

Public Matter

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

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of:) Case No. SBC-23-O-30029
)
 14 JOHN CHARLES EASTMAN,) NOTICE OF DISCIPLINARY CHARGES
 State Bar No. 193726,)
 15) (OCTC Case No. 21-O-11801)
)
 16 An Attorney of the State Bar.)

NOTICE - FAILURE TO RESPOND!

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:

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;**
- 23 (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;**
- 24 (4) **YOU SHALL 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 AND MAY RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES PROC. OF STATE BAR, RULES 5.80 ET SEQ. & 5.137.)**

1 The State Bar of California alleges:

2 JURISDICTION

3 1. John Charles Eastman ("respondent") was admitted to the practice of law in the State
4 of California on December 15, 1997. Respondent was a licensed attorney at all times pertinent to
5 these charges and is currently a licensed attorney of the State Bar of California.
6

7 INTRODUCTION

8 2. In or about December 2020, respondent began working with President Donald Trump
9 ("Trump") and his campaign to develop a legal and political strategy to dispute the results of the
10 November 3, 2020 election, in which President Trump had lost his bid for reelection, by
11 promoting the idea that the election was tainted by fraud, disregard of state election law, and
12 misconduct by election officials.

13 3. In the months following the election, however, the Trump campaign received
14 information from numerous credible sources, including Attorney General of the United States
15 William Barr and members of Trump's inner circle of advisors, that there was no evidence of
16 widespread election fraud or illegality that could have affected the outcome of the election. On or
17 about December 1, 2020, Attorney General Barr, who headed the United States Department of
18 Justice, which had monitored state elections for fraud and illegality, publicly stated that "to date,
19 we have not seen fraud on a scale that could have effected a different outcome in the election."

20 4. Moreover, by early January 2021, more than 60 courts had dismissed cases alleging
21 fraud in the presidential election. Many of the cases were dismissed based on lack of standing or
22 procedural issues. But approximately 30 of the cases were dismissed or had injunctive relief
23 denied based on determinations by a judge that the pleadings failed to allege facts sufficient to
24 state a claim or that no actual evidence of election fraud had been presented, or after an
25 evidentiary hearing and a finding that the evidence presented by the plaintiffs was insufficient on
26 the merits. For example, on or about November 6, 2020, in Michigan, a court denied a request
27 for injunctive relief, concluding that the plaintiffs' motion was "based upon speculation and
28 conjecture" and that there was "no evidence to support accusations of voter fraud." (*Stoddard v.*

1 *City Election Comm’n*, No. 20-014604-CZ, slip op. at 3, 4 (Mich. Cir. Ct. Nov. 6, 2020).). On or
2 about November 21, 2020, in Pennsylvania, a court granted a motion to dismiss some claims
3 based on lack of standing but others for failure to state a claim, concluding that the allegations of
4 election fraud rested on “strained legal arguments without merit and speculative accusations,
5 unpled in the operative complaint and unsupported by evidence.” (*Donald J. Trump for*
6 *President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 906 (M.D. Pa.), *aff’d sub nom. Donald J.*
7 *Trump for President, Inc. v. Secretary of Pennsylvania* (3d Cir. 2020) 830 Fed.Appx. 377.) On or
8 about December 8, 2020, in Arizona, the state’s Supreme Court concluded that the trial court was
9 correct in its determination, after an evidentiary trial, that the plaintiff had failed “to present any
10 evidence of ‘misconduct,’ ‘illegal votes’ or that the Biden Electors ‘did not in fact receive the
11 highest number of votes for office,’ let alone establish any degree of fraud or a sufficient error
12 rate that would undermine the certainty of the election results.” (*Ward v. Jackson*, No. CV-20-
13 0343-AP/EL, 2020 WL 8617817, at *2 (Ariz. Dec. 8, 2020).)

14 5. As a result of information received from credible sources and numerous court rulings,
15 by no later than on or about December 9, 2020, respondent knew, or was grossly negligent in not
16 knowing, that there was no evidence upon which a reasonable attorney would rely of election
17 fraud or illegality that could have affected the outcome of the election, and that there was no
18 evidence upon which a reasonable attorney would rely that the election had been “stolen” by the
19 Democratic Party or other parties acting in a coordinated conspiracy to fraudulently “steal” the
20 election from Trump.

21 6. Nevertheless, from on or about December 9, 2020, and continuing to at least on or
22 about January 6, 2021, respondent continued to work with Trump and others to promote the idea
23 that the outcome of the election was in question and had been stolen from Trump as the result of
24 fraud, disregard of state election law, and misconduct by election officials. In doing so,
25 respondent violated his obligations as an attorney in two ways. First, he provided legal advice,
26 formulated legal strategies, and engaged in litigation based on, and made public statements
27 propounding, allegations of election fraud that he knew, or was grossly negligent in not knowing,
28 were false. Second, based on misinterpretations of historical sources, misinterpretations of law

1 review articles, and law review articles that he knew or was grossly negligent in not knowing
2 were themselves fundamentally flawed, he provided, and proposed actions based on, legal advice
3 regarding the unilateral authority of the Vice President to disregard or delay the counting of
4 electoral votes that he knew, or was grossly negligent in not knowing, was contrary to and
5 unsupported by the historical record and established legal authority and precedent, including the
6 Electoral Count Act and the Twelfth Amendment, such that no reasonable attorney with
7 expertise in constitutional or election law would have concluded that the Vice President was
8 legally authorized to take the actions respondent proposed.

9
10 COUNT ONE

11 Case No. 21-O-11801

12 Business and Professions Code section 6068(a)

13 [Failure to Support the Constitution and Laws of the United States]

14 7. Beginning no later than on or about December 23, 2020 and continuing to at least on
15 or about January 6, 2021, respondent violated his obligation under Business and Profession Code
16 section 6068(a) to uphold the Constitution and the laws of the United States by engaging in a
17 course of conduct that included the acts set out in paragraphs 8 through 30 below to plan,
18 promote, execute, and assist Trump in executing a strategy for Trump to overturn the legitimate
19 results of the election by obstructing the count of electoral votes of certain states, which strategy
20 respondent knew, or was grossly negligent in not knowing, was not supported by either the facts
21 or law.

22 8. On or about December 23, 2020, respondent wrote and sent to an attorney and
23 strategic advisor to Trump's 2020 presidential campaign, with the intent of providing legal
24 advice to Trump and Vice-President Michael Pence ("Pence"), a two-page legal memorandum
25 (the "two-page memo") that, based on what the memo asserted to be Pence's legal authority to
26 take unilateral action with respect to the electoral votes of certain states at the Joint Session of
27 Congress to count electoral votes on January 6, 2021, outlined alternative strategies for action
28 based on Pence refusing to count the electoral votes from seven states that had voted for

1 candidate Joe Biden (“Biden”). Those seven states were Arizona, Georgia, Michigan,
2 Pennsylvania, Nevada, New Mexico, and Wisconsin.

3 9. With respect to these seven states, respondent proposed that Pence “announce[] that
4 he has multiple slates of electors, and so is going to defer decision on that until finishing the
5 other States.” Respondent then proposed two alternative courses of action. Under the first, Pence
6 would “announce[] that because of the ongoing disputes in the 7 States, there are no electors that
7 can be deemed validly appointed in those States.” Without electors appointed for those states,
8 Trump’s 228 electoral votes would constitute a majority of the 454 appointed electors.
9 Respondent advised “Pence [to] then gavel[] President Trump as re-elected.” Under the second
10 course of action, after “[h]owls, of course, from the Democrats,” Pence would concede that 270
11 electoral votes were required for a majority. Under the Twelfth Amendment, when no candidate
12 receives a majority of votes cast by the appointed electors, the House of Representatives chooses
13 the President voting by state delegation. Because Republicans controlled 26 state delegations,
14 respondent advised that “President Trump is re-elected there as well.”

