

No. S214058

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICIA J. BARRY

Plaintiff and Appellant,

v.

THE STATE BAR OF CALIFORNIA,

Defendant and Respondent.

SUPREME COURT
LODGED EXHIBITS

OCT 22 2013

Deputy

After a Published Decision by the Court of Appeal Second Appellate District, Division Two Case No. B242054, Reversing a Judgment Entered by the Superior Court for the County of Los Angeles, Case No. BC452239, The Honorable Dierdre Hill presiding

REQUEST FOR JUDICIAL NOTICE

Volume III of IV

Exhibits X-CC

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Attorneys for Defendant and Respondent
THE STATE BAR OF CALIFORNIA

REQUEST FOR JUDICIAL NOTICE

Pursuant to rule 8.54 of the California Rules of Court, Evidence Code section 452, subdivision (d), and Evidence Code section 459, Petitioner The State Bar of California (“State Bar”) moves for judicial notice of the following Superior Court actions, all of which were brought against the State Bar, its officials or employees:

1. *Alexander, Jon v. State Bar, et al*, San Francisco Sup. Ct., Case No. CGC-12-525073, filed October 12, 2012 (Exs. A-B).
2. *Brown, James Earl v. Guitierrez, et al.*, Los Angeles Sup. Ct., Case No. BC369840, filed April 23, 2007 (Exs. C-D).
3. *Chavarela, Nicholas v. State Bar et al.*, Orange County Sup. Ct. Case No. 30-2009-00311346, filed October 4, 2009, Fourth Dist. Ct. of App. Case No. G043727 (Exs. E-F).
4. *Dickson, Lorraine v. State Bar, Board of Governors, Streeter, Kim, et al.*, Los Angeles Sup. Ct., Case No. BC470523, filed September 28, 2011(Exs. G-H).
5. *Dydzak, Daniel v. Dunn, Joseph, et al.*, Orange County Sup. Ct., Case No 30-2012-00558031, filed May 2, 2012 (Exs. I-J).
6. *Fletcher, Michael v. State Bar et al.*, Los Angeles Sup. Ct., Case No. BS129414, filed November 24, 2010 (Exs. K-L).
7. *Foley, Natalia v. State Bar, B. Rodriguez*, Los Angeles Sup. Ct., Case No. BC445288, filed September 9, 2010 (Exs. M-N).
8. *Gjerde, Sean v. State Bar, et al.*, Sacramento Co. Sup. Ct., Case No. 34-2012-00134070, filed October 19, 2012 (Exs. O-P).
9. *Gottshalk, Ronald v. Public Defender et al*, Orange County Sup. Ct., Case No. 30-2010-00359752-CU-NP-CJC, filed April 5, 2010 (Exs. Q-R).
10. *Henschel, Bradford v. State Bar, et al.*, Los Angeles Sup. Ct., Case No. BC379051, filed December 4, 2007, Second Dist. Ct. of App., Case Nos. B206984, B213595 (Exs. S-T).

11. *Joseph, Joel v. the State Bar of California*, Los Angeles Sup. Ct., Case No. SC103749, filed June 26, 2009, Second Dist. Ct. of App., Case No. B221236 (Exs. U-V).
12. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-10-496869, filed February 16, 2010, First Dist. Ct. of App., Case No. A129515, Cal. Supreme Court Case No. S198578 (Exs.W-X).
13. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-10-502372, filed August 6, 2010, First Dist. Ct. of App., Case Nos. A132643, A134111, A137989 (Exs. Y-Z).
14. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-510717, filed May 4, 2011, First Dist. Ct. of App., Case Nos. A134205, A137989 (Exs. AA-BB).
15. *Kay, Philip E., Robin Kay, Chris Enos v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-514255, filed September 4, 2011 (Exs. CC-DD).
16. *Missud, Patrick v. State Bar of California*, San Francisco Sup. Ct., Case No. CGC-13-533811, filed September 3, 2013 (Ex. EE).
17. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC-06-450766, filed November 29, 2006 (Exs. FF-GG).
18. *Morris, Gregory A. v. State Bar of California, et al.* San Francisco Sup. Ct., Case No. CGC-08-471504 (Exs. HH-II).
19. *Morrowatti, Nasrin v. State Bar of California*, Los Angeles Sup. Ct., Case No. BC 347921, filed February 23, 2006, Second Dist. Ct. of App., Case No. B196392 (Exs. JJ-KK).
20. *Oxman, Brian v. Chang, Alec, et al.*, Los Angeles Sup. Ct., Case No. BC516601, filed July 29, 2013 (Ex. LL).
21. *Scurrah, Robert v. State Bar et al.*, Orange County Sup. Ct., Case No. 30-2012-00595756, filed September 5, 2012 (Exs. MM-NN).
22. *Spadaro, Charlotte v. Phyllis Williams, The State Bar of California*, San Bernardino Co. Sup. Ct. , Case No. CIVRS1203310, filed April 30, 2012 (Ex. OO-PP).
23. *Taylor, Swazi v. State Bar*, Los Angeles Sup. Ct., Case No. BC476842, filed January 18, 2012 (Exs. QQ-RR).

24. *Viriyapanthu, Paul v. The State Bar of California, Viveros*, Orange County Sup. Ct., Case No. 30-2010-00418393, filed October 15, 2010 (Exs. SS-TT).

