

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: <b>13-O-10583-RAP</b>
	)	(13-O-10974); 14-J-02522 (Cons.)
<b>ARSHAK BARTOUMIAN,</b>	)	
	)	<b>DECISION AND ORDER OF INVOLUNTARY</b>
<b>Member No. 210370,</b>	)	<b>INACTIVE ENROLLMENT</b>
	)	
A Member of the State Bar.	)	
_____	)	

**Introduction**<sup>1</sup>

In this proceeding, the Office of the Chief Trial Counsel of the State of Bar of California (State Bar) charged respondent Arshak Bartoumian (respondent) with 54 counts of misconduct involving two correlated matters and, in a consolidated matter, with substantial additional professional misconduct as found by the United States District Court for the Central District of California. (Business and Professions Code section 6049.1; Rules of Proc. of State Bar, rules 5.350 to 5.354.) The charges in the two correlated matters include maintaining unjust actions (18 counts); failing to obey court orders (18 counts), and failing to report judicial sanctions to the State Bar (18 counts). The misconduct found by the United States Central District Court included findings of failing to perform legal services with competence, failing to obey court orders, failing to report judicial sanctions to the State Bar, failing to maintain respect to the court, and failing to only maintain actions that appear to be legal or just.

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

On June 30, 2014, the court issued an order, based on a motion by the State Bar, dismissing 24 counts from the two correlated matters without prejudice. The court finds respondent culpable on 22 of the remaining 30 counts.

In regard to the United States Central District Court matter, the court finds respondent committed extensive additional misconduct. This misconduct included failing to perform legal services with competence, failing to obey court orders, failing to report sanctions, failing to maintain respect due to the court, and failing to maintain legal or just actions.

After considering the facts, the law, and the extent of the misconduct, the court recommends that respondent be disbarred.

#### **Significant Procedural History**

On October 24, 2013, the State Bar filed a notice of disciplinary charges (NDC) against respondent in case nos. 13-O-10583 and 13-O-10974. Respondent filed a response to this NDC on December 11, 2013. On March 30, 2014, the State Bar filed a second NDC against respondent in case no. 14-J-02522. Respondent did not file a response to the second NDC.<sup>2</sup>

The State Bar was represented by Deputy Trial Counsel Ross Viselman. Respondent was represented by attorney David A. Clare. Trial was held on August 25 and 26, 2014. The court took this matter under submission for decision on August 26, 2014.

#### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 4, 2000, and has been a member of the State Bar of California since that date.

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<sup>2</sup> Although no response to the second NDC was filed, respondent participated in the proceedings and the State Bar did not seek to enter his default.

## **General Facts**

As illustrated below, respondent routinely and repeatedly filed or perpetuated lawsuits in the United States Central District Court of California that he did not intend to prosecute. These lawsuits were brought against banks or other financial service institutions under the Fair Debt Collections Practices Act, Fair Credit Reporting Act, or related statutes. In these virtually identical cases, respondent routinely failed to file a response to defendants' motions to dismiss, motions for judgment on the pleadings, or other dispositive motions. On other occasions, respondent failed to serve defendants, failed to appear at hearings, and failed to comply with the applicable rules of procedure.

As defendants began filing motions to dismiss and requests for sanctions, respondent effectively gave up. He repeatedly failed to oppose these motions or participate in the proceedings. Although respondent was not opposing motions to dismiss, he continued, for a time, to file new matters that were virtually identical to those being dismissed.

### **Case No. 13-O-10974 – The Arutyunyan v. Cavalry Portfilio Services Matter<sup>3</sup>**

#### **Facts**

On October 9, 2012, respondent substituted in as counsel of record in place of the plaintiff, who was pro per, in *Ashkhen Arutyunyan v. Cavalry Portfolio Services, et al.*, case no. CV 12-04122, in the United States Central District Court of California (*Arutyunyan*). On October 29, 2012, *Arutyunyan* was dismissed for failure to prosecute. Respondent remained counsel of record until March 13, 2013, when the case was terminated.

On February 11, 2013, the court in *Arutyunyan* ordered respondent to pay sanctions to defense counsel for Resurgent Capital and Northland Group in the total amount of \$13,278.50.

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<sup>3</sup> Case no. 13-O-10583 (Counts One through Three) was dismissed prior to trial upon the request of the State Bar.

These sanctions were based on respondent's failure to submit an opposition to the defendants' motions for attorneys' fees and costs. In ordering sanctions against respondent, the court deemed respondent's failure to oppose the defendants' motions for attorneys' fees and costs to be a concession to the allegations of bad faith and a demonstration of his consent to the attorneys' fees.