15 10. Respondent advised Pence to take these actions based on the two-page memo’s
16 assertion that the “7 states have transmitted dual slates of electors to the President of the Senate.”
17 Respondent knew, or was grossly negligent in not knowing, that this assertion was false and
18 misleading, in that, as respondent knew at the time: (a) pursuant to 3 U.S.C. § 6, the governor of
19 each of those states had submitted a certificate of ascertainment indicting that the Biden electors,
20 not the Trump electors, had been appointed because the Biden electors received more votes in
21 those state’s election; (b) no other state official of any of those states had submitted a purported
22 certificate of ascertainment naming Trump electors; and (c) as a result, no legal authority on
23 behalf of any state had taken any action to support the contention that Trump electors were the
24 legitimate electors for any of the seven states. Indeed, subsequently, on or about January 10,
25 2021, respondent acknowledged in an email that the purported Trump electors from these seven
26 states, who had met on December 14, cast their electoral votes, and themselves transmitted those
27 votes to the Vice President, “had no authority” because “[n]o legislature [had] certified them.”
28

1 11. On or about January 2, 2021, respondent appeared on the “Bannon’s War Room”
2 radio program, during which he was interviewed by program host Steve Bannon. According to
3 Bannon, the radio program had tens of millions of listeners. Respondent stated that there was
4 “massive evidence” of fraud involving absentee ballots in the November 3, 2020, presidential
5 election, “most egregiously in Georgia and Pennsylvania and Wisconsin.” Respondent further
6 stated that there had been “more than enough” absentee ballot fraud “to have affected the
7 outcome of the election.” Respondent made these statements with the intent to encourage the
8 audience listening to the radio program and the general public to question the legitimacy of the
9 election results. Respondent knew, or was grossly negligent in not knowing, that these
10 allegations regarding absentee ballot fraud were false and misleading, as respondent knew at the
11 time that there was no evidence upon which a reasonable attorney would rely of absentee ballot
12 fraud in any state in sufficient numbers that could have affected the outcome of the election. In
13 fact, respondent was informed by numerous credible sources, including the Attorney General of
14 the United States, that there was no evidence of widespread election fraud or illegality that could
15 have affected the outcome of the election.

16 12. On or about January 3, 2021, respondent wrote and sent to an attorney and strategic
17 advisor to Trump’s 2020 presidential campaign, with the intent of providing legal advice to
18 Trump and Pence, a six-page legal memorandum (the “six-page memo”) that, based on what the
19 memo asserted to be Pence’s legal authority to take unilateral action with respect to the electoral
20 votes of certain states on January 6, 2021, elaborated on the legal theory and strategies for action
21 by Pence initially presented in the two-page memo. The six-page memo advised that Pence had
22 legal authority to take various actions, including “determin[ing] on his own which [slate of
23 electors] is valid” or “adjourn[ing] the joint session of Congress.” The advice in the six-page
24 memo was again based on the assertion that there were “7 states with multiple ballots.”
25 Respondent knew, or was grossly negligent in not knowing, that this assertion was false and
26 misleading, in that, as respondent knew at the time: (a) pursuant to 3 U.S.C. § 6, the governor of
27 each of those states had submitted a certificate of ascertainment indicting that the Biden electors,
28 not the Trump electors, had been appointed because the Biden electors received more votes in

1 the election; (b) no other state official of any of those states had submitted a purported certificate
2 of ascertainment naming Trump electors; and (c) as a result, no legal authority on behalf of any
3 state had taken any action to support the contention that Trump electors were the legitimate
4 electors for any of the seven states. Indeed, subsequently, on or about January 10, 2021,
5 respondent acknowledged in an email that the purported the Trump electors from these seven
6 states, who had met on December 14, cast their electoral votes, and themselves transmitted those
7 votes to the Vice President, “had no authority” because “[n]o legislature [had] certified them.”

8 13. The six-page memo asserted that the election was tainted by “outright fraud (both
9 traditional ballot stuffing and electronic manipulation of voting tabulation machines).”

10 Respondent knew, or was grossly negligent in not knowing, that this assertion was false and
11 misleading because there was no evidence upon which a reasonable attorney would rely of
12 “outright fraud,” including either “traditional ballot stuffing” or “electronic manipulation of the
13 voting tabulation machines,” in any state involving enough votes to affect the outcome of the
14 election.

15 14. The six-page memo presented alternative scenarios for action under the heading “War
16 Gaming the Alternatives.” Those scenarios included several in which Pence, as the “ultimate
17 arbiter,” either unilaterally counted no electors for each of the seven states that had purportedly
18 submitted “dual slates of electors,” unilaterally sent the election to the House of Representatives
19 under the procedures established by the Twelfth Amendment, or unilaterally adjourned the Joint
20 Session without counting the electoral votes in the hope that Republican legislatures in the seven
21 states would later appoint or certify a slate of Trump electors.

22 15. The six-page memo stated that the proposed plan was “BOLD” but further stated that
23 “this Election was Stolen by a strategic Democrat plan to systematically flout existing election
24 laws for partisan advantage; we’re no longer playing by Queensbury Rules, therefore.”

25 Respondent knew, or was grossly negligent in not knowing, that this assertion was false and
26 misleading because there was no evidence upon which a reasonable attorney would rely of any
27 widespread election fraud or illegality, much less any widespread election fraud or illegality
28

1 resulting from a strategic Democrat plan to systematically flout existing election laws, that could
2 have affected the outcome of the election.

3 16. The six-page memo advised that if Pence “determine[d] that the ongoing election
4 challenges must conclude before ballots can be counted, and adjourns the joint session of
5 Congress,” then “[t]aking the cue, state legislatures [could] convene, order a comprehensive
6 audit/investigation of the election returns in their states, and then determine whether the slate of
7 electors initially certified is valid, or whether the alternative slate of electors should be certified
8 by the legislature.” Respondent cited 3 U.S.C. § 2 as the statutory basis for state legislatures’
9 purported legal authority to appoint or certify electors after Election Day. Respondent knew, or
10 was grossly negligent in not knowing, that 3 U.S.C. § 2 did not authorize any state legislature to
11 appoint or certify electors after Election Day in the factual circumstances present in the 2020
12 election.

13 17. The two-page and six-page memos proposed that Pence exercise unilateral authority
14 to resolve purported disputes regarding electoral votes or delay the counting of electoral votes.
15 Respondent proposed that Pence exercise this unilateral authority in the context of proposing a
16 detailed plan for Pence to take actions to reverse the legitimate results of the 2020 election to
17 secure Trump’s re-election in the context of a legal proceeding—the counting of electoral votes
18 at the Joint Session of Congress—that was not a judicial proceeding before a court. Respondent
19 advised Trump and Pence to “[l]et the other side challenge [Pence’s] actions in court” and
20 suggested that the plaintiffs “who would press a lawsuit would have their past position – that
21 these are non-justiciable political questions – thrown back at them, to get the lawsuit dismissed.”
22 Respondent’s proposed plan thus presupposed that Pence would take unilateral action without
23 subsequent judicial review of its legality.