DATED: October 21, 2013

KERR & WAGSTAFFE LLP

By



MICHAEL VON LOEWENFELDT
Attorneys for Respondent
The State Bar of California

MEMORANDUM OF POINTS AND AUTHORITIES

This request seeks judicial notice of all of the cases in which Petitioner and its officials, agents and employees have been sued in superior court regarding the attorney admissions and discipline process despite an absence of jurisdiction. Pursuant to California Rules of Court, rule 8.252(a)(2)(A), these lawsuits are relevant because they demonstrate that the State Bar has been sued numerous times in superior court regarding attorney admissions and discipline despite a lack of jurisdiction. The volume of these cases demonstrate the corresponding time and effort the State Bar has had to expend in order to get these cases dismissed.

As required under California Rules of Court, rule 8.252(a)(2)(B), Petitioner avers that these documents were not the subject of judicial notice at either the trial court or the appellate court level because the merits of the trial court's order granting the State Bar's special motion to strike were not at issue. See Declaration of Danielle Lee, attached hereto.

Judicial notice is the appropriate procedure for bringing these lawsuits before this court. (California Rules of Court, rule 8.252(a)(2)(C); see Evid. Code, §452, subd. (d); *Szetelea v. Discover Bank* (2002) 97 Cal.App.4th 1094, 1098; *Taus v. Loftus* (2007) 40 Cal.4th 683, 726 (records from other state court proceedings involving plaintiff relevant to discredit plaintiff's present intrusion-into-private-matters lawsuit);

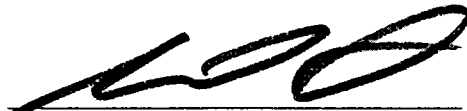
Based on the foregoing legal authority, and for the foregoing reasons, the State Bar respectfully requests this court to grant the motion for judicial notice.

DATED: October 21, 2013

Respectfully submitted,

KERR & WAGSTAFFE LLP

By



Michael von Loewenfeldt

Attorneys for Respondent
THE STATE BAR OF CALIFORNIA

DECLARATION OF DANIELLE LEE

I, Danielle Lee, hereby declare:

1. I am an attorney licensed to practice before all federal and state courts in the State of California, and am an attorney in the Office of the General Counsel of The State Bar of California, one of the attorneys of record for the State Bar of California. I have personal knowledge of the facts stated herein, and, if called as a witness, could and would competently testify to them under oath.


2. I was counsel of record in this matter for The State Bar of California when this matter was in Los Angeles Superior Court, Case number BC452239. I did not request judicial notice of the other cases to which the State Bar, its officials, agents and employees have been a party because the trial court had already granted that the State Bar's special motion to strike pursuant to Code of Civil Procedure section 425.16. The only issue for the hearing on the State Bar's motion for attorney's fees was the reasonableness of the State Bar's fee request.

3. I was counsel of record for the State Bar at the time Ms. Barry appealed the attorney fees award, Second District Court of Appeal, Case number B242054. Because Ms. Barry admitted that she was not appealing the order granting the State Bar's special motion to strike, and was only appealing the order granting the State Bar attorney fees, I did not

request judicial notice of the other cases to which the State Bar, its officials, agents and employees.

4. The State Bar's Office of General Counsel was counsel in each of the cases referenced in this Motion for Judicial Notice. The documents attached hereto are all true and correct copies from the court files in those cases.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 12, 2013, at San Francisco, California.



DANIELLE LEE

PROOF OF SERVICE

I, Lisa Ramon, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 100 Spear Street, 18th Floor, San Francisco, California 94105.

On October 21, 2013, I served the following document(s):

- **REQUEST FOR JUDICIAL NOTICE, VOLUME III OF IV, EXHIBITS X-CC**

on the parties listed below as follows:

Patricia J. Barry 634 Spring Street, #823 Los Angeles, CA 90014	Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill St. Los Angeles, CA 90012
California Court of Appeal 2nd Appellate District, Division 2 Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013 <i>Via Electronic Submission to California Court of Appeal (Petition for Review <u>only</u>)</i>	

By first class mail by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 21, 2013 at San Francisco, California.

