



FILED  
10/19/22

THE BOARD of DISCIPLINARY APPEALS  
Appointed by the Supreme Court of Texas

**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
APPOINTED BY  
THE SUPREME COURT OF TEXAS**

**IN THE MATTER OF** §  
**NATHAN V. HOFFMAN,** § **CAUSE NO. 67182**  
**STATE BAR CARD NO. 09785490** §

**PETITION FOR RECIPROCAL DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Nathan V. Hoffman, (hereinafter called “Respondent”), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board’s Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a licensed member of the State Bar of Texas and is not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Nathan V. Hoffman, 317 S. Holt Avenue, Unit PH-B, Los Angeles, CA 90048.

3. On or about January 15, 2020, a Decision (Exhibit 1) was filed in the State Bar Court of California Hearing Department – Los Angeles, in Case Nos. 12-C-16181; 18-O-15019-CV (Consolidated), styled, *In the matter of Nathan V. Hoffman, State Bar No. 135155*, which states in pertinent part as follows:

. . . This contested matter involves two cases that were consolidated – a conviction referral matter and an original disciplinary proceeding. The conviction referral matter is based on Respondent Nathan V. Hoffman’s (Respondent) felony

conviction of manufacturing at least 50 marijuana plants, in violation of Title 21 United States Code section 841(a)(1). (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.340 et seq.) And, in the disciplinary matter, Respondent is charged with failing to obey a court order.

The Court concludes that Respondent is not culpable of failing to obey a court order. However, based on clear and convincing evidence, this court finds that the facts and circumstances surrounding Respondent's federal felony conviction involved moral turpitude. Given the serious nature of Respondent's conviction, and the mitigating and aggravating factors, the court recommends, among other things, that Respondent be suspended from the practice of law for four years, that execution of that suspension be stayed, and that Respondent be placed on probation for four years with conditions . . .

4. On or about May 13, 2020, an Order was issued in Case Nos. S261244 (State Bar Court Nos. 12-C-16181; 18-O-15019), styled *In the Supreme Court of California En Banc, In re Nathan V. Hoffman on Discipline* (Exhibit 2) that states in pertinent part as follows:

...The court orders that Nathan V. Hoffman (Respondent), State Bar Number 135155, is suspended from the practice of law in California for four years, execution of that period of suspension is stayed, and Respondent is placed on probation for four years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first three years of probation (with credit for the period of interim suspension beginning May 14, 2018), and Respondent will remain suspended until providing proof to the State Bar of Court of rehabilitation, fitness to practice and present learning and ability in the general law, (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Respondent must also comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 15, 2020.

3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

5. On or about January 22, 2022, an Order (Exhibit 3) was issued in Case No. 21-BG-703, *In Re Nathan V. Hoffman, An Administratively Suspended Member of the Bar of the District of Columbia Court of Appeals, Bar Registration No. 420588, 2021 DDN 65*; In the District

of Columbia Court of Appeals, that states in pertinent part as follows:

On consideration of the certified order from the state of California suspending respondent from the practice of law in that jurisdiction for a period of four years, stayed in favor of a three-year suspension with reinstatement contingent on satisfying the conditions imposed and establishing fitness; this court's October 29, 2021, order suspending respondent pending resolution of this matter and directing him to show cause why reciprocal discipline should not be imposed; the statement of Disciplinary Counsel wherein he requests this court impose reciprocal discipline with an additional condition that reinstatement also be conditioned on respondent first being reinstated by the state of California; and it appearing that respondent has not filed any responses or his D.C. Bar R. XI, §14(g) affidavit, it is

ORDERED that Nathan V. Hoffman is hereby suspended from the practice of law in this jurisdiction for a period of four years, stayed in favor of a three-year suspension with reinstatement contingent on his reinstatement to practice law by the state of California and a showing of fitness.


6. A certified copy of the Decision (Exhibit 1), Order of the Supreme Court of California (Exhibit 2), entered in the State Bar Court of California and the Supreme Court of California, and a certified copy of the Order of the District of Columbia Court of Appeals (Exhibit 3), are attached hereto as Petitioner's Exhibits 1 through 3 and made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibits 1 through 3 at the time of hearing of this cause.

7. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of California and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

**Seana Willing**  
Chief Disciplinary Counsel

**Judith Gres DeBerry**  
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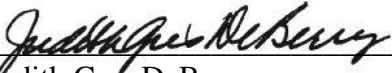
  
\_\_\_\_\_  
Judith Gres DeBerry  
Bar Card No. 24040780

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Nathan V. Hoffman, by personal service.

Nathan V. Hoffman  
317 Holt Ave. Unit PH-B  
Los Angeles, CA 90048

  
\_\_\_\_\_  
Judith Gres DeBerry



# PUBLIC MATTER

FILED *rs*

JAN 15 2020

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

## STATE BAR COURT OF CALIFORNIA

### HEARING DEPARTMENT - LOS ANGELES

|                       |   |                                     |
|-----------------------|---|-------------------------------------|
| In the Matter of      | ) | Case Nos. 12-C-16181; 18-O-15019-CV |
|                       | ) | (Consolidated)                      |
| NATHAN V. HOFFMAN,    | ) |                                     |
|                       | ) | DECISION                            |
| State Bar No. 135155. | ) |                                     |
| _____                 | ) |                                     |

#### Introduction<sup>1</sup>

This contested matter involves two cases that were consolidated – a conviction referral matter and an original disciplinary proceeding. The conviction referral matter is based on Respondent Nathan V. Hoffman's (Respondent) felony conviction of manufacturing at least 50 marijuana plants, in violation of Title 21 United States Code section 841(a)(1). (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.340 et seq.) And, in the disciplinary matter, Respondent is charged with failing to obey a court order.

The court concludes that Respondent is not culpable of failing to obey a court order. However, based on clear and convincing evidence, this court finds that the facts and circumstances surrounding Respondent's federal felony conviction involved moral turpitude. Given the serious nature of Respondent's conviction, and the mitigating and aggravating factors, the court recommends, among other things, that Respondent be suspended from the practice of law for four years, that execution of that suspension be stayed, and that Respondent be placed on

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code.

EXHIBIT

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probation for four years with conditions, including a three-year actual suspension and until he proves his rehabilitation, fitness to practice, and present learning and ability in the general law.

### **Significant Procedural History**

#### **Case No. 12-C-16181**

Respondent's October 24, 2017 conviction for violating title 21 United States Code section 841 (a)(1), a felony which may or may not involve moral turpitude, was transmitted to the State Bar Court. On June 14, 2019, the Review Department of the State Bar Court filed an order, referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department found that the facts and circumstances surrounding the violation of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

On June 14, 2019, this court filed and served on Respondent a Notice of Hearing on Conviction (NOH). (Rules Proc. of State Bar, rule 5.345(A).) Respondent filed his response to the NOH on June 26, 2019.

#### **Case No. 18-O-15019**

The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a notice of disciplinary charges (NDC) against Respondent on September 11, 2018. On July 30, 2019, Respondent filed an answer to the NDC by way of a letter dated October 4, 2018, addressed to the deputy trial counsel and this court's clerk.

On September 18, 2018, Respondent filed a resignation with charges pending (Q case) in the Review Department, case No. 18-Q-16359. On October 22, 2018, the court abated this case pending the resolution of the Q case and Respondent's release from federal custody. On January 31, 2019, the Review Department recommended to the California Supreme Court that

Respondent's resignation with charges pending be rejected. On that same date, the disciplinary case was unabated and consolidated with the conviction referral case number 12-C-16181.

On September 23, 2019, the parties filed a Stipulation as to Facts and Admission of Documents (stipulation). The case proceeded to trial on October 4, 2019, and was submitted for decision at the conclusion of the trial. Respondent filed his closing brief on October 16, 2019, and OCTC filed its brief on October 18, 2019.

### **Findings of Fact and Conclusions of Law**

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on July 5, 1988, and has been a licensed attorney of the State Bar of California since that time.

The following relevant findings of fact are based on the stipulation and the documentary and testimonial evidence admitted at trial. The stipulation contains facts taken directly from the underlying criminal case including the indictment and the plea agreement.

#### **Case No. 12-C-16181 (Manufacturing Marijuana Conviction)**

##### **Facts**

Between approximately December 2010 and June 2011, Respondent conspired with Yan Ebyam (Ebyam) and others to develop two large-scale marijuana cultivation sites – Black Horizon and Blue Horizon – both in the Eastern District of California. Respondent and his coconspirators sought to make profits from the illegal distribution of large quantities of marijuana within California.

In furtherance of the conspiracy, Respondent agreed with Ebyam to form an entity called Black Horizon to organize the marijuana cultivation and distribution business. Respondent played a role in the formation of Black Horizon by filing the articles of incorporation with the California Secretary of State. Black Horizon operated on a site known as Jopson Ranch.

Respondent played a leadership role within Jopson Ranch and took responsibility for legal matters associated with Black Horizon's effort to cultivate and distribute marijuana. Respondent served as the agent for service of process for both Blue Horizon and Black Horizon.

Respondent was identified, in various documents seized during a search by federal agents, as an "employee," "cultivator" and "collective official" of Black Horizon. Respondent also made short-term loans to Black Horizon that were used to cover immediate expenses incurred in the marijuana growing operation at Jopson Ranch. Respondent was the signatory on Black Horizon's bank account and was solely responsible for all activity on the account for a certain period of time. Although Respondent disputes acting as a director or officer, he admitted that he "engaged in acts to help the business going forward." Specifically, Respondent would introduce potential investors to the Jopsons (Jopson Ranch owners). These investors wanted to participate in what Respondent called the "green rush" with the Jopsons and sought to procure investments into the cooperative.

On June 21, 2011, law enforcement agents executed a federal search warrant at Jopson Ranch. Agents seized 2,168 marijuana plants. On August 29, 2012, charges were filed against Respondent and four others in a federal indictment in the Eastern District of California (EDCA), case number 12-CR-0309. On December 17, 2015, a second indictment was filed in case number 15-CR-0234 (EDCA). The two cases were consolidated under case No. 15-CR-0234.

On January 18, 2017, Respondent pleaded guilty to violating title 21 United States Code section 841 (a)(1) [manufacturing of at least 50 marijuana plants], a felony. Pursuant to the plea agreement, Respondent admitted to the following elements of the offense: 1) between January 2011 and June 21, 2011, Respondent knowingly manufactured at least 50 marijuana plants; 2) Respondent knew it was marijuana or some other prohibited drug; 3) "manufacture" included the production, preparation, and cultivation of marijuana.



Respondent agreed, as a collateral consequence of his plea agreement, to voluntarily relinquish or give up his California law license, to cease practicing law, and to refrain from contesting disbarment if the State Bar of California pursued disbarment proceedings against him.<sup>2</sup> Before Respondent was sentenced, he sought an evidentiary hearing and motion to withdraw his plea. Both motions were denied.

On October 24, 2017, Respondent was sentenced to 48 months in federal prison with a surrender date of December 7, 2017.<sup>3</sup> Respondent appealed, and the U.S. Court of Appeals for the Ninth Circuit affirmed the district court on October 17, 2018. Respondent's conviction is final.

### **Conclusions of Law**

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (Bus. & Prof. Code, § 6101.) Respondent is conclusively presumed, by the record of his conviction, to have committed all the acts necessary to constitute the crime of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

The issue before the court is whether the facts and circumstances surrounding Respondent's conviction involved moral turpitude or other misconduct warranting discipline. An attorney's federal felony conviction of manufacturing marijuana does not establish moral turpitude per se. (See *In re Fahey* (1973) 8 Cal.3d 842, 849 [conviction of certain crimes establishes "moral turpitude" on its face; e.g., crimes that involve an intent to defraud or

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<sup>2</sup> At trial, Respondent clarified that he was not contesting OCTC's disbarment recommendation, but, rather, was contesting only that the crime of which he was convicted involved moral turpitude. Whether taking this matter to trial on that basis violates his underlying criminal plea agreement is not for this court to decide.

<sup>3</sup> On October 25, 2017, Respondent notified the State Bar of his conviction.

intentional dishonesty for personal gain (forgery, extortion, bribery, perjury) or crimes “extremely repugnant to accepted moral standards” such as murder or serious sexual offenses].)

### *Manufacturing Marijuana*

Respondent argues that his crime did not involve moral turpitude because he was acting solely as a legal advisor to assist his client in complying with California law regarding marijuana manufacturing for a marijuana collective under both the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA). He claims that his intent was to be in full compliance with California law, and that he was not an officer or manager of Black Horizon. Respondent insists that his “activities were conducted on the good faith belief that California attorneys could lawfully advise and assist clients seeking to legally manufacture and distribute medical marijuana in compliance with state law.” He claims that “an attorney can act ethically without moral turpitude but still be caught in the crosshairs of legal history as the States wrestle with the Federal government on ending prohibition of marijuana. . . .” In support of his position, he cited an ethics opinion of the Bar Association of San Francisco. The court rejects these and Respondent’s other contentions.

The term moral turpitude is defined broadly. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 49 Cal.3d 804, 815, fn. 3.) It has consistently been described as any “act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]” (*In re Craig* (1938) 12 Cal.2d 93, 97.) “It is measured by the morals of the day [citation] and may vary according to the community or the times. [Citation.]” (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214.)

As the Supreme Court stated in *In re Lesansky* (2001) 25 Cal.4th 11, 16:

[W]e can provide this guidance: Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a

deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession.

It is well settled that the court must examine the facts and circumstances surrounding Respondent's crime, and not merely look to the conviction, to decide if he has committed misconduct that is disciplinable. (See *In re Gross* (1983) 33 Cal.3d 561, 566 [misconduct, not conviction, warrants discipline]; *In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. at p. 589, fn. 6 [whether acts underlying conviction amount to professional misconduct "is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction"].)

Here, the facts and circumstances surrounding Respondent's crime involved moral turpitude. Respondent did more than just counsel a client to comply with the MMPA and CUA. Indeed, "the circumstances showing Respondent's role as a principal, his motive of potential financial gain and his awareness of the illegality of his actions (under federal law) demonstrate ... that moral turpitude was involved in the circumstances surrounding Respondent's conviction." (*In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560 [the attorney was convicted of one felony count of possession of marijuana for sale].)

Respondent attempted to minimize his role in the Black Horizon commercial enterprise by claiming that he merely assisted in navigating his clients through state laws regulating marijuana collectives. First, there was no evidence that Respondent was acting legally under California law. Despite the liberalization of marijuana use, it is illegal to cultivate more than six living cannabis plants under current Penal Code section 11358, subdivision (c). Here, Respondent claimed Black Horizon only grew six plants per cooperative member, but there was no evidence in the record, other than his self-serving testimony at trial, to establish that he

complied with the permissible quantity allowed under the current law. This is not Respondent getting caught in the crosshairs of state and federal law. The lack of a state prosecution before Respondent's federal conviction does not establish the lawfulness of Respondent's actions under state law. His illegal activity was clearly for his own financial benefit and not meant to simply assist a marijuana dispensary. Second, even if legal under California law, Black Horizon was also involved in transportation and distribution of marijuana *outside* of California, despite Respondent's testimony that he "did not counsel clients to make profits illegally through out-of-state marijuana shipments."

Respondent's criminal conduct involves a flagrant disrespect for the law and for societal norms. His conviction demonstrates that he has failed to fulfill his ethical obligation to support the laws of the United States and to maintain the respect due to the courts of justice. (Bus. & Prof. Code, § 6068, subds. (a) & (b).) As an attorney, Respondent assumed a responsibility to the law itself, and his serious disregard of federal law negatively reflects on his moral fitness to practice. Moreover, knowledge of his misconduct would undermine public confidence in and respect for the legal profession. Therefore, this court concludes that the facts and circumstances surrounding Respondent's felony conviction for cultivating marijuana involved moral turpitude.

#### **Case No. 18-O-15019 (The 9.20 Matter)**

##### **Facts**

On April 19, 2018, the State Bar Court Review Department issued an order in case number 12-C-16181, placing Respondent on interim suspension pursuant to Business and Professions Code section 6102, effective May 14, 2018. Respondent was also ordered to comply with the California Rules of Court, Rule 9.20 (a) and (c) within 30 and 40 days, respectively,



after the effective date. The order was sent to Respondent's official State Bar attorney records address.

On May 10, 2018, while Respondent was incarcerated at FCI Morgantown in West Virginia, and after no 9.20 affidavit was received, Probation Deputy Michael Kanterakis (Kanterakis) uploaded a reminder letter onto Respondent's State Bar membership profile indicating that Respondent's 9.20 affidavit needed to be filed no later than June 23, 2018. Instructions on how and where to submit the affidavit were included. Kanterakis also emailed a reminder to Respondent about his obligations to comply with the order. Unfortunately, Respondent did not have internet access during his incarceration, and thus could not have reviewed his State Bar membership profile, nor checked his email messages.

On June 28, 2018, Kanterakis mailed Respondent a letter advising him that he had not complied with rule 9.20 by the June 23, 2018 deadline. The letter was sent to Respondent's official State Bar attorney records address, which was his home address. Respondent received Kanterakis's June 28, 2018 letter and the Review Department order in August 2018 when his wife provided the documents to him at the prison after her return home from prolonged international travel. On September 20, 2018, Respondent submitted his 9.20 declaration.

### **Conclusions of Law**

#### ***Count One – (§ 6103 [Failure to Obey a Court Order])***

OCTC charged Respondent with willfully violating section 6103 by failing to comply with the Review Department's order directing him to file a rule 9.20 compliance declaration. Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for

suspension or disbarment. The court does not find Respondent culpable of the misconduct charged in Count One.

To establish a violation of section 6103, OCTC must prove by clear and convincing evidence that the attorney willfully disobeyed a court order; and that the order required the attorney to do or forbear an act in the course of his profession “which he ought in good faith to have done or not done.” (See *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.) In addition, the attorney must have knowledge of the court order. (*In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 666 [attorney’s failure to obey court order did not violate section 6103 because attorney did not receive notice of order in time to comply with it]; *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867-868 [because attorney clearly knew of court order, the only issue regarding the charged violation of section 6103 was whether attorney had a reasonable time to comply with the order].)

Respondent did not become aware of the Review Department’s order directing him to comply with rule 9.20 until August 2018. Upon receipt of the order, Respondent complied with rule 9.20 by filing his compliance declaration in September 2018. Under these circumstances, the court finds a lack of clear and convincing evidence establishing that Respondent willfully violated section 6103. (*In the Matter of Hindin, supra*, 3 Cal. State Bar Ct. Rptr. at p. 666; see also *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [attorney’s knowledge of final, binding order is essential element of § 6103 violation].)

#### **Aggravation<sup>4</sup>**

The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds one aggravating circumstance.

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<sup>4</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

### **Prior Record of Discipline (Std. 1.5(a).)**

#### ***Hoffman I***

In Respondent's first discipline (*Hoffman I*), pursuant to an order filed July 7, 1994, the Supreme Court suspended Respondent from the practice of law for one year, execution of the suspension stayed, and placed Respondent on probation for three years, subject to conditions. Respondent stipulated that he failed to properly supervise an employee, which allowed the employee to repeatedly cash clients' settlement checks without Respondent's knowledge and make misrepresentations about medical lien payments. Respondent stipulated that he was culpable of failing to perform legal services with competence, failing to maintain entrusted funds in a client trust account (CTA) and failing to promptly pay his client settlement funds in cases involving six clients. Respondent's misconduct was mitigated by his candor and cooperation with the victim of his misconduct and the State Bar, restitution payments, disassociation with his employee and transferring his cases to another attorney, and the implementation of necessary changes to his law practice. There were no aggravating circumstances.

#### ***Hoffman II***

In his second discipline (*Hoffman II*), pursuant to an order filed on February 24, 2014, the Supreme Court suspended Respondent from the practice of law for two years, execution of the suspension stayed, and placed Respondent on probation for two years, subject to conditions that included a 30-day actual suspension. Respondent stipulated that in 2012, he failed to obey six court orders, improperly withdrew from employment, and failed to report to the State Bar that a superior court sanctioned him \$3,000 for failing to comply with two court orders. Respondent's misconduct was aggravated by his prior discipline record, harm to the administration of justice, and multiple acts of misconduct. Entering into a pretrial stipulation was Respondent's sole mitigating circumstance.

A prior record of discipline “is a proper factor in aggravation ‘[w]hen discipline is imposed.’ [Citations.]” (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) However, “part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney’s inability to conform his or her conduct to ethical norms. [Citation.]” (*Id.* at p. 619.) Here, although Respondent was convicted of manufacturing over 50 marijuana plants in October 2017, he committed the criminal acts underlying the conviction from January 2011 through June 2011, well before he was disciplined in 2014 in *Hoffman II*. The aggravating weight of *Hoffman II* is therefore diminished because Respondent did not have the opportunity to “heed the import” of that discipline, which involved an actual suspension. Because Respondent’s criminal acts in this proceeding occurred before the misconduct in *Hoffman II*, the court assigns moderate not significant weight in aggravation for Respondent’s prior records of discipline. (See *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 [attorney’s two prior records of discipline assigned limited aggravating weight given minimal discipline imposed in prior and misconduct in his second case occurred before his wrongdoing in the first disciplinary case]; *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464 [Review Department declined to apply standard 1.8(b) because the two prior disciplinary matters occurred after the misconduct in the current case].)

