

1 Respondent Berj Boyajian responds to the Notice of Disciplinary Charges (“NDC”) as
2 follows:

3 **Preliminary Statement**

4 Mr. Boyajian has spent nearly his entire adult life in service of the Armenian community,
5 first in Syria where he was born and first practiced law, and then in the United States, where he
6 moved in 1971 and obtained a law degree and created a successful legal practice. The so-called
7 “misappropriation” that forms the basis of the allegations of the NDC was in fact a continuation
8 of Mr. Boyajian’s charitable efforts toward the Armenian community, and was in no way
9 intended – and did not – personally or professionally benefit Mr. Boyajian. Moreover, when Mr.
10 Boyajian was alerted that he would not be permitted to donate any additional funds he believed
11 in good faith he was authorized to donate to charities of his choice, he voluntarily returned every
12 last dollar, notwithstanding his good faith belief in the agreement he had with interested parties.

13 Mr. Boyajian has lead an exemplary life and legal practice and is a pillar of the Armenian
14 community. The acts complained of in the NDC have been grossly mischaracterized and
15 misconstrued, and in any event, have not caused any damage to any party. Mr. Boyajian
16 respectfully requests that no disciplinary action be taken as a result of the NDC.

17 **Relevant Facts**

18 **Mr. Boyajian’s Education & Background**

19 Mr. Boyajian was admitted to the State Bar of California on December 20, 1974. He was
20 born in 1938 in Aleppo, Syria from Armenian parents. Prior to immigrating to California, Mr.
21 Boyajian practiced law in Aleppo, Syria, having been admitted to the bar there in 1965 after
22 graduating from the University Law School. Mr. Boyajian has never been disciplined in any
23 jurisdiction where he has been admitted.

24 *Education*

25 Syrian University Law School with a License at Law degree (1965)

26 Loyola Law School, Los Angeles, JD (1972 – 1974)

1 *Professional Practice*

2 1965 - 1970 Private practice in Aleppo handling local and international cases

3 1974 - 1979 Partner, Maslansky, Niles, Dougherty & Boyajian, with offices in London

4 1979 - 1981 solo practice

5 1981 - 1992 Partner, Stemple & Boyajian

6 1992 to present, Boyajian & Associates

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8 *Community Activities*

9 From 1975 on, Mr. Boyajian chaired several chapters of the Armenia General Benevolent
10 Union ("AGBU") in Los Angeles, the largest Armenian charitable organization in the world.

11 From 1988 to 1995, he was chairman of the AGBU Western U.S. Region. From 1992 to 1995,
12 Mr. Boyajian was Chairman and President of Armenia Fund, a worldwide fund raising
13 organization dedicated to rebuilding Armenia after the destruction caused by the 1988
14 earthquake. Under AGBU and Armenia Fund auspices, Mr. Boyajian raised tens of millions of
15 dollars to aid Armenia.

16 *Teaching*

17 1958 - 1964 Taught high school in Aleppo while pursuing his legal education

18 1999 - 2008 Adjunct professor, Pepperdine Law School

19 1999 - 2010 Adjunct professor, Loyola Law School

20 1999 - 2014 Adjunct professor, USC Law School

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22 Mr. Boyajian has lectured extensively to legal and professional associations, including
23 the Women Lawyers Association, Italian Lawyers Association, Arab American Lawyers
24 Association, the Genocide Conference at Clark University in October 2011, and others.

25 *Charitable Donations*

26 Mr. Boyajian is a founding benefactor of the Armenian Cathedral in Los Angeles, for
27 which he received the highest medal from the Church, the St. Gregory the Illuminator Medal of
28

1 Honour, which is reserved for those few individuals who have rendered exceptionally honorable
2 and distinguished services in the Armenian Church and community and who have been
3 exceptionally generous in their philanthropic assistance for the betterment of the Armenian
4 community throughout the world. He has also made large contributions to the Mother See (the
5 equivalent of the Vatican for the Armenian Church), AGBU, Loyola Law School, and others.

6 On September 20, 2014, during its 50th Anniversary Celebration Weekend, Loyola Law
7 School unveiled a new donor wall as a new permanent landmark on campus and honored Mr.
8 Boyajian with a plaque reflecting his charitable gift of \$175,300 to the law school. Mr. Boyajian
9 was also instrumental in securing a donation from AGBU of \$350,000 to the Loyola Law
10 School's Center for the Study of Law & Genocide in 2008.

11 Complainants & Vartkes Yeghiayan

12 The complainants are William Paparian, Richard Afarian, and Arlette Afarian-Haccoun.
13 Mr. Paparian is a California attorney, Bar No. 86598. Mr. Paparian has been disciplined by the
14 State Bar following his stipulation that he "failed to perform legal services competently, maintain
15 funds in a client trust account or promptly pay out funds as requested by a client." See
16 <http://members.calbar.ca.gov/fal/Member/Detail/86598>.