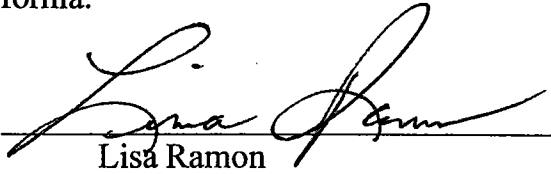

Lisa Ramon

TABLE OF CASES

Exhibit	Case
A.	<i>Alexander, Jon v. State Bar, et al.</i> , San Francisco Sup. Ct., Case No. CGC-12-525073, Complaint filed October 12, 2012.
B.	<i>Alexander, Jon v. State Bar, et al.</i> , San Francisco Sup. Ct., Case No. CGC-12-525073, dismissal filed November 16, 2012.
C.	<i>Brown, James Earl v. Guitierrez, et al.</i> , Los Angeles Sup. Ct., Case No. BC369840, Complaint filed April 23, 2007.
D.	<i>Brown, James Earl v. Guitierrez, et al.</i> , Los Angeles Sup. Ct., Case No. BC369840, dismissal of action filed September 16, 2008.
E.	<i>Chavarela, Nicholas v. State Bar et al.</i> , Orange County Sup. Ct. Case No. 30-2009-00311346, Fourth Dist. Ct. of App. Case No. G043727, Complaint filed October 4, 2009.
F.	<i>Chavarela, Nicholas v. State Bar et al.</i> , Orange County Sup. Ct. Case No. 30-2009-00311346, Fourth Dist. Ct. of App. Case No. G043727, order granting special motion to strike filed April 29, 2010.
G.	<i>Dickson, Lorraine v. State Bar, Board of Governors, Streeter, Kim, et al.</i> , Los Angeles Sup. Ct., Case No. BC470523, Complaint filed September 28, 2011.
H.	<i>Dickson, Lorraine v. State Bar, Board of Governors, Streeter, Kim, et al.</i> , Los Angeles Sup. Ct., Case No. BC470523, judgment of dismissal filed April 10, 2012.
I.	<i>Dydzak, Daniel v. Dunn, Joseph, et al.</i> , Orange County Sup. Ct., Case No 30-2012-00558031, First Amended Complaint filed May 2, 2012.
J.	<i>Dydzak, Daniel v. Dunn, Joseph, et al.</i> , Orange County Sup. Ct., Case No 30-2012-00558031, voluntary request for dismissal filed October 9, 2012.
K.	<i>Fletcher, Michael v. State Bar et al.</i> , Los Angeles Sup. Ct., Case No. BS129414, petition for writ of mandate filed November 24, 2010.

- L. *Fletcher, Michael v. State Bar et al.*, Los Angeles Sup. Ct., Case No. BS129414, dismissal minute order filed March 29, 2011.
- M. *Foley, Natalia v. State Bar, B. Rodriguez*, Los Angeles Sup. Ct., Case No. BC445288, Complaint filed September 9, 2010.
- N. *Foley, Natalia v. State Bar, B. Rodriguez*, Los Angeles Sup. Ct., Case No. BC445288, voluntary dismissal filed December 28, 2010, and minute order following voluntary dismissal filed February 14, 2011.
- O. *Gjerde, Sean v. State Bar, et al.*, Sacramento Co. Sup. Ct., Case No. 34-2012-00134070, Complaint filed October 19, 2012.
- P. *Gjerde, Sean v. State Bar, et al.*, Sacramento Co. Sup. Ct., Case No. 34-2012-00134070, Judgment of Dismissal following granting of special motion to strike filed April 11, 2013.
- Q. *Gottshalk, Ronald v. Daniels et al.*, Orange County Sup. Ct., Case No. 30-2010-00359752-CU-NP-CJC, Complaint filed April 5, 2010.
- R. *Gottshalk, Ronald v. Daniels et al.*, Orange County Sup. Ct., Case No. 30-2010-00359752-CU-NP-CJC, Notice of Dismissal filed August 22, 2011.
- S. *Henschel, Bradford v. State Bar, et al.*, Los Angeles Sup. Ct., Case No. BC379051, Second Dist. Ct. of App., Case Nos. B206984, B213595, Complaint filed December 4, 2007.
- T. *Henschel, Bradford v. State Bar, et al.*, Los Angeles Sup. Ct., Case No. BC379051, filed December 4, 2007, Second Dist. Ct. of App., Case Nos. B206984, B213595, order granting special motion to strike filed January 17, 2008.
- U. *Joseph, Joel v. the State Bar of California*, Los Angeles Sup. Ct., Case No. SC103749, Second Dist. Ct. of App., Case No. B221236, Complaint filed June 26, 2009.
- V. *Joseph, Joel v. the State Bar of California*, Los Angeles Sup. Ct., Case No. SC103749, Second Dist. Ct. of App., Case No. B221236 2009, Order sustaining demurrer without leave to amend October 27, 2009.

- W. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct, Case No. CGC-10-496869, First Dist. Ct. of Appeal, Case No. A129515, California Supreme Court, Case No. S198578, Complaint filed February 16, 2010.
- X. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct, Case No. CGC-10-496869, First Dist. Ct. of Appeal, Case No. A129515, California Supreme Court, Case No. S198578, order sustaining demurrer and taking special motion to strike off calendar filed July 29, 2010.
- Y. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CV 10-502372, First Dist. Ct. Appeal, Case Nos. A132643, A134111, A137989, Complaint filed August 6, 2010.
- Z. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CV 10-502372, First Dist. Ct. Appeal, Case Nos. A132643, A134111, A137989, order sustaining demurrer filed September 20, 2011.
- AA. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-510717, First Dist. Ct. Appeal, Case Nos. A134205, A137989, Complaint filed May 4, 2011.
- BB. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-510717, First Dist. Ct. Appeal, Case Nos. A134205, A137989, order sustaining demur filed August 5, 2011.
- CC. *Kay, Philip E., Robin Kay, Chris Enos v. State Bar et al.*, San Francisco Sup. Ct., Case No. CGC-11-514255, Complaint filed September 14, 2011.
- DD. *Kay, Philip E., Robin Kay, Chris Enos v. State Bar et al.*, San Francisco Sup. Ct. , Case No. CGC-11-514255, voluntary dismissal filed February 17, 2012.
- EE. *Missud, Patrick v State Bar of California*, San Francisco Sup. Ct., Case No. CGC-13-533811, First Amended Complaint filed September 3, 2013.
- FF. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 06-450766, fifth Amended Complaint filed

October 9, 2009.