24 18. Respondent knew, or was grossly negligent in not knowing, that the courses of action
25 he proposed to Pence in the two and six page memos were contrary to and unsupported by the
26 historical record, and contrary to and unsupported by established legal authority and precedent,
27 including the Electoral Count Act and the Twelfth Amendment. Respondent’s legal theory to
28 support his proposed courses of action was based on misinterpreted historical sources,

1 misinterpreted law review articles, and law review articles which he knew, or was grossly
2 negligent in not knowing, were themselves fundamentally flawed, such that no reasonable
3 attorney with expertise in constitutional or election law would conclude that Pence was legally
4 authorized to take the actions that respondent proposed. Moreover, in the course of an email
5 exchange with another individual in early October 2020, respondent himself had recognized that
6 these courses of action were improper. In that earlier email exchange, respondent stated that he
7 he did not agree that Pence, who serves as President of the Senate, could determine which votes
8 to count on January 6, 2021, because “3 U.S.C. § 12 says merely that [the President of the
9 Senate] is the presiding officer, and then it spells out specific procedures, presumptions, and
10 default rules for which slates will be counted. Nowhere does it suggest that the President of the
11 Senate gets to make the determination on his own. § 15 doesn’t, either.” In that earlier email
12 exchange, respondent further stated that he did not agree that, in the event of a dispute between a
13 state legislature and the state’s governor or popular vote regarding the appointment of electors,
14 the legislature determines the appointment of electors, stating “I don’t think [Article II] entitles
15 the Legislature to change the rules after the election and appoint a different slate of electors in a
16 manner different than what was in place on election day. And 3 U.S.C. § 15 gives dispositive
17 weight to the slate of electors that was certified by the Governor in accord with 3 U.S.C. § 5.”

18 19. On January 4, 2021, respondent and Trump invited Pence, Pence’s White House
19 Counsel Greg Jacob (“Jacob”), and Pence’s Chief of Staff Marc Short (“Short”) to the Oval
20 Office to discuss respondent’s memos and the plan for Pence to take unilateral action that would
21 result in Trump’s re-election. During the meeting, respondent presented only two courses of
22 action for Pence to take on January 6: to reject the electors from seven states that respondent
23 falsely and misleadingly asserted had submitted “dual slates of electors,” or delay the count to
24 give those states’ legislatures time to certify Trump’s electors using a purported authority that
25 respondent knew, or was grossly negligent in not knowing, they did not possess. During the
26 meeting on January 4, Pence stated to respondent that he did not possess the legal authority to
27 carry out either of respondent’s proposals.

28

1 20. On January 5, 2021, respondent met again with Jacob and Short. At the meeting,
2 respondent stated “I’m here asking you to reject the electors.” Jacob and respondent debated the
3 merits of respondent’s legal arguments. Over the course of their discussion, respondent retreated
4 from his initial request “to reject the electors,” shifting focus to asking Pence to delay the count
5 because delaying the count would be more “palatable.” During the discussion, respondent
6 conceded that the positions he was urging Pence to take were contrary to historical practice,
7 violated several provisions of statutory law, and would likely be unanimously rejected by the
8 Supreme Court.

9 21. The actions respondent proposed in his two-page and six-page memos, and that he
10 urged Pence to take in their meetings on January 4 and 5, 2021, provided support for messages
11 Trump sent to his followers on Twitter on the morning of January 6, 2021. On January 6, 2021,
12 at approximately 1:00 a.m., Trump sent a message to his followers on Twitter stating, “If Vice
13 President @Mike_Pence comes through for us, we will win the Presidency . . . Mike can send it
14 back!” At approximately 8:17 a.m., Trump sent another message on Twitter stating, “States
15 want to correct their votes . . . All Mike Pence has to do is send them back to the States, AND
16 WE WIN. Do it Mike, this is a time for extreme courage!”

17 22. On or about January 6, 2021, respondent spoke to a crowd of tens of thousands of
18 people who attended a rally, promoted as a “Save America” march, at the Ellipse of the National
19 Mall in Washington, D.C. Respondent’s speech was broadcast live on television. Respondent
20 was introduced by Rudy Giuliani as “Professor Eastman,” and described as “one of the
21 preeminent constitutional scholars in the United States.” In his speech, with the intent of
22 promoting doubt in the results of the election, respondent stated to the audience, “We know there
23 was fraud, traditional fraud that occurred. We know that dead people voted.” Respondent knew,
24 or was grossly negligent in not knowing, that, as an attempt to cast doubt on the results of the
25 election, this statement was false and misleading, in that, as respondent knew at the time, there
26 was no evidence upon which a reasonable attorney would rely of fraud in any state election,
27 involving deceased voters or otherwise, which could have affected the outcome of the election.
28 In fact, while Trump claimed that some 5,000 ballots in Georgia were cast by deceased voters,

1 the Georgia State Election Board found just four such votes, all of which had been returned by
2 relatives. Similarly, Michigan's Office of the Auditor General determined that only 1,616 votes
3 in Michigan, or 0.03% of the total ballots, were cast by voters who were deceased on Election
4 Day and primarily involved people who were alive when they voted prior to Election Day. And,
5 the Nevada Secretary of State determined that only 10 dead voters had ballots cast in their
6 names.

7 23. During his January 6 speech at the Ellipse, respondent also stated that Dominion
8 electronic voting machines had fraudulently manipulated the election results during the
9 November 3, 2020, presidential election and during the January 5, 2021, run-off election in
10 Georgia for its two Senate seats. Respondent stated that “[t]hey” put ballots “in a secret folder in
11 the machines, sitting there waiting until they know how many they need,” and that after the polls
12 closed, “unvoted ballots” were matched with “an unvoted voter” to fraudulently change the
13 election totals in favor of Joe Biden and the Democratic candidates in the Georgia runoff
14 election. Respondent further stated that analysis of the vote percentages showed that “they were
15 unloading the ballots from that secret folder, matching them—matching them to the unvoted
16 voter and voila we have enough votes to barely get over the finish line.” Respondent knew, or
17 was grossly negligent in not knowing, that these statements were false and misleading in that, as
18 respondent knew at the time:

- 19 a) There was no evidence upon which a reasonable attorney would rely of fraud
20 through electronic manipulation of Dominion voting tabulation machines. In fact,
21 respondent knew that on or about November 12, 2020, the Elections Infrastructure
22 Government Coordinating Council and the Election Infrastructure Sector
23 Coordinating Executive Committees issued a joint statement which stated that the
24 “2020 presidential election was the most secure in American history” and “there
25 was no evidence that any voting system deleted or lost votes, changed votes, or
26 was in any way compromised.” Furthermore, no reliable evidence emerged after
27 November 12, 2020, that there was any electronic manipulation of voting
28 tabulation.

1 b) No reasonable expert in statistical analysis of election results would conclude that
2 the vote percentages related to the Dominion voting machines indicated that the
3 machines had been used to fraudulently manipulate the election results.

4 24. On January 6, 2021, before the Joint Session of Congress began, Pence publicly
5 rejected respondent's proposed plan in a written statement that concluded: "It is my considered
6 judgment that my oath to support and defend the Constitution constrains me from claiming
7 unilateral authority to determine which electoral votes should be counted and which should not."
8 Respondent, however, concluded his January 6 speech at the Ellipse by stating: "And all we are
9 demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the state look
10 into this so we get to the bottom of it, and the American people know whether we have control of
11 the direction of our government, or not. We no longer live in a self-governing republic if we
12 can't get the answer to this question. This is bigger than President Trump. It is a very essence of
13 our republican form of government, and it has to be done. And anybody that is not willing to
14 stand up to do it, does not deserve to be in the office. It is that simple." Respondent knew, or
15 was grossly negligent in not knowing, that this assertion that Pence had the authority to delay the
16 counting of electoral votes at the Joint Session of Congress for any reason, including to give
17 states time to investigate purported voting irregularities, was contrary to and unsupported by the
18 historical record; that it was contrary to and unsupported by established legal authority and
19 precedent, including the Electoral Count Act and the Twelfth Amendment; and that no
20 reasonable attorney with expertise in constitutional or election law would conclude that Pence
21 was legally authorized to delay the counting of electoral votes at the Joint Session of Congress to
22 give states time to investigate purported voting irregularities.

