	ORIGINAL		
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2	DIANE L. KARPMAN, SBN 64266 JOANNE EARLS ROBBINS, SBN 8235 KARPMAN & ASSOCIATES		
3	301 North Canon Drive, Suite 303 Beverly Hills, California 90210 (310) 887-3900	FILED	
4	(310) 887-3900	FEB 1 3 2009	
5	Attorneys for Respondent TODD E. MACALUSO	STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
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10	HEARING DEPARTMENT - LOS ANGELES		
11	In the Matter of)	CASE NOS. 06-O-14552, 07-O-10134 & 07-O-10899-RAH	
12	TODD E. MACALUSO	& 07-O-10899-RAH	
13	No. 133009	RESPONDENT'S RESPONSE TO	
14		NOTICE OF DISCIPLINARY	
15	A Member of the State Bar	CHARGES	
16)		
17	Respondent, Todd E. Macaluso, by and through counsel, KARPMAN &		
18	ASSOCIATES, by JoAnne Earls Robbins, hereby answers the Notice of Disciplinary		
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20			
21	1. Respondent admits that Res	pondent was admitted to the practice of law in the	
22			
23	times pertinent to these charges, and that Respondent is currently a member of the State Bar		
24	of California. All further Notices to Respondent in relation to these proceedings are to be		

KARPMAN & ASSOCIATES DIANE L. KARPMAN JOANNE EARLS ROBBINS 301 NORTH CANON DRIVE, SUITE 303 BEVERLY HILLS, CALIFORNIA 90210

sent to counsel at:



GENERAL RESPONSE TO THE CHARGES

2 2. Respondent is a well-known and highly respected attorney who has successfully 3 maintained an excellent reputation for honesty and integrity during his twenty-one (21) year career. He has obtained excellent results for his clients, who will attest to his dedication. 4 5 Respondent has also taken many cases on a pro bono basis and has prosecuted many matters for clients who had been turned down by multiple attorneys before he accepted their 6 7 representation. Respondent has received many awards for his public service and 8 commitment to his clients and to the advancement of laws and regulations to protect our society. He has made extremely generous contributions to worthy causes, especially for 9 residences for the homeless in San Diego and San Diego County, and to Children's Hospital 10 11 of San Diego.

12 3. Any errors that were committed by Respondent were a direct result of mistakes by his office staff in administering and supervising the trust account, because of his inability to 13 attend to those duties at that time. The errors in the trust account all took place during a 14 15 several month period immediately following the unexpected and sudden death of his only brother. His brother, only 44 years of age, suffered a heart attack with no warning and was 16 17 found dead in his home. This was not only traumatic and emotionally debilitating to 18 Respondent, but devastating to their elderly mother, who was divorced and turned to 19 Respondent for support and care. She had depended heavily on Respondent's brother and was dramatically impacted, both physically and psychologically, by his death. Respondent 20 21 was unable to focus and concentrate on some of the responsibilities he had previously 22 performed in his office and entrusted those duties to office staff whom he believed were 23 capable of fulfilling them.

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RESPONSE TO COUNT ONE

4. Respondent, in response to Count One of the State Bar's Notice of Disciplinary
Charges, admits that the checks stated in that Count were paid against insufficient funds.
None of those payees complained to the State Bar.

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5. Respondent specifically denies any wilful violation of Business and
 Professions Code, section 6106. Respondent's actions in failing to know that his trust
 account contained insufficient funds at those particular times were not a result of gross
 negligence, moral turpitude, dishonesty or corruption, but the result of insufficient training
 and supervision of his office staff, due to a personal tragedy in Respondent's family, the
 sudden and unexpected death of his only brother, which caused him severe emotional and
 psychological trauma.

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RESPONSE TO COUNT TWO

6. Respondent, in response to Count Two of the State Bar's Notice of Disciplinary
 Charges, admits that the check stated in that Count was returned for insufficient funds.
 Within one week, the payee of that check was wired the funds, upon her instruction. The
 payee did not complain to the State Bar.

7. Respondent specifically denies any wilful violation of Rules of Professional
Conduct, rule 4-100(A). Respondent's actions in failing to know that his trust account
contained insufficient funds at that particular time were not a result of gross negligence, but
the result of insufficient training and supervision of his office staff, due to a personal tragedy
in Respondent's family, the sudden and unexpected death of his only brother, which caused
him severe emotional and psychological trauma.