### **Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds one mitigating factor.

#### **Good Character (Std. 1.6(f).)**

Respondent presented five character witness declarations from four attorneys and a former client. Favorable character testimony from attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Because judges and attorneys have a “strong

interest in maintaining the honest administration of justice” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), “[t]estimony of members of the bar . . . [are] entitled to great consideration.” (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

One attorney described Respondent as a forthright, honest individual with good communication skills. A second attorney stated that Respondent was a caring and competent lawyer and that the conduct leading to his conviction was aberrational. Finally, Respondent worked as the treasurer of a nonprofit charity that was created by one of his colleagues. During that time Respondent acted responsibly and “never did anything untoward” with the organization’s funds. The court affords minimal weight in mitigation for Respondent’s good character because it was not from a sufficiently wide range of references, and Respondent failed to establish that his witnesses knew the full extent of his misconduct. (Std. 1.6(f); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [testimony of four character witnesses afforded diminished weight in mitigation]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys warranted limited mitigation because not broad range of references]; *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 280 [limited mitigation for two witnesses and numerous declarations because no showing witnesses knew full extent of misconduct].)

Overall, the weight of Respondent’s aggravating circumstance outweighs the mitigating factor.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but is instead (1) to protect the public, the courts, and the legal profession; (2) to maintain the highest possible professional standards for attorneys; and (3) to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)



In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silvertown*, *supra*, 36 Cal.4th at p. 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standards 1.7, 1.8(b), and 2.20(c) are applicable to this case and provide a broad range of sanctions ranging from reproof to disbarment.

Standard 1.7(b) and (c), provide that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors.

Next, standard 2.20(c) states that “suspension or reproof is the presumed sanction for a criminal act that does not reflect on the lawyer’s honesty, but reflects on the lawyer’s fitness as a lawyer.” Here, as stated above, the knowing violation of federal law negatively reflects on Respondent’s fitness as a lawyer since he violated his obligation to support the laws of the United States.

Finally, standard 1.8(b) provides that, unless the most compelling mitigating circumstances clearly predominate or the prior misconduct occurred in the same time period as the current misconduct, if an attorney has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in one of the prior matters; (2) the prior and current matters together demonstrate a pattern of misconduct; or, (3) the prior disciplinary matters coupled with the current record demonstrate the lawyer's unwillingness or inability to conform to ethical responsibilities. This court is mindful that although disbarment is appropriate under standard 1.8(b), it is not mandatory. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment not imposed despite two prior disciplines and no compelling mitigating circumstances (analysis under former std. 1.7(b)) ].) The Supreme Court did not apply former standard 1.7(b) in a rote fashion, and this court does not apply standard 1.8(b) in such a manner either. Instead, the nature and chronology of prior discipline records in standard 1.8(b) cases are examined, recognizing that "[m]erely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

OCTC urges that Respondent be disbarred because he has two prior discipline records. In this case, there are reasons to recommend a discipline less than disbarment. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].) To begin, Respondent was disciplined in *Hoffman I* in 1994, 17 years before he committed the criminal acts underlying his conviction. Next, as stated above, Respondent committed his criminal acts before he was disciplined for his professional and ethical violations in *Hoffman II*, and those acts are not "a repetition of offenses for which an accused has previously been disciplined." (*Marsh v. State Bar* (1934) 2 Cal.2d 75, 80.) Finally, the court recognizes that the misconduct in *Hoffman II* was serious – in addition to abandoning a client,

Respondent willfully violated court orders, and “[o]ther than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney.” (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) But, while an actual suspension was previously ordered, it was for only 30 days, which is generally the shortest period imposed. Disbarment, as argued by OCTC would be manifestly unjust, would not further the objectives of attorney discipline, and would be punitive in nature. However, that the court considers disbarment too severe here neither excuses Respondent’s acts nor signals that attorneys who repeatedly commit misconduct can escape appropriate discipline for their acts.

In addition to the standards, the court considers decisional law to determine the appropriate level of discipline. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) Criminal conviction cases involving large quantities of marijuana have resulted in a stayed suspension where the attorney distributed over 800 pounds of marijuana (20 pounds on one occasion and 791 pounds on another) with evidence of rehabilitation and past and present good character (*In re Kreamer* (1986) 14 Cal.3d 524), to a two-year actual suspension for knowingly assisting another in transporting over 34,000 grams of marijuana where favorable character evidence was present (*In re Cohen* (1974) 11 Cal.3d 416).

In this case, although Respondent was not convicted of distributing marijuana, Respondent pleaded guilty to manufacturing at least 50 marijuana plants where the evidence showed that 2,168 plants were seized and were not grown for personal use, but for sale. However, in contrast to *Kreamer, supra*, and *Cohen, supra*, Respondent’s case involved nominal mitigation that was outweighed by Respondent’s prior record of discipline; thus, Respondent’s discipline warrants a greater sanction than in those cases and Respondent’s suggestion that his period of interim suspension is the appropriate discipline is wholly inadequate.



The court is mindful that in a conviction referral proceeding, "discipline is imposed according to the gravity of the crime and the circumstances of the case. [Citation.] In examining such circumstances, the court may look beyond the specific elements of a crime to the whole course of an attorney's conduct as it reflects upon the attorney's fitness to practice law." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) All relevant factors must be considered in determining the appropriate discipline. (*Grim v. State Bar* (1991) 53 Cal.3d 21, 35.) It is the court's responsibility to impose a discipline that will protect the public from potential harm from Respondent. (*In re Kelley* (1990) 52 Cal.3d 487, 496.)

In reviewing the circumstances which gave rise to a criminal offense, the Supreme Court has stated, "we are not restricted to examining the elements of the crime, but rather may look to the whole course of [Respondent's] conduct which reflects upon [Respondent's] fitness to practice law." (*In re Hurwitz* (1976) 17 Cal.3d 562, 567.) It is the attorney's misconduct, not solely the conviction, that warrants discipline. No matter how an attorney may fare in the criminal courts, an attorney's "fitness to practice law is a matter for separate and independent consideration by the State Bar and [the Supreme Court]." (*In re Gross* (1983) 33 Cal.3d 561, 568.)

Respondent was convicted of knowingly manufacturing at least 50 marijuana plants where he was a principal in the illegal conduct and was motivated by potential gain, a crime involving moral turpitude that negatively reflects on his fitness to practice of law. In consideration of the totality of the circumstances, including Respondent's misconduct, the moderate aggravating factor of his prior record, and the minimal mitigating circumstance, the court finds that a lengthy period of actual suspension is warranted. And before he is allowed to return to the practice of law, Respondent must demonstrate that he has been rehabilitated and fit to practice law such that the misconduct in the underlying matter is unlikely to recur.

Accordingly, the court recommends among other things, an actual suspension of three years and until Respondent complies with standard 1.2(c)(1).

## **RECOMMENDATIONS**

### **Discipline – Actual Suspension “And Until” Rehabilitation**

It is recommended that Nathan V. Hoffman, State Bar Number 13155, be suspended from the practice of law for four years, that execution of that suspension be stayed, and that Respondent be placed on probation for four years with the following conditions.

#### **Conditions of Probation**

##### **1. Actual Suspension**

Respondent must be suspended from the practice of law for a minimum of the first three years of Respondent's probation (with credit given for the period of interim suspension which commenced on May 14, 2018), and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

##### **2. Review Rules of Professional Conduct**

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

**3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions**

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

**4. Maintain Valid Official Membership Address and Other Required Contact Information**

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

**5. Meet and Cooperate with Office of Probation**

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

**6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court**

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

**7. Quarterly and Final Reports**

**a. Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

**b. Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and

signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

**c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

**d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

## **8. State Bar Ethics School**

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.



## **9. Proof of Compliance with Rule 9.20 Obligations**

Respondent is directed to maintain, for a minimum of one year after the commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20(a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

## **10. Criminal Probation**

Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

### **Commencement of Probation/Compliance with Probation Conditions**

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination During Actual Suspension**

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of Respondent's actual suspension in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

### **California Rules of Court, rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.<sup>5</sup> Failure to do so may result in disbarment or suspension.

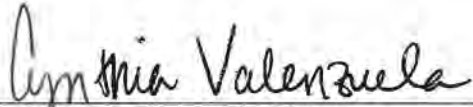
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<sup>5</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers*

## Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: January 15, 2020

  
CYNTHIA VALENZUELA  
Judge of the State Bar Court

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*v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)



## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 15, 2020, I deposited a true copy of the following document(s):

### DECISION

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

Nathan V. Hoffman  
317 S Holt Ave Unit PH-B,  
Los Angeles, CA 90048

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Roy S. Kim, Enforcement Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 15, 2020.



---

Paul Songco  
Court Specialist  
State Bar Court

1 STATE BAR OF CALIFORNIA  
2 OFFICE OF CHIEF TRIAL COUNSEL  
3 MELANIE J. LAWRENCE, No. 230102  
4 INTERIM CHIEF TRIAL COUNSEL  
5 ANTHONY J. GARCIA, No. 171419  
6 ASSISTANT CHIEF TRIAL COUNSEL  
7 ANAND KUMAR, No. 261592  
8 SUPERVISING ATTORNEY  
9 ROY KIM, No. 293815  
10 DEPUTY TRIAL COUNSEL  
11 845 South Figueroa Street  
12 Los Angeles, California 90017-2515  
13 Telephone: (213) 765-1616

**FILED**

**SEP 23 2019**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

STATE BAR COURT  
HEARING DEPARTMENT - LOS ANGELES

11 In the Matter of: ) Case No's. 12-C-16181 &18-O-15019  
12 )  
13 NATHAN V. HOFFMAN, ) STIPULATION AS TO FACTS AND  
14 No. 135155, ) ADMISSION OF DOCUMENTS  
15 )  
16 A Member of the State Bar. ) (Rules Proc. of the State Bar, rule 5.54)

16 IT IS HEREBY STIPULATED by and between the State Bar of California, by and  
17 through Deputy Trial Counsel Roy Kim ("State Bar"), and Nathan V. Hoffman ("respondent"),  
18 in accordance with rule 5.54 of Rules of Procedure of the State Bar of California as follows:

19 **A. JURISDICTION**

20 Respondent was admitted to the practice of law in the State of California on July 5, 1988,  
21 and since that time has been a member of the State Bar of California.

22 **B. WAIVERS AND UNDERSTANDING OF THE PARTIES**

23 It is understood and acknowledged by the parties to this stipulation that:

24 1. This stipulation as to facts is binding upon the parties regardless of the disposition or  
25 degree of discipline recommended or imposed.

26 2. The stipulated facts contained in this stipulation constitute admissions of fact and may  
27 not be withdrawn by either party, except with Court approval.  
28

1           3. Evidence to prove or disprove a stipulated fact is inadmissible at trial. The parties  
2 agree that either party may seek to admit evidence at trial as to facts not contained in this  
3 stipulation, which do not contradict these stipulated facts. Neither party waives the right to  
4 submit and present evidence relating to mitigation or relating to aggravation.

5 **C. STATEMENT OF STIPULATED FACTS**

6           The parties hereby stipulate that the following facts are true and undisputed:

7 **Background Facts:**

8           1. Respondent Hoffman was admitted to the practice of law in the State of California on  
9 July 5, 1988, and since that time has been a member of the State Bar of California. (A certified  
10 copy of respondent Hoffman's registration card is contained at **State Bar Trial Exhibit**  
11 **("SBTE") 1.**)

12           2. Between January 11, 2008 and October 14, 2014, respondent's official State Bar  
13 membership records address was 3350 Wilshire Blvd., Ste. 855, Los Angeles, CA 90010.  
14 Thereafter between October 15, 2014 and November 26, 2017, respondent's official State Bar  
15 membership records address was 3255 Wilshire Blvd., Ste. 1402, Los Angeles, CA 90010. Since  
16 November 27, 2017, respondent's official State Bar membership records address is 317 S. Holt  
17 Ave. Unit PH-B, Los Angeles CA, 90048. (A certified copy of respondent's membership address  
18 history is contained at **SBTE 2.**)

19 **State Bar Case No. 12-C-16181**

20           3. Between approximately December 2010 and June 2011, respondent conspired with  
21 Yan Ebyam ("Ebyam") and others to develop two large-scale marijuana cultivation sites in the  
22 Eastern District of California. Respondent and his co-conspirators sought to make profits from  
23 the illegal distribution of large quantities of marijuana within California. (A copy of respondent's  
24 plea agreement for criminal matter, case number 2:15-CR-0234 ("plea agreement") is contained  
25 at **SBTE 8-0010.**)

26           4. Between approximately December 2010 and June 2011, in furtherance of the  
27 conspiracy to commit the illegal distribution of marijuana, respondent agreed with Ebyam to  
28

1 form a legal entity called Black Horizon to organize the marijuana cultivation and distribution  
2 business. (SBTE8-0010.)

3 5. Between approximately December 2010 and June 2011, respondent played a role in  
4 the formation of Black Horizon and leadership within Jopson Ranch and took responsibility for  
5 legal matters associated with Black Horizon's effort to cultivate and distribute marijuana. (A  
6 copy of special agent Lisa Ulrikson's affidavit in support of criminal complaint is contained at  
7 SBTE 05-0017.)

8 6. Between approximately December 2010 and June 2011, respondent served as the  
9 agent for service of process for Black Horizon. Respondent was identified as an employee of  
10 Black Horizon. Respondent also made short-term loans to Black Horizon used to cover  
11 immediate expenses incurred in the marijuana grow operation at Jopson Ranch. (SBTE8-0010 –  
12 0011.)

13 7. On June 21, 2011, law enforcement served a federal warrant at Jopson Ranch. Agents  
14 seized 2,168 marijuana plants. (SBTE 8-0010.)

15 8. On August 29, 2012, charges were filed against respondent and four others in a  
16 federal indictment, case number 12-CR-0309. (A copy of the August 29, 2012 indictment is  
17 contained at SBTE 6.)

18 9. On December 17, 2015, a second indictment was filed in case number 15-CR-0234.  
19 The two cases were consolidated under case no. 15-CR-0234. (A copy of the December 17, 2015  
20 indictment is contained at SBTE 6.)

21 10. On January 18, 2017, respondent pled guilty to count two in case number 15-CR-  
22 0234 of violating 21 USC 841(a)(1) [manufacturing of at least 50 marijuana plants], a felony.  
23 Pursuant to the plea agreement, respondent pled to the following elements of the offense: 1)  
24 Between January 2011 and June 21, 2011, respondent knowingly manufactured at least 50  
25 marijuana plants; 2) respondent knew it was marijuana or some other prohibited drug; 3)  
26 "manufacturer" includes the production, preparation, and cultivation of marijuana; and 4)  
27 respondent fully understands the nature and elements of the crime charged in Count Two of the  
28



1 Indictment to which he is pleading guilty, together with the possible defense thereto, and has  
2 discussed them with his attorney. (SBTE 8-0005 – 8-0006.)

3 11. As a material term to the plea agreement, respondent also agreed to voluntarily  
4 relinquish, or give up his license to practice law in the State of California. Further, he agreed to  
5 that he will cease practicing law after that time. If disbarment proceedings are instituted by the  
6 State Bar of California at any time, the respondent agreed not to contest disbarment. (SBTE 8-  
7 0004 – 8-0005.)

8 12. Before respondent was sentenced, he sought an evidentiary hearing and motion to  
9 withdraw his plea from the U.S. District Court for the Eastern District of California. Both  
10 motions were denied and respondent was sentenced to 48 months in federal prison. Respondent  
11 again appealed, and the U.S. Court of Appeals for the Ninth Circuit affirmed on October 17,  
12 2018.

13 13. On October 24, 2017, respondent was sentenced to 48 months federal prison with a  
14 surrender date of December 7, 2017.

15 14. On October 25, 2017, respondent notified the State Bar of his plea deal and guilty  
16 plea. (A copy of member's report of criminal proceedings is contained at SBTE 6.)

17 15. Respondent's conviction in the consolidated criminal matter, case number 15-CR-  
18 0234, *et. al.* is final.

19 **18-O-15019**

20 16. On April 19, 2018, the State Bar Review Department issued an Order in case number  
21 12-C-16181, placing respondent on interim suspension pursuant to Business and Professions  
22 Code section 6102, effective May 14, 2018. Pursuant to the Order, respondent was additionally  
23 ordered to comply with the California Rules of Court, Rule 9.20 (a) and (c) within 30 and 40  
24 days, respectively, after the effective date. Respondent received the April 19, 2018 Order.  
25 (SBTE)

26 17. On May 10, 2018, while Respondent was incarcerated at FCI Morgantown in West  
27 Virginia, after not receiving any 9.20 affidavit, Probation Deputy Michael Kanterakis  
28 ("Kanterakis") uploaded a reminder letter onto respondent's State Bar membership profile that

1 his 9.20 affidavit needed to be filed no later than June 23, 2018 along with instructions on how  
2 and where to submit the affidavit (Kanterakis' letter is contained in **SBTE 12.**) Kanterakis also  
3 emailed a reminder to respondent of his obligations to comply with the Order. (Kanterakis' email  
4 is contained in **SBTE 13.**)

5 18. On June 28, 2018, Kanterakis mailed respondent a letter that he had not complied  
6 with rule 9.20 by the due date of June 23, 2018 (Kanterakis' email is contained in **SBTE 14.**)

7 19. On September 20, 2018, respondent submitted his 9.20 declaration. (Respondent's  
8 9.20 declaration is contained in **SBTE 18-0003.**)

9 **D. STIPULATION TO ADMISSION OF DOCUMENTS**

10 The parties hereby stipulate that State Bar Trial Exhibits 001 - 020, and Respondents'  
11 Trial Exhibits 1001 – 1008 and 1010 – 1012, shall be admitted into evidence in these  
12 proceedings. The State Bar stipulates to the admission of Respondent's Trial Exhibit 1009  
13 conditioned that the Joan T. Daniels is produced as a witness at trial. Both parties reserve the  
14 rights to argue to the court the weight that should be given to each exhibit.

15 Respectfully submitted,

16 THE STATE BAR OF CALIFORNIA  
17 OFFICE OF CHIEF TRIAL COUNSEL

18  
19 DATED: 9/20/19

BY: 

Roy Kim  
Deputy Trial Counsel

20  
21  
22  
23 DATED: 09/23/19

BY: 

Nathan V. Hoffman  
Respondent

FILED

JUN 26 2019

P.B.

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

NATHAN V. HOFFMAN (SBN 135155)  
317 S. Holt Ave., Unit PH-B  
Los Angeles, CA 90048  
(310) 739-0978 Phone

THE STATE BAR COURT  
OF THE STATE BAR OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

NATHAN V. HOFFMAN

State Bar No. 135155

)  
) Case No.: 12-C-16181-CV  
)  
) RESPONDENT NATHAN V. HOFFMAN'S  
) RESPONSE TO NOTICE OF HEARING  
) ON CONVICTION (Bus. & Prof. Code,  
) Sections 6101, 6102); DECLARATION OF  
) NATHAN V. HOFFMAN  
)  
) Date: July 30, 2019  
) Time: 9:45 a.m.  
) Dept: Courtroom D  
)  
)

TO THE HEARING DEPARTMENT OF THE STATE BAR COURT AND TO STATE  
BAR OF CALIFORNIA SENIOR TRIAL COUNSEL PAUL G. PRISSEL:

Respondent NATHAN V. HOFFMAN, respectfully files his written response and  
declaration within 20 days after Notice of Hearing on Conviction was served on June 14, 2019 to  
comply with the requirements of the Rules of Procedure of the State Bar, Rule 5.345(B).

WHEREFORE, Respondent prays that this honorable Court find: (1) my conviction did  
not involve "moral turpitude"; (2) vacate its order of April 19, 2018 placing Respondent on  
interim suspension (felony conviction involving moral turpitude); and (3) consider this Response  
and Declaration in determining whether Respondent should be ordered restored to active status.  
As per the Supreme Court of California *En Banc* Order of April 26, 2019 on the related case  
State Bar Court Case Number 18-Q-16359, (Exhibit 1), Respondent fully understands any return  
to active status will be conditioned on payment of any dues, penalty payments, and restitution  
owed by him.

-1-

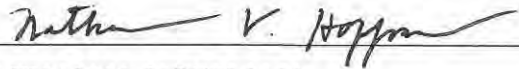
RESPONDENT NATHAN V. HOFFMAN'S RESPONSE TO NOTICE OF HEARING ON CONVICTION;  
DECLARATION OF NATHAN V. HOFFMAN



1           This pleading will be based upon this Response to Notice, the attached Declaration of  
2 Nathan V. Hoffman, the files and records in this action, and any further evidence and argument  
3 that the Court may receive at or before the hearing.  
4

5 Dated: June 26, 2019

Respectfully Submitted,

6  
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9 NATHAN V. HOFFMAN,  
10 Respondent  
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**STATE BAR OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of:

**NATHAN V. HOFFMAN**

A Member of the State Bar No. 135155

)  
) Case No.: **12-C-16181-CV**  
)  
) **Declaration of Respondent**  
) **NATHAN V. HOFFMAN**  
)  
)  
)

As per State Bar Rules of Procedure 5.162 sub (E), this Declaration is to supplement my written response to Notice of Hearing on Conviction and vacate an ORDER for my suspension from the practice of law in this state effective May 14, 2018.

