

S273590

Case No. S_____

SUPREME COURT OF THE STATE OF CALIFORNIA

GREGORY HARPER et. al.

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent,

PETITION FOR REVIEW

APPEAL FROM A DECISION OF THE REVIEW DEPARTMENT
OF THE STATE BAR COURT OF CALIFORNIA

ATTORNEY FOR PETITIONER
GREGORY HARPER IN PRO PER

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STATEMENT OF ISSUES PRESENTED

WHETHER THE STATE BAR COURT COMPLIED FULLY WITH THE CALIFORNIA SUPREME COURT ORDER OF JANUARY 27, 2021

INTRODUCTION

In response to Gregory Harper's Petitions for Review, on August 9, 2020, the California Supreme Court (hereinafter referred to as Supreme Court) remanded the matter to State Bar Court to address racial discrimination and disparate impact regarding his discipline. On January 27, 2021 the Supreme Court remanded the matter to the State Bar Court Hearing Department for further evidentiary hearings to determine if Harper was discriminated against based upon his race. The petitions to the Supreme Court were based upon a state Bar commissioned study of racial disparities in State Bar discipline by Andrew Farkas of U.C. Irvine. The Supreme Court specifically ordered that; *"The Hearing department shall reopen discovery to permit Harper to obtain all data reviewed for purposes of the Farkas study and the Robertson report with identifying information redacted."*¹

Harper has not been able to obtain all data reviewed by Farkas and

¹*In re Gregory Harper on Discipline S265240*

1 **Robertson**

2 To date, Harper has not been permitted to obtain all data reviewed by Farkas
3 and Robertson. The State Bar Office of the Chief Trial Counsel (OCTC) initially
4 provided some statistical information. That information is not all data reviewed by
5 Farkas and Robertson.² Harper seeks to determine and obtain the data Farkas and
6 Robertson reviewed for their study and report. However, the Hearing Department
7 will not permit Harper to obtain the information through the discovery process.
8 While the parties in this case may use expert witnesses, the data that so far is
9 unavailable to Harper is a requirement of any expert witness he will employ.

10 **WHY REVIEW SHOULD BE GRANTED**

11 Harper is unable to proceed because discovery has not been reopened. He is
12 therefore being denied equal protection and his due process rights. We are in a
13 time in American history when the country and the State Bar are still addressing
14 racial discrimination in the legal field, particularly against Black men, their lives
15 and livelihoods.³ As stated by the State Bar at page 4 in its Diversity, Equity and
16 Inclusion plan, “Our present times, a period in which we find ourselves radically
17 altered by a global pandemic *and a national reckoning on the brutal reality of*
18 *systemic racism in America*, have not been overlooked by the State Bar.”⁴ This is
19 an opportunity to do so. It is undisputed race does matter, especially in the legal
20 field.⁵ Anecdotally many have noticed disparities in treatment of Black male
21

22 ²Declaration and supplemental declaration of Ron Pi, custodian of records.

23 ³For example, George Floyd killed by a Minneapolis police officer following arrest for
24 passing an alleged counterfeit \$20 bill.

25 ⁴See <http://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Reports>

26 ⁵ See *Why Are There So Few Black Lawyers in Corporate Law Firms--An Institutional*
27 *Analysis* Wilkins, David B. Gulati, G. California Law Review, May 1996 Mitu;
28

1 attorneys in the State Bar disciplinary system thus prompting the Farkas study
2 and Robertson report. The disparate impact and treatment regarding Harper's
3 discipline and the weight placed upon his prior discipline for reportable action bank
4 matters cannot adequately be examined.

5 Notwithstanding the Hearing Department recommended disbarment for a third
6 offense. Discipline imposed for the 1992 offense was probation. The 2003 case
7 carried an actual suspension for 90 days. Again, there was no theft or fraud. While
8 there was technical non-compliance with trust accounting rules, similarly situated
9 white male attorneys suffered no or substantially lighter discipline.⁶ Pursuant to
10 the Supreme Court edict, Harper seeks to introduce this evidence and is unable to
11 do so.

