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Michael Jay Berger State Bar No. 100291
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Michael Jay Berger

FILED
JAN 22 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT – LOS ANGELES

In the Matter of : MICHAEL JAY BERGER, NO. 100291 A Member of the State Bar	Case No.: 15-0-12701 RESPONDENT MICHAEL JAY BERGER'S ANWER TO NOTICE OF DISCIPLINARY CHARGES

Respondent Michael Jay Berger. (hereinafter "Respondent"), hereby responds as follows to the Notice of Disciplinary Charges (hereafter "Notice") of the State Bar of California ("State Bar").

1. Answering Defendant admits that the State Bar has jurisdiction over this matter

2. Respondent admits that he was late in responding to the inquiry of the State Bar, but denies that he failed to cooperate and participate in the investigation and denies that his lateness was a willful violation of Business and Professions Code, section 6068(1).

3. A true and correct copy of a response letter given to Investigator Christopher Doukakis and Senior Trial Counsel William Todd on December 4, 2015 is attached hereto. The original exhibits attached to the letter are already in the possession of the State Bar.

FIRST AFFIRMATIVE DEFENSE

4. There was no merit to the underlying complaint made by George Lanning. That is why the only count brought against Respondent is the alleged failure to cooperate in the investigation. The State Bar was aware, or should have been aware, of the lack of merit of George Lanning's complaint prior to sending its initial investigation letter to Respondent, prior to receiving Respondent's December 4, 2016 letter, and prior to bringing its failure to cooperate charge against Respondent. For example, the State Bar had already been provided by Complainant with a copy of the Respondent's bill to Complainant giving a complete accounting of all funds received and paid.

SECOND AFFIRMATIVE DEFENSE

5. Respondent is informed and believes that there are no reported cases of the State Bar prosecuting a member only with a failure to cooperate count when there was no underlying misconduct. Respondent was told this by the settlement judge in this matter. Respondent believes that the State Bar is attempting to make an example of him for political reasons. Respondent is informed and believes that this is the reason that the State Bar insisted on filing these charges before the end of the calendar year.

THIRD AFFIRMATIVE DEFENSE

6. Respondent's delay in responding to the State Bar's inquiry was caused by mental stress that Respondent was suffering from, and by Respondent's taking care of his client's first instead of taking care of his own problem first.

FOURTH AFFIRMATIVE DEFENSE

7. Respondent is informed and believes that this matter should be resolved as suggested by the settlement judge in this case suggested: With Respondent taking an 8 hour ethics class and agreeing to something less than public discipline.

FIFTH AFFIRMATIVE DEFENSE

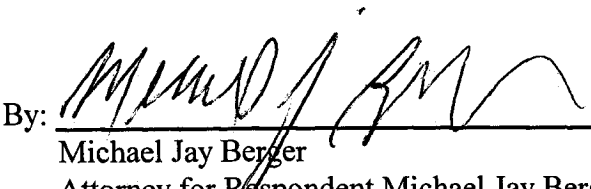
8. Respondent is informed and believes that the matter wrongfully complained of by George Lanning was so old at the time as to be barred by laches and by the applicable statutes of limitations. It is not right for the State Bar to take such a time barred, meritless complaint and turn it into the basis for discipline against Respondent.

WHEREFORE, Respondent prays for relief as follows:

1. That the State Bar's Notice of Disciplinary Charges be dismissed with prejudice; and

2.. For such other and further relief as the Court deems just and proper.

Dated: January 19, 2016

By: 

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Michael Jay Berger is a California State Bar Certified Bankruptcy Law Specialist

Sofya Davtyan
Ori Blumenfeld
Sheila Esmaili

By Messenger and By Fax 213-765-1050, 213-765-1319

December 4, 2015

Christopher Doukakis
Investigator
The State Bar of California
845 South Figueroa Street
Los Angeles, CA 90017-2515

William Todd
Senior Trial Counsel
845 South Figueroa Street
Los Angeles, CA 90017-2515

Re: Case Number 15-0-12701
Complainant: George Lanning

Dear Mr. Doukakis and Mr. Todd:

I was surprised to learn that more than four years after I finished my work for him and his wife, George Lanning filed a complaint against me. George and Nansee Lanning had extensive legal problems, many of them stemming from the unlicensed medical marijuana business that they owned and operated on Sunset Boulevard, The Sunset Super Shop, and from their failure to make mortgage payments on their investment property. Together and separately, they filed at least 6 separate bankruptcy cases in the last 7 years.