Respondent was or should have been aware of the sanctions award, but failed to pay any portion of the sanctions to either party.<sup>4</sup> Respondent also failed to report the sanctions imposed by the court in *Arutyunyan* to the State Bar of California.

### **Conclusions**

#### ***Count Four – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

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. Here, respondent was only attorney of record for a short period of time before the sanctions order, and the court's finding of bad faith was based on respondent's failure to oppose the motion for sanctions. Accordingly, the court finds that there is not clear and convincing evidence that respondent maintained an unjust action, in willful violation of section 6068, subdivision (c). Count Four is therefore dismissed with prejudice.

#### ***Count Five – § 6103 [Failure to Obey a Court Order]***

Section 6103 provides, in pertinent part, that willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause

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<sup>4</sup> There is no evidence in the record that the court in this matter, or any other matter referenced in this decision, granted any type of motion extending respondent's time to pay sanctions or providing relief from the payment of sanctions.

for suspension or disbarment. The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Arutyunyan*.

***Count Six – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery. The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Arutyunyan* to the State Bar of California.

**The Yepremyan v. GC Services Matter**

**Facts**

On May 21, 2012, respondent filed the initial complaint in *Gayane A. Yepremyan v. GC Services LP, et al.*, case no. CV 12-04380, in the United States Court for the Central District (*Yepremyan I*). Respondent remained counsel of record until July 22, 2013, when the case was terminated.

On January 18, 2013, the court in *Yepremyan I* ordered respondent to pay sanctions to defense counsel in the amount of \$30,748.09. These sanctions were based on respondent's bad faith filing of frivolous litigation and his failure to conform to the local rules. Respondent was or should have been aware of the sanctions award, but failed to pay any portion of the sanctions. Respondent also failed to report the sanctions imposed by the court in *Yepremyan I* to the State Bar of California.

## **Conclusions**

### ***Count Seven – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

The court finds that there is clear and convincing evidence that respondent maintained an unjust action, in willful violation of section 6068, subdivision (c), by filing a frivolous lawsuit in *Yepremyan I* that he did not intend to prosecute.

### ***Count Eight – § 6103 [Failure to Obey a Court Order]***

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Yepremyan I*.

### ***Count Nine – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Yepremyan I* to the State Bar of California.

## **The Balasanyan v. Department Stores National Bank Matter**

### **Facts**

On September 5, 2012, respondent filed the initial complaint in *Balasanyan v. Department Stores National Bank, et al.*, case no. CV 12-07589, in the United States Central District Court of California (*Balasanyan*). On November 13, 2012, the court issued an order to show cause why respondent should not be sanctioned in *Balasanyan*. After the order to show cause hearing, the court gave respondent an opportunity to show, in writing, why he should not be sanctioned for bringing a frivolous claim. On or about November 26, 2012, respondent provided the court with a declaration citing numerous personal and health problems. Respondent remained counsel of record until November 27, 2012, when he was substituted out of the case.

On January 13, 2013, the court ordered respondent to pay sanctions to defense counsel in the amount of \$7,548.49. These sanctions were based on respondent's repeated filing of frivolous litigation and his failure to defend against motions to dismiss. Further, the court rejected respondent's attempts to blame his lack of performance on his health problems, noting that respondent's health problems did not prevent him from filing perhaps more than 100 virtually identical cases in the Central District.

Respondent was or should have been aware of the sanctions award, but failed to pay any portion of the sanctions. Respondent also failed to report the sanctions to the State Bar of California.

### **Conclusions**

#### ***Count Thirteen<sup>5</sup> – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

The court finds that there is clear and convincing evidence that respondent maintained an unjust action, in willful violation of section 6068, subdivision (c), by filing a frivolous lawsuit in *Balasanyan* that he did not intend to prosecute.

#### ***Count Fourteen – § 6103 [Failure to Obey a Court Order]***

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Balasanyan*.

#### ***Count Fifteen – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Balasanyan* to the State Bar of California.

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<sup>5</sup> Counts Ten through Twelve were dismissed prior to trial upon the request of the State Bar.

## **The Hanna v. BMW Financial Services Matter**

### **Facts**

On September 7, 2012, respondent filed the initial complaint in *Hanna v. BMW Financial Services, LLC, et al.*, case no. CV 12-07703, in the United States Central District Court of California (*Hanna*). On November 13, 2012, the court issued an order to show cause why respondent should not be sanctioned in *Hanna*.<sup>6</sup> After the order to show cause hearing, the court gave respondent an opportunity to show, in writing, why he should not be sanctioned for bringing a frivolous claim. On or about November 26, 2012, respondent provided the court with a declaration citing numerous personal and health problems. Respondent remained counsel of record until November 26, 2012, when he was substituted out of the case.