23 25. After respondent completed his speech, Trump took the podium and stated to the
24 crowd and television audience: "Thank you very much, John. . . . John is one of the most brilliant
25 lawyers in the country, and he looked at this and he said, 'What an absolute disgrace that this can
26 be happening to our Constitution.' . . . Because if Mike Pence does the right thing, we win the
27 election. All he has to do, all this is, this is from the number one, or certainly one of the top,
28 Constitutional lawyers in our country. He has the absolute right to do it." Trump concluded his

1 speech by urging his supporters to walk with him to the Capitol: “Now, it is up to Congress to
2 confront this egregious assault on our democracy. And after this, we’re going to walk down, and
3 I’ll be there with you, we’re going to walk down, we’re going to walk down. . . . [W]e’re going
4 to try and give our Republicans, the weak ones because the strong ones don’t need any of our
5 help. We’re going to try and give them the kind of pride and boldness that they need to take back
6 our country. So let’s walk down Pennsylvania Avenue.”

7 26. After Trump’s speech, hundreds of protesters left the rally and stormed the Capitol
8 Building. Some of the protestors were armed with weapons, and the mob overwhelmed law
9 enforcement and violently broke into the Capitol in an attempt to prevent the Joint Session of
10 Congress from counting the electoral votes that would result in Biden’s victory. While the
11 violent protestors were attacking the Capitol Building, respondent and Trump continued to urge
12 Pence to delay the electoral vote count.

13 27. Shortly after 2:00 p.m., protestors broke windows and climbed into the Capitol
14 Building, opening doors for other protestors to enter the building. At approximately 2:20 p.m.,
15 Secret Service agents removed Pence from the Senate floor, and the Senate and House were
16 abruptly called to recess as the mob of protestors moved further into the building. At
17 approximately 2:24 p.m., Trump posted a message on Twitter stating "Mike Pence didn't have
18 the courage to do what should have been done to protect our Country and our Constitution."

19 28. At approximately 12:14 p.m. on January 6, 2021, Jacob had sent to respondent an
20 email that stated, “I just don’t in the end believe that there is a single Justice on the United States
21 Supreme Court, or a single judge on any of our Courts of Appeals, who is as ‘broad minded’ as
22 you when it comes to the irrelevance of statutes enacted by the United States Congress, and
23 followed without exception for more than 130 years.” The email closed by stating that Jacob
24 “ha[d] run down every legal trail placed before me to its conclusion, and I respectfully conclude
25 that as a legal framework, it is a results oriented position that you would never support if
26 attempted by the opposition, and essentially entirely made up.” At approximately 2:25 p.m.,
27 respondent replied to Jacob’s email, stating, “You think you can’t adjourn the session because
28 the [Electoral Count Act] says no adjournment, while the compelling evidence that the election

1 was stolen continues to build and is already overwhelming? The ‘siege’ is because YOU and
2 your boss did not do what was necessary to allow this to be aired in a public way so the
3 American people can see for themselves what happened.” Respondent knew that his statement
4 that there was “compelling” and “overwhelming” evidence that the election was “stolen” was
5 false and misleading, in that, as respondent knew at the time:

6 a) There was no evidence upon which a reasonable attorney would rely that the
7 election was “stolen” by the Democratic Party or any other actors. In fact,
8 respondent had been informed by numerous credible sources, including the
9 Attorney General of the United States, and knew, or was grossly negligent in not
10 knowing, that numerous courts had held, that there was no evidence of
11 widespread election fraud or illegality that could have affected the outcome of the
12 election.

13 b) There was no evidence upon which a reasonable attorney would rely of fraud
14 through electronic manipulation of voting tabulation machines. In fact, respondent
15 knew that on or about November 12, 2020, the Elections Infrastructure
16 Government Coordinating Council and the Election Infrastructure Sector
17 Coordinating Executive Committees issued a joint statement which stated that the
18 “2020 presidential election was the most secure in American history” and “there
19 was no evidence that any voting system deleted or lost votes, changed votes, or
20 was in any way compromised.” Furthermore, no reliable evidence emerged after
21 November 12, 2020, that there was any electronic manipulation of voting
22 tabulation.

23 29. At approximately 5:40 p.m., Capitol Police cleared and secured the Capitol building,
24 and Congressional leaders announced that they would proceed with counting the electoral votes.
25 At approximately 6:09 p.m., respondent sent Jacob another email which stated that “adjourn[ing]
26 to allow the state legislatures to continue their work” was the “most prudent course.”

27 30. At approximately 11:32 p.m., after a nearly nine-hour delay, the House and Senate
28 resumed the Joint Session. In an email to Jacob sent at approximately 11:44 p.m. on January 6,

1 2021, respondent stated, “The Senate and House have both violated the Electoral Count Act this
2 evening - they debated the Arizona objections for more than 2 hours. Violation of 3 USC 17.
3 And the VP allowed further debate or statements by leadership after the question had been voted
4 upon. Violation of 3 USC 17. And they had that debate upon motion approved by the VP, in
5 violation of the requirement in 3 USC 15 that after the vote in the separate houses, ‘they shall
6 immediately again meet.’ So now that the precedent has been set that the Electoral Count Act is
7 not quite so sacrosanct as was previously claimed, I implore you to consider one more relatively
8 minor violation [of the law] and adjourn for 10 days to allow the legislatures to finish their
9 investigations, as well as to allow a full forensic audit of the massive amount of illegal activity
10 that has occurred here.” At approximately 3:42 a.m. on January 7, 2021, Pence announced that a
11 majority of votes in the Electoral College votes had been cast for Biden and that Biden had thus
12 been elected to the presidency.

13 31. In engaging in the course of conduct that included the acts set forth in paragraphs 8
14 through 30 above, by which respondent proposed and attempted to convince Pence to execute a
15 plan unilaterally to reject the electoral votes of certain states or delay the count of electoral votes,
16 respondent did not act with intent either to reach an accurate and reasonable legal conclusion
17 regarding the scope of Pence’s authority under the Twelfth Amendment and the Electoral Count
18 Act or to take adequate steps to form an accurate and reasonable determination of whether the
19 election was affected by fraud or illegality involving enough votes to have affected the outcome
20 of the election.

21 32. By engaging in the course of conduct that included the acts set forth in paragraphs 8
22 through 30 above, respondent willfully failed to support the Constitution and the laws of the
23 United States, in violation of Business and Professions Code section 6068(a), in that:

- 24 a) Without legal or factual support, respondent sought to have Vice President Pence
25 unilaterally disregard the electoral votes of certain states or delay the counting of
26 electoral votes at the Joint Session of Congress, in violation of Article II, Section
27 1, and the Twelfth Amendment of the United States Constitution and the Electoral
28 Count Act (3 U.S.C. § 15);

- 1 b) Second, it alleged “[i]ntrastate differences in the treatment of voters, with more
2 favorable [treatment] allotted to voters – whether lawful or unlawful – in areas
3 administered by local government under Democrat control and with populations
4 with higher ratios of Democrat voters than other areas of Defendant States.”
- 5 c) Third, it alleged “[t]he appearance of voting irregularities in the Defendant States
6 that would be consistent with the unconstitutional relaxation of ballot-integrity
7 protections in those States’ election laws.”

