

**PUBLIC MATTER
FILED**

OCT 12 2017

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

1 STATE BAR OF CALIFORNIA
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STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

12 In the Matter of:)
13) Case Nos. 16-O-12208; 16-O-17593;
14 MARTIN GUERBADOT,) 16-O-18197; 17-O-02872
15 No. 275873,)
16 A Member of the State Bar) NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

17
18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
19 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
20 **THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
23 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
- 24 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
25 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
26 **AND THE DEFAULT IS SET ASIDE, AND;**
- 27 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
28 **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.



1 The State Bar of California alleges:

2 JURISDICTION

3 1. Martin Guerbadot (“respondent”) was admitted to the practice of law in the State of
4 California on May 16, 2011, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6
7 COUNT ONE (A)
8 The Barbosa-Cedeno Matter
9 Case No, 16-O-12208
10 Rules of Professional Conduct, rule 3-110(A)
11 [Failure to Perform with Competence]

12 2. On or about March 18, 2013, Antonio Barbosa-Cedeno employed respondent to
13 perform legal services, namely filing documents in support of a Petition for Alien Relative on
14 behalf of the client, which respondent intentionally, recklessly, or repeatedly failed to perform
15 with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by failing
16 to prepare and failing to file UCIS Form I -601A on the client’s behalf, or to perform any legal
17 services on the client’s behalf after July 11, 2013.

18 COUNT ONE (B)
19 The Barbosa-Cedeno Matter
20 Case No, 16-O-12208
21 Rules of Professional Conduct, rule 3-110(A)
22 [Failure to Perform with Competence]

23 3. In or about November 2014, Antonio Barbosa-Cedeno employed respondent to
24 perform legal services, namely filing a personal injury action on behalf of the client, which
25 respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful
26 violation of Rules of Professional Conduct, rule 3-110(A), by failing to file a complaint to
27 initiate the action or perform any other legal services for the client.
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COUNT ONE (C)
The Barbosa-Cedeno Matter
Case No. 16-O-12208
Rules of Professional Conduct, rule 3-700(A)(2)
[Improper Withdrawal from Employment]

4. Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's client, Antonio Barbosa-Cedeno, by constructively terminating respondent's employment in the client's immigration matter in or about August 2015, by failing to take any action on the client's behalf to complete the clients' Petition for Alien Relative, and thereafter failing to inform the client that respondent was withdrawing from employment, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

COUNT ONE (D)
The Barbosa-Cedeno Matter
Case No. 16-O-12208
Rules of Professional Conduct, rule 4-100(A)
[Failure to Deposit Client Funds in Trust Account]

5. On or about September 22, 2014, respondent received on behalf of respondent's client, Antonio Barbosa-Cedeno, a personal check in the amount of \$988 as payment of filing costs associated with the immigration matter he had been hired to handle. Respondent failed to deposit the \$988 in funds received for the benefit of the client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT ONE (E)
The Barbosa-Cedeno Matter
Case No. 16-O-12208
Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

6. On or about June 4, 2015, respondent received, on behalf of respondent's client, Antonio Barbosa-Cedeno, a direct deposit of \$650 into respondent's client trust account at J.P.

1 Morgan Chase Bank, account number 9515XXXXX-XXXX. Of this sum, \$650 was designated
2 for advanced costs associated with the client's case. Respondent failed to maintain a balance of
3 \$650 on the client's behalf in respondent's client trust account, in willful violation of Rules of
4 Professional Conduct, rule 4-100(A).

5
6 COUNT ONE (F)
7 The Barbosa-Cedeno Matter
8 Case No.16-O-12208
9 Business and Professions Code, section 6106
10 [Moral Turpitude - Misappropriation]

11 7. On or about June 4, 2015, respondent received on behalf of respondent's client,
12 Antonio Barbosa-Cedeno, a direct deposit of \$650 to respondent's client trust account, JP
13 Morgan Chase account ending 9515XXXXX-XXXX, as advanced costs in the personal injury
14 action. Respondent never incurred or paid costs in connection with the personal injury action.
15 Of this sum, the clients were entitled to \$650. Thereafter, the balance of respondent's client trust
16 account fell below \$650 on or about the following dates:

<u>Date</u>	<u>Account Balance</u>
June 5, 2015	\$0.00
June 30, 2015	\$0.00
July 10, 2015	\$495.00
July 15, 2015	\$0.00
July 31, 2015	\$0.00
August 3, 2015	\$0.00
August 6, 2015	\$76.00
August 12, 2016	\$1.00
October 13, 2015	\$1.00
October 30, 2015	\$1.00

17 8. Between on or about June 5, 2015, and on or about October 30, 2015, respondent
18 willfully and intentionally misappropriated \$650 that respondent was required to maintain on
19

1 behalf of the client. Respondent thereby committed an act involving moral turpitude, dishonesty
2 or corruption in willful violation of Business and Professions Code, section 6106.

