Respondent's day of reckoning is at hand, and this Court should deny respondent's specious motion forthwith, as nothing more than his latest attempt to derail the disbarment that is so long overdue.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: May 16, 2016 By: _____
CYDNEY BATCHELOR
Senior Trial Counsel

DECLARATION OF CYDNEY BATCHELOR

I, **CYDNEY BATCHELOR**, declare:

1. I am over the age of 18 years, am employed by the State Bar, and am the State Bar's appellate counsel of record in this appeal. I make this declaration in such capacity.

2. Unless otherwise indicated to the contrary, the following facts are personally known to me, and if called as a witness, I could and would testify to the truth hereof. As to those facts about which I do not have personal knowledge, I am informed and believe that they are true, and upon that information and belief, allege the truth hereof.

3. At oral argument, Judge Honn inquired of me whether the record reflected that any of the $3.5 million that Dr. Cartinhour had entrusted to respondent had been used for the *Credit Suisse* litigation. I responded that it did not. My response was based on the $3.5 million compensatory damages awarded against respondent in *Robertson vs. Cartinhour*, and on the Hearing Department's findings of fact in the Decision, at pp. 8 and 12.

4. In response to the Court's questions about his payment of litigation expenses as reflected in the trial record, respondent replied that the record showed he had expended some of Dr. Cartinhour's funds to pay John Watts at the Yearout firm, but could not provide a specific amount or identify specific exhibits reflecting such payments. Respondent stated multiple times

that he would file a document identifying the exhibits within a day or two of oral argument. Respondent never did so.

5. Following oral argument, based on respondent's assertion to the Court that he had paid expenses to John Watts in the *Credit Suisse* litigation, I was concerned that I might have erred in my response to the Court's question and might need to file a post-argument errata. I consulted with the State Bar's counsel at trial, who informed me of a "vague recollection" that respondent might have paid approximately $35,000 to Watts and/or the Yearout firm. I was unaware of any such payment reflected in the record, and unable to locate it on further review. However, irrespective of whether any such payment was reflected in the record, I wanted to provide the Court with accurate information if that was available, even if it meant offsetting the amount of funds that respondent misappropriated from Dr. Cartinhour.

6. I then contacted attorney John Watts. He informed me that he was no longer with the Yearout firm and that firm would have the records of any payments made by respondent. I then sent an email to the office manager of the Yearout firm inquiring whether respondent had paid any such expenses in the *Credit Suisse* litigation. (A true and correct copy of my email is attached as Exh A to Declaration of Jason Yearout, filed with respondent's motion ["Yearout declaration"].) My intention in sending the email to the Yearout firm (Exh A) was clear from the plain language of my email – to obtain information about litigation expenses respondent had paid to the Yearout firm to provide it to the Court. If I had wanted to conceal that information from the Court, then I would not have contacted Watts and the Yearout firm to obtain it for the Court.

7. After I sent the email to the Yearout firm (Exh A), Jason Yearout ("Yearout") responded by email, and said that he would "check on it." I responded by email, "Thank you sir." (Exh B to Yearout declaration.)

8. Later, Yearout telephoned me in response to my email. I told Yearout that the sum that had been mentioned about the expenses was in the approximate amount of $35,000. Yearout responded that his partners were out of the office until the following day, and that he was "not comfortable" giving me the information without talking with them because it might be

confidential client information. At that point, I told Yearout that under no circumstances did I want him to divulge confidential client information, and further, that if the determination was made that the information was confidential that he should consider that the State Bar had never inquired. I may have used the expression that Yearout "should forget the call ever happened," again to impress on Yearout that the State Bar did not want confidential client information and to put Yearout at ease in not providing the information to the State Bar if he continued to feel "uncomfortable" about it.

9. In his declaration, at paragraph 20, Yearout stated that I had indicated to him "in substance, more than once that she would not note or document our conversation and would not keep a record of it." I made no such statement and Yearout developed the wrong impression about the thrust of my comments about confidentiality. The point of my comments to Yearout were that under no circumstances did the State Bar seek any information that Yearout or his partners decided was confidential to a client. I repeated that more than once to Yearout. Yearout's statement to the contrary makes no sense. Again, if I was attempting to hide respondent's payment of expenses from the Court, then I would never have contacted the Yearout firm for the stated purpose of obtaining it for the Court. Moreover, my inquiry was already "noted" and "documented" in writing in the emails that I exchanged with Yearout. When I sent the email to the Yearout firm, I was aware of the unity of interest between the Yearout firm and respondent in the *Credit Suisse* litigation (they were on the same side), and certainly had no expectation of privacy in the communications to and from that firm. In fact, I assumed that Yearout would contact respondent about the State Bar's email. From Yearout's declaration, it is clear that is exactly what he did. It is also clear from Yearout's declaration that although he told me that he was "uncomfortable" in providing possibly confidential client information to the State Bar, he had no such "discomfort" in providing the information to respondent.

10. At the conclusion of my telephone conversation with Yearout, he told me that he "might" be more comfortable confirming the $35,000 amount to the State Bar. I told him again that if he and his partners decided that the information was confidential, then the State Bar did

not want the information. I understood that Yearout would address the issue with his partners when he returned the following day and would contact me if he and his partners were willing to provide the requested information requested by the State Bar. However, Yearout never contacted me again, but instead provided the information to respondent.

11. Beyond the State Bar's trial counsel's vague recollection that I was unable to substantiate in the record or through good-faith communications with the Yearout firm, I had no specific information to provide to the Court about expenses that respondent may have paid in the *Credit Suisse* litigation. Thus, there was no basis for me to file a post-argument errata, especially in view of the civil judgment against respondent and the Hearing Department's restitution recommendation for the full $3.5 million.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that I executed this declaration on May 16, 2016.

CYDNEY BATCHELOR, Declarant