8 35. The lawsuit sought an order from the Supreme Court to “enjoin the use of unlawful
9 election results without review and ratification by the Defendant States’ legislatures and remand
10 to the Defendant States’ respective legislatures to appoint Presidential Electors in a manner
11 consistent with the Electors Clause and pursuant to 3 U.S.C. § 2.”

12 36. Texas’ Motion for Leave to File Bill of Complaint made numerous specific factual
13 allegations, including the following:

- 14 a) Citing “rampant lawlessness arising out of Defendant States’ unconstitutional
15 acts,” the lawsuit asserted that “[t]aken together, these flaws affect an outcome-
16 determinative numbers of popular votes in a group of States that cast outcome-
17 determinative numbers of electoral votes.”
- 18 b) “Statewide election officials and local election officials in Philadelphia and
19 Allegheny Counties, aware of the historical Democrat advantage in those
20 counties, violated Pennsylvania’s election code and adopted the differential
21 standards favoring voters in Philadelphia and Allegheny Counties with the intent
22 to favor former Vice President Biden.”
- 23 c) “The probability of former Vice President Biden winning the popular vote in the
24 four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—
25 independently given President Trump’s early lead in those States as of 3 a.m. on
26 November 4, 2020, is less than one in a quadrillion, or 1 in
27 1,000,000,000,000,000. For former Vice President Biden to win these four States
28

1 collectively, the odds of that event happening decrease to less than one in a
2 quadrillion to the fourth power (i.e., 1 in 1,000,000,000,000,000⁴).”

- 3 d) “The same less than one in a quadrillion statistical improbability of Mr. Biden
4 winning the popular vote in the four Defendant States—Georgia, Michigan,
5 Pennsylvania, and Wisconsin— independently exists when Mr. Biden’s
6 performance in each of those Defendant States is compared to former Secretary of
7 State Hilary Clinton’s performance in the 2016 general election and President
8 Trump’s performance in the 2016 and 2020 general elections. Again, the
9 statistical improbability of Mr. Biden winning the popular vote in these four
10 States collectively is 1 in 1,000,000,000,000,000⁴.”

11 37. On or about December 9, 2020, respondent filed in the Supreme Court a motion on
12 behalf of President Donald Trump to intervene in *Texas v. Pennsylvania* in his capacity as a
13 candidate for re-election and a proposed Bill of Complaint, thereby attempting to join the case as
14 a plaintiff. In his motion, respondent expressly adopted the allegations contained in the Motion
15 for Leave to File Bill of Complaint filed by Texas on December 7, 2020.

16 38. Respondent knew that the factual allegations in the motion filed by Texas were false
17 and misleading, in that, as respondent knew at the time:

- 18 a) There was no evidence upon which a reasonable attorney would rely of fraud in
19 any state election in sufficient numbers that could have affected the outcome of
20 the election.
- 21 b) There was no evidence upon which a reasonable attorney would rely that election
22 officials in Philadelphia and Allegheny Counties had acted with the intent to favor
23 Biden in the election through the alleged violations of election codes or adoptions
24 of differential standards, or that the alleged violations of election codes or
25 adoptions of differential standards “affect[ed] an outcome-determinative numbers
26 of popular votes.”
- 27 c) Texas’ claims that the odds of Biden winning the popular vote in the Defendant
28 States were less than one in a quadrillion were based on statistical analysis that no

1 reasonable expert on statistical analysis would agree with. The claim was
2 supported by a declaration from Charles Cicchetti, who has a Ph.D. in economics.
3 Experts in statistics were highly critical of Cicchetti's statistical analysis and
4 found that he based his analysis on erroneous assumptions about the ways that
5 votes are distributed among geographic regions, demographics, and voting
6 methods.

7 39. By expressly adopting these false and misleading statements and presenting them to
8 the Supreme Court as a basis of relief for Trump, respondent sought to mislead the Supreme
9 Court by an artifice or false statement of fact or law, in willful violation of Business and
10 Professions Code, section 6068(d).

11
12 COUNT THREE

13 Case No. 21-O-11801
14 Business and Professions Code section 6106
15 [Moral Turpitude - Misrepresentation]

16 40. The allegations in paragraphs 8 through 10 above are incorporated here by reference.

17 41. On or about December 23, 2020, in the two-page memo that respondent wrote and
18 sent to an attorney and strategic advisor to Trump's 2020 presidential campaign, with the intent
19 of providing legal advice to Trump and Pence, respondent asserted that seven states that had
20 voted for Biden (Arizona, Georgia, Michigan, Pennsylvania Nevada, New Mexico, and
21 Wisconsin) "have transmitted dual slates of electors to the President of the Senate." Respondent
22 knew that this assertion was false and misleading in that, as respondent knew at the time:

- 23 a) Pursuant to 3 U.S.C. § 6, the governor of each of those states had submitted a
24 certificate of ascertainment naming the Biden electors, not Trump electors;
- 25 b) No other state official of any of those states had submitted a purported certificate
26 of ascertainment naming Trump electors; and
- 27 c) As a result, no legal authority on behalf of any state had taken any action to
28 support the contention that Trump electors were the legitimate electors for any of
the seven states.

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courthouse rather than their residence, and accepted votes cast by deceased individuals.

- b) Fulton County election officials “remove[d] suitcases of ballots from under a table where they had been hidden, and processed those ballots without open viewing by the public in violation of [state law].”

46. Respondent knew that these allegations regarding the administration of Georgia’s election were false and misleading, in that, as respondent knew at the time:

- a) There was no evidence upon which a reasonable attorney would rely that the alleged irregularities in Georgia, even collectively, occurred in sufficient number as to affect the outcome of the election in Georgia, as the margin of votes for Biden in Georgia was over 11,000 votes, and there was no evidence upon which a reasonable attorney would rely that the allegedly fraudulent or unlawful actions in the administration of Georgia’s election approached that margin.
- b) Fulton County election officials did not remove a suitcase of hidden ballots from under a table out of view of election observers and fraudulently process the ballots. In fact, video evidence established that the ballots at issue were in a room filled with people including election monitors, until the boxes—not suitcases—containing the ballots were placed under a table in preparation for the poll watchers to leave for the evening. Those boxes were reopened and their contents retrieved and scanned before poll watchers left when the state official monitor intervened, instructing the workers that they should remain to tabulate the votes. Furthermore, based upon the claim of fraudulent conduct, the Georgia Secretary of State conducted an investigation and determined that the video evidence did not show secreting and counting of illegal ballots, and there was no evidence of improper activity.

47. By including these false and misleading statements in the Verified Complaint for Emergency Injunctive and Declaratory Relief, respondent sought to mislead the court by an

1 artifice or false statement of fact or law, in willful violation of Business and Professions Code,
2 section 6068(d).

3
4 COUNT FIVE

5 Case No. 21-O-11801
6 Business and Professions Code section 6106
7 [Moral Turpitude - Misrepresentation]

8 48. The allegations in paragraph 11 above are incorporated here by reference.