- GG. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 06-450766, order sustaining demurrer filed May 18, 2010.
- HH. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 08-471504, Complaint filed January 29, 2008.
- II. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 08-471504, order dismissing entire action filed January 12, 2009.
- JJ. *Morrowatti, Nasrin v. State Bar of California, et al.*, Los Angeles Sup. Ct., Case No. BC 347921, Second Dist. Ct. Appeal, Case No. B196392, Complaint filed February 23, 2006.
- KK. *Morrowatti, Nasrin v. State Bar of California, et al.*, Los Angeles Sup. Ct., Case No. BC 347921, Second Dist. Ct. Appeal, Case No. B196392, minute order sustaining demurrer filed November 17, 2006.
- LL. *Oxman, Brian v. Chang, Alec, et al.*, Los Angeles Sup. Ct., Case No. BC516601, Complaint filed July 29, 2013.
- MM. *Scurrah, Robert v. State Bar et al.*, Orange County Sup. Ct., Case No. 30-2012-00595756, Complaint filed September 5, 2012.
- NN. *Scurrah, Robert v. State Bar et al.*, Orange County Sup. Ct. , Case No. 30-2012-00595756, Minute order sustaining demurrer filed August 27, 2013.
- OO. *Spadaro, Charlotte v. Phyllis Williams, The State Bar of California*, San Bernardino Co. Sup. Ct., Case No. CIVRS1203310, Complaint filed April 30, 2012.
- PP. *Spadaro, Charlotte v. Phyllis Williams, The State Bar of California*, San Bernardino Co. Sup. Ct., Case No. CIVRS1203310, order sustaining demurrer filed October 3, 2013.
- QQ. *Taylor, Swazi v. State Bar*, Los Angeles Sup. Ct., Case No. BC476842, Complaint filed January 18, 2012.

- RR. *Taylor, Swazi v. State Bar*, Los Angeles Sup. Ct., Case No. BC476842, judgment of dismissal filed August 23, 2012.
- SS. *Viriyapanthu, Paul v. The State Bar of California, Viveros*, Orange County Sup. Ct., Case No. 30-2010-00418393, Complaint filed October 15, 2010.
- TT. *Viriyapanthu, Paul v. The State Bar of California, Viveros*, Orange County Sup. Ct., request for dismissal filed April 1, 2011.

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10 Attorneys for Defendants
11 THE STATE BAR OF CALIFORNIA, BOARD OF
GOVERNORS OF THE STATE BAR OF
12 CALIFORNIA, THE OFFICE OF THE CHIEF
TRIAL COUNSEL, LUCY ARMENDARIZ,
13 SCOTT J. DREXEL, JEFF DAL CERRO, AND
ALLEN BLUMENTHAL

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO

17
18 PHILIP E. KAY,
19 Plaintiff,

20 v.

21 THE STATE BAR OF CALIFORNIA, BOARD OF
GOVERNORS OF THE STATE BAR OF
22 CALIFORNIA, THE OFFICE OF THE CHIEF
TRIAL COUNSEL, LUCY ARMENDARIZ, IN
23 HER OFFICIAL CAPACITY, SCOTT J. DREXEL,
INDIVIDUALLY AND IN HIS OFFICIAL
24 CAPACITY, ALLEN BLUMENTHAL,
INDIVIDUALLY AND IN HIS OFFICIAL
25 CAPACITY, JEFF DAL CERRO INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY, AND DOES
26 1 THROUGH 50 INCLUSIVE.

27 Defendants.
28

ENDORSED
FILED
San Francisco County Superior Court

JUL 29 2010

CLERK OF THE COURT
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

Case No. CGC-10-496869

~~PROPOSED~~ ORDER GRANTING
SUSTAINING
DEMURRER TO PLAINTIFF
KAY'S FIRST AMENDED
COMPLAINT AND TAKING
SPECIAL MOTION TO STRIKE
OFF CALENDAR

DATE: April 30, 2010
TIME: 9:30 a.m.
DEPT: 302

The Honorable Ernest H. Goldsmith

1
2 The following matters came on regularly for hearing in Department 302 of this Court on
3 April 30, 2010:

4 1. Defendants The State Bar of California, The State Bar of California Board of
5 Governors, The Office of the Chief Trial Counsel, Lucy Armendariz, Scott J. Drexel, Jeff Dal
6 Cerro, and Allen Blumenthal's Demurrer to the First Amended Complaint; and

7 2. Defendants The State Bar of California, The State Bar of California Board of
8 Governors, The Office of the Chief Trial Counsel, Lucy Armendariz, Scott J. Drexel, Jeff Dal
9 Cerro, and Allen Blumenthal's Special Motion to Strike the First Amended Complaint.

10 Danielle Lee appeared on behalf of the Defendants The State Bar of California, The State
11 Bar of California Board of Governors, The Office of the Chief Trial Counsel, Lucy Armendariz,
12 Scott J. Drexel, Jeff Dal Cerro, and Allen Blumenthal. Plaintiff Philip E. Kay appeared pro se.
13 The Honorable Ernest H. Goldsmith, judge of the San Francisco County Superior Court, presided.

14 The Court, having heard arguments of counsel, and having reviewed all papers supporting
15 and opposing the demurrer and the special motion to strike, and all judicially noticeable materials,
16 and good cause appearing, rules as follows:

- 17
- 18 1. The demurrer is sustained without leave to amend based on lack of jurisdiction;
 - 19 2. The Special Motion to Strike is taken off calendar as moot; and
 - 20 3. Plaintiff's request for judicial notice is granted.

