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STATE BAR COURT
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9 **STATE BAR COURT**
10 **HEARING DEPARTMENT - LOS ANGELES**
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12 In the Matter of:)
13 Riordan J. Zavala, Esq., SBN 143870,) **Case No. 14-O-04568**
14) Assigned: Hon. W. Kearse McGill
15)
16) **MEMBER'S RESPONSE TO**
17) **FIRST AMENDED NOTICE OF**
18) **DISCIPLINARY CHARGES.**
19 A Member of the State Bar.)
20) Place: Crtrm. D
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26 **NOW COMES** Member of the State Bar, Riordan J. Zavala, Esq. from and
27 after 12/11/1989, to respond to the First Amended Notice of Disciplinary Charges
28 ("FANDC") as follows:

29 **Re: Count One:**

30 1. Deny as a matter of law all allegations of the FANDC, as stated in Count 1,
31 para. 2, which assert violations of 11 U.S.C. 362 (a) -- the automatic stay provision
32 of the United States bankruptcy code. Title 11 U.S.C. 362 (a) is and was
33 inapplicable, in this instance, where, the referenced debtor, Menchaca, was plaintiff
34 in the pre-petition, pending, underlying state court matter -- *Arthur Menchaca v.*



1 Robert Imus et al.; which, well-preceded the further allegation in Count One, that
2 the “automatic stay issued on November 04, 2010 in the U.S. Bankruptcy Court....;”
3 since, at least the First Amended Complaint in that state court matter was filed on
4 05/27/2009. [See *Rett White Motor Sales Co. v. Wells Fargo Bank*, 99 B.R. 12
5 (N.D. Cal. 1989); and, *In re Merrick*, 175 B.R. 333 (9th Cir. BAP 1994); and as
6 cited to and relied upon in *Merrick -- Martin-Trigona v. Champion Fed. Sav. &*
7 *Loan Ass'n.* 892 F.2d 575, 577 (7th Cir.1989)]

8 2. Deny as a matter of law any violation of 11 U.S.C. 362 (a)(5), which pertains,
9 if at all, only to “any act to create, perfect, or enforce against property of the debtor
10 any lien *to the extent that such lien secures a claim that arose before the*
11 *commencement of the case* under this title;....” (Emphasis added.) Clearly, the
12 allegations in Count One assert both of the 06/06/13 lien filings occur well *after* the
13 petition date, i.e., the commencement of the plaintiff/debtor’s bankruptcy case on
14 11/04/2010; and further, said liens were to secure alleged claims that arose well
15 *after* the commencement of the bankruptcy case.

16 3. Deny as a matter of law any violation of 11 U.S.C. 362 (a)(3), which
17 contemplates actions *against* the debtor – not *his own offensive ‘action,’* i.e.
18 “Plaintiff’s Ex Parte Application And Motion To Strike Improper Filings Of June
19 06, 2013 Advanced By Robert P. Goe, Esq.; And In The Alternative For An Order
20 To Show Cause Why Such Filings Should Not Be Struck;...[Etc.]; and *not against*
21 *the Ch. 7 Trustee.*

22 Moreover, said application did not constitute an act to take possession or
23 control over *property the debtor’s estate did not even have or own - there can be no*
24 *loss of what does not exist*, inasmuch as there was no settlement by the Trustee with

1 defendants in that state court litigation, at that time, contrary to the perjured
2 statement/pleading advanced by Robert Goe, Esq, and which, was suborned by that
3 Trustee Karen Naylor – also an attorney. [*In re Merrick*, 175 B.R. 333, 336, 337 and
4 338 (9th Cir. BAP 1994)]

5 a. As an officer of the court, this Member had a professional obligation
6 and duty to so inform the state court that Attorney Goe, who had made the filings in
7 that matter on behalf of Trustee Naylor, to wit: Notice of Settlement of Entire Case
8 & Notice of Re-opening of Bankruptcy Case ...[Etc.] (file date –06/06/2013), had
9 lied to that court to the effect that: a) the case had settled, when in fact, it had not;
10 and b) that he was the attorney for Naylor in the bankruptcy court, when in fact, no
11 application had even been advanced in that respect to the bankruptcy court in order
12 to obtain its required approval. [See Model Rule of Professional Conduct 3.3 --
13 Candor Toward The Tribunal – Comment 12 -- Preserving Integrity of Adjudicative
14 Process – “[12] Lawyers have a special obligation to protect a tribunal against
15 criminal or fraudulent conduct that undermines the integrity of the adjudicative
16 process, ... paragraph (b) requires a lawyer to take reasonable remedial measures,
17 including disclosure if necessary, whenever the lawyer knows that a person,
18 including the lawyer’s client, intends to engage, is engaging or has engaged in
19 criminal or fraudulent conduct related to the proceeding.” (Emphasis added.)]

20 b. Plaintiff’s Ex Parte Application And Motion To Strike Improper
21 Filings Of June 06, 2013 Advanced By Robert P. Goe, Esq.; And In The Alternative
22 For An Order To Show Cause Why Such Filings Should Not Be Struck;...[Etc.] was
23 advanced in support of the laws of this state (consistent with Bus. & Prof. C.
24

1 6068(a), namely, C.C.P. § 387 – the necessary procedural requirements for
2 intervention.