9 49. On or about January 2, 2021, respondent appeared on the “Bannon’s War Room”
10 radio program, during which he was interviewed by program host Steve Bannon. According to
11 Bannon, the radio program had tens of millions of listeners. Respondent stated that there was
12 “massive evidence” of fraud involving absentee ballots in the November 3, 2020 presidential
13 election, “most egregiously in Georgia and Pennsylvania and Wisconsin.” Respondent further
14 stated that there had been “more than enough” absentee ballot fraud “to have affected the
15 outcome of the election.” Respondent made these statements with the intent to encourage the
16 audience listening to the radio program and the general public to question the legitimacy of the
17 election results.

18 50. Respondent knew, or was grossly negligent in not knowing, that these allegations
19 regarding absentee ballot fraud were false and misleading, as respondent knew at that time that
20 there was no evidence upon which a reasonable attorney would rely of absentee ballot fraud in
21 any state in sufficient numbers that could have affected the outcome of the election.

22 51. By making these false and misleading statements, with the intent to encourage the
23 general public to question the legitimacy of the election results, respondent committed an act
24 involving moral turpitude, dishonesty, and corruption in willful violation of Business and
25 Professions Code section 6106.

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

1 misrepresentation through gross negligence is a lesser included offense of intentional
2 misrepresentation.

3
4 COUNT SIX

5 Case No. 21-O-11801
6 Business and Professions Code section 6106
7 [Moral Turpitude - Misrepresentation]

8 53. The allegations in paragraphs 12 through 16 above are incorporated here by
9 reference.

10 54. On or about January 3, 2021, in the six-page memo that respondent wrote and sent to
11 an attorney and strategic advisor to Trump's 2020 presidential campaign, with the intent of
12 providing legal advice to Trump and Pence, respondent stated the following regarding the 2020
13 presidential election:

- 14 a) There had been "outright fraud" through "electronic manipulation of voting
15 tabulation machines."
16 b) There were "dual slates of electors from 7 states," because the Trump electors in
17 Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin
18 had met on December 14, 2020, cast their electoral votes for Trump, and
19 transmitted those votes to Pence.
20 c) The State of Michigan "[m]ailed out absentee ballots to every registered voter,
21 contrary to statutory requirement that voter apply for absentee ballots."
22 d) "[T]his Election was Stolen by a strategic Democrat plan to systematically flout
23 existing election laws for partisan advantage."

24 55. Respondent knew that these statements were false and misleading, in that, as
25 respondent knew at the time:

- 26 a) There was no evidence upon which a reasonable attorney would rely of fraud
27 through electronic manipulation of voting tabulation machines. Respondent knew
28 that on or about November 12, 2020, the Elections Infrastructure Government
Coordinating Council and the Election Infrastructure Sector Coordinating

1 Executive Committees issued a joint statement which stated that “The 2020
2 presidential election was the most secure in American history” and “there was no
3 evidence that any voting system deleted or lost votes, changed votes, or was in
4 any way compromised.” Furthermore, no reliable evidence emerged after
5 November 12, 2020, that there was any electronic manipulation of voting
6 tabulation.

7 b) No states had submitted legitimate, competing slates of electors. The governors of
8 Arizona, Georgia, Michigan, Pennsylvania Nevada, New Mexico, and Wisconsin
9 had each submitted a certificate of ascertainment pursuant to 3 U.S.C. § 6 naming
10 the Biden electors, not Trump electors. No other state official of any of those
11 states had submitted a purported certificate of ascertainment naming the Trump
12 electors, and no legal authority on behalf of any state had taken any action to
13 support the contention that the Trump electors were the legitimate electors for any
14 of the seven states.

15 c) The State of Michigan mailed to every registered voter applications to vote by
16 mail, not absentee ballots. That action did not violate the state’s prohibition on
17 sending absentee ballots without a prior request. Moreover, there was no evidence
18 upon which a reasonable attorney would rely that illegal votes by absentee ballots
19 in Michigan had affected the outcome of the election.

20 d) There was no evidence upon which a reasonable attorney would rely that the
21 election was “stolen” or that the Democratic Party planned to “systematically
22 flout existing election laws for partisan advantage.”

23 56. By including these false and misleading statements as a basis for the alternative legal
24 strategies proposed in the six-page memo, respondent committed an act involving moral
25 turpitude, dishonesty, and corruption in willful violation of Business and Professions Code
26 section 6106.

27 57. A violation of section 6106 may result from intentional conduct or grossly negligent
28 conduct. Respondent is charged with committing intentional misrepresentation. However, should

1 the evidence at trial demonstrate that respondent committed misrepresentation as a result of gross
2 negligence, respondent must still be found culpable of violating section 6106 because
3 misrepresentation through gross negligence is a lesser included offense of intentional
4 misrepresentation.

5
6 COUNT SEVEN

7 Case No. 21-O-11801
8 Business and Professions Code section 6106
9 [Moral Turpitude - Misrepresentation]

10 58. The allegations in paragraphs 22 through 25 are incorporated here by reference.

11 59. On or about January 6, 2021, during his speech to a crowd of tens of thousands of
12 people who attended a rally, promoted as a “Save America” march, held at the Ellipse of the
13 National Mall in Washington, D.C., respondent stated that Dominion electronic voting machines
14 had fraudulently manipulated the election results during the November 3, 2020, presidential
15 election and during the January 5, 2021, run-off election in Georgia for its two Senate seats.
16 Respondent stated that “[t]hey” put ballots “in a secret folder in the machines, sitting there
17 waiting until they know how many they need,” and that after the polls closed, “unvoted ballots”
18 were matched with “an unvoted voter” to fraudulently change the election totals in favor of Joe
19 Biden and the Democratic candidates in the Georgia runoff election. Respondent further stated
20 that analysis of the vote percentages showed that “they were unloading the ballots from that
21 secret folder, matching them—matching them to the unvoted voter and voila we have enough
22 votes to barely get over the finish line.”

23 60. Respondent knew that these statements were false and misleading in that, as
24 respondent knew at the time:

- 25 a) There was no evidence upon which a reasonable attorney would rely of fraud
26 through electronic manipulation of Dominion voting tabulation machines.
27 Respondent knew that on or about November 12, 2020, the Elections
28 Infrastructure Government Coordinating Council and the Election Infrastructure
Sector Coordinating Executive Committees issued a joint statement which stated

1 that “The 2020 presidential election was the most secure in American history” and
2 “there was no evidence that any voting system deleted or lost votes, changed
3 votes, or was in any way compromised.” Furthermore, no reliable evidence
4 emerged after November 12, 2020, that there was any electronic manipulation of
5 voting tabulation.

6 b) No reasonable expert in statistical analysis of election results would conclude that
7 the vote percentages related to the Dominion voting machines indicated that the
8 machines had been used to fraudulently manipulate the election results.

9 61. By making these false and misleading statements in his speech to protestors on
10 January 6, 2021, respondent committed an act involving moral turpitude, dishonesty, and
11 corruption in willful violation of Business and Professions Code section 6106.

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

18
19 COUNT EIGHT

20 Case No. 21-O-11801
21 Business and Professions Code section 6106
22 [Moral Turpitude - Misrepresentation]

23 63. The allegations in paragraphs 23 through 28 are incorporated here by reference.

24 64. On or about January 6, 2021, at approximately 2:25 p.m., while the Capitol was being
25 stormed by a crowd of violent protestors, in an email to Jacob sent with the intent to pressure
26 Pence to adjourn the Joint Session of Congress, respondent wrote: “You think you can’t adjourn
27 the session because the [Electoral Count Act] says no adjournment, while the compelling
28 evidence that the election was stolen continues to build and is already overwhelming? The

1 'siege' is because YOU and your boss did not do what was necessary to allow this to be aired in
2 a public way so that American people can see for themselves what happened."