21 IT IS SO ORDERED.

22 DATED: JUL 22 2010

ERNEST H. GOLDSMITH

HONORABLE ERNEST H. GOLDSMITH
JUDGE OF THE SUPERIOR COURT

23
24
25 APPROVED AS TO FORM:

26
27 PHILIP E. KAY, PLAINTIFF PRO SE

28 DATED: _____

FILED
San Francisco County Superior Court

AUG - 6 2010

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

1 Philip E. Kay
736 43rd Avenue
2 San Francisco, California 94121
(415)387-6622
3 (415)387-6722 (fax)

4 In Pro Per

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 FOR THE COUNTY OF SAN FRANCISCO

7 PHILIP E. KAY,

8 Plaintiff,

9 vs.

10 STATE BAR OF CALIFORNIA, THE
11 BOARD OF GOVERNORS OF THE
STATE BAR OF CALIFORNIA, OFFICE
12 OF CHIEF COUNSEL, LUCY
ARMENDARIZ, in her official capacity and
13 individually, SUPREME COURT OF
CALIFORNIA, RONALD GEORGE, in his
14 official capacity and individually, SCOTT J.
DREXEL, ALLEN BLUMENTHAL, JEFF
15 DAL CERRO, MICHAEL ANELLO,
JOAN WEBER, in their official capacity and
16 individually and DOES 1 - 50,

17 Defendants.

Case No. **088-10-502372**

VERIFIED

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF -
COLLATERAL ATTACK TO VACATE
VOID CONTEMPT, DEFAULT,
DECISION, ORDER AND JUDGMENT,
EXTRINSIC AND COLLATERAL
FRAUD - VIOLATIONS OF CIVIL
RIGHTS - DUE PROCESS - DAMAGES

[Business & Profession Code §§6043.5(a)
6068(i) & 6085(b); Code of Civil
Procedure §§170.4, 473, 585, 1060, 1065,
1068 & 1102; Penal Code §166(a)(7)]

Violation of 42 U.S.C. §1983 - Fifth,
Sixth and Fourteenth Amendments to the
United States Constitution (Procedural
Due Process)

Violation of 42 U.S.C. §1983 (Free
Speech)

Violation of 42 U.S.C. §1983
(Substantive Due Process)

Violation of 42 U.S.C. §1983 (Equal
Protection)

18
19
20 CASE MANAGEMENT CONFERENCE SET

21 JAN - 7 2011 - 9⁰⁰ AM

22 DEPARTMENT 212
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 **The State Bar Defendants Have Charged and Found Kay Guilty by VOID *Ab Initio***
3 **Default of Criminal Contempt in the *Gober* and *Marcisz* cases Based upon a Finding**
4 **of Contempt in the State Bar Proceeding, without Standing and in the Absence of**
5 **all Jurisdiction**

6 1. Plaintiff is Philip E. Kay ("Kay"). At the center of this *collateral attack* proceeding is
7 the entry of the Default in the State Bar proceeding, with Kay's Answer on file and having
8 appeared for trial and testified, which renders it *void ab initio*. See *Heidary v. Yadollahi* (2002)
9 99 Cal.App.4th 857. This Complaint is brought as a *collateral attack* to the *void* Default and
10 subsequent Decision, Order and Judgment issued by the State Bar of California and Supreme
11 Court defendants collectively ("State Bar") defendants. See Exhibits 1-3, Default, Decision and
12 Order to be entered as a Judgment in this Court, which will cause irreparable harm to Kay and
13 his clients. The State Bar defendants have violated Kay's rights as a licensed attorney in the
14 State of California and illegally seek to deny him of his property interest in the right to practice
15 law. See *Neblett v. State Bar* (1941) 17 Cal.2d 77, 81 [". . . the right to practice law is a valuable
16 one which should not be taken away or cancelled under circumstances that have even the
17 slightest tendency to suggest any possible unfairness or disadvantage therein to the attorney
18 whose right to remain in his profession is challenged."]; *Woodard v. State Bar* (1940) 16 Cal.2d
19 755, 758 ["(t)he right to practice law is a valuable one which should be suspended or revoked
20 only on charges alleged and proved and as to which full notice and opportunity to defend have
21 been accorded."].

22 2. The Default, Decision, Order and Judgment ("DDOJ") are all *void ab nitio*. State Bar
23 judges have **not** been given the power to **cite** (charge) and/or sanction respondents and litigants
24 appearing before them for contempt. (*Matter of Lapin* (Rev.Dept. 1993) 2 Cal. State Bar
25 Ct.Rptr. 279, 295 and discussion below.) Regardless, State Bar judge Armendariz found Kay in
26 contempt in the State Bar proceeding as the basis for entering the *void* Default, without standing
27 and in the absence of all jurisdiction. The DDOJ are further void, because they violate
28 fundamental constitutional rights of due process, in which Kay was denied a trial and appeal in

1 the State Bar proceeding. See *In Re Rose*, 22 Cal.4th 430 (2000). See also *Kruetzer v. San*
2 *Diego County* (1984) 153 Cal.App.3d 62, 71-72:

3 “The Fourteenth Amendment protects individuals from being deprived of life, liberty and
4 property without due process of law. The Fourteenth Amendment's requirement of due
5 process applies to the revocation or suspension of licenses (see *Rios v. Cozens* (1972) 7
6 Cal.3d 792, 795 [103 Cal.Rptr. 299, 499 P.2d 979], reinstated at 9 Cal.3d 454, 455 [107
7 Cal.Rptr. 784, 509 P.2d 696] [driver's license]; *Slaughter v. Edwards* (1970) 11
8 Cal.App.3d 285, 295 [90 Cal.Rptr. 144] [real estate broker's license]; *Angelopoulos v.*
9 *Bottorff* (1926) 76 Cal.App. 621, 625 [245 P. 447] [restaurant license]).