**DECLARATION OF NATHAN V. HOFFMAN**

I, NATHAN V. HOFFMAN, declare:

1. If called as a witness I could competently testify to the following matters which are of my own knowledge:

2. This declaration is submitted to assist the State Bar Court in the matter of the Notice of Hearing on Conviction of Nathan V. Hoffman filed on June 14, 2019 in the disposition of Case Number 12-C-16181-CV.

3. On June 15, 2019 I received a NOTICE OF HEARING ON CONVICTION filed on June 14, 2019, (**Exhibit 2**).

4. I am in agreement with the State Bar Court's Review Department *En Banc* ORDER signed by Presiding Judge Catherine Purcel and filed on June 14, 2019, (**Exhibit 3**), to reflect my crime should be classified as felony that *may or may not involve moral turpitude* rectifying the May 14, 2018 Order where it was erroneously indicated that the crime was a felony involving moral turpitude per se.

5. In that regard, this Court should take into account that after nearly 7 years of litigation with the US Attorney of the Eastern District of California, I pled Guilty on October 24, 2017 to Count 2 of the federal indictment which indicated my acceptance of responsibility

1 for manufacture of at least 50 marijuana plants (Class C Felony), under 21 USC Section  
2 841(a)(1) for an offense concluded on **June 21, 2011**, (*See, Exhibit 4*), in violation of the US  
3 Controlled Substances Act (CSA) which classifies marijuana as a Schedule 1 controlled  
4 substance with no recognized medicinal value.

5 6. Currently the United States Congress is in the process of changing  
6 Marijuana's classification as a Schedule 1 drug under the CSA and/or removing it completely  
7 as a controlled substance subject to criminal penalties. This change in law ending federal  
8 prohibition of marijuana appears to be in direct response to the majority of US States,  
9 including California, that have already legalized the manufacture and possession of marijuana  
10 for either medical or recreational use or both.

11 7. With respect to my instant case, I would assert that my conviction was **not**  
12 for a crime involving "moral turpitude" per se. My crime during a limited 6-month period  
13 from December 2010 until June 2011 involved the commission of a *malum prohibitum* act  
14 violating Federal statute, (CSA), prohibiting the manufacture of any Schedule 1 substance  
15 including marijuana. My act in assisting in the manufacture of 50 or more medical marijuana  
16 plants was not in itself immoral. Furthermore, I owe no restitution on my case.

17 8. I concur with the OCTC Senior Trial Counsel, Kevin B. Taylor, who stated  
18 in his SUPPLEMENT TO TRANSMITTAL OF FINALITY RE MORAL TURPITUDE  
19 CLASSIFICATION dated May 22, 2019 that: "The State Bar reasons that the elements of  
20 respondent's conviction, on their face, are something less than [stet] possession for sale or  
21 distribution. Therefore, respondent's offense is **not** one that involves moral turpitude as a  
22 matter of law." [Emphasis added], (*See, Exhibit 5*). This comports with the State Bar and  
23 Respondent's understanding of *In re Kreamer* (1975) 14 Cal.3d 524 and *In the Matter of John*  
24 *C. Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552 which held that even  
25 possession of marijuana for sale or distribution is not a crime of moral turpitude.

26 9. I acknowledged my role as an attorney for the two lawfully organized and  
27 established California Agricultural Cooperatives in Northern California, (located in Rio Oso  
28 and Sacramento), properly filed with the California Secretary of State, and I was designated as  
Agent for Service of Process for both entities although it was without my knowledge as to the  
Sacramento Cooperative which I never visited. I attempted to stay within the bounds of both  
California law, (Compassionate Use Act, "CUA", and SB 420 Medical Marijuana Program

1 Act, "MMPA"), and Federal law, (delineated in USDOJ's 'Ogden Memorandum' and  
2 subsequent 'Cole Memorandum' concerning the manufacture of medical marijuana within  
3 State law guidelines), in rendering legal advice. Unfortunately, I failed to adequately monitor  
4 the activities of the Cooperative clients in Northern California and they were raided and shut  
5 down by the DEA in 2011.

6 10. For purposes of this Declaration, I will refrain from arguing about the  
7 political nature of the US Government's prosecution of my clients and myself, as well as the  
8 abridgement of California's state right to regulate the manufacturing of medical marijuana.  
9 This issue is irrelevant in terms of the matter before this court which is properly focused on my  
10 conduct as an attorney and my conviction.

11 11. As Respondent I would assert my conduct, subsequent guilty plea per a  
12 Plea Bargain Agreement, and ultimately conviction as to Count 2 did *not* constitute an act of  
13 "moral turpitude" like an inherently immoral *malum in se* act which is evil in itself, (e.g.  
14 murder, arson, rape). It was a *malum prohibitum* act that violated a federal statute, (CSA), due  
15 to my faulty legal analysis of the conflict of laws extant in 2010 between the State of  
16 California and the U.S. on permissible manufacturing of medical marijuana at the time.

17 12. At no time during the relevant time period from December 2010 to June  
18 2011 did I believe I was committing a federal crime in advising and/or assisting my clients on  
19 how to legally establish and operate a California Agricultural Cooperative dedicated to  
20 manufacturing medical marijuana for its membership pursuant to the CUA and MMPA. I was  
21 paid \$5,000 by check in legal fees as documented by the US Government's evidence collected  
22 at the Rio Oso facility in 2011.

23 13. There was no prohibition under the MMPA from members manufacturing  
24 up to 60 plants per member following the California Guidelines for cultivation of Medical  
25 Marijuana as established by then Attorney General Jerry Brown.

26 14. I attended CEB seminars focused on the rapidly changing legal landscape  
27 on Medical Marijuana laws to fulfill my fiduciary duty to keep abreast of the new laws for the  
28 benefit of Cooperative clients.

15 15. Since being indicted on the original underlying federal case against me, as  
16 well as ten co-defendants in 2011, I practiced law without any major incident through 2017.  
17 My actual suspension due to conviction was effective May 14, 2018.

16. On December 6, 2017 I voluntarily surrendered to FCI Morgantown in West Virginia where I served 18 months of my sentence. During my period of incarceration I successfully completed the 1-year Residential Drug Abuse Program, (RDAP), earned an Advanced Computer Skills certificate, took various Adult Continuing Education classes, and was an active member of the Psychology Department's Inmate Companion Program for Suicide Prevention and Watch.

17. I returned to Los Angeles on June 4, 2019, and currently reside at the Vinewood Residential Re-Entry Center located at 5520 Harold Way, Los Angeles, CA 90028, and spend my weekends at home on furlough with my family until I achieve full-time Home Confinement status.

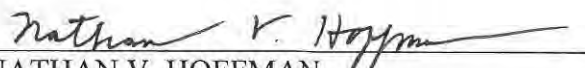
18. While on interim suspension from the Bar I am working full-time as a "legal assistant" at a law firm specializing in Trusts and Probate, the Law Offices of Raphael Rosemblat located at 6303 Wilshire Blvd., Suite 203, Los Angeles, CA 90048.

### CONCLUSION

The Hearing Department of the State Bar Court should find that the facts and circumstances surrounding Respondent's federal felony conviction for the manufacture of at least 50 marijuana plants did not involve moral turpitude. The OCTC filed a supplemental transmittal dated May 22, 2019 regarding the Respondent's moral turpitude classification for manufacturing indicating that Respondent's offense is not one that involves moral turpitude as a matter of law. Respondent owes no restitution, and to date has successfully served his sentence and probation imposed by the US Federal District Court of the Eastern District of California pursuant his plea bargain agreement. Finally, Respondent is willing to abide by any terms of discipline imposed by the State Bar Court as a condition for being ordered restored to active status.

Dated: June 26, 2019

Respectfully submitted,

  
NATHAN V. HOFFMAN,  
Respondent

# **EXHIBIT 1**



APR 26 2019

(State Bar Court No. 18-Q-16359)

Jorge Navarrete Clerk

S254292

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Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re NATHAN V. HOFFMAN on Resignation

---

This court, having considered the request, declines to accept the voluntary resignation with charges pending of Nathan V. Hoffman, State Bar number 135155, as a member of the State Bar of California. (Cal. Rules of Court, rule 9.21(d).) Nathan V. Hoffman remains on inactive status. (Cal. Rules of Court, rule 9.21(a).) He may move the State Bar Court to be restored to active status, at which time the Office of Chief Trial Counsel may demonstrate any basis for his continued ineligibility to practice law. The State Bar Court will expedite the resolution of any request by Nathan V. Hoffman to be restored to active status. Any return to active status will be conditioned on Nathan V. Hoffman's payment of any dues, penalty payments, and restitution owed by him. The underlying disciplinary matters should proceed promptly.

**CANTIL-SAKAUYE**

---

*Chief Justice*

## **EXHIBIT 2**

|  |  |
|--|--|
| <b>STATE BAR COURT OF CALIFORNIA</b><br><br><b>HEARING DEPARTMENT</b><br><br><b>845 S. Figueroa St., Los Angeles, CA 90017</b> | FOR CLERK'S USE ONLY:<br><br><div style="text-align: right;"> <b>FILED</b><br/> <i>18</i><br/> <b>JUN 14 2019</b><br/>         STATE BAR COURT<br/>         CLERK'S OFFICE<br/>         LOS ANGELES       </div> |
| In the Matter of:<br><br><b>NATHAN V. HOFFMAN,</b><br><br><b>State Bar No. 135155.</b>   | Case No(s): <b>12-C-16181-CV</b><br><br><b>NOTICE OF HEARING ON CONVICTION</b><br><b>(Bus. &amp; Prof. Code, §§ 6101, 6102)</b>  |

**NOTICE TO RESPONDENT**

Pursuant to the order of the Review Department of the State Bar Court, filed June 14, 2019, a true and correct copy of which is attached, your conviction has been referred to the Hearing Department of the State Bar Court. You must file and serve a written response within 20 days after this notice is served. (Rules Proc. of State Bar, rule 5.345(B).) You also must appear in person or by counsel at the trial of this case. (Rules Proc. of State Bar, rule 5.100.)

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

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND
- (4) YOU WILL BE SUBJECT TO ADDITIONAL DISCIPLINE. 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 RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA, RULE 5.80 ET SEQ.).

UNDER THE RULES OF PROCEDURE OF THE STATE BAR, YOU MUST FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN 20 DAYS AFTER THIS NOTICE IS SERVED.

Your attention is directed to the Rules of Procedure of the State Bar and Rules of Practice of the State Bar Court, which govern these proceedings. You may locate the Rules of Procedure and Rules of Practice on

the internet at <http://www.statebarcourt.ca.gov>. If you do not have access to the Internet and want to purchase a copy of the rules, please contact State Bar General Services at (213) 765-1121.

**NOTICE - COST ASSESSMENT**

**In the event these proceedings 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 sections 6086.10 and 6140.7. See also rule 5.129, et seq., Rules of Procedure of the State Bar.**



Dated: June 14, 2019

---

Paul Songco  
Court Specialist  
State Bar Court

# **EXHIBIT 3**



FILED

JUN 14 2019 *WZ*

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

En Banc<sup>1</sup>

|                       |   |                     |
|-----------------------|---|---------------------|
| In the Matter of      | ) | Case No. 12-C-16181 |
|                       | ) |                     |
| NATHAN V. HOFFMAN,    | ) | ORDER               |
|                       | ) |                     |
| State Bar No. 135155. | ) |                     |
| _____                 | ) |                     |

On March 23, 2018, the Office of the Chief Trial Counsel (OCTC) filed a transmittal of record of conviction that respondent Nathan V. Hoffman, State Bar No. 135155, had been convicted of violating title 21 United States Code section 841, subdivision (a)(1) (manufacture of marijuana). We classified this crime as a felony involving moral turpitude, though OCTC requested classification as a felony that may or may not involve moral turpitude. Based on respondent's felony conviction, we ordered him suspended effective May 14, 2018, and further ordered OCTC to submit evidence of finality.

On May 22, 2019, OCTC filed a transmittal evidencing finality of respondent's conviction, and a separate supplement to its transmittal regarding the moral turpitude classification. OCTC argues that respondent's felony conviction is one that may or may not involve moral turpitude, rather than one that involves moral turpitude per se, because the crime is divisible, to wit: manufacturing marijuana versus possessing marijuana with an intent to distribute. OCTC further argues that case law has instructed that a conviction for manufacturing

---

<sup>1</sup> Judge Honn did not participate.

marijuana, of which respondent was convicted, is not a felony involving moral turpitude per se but one that may or may not involve moral turpitude. We agree.

Accordingly, we order that respondent's crime is classified as a felony that may or may not involve moral turpitude, nunc pro tunc, to the order we issued May 14, 2018, wherein we incorrectly indicated the crime was a felony involving moral turpitude per se.

As the judgment of conviction is final, this case is referred to the Hearing Department under the authority of California Rules of Court, rule 9.10(a), for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the felony violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline. Respondent remains suspended as previously ordered.

**PURCELL**

---

Presiding Judge

## **EXHIBIT 4**

# UNITED STATES DISTRICT COURT

## Eastern District of California

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **2:15CR00234-001****NATHAN HOFFMAN**

Defendant's Attorney: Robert Helfend, Retained

**THE DEFENDANT:**

- ☒ pleaded guilty to count(s) 2 of the Indictment.
- ☐ pleaded nolo contendere to count(s) \_\_\_\_ which was accepted by the court.
- ☐ was found guilty on count(s) \_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section  | Nature Of Offense  | Date Offense Concluded | Count Number |
|------------------|--|------------------------|--------------|
| 21 USC§841(a)(1) | Manufacture of at least 50 marijuana plants (Class C Felony) | 6/21/2011              | 2            |
| §                |  |                        |              |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_.
- ☐ Count(s) \_\_\_\_ dismissed on the motion of the United States.
- ☒ Remaining counts in this Indictment and in 2:12cr309 are dismissed by District Court as to this defendant.
- ☐ Appeal rights given. ☒ Appeal rights waived.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution or fine, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

**10/24/2017**

Date of Imposition of Judgment

/s/ John A. Mendez

Signature of Judicial Officer

**John A. Mendez**, United States District Judge

Name &amp; Title of Judicial Officer

10/25/2017

Date

# **EXHIBIT 5**



STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
ALLEN BLUMENTHAL, No. 110243  
ACTING ASSISTANT CHIEF TRIAL COUNSEL  
KEVIN B. TAYLOR, No. 151715  
SENIOR TRIAL COUNSEL  
180 Howard Street  
San Francisco, California 94105-1639  
Telephone: (415) 538-2543

STATE BAR COURT  
REVIEW DEPARTMENT

|                            |   |                              |
|----------------------------|---|------------------------------|
| In the Matter of:          | ) | Case No. 12-C-16181          |
|                            | ) |                              |
| NATHAN V. HOFFMAN,         | ) | SUPPLEMENT TO TRANSMITTAL OF |
| AKA NATHAN HOFFMAN,        | ) | FINALITY RE MORAL TURPITUDE  |
| No. 135155,                | ) | CLASSIFICATION               |
|                            | ) |                              |
| A Member of the State Bar. | ) |                              |

**To: The Review Department of the State Bar Court and respondent Nathan V. Hoffman:**

On March 23, 2018, the State Bar transmitted respondent's record of conviction in this matter classifying his felony conviction under Title 21 U.S.C. § 841(a)(1) as a crime that may or may not involve moral turpitude. On April 19, 2018, the Court issued its order placing respondent on interim suspension (felony conviction) and classifying his offense as one involving moral turpitude as a matter of law. The State Bar will transmit evidence that respondent's conviction is final herewith.

The State Bar will not file a request for summary disbarment at this time, but rather requests that the Court confirm its classification of respondent's violation as one involving moral turpitude as a matter of law.

The State Bar's classification of respondent's crime as one that may or may not involve moral turpitude is based upon two factors. First, the Indictment filed against respondent clearly

1 distinguishes divisible charges under Title 21 U.S.C. § 841(a)(1), to wit: alleging manufacturing  
2 marijuana versus possessing marijuana with an intent to distribute. (See March 23, 2018,  
3 transmittal, Indictment, Counts 1 – 3.) Respondent was convicted on Count Two of the  
4 Indictment, alleging only that respondent manufactured marijuana. (See March 23, 2018,  
5 transmittal, Indictment, p. 2.) Second, the plea agreement in respondent's criminal case states  
6 that the elements he was pleading guilty to under Title 21 U.S.C. § 841(a)(1) were (1) knowingly  
7 manufacturing at least 50 marijuana plants and (2) knowing that the manufactured product was  
8 marijuana or another prohibited drug. (See March 23, 2018, transmittal, Plea Agreement, p. 5.)

9 The State Bar recognizes that possession of hard drugs such as cocaine and heroin for  
10 sale or distribution are crimes of moral turpitude. However, the State Bar understands *In re*  
11 *Kreamer* (1975) 14 Cal.3d 524 and *In the Matter of John C. Deierling* (Review Dept. 1991) 1  
12 Cal. State Bar Ct. Rptr. 552 to hold that possession of marijuana for sale or distribution is not a  
13 crime of moral turpitude. Here, it is not clear that respondent was convicted of possession of  
14 marijuana for sale or distribution.

15 The State Bar reasons that the elements of respondent's conviction, on their face, are  
16 something less than possession for sale or distribution. Therefore, respondent's offense is not one  
17 that involves moral turpitude as a matter of law.

18 The State Bar will file a request for summary disbarment in this matter if the Court  
19 disagrees with the State Bar's reasoning and concludes that respondent's crime involves moral  
20 turpitude as a matter of law.

21  
22 Respectfully submitted,

23 THE STATE BAR OF CALIFORNIA  
24 OFFICE OF CHIEF TRIAL COUNSEL

25  
26 DATED: May 22, 2019

27 By:

28   
\_\_\_\_\_  
KEVIN B. TAYLOR  
Senior Trial Counsel

**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 12-C-16181**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that 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; that 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; that I am aware that on motion of 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; and that 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, on the date shown below, a true copy of the within

**SUPPLEMENT TO TRANSMITTAL OF FINALITY RE MORAL TURPITUDE  
CLASSIFICATION**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2093 9434 29, at San Francisco, on the date shown below, addressed to:

**Nathan V Hoffman  
317 S Holt Ave Unit PH-B  
Los Angeles, CA 90048**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**N/A**

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: May 22, 2019

Signed: \_\_\_\_\_  
Ina M. Strehle  
Declarant

DECLARATION OF SERVICE BY CERTIFIED MAIL

**CASE NUMBER: 12-C-16181-CV**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is The Law Offices of Raphael Rosemblat, 6303 Wilshire Blvd., Suite 203, Los Angeles, California 90048, declare that I am not a party to the within action; that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, 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 deposition for mailing in affidavit. That in accordance with the practice of the Law Office for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

**RESPONDENT NATHAN V. HOFFMAN'S RESPONSE TO NOTICE OF HEARING  
ON CONVICTION (Bus. & Prof. Code, Sections 6101, 6102); DECLARATION OF  
NATHAN V. HOFFMAN**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7014 1820 000 9080 0091, at Los Angeles, on the date shown below, addressed to:

State Bar of California  
Office of Chief Trial Counsel  
**Paul G. Prissel**  
Senior Trial Counsel  
845 South Figueroa Street  
Los Angeles, CA 90017-2515

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

Executed on June 26, 2019, at Los Angeles, California.



Ellen Suh



ORIGINAL

FILED

MAY 22 2019

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
ALLEN BLUMENTHAL, No. 110243  
ACTING ASSISTANT CHIEF TRIAL COUNSEL  
KEVIN B. TAYLOR, No. 151715  
SENIOR TRIAL COUNSEL  
180 Howard Street  
San Francisco, California 94105-1639  
Telephone: (415) 538-2543

RECEIVED

STATE BAR COURT

MAY 22 2019

REVIEW DEPARTMENT

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

In the Matter of:

NATHAN V. HOFFMAN,  
AKA NATHAN HOFFMAN,  
No. 135155,

A Member of the State Bar.

) Case No. 12-C-16181

)  
) SUPPLEMENT TO TRANSMITTAL OF  
) FINALITY RE MORAL TURPITUDE  
) CLASSIFICATION

**To: The Review Department of the State Bar Court and respondent Nathan V.**

**Hoffman:**

On March 23, 2018, the State Bar transmitted respondent's record of conviction in this matter classifying his felony conviction under Title 21 U.S.C. § 841(a)(1) as a crime that may or may not involve moral turpitude. On April 19, 2018, the Court issued its order placing respondent on interim suspension (felony conviction) and classifying his offense as one involving moral turpitude as a matter of law. The State Bar will transmit evidence that respondent's conviction is final herewith.

The State Bar will not file a request for summary disbarment at this time, but rather requests that the Court confirm its classification of respondent's violation as one involving moral turpitude as a matter of law.