On January 13, 2013, the court in *Hanna* ordered respondent to pay sanctions to defense counsel in the amount of \$2,345. These sanctions were based on respondent's repeated filing of frivolous litigation and his failure to defend against motions to dismiss.

Respondent was or should have been aware of the sanctions award, but failed to pay any portion of the sanctions. Respondent also failed to report the sanctions imposed by the court in *Hanna* to the State Bar of California.

### **Conclusions**

#### ***Count Sixteen – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

The court finds that there is clear and convincing evidence that respondent maintained an unjust action, in willful violation of section 6068, subdivision (c), by filing a frivolous lawsuit in *Hanna* that he did not intend to prosecute.

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<sup>6</sup> The court considered this matter together with *Balasanyan* (above).

***Count Seventeen – § 6103 [Failure to Obey a Court Order]***

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Hanna*.

***Count Eighteen – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Hanna* to the State Bar of California.

**The Gevorgyan v. Creditors Interchange Receivables Management Matter**

**Facts**

On May 4, 2012, respondent filed the initial complaint in *Sargis Gevorgyan v. Creditors Interchange Receivables Management, LLC, et al.*, case no. CV 12-04174, in the United States Central District Court of California (*Gevorgyan*). Respondent remained counsel of record until December 13, 2012, when the case was terminated.

On December 13, 2012, the court in *Gevorgyan* ordered respondent to pay sanctions to defense counsel in the amount of \$2,669.80. These sanctions were based on the court's finding that respondent prosecuted this action in bad faith. Respondent was aware of the sanctions award, but failed to pay any portion of the sanctions. Respondent also failed to report the sanctions imposed by the court in *Gevorgyan* to the State Bar of California.

**Conclusions**

***Count Nineteen – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

The court finds that there is clear and convincing evidence that respondent maintained an unjust action, in willful violation of section 6068, subdivision (c), by filing a frivolous lawsuit in *Gevorgyan* that he did not intend to prosecute.

***Count Twenty – § 6103 [Failure to Obey a Court Order]***

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Gevorgyan*.

***Count Twenty-One – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Gevorgyan* to the State Bar of California.

**The Sargsyan v. Unifund Government Services Matter**

**Facts**

On July 20, 2012, respondent filed the initial complaint in *Serzhik Sargsyan v. Unifund Government Services, LLC, et al.*, case no. CV 12-06291, in the United States Central District Court of California (*Sargsyan*). Respondent remained counsel of record until October 29, 2013, when the case was terminated.

In or about October 2012, multiple named defendants in this matter filed motions to dismiss. The defendants also sought sanctions against respondent on the basis that he knowingly and in bad faith continued to prosecute a complaint that failed to state a claim. On October 18, 2012, the court in *Sargsyan* ordered respondent to pay sanctions to defense counsel in the amount of \$3,762.30. These sanctions were based on the court's finding that respondent knowingly and in bad faith continued to prosecute a complaint that failed to state a claim. Respondent was or should have been aware of the sanctions award, but failed to pay any portion of the sanctions. Respondent also failed to report the sanctions imposed by the court in *Sargsyan* to the State Bar of California.

## **Conclusions**

### ***Count Twenty-Eight<sup>7</sup> – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

The court finds that there is clear and convincing evidence that respondent maintained an unjust action, in willful violation of section 6068, subdivision (c), by filing a frivolous lawsuit in *Sargsyan* that he did not intend to prosecute.

### ***Count Twenty-Nine – § 6103 [Failure to Obey a Court Order]***

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Sargsyan*.

### ***Count Thirty – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Sargsyan* to the State Bar of California.

## **The Vartanian v. United Recovery Systems Matter**

### **Facts**

On June 12, 2012, in *Stepan Vartanian v. United Recovery Systems*, case no. CV 12-00453, in the United States Central District Court of California (*Vartanian*), respondent substituted in as counsel of record in place of the plaintiff who was pro per. Respondent remained counsel of record until November 1, 2012, when the case was terminated.

On August 6, 2012, the court set an order to show cause hearing regarding sanctions against respondent. On September 10, 2012, the court dismissed this matter due to respondent's failure to submit a new joint report for the third time. In this same order, the court ordered

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<sup>7</sup> Counts Twenty-Two through Twenty-Seven were dismissed prior to trial upon the request of the State Bar.

respondent to pay sanctions to defense counsel in the amount of \$2,866.50. The order did not indicate that respondent maintained a frivolous or otherwise unjust action. Respondent was or should have been aware of the sanctions award, but failed to pay any portion of the sanctions. Respondent also failed to report the sanctions imposed by the court in *Vartanian* to the State Bar of California.