10 Violations of procedural due process may be redressed under section 1983 (*Carey v.*
11 *Piphus* (1978) 435 U.S. 247 [55 L.Ed.2d 252, 98 S.Ct. 1042]). The right to procedural
12 due process is ‘absolute’ in that it does not depend upon the merits of the underlying
13 substantive allegations (*id.* at p. 266 [55 L.Ed.2d at pp. 266-267]). Rigorous procedural
14 rules are particularly important when First Amendment rights are implicated
15 (*Southeastern Promotions, Ltd. v. Conrad* (1975) 420 U.S. 546, 561 [43 L.Ed.2d 448,
16 460-461, 95 S.Ct. 1239, 1247-1248]).”¹

17 3. **Solely by void Default**, with Kay’s Answer on file and having appeared for trial and
18 testified, the State Bar has ordered Kay to be suspended for three years, serve five years
19 probation and pay the State Bar’s costs. State Bar costs have been determined to be a criminal
20 fine (punishment) and non-dischargeable in bankruptcy. (See *Findley v. State Bar of California*,
21 59 Fed.3d 248 (2010). Thus, without standing and in the absence of all jurisdiction, the State
22 Bar has charged and found Kay guilty of criminal contempt and imposed a criminal and non-
23 dischargeable fine by **Default – all of which are void**. Conviction of a nonexistent crime results
24 in a void judgment not subject to waiver. See *People v. McCarty*, 94 Ill.2d 28, 37 (1983).

25 4. There are no client complaints against Kay. Moreover, the State Bar proceeding was
26

27 ¹
28 See *Greene v. Zank* (1986) 158 Cal.App.3d 497, in which the Court held claims for declaratory
and injunctive relief are not barred by quasi-judicial immunity.

1 commenced without any underlying orders from the Superior Court of contempt, sanctions or
2 new trial, which establishes that there was no “reportable action” for the State Bar to investigate,
3 charge or impose any discipline against Kay. See Business & Professions Code §6086.7. This
4 further establishes that no client, party or the public was harmed by any of Kay’s conduct.
5 Without any such complaints or trial and/or appellate court findings of misconduct, all of Kay’s
6 conduct, which has been found to be legitimate and permissible advocacy by the trial and
7 appellate courts, was carried out within the course and scope of his employment and
8 representation of his clients, with their informed consent. Kay’s refusal to disclose his privileged
9 communications with his clients was the primary basis for Judge Armendariz’ *ultra vires*
10 contempt finding in the State Bar proceeding. However, Kay’s communications with his clients,
11 resulting in the actions carried out on behalf of clients, are privileged and not subject to
12 discovery or disclosure in State Bar proceedings. See *McKnew v. Superior Court of San*
13 *Francisco*, 23 Cal.2d 58, 67 (1943):

14 “We are in thorough accord with the rule of privilege under which an attorney is
15 prohibited from disclosing information received by him in his professional relations with
16 his client, and believe it should be rigidly enforced.”

17 Incredibly, in its Opposition to Kay’s Petition for Writ of Review to the Supreme Court, the
18 State Bar **admitted** to these facts. Thus, the State Bar admitted that the central charges and
19 (default) findings in the State Bar proceeding that Kay denied the defendants in the *Gober v.*
20 *Ralphs Grocery Company* and *Marcisz v. UltraStar Cinemas* cases fair trials (obstructed justice)
21 are **fabrications**. In addition, the alleged *contemptuous* misconduct during these trials did not
22 take place in the presence of the State Bar Court, which means it was conducting indirect
23 contempt proceedings, without standing and in the absence of all jurisdiction.

24 5. With the Answer on file and Kay having appeared for trial and testified, Judge
25 Armendariz entered an illegal, **void** and incurable (*ultra vires*) Default based on an *ultra vires*
26 and **void** finding of contempt in the State Bar proceeding. See Exhibit 1. Then, after entering
27 the Default, Judge Armendariz, in another void and *ultra vires* act, *sua sponte* struck his Answer.
28 The policy of the law is it have every litigated cause tried on its merits. *Barri v. Rigerro*, 168 Cal,

1 736, 740 (1914). After the entry of the Default, the Judge Armendariz ordered additional
2 punishment based on matters not charged in the Notice of Disciplinary Charges (“NDC”). This
3 resulted in an amendment of the NDC, which further voids the Default. Rather, service of the
4 NDC with the new charges must take place, which affords Kay the right to answer and contest
5 the NDC. (See *Jackson v. Bank of America* (1986) 188 Cal.App.3d 375, 387; *Engebretson &*
6 *Company, Inc. v. Harrison* (1981) 125 Cal.App.3d 426, 443.) A default judgment for greater
7 relief or a different form of relief than demanded in the complaint is beyond the State Bar’s
8 jurisdiction. (See *Marriage of Lippel* (1990) 51 Cal.3d 1160, 1167, 276 Cal.Rptr. 290, 293;
9 *Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1176.) A default judgment
10 for an amount in excess of the *prima facie* evidence produced at the default hearing is likewise
11 beyond the State Bar’s jurisdiction. (See *Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357,
12 361-362.)