3 9. A violation of section 6106 may result from intentional conduct or grossly negligent
4 conduct. Respondent is charged with committing an intentional misappropriation. However,
5 should the evidence at trial demonstrate that respondent misappropriated funds as a result of
6 grossly negligent conduct, respondent must still be found culpable of violating section 6106
7 because misappropriation through gross negligence is a lesser included offense of intentional
8 misappropriation .

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10 COUNT ONE (G)
11 The Barbosa-Cedeno Matter
12 Case No. 16-O-12208
13 Business and Professions Code, section 6068(m)
14 [Failure to Respond to Client Inquiries]

15 10. Respondent failed to respond promptly to six reasonable status inquiries made by
16 respondent's client, Antonio Barbosa-Cedeno, between on or about April 26, 2015 and on or
17 about December 10, 2015, in matters in which respondent had agreed to provide legal services,
18 in willful violation of Business and Professions Code, section 6068(m).

19 COUNT ONE (H)
20 The Barbosa-Cedeno Matter
21 Case No. 16-O-12208
22 Business and Professions Code, section 6106
23 [Moral Turpitude - Misrepresentation]

24 11. Respondent committed acts involving moral turpitude, dishonesty, or corruption in
25 willful violation of Business and Professions Code, section 6106, as follows:

26 A. On or about October 2014, respondent stated to his client, Antonio Barbosa-Cedeno,
27 that he had filed USCIS form I-601A on Barbosa-Cedeno's behalf when respondent
28 knew that statement was false and misleading.

1 B. On or about August 3, 2015, respondent stated in writing to his clients, Antonio
2 Barbosa-Cedeno, that he had filed a personal injury lawsuit on Barbosa-Cedeno's
3 behalf when respondent knew that statement was false and misleading.

4 12. A violation of section 6106 may result from intentional conduct or grossly negligent
5 conduct. Respondent is charged with committing intentional misrepresentation. However,
6 should the evidence at trial demonstrate that respondent committed misrepresentation as a result
7 of gross negligence, respondent must still be found culpable of violating section 6106 because
8 misrepresentation through gross negligence is a lesser included offense of intentional
9 misrepresentation.

10 COUNT TWO (A)
11 The Barba Matter
12 Case No, 16-O-18197
13 Rules of Professional Conduct, rule 3-110(A)
14 [Failure to Perform with Competence]

15 13. On or about May 11, 2016, Jose and Beatriz Barba employed respondent to perform
16 legal services, namely filing a malpractice action against the clients' former attorney, which
17 respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful
18 violation of Rules of Professional Conduct, rule 3-110(A), by failing to file a complaint to
19 initiate the action or perform any other legal services for the clients.

20 COUNT TWO (B)
21 The Barba Matter
22 Case No. 16-O-18197
23 Rules of Professional Conduct, rule 3-700(A)(2)
24 [Improper Withdrawal from Employment]

25 14. Respondent failed, upon termination of employment, to take reasonable steps to
26 avoid reasonably foreseeable prejudice to respondent's clients, Jose and Beatriz Barba, by
27 constructively terminating respondent's employment in their legal malpractice action in or about
28 November 2016, by failing to take any action on the client's behalf and thereafter failing to
inform the client that respondent was withdrawing from employment, in willful violation of
Rules of Professional Conduct, rule 3-700(A)(2).

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COUNT TWO (C)
The Barba Matter
Case No. 16-O-18197
Rules of Professional Conduct, rule 4-100(A)
[Failure to Deposit Client Funds in Trust Account]

15. On or about May 11, 2016, respondent received on behalf of his clients, Jose and Beatriz Barba, a direct deposit of \$1,000 into a Chase bank account as advanced litigation costs associated with the legal malpractice action he had been hired to handle. The \$1,000 in funds received for the benefit of the respondent’s client were not deposited into a bank account labeled “Trust Account,” “Client’s Funds Account” or words of similar import, in willful violation Rules of Professional Conduct, rule 4-100(A).