17 Mr. Afarian and his wife Ms. Afarian-Haccoun are residents of France.

18 None of the three complainants was ever Mr. Boyajian's client. All three complained to
19 the State Bar after reading allegations concerning him in a newspaper story published in the
20 Glendale News Press on November 3, 2012. The article was planted by California attorney
21 Vartkes Yeghiayan, Cal. Bar. No. 41773.

22 Mr. Yeghiayan has also been disciplined by the State Bar for "fail[ing] to reimburse his
23 client's insurer for nearly \$4,000 in medical bills for more than five years" and for
24 "misappropriate[ing] funds from his client trust account and [] not respond[ing] to his client's
25 status inquiries." Yeghiayan also was privately reprovved in 1994 for a matter involving his trust
26 account. See <http://members.calbar.ca.gov/fal/Member/Detail/41773>.

1 Response to Allegations

2 Jurisdiction

3 1. Mr. Boyajian admits the allegations of paragraph 1.

4 Count One
5 (Rule 4-100(A))

6 2. Mr. Boyajian admits the allegations of paragraph 2.

7 3. Mr. Boyajian admits the allegations of paragraph 3.

8 4. Mr. Boyajian admits the allegations of paragraph 4.

9 5. Mr. Boyajian admits that he was not counsel of record in the class actions identified in
10 paragraph 3, but denies the remaining allegations of paragraph 5. Mr. Boyajian
11 additionally states as follows:

12 Mr. Boyajian was approached by Mr. Yeghiayan in the spring of 2007 about
13 assisting in the distribution of funds from the settlement of the class action lawsuit,
14 *Kyurjkian v. AXA S.A.*, case no. CV 02-01750 USDC Central Dist. of California,
15 (“Kyurjkian Class Action”) brought on behalf of survivors and kin of the Armenian
16 Genocide against a French insurance company. Mr. Boyajian had been involved in the
17 distribution of funds from the settlement of a prior class action case, *Marootian v. New*
18 *York Life*. Mr. Yeghiayan was working with co-counsel Brian Kabateck and Mark
19 Geragos. Mr. Boyajian agreed to assist in the distribution without receiving any
20 compensation – despite the fact that he was offered \$15,000 per month in exchange for
21 his assistance – but simply wanted the right to distribute 25% of the funds earmarked for
22 charity (including unclaimed funds) to the charities of his choice, as class counsel agreed.
23 He understood that he had such an agreement that he would be allowed to distribute at
24 least \$450,000 in unclaimed funds to the charities of his choice. In March 2010, Mr.
25 Boyajian exchanged an email with Mr. Geragos in which Mr. Geragos confirmed that Mr.
26 Yeghiayan would agree that Mr. Boyajian could earmark \$150,000 in charitable
27 contributions from Mr. Yeghiayan’s share of the unclaimed funds earmarked for charity.
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1 See Ex. 1, email dated March 1, 2010. Indeed, in reliance on the agreement from class
2 counsel, Mr. Boyajian pledged approximately \$600,000 to the Armenian Church, of
3 which he had already donated \$200,000 in early 2010 (*see* Ex. 6). In February 2011, Mr.
4 Boyajian distributed \$150,000 to MM Jewelers from the settlement funds to reimburse
5 them for making a \$150,000 contribution to the Armenian Apostolic Church in Armenia
6 on Mr. Boyajian's behalf. Mr. Boyajian understood that he was authorized to make that
7 distribution pursuant to his agreement that he would be allowed to make a distribution of
8 funds of at least \$450,000 to the charities of his choice.

9 Emails between Mr. Kabateck and Mr. Boyajian in December 2009, and between
10 Mr. Kabateck and Mr. Yeghiayan in February 2010, further confirm that Mr. Kabateck,
11 as class counsel and on behalf of all class counsel, understood and agreed that Mr.
12 Boyajian was entitled to designate one fourth of the charitable funds. Further, Mr.
13 Boyajian did not conceal the fact that he was holding money in his client trust account. In
14 March 2010, he informed Mr. Kabateck in an email message sent shortly before he was
15 to undergo surgery that if anything happened to him, that the funds would be transferred
16 by Mr. Kartalian to Mr. Kabateck to donate to charities designated by Mr. Boyajian. *See*
17 Ex. 2.

18 In March 2010, class counsel made a motion to distribute \$2.7 - \$2.8 million from
19 the settlement fund to charities of their choosing, despite the agreement that Mr. Boyajian
20 was entitled to distribute 25% of the unclaimed funds to the charities of his choice. When
21 Mr. Boyajian demanded an explanation, Mr. Kabateck told him that his charities would
22 receive their shares from the uncashed checks returned from class members.

23 Unfortunately, Mr. Boyajian got caught in the crosshairs of a dispute among class
24 counsel that culminated in a lawsuit filed by Mr. Geragos and Mr. Kabateck, as class
25 counsel, on March 11, 2011, against Mr. Yeghiayan for intentional fraud, conspiracy to
26 commit fraud, fraudulent concealment, conversion, breach of fiduciary duty, breach of
27 contract, breach of the implied covenant of good faith and fair dealing, violation of Cal.
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1 Bus. & Prof. Code Section 17200, *et seq.*, and unjust enrichment, based on his “loot[ing
2 of] nearly \$1,000,000 of *cy pres* dollars from class action settlement benefits that were
3 specifically designated...to be used by legitimate charitable organizations to assist the
4 Armenian community.” (emphasis in original) *See* Ex. 3, paragraph 2. In the course of
5 litigating those issues, Mr. Yeghiayan made allegations that Mr. Boyajian was stealing
6 money from the settlement fund to divert attention from his own theft.