The State Bar's classification of respondent's crime as one that may or may not involve moral turpitude is based upon two factors. First, the Indictment filed against respondent clearly



1 distinguishes divisible charges under Title 21 U.S.C. § 841(a)(1), to wit: alleging manufacturing  
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4 Indictment, alleging only that respondent manufactured marijuana. (See March 23, 2018,  
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12 Cal. State Bar Ct. Rptr. 552 to hold that possession of marijuana for sale or distribution is not a  
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15 The State Bar reasons that the elements of respondent's conviction, on their face, are  
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18 The State Bar will file a request for summary disbarment in this matter if the Court  
19 disagrees with the State Bar's reasoning and concludes that respondent's crime involves moral  
20 turpitude as a matter of law.

21  
22 Respectfully submitted,

23 THE STATE BAR OF CALIFORNIA  
24 OFFICE OF CHIEF TRIAL COUNSEL

25  
26 DATED: May 22, 2019

27 By:



28 KEVIN B. TAYLOR  
Senior Trial Counsel

**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 12-C-16181**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that 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; that 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; that I am aware that on motion of 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; and that 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, on the date shown below, a true copy of the within

**SUPPLEMENT TO TRANSMITTAL OF FINALITY RE MORAL TURPITUDE  
CLASSIFICATION**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2093 9434 29, at San Francisco, on the date shown below, addressed to:


**Nathan V Hoffman  
317 S Holt Ave Unit PH-B  
Los Angeles, CA 90048**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**N/A**

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: May 22, 2019

Signed: 

Ina M. Strehle  
Declarant



THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
KEVIN TAYLOR, No. 151715  
180 Howard Street  
San Francisco, California 94105-1639  
Telephone: (415) 538-2000

FILED

ORIGINAL

MAY 22 2019

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

IN THE MATTER OF THE  
CONVICTION OF:

NATHAN V. HOFFMAN,  
AKA NATHAN HOFFMAN  
No. 135155

RECEIVED

A Member of the State Bar

MAY 22 2019

- ) Case No. 12-C-16181  
)  
) Transmittal of Records of Conviction of Attorney (Bus. & Prof.  
) Code §§ 6101-6102; Cal. Rules of Court, rule 9.5 et seq.)  
)  
) [ X ] Felony;  
) [ ] Crime(s) involved moral turpitude;  
) [ ] Probable cause to believe the crime(s) involved moral  
) turpitude;  
) [ X ] Crime(s) which may or may not involve moral turpitude or  
) other misconduct warranting discipline;  
) [ X ] Transmittal of Notice of Finality of Conviction.

STATE BAR COURT CLERK'S OFFICE

SAN FRANCISCO

To the CLERK OF THE STATE BAR COURT:

1. Transmittal of records.

- [ X ] A. Pursuant to the provisions of Business and Professions Code, section 6101-6102 and California Rules of Court, rule 9.5 et seq., the Office of Chief Trial Counsel transmits a certified copy of the record of convictions of the following member of the State Bar and for such consideration and action as the Court deems appropriate:
- [ ] B. Notice of Appeal
- [ X ] C. Evidence of Finality of Conviction (Certified Copy of Docket)
- [ ] D. Other

Name of Member: Nathan V. Hoffman

Date member admitted to practice law in California: July 5, 1988

Member's Address of Record: 317 S Holt Ave Unit PH-B

Los Angeles, CA 90048

2. Date and court of conviction; offense(s).

The record of conviction reflects that the above-named member of the State Bar was convicted as follows:

Date of entry of conviction: October 24, 2017

Convicting court: U.S. District Court, Eastern District of California

Case number(s): 2:15-cr-00234-JAM-1

Crime(s) of which convicted and classification(s): Title 21 U.S.C. § 841(a)(1), Manufacture of Marijuana, a felony (Judgement p. 1) that may or may not involve moral turpitude or other misconduct warranting discipline. (*In re Kreamer* (1975) 14 Cal. 3d 524.)

☐ 3. Compliance with Rule 9.20.

We bring to the Court's attention that, should the Court enter an order of interim suspension herein, the Court may wish to require the above-named member to comply with the provisions of rule 9.20, California Rules of Court, paragraph (a), within 30 days of the effective date of any such order; and to file the affidavit with the Clerk of the State Bar Court provided for in paragraph (c) of rule 9.20 within 40 days of the effective date of said order, showing the member's compliance with the provisions of rule 9.20.

☒ 4. Other information to assist the State Bar Court

The United States Court of Appeals issued its order of mandate on November 08, 2018. Respondent had 90 days from that date to file a petition for writ of certiorari with the United States Supreme Court. (Rule 13, Rules of the Supreme Court of the United States.) Respondent did not do so. (See attached docket dated March 13, 2019.)

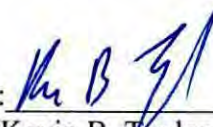
---

DOCUMENTS TRANSMITTED:

Certified Copy of Docket  
Certified Copy of Mandate  
Certified Copy of Memorandum

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: May 22, 2019

BY:   
Kevin B. Taylor  
Senior Trial Counsel

A copy of this transmittal and its  
Attachments have been sent to:

Nathan V. Hoffman  
317 S Holt Ave Unit PH-B  
Los Angeles, CA 90048



**General Docket**  
**United States Court of Appeals for the Ninth Circuit**

|  |   |   |  |
|--|---|---|--|
| <b>Court of Appeals Docket #:</b> 17-10472<br>USA v. Nathan Hoffman<br><b>Appeal From:</b> U.S. District Court for Eastern California, Sacramento<br><b>Fee Status:</b> IFP  |   | <b>Docketed:</b> 11/07/2017<br><b>Termed:</b> 10/17/2018  |  |
| <b>Case Type Information:</b><br>1) criminal<br>2) Direct Criminal<br>3) null  |   |   |  |
| <b>Originating Court Information:</b><br><b>District:</b> 0972-2 : 2:15-cr-00234-JAM-1<br><b>Court Reporter:</b> Jonathan A. Anderson<br><b>Court Reporter:</b> Kacy Parker Barajas, Court Reporter<br><b>Court Reporter:</b> Kimberly Bennett<br><b>Court Reporter:</b> Jennifer Coulthard<br><b>Court Reporter:</b> Ana P. Rivas<br><b>Court Reporter:</b> Diane J. Shepard, Official Court Reporter |   | <div style="border: 1px solid black; padding: 5px;">         A TRUE COPY<br/>         MOLLY C. DWYER<br/>         Clerk of Court<br/>         ATTEST<br/><br/> <div style="text-align: center;">MAR 13 2019</div><br/>         by: <i>Erica Ruiz</i><br/>         Deputy Clerk       </div> |  |
| <b>Trial Judge:</b> John A. Mendez, District Judge<br><b>Date Filed:</b> 12/17/2015  |   |   |  |
| <b>Date</b><br><b>Order/Judgment:</b><br>10/25/2017  | <b>Date Order/Judgment</b><br><b>EOD:</b><br>10/25/2017 | <b>Date NOA</b><br><b>Filed:</b><br>11/06/2017  | <b>Date Rec'd</b><br><b>COA:</b><br>11/07/2017 |
| <b>Prior Cases:</b><br>None  |   |   |  |
| <b>Current Cases:</b><br>None  |   |   |  |

UNITED STATES OF AMERICA  
 Plaintiff - Appellee,

Jason Hitt  
 Direct: 916-554-2751  
 [COR LD NTC Assist US Attorney]  
 USSAC - Office of the US Attorney  
 Ste. 10-100  
 501 I Street  
 Sacramento, CA 95814

Todd A. Pickles, Esquire, Assistant U.S. Attorney  
 Direct: 916-442-1111  
 [COR LD NTC Assist US Attorney]  
 Greenberg Traurig, LLP  
 1201 K Street



Suite 1100  
Sacramento, CA 95814

Samuel Wong, Assistant U.S. Attorney  
Direct: 916-554-2772  
[COR LD NTC Assist US Attorney]  
USSAC - Office of the US Attorney  
Suite 10-100  
501 I Street  
Sacramento, CA 95814

v.

NATHAN HOFFMAN  
Defendant - Appellant,

Krista Hart  
Direct: 916-498-8398  
[COR LD NTC CJA Appointment]  
Law Offices of Krista Hart  
PO Box 188794  
Sacramento, CA 95818

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NATHAN HOFFMAN,  
Defendant - Appellant.

- |            |          |  |
|------------|----------|--|
| 11/07/2017 | <u>1</u> | DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Reporters Transcript required: Yes. Sentence imposed: 48 months. Transcript ordered by 11/27/2017. Transcript due 12/27/2017. Appellant briefs and excerpts due by 02/05/2018 for Nathan Hoffman. Appellee brief due 03/07/2018 for United States of America. Appellant's optional reply brief is due 21 days after service of the answering brief. [10646537] (GWL) [Entered: 11/07/2017 02:22 PM] |
| 11/21/2017 | 2        | Criminal Justice Act electronic voucher created. (Counsel: Krista Hart for Nathan Hoffman) [10663697] (TG) [Entered: 11/21/2017 04:33 PM]  |
| 01/29/2018 | 3        | Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Nathan Hoffman. New requested due date is 03/07/2018. [10742042] [17-10472] (Hart, Krista) [Entered: 01/29/2018 01:14 PM]   |
| 01/29/2018 | 4        | <b>Streamlined request [3] by Appellant Nathan Hoffman to extend time to file the brief is approved. Amended briefing schedule: Appellant briefs and excerpts due by 03/07/2018 for Nathan Hoffman. Appellee brief due</b>   |

**04/06/2018 for United States of America. The optional reply brief is due 21 days from the date of service of the answering brief.** [10742303] (DJW)  
[Entered: 01/29/2018 02:18 PM]

- 03/07/2018 5 Submitted (ECF) Opening Brief for review. Submitted by Appellant Nathan Hoffman. Date of service: 03/07/2018. [10790503] [17-10472] (Hart, Krista) [Entered: 03/07/2018 06:42 PM]
- 03/07/2018 6 Submitted (ECF) excerpts of record. Submitted by Appellant Nathan Hoffman. Date of service: 03/07/2018. [10790504] [17-10472] (Hart, Krista) [Entered: 03/07/2018 06:42 PM]
- 03/07/2018 7 Filed (ECF) presentence report UNDER SEAL by Appellant Nathan Hoffman. [10790505] [17-10472] (Hart, Krista) [Entered: 03/07/2018 06:43 PM]
- 03/08/2018 8 Filed clerk order: The opening brief [5] submitted by Nathan Hoffman is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [6] submitted by Nathan Hoffman. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10790971] (KWG) [Entered: 03/08/2018 11:29 AM]
- 03/16/2018 9 Filed 4 paper copies of excerpts of record [6] in 1 volume(s) filed by Appellant Nathan Hoffman. [10801814] (KWG) [Entered: 03/16/2018 02:01 PM]
- 03/16/2018 10 Received 7 paper copies of Opening Brief [5] filed by Nathan Hoffman. [10802728] (RG) [Entered: 03/19/2018 08:52 AM]
- 03/29/2018 11 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee USA. New requested due date is 04/27/2018. [10817642] [17-10472] (Pickles, Todd) [Entered: 03/29/2018 11:08 AM]
- 03/29/2018 12 **Streamlined request [11] by Appellee USA to extend time to file the brief is approved. Amended briefing schedule: Appellee brief due 04/27/2018 for United States of America. The optional reply brief is due 21 days from the date of service of the answering brief.** [10817686] (DJW) [Entered: 03/29/2018 11:22 AM]
- 04/17/2018 13 Submitted (ECF) Answering Brief for review. Submitted by Appellee USA. Date of service: 04/17/2018. [10840553] [17-10472] (Pickles, Todd) [Entered: 04/17/2018 04:35 PM]
- 04/17/2018 14 Submitted (ECF) supplemental excerpts of record. Submitted by Appellee USA. Date of service: 04/17/2018. [10840558] [17-10472] (Pickles, Todd) [Entered: 04/17/2018 04:39 PM]
- 04/17/2018 15 Filed (ECF) Appellee USA Motion to take judicial notice of attached documents. Date of service: 04/17/2018. [10840578] [17-10472] (Pickles, Todd) [Entered: 04/17/2018 04:39 PM]

04/17/2018 04:46 PM]

- 04/18/2018 16 Filed clerk order: The answering brief [13] submitted by USA is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [14] submitted by USA. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10840941] (KWG) [Entered: 04/18/2018 09:29 AM]
- 04/23/2018 17 Received 7 paper copies of Answering Brief [13] filed by USA. [10846747] (DB) [Entered: 04/23/2018 12:40 PM]
- 04/23/2018 18 Filed 4 paper copies of supplemental excerpts of record [14] in 1 volume(s) filed by Appellee USA. [10847069] (KWG) [Entered: 04/23/2018 02:19 PM]
- 05/01/2018 19 Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant Nathan Hoffman. New requested due date is 05/30/2018. [10856683] [17-10472] (Hart, Krista) [Entered: 05/01/2018 09:26 AM]
- 05/01/2018 20 **Streamlined request [19] by Appellant Nathan Hoffman to extend time to file the brief is approved. Amended briefing schedule: the optional reply brief is due 05/30/2018.** [10856981] (DJW) [Entered: 05/01/2018 10:49 AM]
- 05/30/2018 21 Submitted (ECF) Reply Brief for review. Submitted by Appellant Nathan Hoffman. Date of service: 05/30/2018. [10890563] [17-10472] (Hart, Krista) [Entered: 05/30/2018 09:54 PM]
- 05/31/2018 22 Filed clerk order: The reply brief [21] submitted by Nathan Hoffman is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10890775] (KWG) [Entered: 05/31/2018 09:23 AM]
- 06/07/2018 23 Received 7 paper copies of Reply Brief [21] filed by Nathan Hoffman. [10899997] (RG) [Entered: 06/07/2018 10:39 AM]
- 06/20/2018 24 This case is being considered for an upcoming oral argument calendar in San Francisco

Please review the San Francisco sitting dates for October 2018 and the two subsequent sitting months in that location at [http://www.ca9.uscourts.gov/court\\_sessions](http://www.ca9.uscourts.gov/court_sessions). If you have an unavoidable conflict on any of the dates, please inform the court *within 3 days of this notice*, using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** regarding availability for oral argument).

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter *within 3 days of this notice*, using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** request for mediation).[10916275] (AW) [Entered: 06/20/2018 03:43 PM]

08/05/2018 25 Notice of Oral Argument on Monday, October 15, 2018 - 9:00 am - Courtroom 3 - San Francisco CA.

View the Oral Argument Calendar for your case [here](#).

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

When you have reviewed the calendar, download the [ACKNOWLEDGMENT OF HEARING NOTICE form](#) and within 21 days of Monday, October 15, 2018, file the completed form via Appellate CM/ECF. [10966406] (AW) [Entered: 08/05/2018 06:09 AM]

08/06/2018 26 Authorization for CJA attorney Krista Hart for Nathan Hoffman to travel to San Francisco to attend oral argument on 10/15/2018. See attached letter for details. [10966892] (AKM) [Entered: 08/06/2018 10:37 AM]

08/08/2018 27 Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Mr. Todd A. Pickles, Esquire for Appellee USA. [10969821] [17-10472] (Pickles, Todd) [Entered: 08/08/2018 09:16 AM]

09/24/2018 28 Filed clerk order (Deputy Clerk: OC): The panel unanimously finds this case suitable for decision without oral argument. This case shall be submitted on the briefs and record, without oral argument, on October 15, 2018, in San Francisco, California. Fed. R. App. P. 34(a)(2). [11022761] (AF) [Entered: 09/24/2018 01:17 PM]

10/15/2018 29 SUBMITTED ON THE BRIEFS TO MICHAEL DALY HAWKINS, ANDREW D. HURWITZ and LEE H. ROSENTHAL. [11047038] (WWP) [Entered: 10/15/2018 01:39 PM]

10/17/2018 30 FILED MEMORANDUM DISPOSITION (MICHAEL DALY HAWKINS, ANDREW D. HURWITZ and LEE H. ROSENTHAL) AFFIRMED. Appellee's unopposed Motion for Judicial Notice, Dkt. [15], is GRANTED. FILED AND ENTERED JUDGMENT. [11049852] (MM) [Entered: 10/17/2018 09:43 AM]

11/08/2018 31 MANDATE ISSUED.(MDH, ADH and LHR) [11081231] (RL) [Entered: 11/08/2018 09:00 AM]



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

NOV 08 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NATHAN HOFFMAN,

Defendant - Appellant.

No. 17-10472

D.C. No. 2:15-cr-00234-JAM-1

U.S. District Court for Eastern  
California, Sacramento

**MANDATE**

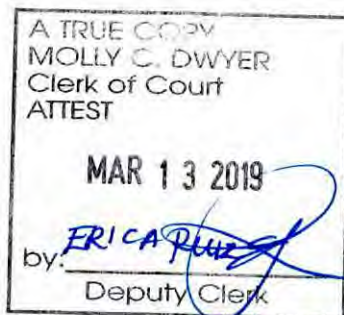
The judgment of this Court, entered October 17, 2018, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Rebecca Lopez  
Deputy Clerk  
Ninth Circuit Rule 27-7





NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 17 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NATHAN HOFFMAN,

Defendant-Appellant.

No. 17-10472

D.C. No.

2:15-cr-00234-JAM-1

MEMORANDUM\*

A TRUE COPY  
MOLLY C. DWYER  
Clerk of Court  
ATTEST

MAR 13 2019

by:

ERICA DWYER

Deputy Clerk

Appeal from the United States District Court  
for the Eastern District of California  
John A. Mendez, District Judge, Presiding

Submitted October 15, 2018\*\*  
San Francisco, California

Before: HAWKINS and HURWITZ, Circuit Judges, and ROSENTHAL,\*\*\* District Judge.

Nathan Hoffman was charged with conspiring to manufacture and manufacturing marijuana. After he was charged, the Ninth Circuit decided *United*

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Lee H. Rosenthal, Chief United States District Judge for the Southern District of Texas, sitting by designation.

*States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016), which held that a congressional appropriations rider prohibits use of federal funds to prosecute defendants in compliance with state medical marijuana laws. Hoffman initially indicated that he would file a *McIntosh* motion, but he never did so. Instead, pursuant to a plea agreement, he pleaded guilty to manufacturing marijuana. The plea agreement stipulated that Hoffman had manufactured and sold marijuana for profit, and included a waiver of the right to appeal or to “bring a collateral attack . . . challenging any aspect of the guilty plea, conviction, or sentence.” Before he was sentenced, Hoffman sought an evidentiary hearing; his motion was denied. He then filed, inter alia, a motion to withdraw his plea. The court denied the motion and sentenced Hoffman to a 48-month sentence, which was consistent with his Rule 11(C)(1)(c) agreement. This appeal followed. We have jurisdiction over his appeal under 28 U.S.C. § 1291 and affirm.

1. An appeal and collateral attack waiver “is generally enforced if ‘(1) the language of the waiver encompasses [the] right to appeal on the grounds raised, and (2) the waiver is knowingly and voluntarily made.’” *Davies v. Benov*, 856 F.3d 1243, 1246 (9th Cir. 2017) (citation omitted). Hoffman claims that his waiver does not encompass his present claims, because they are based on the district court’s 2017 denial of an evidentiary hearing, which occurred *after* he entered into the plea agreement. This argument fails. This Court decided *McIntosh* in 2016,

well prior to Hoffman's plea agreement, and he offers no credible argument that his plea implicitly allowed him to appeal the denial of a *McIntosh* defense raised only after the guilty plea.

Hoffman also argues that the district court failed to conduct a "count-by-count" analysis, which he claims is required by *United States v. Kleinman*, 880 F.3d 1020, 1028 (9th Cir. 2017), to determine which charges were restricted by the congressional appropriations rider. Hoffman is mistaken; as *Kleinman* explains, a count-by-count analysis is necessary to ensure that the prosecution does not "use a prosecutable charge (for conduct that violates state medical marijuana law) to bootstrap other charges that rely solely upon conduct that would fully comply with state law." *Id.* That is not a risk here. Hoffman was charged with conspiracy to manufacture marijuana, and the same offense conduct is alleged in both counts.

2. Even if Hoffman had not waived his right to appeal, the district court correctly denied his request for a *McIntosh* hearing as "futile." Hoffman's plea agreement specifically admitted that he "was involved in a conspiracy to grow marijuana for profit," precluding any basis for finding that he was in compliance with state law. California's Medical Marijuana Program expressly excludes cultivation and sale for profit. *See* Cal. Health & Safety Code § 11362.765. By his own admission, Hoffman was not in compliance with California law, and a *McIntosh* hearing was unwarranted.

