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FILED

OCT 11 2016

Respondent

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of :

JOSEPH HENRY MARMAN,
SBN 129517

Case Nos. 16-N-15019; 16-O-15084
ANSWER TO AMENDED NOTICE OF
DISCIPLINARY CHARGES

Respondent, JOSEPH HENRY MARMAN hereby answers this Complaint as follows:

These answering Defendant specifically and generally denies each and every factual allegation set forth in the NOTICE OF DISCIPLINARY CHARGES and all allegations contained therein, and each and every cause of action of said complaint.

AFFIRMATIVE DEFENSES

1. No Cause of Action

AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that this complaint fails to state facts sufficient to constitute a cause of action, or any cause of action, against these answering Respondent.

2. Set-off

AS A SEPARATE AFFIRMATIVE DEFENSE, STATE BAR is indebted to Respondent in a sum to be established at the trial of this matter, and Respondent are entitled to a set-off for the amount of such obligation due from STATE BAR to Respondent, against any obligation found to be due from Respondent to STATE BAR by reason of this complaint.

Answer to Amended Notice of Disciplinary Charges

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1 **3. Statute of Limitations**

2 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that the claims
3 asserted by this complaint are barred by the applicable statutes of limitation, set forth in the
4 California Code of Civil Procedure, beginning with Section 335 and continuing through Section
5 349.4, and, more particularly, but not limited to, the following: Sections 337 (1), 337.1, 337.15,
6 338, 339, 340, and 343; and by sections 2607 (3) (a), 2725 (1) and (2) of the Uniform
7 Commercial Code of the State of California.

8 **4. Laches**

9 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that STATE
10 BAR has unreasonably delayed in bringing this action to the prejudice of these answering
11 Respondent, and is therefore barred from bringing this action by the doctrine of laches.

12 **5. Carelessness of Plaintiff**

13 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that STATE
14 BAR was careless and negligent in and about the matter set forth in said complaint, and that said
15 carelessness and negligence contributed to and approximately caused any and all damages, if any,
16 alleged in said Complaint.

17 **6. No Liability for Acts of Others**

18 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that, without
19 admitting any allegation of said Complaint, some of the acts, actions or activities, as alleged, were
20 committed, if at all, by independent, non-affiliated persons or other Respondent or tort feasons, who
21 were not acting on behalf of, or within the course and scope of any relationship with these
22 answering Respondent during the time referred to in the Complaint.

23 **7. Proposition 51**

24 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that his
25 responsibility, if any, and/or liability, if any, as to non-economic damages, if any, shall be limited
26 to the percentage of fault attributable, if any, to these answering Respondent, and that a separate
27 judgment shall be so rendered, under Civil Code § 1431.2.

28 **8. Indemnification**

1 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that should
2 STATE BAR recover from these answering Respondent, these answering Respondent is entitled to
3 indemnification, either whole or in part, from all persons or entities whose negligence and/or fault
4 proximately contributed to STATE BAR' damages, if any there are.

5 **9. Estoppel**

6 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that Plaintiff has
7 directed, ordered, consented to, approved and ratified Respondents conduct and STATE BAR is
8 therefore estopped from asserting any claim based thereon.

9 **10. Unclean Hands**

10 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that STATE
11 BAR are barred by virtue of its conduct in causing the damage alleged in the Complaint under the
12 doctrine of unclean hands.

13 **11. Failure to Mitigate**

14 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that any injury,
15 damage, or loss, if any sustained by STATE BAR, was aggravated by their failure to use
16 reasonable diligence to mitigate and minimize the same.

17 **12. Waiver and Release**

18 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that the
19 Complaint and each of its causes of action are barred because STATE BAR, through statements,
20 actions and conduct, have voluntarily and knowingly waived and released all rights, claims, and
21 causes of action, if any, against these answering Respondent.

22 **13. Contribution from Other Tort Feasors**

23 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that he has, or
24 will, satisfy more than their proportionate share of responsibility, and that these Respondent are
25 entitled to contribution from other parties, pursuant to Civil Code § 1432.

26 **14. Performance of Obligations**

27 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that prior to the
28 commencement of this action, these answering Respondent duly performed, satisfied and discharged

1 all duties and obligations they may have owed to the STATE BAR arising out of any and all
2 agreements, representation or contracts made by it or on behalf of these answering Respondent and
3 this action is therefore barred by the provisions of California Civil Code § 1473.

4 **15. Partial Performance - California Civil Code § 1474 – 1477**

5 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that the
6 Complaint and each alleged cause of action therein, are absolutely barred by the provisions of Civil
7 Code Sections 1474, 1475, 1476, 1477, and each of them.

8 **16. Knowledgeable Consent to Defendant's actions created privilege and justification**

9 AS A SEPARATE AFFIRMATIVE DEFENSE, Respondent alleges that the
10 Complainants knowingly and intelligently consented to the conduct of the Respondent creating
11 justification and privilege to the conduct of Respondent.