### **Conclusions**

#### ***Count Thirty-Four*<sup>8</sup> – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]**

There is not clear and convincing evidence that respondent maintained an unjust action in *Vartanian*, in willful violation of section 6068, subdivision (c). Count Thirty-Four is therefore dismissed with prejudice.

#### ***Count Thirty-Five* – § 6103 [Failure to Obey a Court Order]**

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Vartanian*.

#### ***Count Thirty-Six* – § 6068, subd. (o)(3) [Failure to Report Sanctions]**

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Vartanian* to the State Bar of California.

### **The Ayvazian v. Moore Law Group Matter**

#### **Facts**

Respondent was the attorney for Hakob Ayvazian in *Hakob Ayvazian v. The Moore Law Group, LLC, et al.*, case no. CV 12-01506, in the United States Central District Court of

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<sup>8</sup> Counts Thirty-One through Thirty-Three were dismissed prior to trial upon the request of the State Bar.

California (*Ayvazian*). On June 26, 2012, the court ordered plaintiff to pay sanctions to defense counsel in the amount of \$2,750. These sanctions were based on the court's finding that the plaintiff filed a frivolous complaint. Respondent was not ordered to pay any portion of these sanctions, and, therefore, he did not have a duty to report these sanctions to the State Bar of California.<sup>9</sup>

### **Conclusions**

#### ***Count Forty – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

There is not clear and convincing evidence that respondent maintained an unjust action in *Ayvazian*, in willful violation of section 6068, subdivision (c). Count Forty is therefore dismissed with prejudice.

#### ***Count Forty-One – § 6103 [Failure to Obey a Court Order]***

There is not clear and convincing evidence that respondent failed to obey a court order in *Ayvazian*, in willful violation of section 6103. Count Forty-One is therefore dismissed with prejudice.

#### ***Count Forty-Two – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

There is not clear and convincing evidence that respondent failed to report judicial sanctions in *Ayvazian*, in willful violation of section 6068, subdivision (o)(3). Count Forty-Two is therefore dismissed with prejudice.

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<sup>9</sup> While the parties stipulated that respondent was the attorney for Hakob Ayvazian, he was not the attorney of record in *Ayvazian*. In its order granting sanctions, the court noted that there was a high probability that respondent drafted the complaint as a "ghostwriter." The court's speculation was based on the fact that the complaint was almost identical to multiple federal complaints filed by respondent.

## **The Minasyan v. Creditors Financial Group Matter**

### **Facts**

On May 9, 2012, in *Hasmik Minasyan v. Creditors Financial Group, LLC, et al.*, case no. CV 12-01864, in the United States Central District Court of California (*Minasyan*), respondent substituted in as counsel of record in place of the plaintiff who was pro per. Respondent remained counsel of record until November 29, 2012, when the case was terminated.

On June 25, 2012, the court in *Minasyan* ordered respondent to pay sanctions to defense counsel in the amount of \$3,712.50.<sup>10</sup> These sanctions were based on the court's finding that the conclusory allegations set forth in this action were baseless, frivolous, and a clear abuse of judicial process. Respondent was or should have been aware of the sanctions award, but failed to pay any portion of the sanctions. Respondent also failed to report the sanctions imposed by the court in *Minasyan* to the State Bar of California.

### **Conclusions**

#### ***Count Forty-Three – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

The court finds that there is clear and convincing evidence that respondent maintained an unjust action, in willful violation of section 6068, subdivision (c), by maintaining a baseless and frivolous lawsuit in *Minasyan* that he did not intend to prosecute.

#### ***Count Forty-Four – § 6103 [Failure to Obey a Court Order]***

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the court's sanction order in *Minasyan*.

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<sup>10</sup> Respondent and his client were ordered jointly and severally liable for this amount.

***Count Forty-Five – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report the sanctions imposed by the court in *Minasyan* to the State Bar of California.

**The Yepremyan v. Asset Acceptance Matter**

Respondent was the attorney for Gayane Yepremyan in *Gayane A. Yepremyan v. Asset Acceptance LLC, et al.*, case no. CV 12-00715, in the United States Central District Court of California (*Yepremyan II*). On May 7, 2012, the court in *Yepremyan II* ordered the plaintiff to pay sanctions to defense counsel in the amount of \$1,500. These sanctions were based on the court's finding that the plaintiff failed to appear and failed to comply with the court's orders. Respondent was not ordered to pay any portion of these sanctions, and, therefore, did not have a duty to report these sanctions to the State Bar of California.<sup>11</sup>

**Conclusions**

***Count Forty-Nine<sup>12</sup> – § 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

There is not clear and convincing evidence that respondent maintained an unjust action in *Yepremyan II*, in willful violation of section 6068, subdivision (c). Count Forty-Nine is therefore dismissed with prejudice.