7 6. Mr. Boyajian admits the allegations of paragraph 6 and states as follows: a Settlement
8 Fund Board was created to evaluate claims resulting from the settlement. Because AXA
9 was a French company, that Board consisted of three French individuals of Armenian
10 heritage. An administrator for the Settlement Fund Board was hired, Parsegh Kartalian.
11 Mr. Kartalian’s offices were in the same building as Mr. Boyajian’s office, then located
12 at 900 Wilshire Boulevard, Los Angeles. On November 24, 2009, Judge Snyder issued an
13 order that the first distributions be made from the Settlement Fund. That order provided
14 that settlement checks must be cashed within four months after they were issued. The
15 checks were issued on December 24, 2009, and mailed in January 2010. In February
16 2010, the Administrator’s office was effectively closed and Mr. Kartalian was not coming
17 into the office on a regular basis, leading to much frustration from claimants, especially
18 those claimants whose claims had been denied. Mr. Boyajian acted in his absence. Mr.
19 Kartalian gave Mr. Boyajian’s office address as a forwarding address and asked Mr.
20 Boyajian to open the mail since he would not be coming in every day.

21 7. Mr. Boyajian admits the allegations of paragraph 7.

22 8. Mr. Boyajian admits the allegations of paragraph 8.

23 9. Mr. Boyajian admits the allegations of paragraph 9.

24 10. Mr. Boyajian denies the allegations of paragraph 10. Mr. Boyajian was approached by
25 attorney Vartkes Yeghiayan in the spring of 2007 about assisting in the distribution of
26 funds from the settlement of the Kyurkjian Class Action. Mr. Boyajian had been involved
27 in the distribution of funds from the settlement of a prior class action case, *Marootian v.*
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1 *New York Life*. Mr. Yeghiayan was working with co-counsel Mr. Kabateck and Mr.
2 Geragos. Mr. Boyajian agreed to assist in the distribution without receiving any
3 compensation – despite the fact that he was offered \$15,000 per month in exchange for
4 his assistance – but simply wanted the right to distribute 25% of the funds earmarked for
5 charity (including unclaimed funds) to the charities of his choice, as class counsel agreed.
6 He understood that he had such an agreement that he would be allowed to distribute at
7 least \$450,000 in unclaimed funds to the charities of his choice. In March 2010, Mr.
8 Boyajian exchanged an email with Mr. Geragos in which Mr. Geragos confirmed that Mr.
9 Yeghiayan would agree that Mr. Boyajian could earmark \$150,000 in charitable
10 contributions from Mr. Yeghiayan’s share of the unclaimed funds earmarked for charity.
11 *See Ex. 1*, email dated March 1, 2010. Indeed, in reliance on the agreement from class
12 counsel, Mr. Boyajian pledged approximately \$600,000 to the Armenian Church, of
13 which he had already donated \$200,000 in early 2010 (*see Ex. 6*). In February 2011, Mr.
14 Boyajian distributed \$150,000 to MM Jewelers from the settlement funds to reimburse
15 them for making a \$150,000 contribution to the Armenian Apostolic Church in Armenia
16 on Mr. Boyajian’s behalf. Mr. Boyajian understood that he was authorized to make that
17 distribution pursuant to his agreement that he would be allowed to make a distribution of
18 funds of at least \$450,000 to the charities of his choice.

19 Emails between Mr. Kabateck and Mr. Boyajian in December 2009, and between
20 Mr. Kabateck and Mr. Yeghiayan in February 2010, further confirm that Mr. Kabateck,
21 as class counsel and on behalf of all class counsel, understood and agreed that Mr.
22 Boyajian was entitled to designate one fourth of the charitable funds. Further, Mr.
23 Boyajian did not conceal the fact that he was holding money in his client trust account. In
24 March 2010, he informed Mr. Kabateck in an email message sent shortly before he was
25 to undergo surgery that if anything happened to him, that the funds would be transferred
26 by Mr. Kartalian to Mr. Kabateck to donate to charities designated by Mr. Boyajian. *See*
27 *Ex. 2*.

1 In March 2010, class counsel made a motion to distribute \$2.7 - \$2.8 million from
2 the settlement fund to charities of their choosing, despite the agreement that Mr. Boyajian
3 was entitled to distribute 25% of the unclaimed funds to the charities of his choice. When
4 Mr. Boyajian demanded an explanation, Mr. Kabateck told him that his charities would
5 receive their shares from the uncashed checks returned from class members.