**AFFIRMED.** Appellee's unopposed Motion for Judicial Notice, **Dkt. 15**, is  
**GRANTED.**



**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 12-C-16181**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that 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; that 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; that I am aware that on motion of 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; and that 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, on the date shown below, a true copy of the within

**TRANSMITTAL OF RECORDS OF CONVICTION OF ATTORNEY, including:**

**Certified Copy of Docket  
Certified Copy of Mandate  
Certified Copy of Memorandum**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2093 9434 29, at San Francisco, on the date shown below, addressed to:


**Nathan V Hoffman  
317 S Holt Ave Unit PH-B  
Los Angeles, CA 90048**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**N/A**

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: May 22, 2019

Signed: 

Ina M. Strehle  
Declarant



THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
KEVIN B. TAYLOR, No. 151715  
180 Howard Street  
San Francisco, California 94105-1639  
Telephone: (415) 538-2000

 ORIGINAL  
FILED

MAR 23 2018

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

|                           |   |  |
|---------------------------|---|--|
| IN THE MATTER OF THE      | ) | Case No. 12-C-16181  |
| CONVICTION OF:            | ) |  |
|                           | ) | Transmittal of Records of Conviction of Attorney (Bus. & Prof.                                     |
| <b>NATHAN V. HOFFMAN,</b> | ) | Code §§ 6101-6102; Cal. Rules of Court, rule 9.5 et seq.)  |
| <b>AKA NATHAN HOFFMAN</b> | ) |  |
| <b>No. 135155</b>         | ) | <input checked="" type="checkbox"/> [ X ] Felony;  |
|                           | ) | <input type="checkbox"/> [ ] Crime(s) involved moral turpitude;                                    |
|                           | ) | <input type="checkbox"/> [ ] Probable cause to believe the crime(s) involved moral                 |
| A Member of the State Bar | ) | turpitude;   |
|                           | ) | <input checked="" type="checkbox"/> [ X ] Crime(s) which may or may not involve moral turpitude or |
|                           | ) | other misconduct warranting discipline;  |
|                           | ) | <input type="checkbox"/> [ ] Transmittal of Notice of Finality of Conviction.                      |

To the CLERK OF THE STATE BAR COURT:

1. Transmittal of records.

- ☒ [ X ] A. Pursuant to the provisions of Business and Professions Code, section 6101-6102 and California Rules of Court, rule 9.5 et seq., the Office of Chief Trial Counsel transmits a certified copy of the record of convictions of the following member of the State Bar and for such consideration and action as the Court deems appropriate:
- ☐ [ ] B. Notice of Appeal
- ☐ [ ] C. Evidence of Finality of Conviction (Notice of Lack of Appeal)
- ☐ [ ] D. Other

Name of Member: Nathan V. Hoffman

Date member admitted to practice law in California: July 5, 1988

Member's Address of Record: Law Offices of Hoffman & Osorio, LLP

3255 Wilshire Blvd., Suite 1402

Los Angeles, CA 90010

2. Date and court of conviction; offense(s).

The record of conviction reflects that the above-named member of the State Bar was convicted as follows:

Date of entry of conviction: October 24, 2017

Convicting court: United States District Court, Eastern District of California

**RECEIVED**

**MAR 23 2018**

STATE BAR COURT  
CLERK'S OFFICE  
SAN FRANCISCO

Case number(s): 2:15-cr-00234-JAM-1

Crime(s) of which convicted and classification(s): Title 21 U.S.C. § 841(a)(1), Manufacture of Marijuana, a felony (Judgment p. 1) that may or may not involve moral turpitude (*In re Kreamer* (1975) 14 Cal. 3d 524).

☒ 3. Compliance with Rule 9.20. (Applicable only if checked.)

We bring to the Court's attention that, should the Court enter an order of interim suspension herein, the Court may wish to require the above-named member to comply with the provisions of rule 9.20, California Rules of Court, paragraph (a), within 30 days of the effective date of any such order; and to file the affidavit with the Clerk of the State Bar Court provided for in paragraph (c) of rule 9.20 within 40 days of the effective date of said order, showing the member's compliance with the provisions of rule 9.20.

☒ 4. Other information to assist the State Bar Court

Counts One and Three of Indictment, specifically identifying an intent to distribute the controlled substance, were dismissed.


This criminal matter was initially filed as case number 12-cr-00309, however that case number was dismissed and the matter was prosecuted under case number 15-cr-00234. (See docket entries of August 29, 2012 and January 21, 2016 and Judgment p. 1.)

CERTIFIED DOCUMENTS TRANSMITTED:

Indictment, filed December 17, 2015  
Plea Agreement  
Judgment  
Sentencing Minutes  
Notice of Appeal  
Docket

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: March 23, 2018

BY:   
Kevin B. Taylor  
Senior Trial Counsel

A copy of this transmittal and its  
Attachments have been sent to:

Nathan V. Hoffman  
Law Offices of Hoffman & Osorio, LLP  
3255 Wilshire Blvd., Suite 1402  
Los Angeles, CA 90010



BENJAMIN B. WAGNER  
United States Attorney  
JASON HITT  
TODD A. PICKLES  
SAMUEL WONG  
Assistant United States Attorneys  
501 I Street, Suite 10-100  
Sacramento, CA 95814  
Telephone: (916) 554-2700  
Facsimile: (916) 554-2900

Attorneys for Plaintiff  
United States of America

**FILED**

DEC 17 2015

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATHAN HOFFMAN,  
HUNG C. NGUYEN,  
aka John Nguyen, and  
BROOK MURPHY,

Defendants.

CASE NO. 2:15 - CR - 0234 KJM

21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to  
Manufacture and Possess with Intent to Distribute  
Marijuana (2 Counts); 21 U.S.C. § 841(a)(1) -  
Manufacture of Marijuana (2 Counts); 21 U.S.C.  
§ 853(a) - Criminal Forfeiture

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.

ATTEST: **MARIANNE MATHERLY**

Clerk, U. S. District Court  
Eastern District of California

By *[Signature]* Deputy Clerk

INDICTMENT

Dated 2/12/18

COUNT ONE: [21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Manufacture and Possess with Intent to  
Distribute Marijuana]

The Grand Jury charges: T H A T

NATHAN HOFFMAN,  
HUNG C. NGUYEN, aka John Nguyen, and  
BROOK MURPHY,

defendants herein, beginning at a time unknown to the Grand Jury but no later than on or about  
December 2010, and continuing up to, and including on or about June 21, 2011, in the Counties of Sutter  
and Sacramento, State and Eastern District of California, and elsewhere, did knowingly and intentionally  
conspire with each other and with other persons unknown to the Grand Jury to manufacture at least



1 1,000 marijuana plants, a Schedule I Controlled Substance, in violation of Title 21, United States Code,  
2 Sections 846 and 841(a)(1).

3 COUNT TWO: [21 U.S.C. § 841(a)(1) - Manufacture of Marijuana]

4 The Grand Jury further charges: T H A T

5 NATHAN HOFFMAN,  
6 HUNG C. NGUYEN, aka John Nguyen, and  
7 BROOK MURPHY,

8 defendants herein, beginning at a time unknown to the Grand Jury, but not later than in or about January  
9 2011, and continuing up to, and including, on or about June 21, 2011, in the County of Sutter, State and  
10 Eastern District of California, did knowingly and intentionally manufacture at least 50 marijuana plants,  
11 a Schedule I Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

12  
13 COUNT THREE: [21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Manufacture and Possess with Intent to  
14 Distribute Marijuana]

15 The Grand Jury further charges: T H A T

16 NATHAN HOFFMAN,  
17 HUNG C. NGUYEN, aka John Nguyen, and  
18 BROOK MURPHY,

19 defendants herein, beginning at a time unknown to the Grand Jury but no later than on or about February  
20 2011, and continuing up to, and including on or about June 21, 2011, in the County of Sacramento, State  
21 and Eastern District of California, and elsewhere, did knowingly and intentionally conspire with each  
22 other and with other persons unknown to the Grand Jury to manufacture at least 1,000 marijuana plants,  
23 a Schedule I Controlled Substance, in violation of Title 21, United States Code, Sections 846 and  
24 841(a)(1).

25 ///

26 ///

27 ///

28 ///

1 COUNT FOUR: [21 U.S.C. § 841(a)(1) - Manufacture of Marijuana]

2 The Grand Jury further charges: T H A T

3 NATHAN HOFFMAN,  
4 HUNG C. NGUYEN, aka John Nguyen, and  
5 BROOK MURPHY,

6 defendants herein, beginning at a time unknown to the Grand Jury, but not later than in or about January  
7 2011, and continuing up to, and including, on or about June 21, 2011, in the County of Sacramento,  
8 State and Eastern District of California, did knowingly and intentionally manufacture at least 50  
9 marijuana plants, a Schedule I Controlled Substance, in violation of Title 21, United States Code,  
10 Section 841(a)(1).

11 FORFEITURE ALLEGATION: [21 U.S.C. § 853(a) – Criminal Forfeiture]

12 1. Upon conviction of one or more of the offenses alleged in Counts One through Four,  
13 defendants NATHAN HOFFMAN, HUNG C. NGUYEN, aka John Nguyen, and BROOK MURPHY  
14 shall forfeit to the United States pursuant to Title 21, United States Code, Section 853(a), the following  
15 property:

16 a. All right, title, and interest in any and all property involved in violations of Title  
17 21, United States Code, Section 841(a)(1), or conspiracy to commit such offenses, for which defendants  
18 are convicted, and all property traceable to such property, including the following: all real or personal  
19 property, which constitutes or is derived from proceeds obtained, directly or indirectly, as a result of  
20 such offenses; and all property used, or intended to be used, in any manner or part to commit or to  
21 facilitate the commission of the offenses.

22 b. A sum of money equal to the total amount of proceeds obtained as a result of the  
23 offenses, or conspiracy to commit such offenses, for which defendants are convicted.

24 2. If any property subject to forfeiture, as a result of the offenses alleged in Counts One  
25 through Four of this Indictment, for which defendants are convicted:

- 26 a. cannot be located upon the exercise of due diligence;  
27 b. has been transferred or sold to, or deposited with, a third party;  
28 c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

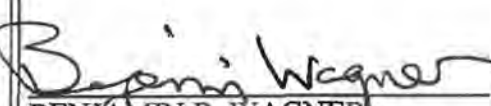
e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of defendants, up to the value of the property subject to forfeiture.

A TRUE BILL.

**/s/ Signature on file w/AUSA**

\_\_\_\_\_  
FOREPERSON

  
BENJAMIN B. WAGNER  
United States Attorney

No. \_\_\_\_\_

2:15 - CR - 0234 KJM

**UNITED STATES DISTRICT COURT**

*Eastern District of California*

*Criminal Division*

**THE UNITED STATES OF AMERICA**

vs.

NATHAN HOFFMAN,  
HUNG C. NGUYEN,  
aka John Nguyen, and  
BROOK MURPHY,

**INDICTMENT**

**VIOLATION(S):** 21 U.S.C. §§ 846, 841(A)(1) – Conspiracy to Manufacture  
and Possess With Intent to Distribute Marijuana (2 Counts);  
21 U.S.C. § 841(a)(1) – Manufacture of Marijuana (2 Counts);  
21 U.S.C. § 853(a) & 18 U.S.C. § 982(a)(1) – Criminal Forfeiture

*A true bill,*

**/s/ Signature on file w/AUSA**

\_\_\_\_\_  
*Foreman.*

Filed in open court this 17 day

of December, A.D. 20 15

\_\_\_\_\_  
*Clerk*

*Notices to Appen  
for all ss*  
*an* *Claire*  
Honorable Allison Claire  
U.S. Magistrate Judge

Bail, \$ \_\_\_\_\_



**United States v. Hoffman, et al.**  
**Penalties for Indictment**

**Defendants**

**NATHAN HOFFMAN**  
**HUNG NGUYEN**  
**BROOK MURPHY**

**Penalties on COUNTS ONE and THREE**

**VIOLATIONS:** 21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Manufacture at Least 1,000 Marijuana Plants

**PENALTIES:** Mandatory Minimum of 10 years in prison and a maximum of up to life in prison; or  
Fine of up to \$10,000,000; or both fine and imprisonment  
Supervised release of at least 5 years up to life

**SPECIAL ASSESSMENT:** \$100 (mandatory on each count)

**Penalties on COUNTS TWO and FOUR**

**VIOLATIONS:** 21 U.S.C. § 841(a)(1) - Manufacture of at Least 50 Marijuana Plants

**PENALTIES:** Up to 20 years in prison; or  
Fine of up to \$1,000,000; or both fine and imprisonment  
Supervised release of at least 3 years up to life

**SPECIAL ASSESSMENT:** \$100 (mandatory on each count)

**FORFEITURE ALLEGATION: All Defendants**

**VIOLATION:** 21 U.S.C. § 853(a) - Criminal

**PENALTIES:** As stated in the charging document

1 PHILLIP A. TALBERT  
United States Attorney  
2 JASON HITT  
TODD A. PICKLES  
3 Assistant United States Attorneys  
501 I Street, Suite 10-100  
4 Sacramento, CA 95814  
Telephone: (916) 554-2700  
5 Facsimile: (916) 554-2900

6 Attorneys for Plaintiff  
United States of America

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.

ATTEST: **MARIANNE MATHERLY**

Clerk, U. S. District Court  
Eastern District of California

By *[Signature]* Deputy Clerk

Dated 2/12/18

**FILED**

**JAN 18 2017**

**CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11 Plaintiff,

12 v.

13 NATHAN HOFFMAN, ET AL.,  
14 Defendants.

CASE NO. 2:15-CR-0234 JAM

PLEA AGREEMENT FOR NATHAN HOFFMAN

15  
16  
17 **I. INTRODUCTION**

18 **A. Scope of Agreement**

19 The defendant Nathan HOFFMAN ("defendant") will enter a guilty plea to Count Two of the  
20 Indictment in this case. Count Two charges the defendant with Manufacture of at least 50 marijuana  
21 plants, in violation of 21 U.S.C. § 841(a)(1). This document contains the complete plea agreement  
22 between the United States Attorney's Office for the Eastern District of California (the "government")  
23 and the defendant regarding this case. This plea agreement is limited to the United States Attorney's  
24 Office for the Eastern District of California and cannot bind any other federal, state, or local  
25 prosecuting, administrative, or regulatory authorities.

26 **B. Rule 11(c)(1)(C) Specific Sentence Agreement**

27 The government and the defendant agree that a specific sentence within the range of 48 and 70  
28 months in prison would be appropriate in this case. Consequently, this Plea Agreement is being

1 offered to the Court pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. Under the  
2 provisions of Rule 11(c)(3), the Court may accept or reject the Plea Agreement, or may defer its  
3 decision as to the acceptance or rejection until there has been an opportunity to consider the Presentence  
4 Investigation Report. If the Court accepts the Plea Agreement, the Court will inform the defendant that  
5 it will embody in the judgment and sentence the disposition provided for in this Plea Agreement. If the  
6 Court rejects this Plea Agreement, the Court shall so advise the parties, allow either party the  
7 opportunity to withdraw from this Plea Agreement, and advise this defendant that if he persists in a  
8 guilty plea the disposition of the case may be less favorable to his than is contemplated by this Plea  
9 Agreement. In addition, under this Agreement, if the Court rejects this Plea Agreement, the government  
10 reserves the right to withdraw from this Plea Agreement.

11 **II. DEFENDANT'S OBLIGATIONS**

12 **A. Guilty Plea**

13 The defendant will enter a guilty plea to Count Two of the Indictment in this case. Count Two  
14 charges the defendant with Manufacture of at least 50 marijuana plants, in violation of 21 U.S.C.  
15 § 841(a)(1). The defendant agrees that he is in fact guilty of this charge and that the facts set forth in the  
16 Factual Basis For Plea attached as Exhibit A are accurate. Exhibit A is incorporated here by reference.

17 The defendant agrees that this plea agreement will be filed with the Court and become a part of  
18 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his  
19 plea should the Court not follow the government's sentencing recommendations.

20 The defendant agrees that the statements made by him in signing this Agreement, including the  
21 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by  
22 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a  
23 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal  
24 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these  
25 rules are inconsistent with this paragraph or with this Agreement generally.

26 **B. Fine**

27 The parties reserve their argument about whether the defendant has the ability to pay a fine, and  
28 what fine, if any, is appropriate until after a financial investigation by the Probation Officer.



1           **C.     Special Assessment**

2           The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering  
3 a check or money order payable to the United States District Court to the United States Probation Office  
4 immediately before the sentencing hearing. The defendant understands that this plea agreement is  
5 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the  
6 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money  
7 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

8           **D.     Agreement to Cooperate**

9           The defendant agrees to cooperate fully with the government and any other federal, state, or local  
10 law enforcement agency, as directed by the government. As used in this plea agreement, "cooperation"  
11 requires the defendant: (1) to respond truthfully and completely to all questions, whether in interviews,  
12 in correspondence, telephone conversations, before a grand jury, or at any trial or other court  
13 proceeding; (2) to attend all meetings, grand jury sessions, trials, and other proceedings at which the  
14 defendant's presence is requested by the government or compelled by subpoena or court order; (3) to  
15 produce voluntarily any and all documents, records, or other tangible evidence requested by the  
16 government; (4) not to participate in any criminal activity while cooperating with the government; and  
17 (5) to disclose to the government the existence and status of all money, property, or assets, of any kind,  
18 derived from or acquired as a result of, or used to facilitate the commission of, the defendant's illegal  
19 activities or the illegal activities of any conspirators.

20           **E.     Defendant's Violation of Plea Agreement or Withdrawal of Plea**

21           If the defendant, violates this plea agreement in any way, withdraws his plea, or tries to withdraw  
22 his plea, this plea agreement is voidable at the option of the government. The government will no longer  
23 be bound by its representations to the defendant concerning the limits on criminal prosecution and  
24 sentencing as set forth herein. One way a defendant violates the plea agreement is to commit any crime  
25 or provide any statement or testimony which proves to be knowingly false, misleading, or materially  
26 incomplete. Any post-plea conduct by a defendant constituting obstruction of justice will also be a  
27 violation of the agreement. The determination whether the defendant has violated the plea agreement  
28 shall be decided under a probable cause standard.



1 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the  
2 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded  
3 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file  
4 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter  
5 be subject to prosecution for any federal criminal violation of which the government has knowledge,  
6 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these  
7 options is solely in the discretion of the United States Attorney's Office.

8 By signing this plea agreement, the defendant agrees to waive any objections, motions, and  
9 defenses that the defendant might have to the government's decision to exercise the options stated in the  
10 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as  
11 of the date of this plea agreement may be commenced in accordance with this paragraph,  
12 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement  
13 and the commencement of any such prosecutions. The defendant agrees not to raise any objections  
14 based on the passage of time with respect to such counts including, but not limited to, any statutes of  
15 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth  
16 Amendment to any counts that were not time-barred as of the date of this plea agreement.

17 In addition: (1) all statements made by the defendant to the government or other designated law  
18 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,  
19 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or  
20 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no  
21 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal  
22 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by  
23 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.  
24 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

25 **F. Defendant's Relinquishment of License to Practice Law in California**

26 As a material term of this Plea Agreement, the defendant agrees to voluntarily relinquish, or give  
27 up, his license, State Bar of California, Bar Number 135155, to practice law in the State of California.  
28 He further agrees to relinquish his license to practice at the time of his sentencing in this case and that he

1 will cease to practice law after that time. If disbarment proceedings are instituted by the State Bar of  
2 California at any time, the defendant agrees not to contest disbarment.

3 **III. THE GOVERNMENT'S OBLIGATIONS**

4 **A. Dismissals**

5 The government agrees to move, at the time of sentencing, to dismiss without prejudice the  
6 remaining counts in the pending Indictment. The government also agrees not to reinstate any dismissed  
7 count except if this agreement is voided as set forth in this Plea Agreement, or as provided in II.F  
8 (Defendant's Violation of Plea Agreement) and VII.B (Waiver of Appeal).

9 **B. Specific Sentence Agreement**

10 Pursuant to Rule 11(c)(1)(C), the government will recommend defendant be sentenced to within  
11 the range of **48 and 70 months in prison**

12 **C. Use of Information for Sentencing**

13 The government is free to provide full and accurate information to the Court and the United  
14 States Probation Office ("Probation"), including answering any inquiries made by the Court and/or  
15 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,  
16 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement  
17 bars the government from defending on appeal or collateral review any sentence that the Court may  
18 impose.

19 **IV. ELEMENTS OF THE OFFENSE**

20 At a trial, the government would have to prove beyond a reasonable doubt the following  
21 elements of the offense(s) to which the defendant is pleading guilty:

22 **COUNT TWO: Manufacture of at least 50 Marijuana Plants in violation of 21 U.S.C.**  
23 **§ 841(a)(1)**

24 First, between on or about January 2011 and June 21, 2011, defendant knowingly manufactured  
at least 50 marijuana plants; and

25 Second, the defendant knew that it was marijuana or some other prohibited drug.

26 "Manufacture" includes the production, preparation, and cultivation of marijuana. 21 U.S.C.  
27 § 802(15); 21 U.S.C. § 801(5); Gonzales v. Raich, 545 U.S. 1, 22 (2005).

1 The defendant fully understands the nature and elements of the crime charged in Count Two of  
2 the Indictment to which he is pleading guilty, together with the possible defenses thereto, and has  
3 discussed them with his attorney.

