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STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
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PUBLIC MATTER

FILED

DEC 22 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of:) Case No.: 14-O-05941
ELIAS FRANCISCO PORTALES,)
No. 230402,) NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

The State Bar of California alleges:

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JURISDICTION

1. Elias Francisco Portales ("respondent") was admitted to the practice of law in the State of California on April 30, 2004, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE
Case No. 14-O-05941
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

2. On or about September 24, 2011, Dan Nelson employed respondent to perform legal services, namely to represent Daniel Kottke in a debt collection matter, *American Express v. Daniel Kottke*, Santa Clara County Superior Court, case no. 1-11-CV-209376, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by:

- (A) failing to file a response to the complaint;
- (B) failing to file an opposition to the motion for entry of default; and,
- (C) failing to set aside the default.

COUNT TWO
Case No. 14-O-05941
Rules of Professional Conduct, rule 3-310(F)
[Accepting Fees From a Non-Client]

3. On or about September 24, 2011, respondent accepted \$3,000 cash and barter exchange, from Dan Nelson as compensation for representing a client, Daniel Kottke, without obtaining his client's informed written consent to receive such compensation, in willful violation of the Rules of Professional Conduct, rule 3-310(F).

COUNT THREE
Case No. 14-O-05941
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

4. On or about September 24, 2011, respondent received advanced fees of \$3,000 in cash and barter exchange from Dan Nelson to represent respondent's client, Daniel Kottke, in a debt collection matter, *American Express v. Daniel Kottke*, Santa Clara County Superior Court, case no. 1-11-CV-209376. Respondent failed to file a response, oppose the motion for entry of

1 default or set aside the default, or perform any legal services for the client, and therefore earned
2 none of the advanced fees paid. Respondent failed to refund promptly, upon respondent's
3 termination of employment on or about January 3, 2013, any part of the \$3,000 in cash and barter
4 exchange paid by Dan Nelson as an advance fee, to Dan Nelson or the client, in willful violation
5 of Rules of Professional Conduct, rule 3-700(D)(2).

6 COUNT FOUR

7 Case No. 14-O-05941

8 Business and Professions Code, section 6106

9 [Moral Turpitude - Misrepresentation]

10 5. On or about August 16, 2012, respondent stated in writing to Dan Nelson, in response
11 to an inquiry on the status of *American Express v. Daniel Kottke*, Santa Clara County Superior
12 Court, case no. 1-11-CV-209376, that that he had rescheduled the hearing on the Motion to Set
13 Aside Default because of "a technical issue" and on or about November 29, 2012, respondent
14 stated in writing to Dan Nelson, that that the hearing on the Motion to Set Aside Default was re-
15 scheduled for December 27, 2012, because opposing counsel had "claimed they did not receive
16 the notice in time" when respondent knew or was grossly negligent in not knowing the
17 statement(s) were false, and thereby committed an act involving moral turpitude, dishonesty or
18 corruption in willful violation of Business and Professions Code, section 6106.

19 NOTICE - INACTIVE ENROLLMENT!

20 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
21 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
22 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
23 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
24 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
25 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
26 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
27 RECOMMENDED BY THE COURT.**

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NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: December 22, 2015

By: *Robert A. Henderson*
Robert A. Henderson
Supervising Senior Trial Counsel

DECLARATION OF SERVICE
BY CERTIFIED AND REGULAR MAIL

CASE NO.: 14-O-05941

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as *certified mail, return receipt requested*, and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

Article No.: 9414 7266 9904 2011 9770 31

Elias F. Portales
111 N. Market St., #300
San Jose, CA 95113

Courtesy copy:

Anthony P. Radogna
Law Offices of Anthony Radogna
1 Park Plz., Ste. 600
Irvine, CA 92614

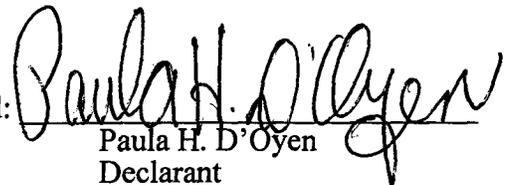
in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: December 22, 2015

Signed:


Paula H. D'Oyen
Declarant