6 Unfortunately, Mr. Boyajian got caught in the crosshairs of a dispute among class
7 counsel that culminated in a lawsuit filed by Mr. Geragos and Mr. Kabateck, as class
8 counsel, on March 11, 2011, against Mr. Yeghiayan for intentional fraud, conspiracy to
9 commit fraud, fraudulent concealment, conversion, breach of fiduciary duty, breach of
10 contract, breach of the implied covenant of good faith and fair dealing, violation of Cal.
11 Bus. & Prof. Code Section 17200, *et seq.*, and unjust enrichment, based on his “loot[ing
12 of] nearly **\$1,000,000** of *cy pres* dollars from class action settlement benefits that were
13 specifically designated...to be used by legitimate charitable organizations to assist the
14 Armenian community.” (emphasis in original) *See* Ex. 3, paragraph 2. In the course of
15 litigating those issues, Mr. Yeghiayan made allegations that Mr. Boyajian was stealing
16 money from the settlement fund to divert attention from his own theft.

17 11. Mr. Boyajian admits the allegations of paragraph 11, but denies that the bank account
18 was opened for anything but a legitimate business purpose. Indeed, the account was
19 opened years before the Kyurkjian Class Action was filed.

20 12. Mr. Boyajian denies the allegations of paragraph 12. Mr. Kartalian had asked Mr.
21 Boyajian to receive returned mail and mail directed to him as administrator . Six
22 undeliverable checks totaling \$194,166 were received in April 2010, including one
23 payable to Iveta Kalantaryan. Mr. Boyajian deposited those six checks into the client trust
24 account because they were to be stale dated and uncashable, per Judge Snyder’s order, on
25 April 25, 2010 and because he had an agreement with class counsel that would allow him
26 to distribute 25% of the charitable funds.

27 13. Mr. Boyajian denies the allegations of paragraph 13. Mr. Kartalian had asked Mr.
28

1 Boyajian to receive returned mail and mail directed to him as administrator. Six
2 undeliverable checks totaling \$194,166 were received in April 2010, including one
3 payable to Khachatur Kazazyan. Mr. Boyajian deposited those six checks into the client
4 trust account because they were to be stale dated and uncashable, per Judge Snyder's
5 order, on April 25, 2010 and because he had an agreement with class counsel that would
6 allow him to distribute 25% of the charitable funds.

7 14. Mr. Boyajian denies the allegations of paragraph 13. Mr. Kartalian had asked Mr.
8 Boyajian to receive returned mail and mail directed to him as administrator. Six
9 undeliverable checks totaling \$194,166 were received in April 2010, including one
10 payable to Khachatur Kazazyan. Mr. Boyajian deposited those six checks into the client
11 trust account because they were to be stale dated and uncashable, per Judge Snyder's
12 order, on April 25, 2010 and because he had an agreement with class counsel that would
13 allow him to distribute 25% of the charitable funds.

14 15. Mr. Boyajian denies the allegations of paragraph 15. Mr. Kartalian had asked Mr.
15 Boyajian to receive returned mail and mail directed to him as administrator. Six
16 undeliverable checks totaling \$194,166 were received in April 2010, including one
17 payable to Khachatur Kazazyan. Mr. Boyajian deposited those six checks into the client
18 trust account because they were to be stale dated and uncashable, per Judge Snyder's
19 order, on April 25, 2010 and because he had an agreement with class counsel that would
20 allow him to distribute 25% of the charitable funds.

21 16. Mr. Boyajian denies the allegations of paragraph 16. On March 22, 2010, Mr. Boyajian
22 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
23 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
24 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
25 pursuant to her authorization. *See* Ex. 4. These ten checks were given to Mr. Boyajian by
26 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
27 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
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1 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
2 2010. *See* Ex. 4.

3 17. Mr. Boyajian denies the allegations of paragraph 17. On March 22, 2010, Mr. Boyajian
4 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
5 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
6 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
7 pursuant to her authorization. *See* Ex. 4. These ten checks were given to Mr. Boyajian by
8 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
9 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
10 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
11 2010. *See* Ex. 4.

12 18. Mr. Boyajian denies the allegations of paragraph 18. On March 22, 2010, Mr. Boyajian
13 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
14 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
15 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
16 pursuant to her authorization. *See* Ex. 4. These ten checks were given to Mr. Boyajian by
17 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
18 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
19 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
20 2010. *See* Ex. 4.

21 19. Mr. Boyajian denies the allegations of paragraph 19. On March 22, 2010, Mr. Boyajian
22 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
23 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
24 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
25 pursuant to her authorization. *See* Ex. 4. These ten checks were given to Mr. Boyajian by
26 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
27 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
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1 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
2 2010. *See* Ex. 4.

3 20. Mr. Boyajian denies the allegations of paragraph 20. On March 22, 2010, Mr. Boyajian
4 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
5 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
6 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
7 pursuant to her authorization. *See* Ex. 4. These ten checks were given to Mr. Boyajian by
8 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
9 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
10 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
11 2010. *See* Ex. 4.

12 21. Mr. Boyajian denies the allegations of paragraph 21. On March 22, 2010, Mr. Boyajian
13 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
14 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
15 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
16 pursuant to her authorization. *See* Ex. 4. These ten checks were given to Mr. Boyajian by
17 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
18 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
19 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
20 2010. *See* Ex. 4.