4 ~~The defendant fully understands the nature and elements of the crime charged in Count One of~~  
5 ~~the Indictment to which he is pleading guilty, together with the possible defenses thereto, and has~~  
6 ~~discussed them with his attorney.~~ *jam*

7 **V. MAXIMUM SENTENCE**

8 **A. Maximum Penalty**

9 The maximum sentence that the Court can impose on Count Two of the Indictment is up to 20  
10 years in prison, a fine of up to \$1,000,000, a term of supervised <sup>or release</sup> of at least 3 years, up to life, and a  
11 special assessment of \$100. In addition, the defendant may be ineligible for certain federal and/or state  
12 assistance and/or benefits, pursuant to 21 U.S.C. § 862.

13 **B. Violations of Supervised Release**

14 The defendant understands that if he violates a condition of supervised release at any time during  
15 the term of supervised release, the Court may revoke the term of supervised release and require the  
16 defendant to serve up to 2 additional years in prison.

17 **VI. SENTENCING DETERMINATION**

18 **A. Statutory Authority**

19 The defendant understands that the Court must consult the Federal Sentencing Guidelines and  
20 must take them into account when determining a final sentence. The defendant understands that the  
21 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the  
22 Sentencing Guidelines and must take them into account when determining a final sentence. The  
23 defendant understands that the Court will determine a non-binding and advisory guideline sentencing  
24 range for this case pursuant to the Sentencing Guidelines. The defendant further understands that the  
25 Court will consider whether there is a basis for departure from the guideline sentencing range (either  
26 above or below the guideline sentencing range) because there exists an aggravating or mitigating  
27 circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing  
28 Commission in formulating the Guidelines. The defendant further understands that the Court, after

1 consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable  
2 in light of the factors set forth in 18 U.S.C. § 3553(a). In this particular case, the Court will make the  
3 determination of whether to sentence defendant to the specific prison term contemplated by this plea  
4 agreement pursuant to Rule 11(c)(1)(C) after considering all of the of sentencing factors discussed  
5 above.

6 **B. Specific Sentence Agreement**

7 The parties agree that, if the Court accepts this Plea Agreement, the defendant's sentence shall be  
8 within the range of **48 and 70 months in prison**. Fed. R. Crim. P. 11(c)(1)(C).

9 The defendant and the government both agree not to argue in support of any departures,  
10 guideline classifications, or any other such grounds for a sentence outside of the range of **48 and 70**  
11 **months in prison**. The defendant is absolutely precluded from seeking a sentence of less than the  
12 sentence recommended by this agreement. The defendant is not precluded from receiving a further  
13 reduction in his sentence for substantial cooperation in other criminal cases in which he was not a  
14 participant and are not the subject of this Indictment.

15 **VII. WAIVERS**

16 **A. Waiver of Constitutional Rights**

17 The defendant understands that by pleading guilty he is waiving the following constitutional  
18 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to  
19 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to  
20 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be  
21 compelled to incriminate himself.

22 **B. Waiver of Appeal and Collateral Attack**

23 The defendant understands that the law gives the defendant a right to appeal his guilty plea,  
24 conviction, and sentence. The defendant agrees as part of his plea/pleas, however, to give up the right to  
25 appeal the guilty plea, conviction, and the sentence imposed in this case so long as the Court imposes as  
26 sentence that falls within the range of **48 and 70 months in prison** pursuant to Rule 11(c)(1)(C).

27 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if  
28 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the



1 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant  
2 understands that these circumstances occur infrequently and that in almost all cases this Agreement  
3 constitutes a complete waiver of all appellate rights.

4 If the Court accepts this Plea Agreement and sentences the defendant to a term of a sentence  
5 within the range of **48 and 70 months in prison**, the defendant also gives up any right to bring a  
6 collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any aspect of the  
7 guilty plea, conviction, or sentence, except for non-waivable claims.

8 Notwithstanding the agreement in paragraph III.A (Dismissals) above that the government will  
9 move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea, dismiss  
10 the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading  
11 guilty, the government shall have the rights set forth in paragraph II.E (Defendant's Violation of Plea  
12 Agreement) herein.

13 **C. Waiver of Attorneys' Fees and Costs**

14 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-  
15 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the  
16 investigation and prosecution of all charges in the above-captioned matter and of any related allegations  
17 (including without limitation any charges to be dismissed pursuant to this plea agreement and any  
18 charges previously dismissed).

19 **VIII. ENTIRE PLEA AGREEMENT**

20 Other than this plea agreement, no agreement, understanding, promise, or condition between the  
21 government and the defendant exists, nor will such agreement, understanding, promise, or condition  
22 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and  
23 counsel for the United States.  
24  
25  
26  
27  
28

IX. APPROVALS AND SIGNATURES

A. Defense Counsel

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated: 1-18-17

  
ROBERT HELFEND, Esq.  
Counsel for Defendant

B. Defendant

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 01/18/17

  
NATHAN HOFFMAN  
Defendant

C. Attorney for the United States

I accept and agree to this plea agreement on behalf of the government.

Dated: January 18, 2017

PHILLIP A. TALBERT  
United States Attorney

By: 

JASON HITT  
TODD A. PICKLES  
Assistant United States Attorneys

**EXHIBIT "A"**  
**Factual Basis for Plea**

This Factual Basis does not include each and every individual, event, or item of evidence known to defendant Nathan HOFFMAN or to the United States. Instead, it is a summary of facts highlighting sufficient facts for entry of guilty pleas pursuant to Rule 11. Some facts and events have specifically not been included in this Factual Basis because they are not necessary for the Court to determine that there is a factual basis for this guilty plea.

Overall Summary of Conspiracy

Between approximately December 2010, and June 2011, defendant Nathan HOFFMAN conspired with Yan EBYAM and others to develop two large-scale marijuana cultivation sites in the Eastern District of California. As part of this agreement, the defendant admits that he and his co-conspirators sought to make profits from the illegal distribution of large quantities of marijuana within California.

During the conspiracy, on June 21, 2011, law enforcement served a federal warrant at a marijuana cultivation site, known as Black Horizon, located in Rio Oso, California, at the Jopson Ranch in Sutter County, within the Eastern District of California. Agents seized 2,168 marijuana plants. During and in furtherance of the conspiracy charged in Count One, defendant HOFFMAN agreed with co-defendant EBYAM to form a legal entity called Black Horizon to organize the marijuana cultivation and distribution business at the Jopson Ranch. EBYAM and HOFFMAN agreed with Thomas and Dave JOPSON to lease the Jopson Ranch in order to cultivate marijuana. Seized documents and internal emails reveal estimated returns of approximately 20% from the scheme to cultivate and distribute marijuana at the Jopson Ranch.

As part of the scheme, HOFFMAN arranged for a portion of the marijuana cultivated at the Jopson Ranch to be distributed by Hung Cao NGUYEN, also known as John NGUYEN, through two separate marijuana dispensaries located in Southern California.<sup>1</sup> During the conspiracy, NGUYEN distributed much of the marijuana obtained from the Jopson Ranch during the time of the charged conspiracy in Count One. Cooperating testimony and seized emails among the co-conspirators, including HOFFMAN and NGUYEN, reveal that NGUYEN distributed at least 100 pounds of marijuana from the Black Horizon marijuana cultivation site. Financial and business records seized from each of NGUYEN's dispensaries demonstrated that one dispensary could sell more than \$10,000 of marijuana on a single busy day. Seized financial records indicate EBYAM received a monthly salary and various expenses from by investor money invested into the marijuana scheme at the Jopson Ranch.

On June 21, 2011, during execution of the federal search warrant at the Jopson Ranch, agents discovered the following documents corroborating the conspiracy:

a. Copies of Articles of Incorporation and a Statement of Information filed with the California Secretary of State for Black Horizon Cooperative, Inc. These documents listed the agent of service of Black Horizon Cooperative, Inc. as Nathan V. Hoffman, at 3350 Wilshire Boulevard, Suite 855, Los Angeles, California, the Hoffman Law Office. The Articles of Incorporation are dated December 8, 2010, and contain the signature of HOFFMAN as the Incorporator. The document lists HOFFMAN as the agent for service and Yan EBYAM as the Chief Financial Officer.

<sup>1</sup> NGUYEN was the President of New Age Canna, doing business as Canna Clinic of Garden Grove and South Bay Canna Clinic, two separate medical marijuana dispensaries located in the Central District of California.

Exhibit A - Continued

b. A multi-page, printed copy of Black Horizon Cooperatives, Inc.'s check register. This register reflects several deposits categorized as loans from HOFFMAN. Based upon this check register, all of these loans were repaid and most were repaid within a few days of the date of the loan. Based on the account balances, the rapid repayment of these loans, and some account notations, these loans from HOFFMAN were short term loans needed to cover immediate expenses incurred in the marijuana growing operation at the Jopson Ranch greenhouse complex.

c. A document entitled "Employee List for Black Horizon Cooperative, Inc.," with five columns. The columns include Employee Name, Date of Birth, Hire Date, Hourly Wage, and SSN. The document lists numerous individuals under Employee Name including: Yan EBYAM and Nathan HOFFMAN. The document also lists their respective Dates of Birth and social security numbers but is blank for Hire Date and Hourly Wage.

d. On June 21, 2011, during the search of Thomas Jopson's residence at the Jopson Ranch, agents discovered a printed email from Nathan HOFFMAN to Thomas JOPSON, Yan

EBYAM, and others, dated February 17, 2011. The following is an excerpt:

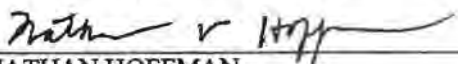
*While I would love to revisit Rio Oso for the meeting on Friday, I have to defer this time around.*

*However, I whole heartedly agree with the sum and substance of your 'proposal', and by this email affirm my vote to: (1) appoint Tom Jopson as 'Team Leader' and head manager of the GH; (2) Vest primary authority with Tom, Brook and David to work out a tentative crop schedule and rotation; (3) Yan & Jesus to handle all Finances and Sales; (4) Aimee and Autumn remain in charge of HR and Accounting functions; and (5) Nathan remains responsible for Legal and assists with Southern CA sales.*

In sum, as part of this agreement, defendant HOFFMAN admits that he knowingly conspired with Yan EBYAM, Hung C. NGUYEN, and others to manufacture and cultivate at least 1,000 marijuana plants at the Jopson Grow located at 1251 Pleasant Grove in Rio Oso between January and June of 2011. And, by operation of Pinkerton liability, he is responsible for manufacturing at least 50 marijuana plants, as alleged in Count Two of the Indictment.

I have reviewed the factual basis and, as far as my own conduct is concerned, the facts set forth in Exhibit A are true, accurate and correct. I adopt them as my own statement in support of my guilty plea.

Dated: 01/18/17

  
NATHAN HOFFMAN  
Defendant



# UNITED STATES DISTRICT COURT

## Eastern District of California

UNITED STATES OF AMERICA

v.

**NATHAN HOFFMAN**

JUDGMENT IN A CRIMINAL CASE

Case Number: **2:15CR00234-001**

Defendant's Attorney: Robert Helfend, Retained

**THE DEFENDANT:**

- ☒ pleaded guilty to count(s) 2 of the Indictment.
- ☐ pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- ☐ was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section  | Nature Of Offense  | Date Offense Concluded | Count Number |
|------------------|--|------------------------|--------------|
| 21 USC§841(a)(1) | Manufacture of at least 50 marijuana plants (Class C Felony) | 6/21/2011              | 2            |
| §                |  |                        |              |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_.
- ☐ Count(s) \_\_\_\_\_ dismissed on the motion of the United States.
- ☒ Remaining counts in this Indictment and in 2:12cr309 are dismissed by District Court as to this defendant.
- ☐ Appeal rights given. ☒ Appeal rights waived.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution or fine, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

**10/24/2017**

Date of Imposition of Judgment

/s/ John A. Mendez

Signature of Judicial Officer

**John A. Mendez**, United States District Judge

Name &amp; Title of Judicial Officer

**10/25/2017**

Date

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST: **MARIANNE MATHERLY**

Clerk, U. S. District Court  
Eastern District of California

By

*B. Mena-Sanchez*  
Deputy Clerk

Dated

2/12/18

### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 48 months.

- ☐ No TSR: Defendant shall cooperate in the collection of DNA.
- ☒ The court makes the following recommendations to the Bureau of Prisons:  
The Court recommends that the defendant be incarcerated in a Southern California facility, but only insofar as this accords with security classification and space availability. The Court recommends the defendant participate in the 500-Hour Bureau of Prisons Substance Abuse Treatment Program.
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district
- ☐ at \_\_\_\_ on \_\_\_\_.
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence as directed under separate order of this court:
- ☐ before \_\_\_\_ on \_\_\_\_.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Officer.
- If no such institution has been designated, to the United States Marshal for this district.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
United States Marshal

\_\_\_\_\_  
By Deputy United States Marshal

### SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :  
24 months..

### MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
- ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
- ☒ You must cooperate in the collection of DNA as directed by the probation officer.
- ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense.
- ☐ You must participate in an approved program for domestic violence.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the Court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the Court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_



**SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall provide the probation officer with access to any requested financial information.
3. As directed by the probation officer, the defendant shall participate in an outpatient correctional treatment program to obtain assistance for drug or alcohol abuse.
4. As directed by the probation officer, the defendant shall participate in a program of testing (i.e. breath, urine, sweat patch, etc.) to determine if he has reverted to the use of drugs or alcohol.
5. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
6. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to \$25 per month.

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

|        | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|--------|-------------------|-------------|--------------------|
| TOTALS | \$100             |             |                    |

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.
- If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.
- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ The interest requirement is waived for the ☐ fine ☐ restitution
- ☐ The interest requirement for the ☐ fine ☐ restitution is modified as follows:
- ☐ If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.
- ☐ If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

\*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A. ☐ Lump sum payment of \$ \_\_\_\_ due immediately, balance due  
☐ Not later than \_\_\_\_, or  
☐ in accordance ☐ 1C, ☐ 1D, ☐ 1E, or ☐ 1F below; or
- B. ☒ Payment to begin immediately (may be combined with ☐ 1C, ☐ 1D, or ☐ 1F below); or
- C. ☐ Payment in equal \_\_\_\_ (*e.g. weekly, monthly, quarterly*) installments of \$ \_\_\_\_ over a period of \_\_\_\_ (*e.g. months or years*), to commence \_\_\_\_ (*e.g. 30 or 60 days*) after the date of this judgment; or
- D. ☐ Payment in equal \_\_\_\_ (*e.g. weekly, monthly, quarterly*) installments of \$ \_\_\_\_ over a period of \_\_\_\_ (*e.g. months or years*), to commence \_\_\_\_ (*e.g. 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E. ☐ Payment during the term of supervised release/probation will commence within \_\_\_\_ (*e.g. 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

Before the Honorable John A. Mendez

**UNITED STATES OF AMERICA**

v.

**NATHAN HOFFMAN**

**CRIMINAL MINUTES**

Case No.: 15cr234

Date of Hearing: October 24, 2017

Deputy Clerk: Harry Vine

Court Reporter: K. Barajas

**For the Government:**

J. Hitt; T. Pickles,  
Assistant United States Attorney

**Interpreter Previously Sworn:**

Yolanda Riley Portal

**For the Defendant:**

R. Helfend,

[x] Retained

**Defendant:**

[x] Present

**JUDGMENT AND SENTENCING to Count 2 of the indictment Plea entered January 18, 2017.**

imprisonment: 48 months

surrender date: December 7, 2017

term of supervised release: 24 months

recommendation: SoCal and 500 hr drug program [x] fine waived.

special assessment: \$100

right to appeal given: Yes [x] appeal rights waived.

**Other: Remaining counts dismissed in this action as to this defendant as well as those pending counts in 12cr309 as to this defendant.**

Proceeding Time: 30 min.

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.  
ATTEST: **MARIANNE MATHERLY**

Clerk, U. S. District Court  
Eastern District of California

By

J. Mena-Sanchez  
Deputy Clerk

Dated

2/12/18



Krista Hart  
Attorney at Law  
State Bar No. 199650  
P.O. Box 188794  
Sacramento, CA 95818  
(916) 498-8398  
[kristahartesq@gmail.com](mailto:kristahartesq@gmail.com)

Counsel for  
Nathan Hoffman

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.

ATTEST: **MARIANNE MATHERLY**

Clerk, U. S. District Court  
Eastern District of California

By

*H. Mena-Sanchez*  
Deputy Clerk

Dated

2/12/18

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATHAN HOFFMAN,

Defendant.

Case No. 2:15-cr-00234-JAM

NOTICE OF APPEAL

**PLEASE TAKE NOTICE** that defendant Nathan Hoffman, by and through appellate counsel Krista Hart, files this Notice of Appeal to the Ninth Circuit Court of Appeals in the case referenced above. Mr. Hoffman appeals from the district court's judgment and sentence entered in open court on October 24, 2017 (ECF No. 140), and the

judgment and commitment entered on the record on October 25, 2017. (ECF No. 139.)

Pursuant to the Court's order of October 27, 2017 (ECF No. 145), which granted an additional 30 days to file the notice of appeal, this notice of appeal is timely filed as to all potential issues including, but not limited to, the "sentencing judgment docket [139] and his pre-sentencing motion for reconsideration and substantive pretrial motions related to docket numbers [113][123] and [124]." (*Id.* at 2.)

DATED: November 6, 2017

/s/ Krista Hart  
Attorney for Appellant

**U.S. District Court  
Eastern District of California - Live System (Sacramento)  
CRIMINAL DOCKET FOR CASE #: 2:15-cr-00234-JAM-1**

Case title: USA v. Hoffman et al

Date Filed: 12/17/2015

Date Terminated: 10/24/2017

Assigned to: District Judge John A.  
Mendez

Appeals court case number: 17-  
10472 USCA

**Defendant (1)**

**Nathan Hoffman**

*TERMINATED: 10/24/2017*

represented by **Krista Hart**

Law Offices of Krista Hart

P.O. Box 188794

Sacramento, CA 95818

916-498-8398

Email: kristahartesq@gmail.com

**LEAD ATTORNEY**

**ATTORNEY TO BE NOTICED**

*Designation: CJA Appointment*

**Robert M. Helfend**

Law Office of Robert M. Helfend

23838 Pacific Coast Hwy

No. 309

Malibu, CA 90265

818-591-2809

Fax: 818-222-1530

Email: rmhelfend@gmail.com

*TERMINATED: 11/01/2017*

**LEAD ATTORNEY**

**ATTORNEY TO BE NOTICED**

*Designation: Retained*

**Ronald Neil Richards**

Law Offices of Ronald Richards &  
Associates

P.O. box 11480

Beverly Hills, CA 90213

(310) 556-1001

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.