COUNT TWO (D)
The Barba Matter
Case No. 16-O-18197
Rules of Professional Conduct, rule 4-100(A)
[Commingling Personal Funds in a Trust Account]

16. On or about April 7, 2017 and on or about April 19, 2017, respondent deposited or commingled funds belonging to respondent into respondent’s client trust account at JP Morgan Chase Bank, 9515XXXXX-XXXX, as follows, in willful violation Rules of Professional Conduct, rule 4-100(A):

<u>Date of Deposit</u>	<u>Amount Deposited</u>	<u>Form of Deposit</u>
April 7, 2017	\$874.94	Direct deposit
April 19, 2017	\$2,744.25	Direct deposit

COUNT TWO (E)
The Barba Matter
Case No. 16-O-18197
Business and Professions Code, section 6068(j)
[Failure to Update Membership Address]

17. On or about November 23, 2016, respondent vacated respondent’s office located at the address maintained on the official membership records of the State Bar and thereafter failed to comply with the requirements of Business and Professions Code section 6002.1, by failing to

1 notify the State Bar of the change in respondent's address within 30 days, in willful violation of
2 Business and Professions Code, section 6068(j).

3
4 COUNT THREE (A)

5 The Miller Matter
6 Case No.16-O-17593
7 Rules of Professional Conduct, rule 3-110(A)
8 [Failure to Perform with Competence]

9 18. On or about October 27, 2015, Anita Miller employed respondent to perform legal
10 services, namely to seek post-conviction relief in connection with the client's defense to removal
11 proceedings, which respondent intentionally, recklessly, or repeatedly failed to perform with
12 competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by failing to
13 file a motion to vacate the judgment in *People v. Miller*, Alameda County Superior Court case
14 no. 415530.

15 COUNT THREE (B)

16 The Miller Matter
17 Case No. 16-O-17593
18 Rules of Professional Conduct, rule 3-700(A)(2)
19 [Improper Withdrawal from Employment]

20 19. Respondent failed, upon termination of employment, to take reasonable steps to
21 avoid reasonably foreseeable prejudice to respondent's client, Anita Miller, by constructively
22 terminating respondent's employment in the post-conviction relief sought in her immigration
23 matter on or about November 4, 2016, by failing to take any action on the client's behalf and
24 thereafter failing to inform the client that respondent was withdrawing from employment, in
25 willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

26 COUNT THREE (C)

27 The Miller Matter
28 Case No.16-O-17593
29 Rules of Professional Conduct, rule 3-700(D)(2)
30 [Failure to Refund Unearned Fees]

31 20. On or about October 27, 2015, respondent received advanced fees of \$3,500 from a
32 client, Anita Miller, to complete post-conviction relief in support of Miller's defense of removal

1 proceedings. Respondent failed to perform necessary legal services for the client, and therefore
2 earned none of the advanced fees paid. Respondent failed to refund promptly, upon respondent's
3 termination of employment on or about November 4, 2016, any part of the \$3,500 in advanced
4 fee to the client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

5
6 COUNT THREE (D)

7 The Miller Matter
8 Case No. 16-O-17593
9 Business and Professions Code, section 6068(j)
10 [Failure to Update Membership Address]

11 21. On or about November 23, 2016, respondent vacated respondent's office located at
12 the address maintained on the official membership records of the State Bar and thereafter failed
13 to comply with the requirements of Business and Professions Code section 6002.1, by failing to
14 notify the State Bar of the change in Respondent's address within 30 days, in willful violation of
15 Business and Professions Code, section 6068(j).

16
17 COUNT THREE (E)

18 The Miller Matter
19 Case No. 16-O-17593
20 Business and Professions Code, section 6106
21 [Moral Turpitude - Misrepresentation]

22 22. In or around May 2016, respondent stated to his client, Anita Miller, that he had filed
23 a motion seeking post-conviction relief on Miller's behalf in Alameda County Superior Court
24 case no. 415530 when respondent knew that statement was false and misleading. Respondent
25 thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation
26 of Business and Professions Code, section 6106.

27 23. A violation of section 6106 may result from intentional conduct or grossly negligent
28 conduct. Respondent is charged with committing intentional misrepresentation. However,
should the evidence at trial demonstrate that respondent committed misrepresentation as a result
of gross negligence, respondent must still be found culpable of violating section 6106 because
misrepresentation through gross negligence is a lesser included offense of intentional
misrepresentation.