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RESPONSE TO COUNT THREE

8. Respondent, in response to Count Three of the State Bar's Notice of
Disciplinary Charges, specifically denies, that he misappropriated any funds, as stated in that
Count.

9. Respondent specifically denies any wilful violation of Business and
 Professions Code, section 6106. Respondent's actions in failing to know that his trust
 account contained insufficient funds at that particular time were not a result of gross
 negligence, moral turpitude, dishonesty or corruption, but the result of insufficient training

and supervision of his office staff, due to a personal tragedy in Respondent's family, the
 sudden and unexpected death of his only brother, which caused him severe emotional and
 psychological trauma.

RESPONSE TO COUNT FOUR

10. Respondent, in response to Count Four of the State Bar's Notice of Disciplinary
Charges, admits that the balance in his trust account fell below the required amount for a
brief period of time. As soon as he became aware that the balance had dropped, he
immediately deposited funds to correct the balance. The client involved did not complain to
the State Bar.

11 11. Respondent specifically denies any wilful violation of Rules of Professional
 12 Conduct, rule 4-100(A). Respondent's actions in failing to know that his trust account
 13 contained insufficient funds at that particular time were not a result of gross negligence, but
 14 the result of insufficient training and supervision of his office staff, due to a personal tragedy
 15 in Respondent's family, the sudden and unexpected death of his only brother, which caused
 16 him severe emotional and psychological trauma.

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RESPONSE TO COUNT FIVE

19 12. Respondent specifically denies any wilful violation of Business and
20 Professions Code, section 6106. Respondent's actions in failing to know that his trust
21 account contained insufficient funds at those particular times were not a result of gross
22 negligence, moral turpitude, dishonesty or corruption, but the result of insufficient training
23 and supervision of his office staff, due to a personal tragedy in Respondent's family, the
24 sudden and unexpected death of his only brother, which caused him severe emotional and
25 psychological trauma.

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13. Respondent, in response to Count Six of the State Bar's Notice of Disciplinary

RESPONSE TO COUNT SIX

Charges, specifically denies, on information and belief, each of the allegations and charges 1 stated in that Count. 2

3 14. Consequently, and as a result, Respondent therefore specifically denies, on information and belief, any wilful violation of Rules of Professional Conduct, rule 4-5 100(A).

<u>RESPONSE TO COUNT SEVEN</u>

15. Respondent, in response to Count Seven of the State Bar's Notice of Disciplinary Charges, specifically denies, on information and belief, each of the allegations and charges stated in that Count.

11 16. Respondent specifically denies any wilful violation of **Business and** Professions Code, section 6106. Any errors that may have occurred were not a result of 12 gross negligence, moral turpitude, dishonesty or corruption, but the result of insufficient 13 training and supervision of his office staff, due to a personal tragedy in Respondent's family, 14 the sudden and unexpected death of his only brother, which caused him severe emotional and 15 psychological trauma. 16

<u>RESPONSE TO COUNT EIGHT</u>

19 17. Respondent, in response to Count Eight of the State Bar's Notice of Disciplinary Charges, specifically denies, on information and belief, any misuse of his trust 20 21 account as stated in that Count.

22 18. Respondent specifically denies any wilful violation of Rules of Professional 23 Conduct, rule 4-100(A). Any mistakes made by Respondent in his use of his trust account at those particular times were simple human error, the result of insufficient training and 24 supervision of his office staff, due to a personal tragedy in Respondent's family, the sudden 25 and unexpected death of his only brother, which caused him severe emotional and 26 27 psychological trauma.