21 22. Mr. Boyajian denies the allegations of paragraph 22. On March 22, 2010, Mr. Boyajian
22 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
23 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
24 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
25 pursuant to her authorization. *See* Ex. 4. These ten checks were given to Mr. Boyajian by
26 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
27 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
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1 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
2 2010. *See Ex. 4.*

3 23. Mr. Boyajian denies the allegations of paragraph 23. On March 22, 2010, Mr. Boyajian
4 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
5 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
6 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
7 pursuant to her authorization. *See Ex. 4.* These ten checks were given to Mr. Boyajian by
8 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
9 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
10 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
11 2010. *See Ex. 4.*

12 24. Mr. Boyajian denies the allegations of paragraph 24. On March 22, 2010, Mr. Boyajian
13 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
14 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
15 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
16 pursuant to her authorization. *See Ex. 4.* These ten checks were given to Mr. Boyajian by
17 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
18 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
19 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
20 2010. *See Ex. 4.*

21 25. Mr. Boyajian denies the allegations of paragraph 25. On March 22, 2010, Mr. Boyajian
22 issued check no. 1089 to Ani Kartalian, wife of Parsegh Kartalian, in the amount of
23 \$94,392. This amount represented ten checks that had been made payable to A. Atamian,
24 which was Ani Kartalian's maiden name and S. Atamian, who is Ani Kartalian's mother,
25 pursuant to her authorization. *See Ex. 4.* These ten checks were given to Mr. Boyajian by
26 Mr. Kartalian, Ani's husband, because Ani's bank would not accept the checks under her
27 maiden name. These checks were deposited into Mr. Boyajian's Union Bank client trust
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1 account. Ms. Kartalian's funds were promptly disbursed by check no. 1089 on March 22,
2 2010. *See* Ex. 4.

3 26. Mr. Boyajian denies the allegations of paragraph 26. On January 20, 2012, Mr. Boyajian
4 issued a check in the amount of \$23,805 to Patricia Vartan. *See* Ex. 5. A check had been
5 issued to Ms. Vartan in March 2010 but was not cashed. The January 2012 check was the
6 replacement check.

7 27. Mr. Boyajian denies the allegations of paragraph 27. Mr. Kartalian had asked Mr.
8 Boyajian to receive returned mail and mail directed to him as administrator. Six
9 undeliverable checks totaling \$194,166 were received in April 2010, including one
10 payable to Ahsot Mkhitarian. Mr. Boyajian deposited those six checks into the client trust
11 account because they were to be stale dated and uncashable, per Judge Snyder's order, on
12 April 25, 2010 and because he had an agreement with class counsel that would allow him
13 to distribute 25% of the charitable funds.

14 28. Mr. Boyajian denies the allegations of paragraph 28. Mr. Kartalian had asked Mr.
15 Boyajian to receive returned mail and mail directed to him as administrator. Six
16 undeliverable checks totaling \$194,166 were received in April 2010, including one
17 payable to Ahsot Mkhitarian. Mr. Boyajian deposited those six checks into the client trust
18 account because they were to be stale dated and uncashable, per Judge Snyder's order, on
19 April 25, 2010 and because he had an agreement with class counsel that would allow him
20 to distribute 25% of the charitable funds.

21 29. Mr. Boyajian denies the allegations of paragraph 29 and states as follows: in June 2012, a
22 check in the amount of \$194,166 was written to the client trust account of Mr. Boyajian's
23 counsel Michael Lightfoot, who in turn wrote a check in that amount that was returned to
24 the AXA settlement fund. All monies comprising the 17 checks were returned and
25 accounted for by June 2012.

26 30. Mr. Boyajian denies the allegations of paragraph 30.

27 31. Mr. Boyajian denies the allegations of paragraph 31. As set forth above, Mr. Boyajian
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1 never intended to, nor did he, profit from the funds he set aside for charitable purposes,
2 pursuant to the documented agreement among class counsel. Indeed, the evidence shows
3 that he had already donated \$200,000 to the Armenian Church from the settlement funds.
4 *See Ex. 6.*

5 32. Mr. Boyajian denies the allegations of paragraph 32. As set forth above, Mr. Boyajian
6 never intended to, nor did he, profit from the funds he set aside for charitable purposes,
7 pursuant to the documented agreement among class counsel. Indeed, the evidence shows
8 that he had already donated \$200,000 to the Armenian Church from the settlement funds.
9 *See Ex. 6*

10 Count Two
(Rule 4-100(A))

11 33. Mr. Boyajian incorporates his previous responses to the paragraphs referenced in
12 paragraph 33 as if set forth in full.

