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13 Attorneys for Respondent
14 Robert Lee Waldman

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BEFORE THE STATE BAR COURT
OF THE STATE OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of

ROBERT LEE WALDMAN,

Member No. 120397

A Member of the State Bar.

) Case No. 09-C-10290

) **RESPONDENT ROBERT LEE**
) **WALDMAN'S RESPONSE TO NOTICE**
) **OF HEARING ON CONVICTION**

FILED

JUN 28 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

kwiktag ° 211 098 811



1 Respondent Robert L. Waldman responds to the Notice of Hearing on Conviction on file
2 herein as follows:

3
4 1. The address to which all further notices to Respondent Waldman in relation to these
5 proceedings may be sent to Respondent's counsel: Robert K. Weinberg, Law Offices of Robert K.
6 Weinberg, 19200 Von Karman Avenue, Suite 380, Irvine, CA 92612, (949) 474-9700; and to co-
7 counsel: Ellen A. Pansky, Pansky Markle Ham LLP, 1010 Sycamore Ave., Suite 308, South
8 Pasadena, CA. 91030, (213) 626-7300.

9 2. Respondent Waldman was convicted of a single count violation of Corp. Code
10 Section 25110 (offering or selling an unqualified, unexempt security).

11 3. Respondent Waldman's position on the facts and circumstances surrounding the
12 conviction is that they do not involve moral turpitude or other misconduct warranting professional
13 discipline. The acts underlying the conviction have no relation to any client complaint, are
14 unrelated to the practice of law, and there is no public protection issue presented.

15 4. Respondent reserves the right to present additional positions in response to assertions
16 and allegations which may be made by the Office of the Chief Trial Counsel.

17 5. Respondent does not object to a hearing on the issue whether the conduct underlying
18 his felony conviction involves moral turpitude or other misconduct warranting discipline.

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20 **FIRST AFFIRMATIVE DEFENSE**

21 (Failure to State a Cause of Action)

22 1. The Notice of Hearing on Conviction does not state facts sufficient to constitute a
23 disciplinary offense.

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25 **SECOND AFFIRMATIVE DEFENSE**

26 (Void for Vagueness)

27 2. Discipline cannot be imposed in this matter consistent with the requirements of the
28 United States and California constitutions, because the notion of "moral turpitude" lacks standards,

1 is vague and ambiguous, and reasonable persons can disagree as to its meaning and application, as
2 acknowledged in case law attempting to interpret the inherently ambiguous concept. Likewise, the
3 concept of "other misconduct warranting discipline" is also unconstitutionally vague, and void for
4 vagueness as applied, because it is standardless and applied only in an illegal *ex post facto* manner
5 to past conduct. Accordingly, the prosecution of these claims violates basic due process standards.

6
7 **THIRD AFFIRMATIVE DEFENSE**

8 (Criminal Violation Underlying Conviction Referral

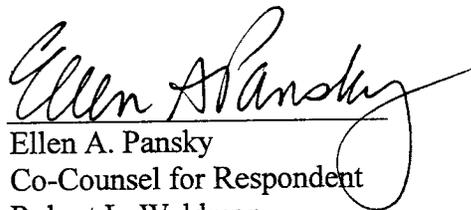
9 Does Not Involve Moral Turpitude)

10 3. Respondent's criminal conviction on which the Notice of Hearing on Conviction
11 Referral Proceeding is based does not involve moral turpitude. A defendant convicted for violating
12 Corp. Code, § 25110 may be found guilty without any criminal intent, mens rea, or other moral
13 culpability. *People v. Clem* (1974) 39 Cal. App. 3d 539, 541-542. Corp. Code, § 25110 does not
14 include scienter as an element which must be proved to establish that a person who offers or sells an
15 unregistered and unexempt security is in violation of the statute. *People v. Corey* (1995) 35 Cal.
16 App. 4th 717, 726-727, overruled in part on other grounds, *People v. Salas* (2006) 37 Cal. 4th 967,
17 overruled on other grounds as stated in *Gomez v. Dexter* (2009, C.D. Cal.) 2009 U.S. Dist. LEXIS
18 110154; in accord *People v. Salas, supra*, 37 Cal. 4th at 971; *People v. Butler* (2012) 212 Cal. App.
19 4th 404, 418.

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21 Dated: June 28, 2016

Respectfully submitted,

PANSKY MARKLE HAM LLP

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25 Ellen A. Pansky
26 Co-Counsel for Respondent
27 Robert L. Waldman
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PROOF OF SERVICE

In the Matter of Robert Waldman

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1010 Sycamore Ave., Suite 308, South Pasadena, California 91030.

On June 28, 2016, I served the foregoing document(s) described as:

RESPONDENT ROBERT LEE WALDMAN'S RESPONSE TO NOTICE OF HEARING ON CONVICTION

on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

Amanda F. Sanchez, Deputy Trial Counsel
Office of the Chief Trial Counsel
Enforcement
The State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017

(X) **BY PERSONAL SERVICE:** I personally delivered such envelope addressed to Amanda F. Sanchez to the California State Bar reception desk, on June 28, 2016.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed June 28, 2016 at Los Angeles, California.



Valerie Markle