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FILED

OCT 05 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

8 STATE BAR COURT
9 HEARING DEPARTMENT - LOS ANGELES

10 In the Matter of:) Case No. 15-O-11994
11 ANTHONY NGULA LUTI) RESPONSE TO NOTICE OF
12 No. 207852,) DISCIPLINARY CHARGES
13 A Member of the State Bar

14 Respondent Anthony Ngula Luti ("Respondent") responds to the Notice of
15 Disciplinary Charges filed herein as follows:

16 1. The address to which all further notices to respondent in relation to these
17 proceedings may be sent is as follows:

18 Vicken Sonentz Papazian, Esq.
19 1611 North San Fernando Boulevard
20 Burbank, California 91504



21 2. Respondent admits the allegations in Paragraph 1 of the Notice of Disciplinary
22 Charges.

23 3. Respondent admits the allegations of Count One, page 2, line 9 up to the
24 words October 5, 2009. Respondent denies that Respondent received on behalf of
25 Respondent's escrow clients, Vivid Entertainment New York, LLC, ("Vivid") and Kristin
26 Davis ("Davis"), a \$15,000 check that Vivid and Davis requested Respondent deposit into
27

1 Respondent's client's trust account at Bank of America, account no. xxxxxx2092, while
2 Vivid and Davis finalized a business transaction. Respondent further denies that on or about
3 October 5, 2009, Respondent deposited the \$15,000 check into Respondent's client trust
4 account at Bank of America, account no. xxxxxx2092, on Vivid and Davis's behalf.
5 Respondent further denies that of this sum, Vivid was ultimately entitled to \$15,000.
6 Respondent denies that Respondent failed to maintain a balance of \$15,000 on Vivid's behalf
7 in Respondent's client trust account, in willful violation of Rules of Professional Conduct,
8 rule 4-100(A).

9 4. Respondent admits the allegations of Count Two, page 2, line 21 up to the
10 words October 5, 2009. Respondent denies that Respondent received on behalf of
11 Respondent's escrow clients, Vivid Entertainment New York, LLC, ("Vivid") and Kristin
12 Davis ("Davis"), a \$15,000 check that Vivid and Davis requested Respondent deposit into
13 Respondent's client's trust account at Bank of America, account no. xxxxxx2092, while
14 Vivid and Davis finalized a business transaction. Respondent further denies that on or about
15 October 5, 2009, Respondent deposited the \$15,000 check into Respondent's client trust
16 account at Bank of America, account no. xxxxxx2092, on Vivid and Davis's behalf.
17 Respondent further denies that between on or about October 8, 2009 and October 30, 2009,
18 Respondent dishonestly or grossly negligently misappropriated for Respondent's own
19 purposes \$13, 295.13 that Respondent's client was entitled to received, and thereby
20 committed an act involving moral turpitude, dishonesty or corruption in willful violation of
21 Business and Professions Code section 6106.

22 5. Respondent admits the allegations of Count Three, page 3, line 8 up to the
23 words October 5, 2009. Respondent denies that Respondent received on behalf of
24 Respondent's escrow clients, Vivid Entertainment New York, LLC, ("Vivid") and Kristin
25 Davis ("Davis"), a \$15,000 check that Vivid and Davis requested Respondent deposit into
26 Respondent's client's trust account at Bank of America, account no. xxxxxx2092, while
27 Vivid and Davis finalized a business transaction. Respondent further denies that on or about
28

1 October 5, 2009, Respondent deposited the \$15,000 check into Respondent's client trust
2 account at Bank of America, account no. xxxxxx2092, on Vivid and Davis's behalf.
3 Respondent further denies that of this sum, Vivid was ultimately entitled to \$15,000.
4 Respondent further denies that on or about February 3, 2015, Vivid requested that
5 Respondent make payment of \$7,170 to Vivid. Respondent further denies that, to date,
6 Respondent has failed to pay promptly, as requested by Respondent's client, any portion of
7 the \$7,170 in Respondent's possession in willful violation of Rules of Professional Conduct,
8 rule 4-100(B)(4).

9 6. Respondent admits the allegations of Count Four, page 3, line 23 up to the
10 words no. xxxxxx2092. Respondent denies remainder of the Count asserting that the checks
11 were for the payment of personal expenses in willful violation of Rules of Professional
12 Conduct, rule 4-100(A) balance of the allegations in Paragraph 5 and the charge.

13
14 **AFFIRMATIVE DEFENSES**

15 As separate and distinct affirmative defenses, Defendant alleges as follows:

16 **FIRST AFFIRMATIVE DEFENSE**

17 (Statute of Limitations)

18 7. The alleged Counts, and each of them, are barred, in whole or in part, by the
19 applicable limitations periods, including that set forth in State Bar Rule 5.21, *et seq.*

20 **SECOND AFFIRMATIVE DEFENSE**

21 (Choice of Law Is Exclusive Remedy)

22 8. The alleged Counts, and each of them, are barred, in whole or in part, by the
23 applicable limitations period set forth in State Bar Rule 5.21, *et seq.*

24 9. At all times alleged in the Notice, the alleged dispute has been governed by a
25 written agreement between Respondent and the purported complainants. The agreement
26 contained a specific provision for settling all disputes between Respondent and the purported
27 parties, designating New York law as the governing choice of law. Such procedure was the
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1 sole and exclusive method for resolving disputes under the agreement, and by the terms of
2 such agreement, complainant is barred from asserting its claims in a proceeding in any other
3 forum or by any other procedure to resolve said disputes.

4 **THIRD AFFIRMATIVE DEFENSE**

5 (Laches)

6 10. Because of Complainant's failure to initiate disciplinary proceedings against
7 Respondent until more than 5 years after the alleged violations occurred, the Notice is barred,
8 in whole or in part, by the equitable doctrine of laches.

9 **FOURTH AFFIRMATIVE DEFENSE**

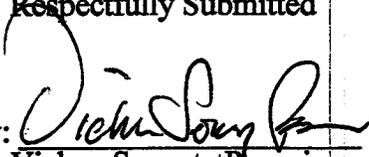
10 (Res Judicata)

11 11. On January 17, 2013, the State Bar entered into stipulation with Respondent,
12 assigned State Bar Case No. 12-O-14855. On January 17, 2013, that stipulation was duly
13 entered on the merits. Said stipulation has never been appealed, and the time for filing an
14 appeal has expired. Count 4 asserted in the instant Notice involves the same issues that were,
15 or could have been, litigated and decided in the former action. Accordingly, said stipulation
16 is *res judicata* of Count 4 asserted herein.

17
18 WHEREFORE, Respondent prays that the Hearing Panel find that the act(s)
19 charged did not constitute professional misconduct or, if misconduct is found, that is be
20 excused by virtue of mitigating circumstances.

21 Dated: October 5, 2016

22 Respectfully Submitted

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24 By: 
25 Vickie Sonentz Papazian
26 Attorneys for Respondent
27 Anthony Ngula Luti
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