I received the March 9, 2011 letter from Jerome Cohen, accepted his invitation to discuss my bill with him, and then heard nothing further about this alleged fee dispute

until 2015 when I received a letter from Mr Doukakis. Evidently, Jerome Cohen was looking for money to help pay his fees as he had filed another bankruptcy proceeding for the Lannings on March 7, 2011. Note that Mr. Cohen does not in any way criticize the work that I did for the Lannings. A copy of his March 9, 2011 letter to me is attached hereto.

It is worth noting that under California law, the statute of limitations for any refund claim, breach of contract claim, or any other claim against me has already run without any complaint being filed. Nevertheless, I am pleased to explain now why the Lannings never had any claim against me.

Your letter alleges that the Lannings employed me in or around August 2010. Their first payment to me was $2,500.00 cash paid on July 20, 2010, with additional payments in July and August of 2010.. A copy of our signed fee agreement dated July 17, 2010 is enclosed herein.

Prior to retaining me, George and Nansee Lanning had filed a Chapter 11 in 2008 and George Lanning had filed 2 other bankruptcy cases in 2010. After the conclusion of the case that I handled for them, they filed 2 more bankruptcy cases.

George Lanning	cacbke	1:10-bk-12871	13	03/15/2010	04/26/2010	Dismissed for Failure to File Information 04/07/2010
George Lanning	cacbke	1:10-bk-15271	7	05/04/2010	07/09/2010	Dismissed for Failure to File Information 06/02/2010
George Lanning	cacbke	2:13-bk-18712	13	04/03/2013	05/06/2013	Dismissed for Failure to File Information 04/09/2013
George Lanning and Nansee Lanning	cacbke	2:10-bk-42450	11	08/04/2010	03/01/2011	Dismissed for failure to pay filing fee and to file information 10/18/2010
George Lanning and Nansee	cacbke	2:11-bk-19760	11	03/07/2011	10/30/2012	Dismissed for Other Reason 05/07/2012

Lanning

George Lanning and Nansee Lanning	cacbke	2:08-bk-11578	11	02/06/2008	06/30/2008	Dismissed for Other Reason 06/17/2008

Here are my specific answers to your three questions:

1. What led to the dismissal on October 18, 2010 was the failure of the Lannings to file their August, 2010 Monthly Operating Report on time (it was filed on October 1 instead of September 15 when it was due, due to the failure of the Lannings to supply accurate, complete information to counsel), the failure of the Lannings to timely pay the United States Trustee quarterly fee, and Judge Zurzolo's view of the conduct of the debtors in this case and in their prior bankruptcy cases. In my opinion, Judge Zurzolo's view of their conduct was influenced by the representations made by creditor's counsel as discussed herein. All required bankruptcy schedules were filed by my office on a timely basis. The filing fee to file Chapter 11 was filed by me at the time the case was filed. The case could not have been filed in the first place if I had not paid the Chapter 11 Filing fee. This case was electronically filed and my debit card was charged the moment that the case was filed. The entry on the docket (complete docket attached) dated August 4, 2010 is a receipt for the $1,039.00 filing fee that I paid on the Lannings behalf. There were no other court filing fees in this case that were payable by the debtors.

   In reviewing the docket in this bankruptcy case to prepare my response to your inquiry, I saw the notation on the docket "dismissed due to failure to pay filing fee and to file information." I infer that this refers to the debtors' failure to pay the US Trustee Quarterly Fees, fees that are required in every Chapter 11 case for the privilege of being in Chapter 11. This inference is supported by the Order of Dismissal filed and entered October 18, 2010 (copy attached), which includes the statement "FURTHER ORDERED that the United States Trustee is granted a judgment in the amount of $325.00 for United States Trustee quarterly fees." I am not aware of any other court or United States Trustee fee in this case that was not paid by the Lannings.