12 **17. Waiver**

13 AS A SEPARATE AND AFFIRMATIVE DEFENSE,, Respondent alleges that
14 Complaining party hereto has acted in such a way as to have waived the assertion of any claim.

15 **18. Assumption of the Risk**

16 AS A SEPARATE AND AFFIRMATIVE DEFENSE, Respondent herein alleges that
17 Complaining parties hereto had express, implied, and constructive knowledge and notice of the risks
18 and hazards set forth in the Complaint, as well as the magnitude of said risks and hazards, and
19 therefore knowingly and willingly assumed those risks.

20 **19. Bad Faith and Frivolous Claim**

21 AS A SEPARATE AND AFFIRMATIVE DEFENSE, Respondent herein alleges that
22 Complaining parties herein have acted in bad faith and have asserted a frivolous claim, entitling
23 these answering Respondent to an award of reasonable costs of defense and attorneys fees.

24 **20. Fraud**

25 AS A SEPARATE AND AFFIRMATIVE DEFENSE, Respondent herein alleges that
26 STATE BAR and their agents herein are guilty of fraud and misrepresentation in the underlying
27 activities relevant to the lawsuit, and are therefore barred from seeking any recovery.

28 **21. ANTI-SLAPP PRIVILEGE**

1 AS A SEPARATE AND AFFIRMATIVE DEFENSE, Respondent herein alleges that
2 California Code of Civil Procedure, §425.16, the anti-SLAPP code provides Respondent with a
3 privilege for protection of speech and redress of grievances and this is to be interpreted broadly.

4 **22. Novation - California Civil Code § 1530**

5 AS A SEPARATE AND AFFIRMATIVE DEFENSE, Respondent herein alleges
6 that STATE BAR have substituted a new obligation, and that Respondent have accepted that
7 substitution and have performed their part of that agreement, barring STATE BAR from pursuing
8 this action.

9 **23. Modification - California Civil Code § 1697**

10 AS A SEPARATE AND AFFIRMATIVE DEFENSE, Respondent herein alleges that
11 Plaintiff has modified the original contract to a new term. Respondent have accepted that
12 Modification, and have provided consideration by performance. Said proposed Modification of the
13 original contract has substituted a new obligation, and has therefore modified the original contract,
14 barring STATE BAR from pursuing this action.

15 **24. Accord and Satisfaction - California Civil Code § 1521**

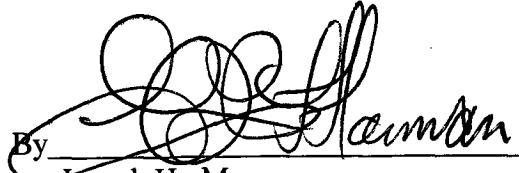
16 AS A SEPARATE AND AFFIRMATIVE DEFENSE, Respondent herein alleges that
17 STATE BAR have proposed an Accord and Satisfaction of the original contract. Respondent have
18 accepted that Accord, and have begun the process of Satisfaction by having provided consideration
19 by performance. Respondent have performed said Satisfaction. Said proposed Modification of the
20 original contract has substituted a new obligation, and has therefore modified the original contract,
21 barring STATE BAR from pursuing this action.

22 Wherefore, Respondent request that:

- 23 1. STATE BAR' request for relief, in all respects, be denied, and that STATE BAR take
24 nothing by this action.
25 2. Judgment be entered dismissing the Complaint, and each cause of action therein
26 alleged, against this answering Respondent.
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- 1 3. If STATE BAR prevail in any aspect of the Complaint, that the obligations due from
2 STATE BAR to Respondent, as established at the trial in this matter, be off-set against
3 any sums found to be due from Respondent to STATE BAR.
- 4 4. That these answering Respondent's proportionate liability and contribution be
5 determined by the court in relation to the other Respondent and other un-named tort-
6 feorsors.
- 7 5. Respondent be awarded their costs of suit, including reasonable attorneys fees
8 pursuant to Civil Code Section 1717; and
- 9 6. For such other and further relief as is deemed proper by the Court.
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14 Dated: October 4,2016

15 By 
16 Joseph H. Marman
17 Respondent
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PROOF OF SERVICE
(C.C.P. Sections 1005, 1013a, 2015.5)

I, Daniel Miranda, whose's address is 6008 Auburn Blvd., Citrus Heights, CA 95621. I am a licensed process server with my license number as 2016-13. Phone number is (916) 745-6259. I do declare that I am over the age of eighteen and am not a party to the within-entitled action. On the following date, I served, by depositing in the U.S. Mail, in a sealed envelope; postage fully pre-paid the following documents:

Respondent's Answer to Amended Notice of Disciplinary Charges

on the parties to the action addressed as follows:

STATE BAR OF CALIFORNIA
Susan Kagan
180 Howard Street
San Francisco, CA 94105-1639

STATE BAR COURT
180 Howard Street, 6th Floor
San Francisco, CA 94105

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 as indicated in the affidavit.

Signed under penalty of perjury under the laws of the State of California, on
10/5/16 2016 in Citrus Heights, CA.

 2016-13
Daniel Miranda, licensed Process Server and Legal Document Preparer.