumbrance,' there is no basis for Li to, once again, file papers seeking to vacate the valid and recently upheld Judgment of this Court."

to administration of justice where attorney “wasted considerable time” by failing to conduct affairs properly and as directed]; *In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at p. 792 [substantial harm where opposing party “was required to perform substantial additional work” and incur additional expense because of multiple filings and misrepresentations made by attorney].)

Fourth, Li’s misconduct is aggravated by his failure to accept responsibility for his actions and atone for the resulting harm. (Std. 1.5(k); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [while law does not require attorney to be falsely penitent, it “does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation].”].) Li asserts that his failure to know the law caused him to make an honest mistake. The hearing judge rejected his argument reasoning that while an incorrect legal analysis might excuse an improper initial challenge to a court decision, Li’s successive and unsuccessful filings demonstrate indifference. We agree.

Li also showed his lack of insight into his misconduct by emailing Chang after the discipline proceedings began with a “proposal for global settlement” regarding the property on issues that had been conclusively determined by the July 2010 judgment and July 2012 reconveyance orders. Submitting such a proposal clearly reveals Li’s complete failure to understand and acknowledge that the court rulings on the property are final.<sup>17</sup> (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100–1101 [blanket refusal to acknowledge wrongful conduct constitutes indifference].)

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<sup>17</sup> In the global settlement, Li proposed the following:  
“1. 10 years of right to residence by Chui in exchange for his assigning ownership interest of his UNGRANTED 50% interest to me.  
2. 10 years for Zhang to recover his contribution to the co-ownership and money award I cannot afford to pay.  
3. Then partition.”

Fifth, Li has two prior records of discipline (Std. 1.5(a)):

**1. Case Nos. 11-O-14430, 11-O-17550 (Cons.)**

On January 7, 2016, the Supreme Court suspended Li for six months and placed him on probation for two years (S230359). In one client matter, Li was found culpable for moral turpitude for disingenuous and unethical attempts to avoid refunding a \$30,000 fee, and for employing a means inconsistent with the truth, in violation of section 6068, subdivision (d), by making a false representation to the bankruptcy court. In a second client matter, Li was found culpable of violating former rule 4-200(A) by entering into five promissory notes charging illegal, usurious interest rates while representing Chiu regarding the property in the present case. Aggravation was found for multiple acts, harm, lack of insight, and overreaching. Mitigation was afforded for lack of a prior record of discipline and pro bono and community service.

**2. Case No. 16-N-12766**

On July 30, 2018, the Supreme Court ordered Li suspended for one year, crediting him for a previous period of inactive enrollment, resulting in no prospective actual suspension (S249110). Li was found culpable of willfully violating California Rules of Court, rule 9.20, for failing to comply with the Supreme Court's directive in its January 7, 2016 order in his first discipline case. We found aggravation for Li's prior record of discipline and multiple acts of wrongdoing, minor mitigation for cooperation, and modest mitigation for lack of harm.

The hearing judge noted that the NDC in this second discipline case was filed on July 28, 2016, over three months after the NDC in the present matter was filed on March 15, 2016. The judge concluded that the aggravating weight of Li's second discipline was greatly diminished. We agree. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136 [prior discipline given less weight where discipline imposed after commission of current misconduct]; *In re the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [aggravating force

of “prior” disciplinary record diluted where misconduct in present case occurred before notice to show cause in prior case served].)

Nonetheless, the hearing judge found substantial aggravation for Li’s first prior discipline because it resulted from serious misconduct involving moral turpitude and employing means inconsistent with the truth—the same charges Li has been found culpable of in the present case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [prior discipline is aggravating because it is indicative of recidivist attorney’s inability to conform conduct to ethical norms]; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444 [similarities between prior and current misconduct render prior discipline more serious as it indicates attorney was not rehabilitated].) We agree with the hearing judge and assign substantial aggravating weight to Li’s overall prior record of discipline.

**B. Mitigation for Cooperation / No Mitigation for Good Faith**

The hearing judge properly assigned substantial mitigation under standard 1.6(e) (cooperation with the State Bar) for Li’s extensive stipulation as to facts and admission of documents. The Stipulation saved judicial resources and established facts that formed the basis for Li’s culpability. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigation credit for entering into stipulation as to facts and culpability].)

The hearing judge correctly rejected Li’s request for mitigation under standard 1.6(b), which requires a “good faith belief that is honestly held and objectively reasonable.” Li argues he acted in good faith because he did not know the appropriate law when he filed certain pleadings. But this does not explain or excuse his repeated and harassing litigation. Further, in a January 9, 2015 superior court order, the judge found that it was objectively unreasonable for Li to file motions without being familiar with the fundamental rules of civil procedure, particularly while ignoring prior rulings against his position. Li testified that “in hindsight, I agree with him



. . . I shouldn't have acted that way.” In discussing this order, Li testified, “Well, I stipulate I committed legal malpractice.” Li's admission transcends issues of civil malpractice and supports our findings that Li did not have a reasonably objective good faith belief that his litigation was legal and just.