3 65. Respondent knew that his statement that there was "compelling" and "overwhelming"
4 evidence that the election was "stolen" was false and misleading, in that, as respondent knew at
5 the time, there was no evidence upon which a reasonable attorney would rely that the election
6 was "stolen" by the Democratic Party or any other actors. In fact, respondent had been informed
7 by numerous credible sources, including the Attorney General of the United States, and knew
8 that numerous courts had held, that there was no evidence of widespread election fraud or
9 illegality that could have affected the outcome of the election.

10 66. By stating to Jacob, with the intent of pressuring Pence to adjourn the Joint Session of
11 Congress, that there was "compelling" and "overwhelming" evidence that the election was
12 "stolen," when respondent knew the statement was false and misleading, respondent committed
13 an act involving moral turpitude, dishonesty, and corruption in willful violation of Business and
14 Professions Code section 6106.

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

21
22 COUNT NINE

23 Case No. 21-O-11801
24 Business and Professions Code section 6106
[Moral Turpitude - Misrepresentation]

25 68. On or about January 18, 2021, the American Mind, a publication of the Claremont
26 Institute, published an article written by respondent regarding the November 3, 2020,
27 presidential election entitled "Setting the Record Straight on the POTUS 'Ask'." In the article,
28 respondent stated that illegal or fraudulent conduct had occurred during the election, including:

- 1 a) “in Fulton County, Georgia, where suitcases of ballots were pulled from under the
2 table after election observers had been sent home for the night;”
3 b) “in parts of Wayne County (Detroit), Michigan, where there are more absentee
4 votes cast than had been requested;” and
5 c) “in Antrim County, Michigan, where votes were electronically flipped from
6 Trump to Biden.”

7 69. Respondent knew that these statements were false and misleading in that, as
8 respondent knew at the time:

- 9 a) Fulton County election officials did not remove a suitcase of hidden ballots from
10 under a table out of view of election observers and fraudulently process the
11 ballots. In fact, video evidence established that the ballots at issue were in a room
12 filled with people including election monitors, until the boxes—not suitcases—
13 containing the ballots were placed under a table in preparation for the poll
14 watchers to leave for the evening. Those boxes were reopened and their contents
15 retrieved and scanned before poll watchers left when the state official monitor
16 intervened, instructing the workers that they should remain to tabulate the votes.
17 Furthermore, based upon the claim of fraudulent conduct, the Georgia Secretary
18 of State conducted an investigation and determined that the video evidence did
19 not show secreting and counting of illegal ballots, and there was no evidence of
20 improper activity.
- 21 b) The State of Michigan mailed to every registered voter applications to vote by
22 mail, not absentee ballots. That action did not violate the state’s prohibition on
23 sending absentee ballots without a prior request. Furthermore, while Trump
24 supporters made public claims that hundreds of thousands of absentee ballots
25 were sent to voters without a prior request, the Michigan Senate Oversight
26 Committee found that that “no evidence [was] presented to the Committee”
27 supporting that claim, and it appeared that many who claimed to have received an
28 unsolicited ballot actually received an absentee-ballot application, which is legal

1 under Michigan law. There was also no evidence that election workers in Wayne
2 County ran the same ballots through a tabulator multiple times. Moreover, there
3 was no evidence upon which a reasonable attorney would rely that illegal votes by
4 absentee ballots in Michigan had affected the outcome of the election.

- 5 c) There was no evidence upon which a reasonable attorney would rely that votes
6 were “electronically flipped from Trump to Biden” in Antrim County, Michigan.

7 70. By making these statements, when respondent knew they were false and misleading,
8 and with the intent to encourage the general public to question the legitimacy of the election
9 results, respondent committed an act involving moral turpitude, dishonesty, and corruption in
10 willful violation of Business and Professions Code section 6106.

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

17
18 COUNT TEN

19 Case No. 21-O-11801
20 Business and Professions Code section 6106
21 [Moral Turpitude]

22 72. The allegations in paragraphs 8 through 31 above are incorporated by reference.

23 73. Between on or about December 23, 2020, and on or about January 6, 2021,
24 respondent repeatedly proposed and sought to encourage that Pence exercise unilateral authority
25 to disregard the electoral votes of certain states or delay the counting of electoral votes. In
26 particular:

- 27 a) In the December 23, 2020, two-page memo, respondent asserted that “the
28 Constitution assigns th[e] power” to resolve disputes regarding electoral votes “to
the Vice President as the ultimate arbiter” and that Pence therefore could and

1 should take action to disregard the electoral votes of seven states that had voted
2 for Biden but had purportedly submitted dual slates of electors “without asking
3 for permission – either from a vote of the joint session or from the Court”;

4 b) In the January 3, 2021, six-page memo, respondent asserted that Pence, as the
5 “ultimate arbiter,” had legal authority to take various actions, including
6 “determin[ing] on his own which [slate of electors] is valid” or adjourn[ing] the
7 joint session of Congress,” and as a result could unilaterally count no electors for
8 each of seven states that had purportedly submitted dual slates of electors,
9 unilaterally send the election to the House of Representatives under the
10 procedures established by the Twelfth Amendment, or unilaterally adjourn the
11 Joint Session without counting the electoral votes in the hope that Republican
12 legislatures in the seven state would later appoint or certify a slate of Trump
13 electors;

14 c) In an email to Jacob sent at approximately 6:09 pm on January 6, 2021,
15 approximately one-half hour after Capitol Police had cleared and secured the
16 Capital building of protestors and Congressional leaders had announced that they
17 would proceed with counting the electoral votes, respondent stated that
18 “adjourn[ing] to allow the state legislatures to continue their work” was the “most
19 prudent course”; and

20 d) In an email to Jacob sent at approximately 11:44 p.m. on January 6, 2021, shortly
21 after the House and Senate resumed the Joint Session to count electoral votes,
22 respondent stated, “I implore you to consider one more relatively minor violation
23 [of the law] and adjourn for 10 days.”

24 74. Respondent knew that the courses of action he proposed to Pence were contrary to
25 and unsupported by the historical record, contrary to and unsupported by established legal
26 authority and precedent, including the Electoral Count Act and the Twelfth Amendment, and
27 based on the false premise that the seven states at issue had transmitted alternate slates of
28 electors. Respondent’s legal theory to support his proposed courses of action was based on

1 misinterpreted historical sources, misinterpreted law review articles, and law review articles
2 which he knew, or was grossly negligent in not knowing, were themselves fundamentally flawed,
3 such that no reasonable attorney with expertise in constitutional or election law would conclude
4 that Pence was legally authorized to take the actions that respondent proposed. Moreover, in the
5 course of an email exchange with another individual in early October 2020, respondent himself
6 had recognized that these courses of action were improper. In that earlier email exchange,
7 respondent stated that he he did not agree that Pence, who serves as President of the Senate,
8 could determine which votes to count on January 6, 2021, because “3 U.S.C. § 12 says merely
9 that [the President of the Senate] is the presiding officer, and then it spells out specific
10 procedures, presumptions, and default rules for which slates will be counted. Nowhere does it
11 suggest that the President of the Senate gets to make the determination on his own. § 15 doesn’t,
12 either.” In that earlier email exchange, respondent further stated that he did not agree that, in the
13 event of a dispute between a state legislature and the state’s governor or popular vote regarding
14 the appointment of electors, the legislature determines the appointment of electors, stating “I
15 don’t think [Article II] entitles the Legislature to change the rules after the election and appoint a
16 different slate of electors in a manner different than what was in place on election day. And 3
17 U.S.C. § 15 gives dispositive weight to the slate of electors that was certified by the Governor in
18 accord with 3 U.S.C. § 5.”

