

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

ASHRAF T. HANNA, Respondent

Agency Case No. 7417

OAH No. 2023050008

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 18, 2023.

It is so ORDERED on September 18, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 25, 2023, from Sacramento, California.

Malissa N. Siemantel, Deputy Attorney General, represented Anne Sodergren (complainant), Executive Officer of the Board of Pharmacy (Board or Pharmacy Board), Department of Consumer Affairs, State of California.

Ashraf T. Hanna (respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on July 25, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 27, 2022, respondent signed and subsequently filed an application with the Board to obtain a pharmacist license. The Board denied the application on November 8, 2022. Respondent timely appealed and requested a hearing. On February 26, 2023, complainant signed and subsequently filed the Statement of Issues, in her official capacity. This hearing followed.

Complainant's Evidence

TESTIMONY OF MOJGAN MOHAMMADZADEH, PHARM. D.

2. Mojgan Mohammadzadeh, Pharm. D., has been licensed by the Board as a pharmacist since 2001. She has been employed by the Board as an inspector since 2019, and has been involved in over 200 investigations and 100 inspections.

3. Dr. Mohammadzadeh is knowledgeable about the duties and responsibilities of pharmacists, including evaluating prescriptions, ordering and storing medications, and maintaining security of medications. To meet these responsibilities, a pharmacist must demonstrate attention to detail, accuracy, and honesty. If a pharmacist made a false statement on a license application, this would raise concerns about the pharmacist's honesty and the potential negative impact on patient safety.

ALLEGED OUT OF STATE DISCIPLINE

4. Effective August 20, 2018, pursuant to a Consent Order signed by respondent, his attorney, and the president of the New Jersey State Board of Pharmacy

(New Jersey Board), the New Jersey Board denied respondent's application for a pharmacist license, revoked his registrations as a pharmacy technician and a pharmacist intern, and assessed a \$5,000 civil penalty and \$5,000 in administrative costs. The Consent Order was based on matters including respondent's 2013 arrest for unlawful possession of a prescription drug with the intent to distribute and respondent's failure to disclose his 2011 shoplifting/criminal mischief arrest in his 2012 application for licensure to practice as a pharmacist in New Jersey, in which he falsely checked the "No" box in response to the question whether he had ever been arrested.

5. On June 20, 2022, following an evidentiary administrative hearing before the New Jersey Board, at which respondent testified, the New Jersey Board issued a written decision and order denying respondent's application to reinstate his pharmacy technician and pharmacist intern registrations, and respondent's request to resume his application process for licensure as a pharmacist. The New Jersey Board's decision and order was based in substantial part on its findings that when respondent entered into the Consent Order, "he necessarily admitted all of the allegations that are detailed in the Consent Order" and that "respondent was lying during his testimony before the committee" during the 2022 hearing when he denied engaging in the misconduct to which he previously admitted.

ALLEGED UNPROFESSIONAL CONDUCT

6. On April 27, 2022, respondent signed and subsequently submitted to the Board a Verification of License in Another State form, verifying he had been licensed as a pharmacist intern in New Jersey from August 1, 2012 to August 1, 2014, and that he had worked 1,440 hours as a pharmacist intern during that time. Respondent also submitted signed verifications that he had worked 1,440 hours as a pharmacist intern at a Walmart in New Jersey from April 1 to December 10, 2012. Respondent was not

licensed as a pharmacist intern in New Jersey during a portion of that time – specifically April 1 to August 1, 2012. Complainant alleges respondent violated New Jersey Administrative Code, title 13, chapter 39, section 2.6, when he practiced as a pharmacist intern in New Jersey before he was licensed to do so, and that this constitutes unprofessional conduct in California.