   The Order of Dismissal says only this about the reasons for dismissal: "The Court having considered the Debtor's record in this case, and for the reason set forth on the record."

   The Lannings were opposed in this bankruptcy by two angry creditors that were represented by competent counsel. Creditor California Bank & Trust was represented by Steve Casselberry of Michelman & Robinson, LLP. They filed a Motion for Relief from Stay on August 11, 2010 referencing the multiple prior

bankruptcies filed by the debtors and the multiple prior bankruptcy filings, alleging multiple prior bankruptcies affecting the property at issue, 8391 San Fernando Road, and alleging that the debtors' filing of the petition was part of a scheme to delay, hinder and defraud creditors. This Motion was filed on August 10 and is listed as item # 10 on the attached docket.

Andrew Kramer was another objecting creditor. Through his attorneys Stutman, Treister & Glatt, he objected to the debtors' Application for Order Authorizing the Use of Cash Collateral Regarding the West Sunset property. He pointed out in his papers that debtors' "marijuana dispensary is not licensed by the City of West Hollywood" and argued that the "Debtor's business thus operates in violation of both federal and state law" (page 2, lines16-17, a copy of Andrew Kramer's objection is attached hereto). Judge Zurzolo denied Debtors' Application to use cash collateral on September 29, 2010.

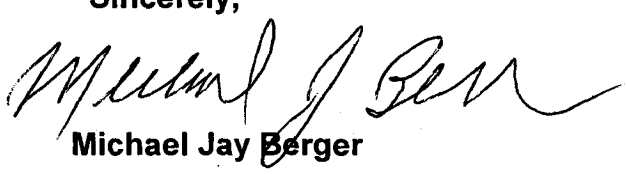
At the time of the Status Conference in Debtors case, September 23, 2010, Debtors were not in full compliance with the requirements of the Office of the United States Trustee. Specifically, Debtors had not filed the monthly operating report for August that was due September 15, 2010. The reason for this failure was the failure of the debtors to supply the required information to their counsel. The August, 2010 Monthly Operating Report that was due on September 15, 2010 was not filed until October 1, 2010. (Docket Item 34).

2. I did not refund any or all of the Lanning's retainer

3. I furnished the Lannings with a billing statement. On October 14, 2010, My assistant Jessica Orchard mailed them a copy of my Invoice #58. A duplicate copy of this invoice is attached hereto. The bill shows that not only are the Lannings not owed any refund, they owe me $2,352.04. Later that month I met in person with Nansee Lanning and spoke separately with George Lanning by telephone to go over my bill with them. In the end, they understood my bill showing that they were not entitled to any refund, but they refused to pay the $2,352.04 balance due. I decided that it was not worth suing them over $2,352.04 and the matter seemed to be resolved March 9, 2011 when their new bankruptcy attorney Jerome Cohen sent me his March 9, 2011 letter. Mr. Cohen was subsequently replaced by another bankruptcy.

I look forward to meeting with you in person and answering any other questions that you may have about this matter.

Sincerely,



Michael Jay Berger

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____

_____ and know its contents.

☐ **CHECK APPLICABLE PARAGRAPHS**

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____

_____,

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, at _____, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

Type or Print Name Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: Law Offices of Michael Jay Berger, 9454 Wilshire Blvd. 6th Floor, Beverly Hills, CA 90212

On, January 19, 2016 I served the foregoing document described as Respondent Michael Jay Berger's Answer to Notice of Disciplinary Charges

_____ on interested parties in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

William Todd, Senior Trial Counsel, State Bar of California
845 South Figueroa Street, Los Angeles, CA 90017

Angela Carpenter, Case Administrator for Judge Yvette D. Roland, State Bar of California, 845 South Figueroa Street, Los Angeles, CA 90017

☒ **BY MAIL**

☒ *I deposited such envelope in the mail at Beverly Hills, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on January 19, 2016, at Beverly Hills, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Erol Guler _____

Type or Print Name Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)