13 6. The DDOJ impose a money judgment through a Default, without any claim for damages
14 in the NDC. When recovering damages by a default judgment, the plaintiff is limited to the
15 damages specified in the complaint further renders the DDOJ void. See *Sole Energy Co. v.*
16 *Hodges* (2005) 128 Cal.App.4th 199, 206; fn. 4:

17 Plaintiffs’ attempt to correct the first amended complaint’s lack of any claim for damages
18 through service of a statement of damages provides an alternate ground for reversal.
19 Statements of damages are used only in personal injury and wrongful death cases, in
20 which the plaintiff may not state the damages sought in the complaint. (Code Civ. Proc.,
21 § 425.11.) In all other cases, when recovering damages in a default judgment, the
22 plaintiff is limited to the damages specified in the complaint. (*In re Marriage of Lippel*
23 (1990) 51 Cal.3d 1160, 1167, 276 Cal.Rptr. 290, 801 P.2d 1041; *Heidary v. Yadollahi*
24 (2002) 99 Cal.App.4th 857, 864-865, 121 Cal.Rptr.2d 695.)

25 Here, plaintiffs’ first amended complaint did not specify any amount of damages. If
26 plaintiffs could remedy that failure through service of a statement of damages after entry
27 of default , the statement of damages would serve as the functional equivalent of an
28 amendment to the complaint, which would open the default s. (*Cole v. Roebing*

1 Construction Co. (1909) 156 Cal. 443, 446, 105 P. 255; Ostling v. Loring (1994) 27
2 Cal.App.4th 1731, 1743, 33 Cal.Rptr.2d 391.)”

3 (See also, *Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1176-1177;
4 *Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1137.)

5
6 **II. JURISDICTION AND VENUE TO PURSUE COLLATERAL ATTACK ON VOID**
7 **DEFAULT ORDERS AND JUDGMENT**

8 7. This is an action brought pursuant to the laws of the State of California, including
9 Business & Profession Code §6068(i), §6043.5(a); Code of Civil Procedure §§170.4, 473, 585,
10 1060, 1065, 1068 & 1102; Penal Code §166(a)(7) and federal law, pursuant to 42 U.S.C. §1983.
11 The California Supreme Court, in denying (summarily) Kay’s Petition for Writ of Review in the
12 State Bar proceeding, has relinquished jurisdiction in this matter.

13 8. The entry of the void Default based on the void contempt after Kay filed the Answer and
14 appeared for trial and testified in the State Bar proceeding are void orders, resulting in the
15 unconstitutional denial of due process. Following the entry of the void Default, Judge
16 Armendariz entered a series of void orders further denying Kay his due process rights -
17 culminating in the Decision, Order and Judgment, all of which are based on the void Default.
18 Thus, the DDOJ are void, a legal nullity and without effect. A void order is void *ab initio* and
19 can be *collaterally attacked* in this proceeding. California Courts have long recognized the
20 propriety of collateral attacks on void orders. See *People v. Gonzalez* (1996) 12 Cal.4th 804,
21 824:

22 “The People argue the trial court should not entertain collateral attacks on injunctive
23 orders, because of the danger of piecemeal derogation of superior court orders resulting
24 in judgments without precedential value. Permitting a collateral attack only in the Court
25 of Appeal, the argument continues, would at least produce an opinion binding on all
26 parties involved in the litigation over the injunction. This is, indeed, a substantial
27 concern, yet it is one overbalanced by the need to protect the individual’s interest in being
28 free from the coercive effects of unconstitutional orders. In *Berry* itself, we

1 acknowledged the authority of the municipal court, by sustaining a demurrer, to prevent
2 trial on a charge of violation of an invalid order. (Berry, supra, 68 Cal.2d at p. 146.) Such
3 an order would have no precedential value. Nevertheless, as we established in Berry, and
4 as the very wording of section 166 makes clear, in this state, **the interest of the**
5 **individual in avoiding the coercive effect of void injunctive orders is more**
6 **substantial than the interest of society in vindicating a court's power by maintaining**
7 **deference even to void orders through the contempt power.”** (Emphasis.)

8 See also *Rochin v. Pat Johnson Mfg. Co.* (1998) 67 Cal.App.4th 1228, 1239 [an amended
9 judgment entered without notice to plaintiff violated due process and was subject collateral
10 attack. Thus, a judgment void on its face because rendered when the court lacked personal or
11 subject matter jurisdiction or exceeded its jurisdiction in granting relief, as here, which the court
12 had no power to grant, is subject to collateral attack at any time].