ALLEGED ACTS INVOLVING DISHONESTY, FRAUD OR DECEIT

7. Following respondent's April 27, 2022, written verifications to the Board that he had worked 1,440 hours as a pharmacist intern, the Board sent respondent a notice dated August 9, 2022, stating that a person must work a minimum of 1,500 hours as a pharmacist intern before taking the pharmacist licensure examination. On August 16, 2022, respondent sent an email to the Board stating he had already submitted documentation of the required hours, and that he was attaching the documents for the Board's convenience. Respondent submitted a letter on Partners Pharmacy letterhead, dated January 6, 2014, addressed to "whom it may concern," bearing the undated electronic signature of pharmacist E.E., respondent's undated signature, and a notary stamp and notary signature dated August 15, 2022. The letter states respondent worked as a pharmacist intern at Partners Pharmacy 40 hours per week from March 25 through December 30, 2013. Respondent also submitted a Pharmacy Intern Hours Affidavit stating he worked 1,570 hours as a pharmacist intern at Partners Pharmacy from March 25 through December 30, 2013. This document bears the electronic signature of pharmacist E.E., dated January 6, 2014, respondent's signature, and a New Jersey notary public stamp and signature with an illegible date. The footer on the Pharmacy Intern Hours Affidavit includes "(2.2019)" and the form number. Complainant argued that the "(2.2019)" footer demonstrates the form was

generated in February 2019, and therefore pharmacist E.E.'s January 2014 signature on a 2019 form is false.

Respondent's Evidence

8. Regarding respondent's 2013 arrest for unlawful possession of a prescription drug with the intent to distribute same, on November 6, 2015, in the Superior Court of New Jersey, Middlesex County, upon application by the chief probation officer and with the prosecutor's consent, the judge ordered the complaint dismissed based on respondent's successful completion of the pretrial intervention program.

9. On May 7, 2018, in the Superior Court of New Jersey, Middlesex County, upon application by respondent's attorney, the judge issued an order that respondent's criminal records be expunged, including his 2011 arrest for shoplifting/criminal mischief, and his 2013 arrest and charges of unlawful possession of a prescription drug with the intent to distribute.

10. Respondent completed the ethics course and paid the \$5,000 civil penalty and the \$5,000 in administrative costs as mandated by the New Jersey Board's Consent Order.

LEGAL CONCLUSIONS

Burden of Proof

1. Respondent has the burden of proving that he qualifies for a pharmacist license in California. (*Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) "Except as otherwise provided by law, the burden of proof

requires proof by a preponderance of the evidence. (Evid. Code, § 115.) In other words, respondent must prove it is more likely than not he is fit for the license he seeks and that the license should be granted. (*People ex. Rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Alleged Causes for Denial

OUT OF STATE DISCIPLINE

2. Business and Professions Code section 480, subdivision (a)(2), provides that the Board may deny a license if the applicant has been subject to formal discipline, as follows:

The applicant has been subject to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the [Pharmacy Board] and that is substantially related to the qualifications, functions, or duties of the [pharmacy profession]. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4 . . . of the Penal Code or a comparable dismissal or expungement.

3. On June 20, 2022, the New Jersey Board denied respondent's petition to reinstate his pharmacy technician and pharmacy intern registrations, and his request to reinstate his pharmacist application process. Complainant did not establish that this

action was disciplinary within the meaning of Business and Professions Code section 480, subdivision (a)(2). For this reason, cause does not exist to deny respondent's pharmacist application based on the New Jersey Board's June 20, 2022, denial of reinstatement.

4. On August 20, 2018, the New Jersey Board denied respondent's application to practice as a pharmacist. Complainant did not establish that this action was disciplinary within the meaning of Business and Professions Code section 480, subdivision (a)(2). For this reason, cause does not exist to deny respondent's pharmacist application based on the New Jersey Board's August 20, 2018, denial of respondent's application.

5. Also on August 20, 2018, the New Jersey Board revoked respondent's registrations to practice as a pharmacy technician and a pharmacist intern. This license discipline was based on matters including respondent's 2011 and 2013 arrests as well as his false statement in his 2012 application about whether he had ever been arrested. Pursuant to Business and Professions Code section 480, subdivision (a)(2), respondent's criminal history may not be considered because the New Jersey courts expunged that arrest and other criminal records.

6. However, including false information in a license application is professional misconduct that would constitute cause for discipline before the Pharmacy Board and that is substantially related to the qualifications, functions, or duties of the pharmacy profession. (Bus. & Prof. Code, § 4301, subds. (a), (f), and (g).) Therefore, under Business and Professions Code section 480, subdivision (a)(2) cause exists to deny respondent's application for a pharmacist license based on the New Jersey Board's 2018 revocation of his registrations to practice as a pharmacy technician and pharmacist intern, only to the extent that the revocation was based on

respondent's failure to disclose his 2011 arrest in his 2012 application for a pharmacist license in New Jersey, in which he falsely checked the "No" box in response to the question whether he had ever been arrested.