19 75. Respondent failed to state in either the two-page or six-page memo that the courses of
20 action he proposed to Pence were contrary to and unsupported by the historical record, and that
21 his legal theory was primarily based on law review articles and contrary to and unsupported by
22 established legal authority and precedent.

23 76. In discussions with Pence and Jacob on January 4 and 5, 2021, respondent conceded
24 that the positions he was urging Pence to take were contrary to historical practice, violated
25 several provisions of statutory law, and would likely be unanimously rejected by the Supreme
26 Court. Moreover, at approximately 12:14 p.m. on January 6, 2021, Jacob sent an email to
27 respondent which stated, “I just don’t in the end believe that there is a single Justice on the
28 United States Supreme Court, or a single judge on any of our Courts of Appeals, who is as

1 'broad minded' as you when it comes to the irrelevance of statutes enacted by the United States
2 Congress, and followed without exception for more than 130 years." The email closed by stating
3 that Jacob "ha[d] run down every legal trail placed before me to its conclusion, and I respectfully
4 conclude that as a legal framework, it is a results oriented position that you would never support
5 if attempted by the opposition, and essentially entirely made up." Nevertheless, in subsequent
6 emails sent to Jacob on January 6, 2021, at approximately 6:09 pm and 11:44 pm, respondent
7 continued to urge Pence to take unilateral action to adjourn the Joint Session and so delay the
8 counting of electoral votes.

9 77. By proposing to Pence that he had the legal authority to and should act unilaterally to
10 resolve purported disputes regarding electoral votes on January 6, 2021, or that he had the legal
11 authority unilaterally to delay certification of the votes, respondent advanced a radical and
12 incorrect theory of constitutional law and election law, based on misinterpreted historical
13 sources, misinterpreted law review articles, and law review articles which he knew, or was
14 grossly negligent in not knowing, were themselves fundamentally flawed, and on the false
15 premise that the seven states at issue had transmitted alternate slates of electors, such that no
16 reasonable attorney with expertise in constitutional law or election law would conclude that
17 Pence was legally authorized to take the actions that respondent proposed. Respondent advanced
18 this theory and proposed that Pence take these actions where the outcome of a presidential
19 election was at stake, courts were unlikely to be in a position to intervene, and the intended result
20 of the proposed actions, the reversal of the outcome of the 2020 presidential election, risked
21 significant foreseeable harm. By advancing this theory and proposing that Pence take these
22 actions under the circumstances set forth above, respondent committed acts of moral turpitude,
23 dishonesty, and corruption in willful violation of Business and Professions Code section 6106.

24 78. A violation of section 6106 may result from intentional conduct or grossly negligent
25 conduct. Respondent is charged with committing intentional acts of moral turpitude, dishonesty,
26 or corruption. However, should the evidence at trial demonstrate that respondent committed the
27 acts as a result of gross negligence, respondent must still be found culpable of violating section
28

1 6106 because acts of moral turpitude, dishonesty, or corruption through gross negligence are a
2 lesser included offense of intentional acts of moral turpitude, dishonesty, or corruption.

3
4 COUNT ELEVEN

5 Case No. 21-O-11801
6 Business and Professions Code section 6106
7 [Moral Turpitude]

8 79. The allegations in paragraphs 8 through 31 above are incorporated here by reference.

9 80. On or about January 6, 2021, respondent spoke to a crowd of tens of thousands of
10 people who attended a rally, promoted as a “Save America” march, at the Ellipse of the National
11 Mall in Washington, D.C. During his speech, respondent stated to the crowd that fraud had
12 occurred in the November 3, 2020, presidential election, including a claim that “dead people had
13 voted” and that Dominion electronic voting machines had fraudulently manipulated the election
14 results. Respondent made these statements with the intent to convince the listener that the
15 outcome of the presidential election had been affected by fraud. Respondent further stated, “[A]ll
16 we are demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the
17 state look into this so we get to the bottom of it . . .” Respondent made these statements with the
18 intent to encourage the crowd of protestors to doubt the results of the election and to believe that
19 Pence had the legal authority to delay the counting of electoral votes.

20 81. By telling the crowd of protestors, from a position of authority as a professor and
21 purported “preeminent constitutional scholar,” that fraud had occurred in the election, that dead
22 people had voted, that electronic voting machines had been used to fraudulently alter the election
23 results, that Pence had authority to delay the counting of votes, and that Pence did not deserve to
24 be in office if he did not delay the counting of votes, respondent made false and misleading
25 statements that contributed to provoking the crowd to assault and breach the Capitol in an effort
26 to intimidate Pence and prevent the electoral count from proceeding, when such harm was
27 foreseeable, and thereby committed an act of moral turpitude, dishonesty, and corruption in
28 willful violation of Business and Professions Code section 6106.

1 82. A violation of section 6106 may result from intentional conduct or grossly negligent
2 conduct. Respondent is charged with committing intentional acts of moral turpitude, dishonesty,
3 or corruption. However, should the evidence at trial demonstrate that respondent committed the
4 acts as a result of gross negligence, respondent must still be found culpable of violating section
5 6106 because acts of moral turpitude, dishonesty, or corruption through gross negligence are a
6 lesser included offense of intentional acts of moral turpitude, dishonesty, or corruption.

7
8 **NOTICE - INACTIVE ENROLLMENT!**

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

17 **NOTICE - COST ASSESSMENT!**

18 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**
19 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**
20 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**
21 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**
22 **PROFESSIONS CODE SECTION 6086.10.**

23 **NOTICE – MONETARY SANCTION!**

24 **IN THE EVENT THIS MATTER RESULTS IN ACTUAL SUSPENSION,**
25 **DISBARMENT, OR RESIGNATION WITH CHARGES PENDING, YOU**
26 **MAY BE SUBJECT TO THE PAYMENT OF A MONETARY SANCTION**
27 **NOT TO EXCEED \$5,000 FOR EACH VIOLATION, TO A MAXIMUM OF**
28 **\$50,000 PER DISCIPLINARY ORDER, PURSUANT TO BUSINESS AND**
PROFESSIONS CODE SECTION 6086.13. SEE RULE 5.137, RULES OF
PROCEDURE OF THE STATE BAR OF CALIFORNIA.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: January 26, 2023

By: 
Duncan Carling
Supervising Attorney

DECLARATION OF SERVICE

CASE NUMBER(s): 21-O-11801

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

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

NOTICE OF DISCIPLINARY CHARGES

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

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

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

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

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

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

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

By Electronic Service: (CCP § 1010.6 and Rules of Proc. of State Bar, rule 5.26.2)

Based on rule 5.26.2, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the above-named document(s) to be transmitted by electronic means to the person(s) at the electronic address(es) listed below. If there is a signature on the document(s), I am the signer of the document(s), I am the agent of, or I am serving the document(s) at the direction of, the signer of the document(s). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article 9414 7266 9904 2171 3860 94 at Los Angeles, addressed to: (see below)

No.:

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking addressed to: (see below)

No.:

Table with 4 columns: Person Served, Business Address, Fax Number, and Courtesy Copy via Email To. Row 1: RANDALL ALLEN MILLER, MILLER LAW ASSOCIATES, APC, 411 S HEWITT ST, LOS ANGELES, CA 90013-2215, Olga Gorbunkova (olga@millerlawapc.com), Yvette Blandon (yvette@millerlawapc.com)

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

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

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

DATED: January 26, 2023

SIGNED:

Sandra Jones signature and name: SANDRA JONES Declarant