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FILED

FEB 12 2016

5 Attorneys for Respondent
ALDON LOUIS BOLANOS

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

8 THE STATE BAR COURT OF CALIFORNIA
9 HEARING DEPARTMENT – SAN FRANCISCO

11 In the Matter of:

Case No.: 15-O-10896-LMA

12 ALDON LOUIS BOLANOS,

**RESPONDENT'S RESPONSE TO NOTICE
OF DISCIPLINARY CHARGES**

13 Member No.: 233915

DOF: December 23, 2015
Trial Date: April 26-29, 2016

15 A Member of the State Bar.

17 Respondent, ALDON LOUIS BOLANOS, does hereby respond to the State Bar's Notice of
18 Disciplinary Charges as follows:

19 **ADDRESS FOR SERVICE**

20 Service on Respondent can be made on William A. Muñoz, Murphy, Pearson, Bradley &
21 Feeney, 520 Capitol Mall, Suite 250, Sacramento, California 95814; telephone (916) 565-0300;
22 facsimile: (916) 565-1636.

23 **JURISDICTION**

24 1. As to Paragraph 1 of the Notice of Disciplinary Charges, Respondent admits the
25 allegations therein.

26 **COUNT ONE**

27 **(Rules of Professional Conduct, rule 4-200(A) [Illegal Fee])**

28 2. As to Paragraph 2 of the Notice of Disciplinary Charges, Respondent admits that he

1 entered into a written hybrid fee agreement with Anila Maharaj to perform legal services in a civil
2 lawsuit against Ms. Maharaj's former dentists entitled *Anila Maharaj v. Jose Costa-Acuevas, et al.*,
3 Sacramento County Superior Court, Case Number 34-2012-00134422 (hereinafter "underlying
4 matter"). As to the remaining allegations, Respondent denies, generally and specifically, each and
5 every allegation therein.

6 **COUNT TWO**

7 **Business and Professions Code 6068(a)**

8 **[Failure to Comply with Laws – MICRA Limitations and Disclosure]**

9 3. As to Paragraph 3 of the Notice of Disciplinary Charges, Respondent admits that he
10 entered into a written hybrid fee agreement with Anila Maharaj to perform legal services in the
11 underlying matter. As to the remaining allegations, Respondent denies, generally and specifically,
12 each and every allegation therein.

13 **COUNT THREE**

14 **Business and Professions Code section 6068(m)**

15 **[Failure to Inform Client of Significant Development]**

16 4. As to Paragraph 4 of the Notice of Disciplinary Charges, Respondent denies, generally
17 and specifically, that he failed to inform Ms. Maharaj of the limitations set forth in Business and
18 Professions Code section 6146 as the subject hybrid fee agreement and resulting settlement in the
19 underlying matter resolved medical and non-medical malpractice claims not subject to the limitations
20 set forth in Business and Professions Code section 6146. As to the remaining allegations, Respondent
21 denies, generally and specifically, each and every allegation therein.

22 **COUNT FOUR**

23 **Rules of Professional Conduct, rule 4-100(A)**

24 **[Failure to Maintain Client Funds in Trust Account]**

25 5. As to Paragraph 5 of the Notice of Disciplinary Charges, Respondent admits that he
26 received settlement checks from the defendants in the underlying matter totaling \$29,997 on August 8,
27 11 and 18 and deposited the same into his client trust account at JP Morgan Chase Bank, account no.
28 XXXXXX6123 on the dates received. As to the remaining allegations in Paragraph 5, Respondent

1 denies, generally and specifically, the allegations therein.

2 **COUNT FIVE**

3 **Business and Professions Code section 6106**

4 **[Moral Turpitude – Misappropriation]**

5 6. As to Paragraph 6 of the Notice of Disciplinary Charges, Respondent admits that he
6 received settlement checks from the defendants in the underlying matter totaling \$29,997 on August 8,
7 11 and 18 and deposited the same into his client trust account at JP Morgan Chase Bank, account no.
8 XXXXXX6123 on the dates received. As to the remaining allegations in Paragraph 6, Respondent
9 denies, generally and specifically, the allegations therein.

10 **FACTS RELEVANT TO DEFENSE**

11 Respondent further alleges facts relevant to his defense include, but are not limited to, the
12 following:

13 Ms. Maharaj's original counsel filed the underlying matter and then retained Respondent to
14 substitute into the case approximately six months before trial. At the time the underlying matter was
15 settled, Ms. Maharaj had a motion for leave to file an amended complaint seeking to add various non-
16 medical malpractice claims for fraud and unfair business practices against the defendant dentists
17 relating to their billing practices. The settlement in the underlying matter was based on medical and
18 non-medical malpractice claims, which take the hybrid fee agreement and Respondent's fee outside the
19 scope of Business and Professions Code section 6146 or Rules of Professional Conduct, rule 4-200(A).

20 With regard to the settlement funds, after all of the funds had been received by Respondent
21 and deposited into his client trust account, he caused to be issued a settlement draft to Ms. Maharaj in
22 the amount of \$19,098 on August 22, 2014. Respondent further states that all client funds due and
23 owing to Ms. Maharaj were in his client trust account at JP Morgan Chase Bank, account no.
24 XXXXXX6123 on August 22, 2014 when the settlement draft was issued to Ms. Maharaj.