ALLEGED UNPROFESSIONAL CONDUCT

7. Business and Professions Code section 4300, subdivision (c), provides that the Board may deny a license or issue a probationary license on the grounds that the applicant has committed unprofessional conduct. Unprofessional conduct includes violations of "any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs." (Bus. & Prof. Code, § 4301, subd. (j).) Complainant alleges that respondent committed unprofessional conduct by violating New Jersey Administrative Code, title 13, chapter 39, section 2.6, when he practiced as a pharmacist intern in New Jersey before he was registered to do so.

8. This tribunal does not have jurisdiction to make factual findings and legal conclusions regarding respondent's conduct in New Jersey under New Jersey law, absent a finding or order by a tribunal with jurisdiction over questions of law and fact under New Jersey law. Complainant did not present such a finding or order, and did not establish that respondent violated New Jersey law when he practiced as a pharmacist intern in New Jersey before he was registered to do so. For these reasons, cause does not exist, under Business and Professions Code section 4300, subdivision (c), to deny respondent's pharmacist application based on the allegation that he committed unprofessional conduct by violating New Jersey law.

ALLEGED ACTS INVOLVING DISHONESTY, FRAUD OR DECEIT

9. Business and Professions Code section 480, subdivision (e), states that the Board may deny a license “on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.”

10. Complainant alleges that respondent acted dishonestly and deceitfully by submitting a Pharmacy Intern Hours Affidavit stating he worked 1,570 hours on a form generated in February 2019, with pharmacist E.E.’s electronic signature dated in January 2014. Complainant’s allegation rests on the premise that the “(2.2019)” footer demonstrates the form was generated in February 2019. This is one possibility, but complainant did not present any other evidence to substantiate the assertion. The “(2.2019)” footer it is not sufficient, standing alone, to demonstrate when the form was generated. For these reasons, cause does not exist, under Business and Professions Code section 480, subdivision (e), to deny respondent’s pharmacist application based on the allegation that he acted dishonestly and deceitfully by submitting the Pharmacy Intern Hours Affidavit.

Analysis

11. Respondent’s evidence in support of his application for a pharmacist license and complainant’s causes for denial must be assessed in light of the Board’s statutory mandate to protect the public. (Bus. & Prof. Code, § 4001.1.)

12. As set forth in the Legal Conclusions above, complainant established cause to deny respondent’s application for a pharmacist license based on the New Jersey Board’s 2018 revocation of his registrations to practice as a pharmacy technician and pharmacist intern because he failed to disclose his 2011 arrest in his 2012

application for a pharmacist license in New Jersey, in which he falsely checked the “No” box in response to the question whether he had ever been arrested. Respondent presented substantial evidence of rehabilitation with the 2018 expungement of his criminal history in New Jersey. However, respondent’s misconduct in failing to disclose his 2011 arrest in his 2012 application occurred well before the expungement at a time when respondent was required to disclose his arrest.

13. Respondent did not accept responsibility for his 2011 failure to disclose his arrest. As Dr. Mohammadzadeh convincingly testified, honesty is essential for a pharmacist to safely carry out their responsibilities. Also, as the California Supreme Court stated in *Seide v. Committee of Bar Examiners* (1989) 49 Cal. 3d. 933, 940, “Fully acknowledging the wrongfulness of [one’s] actions is an essential step towards rehabilitation.” By failing to acknowledge his dishonest conduct that, in part, led to the New Jersey Board’s 2018 revocation action, respondent failed to meet his burden of demonstrating sufficient rehabilitation to establish he is fit to practice as a pharmacist in the State of California, consistent with the protection of public safety.

ORDER

The denial of respondent Ashraf T. Hanna’s application for a pharmacist license is AFFIRMED.

DATE: August 18, 2023

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against: Case No. 7417
13 **ASHRAF T. HANNA**
14 **Pharmacist License Applicant** **STATEMENT OF ISSUES**
15 Respondent.
16

17 **PARTIES**

18 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
20 Affairs.

21 2. On or about May 19, 2022, the Board received an application for a Pharmacist
22 License from Ashraf T. Hanna (Respondent). On or about April 27, 2022, Respondent certified
23 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on November 8, 2022.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

1 4. Code section 118, subdivision (a), states:

2 The withdrawal of an application for a license after it has been filed with a
3 board in the department shall not, unless the board has consented in writing to such
4 withdrawal, deprive the board of its authority to institute or continue a proceeding
5 against the applicant for the denial of the license upon any ground provided by law or
6 to enter an order denying the license upon any such ground.