3 4. Deny as a matter of law the mere giving of required notice post-petition by
4 recordation/filing of the referenced liens, without more, constituted a violation of 11
5 U.S.C. 362 (a), assuming arguendo the stay was even applicable ab initio. [“...post-
6 petition recordation of ... lien allowed” -- *In Re Baldwin Builders*, 232 B.R. 406,
7 411- 414 (9th Cir. BAP 1999; 11 U.S.C. §§ 362(b)(3); 546(b); *In Re Victoria Grain*
8 *Co. of Minneapolis*, 45 B.R. 2, 6 (Bankr. D. Minn. 1984)]

9 5. Deny as a matter of law any violation of the automatic stay issued on
10 11/04/2010, assuming arguendo, once again, the stay was even applicable ab initio,
11 inasmuch as it terminated with the discharge of the debtors Menchaca on
12 07/19/2011 (11 U.S.C. § 362(c)(2)(C).

13 6. Deny as a matter of law any violation of Bus. & Prof. C. § 6068(a), let alone
14 any willful violation, based upon all of the above-cited law and facts. Deny any
15 violation of this Member’s duty to support the Constitution and laws of the United
16 States and of this state.

17 **Re: Count Two:**

18 7. Deny as a matter of law, that the order alleged to be violated which imposes
19 monetary sanctions against this Member for “having violated the automatic stay of
20 11 U.S.C. Section 362” was lawful¹ ab initio. (Bankruptcy stay inapplicable; no
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22 ¹ No reference to the alleged reasons of the tentative ruling are either necessary or
23 warranted. The order *on its face* is unlawful per *Merrick*. Paragraph 3 claims the
24 Member “to be in contempt...[for] having violated the automatic stay of 11 U.S.C.
25 Section 362.” Paragraph 4 connects those dots, so that any speculation as to the
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1 willful violation of the stay; award of *sanctions vacated*. -- *In re Merrick*, 175 B.R.
2 333, 338 (9th Cir. BAP 1994))

3 8. Deny as a matter of law any willful disobedience or violation of an order of
4 the court, per Bus. & Prof. C. § 6103. It is axiomatic that any such “order” must be
5 lawful. It is undeniable that if sanctions for violating the bankruptcy stay cannot be
6 imposed under the aforementioned case law, when the stay is inapplicable, it is
7 axiomatic that an/the order which specifically imposes such sanctions to wit: for
8 “having violated the automatic stay of 11 U.S.C. Section 362” is unlawful. Ergo,
9 there is no legitimacy to Count Two; and, thus, no disciplinable offense can be
10 levied relevant thereto.

11 9. Further, deny as a matter of law any willful disobedience of the subject
12 unlawful order, in violation of Bus. & Prof. C. § 6103, as compliance by the
13 Member is not possible. (*U.S. v. Rylander* 460 U.S. 752 (1983) - “In a civil
14 contempt proceeding such as this, of course, a defendant may assert a present
15 inability to comply with the order in question. *Maggio v. Zeitz*, *supra*, at 75-76;
16 *Oriel v. Russell*, 278 U.S. 358, 366 (1929). While the court is bound by the
17 enforcement order, it will not be blind to evidence that compliance is now factually
18 impossible. Where compliance is impossible, neither the moving party nor the court
19 has any reason to proceed with the civil contempt action.”)

20 a. The predicate alleged violations of Count One are exclusively of
21 federal law; and, via Count Two, of an order issued by a federal judge in federal

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23 propriety of the order by reference to any other “reason” is unnecessary –
24 “Sanctions are hereby imposed against [the Member] on account of such
contempt....”

1 court; and as to Count One, bootstrapped to Bus. & Prof. C. § 6068(a) i.e. “To
2 support the Constitution and laws of the United States....” Federal again.

3 Notwithstanding any state case law to the contrary, the Member’s federal due
4 process rights, relative to the alleged violation of a federal court order which
5 purportedly flows from federal law violations, are thankfully enshrined in the long-
6 standing dispositive stare decisis of the United States Supreme Court.

7 Law Offices of Riordan J. Zavala

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10 Date: 04/06/2016

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12 Riordan J. Zavala, Esq.
13 Member in Pro Per
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1 **PROOF OF SERVICE**

2 **Case No. 14-O-04568**

3 I am self-employed in the County of Orange, State of California. I am over the age
4 of 18 and not a party to this action. My business address is 333 City Blvd. West, Ste. 1700,
5 Orange, CA 92868.

6 On 04/07/2016, I served the foregoing document(s) described as: **MEMBER'S**
7 **RESPONSE TO FIRST AMENDED NOTICE OF DISCIPLINARY**
8 **CHARGES** on all interested parties in this action by placing // the original /X/ a true
9 copy thereof as follows:

10 Sue Hong, Esq.
11 State Bar Office of Chief Trial Counsel
12 845 S. Figueroa Street
13 Los Angeles, CA 90017-2515

14 // BY CM/ECF Notice of Electronic Filing

15 I caused the above document to be filed and served via electronic filing through the
16 Court's CM/ECF system to the above parties and /or counsel of record who are registered
17 as CM/ECF Users and who have consented to electronic service.

18 // BY U.S. MAIL

19 // I deposited such envelope in the U.S. mail at Santa Ana, California. The
20 envelope was mailed with postage thereon fully prepaid.

21 /X/ BY PERSONAL SERVICE I delivered such document by hand.

22 I declare under penalty of perjury that the above is true and correct. Executed on
23 04/07/2016 at Placentia, California.

24 Riordan J. Zavala, Esq.
25 Name



26 _____
27 Signature