25 Despite the express language of the hybrid fee agreement the provides Respondent states that
26 on or about November 3, 2014, Ms. Maharaj and her new counsel fabricated a fee dispute and claim
27 for malpractice to extort funds from Respondent forcing Respondent to spend time addressing the false
28 claims. Ms. Maharaj requested another settlement draft be prepared removing the "full and final

1 settlement" language from the draft when, in fact, the draft represented full and final settlement of the
2 underlying matter as there were no claims for malpractice ever asserted against Respondent prior to
3 this time despite having issued the original settlement draft to Ms. Maharaj approximately three
4 months prior without any objections. Respondent has nonetheless returned the \$2,478 in "disputed
5 funds" to Ms. Maharaj.

6 Other relevant facts to Respondent's defense can be found in the Motion to Dismiss, Notice of
7 Disciplinary Charges and supporting documents, Respondent's Early Neutral Evaluation Conference
8 Statement, as well as Respondent's file from the underlying matter, all of which will be produced,
9 subject to all appropriate privileges and objections, to the State Bar.

10 AFFIRMATIVE DEFENSES

11 FIRST AFFIRMATIVE DEFENSE

12 1. Respondent alleges that the Notice of Disciplinary Charges, and each count contained
13 therein, fails to state facts sufficient to constitute a disciplinable offense.

14 SECOND AFFIRMATIVE DEFENSE

15 2. Respondent is informed and believes and thereon alleges that Counts One and Three fail
16 to state a disciplinable offense as the settlement in the underlying matter resolved medical and non-
17 medical claims that are not subject to Business and Professions Code section 6146 pursuant to the
18 authority set forth in *Waters v. Bourhis* (1985) 40 Cal.3d 424 and its progeny.

19 THIRD AFFIRMATIVE DEFENSE

20 3. Respondent is informed and believes and thereon alleges that Count Two of the Notice
21 of Disciplinary Charges fails to state a disciplinable offense as Business and Professions Code sections
22 6068(a), 6146 and 6147 are not disciplinable offenses and otherwise duplicative of other charges
23 alleged as set forth in *Baker v. State Bar* (1989) 49 Cal.3d 804, and its progeny.

24 FOURTH AFFIRMATIVE DEFENSE

25 4. Respondent alleges that charges asserted against relating to Business and Professions
26 Code section 6068(a) are unconstitutionally vague.

27 FIFTH AFFIRMATIVE DEFENSE

28 5. Respondent is informed and believe and thereon alleges that this Court lacks

1 jurisdiction over this matter insofar as the fee dispute giving rise to these charges are subject to
2 mandatory contractual arbitration.

3 **SIXTH AFFIRMATIVE DEFENSE**

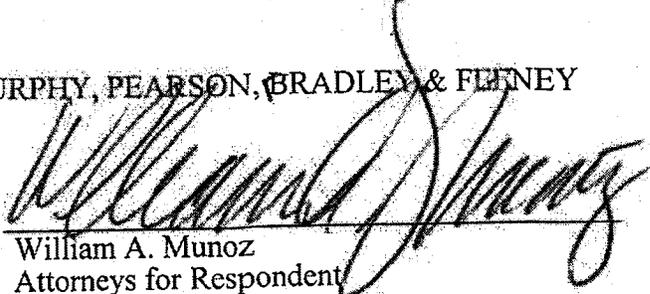
4 6. Respondent alleges, upon information and believe, that he cannot fully anticipate all
5 affirmative defenses which may be applicable to this action based on the allegations alleged in the
6 Disciplinary Charges. Accordingly, Respondent expressly reserves the right to assert such additional
7 defense to the extent that such defenses may become applicable.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Respondent ALDON LOUIS BOLANOS prays for a finding that the charges
10 lack merit and the Notice of Disciplinary Charges fails to state a disciplinary offense.

11 DATED: February 12, 2016

MURPHY, PEARSON, BRADLEY & FEENEY

12
13
14 By 

15 William A. Munoz
16 Attorneys for Respondent
17 ALDON L. BOLANOS
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1 **CERTIFICATE OF SERVICE**

2 I, Crystal J. Roberts, declare:

3 I am a citizen of the United States, am over the age of eighteen years, and am not a party to or
4 interested in the within entitled cause. My business address is 520 Capitol Mall, Suite 250,
5 Sacramento, California 95814.

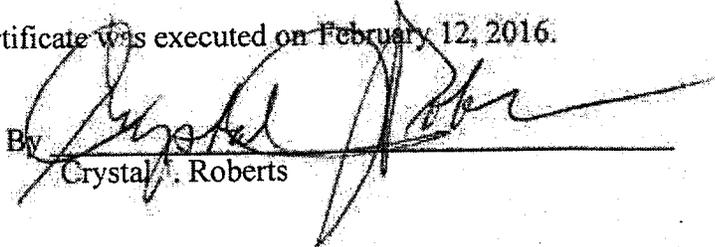
6 On February 12, 2016, I caused to be served the following document(s) on the parties in the
7 within action as indicated below:

8 **RESPONDENT'S RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**

9 10 XX	BY HAND: The above-described document(s) will be hand-delivered on this same date by ONE HOUR DELIVERY
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11
12 Robert A. Henderson
13 Supervising Senior Trial Counsel
14 State Bar of California
15 180 Howard Street
16 San Francisco, CA 94105-1639

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 a true and correct statement and that this Certificate was executed on February 12, 2016.

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By 
Crystal Roberts