ATTEST: **MARIANNE MATHERLY**

Clerk, U. S. District Court  
Eastern District of California

By

*J. Mendez-Sanchez*  
Deputy Clerk

Dated

*2/12/18*

Fax: (310) 277-3325  
Email: ron@ronaldrichards.com  
TERMINATED: 11/01/2017  
ATTORNEY TO BE NOTICED  
Designation: Retained

**Pending Counts**

21:841A=MM.F MANUFACTURE  
OF MARIJUANA  
(2)

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

21:846=MM.F CONSPIRACY TO  
MANUFACTURE AND POSSESS  
WITH INTENT TO DISTRIBUTE  
MARIJUANA  
(1)

21:846=MM.F CONSPIRACY TO  
MANUFACTURE AND POSSESS  
WITH INTENT TO DISTRIBUTE  
MARIJUANA  
(3)

21:841A=MM.F MANUFACTURE  
OF MARIJUANA  
(4)

18:1956-6803.F CONSPIRACY TO  
LAUNDER MONETARY  
INSTRUMENTS  
(5s)

**Highest Offense Level  
(Terminated)**

Felony

**Complaints**

None

**Disposition**

Imprisonment: 48 Months; Surrender  
Date: 12/7/2017; Term of Supervised  
Release: 24 Months;  
Recommendation: SoCal and 500 hr  
drug program; Fine Waived; S/A  
\$100.00

**Disposition**

DISMISSED

DISMISSED

DISMISSED

DISMISSED

**Disposition**



**Plaintiff****USA**represented by **Jason Hitt**

United States Attorney's Office  
501 I Street  
Suite 10-100  
Sacramento, CA 95814  
916-554-2751  
Fax: 916-554-2900  
Email: jason.hitt@usdoj.gov  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Assistant US Attorney*

**Samuel Wong , GOVT**

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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Assistant US Attorney*

| <b>Date Filed</b> | <b>#</b>  | <b>Docket Text</b>  |
|-------------------|-----------|---|
| 08/29/2012        | <u>20</u> | INDICTMENT as to Nathan Hoffman (1) count 5s, Hung C. Nguyen (2) count 5s, Steven Marcus (4) counts 3 & 4. [INDICTMENT PREVIOUSLY FILED IN 2:12-cr-0309 JAM-ADDED TO CASE 2:15-cr-0234 JAM pursuant to Consolidation. Only Active Counts ADDED] (Donati, J) (Entered: 01/29/2016) |
| 12/17/2015        | <u>1</u>  | INDICTMENT as to Nathan Hoffman (1) counts 1-4, Hung C.   |

|            |           |  |
|------------|-----------|--|
|            |           | Nguyen (2) counts 1-4, Brook Murphy (3) counts 1-4. (Jackson, T) (Entered: 12/18/2015)   |
| 12/17/2015 | <u>2</u>  | AO257 (Sealed) as to Nathan Hoffman, Hung C. Nguyen, Brook Murphy. (Jackson, T) (Entered: 12/18/2015)  |
| 12/18/2015 | <u>3</u>  | ** NOTICE to APPEAR as to *Nathan Hoffman* *c/o Robert M. Helfend* *23838 Pacific Coast Hwy #309* *Malibu, CA 90265* re *Arraignment*. Arraignment set for 1/8/2016 at 02:00 PM in Courtroom 8 (EFB) before Magistrate Judge Edmund F. Brennan. (Jackson, T) (Entered: 12/18/2015)   |
| 01/04/2016 | <u>7</u>  | NOTICE of RELATED CASE by USA: 12-CR-0309 JAM and 11-CR-0275 JAM. (Hitt, Jason) Modified on 1/5/2016 (Marciel, M) (Entered: 01/04/2016)  |
| 01/08/2016 | <u>9</u>  | ORDER by Chief Judge Morrison C. England, Jr.: The Court having considered the equitable division and efficient and economical determination of court business, hereby reassigns this case from District Judge *Kimberly J. Mueller* to * District Judge Garland E. Burrell, Jr* for all further proceedings. (Dillon, M) (Entered: 01/08/2016)  |
| 01/08/2016 | <u>10</u> | MINUTES (Text Only) for proceedings before Magistrate Judge Carolyn K. Delaney: ARRAIGNMENT (Initial Appearance) as to Nathan Hoffman (1) Count 1-4 and Hung C. Nguyen (2) Count 1-4 held on 1/8/2016. Retained counsel Donald Re on behalf of his client Hung Nguyen, and standing in for retained counsel Robert Helfend for Nathan Hoffman. Defendants advised of their rights and charges; formal reading waived; not guilty plea and jury trial demand entered as to both Defendants. Parties stipulated to both Defendants' continued release on conditions previously imposed in related case 2:12-cr-0309-JAM. Status Conference set for 3/25/2016 at 09:00 AM in Courtroom 10 (GEB) before District Judge Garland E. Burrell Jr. Time excluded under Local Code T4 from 1/8/2016 to 3/25/2016. Government Counsel: Jason Hitt present. Defense Counsel: Donald Re (and standing in on behalf of Robert Helfend) present. Custody Status: Both present/out of custody. Court Reporter/CD Number: Jonathan Anderson/ECRO. (Owen, K) (Entered: 01/08/2016) |
| 01/08/2016 | <u>12</u> | NOTICE to DEFENDANT BEING RELEASED as to Nathan Hoffman. (Kaminski, H) (Entered: 01/12/2016)   |
| 01/21/2016 | <u>15</u> | RELATED ORDER signed by District Judge John A. Mendez on 1/20/16 ORDERING that the action denominated 2:15-CR- 00234 GEB is reassigned to Judge John A. Mendez for all further proceedings, and any dates currently set in this reassigned case only are hereby VACATED. Henceforth, the caption on documents filed in the reassigned case shall be shown as 2:15-CR-00234 JAM.  |

|            |           |  |
|------------|-----------|--|
|            |           | (Kastilahn, A) (Entered: 01/21/2016)   |
| 01/27/2016 | <u>17</u> | STIPULATION and PROPOSED ORDER for to Consolidate Cases; Set Motion Schedule; and Set Status Conference by Hung C. Nguyen. (Attachments: # <u>1</u> Proposed Order TO Consolidate Cases; Set Motion Schedule; and Set Status Conference)(Re, Donald) (Entered: 01/27/2016)   |
| 01/29/2016 | <u>18</u> | AMENDED STIPULATION and PROPOSED ORDER for to Consolidate Cases; Set Motion Schedule; and Set Status Conference by Hung C. Nguyen. (Attachments: # <u>1</u> Proposed Order re Amended Stipulation to Consolidate Cases; Set Motion Schedule; and Set Status Conference)(Re, Donald) Modified on 1/29/2016 (Streeter, J). (Entered: 01/29/2016) |
| 01/29/2016 | <u>19</u> | AMENDED STIPULATION and ORDER signed by District Judge John A. Mendez on 1/29/2016 ORDERING cases 2:15-cr-0234 JAM and 2:12-cr-0309 JAM are CONSOLIDATED. All future documents shall be filed in 2:15-cr-0234 JAM. (Donati, J) (Entered: 01/29/2016)   |
| 03/24/2016 | <u>21</u> | MOTION to DISMISS Indictment for Equal Protection Violation by Hung C. Nguyen. Motion Hearing set for 7/12/2016 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. (Re, Donald) (Entered: 03/24/2016)  |
| 03/24/2016 | 25        | MINUTE ORDER: The parties are advised that the Court requires that a courtesy hard copy of each pleading in motion practice is to be delivered at the earliest convenience to the Clerks office at 501 I Street, Ste. 400, Sacramento, CA 95814, to the Attention of Judge Mendez. (TEXT ENTRY ONLY) (Vine, H) (Entered: 03/24/2016)           |
| 03/24/2016 | <u>26</u> | JOINDER in <u>21</u> , <u>22</u> , <u>23</u> , <u>24</u> Motions to Dismiss Indictment by Nathan V. Hoffman. (Helfend, Robert) Modified on 3/25/2016 (Benson, A). (Entered: 03/24/2016)  |
| 03/28/2016 | <u>27</u> | JOINDER by Steven Marcus in. <i>Motions Docs, 21,22,23 and 24</i> (Heller, Donald) (Entered: 03/28/2016)   |
| 05/24/2016 | <u>28</u> | OPPOSITION by USA to 22 Motion to Dismiss Indictment Re: Appropriations Act. (Pickles, Todd) Modified on 5/25/2016 (Washington, S). (Entered: 05/24/2016)  |
| 05/24/2016 | <u>29</u> | OPPOSITION by USA to <u>21</u> Motion to Dismiss Indictment for Equal Protection Violation. (Pickles, Todd) (Entered: 05/24/2016)  |
| 05/26/2016 | <u>30</u> | OPPOSITION by USA to 24 Motion to Dismiss Indictment for Violation of the Ninth and Tenth Amendments. (Hitt, Jason) Modified on 5/27/2016 (Washington, S). (Entered: 05/26/2016)   |
| 05/26/2016 | <u>31</u> | OPPOSITION by USA to 23 Motion to Dismiss Indictment for   |

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|            |           | Commerce Clause Violations. (Hitt, Jason) Modified on 5/27/2016 (Washington, S). (Entered: 05/26/2016)   |
| 06/15/2016 | <u>32</u> | MOTION to STRIKE <i>Opposition to Defense Motions to dismiss indictment</i> by Hung C. Nguyen. Motion Hearing set for 7/12/2016 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. (Re, Donald) Modified on 6/17/2016 (Reader, L). (Entered: 06/15/2016)   |
| 06/16/2016 | <u>33</u> | OPPOSITION by USA to <u>32</u> MOTION to STRIKE <i>Government Opposition to Defense Motions; Memorandum of Points and Authorities</i> . (Pickles, Todd) (Entered: 06/16/2016)  |
| 06/16/2016 | <u>34</u> | REPLY by Hung C. Nguyen to RESPONSE to 22 Motion to Dismiss Indictment Re: Appropriations Act. (Re, Donald) (Entered: 06/16/2016)  |
| 06/16/2016 | <u>35</u> | REPLY by Hung C. Nguyen to RESPONSE to <u>21</u> Motion to Dismiss Indictment for Equal Protection Violation. (Re, Donald) (Entered: 06/16/2016)   |
| 06/16/2016 | <u>36</u> | REPLY by Hung C. Nguyen to RESPONSE to 23 Motion to Dismiss Indictment for Commerce Clause Violations. (Re, Donald) (Entered: 06/16/2016)  |
| 06/16/2016 | <u>37</u> | REPLY by Hung C. Nguyen to RESPONSE to 24 Motion to Dismiss Indictment for Violation of the Ninth and Tenth Amendments. (Re, Donald) (Entered: 06/16/2016)   |
| 07/11/2016 | 38        | MINUTE ORDER issued by Courtroom Deputy A. Shaddox-Waldrop for District Judge John A. Mendez on 7/11/2016: The Court has determined that all of the motions, defendant Nguyen's Motions to Dismiss (ECF Nos. <u>21</u> , <u>22</u> , <u>23</u> , and <u>24</u> ), Joinder of Motion (ECF Nos. <u>26</u> and <u>27</u> ) and the Motion to Strike (ECF No. <u>32</u> ), are suitable for decision without oral argument. The Motions are SUBMITTED and the 7/12/2016 hearing before Judge Mendez is VACATED. (TEXT ONLY ENTRY) (Shaddox-Waldrop, A) Modified on 7/11/2016 (Shaddox-Waldrop, A). (Entered: 07/11/2016) |
| 07/13/2016 | <u>40</u> | ORDER signed by District Judge John A. Mendez on 7/13/16 ORDERING the Court DENIES Defendants' four Motions to Dismiss (Doc. ## <u>21</u> - <u>24</u> ) and Defendants' Motion to Strike (Doc. # <u>32</u> ). A status conference is set for July 19, 2016 at 9:15 a.m. in Courtroom 6 of this Court. (Becknal, R) (Entered: 07/13/2016)   |
| 07/19/2016 | 41        | MINUTES (Text Only) for proceedings before District Judge John A. Mendez: STATUS CONFERENCE as to Nathan Hoffman, Hung C. Nguyen, Brook Murphy, Steven Marcus held on 7/19/2016. T4 Start: 7/19/2016 Stop: 1/23/2017, ( Jury Trial set for 1/23/2017 at  |



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|            |           | 09:00 AM in Courtroom 6 (JAM) before District Judge John A. Mendez., Trial Confirmation Hearing set for 11/15/2016 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. Government Counsel: S. Wong present. Defense Counsel: R. Helfend; D. Re; J. Balazs; D. Heller present. Court Reporter: K. Bennett. (Vine, H) (Entered: 07/19/2016)   |
| 09/12/2016 | <u>42</u> | TRANSCRIPT REQUEST by Amanda Lewis for proceedings held on 7/19/2016 before Judge John A. Mendez. Court Reporter Kimberly Bennett. (Jackson, T) (Entered: 09/13/2016)  |
| 09/15/2016 | <u>43</u> | TRANSCRIPT of Proceedings as to Nathan Hoffman, Hung C. Nguyen, Brook Murphy, Steven Marcus held on 7/19/16, before District Judge John A. Mendez, filed by Court Reporter Kimberly Bennett, Phone number 916-442-8420 E-mail reporter.bennett@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 10/6/2016. Redacted Transcript Deadline set for 10/17/2016. Release of Transcript Restriction set for 12/15/2016. (Bennett, K) (Entered: 09/15/2016) |
| 11/15/2016 | 44        | MINUTES (Text Only) for proceedings before District Judge John A. Mendez: TRIAL CONFIRMATION HEARING as to Nathan Hoffman, Hung C. Nguyen, Brook Murphy, Steven Marcus held on 11/15/2016. Motions filed by 12/13/2016., Responses due by 12/27/2016., Replies due by 1/3/2017., Motion Hearing set for 1/10/2017 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez., Status Conference/change of plea for Steven Marcus set for 12/13/2016 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. Government Counsel: J. Hitt; T. Pickles present. Defense Counsel: R. Helfend; D. Re; J. Balazs; D. Heller present. Court Reporter: J. Coulthard. (Vine, H) (Entered: 11/15/2016)                  |
| 12/13/2016 | <u>54</u> | SEALED EVENT (Zignago, K.) (Entered: 12/15/2016)   |
| 01/18/2017 | 62        | MINUTES (Text Only) for proceedings before District Judge John A. Mendez: STATUS CONFERENCE as to Nathan Hoffman held on 1/18/2017. Defendant entered guilty plea to Ct. 2. PSR ordered. Sentencing set for 4/18/2017 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. Jury trial of 1/23/17 ordered vacated. Government Counsel: J. Hitt present. Defense Counsel: R. Helfend present. Court Reporter: D. Shepard. (Vine, H) (Entered: 01/18/2017)  |
| 01/18/2017 | <u>63</u> | SCHEDULE of DISCLOSURE for PSR as to Nathan Hoffman.   |

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|            |           | (Vine, H) (Entered: 01/18/2017)  |
| 01/18/2017 | <u>64</u> | PLEA AGREEMENT as to Nathan Hoffman. (Benson, A) (Entered: 01/19/2017)   |
| 02/21/2017 | <u>67</u> | STIPULATION and [PROPOSED] ORDER to Continue Judgment & Sentencing by Steven Marcus. (Heller, Donald) Modified on 2/22/2017 (Mena-Sanchez, L). (Entered: 02/21/2017)   |
| 03/06/2017 | <u>71</u> | STIPULATION and PROPOSED ORDER <i>To Continue Sentencing</i> by Nathan Hoffman. (Helfend, Robert) Modified on 3/7/2017 (Kastilahn, A). (Entered: 03/06/2017)   |
| 03/07/2017 | <u>72</u> | STIPULATION and ORDER as to Nathan Hoffman signed by District Judge John A. Mendez on 3/6/17 ORDERING the Sentencing is CONTINUED to 6/27/17 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. Excludable started as to Nathan Hoffman: T4 Start: 4/18/17 Stop: 6/27/17. (Becknal, R) (Entered: 03/07/2017)                     |
| 05/18/2017 | <u>77</u> | STIPULATION and PROPOSED ORDER continuing Judgment and Sentencing by Brook Murphy. (Balazs, John) (Entered: 05/18/2017)  |
| 06/10/2017 | <u>80</u> | STIPULATION and PROPOSED ORDER for Continuance of Sentencing. (Helfend, Robert) (Entered: 06/10/2017)  |
| 06/12/2017 | <u>81</u> | ORDER signed by District Judge John A. Mendez on 6/12/2017 ORDERING Sentencing Hearing as to Nathan Hoffman is CONTINUED to 8/22/2017 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. (Reader, L) (Entered: 06/12/2017)   |
| 07/10/2017 | <u>89</u> | STIPULATION and PROPOSED ORDER for Continue Judgment and Sentencing by Steven Marcus. (Heller, Donald) (Entered: 07/10/2017)   |
| 07/10/2017 | <u>90</u> | CORRECTED <u>89</u> STIPULATION and PROPOSED ORDER to continue Judgment and Sentencing by Steven Marcus. (Heller, Donald) (Entered: 07/10/2017)  |
| 07/18/2017 | <u>92</u> | MINUTE ORDER: Sentencing for defendant Hoffman is ordered reset for 9/19/2017 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. (TEXT ENTRY ONLY) (Vine, H) (Entered: 07/18/2017)   |
| 08/01/2017 | <u>94</u> | ( <i>TO BE VIEWED BY ASSIGNED COUNSEL ONLY</i> ) DISCLOSED PRESENTENCE INVESTIGATION REPORT (DRAFT) as to Nathan Hoffman. Informal objections shall not be submitted via CM/ECF and shall be in compliance with the sentencing schedule and pursuant to Local Rule 460. (Attachments: # <u>1</u> Supplement Resume)(Di Dio, C) (Entered: 08/01/2017) |

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| 08/29/2017 | <u>96</u>  | SENTENCING PRESENTENCE INVESTIGATION REPORT (FINAL) as to Nathan Hoffman. (Attachments: # <u>1</u> Supplement-Resume, # <u>2</u> No Objection Letter)(Di Dio, C) (Entered: 08/29/2017)   |
| 09/05/2017 | <u>98</u>  | NOTICE of ATTORNEY APPEARANCE: Ronald Neil Richards on behalf of Nathan Hoffman. Attorney Richards, Ronald Neil added. <i>notice of association of counsel (limited to post change of plea motion practice)</i> (Richards, Ronald) (Entered: 09/05/2017)   |
| 09/07/2017 | <u>103</u> | STIPULATION and PROPOSED ORDER for Continuing Judgment & Sentencing Hearing by Steven Marcus. (Heller, Donald) (Entered: 09/07/2017)   |
| 09/10/2017 | <u>105</u> | MOTION to vacate the sentencing date and to set a hearing to determine whether a stay of the proceedings is appropriate pursuant to united states vs. mcintosh and related authorities re 92 Minute Order by Nathan Hoffman. Motion Hearing SET for 10/17/2017 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B", # <u>3</u> Exhibit "C", # <u>4</u> Exhibit "D", # <u>5</u> Exhibit "E")(Richards, Ronald) Modified on 9/11/2017 (Mena-Sanchez, L). (Entered: 09/10/2017) |
| 09/11/2017 | <u>106</u> | EX PARTE APPLICATION to continue the 9/19/17 Sentencing Hearing to 11/7/17 by Nathan Hoffman. (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B", # <u>3</u> Proposed Order)(Richards, Ronald) Modified on 9/13/2017 (Mena-Sanchez, L). (Entered: 09/11/2017)  |
| 09/11/2017 | 107        | MINUTE ORDER: The Court is in receipt of Defendant Nathan V. Hoffmans Motion to Vacate the Sentencing Date and to Set a Hearing to Determine Whether a Stay of the Proceedings is Appropriate Pursuant to United States v. McIntosh and Ex Parte Application to Continue Sentencing. The Government may file a response, due by Thursday, September 14, 2017. (TEXT ENTRY ONLY) (Vine, H) (Entered: 09/11/2017)  |
| 09/14/2017 | <u>108</u> | OPPOSITION by USA to <u>105</u> MOTION to vacate the sentencing date. (Hitt, Jason) (Entered: 09/14/2017)  |
| 09/15/2017 | <u>109</u> | REPLY by Nathan Hoffman to RESPONSE to <u>106</u> MOTION to CONTINUE. (Attachments: # <u>1</u> Exhibit "A")(Richards, Ronald) (Entered: 09/15/2017)  |
| 09/15/2017 | 110        | MINUTE ORDER: The Court has received and reviewed the briefs filed in support of and in opposition to Defendant Hoffmans Motion to Vacate the Sentencing Date and Set a McIntosh Hearing. ECF Nos. 105, 106, 108, & 109. For the reasons set forth in the Governments Opposition, ECF No. 108, the Court DENIES Defendants Motion with respect to the McIntosh hearing. The Court GRANTS Mr. Hoffman a short continuance. Defendants requested date, November 7, 2017, is unavailable due to court congestion.   |

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|            |            | Defendants sentencing will be continued to October 17, 2017. IT IS SO ORDERED. (TEXT ENTRY ONLY)(Vine, H) (Entered: 09/15/2017)  |
| 09/15/2017 | <u>111</u> | TRANSCRIPT REQUEST by Nathan Hoffman for proceedings held on 11-15-16 before Judge Mendez. Court Reporter Jennifer Coulthard. (Richards, Ronald) (Entered: 09/15/2017)   |
| 09/19/2017 | <u>112</u> | TRANSCRIPT of Proceedings Trial Confirmation Hearing as to Nathan Hoffman, Hung C. Nguyen, Brook Murphy, Steven Marcus held on 11-15-16, before District Judge John A. Mendez, filed by Jennifer Coulthard, Phone number 312-617-9858 E-mail jenrmcrr2@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 10/13/2017. Redacted Transcript Deadline set for 10/20/2017. Release of Transcript Restriction set for 12/18/2017. (Dunn-Coulthard, J) (Entered: 09/19/2017) |
| 09/19/2017 | <u>113</u> | EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME on Motion for Reconsideration and/or MOTION for RECONSIDERATION re minute order #110 denying a McIntosh hearing by Nathan Hoffman. (Attachments: # <u>1</u> Exhibits A-C) (Richards, Ronald) Modified on 9/25/2017 (Benson, A.). (Entered: 09/19/2017)   |
| 09/21/2017 | <u>114</u> | MINUTE ORDER: The Court is in receipt of Defendant Hoffmans Ex Parte Motion for Reconsideration. ECF No. 113. The Government may file an opposition, due by Wednesday, September 27, 2017. Defendant may then file a reply, due the following Wednesday, October 4, 2017. (TEXT ENTRY ONLY) (Vine, H) (Entered: 09/21/2017)  |
| 09/22/2017 | <u>115</u> | DECLARATION of Robert M. Helfend in support of <u>113</u> Ex Parte Application/Motion for Reconsideration. (Helfend, Robert) Modified on 9/25/2017 (Benson, A.). (Entered: 09/22/2017)   |
| 09/27/2017 | <u>116</u> | OPPOSITION by USA to <u>113</u> Ex Parte Application/Motion for Reconsideration. (Hitt, Jason) (Entered: 09/27/2017)   |
| 10/04/2017 | <u>117</u> | REPLY by Nathan Hoffman to RESPONSE to <u>113</u> Ex Parte Application/Motion for Reconsideration. (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B", # <u>3</u> Exhibit "C", # <u>4</u> Exhibit "D", # <u>5</u> Exhibit "E", # <u>6</u> Exhibit "F", # <u>7</u> Exhibit "G", # <u>8</u> Exhibit "H", # <u>9</u> Exhibit "I", # <u>10</u> Exhibit "J" Ethics Opinion, # <u>11</u> Exhibit "K", # <u>12</u> Exhibit "L", # <u>13</u> Exhibit "M")(Richards, Ronald) (Entered: 10/04/2017)  |
| 10/10/2017 | <u>118</u> | NOTICE of Lodging of Los Angeles Times article by Nathan   |