## **V. DISBARMENT IS THE PROPER DISCIPLINE**

Our purpose is to recommend appropriate professional discipline, considering the goals of the discipline system, and not to punish attorneys for misconduct. (*In re Brown* (1995) 12 Cal.4th 205, 217 [“the aim of attorney discipline is not punishment or retribution; rather, attorney discipline is imposed to protect the public, to promote confidence in the legal system, and to maintain high professional standards”].) Discipline standards guide us whenever possible, and we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis, to ensure that the discipline imposed is consistent with the purposes of discipline. (*In re Young* (1989) 49 Cal.3d 257, 266–267 & fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

The hearing judge properly considered standard 1.8(b) (disbarment for a third discipline) because Li has two prior records of discipline. Li argued that only one prior discipline should be considered since the NDC in his second discipline case was issued after the NDC was filed in this matter. We agree with the judge's decision to greatly diminish the weight of Li's second prior discipline for this reason and do not rely on standard 1.8(b) in making our recommendation.

However, where an attorney commits two or more acts of misconduct, and different standards apply, the most severe sanction must be imposed. (Std. 1.7(a).) Here, the hearing judge identified three applicable standards with a range of discipline from actual suspension to disbarment. (Stds. 2.9 [pattern of frivolous litigation]; 2.11 [moral turpitude]; 2.12(a) [disobeying court order].) Under standard 2.11, “[t]he degree of sanction depends on the

magnitude of the misconduct . . . and the extent to which the misconduct harmed or misled the victim . . . [and] related to the practice of law.” Under standard 2.9, actual suspension is presumed but disbarment is appropriate if the misconduct demonstrates a pattern, as it does here.

Li argues disbarment is too severe because he made “an initial error as a result of having forgotten a fundamental concept [he] learned in first-year law school.” We disagree. Li’s actions went far beyond errors of simple negligence, forgetting legal principles, or missing issues. He used his legal skills to abuse the court system with relentless lawsuits that harmed Zhang and others. And he has shown no sign that he will stop which further demonstrates he is unfit to practice law. (*Maltaman v. State Bar, supra*, 43 Cal.3d at p. 951 [“serious and fundamental obstructions of the judicial system the member has sworn to uphold, committed willfully and in bad faith, suggest a lapse of character and a disrespect for the legal system which bear directly on the attorney’s fitness to practice law”].)

Another round of disciplinary probation would not protect the public. Li’s past probation and suspension failed to prevent him from committing similar and more serious misconduct, and the aggravation far outweighs Li’s cooperation for providing the Stipulation. We reject Li’s argument that he acted in good faith considering he has persisted in engaging in meritless litigation even after several courts advised him that his actions lacked merit.

Li’s blatant disregard for ethical duties and court processes, as well as his pattern of serious misconduct, call for discipline at the highest end of the range provided in the standards. Disbarment is the appropriate discipline given Li’s wrongdoing, the aggravating circumstances, and his unrepentant intent to continue his misconduct. The public, the courts, and the legal

profession are best protected if Li is disbarred, a conclusion that is thoroughly supported by the record and relevant case law.<sup>18</sup>

## VI. RECOMMENDATION

It is recommended that James Hsiaosheng Li, State Bar Number 176662, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

## VII. CALIFORNIA RULES OF COURT, RULE 9.20

It is further recommended that Li be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.<sup>19</sup>

## VIII. COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline

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<sup>18</sup> *Lebbos v. State Bar* (1991) 53 Cal.3d 37 (disbarment for multiple acts of moral turpitude and dishonesty, including pattern of abuse of judicial officers and court system); *In the Matter of Kinney, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 366–369 (disbarment for abuse of court system through relentless lawsuits, aggravated by pattern of wrongdoing, significant harm, and disregard for court process); *In the Matter of Varakin, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 189–190 (disbarment for filing frivolous motions and appeals over 12 years aggravated by lacked insight and refused to change); and *Matter of Schooler* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494, 504–505 (disbarment where attorney with no past discipline engaged in frivolous and dishonest litigation, demonstrated truculence, and disregarded court orders).

<sup>19</sup> For purposes of compliance with rule 9.20(a), 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, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Li is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed 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).)

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 reinstatement or return to active status.

### **IX. MONETARY SANCTIONS**

The court does not recommend the imposition of monetary sanctions as all the misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137 of the Rules of Procedure of the State Bar, which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [rules of statutory construction apply when interpreting Rules Proc. of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

### **X. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

The order that James Hsiaosheng Li be involuntarily enrolled as an inactive attorney of the State Bar pursuant to section 6007, subdivision (c)(4), effective October 24, 2019, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

McGILL, J.

STOVITZ, J.\*

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\* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.