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COUNT FOUR (A)
The Kivolya Matter
Case No. 17-O-02872
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

24. On or about May 22, 2015, Irina Kivolya employed respondent to perform legal services, namely to prepare and file an application for affirmative asylum and an application for a work permit, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by failing to complete and file any applications on the client's behalf or perform any other work on her behalf.

COUNT FOUR (B)
The Kivolya Matter
Case No. 17-O-02872
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

25. On or about May 22, 2015, Irina Kivolya employed respondent to perform legal services, namely to prepare and file an application for affirmative asylum and an application for a work permit, 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 supervise his office staff and permitting them to communicate to the client via email on or about September 8, 2016, that her biometrics appointment had been rescheduled, when respondent knew or should have known that that information was false and misleading;
- (B) Permitting his office assistant to provide the client, on or about September 8, 2016, with document that falsely purported to be confirmation of a biometrics appointment, when respondent knew or should have known that the document was false and misleading.

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COUNT FOUR (C)
The Kivolya Matter
Case No. 17-O-02872
Rules of Professional Conduct, rule 3-700(D)(1)
[Failure to Release File]

26. Respondent failed to release promptly, after termination of respondent's employment on or about September 30, 2016, to respondent's client, Irina Kivolya, all of the client's papers and property following the client's request for the client's file on or about September 30, 2016, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

COUNT FOUR (D)
The Kivolya Matter
Case No. 17-O-02872
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

27. On or about May 22, 2015, respondent received advanced fees of \$3,500 from a client, Irina Kivolya, to prepare and submit an affirmative asylum application on the client's behalf, and to handle associated legal tasks. Respondent failed to prepare and file the asylum application, or perform any legal services for the client, and therefore earned none of the advanced fees paid. Respondent failed to refund promptly, upon respondent's termination of employment on or about September 30, 2016, any part of the \$3,500 fee to the client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT FOUR (E)
The Kivolya Matter
Case No. 17-O-02872
Business and Professions Code, section 6068(j)
[Failure to Update Membership Address]

28. On or about November 23, 2016, respondent vacated respondent's office located at the address maintained on the official membership records of the State Bar and thereafter failed to comply with the requirements of Business and Professions Code section 6002.1, by failing to notify the State Bar of the change in Respondent's address within 30 days, in willful violation of Business and Professions Code, section 6068(j).

COUNT FOUR (F)
The Kivolya Matter
Case No. 17-O-02872
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

29. Respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code, section 6106, as follows:

- A. On or about May 5, 2016, by providing Irina Kivolya a copy of a document that purported to be a USCIS filing receipt in her name, and stating, in writing, "here is a copy of receipt," when respondent knew that statement was false and misleading;
- B. On or about September 13, 2016, by stating in writing to Irina Kivolya that he expected to receive the client's work authorization soon, when respondent knew that statement was false and misleading;
- C. On or about September 28, 2016, by stating in writing to Irina Kivolya that respondent was contacting USCIS and submitting "the [asylum] application that was previously filed," when respondent knew when respondent knew that statement was false and misleading.

30. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Respondent is charged with committing intentional misrepresentation. However, should the evidence at trial demonstrate that respondent committed misrepresentation as a result of gross negligence, respondent must still be found culpable of violating section 6106 because misrepresentation through gross negligence is a lesser included offense of intentional misrepresentation.

NOTICE - INACTIVE ENROLLMENT!

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

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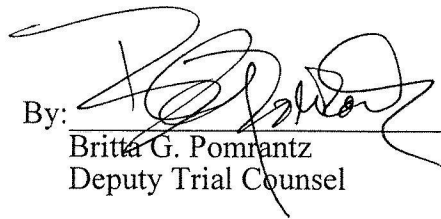
NOTICE - COST ASSESSMENT!

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: 10/12/2017

By: 
Britta G. Pomrantz
Deputy Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 16-O-12208; 16-O-17593; 16-O-18197; 17-O-02872

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES



By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- 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.



By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))

- 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.



By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').



By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at San Francisco, addressed to: (see below)



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: See below at San Francisco, addressed to: (see below)



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy via email to:
Martin Ross Guerbador	MRG Immigration 100 Pine St., Ste. 1250 San Francisco, CA 94111 Article No. 9414 7266 9904 2112 6636 97	Electronic Address	mguerbador@gmail.com
	1337 Portola Drive San Francisco, CA 94127 Article No. 9414 7266 9904 2112 6636 80		mguerbador@mrgvisa.com

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

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, and overnight delivery by the United Parcel Service ('UPS'). 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, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the 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.

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: October 12, 2017

SIGNED: 
Victoria Gotera
Declarant