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1	OMNIBUS DENIAL	
2	19. Except as otherwise admitted or denied herein, Respondent specifically denies,	
. 3	on information and belief, each and every allegation contained in Counts One through Eight	
4	of the Notice of Disciplinary Charges.	
5		
6	AFFIRMATIVE DEFENSES	
7	FIRST AFFIRMATIVE DEFENSE	
8	(Failure to State a Disciplinable Offense)	
9	20. The Notice of Disciplinary Charges does not state facts sufficient to constitute	
10	a disciplinable offense.	
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12	SECOND AFFIRMATIVE DEFENSE	
13	(Failure to Give Sufficient Notice of the Charges)	
14	21. The Notice of Disciplinary Charges does not give sufficient Notice of the	
15	charges against Respondent.	
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17	THIRD AFFIRMATIVE DEFENSE	
18	(Estoppel)	
19	22. The Office of Chief Trial Counsel is equitably estopped from asserting each	
20	and all purported charges in the Notice of Disciplinary Charges, by reason of its own acts,	
21	omissions, and conduct, and that of its agents, upon which Respondent relied to Respondent's	
22	prejudice and detriment.	
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24	FOURTH AFFIRMATIVE DEFENSE	
25	(Waiver)	
26	23. The Office of Chief Trial Counsel has waived all purported charges in the	
27	Notice of Disciplinary Charges, by reason of its own acts, omissions, and conduct or that of	
28	its agents.	
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1	FIFTH AFFIRMATIVE DEFENSE
2	(Laches)
3	24. The Notice of Disciplinary Charges does not state facts sufficient to constitute
4	a disciplinable offense in that the Office of Trial Counsel has inexcusably and unreasonably
5	delayed the commencement of the action, to the prejudice of Respondent.
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7	SIXTH AFFIRMATIVE DEFENSE
8	Duplicative Charges
9	25. The Notice of Disciplinary Charges is repetitive and redundant, and states
10	duplicative charges for the same event, including but not limited to Counts One, Three, Five
11	and Seven.
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13	EXTENUATING AND MITIGATING CIRCUMSTANCES
14	26. In the event Respondent is found guilty of unprofessional conduct as charged
15	in the Notice of Disciplinary Charges, Respondent respectfully submits the following facts in
16	mitigation without admitting that such charges are true or that the facts alleged therein
17	constitute professional misconduct:
18	27. Throughout Respondent's professional career, Respondent has successfully
19	endeavored to maintain a high level of respect and an excellent reputation among fellow
20	attorneys and the courts for honesty, integrity, and professional competence in diligently and
21	vigorously representing clients.
22	28. Respondent acted in good faith.
23	29. Respondent exhibited spontaneous candor and cooperation throughout the
24	disciplinary investigation.
25	30. Testimonials will be provided from members of the community, to substantiate
26	Respondent's good character, trustworthiness and excellence as a lawyer.
27	31. The period of time during which the alleged misconduct took place was an
28	anomaly in Respondent's legal career and any behavior during that time was aberrational.
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32. Respondent justifiably relied, in good faith, on the representations and actions
 of others to fulfill certain responsibilities.

3 33. Other mitigating facts and circumstances, which may at this point be
4 confidential, which will be presented in the course of these proceedings.

Dated: February

6 WHEREFORE, Respondent prays that the Hearing Judge find that Respondent did not
7 commit acts constituting professional misconduct, and that the Notice of Disciplinary
8 Charges be dismissed. Alternatively, if misconduct is found, Respondent prays such conduct
9 be excused by virtue of the mitigating and extenuating circumstances as stated above and to
10 be established at the time of the hearing in this matter.

Respectfully submitted by: KARPMAN & ASSOCIATES

Attorneys for Respondent

By JOANNE EARLS ROBBINS

1	KARPMAN & ASSOCIATES		
2	301 North Canon Drive, Suite 303 Beverly Hills, California 90210		
3	Telephone 310-887-3900		
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5			
6	PROOF OF SERVICE BY U.S. MAIL		
7	STATE OF CALIFORNIA)		
8	COUNTY OF LOS ANGELES)		
9	I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the		
10	within-entitled action; my business address is 301 North Canon Drive, Suite 303, Beverly Hills,		
11	California 90210. On February 11, 2009, I served Respondent's Response to Notice of Disciplinary		
12	Charges, In the Matter of Todd E. Macaluso, Case Nos. 06-O-14552, 07-O-10134 and 07-O-10899-		
13	RAH, on all interested parties in said action by placing a true copy thereof enclosed in a sealed envelope		
14	by U.S. Mail with appropriate postage thereon fully prepaid in a U.S. Mail depository addressed as		
15	follows:		
16	TOHOWS:		
17	Aquatin Hamandar Fra		
18			
19			
20	Los Angeles, CA 90015-2299		
21	EVECUTED on Fohmung 11, 2000, at Deverty Hills, Colifornia, I declare under negality		
22	EXECUTED on February 11, 2009, at Beverly Hills, California. I declare under penalty		
23	of perjury that the foregoing is true and correct.		
24	And Dock		
25	Judy Dalton		
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