5 5. Code section 4300, subdivision (c), states:

6 (c) The board may refuse a license to any applicant guilty of unprofessional
7 conduct. The board may, in its sole discretion, issue a probationary license to any
8 applicant for a license who is guilty of unprofessional conduct and who has met all
9 other requirements for licensure. The board may issue the license subject to any
10 terms or conditions not contrary to public policy, including, but not limited to, the
11 following:

- 12 (1) Medical or psychiatric evaluation.
- 13 (2) Continuing medical or psychiatric treatment.
- 14 (3) Restriction of type or circumstances of practice.
- 15 (4) Continuing participation in a board-approved rehabilitation program.
- 16 (5) Abstention from the use of alcohol or drugs.
- 17 (6) Random fluid testing for alcohol or drugs.
- 18 (7) Compliance with laws and regulations governing the practice of pharmacy.

17 6. Code section 4307 states:

18 (a) Any person who has been denied a license or whose license has been
19 revoked or is under suspension, or who has failed to renew his or her license while it
20 was under suspension, or who has been a manager, administrator, owner, member,
21 officer, director, associate, partner, or any other person with management or control
22 of any partnership, corporation, trust, firm, or association whose application for a
23 license has been denied or revoked, is under suspension or has been placed on
24 probation, and while acting as the manager, administrator, owner, member, officer,
25 director, associate, partner, or any other person with management or control had
26 knowledge of or knowingly participated in any conduct for which the license was
27 denied, revoked, suspended, or placed on probation, shall be prohibited from serving
28 as a manager, administrator, owner, member, officer, director, associate, partner, or in
any other position with management or control of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed
on probation, this prohibition shall remain in effect for a period not to exceed five
years.

(2) Where the license is denied or revoked, the prohibition shall continue until
the license is issued or reinstated.

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1 (b) “Manager, administrator, owner, member, officer, director, associate,
2 partner, or any other person with management or control of a license” as used in this
section and Section 4308, may refer to a pharmacist or to any other person who serves
in such capacity in or for a licensee.

3 (c) The provisions of subdivision (a) may be alleged in any pleading filed
4 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
5 the Government Code. However, no order may be issued in that case except as to a
6 person who is named in the caption, as to whom the pleading alleges the applicability
7 of this section, and where the person has been given notice of the proceeding as
required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
the Government Code. The authority to proceed as provided by this subdivision shall
be in addition to the board’s authority to proceed under Section 4339 or any other
provision of law.

8 7. Code section 4011 states:

9 The board shall administer and enforce this chapter and the Uniform Controlled
10 Substances Act (Division 10 (commencing with Section 11000) of the Health and
Safety Code).

11 **STATUTORY PROVISIONS**

12 8. Code section 480 states, in pertinent part:

13 (a) Notwithstanding any other provision of this code, a board may deny a
14 license regulated by this code on the grounds that the applicant has been convicted of
a crime or has been subject to formal discipline only if either of the following
15 conditions are met:

16 ...

17 (2) The applicant has been subjected to formal discipline by a licensing board in
18 or outside California within the preceding seven years from the date of application
based on professional misconduct that would have been cause for discipline before
19 the board for which the present application is made and that is substantially related to
the qualifications, functions, or duties of the business or profession for which the
20 present application is made. However, prior disciplinary action by a licensing board
within the preceding seven years shall not be the basis for denial of a license if the
21 basis for that disciplinary action was a conviction that has been dismissed pursuant to
Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a
comparable dismissal or expungement.

22 ...

23 (e) A board may deny a license regulated by this code on the ground that the
24 applicant knowingly made a false statement of fact that is required to be revealed in
the application for the license. A board shall not deny a license based solely on an
25 applicant’s failure to disclose a fact that would not have been cause for denial of the
license had it been disclosed.

26 ...

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28 ///

1 9. Code section 4300, subdivision (c), states, in pertinent part:

2 (c) The board may refuse a license to any applicant guilty of unprofessional
3 conduct. ...

4 **NEW JERSEY STATUTORY PROVISIONS**

5 10. New Jersey Administrative Code, title 13, chapter 39, section 2.6, states, in pertinent
6 part:

7 (a) The following words and terms, when used in this section, shall have the
8 following meanings, unless the context clearly indicates otherwise.

9 ...