13 34. Mr. Boyajian denies the allegations of paragraph 34. Zaven Halebian has been a friend of
14 Mr. Boyajian since Mr. Boyajian was a lawyer in Aleppo, Syria, fifty years ago. During
15 the relevant time period, Mr. Halebian resided in Aleppo. AXA settlement checks
16 totaling \$574,425 payable to Mr. Halebian from the AXA settlement fund were deposited
17 into Mr. Halebian's account at Pacific Western Bank. Because of the deteriorating
18 conditions in Syria, Mr. Halebian gave Mr. Boyajian a power of attorney and Mr.
19 Boyajian agreed to disburse funds as directed by Mr. Halebian. When Mr. Halebian
20 opened an account at First California Bank, he asked Mr. Boyajian to transfer funds to
21 that account. Their primary mode of communication was by telephone, as evidenced by
22 phone bills documenting the many calls to Mr. Halebian. There were, however, a few
23 communications by email. Notably, in May 2012, Mr. Boyajian sent Mr. Halebian a
24 statement of his account at First California Bank (over which Mr. Boyajian had power of
25 attorney), which showed an account balance of \$585,830 (Mr. Boyajian had deposited
26 approximately \$11,000 into the account as reimbursement to Mr. Halebian on an
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1 unrelated matter). *See* Ex. 7. On July 17, 2012, Mr. Halebian's daughter, in an email
2 addressed to "Uncle Berj" asked Mr. Boyajian to wire \$25,000 to her account to pay her
3 tuition at Harvard University. *See* Ex. 8. Despite their many decades of friendship, Mr.
4 Halebian testified falsely at his deposition that he was unaware of the deposit of the AXA
5 settlement checks, despite the May 2012 email from Mr. Boyajian, which showed an
6 account balance of \$585,830. *See* Ex. 9, 27:15-28 (stating that he was "shocked" in
7 September 2012 to see the \$574,425 account balance). Mr. Boyajian believes that Mr.
8 Halebian was pressured to falsely testify by Mr. Yeghiayan's threats that Mr. Halebian
9 would lose his green card and be unable to leave Syria.

10 35. Mr. Boyajian denies the allegations of paragraph 35. AXA settlement checks totaling
11 \$574,425 payable to Mr. Halebian from the AXA settlement fund were deposited into
12 Mr. Halebian's account at Pacific Western Bank. Because of the deteriorating conditions
13 in Syria, Mr. Halebian gave Mr. Boyajian a power of attorney and Mr. Boyajian agreed to
14 disburse funds as directed by Mr. Halebian. When Mr. Halebian opened an account at
15 First California Bank, he asked Mr. Boyajian to transfer funds to that account. Their
16 primary mode of communication was by telephone, as evidenced by phone bills
17 documenting the many calls to Mr. Halebian. There were, however, a few
18 communications by email. Notably, in May 2012, Mr. Boyajian sent Mr. Halebian a
19 statement of his account at First California Bank (over which Mr. Boyajian had power of
20 attorney), which showed an account balance of \$585,830 (Mr. Boyajian had deposited
21 approximately \$11,000 into the account as reimbursement to Mr. Halebian on an
22 unrelated matter). *See* Ex. 7. On July 17, 2012, Mr. Halebian's daughter, in an email
23 addressed to "Uncle Berj" asked Mr. Boyajian to wire \$25,000 to her account to pay her
24 tuition at Harvard University. *See* Ex. 8. Despite their many decades of friendship, Mr.
25 Halebian testified falsely at his deposition that he was unaware of the deposit of the AXA
26 settlement checks, despite the May 2012 email from Mr. Boyajian attaching the statement
27 of Mr. Halebian's account at First California Bank, which showed an account balance of
28

1 \$585,830. *See* Ex. 9, 27:15-28 (stating that he was “shocked” in September 2012 to see
2 the \$574,425 account balance). Mr. Boyajian believes that Mr. Halebian was pressured to
3 falsely testify by Mr. Yeghiayan’s threats that Mr. Halebian would lose his green card
4 and be unable to leave Syria.

5 36. Mr. Boyajian denies the allegations of paragraph 36. AXA settlement checks totaling
6 \$574,425 payable to from the AXA settlement fund Mr. Halebian were deposited into
7 Mr. Halebian’s account at Pacific Western Bank. Because of the deteriorating conditions
8 in Syria, Mr. Halebian gave Mr. Boyajian a power of attorney and Mr. Boyajian agreed to
9 disburse funds as directed by Mr. Halebian. When Mr. Halebian opened an account at
10 First California Bank, he asked Mr. Boyajian to transfer funds to that account. Their
11 primary mode of communication was by telephone, as evidenced by phone bills
12 documenting the many calls to Mr. Halebian. There were, however, a few
13 communications by email. Notably, in May 2012, Mr. Boyajian sent Mr. Halebian a
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15 attorney), which showed an account balance of \$585,830 (Mr. Boyajian had deposited
16 approximately \$11,000 into the account as reimbursement to Mr. Halebian on an
17 unrelated matter). *See* Ex. 7. On July 17, 2012, Mr. Halebian’s daughter, in an email
18 addressed to “Uncle Berj” asked Mr. Boyajian to wire \$25,000 to her account to pay her
19 tuition at Harvard University. *See* Ex. 8. Despite their many decades of friendship, Mr.
20 Halebian testified falsely at his deposition that he was unaware of the deposit of the AXA
21 settlement checks, despite the May 2012 email from Mr. Boyajian attaching the statement
22 of Mr. Halebian’s account at First California Bank, which showed an account balance of
23 \$585,830. *See* Ex. 9, 27:15-28 (stating that he was “shocked” in September 2012 to see
24 the \$574,425 account balance). Mr. Boyajian believes that Mr. Halebian was pressured to
25 falsely testify by Mr. Yeghiayan’s threats that Mr. Halebian would lose his green card
26 and be unable to leave Syria.