***Count Fifty – § 6103 [Failure to Obey a Court Order]***

There is not clear and convincing evidence that respondent failed to obey a court order in *Yepremyan II*, in willful violation of section 6103. Count Fifty is therefore dismissed with prejudice.

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<sup>11</sup> While the parties stipulated that respondent was the attorney for Gayane Yepremyan, he was not the attorney of record in *Yepremyan II*.

<sup>12</sup> Counts Forty-Six through Forty-Eight were dismissed prior to trial upon the request of the State Bar.

***Count Fifty-One – § 6068, subd. (o)(3) [Failure to Report Sanctions]***

There is not clear and convincing evidence that respondent failed to report judicial sanctions in *Yepremyan II*, in willful violation of section 6068, subdivision (o)(3). Count Fifty-One is therefore dismissed with prejudice.

**Case No. 14-J-02522 – The Central District Court Disciplinary Matter**

On February 27, 2014, a three-judge panel for the United States Central District Court of California issued a disciplinary order adopting findings that respondent committed extensive professional misconduct in the Central District Court of California and ordering that he be disbarred from the Central District Court.

Business and Professions Code section 6049.1, subdivision (a), provides, in pertinent part, that a certified copy of a final order by any court of record of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction, shall be conclusive evidence that the member is culpable of professional misconduct in this state. As a result, the State Bar initiated the above-entitled proceeding pursuant to Business and Professions Code section 6049.1, subdivision (b), and Rules of Procedure of the State Bar, rules 5.350-5.354.

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon respondent; (2) whether, as a matter of law, respondent's culpability in the proceeding would not warrant the imposition of discipline under the laws or rules applicable in California at the time of respondent's misconduct in the other jurisdiction; and (3) whether the proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

Respondent bears the burden of establishing that the conduct for which he was disciplined by the United States District Court for the Central District of California would not warrant the imposition of discipline in California and/or that the proceeding lacked fundamental constitutional protection. Unless respondent establishes one or both of these, the record of

discipline in United States District Court for the Central District of California proceeding is conclusive evidence of culpability of misconduct in California. (Section 6049.1, subdivisions (a) & (b).)

### **Facts**

On November 21, 2013, Section 3 of the Standing Committee on Discipline (Section 3) issued its Final Report re Bartoumian Referrals (Final Report). The Final Report made findings based on three separate referrals.

The first referral was from Judge Dale S. Fischer in the matter of *Kodesh v. Aurora Loan Services (Kodesh)*. This matter was the subject of respondent's prior discipline before the State Bar, case no. 12-O-12245 (S209209). In *Kodesh*, respondent stipulated to violating section 6103 by willfully disobeying court orders in October, November, and December 2011.<sup>13</sup>

The second referral was from Judge Stephen V. Wilson in the matter of *Tervardanyan v. Creditors Financial Group (Tervardanyan)*. In *Tervardanyan*, the Final Report found that respondent failed to appear at hearings, failed to respond to dispositive motions filed by defendants, and failed to respond to sanctions requests. Further, respondent failed to respond to an order to show cause and the case was dismissed with prejudice as a result. Judge Wilson sanctioned respondent a total of \$41,515.70 for his conduct in this matter. To date, respondent has paid \$1,500 towards the outstanding sanctions in *Tervardanyan*.

The third referral was from Chief Magistrate Judge Suzanne Segal regarding eight distinct cases. Based on Chief Magistrate Judge Segal's referral, Section 3 conducted a more expansive independent investigation into respondent's conduct before the United States District Court.

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<sup>13</sup> The court assigns *Kodesh* no weight in the present proceeding, since it was previously adjudicated in respondent's prior discipline.

In correspondence dated December 12, 2012, January 6, 2013, and February 1, 2013, Section 3 advised respondent of the nature of the referrals and requested that he provide a response. Respondent did not provide a substantive response.