13 A court cannot confer jurisdiction where none existed and cannot make a void
14 proceeding valid. A void order can be challenged in any court. *Old Wayne Mut. L. Assoc. v.*
15 *Mcdonough*, 204 U. S. 8 (1907). A void order or judgment is void even before reversal. *Valley*
16 *v. Northern Fire & Marine Co.*, 254 U.S. 348 (1920). No court has the authority to validate a
17 void order. *U.S. v. Throckmorton*, 98 U.S. 61 (1878). If the underlying order is void, the
18 judgment based on it is also void. *Austin v. Smith*, 312 F. 2d 337, 343 (1962). (See *Armstrong v.*
19 *Armstrong* (1976) 15 Cal.3d 942, 950; *McCallum v. McCallum* (1987) 190 Cal.App.3d 308,
20 314.) Void judgments are those rendered by a court which lacked jurisdiction, either of the
21 subject matter or the parties. See *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339 (1940). A void
22 judgment entered by a court, which lacks jurisdiction over the parties or the subject matter, or
23 lacks inherent power to enter the particular judgment, or an order procured by fraud, can be
24 attacked at any time, in any court, either directly or collaterally, provided that the party is
25 properly before the court. *Long v. Shorebank Development Corp.*, 182 Fed.3d 548 (C.A. 7 Ill.
26 1999). A void judgment is one which, from its inception, was a complete nullity and without
27 legal effect. *Lubben v. Selevtive Service System Local Bd. No. 27*, 453 Fed.2d 645 (C.A. 1 Mass.
28 1972). A void judgment is one in which the rendering court lacked subject matter jurisdiction,

1 jurisdiction over the parties, acted in a manner inconsistent with due process of law or otherwise
2 acted unconstitutionally in entering a judgment. *Hays v. Louisiana Dock Co.*, 452 N.E.2d 1383
3 (Ill. App. 5 Dist. 1983). A void judgment is one that has been procured by extrinsic or collateral
4 fraud or entered by a court that did not have jurisdiction over the subject matter or the parties.
5 *Rook v. Rook*, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987). An act beyond a court's jurisdiction
6 in the fundamental sense is void; it may be set aside at any time and no valid rights can accrue
7 thereunder. *People v. Ruiz* (1990) 217 Cal. App. 3d 574. See *American Surety Co. v. Baldwin*,
8 287 U.S. 156, 166-67 (1932) (applying *res judicata* to action seeking to set aside judgment for
9 lack of jurisdiction); *Browning v. Navarro*, 887 F.2d 553, 558-59 (5th Cir. 1989) (*res judicata*
10 applies to actions to void a judgment for fraud).

11 The Supreme Court further lost jurisdiction over Kay's conduct in *Gober* and *Marcisz*
12 after denying review in those cases. In *Gober* and *Marcisz*, there are no new facts or orders
13 granting writs of *coram nobis* or *vobis*. The Supreme Court has no jurisdiction to reclaim
14 jurisdiction through its administrative arm (State Bar) in the very same matters that they
15 relinquished jurisdiction over based on the exact same record. Thus, both the State Bar and the
16 Supreme Court were without standing and all jurisdiction to act, which further renders the DDOJ
17 void.

18 9. Venue is proper in this Court because the harm was caused to Kay in this County and the
19 State Bar maintains corporate headquarters in this County.

20
21 **III. PARTIES**

22 **Plaintiff**

23 10. Kay is, and at all times mentioned herein was, a citizen and resident of the State of
24 California, residing in this County. He is licensed to practice law in the State of California and
25 has been an active member of the State Bar of California since 1981. He has no prior
26 disciplinary record with the State Bar. Rather, he has been singled out by numerous courts in
27 orders awarding attorney's fees, pursuant to Government Code §12965(b) for exemplary
28 courtroom conduct and advocacy, including the *Gober* case, for which he is being suspended

1 from the practice of law.

2 **The State Bar Defendants**

3 11. The State Bar of California is a public corporation in the judicial branch of the State of
4 California, incorporated under the laws of the State of California with its principal place of
5 business in the State of California. The State Bar acts through the Board of Governors of the
6 State Bar of California. The Board of Governors makes rules, regulates and operates the State
7 Bar, which is **not** empowered to reverse the final orders and decisions of the article VI courts in
8 the *Gober* and *Marcisz* cases, as it has done here. See *Lady v. Worthingham* (1943) 61
9 Cal.App.2d 780, 782:

10 "So far as the Decisions of this Court and the Supreme Court are concerned, it is utterly
11 immaterial what conclusion the State Bar, or any investigating committee thereof, may
12 have reached relative to a judgment of this Court or of the Supreme Court. **The**
13 **Decisions and judgments of the District Court of Appeal and the Supreme Court are**
14 **not subject to review by the State Bar or a committee thereof.**" (Emphasis.)

15 12. The State Bar Court is the adjudicative tribunal acting as an administrative arm of the
16 California Supreme Court to hear and decide attorney disciplinary and regulatory proceedings
17 and to make recommendations to the Supreme Court regarding those matters. State Bar judge
18 Armendariz, without standing and in the absence of all jurisdiction and/or administratively and,
19 thus without immunity, issued and entered the **void** Default and Decision. (See *Mireles v. Waco*,
20 502 U.S. 9, 11-12, 112 S.Ct. 286 (1991).) Justice George issued and entered the **void** Order based
21 on the void Default and Decision, without standing and in the absence of all jurisdiction and/or
22 administratively and thus, without immunity. Judge Armendariz is being sued in her official
23 and individual capacity. Justice George is being sued in his official and individual capacity.
24 Defendant Scott J. Drexel was Chief Trial Counsel of the Office of the Chief Trial Counsel
25 (OCTC), the office within the State Bar, which is the prosecutorial arm of the State Bar in
26 attorney discipline and regulatory matters. The OCTC functions under the direction of the Chief
27 Trial Counsel. Allen Blumenthal and Jeff Dal Cerro are Deputy Trial Counsel in the OCTC.
28 Messrs. Drexel, Blumenthal and Dal Cerro are being sued in their official and individual