27 37. Mr. Boyajian denies the allegations of paragraph 37. AXA settlement checks totaling
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1 \$574,425 payable to Mr. Halebian from the AXA settlement fund were deposited into
2 Mr. Halebian's account at Pacific Western Bank. Because of the deteriorating conditions
3 in Syria, Mr. Halebian gave Mr. Boyajian a power of attorney and Mr. Boyajian agreed to
4 disburse funds as directed by Mr. Halebian. When Mr. Halebian opened an account at
5 First California Bank, he asked Mr. Boyajian to transfer funds to that account. Their
6 primary mode of communication was by telephone, as evidenced by phone bills
7 documenting the many calls to Mr. Halebian. There were, however, a few
8 communications by email. Notably, in May 2012, Mr. Boyajian sent Mr. Halebian a
9 statement of his account at First California Bank (over which Mr. Boyajian had power of
10 attorney), which showed an account balance of \$585,830 (Mr. Boyajian had deposited
11 approximately \$11,000 into the account as reimbursement to Mr. Halebian on an
12 unrelated matter). *See Ex. 7.* On July 17, 2012, Mr. Halebian's daughter, in an email
13 addressed to "Uncle Berj" asked Mr. Boyajian to wire \$25,000 to her account to pay her
14 tuition at Harvard University. *See Ex. 8.* Despite their many decades of friendship, Mr.
15 Halebian testified falsely at his deposition that he was unaware of the deposit of the AXA
16 settlement checks, despite the May 2012 email from Mr. Boyajian attaching the statement
17 of Mr. Halebian's account at First California Bank, which showed an account balance of
18 \$585,830. *See Ex. 9, 27:15-28* (stating that he was "shocked" in September 2012 to see
19 the \$574,425 account balance). Mr. Boyajian believes that Mr. Halebian was pressured to
20 falsely testify by Mr. Yeghiayan's threats that Mr. Halebian would lose his green card
21 and be unable to leave Syria.

22 38. Mr. Boyajian denies the allegations of paragraph 38. As set forth above, Mr. Boyajian
23 never intended to, nor did he, profit from the funds he set aside for charitable purposes,
24 pursuant to the documented agreement among class counsel. Indeed, the evidence shows
25 that he had already donated \$200,000 to the Armenian Church from the settlement funds.
26 *See Ex. 6*

27 39. Mr. Boyajian denies the allegations of paragraph 39. As set forth above, Mr. Boyajian
28

1 never intended to, nor did he, profit from the funds he set aside for charitable purposes,
2 pursuant to the documented agreement among class counsel. Indeed, the evidence shows
3 that he had already donated \$200,000 to the Armenian Church from the settlement funds.
4 See Ex. 6

5 Count Three
6 (Section 6106)

7 40. Mr. Boyajian incorporates his previous responses to the paragraphs referenced in
8 paragraph 40 as if set forth in full.

9 41. Mr. Boyajian denies the allegations of paragraph 41.

10 Affirmative Defenses

- 11 1. The NDC and every count in it, fail to plead a disciplinable offense.
12 2. The NDC and every count in it, fail to provide adequate notice of the conduct alleged to
13 violate the rule (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.
14 163; *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179).

15 Presence of Mitigating Circumstances/Absence of Aggravating Circumstances

- 16 1. Each of the applicable mitigating circumstances set forth in Rules of Procedure of the
17 State Bar of California, Rule 1.6, exist in this case:
18 Rule 1.6(a): there is an absence of any prior record of discipline over Mr. Boyajian's 42
19 years of practice, and the present alleged misconduct will not recur because Mr. Boyajian
20 is virtually retired (he has only one case pending and intends to retire upon the resolution
21 of that case);
22 Rule 1.6 (b): Mr. Boyajian had a good faith belief that is honestly held and objectively
23 reasonable – particularly given the supporting evidence referenced above – that he was
24 entitled to make charitable donations from the settlement fund. Mr. Boyajian had a good
25 faith belief that he was entitled to disburse at least \$450,000 from his client trust account
26 in March 2011 based on his extensive communications with Mr. Yeghiayan, Mr.
27 Kabateck and Mr. Geragos. That belief was reasonable, given that Mr. Boyajian had
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1 distributed funds as part of his participation in the settlement process in *Marootian v.*
2 *New York Life*;

3 Rule 1.6(c): no one was harmed by Mr. Boyajian's conduct. All funds were restored to
4 trust and refunded back to the AXA settlement fund and claimants. Those funds were
5 ultimately distributed according to Judge Snyder's order filed April 21, 2014. Judge
6 Snyder found no basis to refer Mr. Boyajian to the State Bar for discipline (*see ex. 10*);