Respondent was the attorney of record in the following 49 cases and violated the Rules of Professional Conduct, rule 3-110(A), in each of these cases by failing to appear at hearings, failing to file oppositions to motions, failing to prosecute complaints he filed, and/or failing to respond to orders to show cause for imposition of sanctions:

1. *Agavni Ani Gabrielyan v. Equifax Information Services LLC*
2. *Akop Indzheyan v. Mandarich Law Group LLP, et al.*
3. *Alik Eliasian v. Bank of America NA, et al.*
4. *Alla Arutyunyan v. Bank of America*
5. *Anait Oganyan v. Square Two Financial, et al.*
6. *Ani Bagramyan v. Bank of America*
7. *Ani Bagramyan v. Client Services Inc.*
8. *Anushik Khachatryan v. CMRE Financial Services Inc., et al.*
9. *Armen Grigoryan v. Chexs Systems Inc.*
10. *Armen Hovsepyan v. Commercial Collection of America*
11. *Ashken Arutyunyan v. JPMorgan Chase Bank*
12. *Ashken Arutyunyan v. American Express Centurion Bank*
13. *Cindy Anna-Maria Carder v. Allied Collection Services of California LLC*
14. *David Bagramian v. Legal Recovery Law Offices Inc., et al.*
15. *Diana Toroussian v. Asset Acceptance LLC, et al.*
16. *Gayane A. Yepremyan v. Citibank, et al.*
17. *Ghassan A. Kailany v. Chase Home Finance LLC, et al.*
18. *Haikas Sargisian v. Bank of America NA*
19. *Hakob Otaryan v. Bank of America Corporation*
20. *Haykaz Abrahamyan v. AFNI Inc.*
21. *Henrik Zamanyan v. Northland Group Inc., et al.*
22. *Hovik Seysyan v. Experian Information Solutions Inc., et al.*
23. *International Families Association v. Electronic Payments, et al.*
24. *Jose Percimar Duenas v. Nordstrom FSB*
25. *Karen Vahanyan v. Unifund Corporation, et al.*
26. *Karine Yegiazaryan v. Professional Collection Services LLC*
27. *Karlen Ghazarian v. First Resolution Management Corporation*
28. *Levon Filian v. ACS Education Services Inc.*
29. *Loretta Khachatryan v. Equable Ascent Financial LLC*
30. *Loretta Khachatryan v. United Recovery Systems LP, et al.*
31. *Mara Khayan v. Asset Acceptance Capital Corp., et al.*
32. *Mara Khayan v. Bank of America NA, et al.*
33. *Margarita Reyes v. American Express Company*
34. *Mikayel Mnatsakanyan v. Transunion*
35. *Minasyan v. Creditors Financial Group LLC, et al.*
36. *Nvard Grigoryan v. Convergent Outsourcing Inc., et al.*
37. *Romina Movsisyan v. HSBC Bank USA NA, et al.*
38. *Shagane Ovsepyan v. OneWest Bank*
39. *Sona Sukiasyan v. OCS Recovery Inc., et al.*

40. *Stepan Vartanian v. Phillips & Cohen Associates LTD*
41. *Stepan Vartanian v. LTD Financial Services*
42. *Stepan Vartanian v. Creditors Financial Group LLC*
43. *Stepan Vartanian v. Client Services Inc.*
44. *Stepan Vartanian v. JC Christensen & Associates Inc.*
45. *Stepan Vartanian v. United Recovery Systems*
46. *Suchart Thongnoppakun v. American Express Bank et al.*
47. *Vaagn Zakharyan v. CIR Law Offices LLP, et al.*
48. *Vahe Margaryan v. Primary Financial Services et al.*
49. *Vartan Antonyan v. Client Services Inc.*

In addition to violating rule 3-110(A), respondent also violated section 6103 in each the following eight cases by failing to obey court orders:

1. *Alla Arutyunyan v. Bank of America*
2. *Ashken Arutyunyan v. JPMorgan Chase Bank*
3. *Gayane A. Yepremyan v. Citibank, et al.*
4. *Haikas Sargisian v. Bank of America NA*
5. *Karen Vahanyan v. Unifund Corporation, et al.*
6. *Levon Filian v. ACS Education Services Inc.*
7. *Loretta Khachatryan v. Equable Ascent Financial LLC*
8. *Loretta Khachatryan v. United Recovery Systems LP, et al.*

Respondent also failed to report sanctions of more than \$1,000 on non-discovery related matters in the following cases:

1. *Gayane A. Yepremyan v. Citibank, et al.* - \$9,500 sanctions
2. *Karen Vahanyan v. Unifund Corporation, et al.* - \$1,320 sanctions
3. *Mara Khayan v. Asset Acceptance Capital Corp., et al.* - \$2,127.58 sanctions
4. *Mara Khayan v. Bank of America NA, et al.* - \$19,513.50 total sanctions
5. *Minasyan v. Creditors Financial Group LLC, et al.* - \$3,712.50<sup>14</sup>

As result of the multiple violations identified by Section 3, it recommended that respondent be disbarred from the United States Central District Court of California. On October 11, 2013, Section 3 sent respondent a copy of their report and advised him that it would recommend disbarment. Respondent did not provide a substantive response.

