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FILED

MAR 11 2014

STATE BAR COURT
 CLERK'S OFFICE
 LOS ANGELES

Attorneys for Respondent
 Anthony Robert Lopez, Jr.

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

In the Matter of

ANTHONY ROBERT LOPEZ, JR.,

Member No. 137401,

A Member of the State Bar.

Case No. 12-O-16226-RAH

**FIRST AMENDED RESPONSE TO
 NOTICE OF DISCIPLINARY CHARGES**

Respondent Anthony Robert Lopez, Jr. responds to the Notice of Disciplinary Charges on file herein as follows:

1. Answering paragraph 1 of the NDC, Respondent admits that he was admitted to the practice of law in the State of California on December 7, 1988, and that he is a member of the State Bar in good standing. Except as admitted, Respondent denies the allegations of paragraph 1.

2. Respondent denies the allegations of paragraph 2 of the NDC.

3. Answering paragraph 3, Respondent avers that he believes that David Baez and Miguel Baez were involved in a car accident in or around May 25, 2007. Except as admitted, Respondent lacks firsthand personal knowledge and denies all other allegations on that basis.

1 4. Answering paragraph 4, Respondent admits that David and Miguel signed a retainer
2 agreement and that the agreement speaks for itself. Except as admitted, Respondent denies the
3 allegations of paragraph 4.

4 5. Answering paragraphs 5 and 6, Respondent lacks firsthand personal knowledge of
5 the facts alleged, and denies the allegations on that basis.

6 6. Answering paragraphs 7 through 9, Respondent admits that Respondent signed
7 certain medical liens for David. Except as admitted, Respondent denies the allegations of
8 paragraphs 7 through 9.

9 7. Answering paragraph 10, Respondent admits that a personal injury action was filed
10 on or about February 27, 2009 against a defendant. Except as admitted, Respondent denies the
11 allegations of paragraph 10.

12 8. Answering paragraph 11, Respondent admits that the personal injury case was settled
13 after mediation and that the settlement documentation speaks for itself. Except as admitted,
14 Respondent denies the allegations of paragraph 11.

15 9. Respondent admits the allegations of paragraph 12.

16 10. Answering paragraphs 13 and 14, Respondent admits that respondent deposited the
17 settlement checks for Miguel and David into the law firm's client trust account. Except as admitted,
18 Respondent denies the allegations of paragraphs 13 and 14.

19 11. Answering paragraph 15, Respondent admits that David and Miguel Baez received
20 certain advances against an anticipated recovery. Except as admitted, Respondent denies the
21 allegations of paragraph 15.

22 12. Respondent denies the allegations of paragraph 16.

23 13. Respondent denies the allegations of paragraph 17 as mischaracterizations.

24 14. Answering paragraph 18, Respondent admits that Attorney Michael Millen contacted
25 Respondent on behalf of Miguel and David Baez and reviewed the status of the case and that
26 Respondent communicated with Attorney Michael Millen. Except as admitted, Respondent denies
27 the allegations of paragraph 18.
28

1 15. Answering paragraph 19, Respondent admits that there was correspondence between
2 Mr. Millen and Respondent's office, that said correspondence speaks for itself, and that Millen, who
3 was acting as an attorney for David and Miguel Baez, was notified that Respondent's office might
4 be required to file an interpleader action. Except as admitted, Respondent denies the allegations of
5 paragraph 19.

6 16. Answering paragraphs 20 and 21, Respondent admits that there was correspondence
7 and communications between Respondent's offices and medical providers and concerning a
8 reasonable distribution of settlement proceeds and resolution of medical liens. Except as admitted,
9 Respondent denies the allegations of paragraph 20.

10 17. Respondent admits the allegations of paragraph 22.

11 18. Respondent denies the allegations of paragraph 23.

12 19. Respondent denies the allegations of paragraph 24.

13 20. Answering paragraph 25, Respondent admits that his office filed an interpleader
14 action on or about December 7, 2012, at the insistence of the State Bar Office of Chief Trial
15 Counsel, which was pressuring Respondent to file an interpleader action even though such action
16 was not in the best interests David and Miguel. Except as admitted, Respondent denies the
17 allegations of paragraph 25.

18 21. Respondent denies the allegations of paragraph 26.

19 22. Respondent denies the allegations of paragraph 27.

20 23. Respondent denies the allegations of paragraph 28.

21 24. Answering paragraph 29, Respondent incorporates his responses to Count One by
22 this reference as if fully set forth herein.

23 25. Respondent denies the allegations of paragraph 30.

24 26. Respondent denies the allegations of paragraph 31.

25 27. Answering paragraph 32, Respondent incorporates his responses to Count One by
26 this reference as if fully set forth herein.

27 28. Respondent denies the allegations of paragraph 33.

28 29. Respondent denies the allegations of paragraph 34.

1 30. Answering paragraph 35, Respondent incorporates his responses to Count One by
2 this reference as if fully set forth herein.

3 31. Answering paragraph 36, Respondent lacks personal knowledge of the facts alleged,
4 and avers that the documentation regarding the incident speaks for itself. Except as admitted,
5 Respondent denies the allegations of paragraph 36.

6 32. Respondent denies the allegations of paragraph 37.

7 33. Respondent denies the allegations of paragraph 38.

8 34. Respondent denies the allegations of paragraph 39.

9 35. Respondent denies the allegations of paragraph 40.

10 36. Answering paragraph 41, Respondent incorporates his responses to Count One by
11 this reference as if fully set forth herein.

12 37. Respondent denies the allegations of paragraphs 42 through 43.

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14 **FIRST AFFIRMATIVE DEFENSE**

15 (Good Faith Judgment)

16 38. The charges against Respondent should be dismissed because Respondent acted in good
17 faith, used reasonable discretion, and exercised reasonable and good faith judgment with respect to his
18 professional obligations, and the violation of any ethical obligation was merely technical, did not harm
19 a client, the public, or the administration of justice, and was merely negligent, rather than willful or
20 grossly negligent.

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22 **SECOND AFFIRMATIVE DEFENSE**

23 (Lack of Harm)

24 39. No persons were harmed by the acts alleged in each and every count of the Notice of
25 Disciplinary Charges.

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40. Respondent's case has been prejudiced due to an unreasonable passage of time and the disappearance of witnesses.

(Failure to Allege Facts Constituting a Disciplinary Violation)

41. The NDC, and each count therein, fails to state facts sufficient to constitute a disciplinary violation.

(Rule 3-3-110(A) Is Unconstitutional *As Applied* Due To Vagueness)

42. Count One is defective because Rule 3-110(A) of the Rules of Professional Conduct is void for vagueness as applied to the facts of this case under the Fifth and Fourteenth Amendments of the United States Constitution, and equivalent state law, because Rule 3-100(A) fails to give reasonable notice that the conduct identified in the NDC constitutes a violation.

WHEREFORE, Respondent prays that the Court find that Respondent did not commit acts constituting professional misconduct, and that the Notice of Disciplinary Charges be dismissed.

Dated: March 11, 2014

PANSKY MARKLE HAM LLP
JAMES I. HAM, ESQ.

By:

James I. Ham
Attorneys for Respondent
Anthony R. Lopez, Jr.

PROOF OF SERVICE

In the Matter of Anthony R. Lopez, Jr.

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 March 11, 2014, I served the foregoing document(s) described as:

FIRST AMENDED RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

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

Lara Bairamian, 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 MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at South Pasadena, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed March 11, 2014 at South Pasadena, California.



Annette Herrera