7 Rule 1.6(e): Mr. Boyajian has always been forthcoming regarding his possession of funds
8 and has displayed candor and cooperation;

9 Rule 1.6(f): Mr. Boyajian's contributions to the Armenian community and his over 40
10 years of unblemished legal practice exemplify his extraordinary good character;

11 Rule 1.6(g): upon being notified that he would not be permitted to make additional
12 charitable donations (he had already donated \$200,000 to the Armenian Church), Mr.
13 Boyajian took prompt objective steps to return the funds;

14 Rule 1.6(h): misconduct, if it occurred, occurred in February 2011. Not only is it remote
15 in time, it is or is approaching being time barred by State Bar Rule of Procedure 5.21;

16 Rule 1.6(i): the original complaint by Mr. Paparian in this matter was made in November
17 12, 2012. It was appropriately closed on the recommendation of veteran State Bar
18 investigator Joy Nunley in May 2013. It was re-opened after review by the Audit and
19 Review Unit in July 2014. Nothing happened until former State Bar Executive Director
20 Joseph Dunn was fired in November 2014 and filed a lawsuit against the State Bar,
21 represented by Mr. Geragos, making allegations against the former Chief Trial Counsel.
22 It was then slated for assignment to Special Deputy Trial Counsel pursuant to State Bar
23 Rule of Procedure 2201. It has since languished for the better part of two years. The
24 passage of time has made it difficult for Mr. Boyajian to obtain bank records as Union
25 Bank only keeps copies of checks and deposit items for five years, prejudicing Mr.
26 Boyajian; and

27 Rule 1.6(j): full restitution of all remaining funds under Mr. Boyajian's control was made
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1 in June 2012, before this State Bar complaint was made. There have been no civil or
2 criminal actions instituted based on these facts.

3 2. By contrast, none of the aggravating circumstances set forth in Rules of Procedure of the
4 State Bar of California, Rule 1.5 apply:

5 Rule 1.5(a): Mr. Boyajian has no prior record of discipline in any jurisdiction in which he
6 has practiced;

7 Rule 1.5(b) & (c): there were not multiple acts of wrongdoing or a pattern of misconduct,
8 but rather, a single attempt to secure funds for charity per class counsel's agreement;

9 Rule 1.5(d): as set forth above, Mr. Boyajian had a good faith belief that he could set
10 aside and donate funds to charities of his choice, and he had already donated \$200,000 to
11 the Armenian Church from the settlement funds;

12 Rule 1.5(e), (f), and (g): there has been no misrepresentation, concealment, or
13 overreaching – Mr. Boyajian has always been transparent about his possession of funds
14 and his intentions with those funds (i.e., to donate them to charity) based on his
15 agreements with class counsel;

16 Rule 1.5(h): there are no uncharged violations of the Business and Professions Code or
17 the Rules of Professional Conduct;

18 Rule 1.5(i): Mr. Boyajian voluntarily accounted for and returned the entrusted funds;

19 Rule 1.5(j): there has been no harm to any client, the public, or the administration of
20 justice;

21 Rule 1.5(k): Mr. Boyajian fully rectified the alleged consequences of the alleged
22 misconduct;

23 Rule 1.5(l): Mr. Boyajian has always been candid and cooperated regarding the return of
24 funds and has cooperated with the State Bar during disciplinary investigations or
25 proceedings;

26 Rule 1.5(m): Mr. Boyajian has made full restitution; and

27 Rule 1.5(n): there is no victim here, as Mr. Boyajian always intended that the funds
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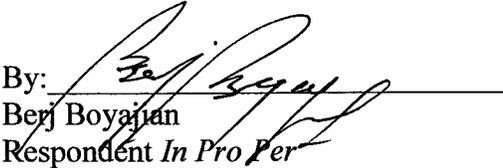
1 would be given to a charity.

2 **Address for Service**

3 All documents in this matter should be served on Mr. Boyajian at the address above.

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5 Respectfully submitted,

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7 Dated: September 12, 2016

8 By: 
9 Berj Boyajian
10 Respondent *In Pro Per*

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PROOF OF SERVICE BY MAIL
C.C.P. 1013a

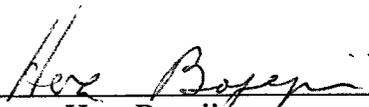
I declare that I am a resident of the County of Los Angeles, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is 556 Chalette Dr., Beverly Hills, CA 90210.

I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

On September 12, 2016, I served the RESPONSE TO NOTICE OF DISCIPLINARY CHARGES in Case Nos. 12-O-17778; 15-O-15098; and 15-O-15691 on the party listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Beverly Hills, California addressed as follows:

EDWARD J. MCINTYRE
SPECIAL DEPUTY TRIAL COUNSEL
Symphony Towers
750 B Street, Suite 2100
San Diego, California 92101

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 12, 2016, at Beverly Hills, California.



Hera Boyajian