On December 4, 2013, the full U.S. District Court Standing Committee on Discipline approved the Final Report and recommendation by Section 3. By an order dated January 16,

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<sup>14</sup> This violation does not warrant any additional weight in culpability as it was already considered in Count Forty-Five.

2014, the United States District Court offered respondent 30 days to file a written response to the Final Report. The court did not receive a response.

On February 27, 2014, a three-judge panel for the United States District Court adopted the findings of the Standing Committee in the Final Report and ordered that respondent be disbarred in the Central District of California. The misconduct found by the Central District of California warrants discipline in the California State Bar Court. The discipline proceedings in the Central District of California did not lack fundamental constitutional protection.

### **Conclusions**

The Central District of California found that respondent's aforementioned conduct constituted violations of rule 3-110(A); section 6103; section 6068, subdivision (o)(3); section 6068, subdivision (b); and section 6068, subdivision (c). The court finds, as a matter of law, that respondent's culpability on the aforementioned conduct in the Central District of California proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Central District Court of California, as follows.

#### ***Rule 3-110(A) [Failure to Perform Legal Services with Competence]***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The court finds that respondent willfully violated rule 3-110(A), by failing to appear at hearings, failing to file oppositions to motions, failing to prosecute complaints he filed, and/or failing to respond to orders to show cause for imposition of sanctions in the 49 matters referenced above.

#### ***Section 6103 [Failure to Obey a Court Order]***

The court finds that respondent failed to obey court orders, in willful violation of section 6103, by failing to obey court orders in the eight matters referenced above.

***Section 6068, subd. (o)(3) [Failure to Report Sanctions]***

The court finds that respondent failed to report judicial sanctions, in willful violation of section 6068, subdivision (o)(3), by failing to report judicial sanctions in the four matters referenced above.<sup>15</sup>

***Section 6068, subd. (b) [Duty to Maintain Respect Due to Courts]***

Section 6068, subdivision (b), provides that attorneys have a duty to maintain respect due to the courts of justice and judicial officers. The court finds that respondent failed to maintain respect due to courts and judicial officers, in willful violation of section 6068, subdivision (b), by failing to appear at hearings, failing to file oppositions to motions, failing to prosecute complaints he filed, and/or failing to respond to orders to show cause for imposition of sanctions in the 49 matters referenced above. However, since these same facts were relied upon to establish respondent's violations of rule 3-110(A), the court does not assign any additional weight in culpability.

***Section 6068, subd. (c) [Duty to Maintain Legal or Just Actions]***

The court finds that respondent failed to maintain legal or just actions, in willful violation of section 6068, subdivision (c), by repeatedly counseling or maintaining actions that did not appear legal or just, resulting in repeated sanctions and unopposed motions to dismiss.

**Aggravation<sup>16</sup>**

The State Bar has established, by clear and convincing evidence, the following factors in aggravation. (Std. 1.5.)

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<sup>15</sup> This does not include *Minasyan v. Creditors Financial Group LLC, et al.*

<sup>16</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

**Prior Record of Discipline (Std. 1.5(a).)**

On May 14, 2013, the Supreme Court issued Order No. S209209 (State Bar Court case no. 12-O-12245) suspending respondent from the practice of law for one year, stayed, and placing respondent on probation for one year. Here, respondent stipulated, in a single client matter, to disobeying court orders in willful violation of section 6103. In mitigation, respondent had no prior record of discipline and cooperated with the State Bar by entering into a stipulation. No aggravating circumstances were involved.

The court notes that the present matter stems from misconduct occurring before the imposition of discipline in respondent's prior discipline. Accordingly, the aggravating force of respondent's prior discipline is somewhat diminished, as it is not an indication of respondent's unwillingness or inability to conform to ethical norms following the imposition of discipline. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619; and *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

**Pattern of Misconduct (Std. 1.5(c).)**

Respondent's extensive and repeated acts of wrongdoing over an extended period of time evidence a pattern of misconduct. Respondent's pattern of misconduct warrants substantial consideration in aggravation.

**Harm to Client/Public/Administration of Justice (Std. 1.5(f).)**

Respondent caused significant harm to the defendants he sued and the administration of justice. While respondent's actions were frivolous, this fact did not absolve the named defendants from expending extensive legal fees to competently defend these actions. Although respondent has been ordered to pay out well over \$100,000 in sanctions to opposing counsel for costs and attorneys' fees, only a minute portion of this money has been paid.