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|            |            | Hoffman re 114 Minute Order. (Attachments: # <u>1</u> Exhibit "A", Los Angeles Times Article)(Richards, Ronald) (Entered: 10/10/2017)  |
| 10/10/2017 | <u>119</u> | MOTION to CONTINUE SENTENCING as to Nathan Hoffman. (Attachments: # <u>1</u> Proposed Order)(Helfend, Robert) (Entered: 10/10/2017)  |
| 10/11/2017 | <u>120</u> | NOTICE of lodging print front page edition dated 10-11-17 by Nathan Hoffman re <u>118</u> Notice. (Attachments: # <u>1</u> Exhibit "A") (Richards, Ronald) (Entered: 10/11/2017)   |
| 10/11/2017 | <u>121</u> | MINUTE ORDER: Defendant's motion <u>119</u> to Continue sentencing is denied. The matter shall remain on calendar for October 17, 2017 at 9:15 a.m.(TEXT ENTRY ONLY) (Vine, H) (Entered: 10/11/2017)   |
| 10/12/2017 | <u>122</u> | SENTENCING MEMORANDUM by USA as to Nathan Hoffman. (Pickles, Todd) (Entered: 10/12/2017)   |
| 10/13/2017 | <u>123</u> | MOTION to WITHDRAW Plea by Nathan Hoffman. Motion Hearing set for 11/14/2017 at 09:15 AM in Courtroom 6 (JAM) before District Judge John A. Mendez. (Attachments: # <u>1</u> Exhibit "A")(Richards, Ronald) Modified on 10/19/2017 (Zignago, K.). (Entered: 10/13/2017)  |
| 10/13/2017 | <u>124</u> | EX PARTE APPLICATION to continue sentencing by Nathan Hoffman. (Richards, Ronald) Modified on 10/19/2017 (Zignago, K.). (Entered: 10/13/2017)  |
| 10/16/2017 | <u>125</u> | MINUTE ORDER: Defendant's ex parte motion to continue sentencing <u>124</u> is ordered denied. (TEXT ENTRY ONLY) (Vine, H) (Entered: 10/16/2017)   |
| 10/16/2017 | <u>126</u> | OPPOSITION by USA to <u>123</u> Motion to Withdraw Plea. (Pickles, Todd) Modified on 10/19/2017 (Zignago, K.). (Entered: 10/16/2017)   |
| 10/17/2017 | <u>128</u> | MINUTES (Text Only) for proceedings before District Judge John A. Mendez: After hearing, the Court ordered defendants motions <u>113</u> <u>123</u> and <u>124</u> denied. Sentencing was ordered reset to 10/24/2017 at 9:15 a.m. Defendant's reply brief, if any, is to be filed no later than 10/23/2017 by 4:00 p.m. Government Counsel: S. Wong; T. Pickles present. Defense Counsel: R. Helfend present. Court Reporter: K. Barajas. (Vine, H) (Entered: 10/17/2017) |
| 10/17/2017 | <u>129</u> | TRANSCRIPT REQUEST by Nathan Hoffman for proceedings held on 10-17-17 before Judge Mendez. Court Reporter Jennifer Coulthard. (Richards, Ronald) (Entered: 10/17/2017)   |
| 10/17/2017 | <u>130</u> | TRANSCRIPT REQUEST by Nathan Hoffman for proceedings held on 10-17-17 before Judge Mendez. Court Reporter Jennifer Coulthard. (Richards, Ronald) (Entered: 10/17/2017)   |

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| 10/17/2017 | <u>131</u> | AMENDED TRANSCRIPT REQUEST re <u>129</u> , <u>130</u> for proceedings held on 10-17-17 before Judge Mendez. Court Reporter Kacy Barajas. (Richards, Ronald) (Entered: 10/17/2017)  |
| 10/18/2017 | <u>132</u> | TRANSCRIPT REQUEST by USA for proceedings held on October 17, 2017 before Judge Hon. John A. Mendez. Court Reporter Kacy Barajas. (Hitt, Jason) (Entered: 10/18/2017)  |
| 10/20/2017 | <u>133</u> | TRANSCRIPT of status re: J & S as to Nathan Hoffman, 10/17/2017, before District Judge John A. Mendez, filed by Court Reporter Kacy Barajas, E-mail kbarajas.csr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 11/13/2017. Redacted Transcript Deadline set for 11/20/2017. Release of Transcript Restriction set for 1/19/2018. (Barajas, K) (Entered: 10/20/2017) |
| 10/23/2017 | <u>134</u> | NOTICE of Intent to Withdraw from Plea Agreement by USA. (Pickles, Todd) (Entered: 10/23/2017)   |
| 10/23/2017 | <u>135</u> | REQUEST for briefing schedule regarding double jeopardy for remaining counts other than Count 2 by Nathan Hoffman re 128 Motion Hearing. (Richards, Ronald) Modified on 10/24/2017 (Mena-Sanchez, L). (Entered: 10/23/2017)  |
| 10/24/2017 | <u>136</u> | ORDER FOR VOLUNTARY SURRENDER signed by District Judge John A. Mendez on 10/24/17. Defendant Nathan Hoffman shall surrender to the institution designated by the Bureau of Prisons, or if no such institution has been designated, to the USM in Los Angeles, California before 2:00 PM on 12/7/2017. (Mena-Sanchez, L) (Entered: 10/24/2017)  |
| 10/24/2017 | <u>140</u> | MINUTES for proceedings before District Judge John A. Mendez: SENTENCING to Count 2, as to Nathan Hoffman (1); Imprisonment: 48 months; surrender date: 12/7/2017; term of supervised release: 24 months; recommendation: SoCal and 500 hr drug program; Fine waived; special assessment: \$100.00 Government Counsel: J. Hitt, T. Pickles present. Defense Counsel: R. Helfend present. Custody Status: Present. Court Reporter/CD Number: K. Barajas. Interpreter: Yolanda Riley Portal (Reader, L) (Entered: 10/25/2017)  |
| 10/25/2017 | <u>137</u> | TRANSCRIPT REQUEST by Nathan Hoffman for proceedings held on 10-25-17 before Judge Mendez. Court Reporter Kacy Barajas. (Richards, Ronald) (Entered: 10/25/2017)   |
| 10/25/2017 | <u>138</u> | AMENDED TRANSCRIPT REQUEST re <u>137</u> for proceedings held on 10-24-17 before Judge Mendez. Court Reporter Kacy Barajas.  |

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|            |            | (Richards, Ronald) (Entered: 10/25/2017)   |
| 10/25/2017 | <u>139</u> | JUDGMENT and COMMITMENT as to Nathan Hoffman.(Vine, H) (Entered: 10/25/2017)   |
| 10/26/2017 | <u>141</u> | EX PARTE MOTION to appoint counsel, proceed in forma pauperis, Extension of time to file an appeal by Nathan Hoffman. (Richards, Ronald) Modified on 10/27/2017 (Mena-Sanchez, L). (Entered: 10/26/2017)   |
| 10/26/2017 | <u>143</u> | PROPOSED ORDER re <u>141</u> Ex Parte Motion by Nathan Hoffman. (Richards, Ronald) Modified on 10/27/2017 (Mena-Sanchez, L). (Entered: 10/26/2017)   |
| 10/27/2017 | <u>145</u> | ORDER as to Nathan Hoffman signed by District Judge John A. Mendez on 10/26/2017 GRANTING <u>141</u> motion to appoint counsel. The CJA panel or federal public defender's office shall immediately appoint counsel for Mr. Hoffman. The motion to extend to file an appeal is GRANTED. The time to appeal shall be extended 30 days. (Zignago, K.) (Entered: 10/27/2017)  |
| 10/30/2017 | <u>148</u> | TRANSCRIPT of Sentencing as to Nathan Hoffman, 10/24/17, before District Judge John A. Mendez, filed by Court Reporter Kacy Barajas, Phone number 916-426-7640, E-mail kbarajas.csr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. ( Redaction Request due 11/20/2017., Redacted Transcript Deadline set for 11/30/2017., Release of Transcript Restriction set for 1/29/2018.), NOTICE of NONCOMPLIANCE With Electronic Filing Requirement (Local Rule 135(g)): Attorney is directed to register for CM/ECF. (Barajas, K) Modified on 11/1/2017 (Rivas, A). (Entered: 10/30/2017) |
| 10/31/2017 | <u>149</u> | SUBSTITUTION of ATTORNEY - PROPOSED, submitted by Nathan Hoffman, Hung C. Nguyen, Brook Murphy, Steven Marcus. (Richards, Ronald) (Entered: 10/31/2017)  |
| 11/01/2017 | <u>150</u> | ORDER SUBSTITUTING ATTORNEY signed by District Judge John A. Mendez on 10/31/17: Attorney Krista Hart for Nathan Hoffman Added, attorney Robert M. Helfend and Ronald Neil Richards terminated. (Kaminski, H) (Entered: 11/01/2017)  |
| 11/06/2017 | <u>151</u> | NOTICE of APPEAL by Nathan Hoffman re <u>139</u> Judgment and Commitment. (Hart, Krista) (Entered: 11/06/2017)   |
| 11/07/2017 | <u>152</u> | APPEAL PROCESSED to Ninth Circuit re <u>151</u> Notice of Appeal filed by Nathan Hoffman. Filed dates for Notice of Appeal *11/6/2017*, Indictment *12/17/2015* and Appealed Order /   |

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|            |            | Judgment *10/25/2017*. Court Reporter: *K. Barajas*. *Fee Status: CJA or IFP granted on 11/1/2017* (Attachments: # <u>1</u> Appeal Information) (Mena-Sanchez, L) (Entered: 11/07/2017)  |
| 11/07/2017 | <u>153</u> | USCA CASE NUMBER 17-10472 for <u>151</u> Notice of Appeal filed by Nathan Hoffman. (York, M) (Entered: 11/07/2017)   |
| 11/13/2017 | <u>154</u> | STIPULATION and PROPOSED ORDER for Continuing Judgment & Sentencing Hearing by Steven Marcus. (Heller, Donald) (Entered: 11/13/2017)   |
| 11/27/2017 | <u>158</u> | TRANSCRIPT REQUEST for proceedings held on January 18, 2017 before Judge Mendez re <u>151</u> Notice of Appeal. Court Reporter Diane Shepard. (Hart, Krista) (Entered: 11/27/2017)   |
| 11/27/2017 | <u>159</u> | MOTION for EXTENSION of TIME to Self-Surrender by Nathan Hoffman. (Attachments: # <u>1</u> Proposed Order)(Hart, Krista) (Entered: 11/27/2017)   |
| 11/28/2017 | <u>160</u> | MINUTE ORDER (Text Only) issued by Courtroom Deputy J. Streeter for District Judge John A. Mendez on 11/28/2017: Defendant Nathan Hoffman's Motion for Extension of Time (ECF No. <u>159</u> ) is hereby DENIED. (Streeter, J) (Entered: 11/28/2017)   |
| 12/22/2017 | <u>163</u> | TRANSCRIPT of Proceedings, Change of Plea, as to Nathan Hoffman, held on January 18, 2017, before District Judge John A. Mendez, filed by Court Reporter Diane Shepard, Phone number 916-554-7460 E-mail diane.shepard@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 1/12/2018. Redacted Transcript Deadline set for 1/22/2018. Release of Transcript Restriction set for 3/22/2018. (Shepard, D) (Entered: 12/22/2017) |
| 01/08/2018 | <u>165</u> | STIPULATION and PROPOSED ORDER for Continuing Judgment & Sentencing Hearing by Steven Marcus. (Heller, Donald) (Entered: 01/08/2018)   |



**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 12-C-16181**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that 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; that 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; that I am aware that on motion of 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; and that 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, on the date shown below, a true copy of the within

**TRANSMITTAL OF RECORDS OF CONVICTION OF ATTORNEY, including:**

**Indictment, filed December 17, 2015**

**Plea Agreement**

**Judgment**

**Sentencing Minutes**

**Notice of Appeal**

**Docket**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2112 6620 03, at San Francisco, on the date shown below, addressed to:

**Nathan V Hoffman**

**Law Offices of Hoffman & Osorio, LLP**

**3255 Wilshire Blvd Ste 1402**

**Los Angeles, CA 90010**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**N/A**

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: March 23, 2018**

Signed: \_\_\_\_\_

**Ina M. Strehle  
Declarant**



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST March 21, 2022

State Bar Court, State Bar of California,  
Los Angeles

By Daniel Onthaw  
Clerk

S261244

SUPREME COURT  
**FILED**

**IN THE SUPREME COURT OF CALIFORNIA**

MAY 13 2020

**En Banc**

In re NATHAN V. HOFFMAN on Discipline

Jorge Navarrete Clerk

Deputy

The court orders that Nathan V. Hoffman (Respondent), State Bar Number 135155, is suspended from the practice of law in California for four years, execution of that period of suspension is stayed, and Respondent is placed on probation for four years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first three years of probation (with credit for the period of interim suspension beginning May 14, 2018), and Respondent will remain suspended until providing proof to the State Bar Court of rehabilitation, fitness to practice and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Respondent must also comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 15, 2020.
3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must provide to the State Bar's Office of Probation proof of taking and passing the Multistate Professional Responsibility Examination as recommended by the Hearing Department in its Decision filed on January 15, 2020. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Respondent must also comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**EXHIBIT**

**2**

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By: \_\_\_\_\_

Month

Deputy

**CANTIL-SAKAUYE**

Chief Justice



*Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.*

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**No. 21-BG-703**

**IN RE NATHAN V. HOFFMAN**

**2021 DDN 65**

An Administratively Suspended Member  
of the Bar of the District of Columbia Court of Appeals

**Bar Registration No. 420588**

**FILED** 01/27/2022  
**District of Columbia  
Court of Appeals**

*Julio A. Castillo*  
**Julio Castillo  
Clerk of Court**

BEFORE: Thompson\* and Easterly, Associate Judges, and Ferren, Senior Judge.

**ORDER**

(FILED— January 27, 2022)

On consideration of the certified order from the state of California suspending respondent from the practice of law in that jurisdiction for a period of four years, stayed in favor of a three-year suspension with reinstatement contingent on satisfying the conditions imposed and establishing fitness; this court's October 29, 2021, order suspending respondent pending resolution of this matter and directing him to show cause why reciprocal discipline should not be imposed; the statement of Disciplinary Counsel wherein he requests this court impose reciprocal discipline with an additional condition that reinstatement also be conditioned on respondent first being reinstated by the state of California; and it appearing that respondent has not filed any responses or his D.C. Bar R. XI, §14(g) affidavit, it is

ORDERED that Nathan V. Hoffman is hereby suspended from the practice of law in this jurisdiction for a period of four years, stayed in favor of a three-year suspension with reinstatement contingent on his reinstatement to practice law by the state of California and a showing of fitness. *See In re Fuller*, 930 A.2d 194, 198 (D.C. 2007) and *In re Willingham*, 900 A.2d 165 (D.C. 2006) (rebuttable presumption of identical reciprocal discipline applies to all cases in which the respondent does not participate, including those involving disbarment). It is

**EXHIBIT**

**3**



**No. 21-BG-703**

FURTHER ORDERED that for purposes of reinstatement respondent's suspension will not begin to run until such time as he files an affidavit that fully complies with the requirements of D.C. Bar R. XI, § 14(g).

**PER CURIAM**

\*Judge Thompson's term expired on September 4, 2021; however, she will continue to serve as an Associate Judge until her successor is confirmed. *See* D.C. Code § 11-1502 (2012 Repl.). She was qualified and appointed on October 4, 2021, to perform judicial duties as a Senior Judge and will begin her service as a Senior Judge on a date to be determined after her successor is appointed and qualifies.

*A true Copy  
Test:*

*Julio Castillo  
Clerk of the District of Columbia Court  
of Appeals*

BY \_\_\_\_\_

*Julio Castillo*  
DEPUTY CLERK  
Julio Castillo  
Clerk of the District of Columbia  
Court of Appeals

# INTERNAL PROCEDURAL RULES

## BOARD OF DISCIPLINARY APPEALS

*Current through June 21, 2018*

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# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Current through June 21, 2018*

### I. GENERAL PROVISIONS

#### Rule 1.01. Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

#### Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

#### Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

#### Rule 1.04. Appointment of Panels

- (a) BODA may consider any matter or motion by panel,

except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

#### Rule 1.05. Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

- (1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

- (2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

- (4) Exceptions.

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

- (ii) The following documents must not be filed electronically:

- a) documents that are filed under seal or subject to a pending motion to seal; and
- b) documents to which access is otherwise restricted by court order.

- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

- (5) Format. An electronically filed document must:



- (i) be in text-searchable portable document format (PDF);
- (ii) be directly converted to PDF rather than scanned, if possible; and
- (iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

#### **Rule 1.06. Service of Petition**

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent’s signature.

#### **Rule 1.07. Hearing Setting and Notice**

(a) **Original Petitions.** In any kind of case initiated by the CDC’s filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the

request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

#### **Rule 1.08. Time to Answer**

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

#### **Rule 1.09. Pretrial Procedure**

##### **(a) Motions.**

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

#### **Rule 1.10. Decisions**

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

#### **Rule 1.11. Board of Disciplinary Appeals Opinions**

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in

the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

#### **Rule 1.12. BODA Work Product and Drafts**

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

#### **Rule 1.13. Record Retention**

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

#### **Rule 1.14. Costs of Reproduction of Records**

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

#### **Rule 1.15. Publication of These Rules**

These rules will be published as part of the TDRPC and TRDP.

## **II. ETHICAL CONSIDERATIONS**

#### **Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases**

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

## **Rule 2.02. Confidentiality**

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

## **Rule 2.03. Disqualification and Recusal of BODA Members**

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

## **III. CLASSIFICATION APPEALS**

### **Rule 3.01. Notice of Right to Appeal**

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

### **Rule 3.02. Record on Appeal**

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and

all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

## **IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS**

### **Rule 4.01. Perfecting Appeal**

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

#### **Rule 4.02. Record on Appeal**

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

#### **(c) Responsibility for Filing Record.**

##### **(1) Clerk's Record.**

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

##### **(2) Reporter's Record.**

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

- a) a notice of appeal has been filed;
- b) a party has requested that all or part of the reporter's record be prepared; and
- c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

#### **(d) Preparation of Clerk's Record.**

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties'

written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

#### **(f) Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for



perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6<sup>1</sup>) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

<sup>1</sup> So in original.

#### **Rule 4.03. Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless

a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

#### **(b) If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

#### **(c) Extension of Time to File the Reporter's Record.**

When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

#### **Rule 4.04. Copies of the Record**

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

#### **Rule 4.05. Requisites of Briefs**

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
- (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
- (5) a statement, without argument, of the basis of BODA's jurisdiction;
- (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
- (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
- (8) the argument and authorities;
- (9) conclusion and prayer for relief;
- (10) a certificate of service; and
- (11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.**

In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's

failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

**Rule 4.06. Oral Argument**

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

- (1) the appeal is frivolous;
- (2) the dispositive issue or issues have been authoritatively decided;
- (3) the facts and legal arguments are adequately presented in the briefs and record; or
- (4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

**Rule 4.07. Decision and Judgment**

(a) **Decision.** BODA may do any of the following:

- (1) affirm in whole or in part the decision of the evidentiary panel;
- (2) modify the panel's findings and affirm the findings as modified;
- (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
- (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:
  - (i) the panel that entered the findings; or
  - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

**(b) Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

#### **Rule 4.08. Appointment of Statewide Grievance Committee**

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

#### **Rule 4.09. Involuntary Dismissal**

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

### **V. PETITIONS TO REVOKE PROBATION**

#### **Rule 5.01. Initiation and Service**

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

#### **Rule 5.02. Hearing**

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

### **VI. COMPULSORY DISCIPLINE**

#### **Rule 6.01. Initiation of Proceeding**

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

#### **Rule 6.02. Interlocutory Suspension**

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

- (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
- (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

## VII. RECIPROCAL DISCIPLINE

### Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

### Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

### Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

## VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

### Rule 8.01. Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

### Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

### Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.



#### **Rule 8.04. Ability to Compel Attendance**

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

#### **Rule 8.05. Respondent's Right to Counsel**

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

#### **Rule 8.06. Hearing**

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

#### **Rule 8.07. Notice of Decision**

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

#### **Rule 8.08. Confidentiality**

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

### **IX. DISABILITY REINSTATEMENTS**

#### **Rule 9.01. Petition for Reinstatement**

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension

contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

#### **Rule 9.02. Discovery**

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

#### **Rule 9.03. Physical or Mental Examinations**

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

#### **Rule 9.04. Judgment**

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

## **X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS**

### **Rule 10.01. Appeals to the Supreme Court**

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.