10 "Pharmacy intern" means a person who is employed in an approved pharmacy
11 training site for the purpose of acquiring practical experience and who has first
12 registered for such purposes with the Board pursuant to N.J.S.A. 45:14-48b(2) ...

13 (b)(3) No credit shall be given for hours served as a pharmacy intern prior to
14 the applicant's registration with the Board and approval of the intern preceptor by the
15 Board.

14 **FACTUAL BACKGROUND**

15 11. On or about August 20, 2018, *In the Matter of Ashraf T. Hanna*, in front of the New
16 Jersey State Board of Pharmacy, pursuant to a Consent Order, Respondent's application to
17 practice as a pharmacist in the State of New Jersey was denied, Respondent's registration to
18 practice as a pharmacy technician was revoked, and Respondent's registration to practice as a
19 pharmacist intern was revoked. Respondent was also assessed a civil penalty in the amount of
20 \$5,000 "for engaging in acts relating adversely to activity regulated by the Board while registered
21 as a Pharmacy Technician and a Pharmacist Intern", and Respondent was assessed administrative
22 costs in the amount of \$5,000. The Consent Order was based upon Respondent's 2013 arrest for
23 unlawful possession of a prescription drug with the intent to distribute, Respondent's failure to
24 disclose his prior arrest on his application for licensure as a pharmacist, and Respondent's theft of
25 prescription drugs from his employer to give to his uncle because his uncle was in a "bad
26 financial situation".

27 12. On or about June 20, 2022, *In the Matter of the Application of Ashraf T. Hanna*, in
28 front of the New Jersey Board of Pharmacy, pursuant to an Order of Denial of Reinstatement of

1 Registrations and Resumption of the Pharmacist Application Process, Respondent's request for
2 reinstatement of his pharmacy technician and pharmacy intern registrations was denied.
3 Additionally, Respondent's requested approval to resume the process to obtain a pharmacist
4 license was denied. The New Jersey Board's denial was based upon the New Jersey Board's
5 finding that Respondent's current testimony was not credible, Respondent's failed to accept
6 responsibility for his prior misconduct, and Respondent "failed to demonstrate that he possesses
7 the good moral character that is a requirement for licensure and registration."

8 13. On or about and between April 1, 2012, and December 10, 2012, Respondent worked
9 as an intern pharmacist in New Jersey working at Walmart. However, Respondent was not issued
10 a New Jersey intern pharmacist registration until August 1, 2012.

11 14. On or about May 19, 2022, Respondent certified on the Board's "Verification of
12 License in Another State" form that he worked 1440 hours under his New Jersey intern
13 pharmacist license from August 1, 2012, through August 1, 2014. However, on or about May 19,
14 2022, Respondent submitted documentation to the Board indicating that from April 1, 2012,
15 through December 10, 2012, Respondent obtained 1440 hours as an intern pharmacist in New
16 Jersey working at Walmart. On or about August 9, 2022, the Board notified Respondent that
17 1440 hours was not a sufficient number of pharmacy intern hours. On or about August 18, 2022,
18 Respondent submitted an additional Pharmacy Intern Hours Affidavit stating that from March 25,
19 2013, through December 30, 2013, Respondent obtained 1570 hours as an intern pharmacist in
20 New Jersey under pharmacist E.E. The additional Pharmacy Intern Hours Affidavit was on a
21 form that was generated in or around February 2019, and contained a typed signature for
22 pharmacist E.E. dated January 6, 2014.

23 **FIRST CAUSE FOR DENIAL OF APPLICATION**

24 **(Out of State Discipline)**

25 15. Respondent's application is subject to denial under Code section 480, subdivision
26 (a)(2), in that Respondent was subjected to formal discipline by a licensing board outside
27 California, as set forth in paragraphs 11 and 12, above.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud or Deceit)

16. Respondent's application is subject to denial under Code section 480, subdivision (e), in that Respondent submitted false information to the Board as set forth in paragraph 14, above.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

17. Respondent's application is subject to denial for unprofessional conduct under Code section 4300, subdivision (c), in that Respondent violated New Jersey Administrative Code, title 13, chapter 39, section 2.6, when he worked as an intern pharmacist without a valid intern pharmacist registration, as set forth in paragraphs 13 and 14, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Ashraf T. Hanna for a Pharmacist License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/26/2023

Sodergren,
Anne@DCA



Digitally signed by Sodergren,
Anne@DCA
Date: 2023.02.26 20:23:11 -08'00'

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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