In addition, respondent's pattern of repeatedly filing or perpetuating frivolous actions in the Central District Court resulted in an extensive waste of judicial resources. Consequently, respondent's significant harm to opposing parties and the administration of justice warrants significant consideration in aggravation.

**Indifference (Std. 1.5(g).)**

Respondent's actions demonstrate his indifference toward rectification or atonement for the consequences of his misconduct. Despite repeated sanctions for filing frivolous actions, respondent repeatedly failed to take the initiative to dismiss outstanding matters. Instead of minimizing the damage he was doing to opposing parties and the administration of justice, respondent allowed many of these cases to continue to linger in the court system. He even added to the problem by filing similar new cases.

Respondent further demonstrated indifference by failing to participate in the Central District Court discipline proceedings. Consequently, respondent's indifference toward rectification or atonement for the consequences of his misconduct warrant some consideration in aggravation.

**Mitigation**

The record shows that respondent has proven by clear and convincing evidence the following factors in mitigation. (Std. 1.6.)

**Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)**

Respondent suffered from serious health problems and the loss of four family members during the period of his misconduct. These extreme emotional and physical difficulties warrant consideration in mitigation; however, the weight of this mitigation is significantly limited by the lack of expert testimony on this subject.

**Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Respondent entered into an extensive stipulation to facts and admission of documents. Respondent's candor and cooperation with the State Bar warrant significant consideration in mitigation.

**Good Character (Std. 1.6(f).)**

Respondent provided declarations of eight character witnesses. These witnesses consisted of two attorneys and six clients. Respondent's character witnesses attested to his honesty, good character, and competence and effectiveness as an attorney. Although some of his witnesses did not understand the scope of the charged misconduct, respondent's good character evidence warrants some consideration in mitigation.

**Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating and mitigating factors.

In this case, the standards call for disbarment. Standard 2.5(a) provides that disbarment is appropriate for failing to perform legal services with clients, demonstrating a pattern of

misconduct. In addition, standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in a talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urged that respondent be disbarred. Respondent, on the other hand, argued for a period of actual suspension in lieu of disbarment. In determining the appropriate level of discipline, the court is guided by *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315; and *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In *Varakin*, the attorney was disbarred for repeatedly filing frivolous motions and appeals in four different cases for a dozen years for the purpose of delay and harassment of his ex-wife and others. He continued this pattern despite being sanctioned numerous times. The attorney lacked insight into his misconduct, expressed no remorse, refused to mend his ways, and greatly harmed the individuals involved and the administration of justice.

In *Phillips*, the attorney was disbarred for his misconduct involving five client matters and two non-client matters over a period of nearly four years. His misconduct included charging an illegal fee, failing to return clients files, sharing legal fees with a non-lawyer, forming a law partnership with a non-lawyer, failing to perform legal services, failing to refund unearned fees, failing to render an accounting, and improper solicitation. The attorney began to commit

professional misconduct soon after he was admitted to practice law and the misconduct was surrounded by little evidence in mitigation, but significant evidence in aggravation.

In *Gadda*, the attorney was disbarred for his misconduct in nine immigration client matters over five years, including failing to perform services, failing to return unearned fees, failing to communicate with clients, and commingling. He had been previously disciplined once for the same type of misconduct and did not learn from his prior discipline.

In the present case, respondent has been found culpable of misconduct involving well over 50 clients. Respondent's pattern of misconduct demonstrates a habitual disregard of his ethical duties as an attorney. While respondent's misconduct was not as lengthy as *Varakin*, *Phillips*, and *Gadda*, it was considerably more pervasive.

Although the court is sympathetic to respondent's medical and physical difficulties, his wholesale dereliction of his ethical obligations is of paramount concern. Over an extended time period, respondent repeatedly and routinely committed egregious misconduct involving failing to maintain legal and just actions, failing to obey court orders, failing to perform legal services with competence, failing to report judicial sanctions, and failing to maintain respect for the court. After consideration of the extensive circumstances involved in this case, the court concludes that only disbarment offers adequate protection for the public and the courts.

### **Recommendations**

It is recommended that respondent **Arshak Bartoumian**, State Bar Number 210370, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 proceeding. Failure to do so may result in disbarment or suspension.

### **Costs**

It is 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.

### **Order of Involuntary Inactive Enrollment**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: October 21, 2014

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**RICHARD A. PLATEL**  
Judge of the State Bar Court