12 The State Bar itself is now under investigation as to why it did not protect the
13 public and made "mistakes" in applying its disciplinary policies and procedures
14 such that it commissioned a study on trust accounting. The State Bar recognized
15 its policies are inadequate and is in receipt of recommendations for comprehensive
16 change.⁷ This case involves racial discrimination through disparate impact and
17 treatment in State Bar court proceedings where discovery is limited. It is either
18 voluntary or by court Order. Here, since the court and the State Bar Office of Chief
19 Trial Counsel (OCTC) have not provided a factual definitive and conclusive
20

21 _____
22 [www.dailyjournal.com/articles/354897-missed-opportunity-to-make-sense-of-discipline](http://www.dailyjournal.com/articles/354897-missed-opportunity-to-make-sense-of-discipline-discrimination-study)
23 [discrimination-study](http://www.dailyjournal.com/articles/354897-missed-opportunity-to-make-sense-of-discipline-discrimination-study)

24 ⁶For example, the Matter of Thomas V. Girardi SBN #36603. While the State Bar
25 eventually admitted "mistakes" in handling of the matter of Thomas V. Girardi resulting in no
26 discipline, it appears disparate treatment permitting misappropriation of millions of dollars
misappropriated, notwithstanding State Bar complaints for over 40 years.

27 ⁷*Final Report and Recommendations from the Committee on Special Discipline Case*
28 *Audit for the Development of a California Trust Account Program State Bar Trustees meeting*
Agenda Item 701 November 18, 2021 Jose Cisneros

1 statement as to what data was reviewed by professors Farkas and Robertson
2 discovery is necessary. As contractors with OCTC they have been continuously
3 available to it. Neither will communicate with Harper without a court order. Of
4 paramount importance to Harper is that notwithstanding facially neutral policies,
5 he and other Black male attorneys receive substantially harsher discipline than
6 white male attorneys and, are disbarred at a rate four times greater than white
7 male attorneys.⁸

8 Harper's appeals of the disbarment recommendation was based partially on the
9 2019 State Bar sponsored study of racial disparities in discipline by Andrew Farkas
10 of UC Irvine and, a follow up report in 2020 by professor Christopher Robertson of
11 Boston University covering disciplinary actions from 1990 through 2018.⁹ The
12 Supreme Court ordered further evidentiary hearings including discovery of
13 necessary information, regarding this alleged racial discrimination, especially
14 whether Harper was disciplined more harshly than any similarly situated white
15 male attorney. An additional order following Harper's request to be reactivated
16 pending this process was denied with a proviso that the reactivation issue be
17 reexamined once Harper had been through the process.¹⁰

18 **Similarly Situated white Male Attorneys**

19
20 Nevertheless, in 2021, following revelations first reported by the Los Angeles
21 Times hereinafter referred to as Times) that notwithstanding complaints during the
22 same time period and further, a similarly situated white male attorney, Thomas V.
23 Girardi also had unprosecuted reportable bank matters. The Times reported
24 Girardi avoided criminal prosecution due to complications from Alzheimer disease

25
26 ⁸ See Farkas study.

27 ⁹See Farkas study and Robertson report.

28 ¹⁰Se In Re Gregory Harper on discipline [S268240]

1 and dementia. Girardi defaulted when prosecuted for misappropriations of over 2
2 million dollars. Girardi was accused, without prior State Bar prosecution with
3 misappropriating upwards of 25 million dollars from clients and failing to pay
4 vendors, suppliers, other attorneys and liens.¹¹ Following demands from the
5 California Legislature, the State Bar hired outside counsel to investigate why, in
6 light of multiple complaints of reportable action bank matters for over 40 years the
7 public apparently was never protected from Girardi's conduct.¹² The issue of why
8 and how this happened and subsequent demand for Girardi's State Bar records is
9 being contested by the State Bar in the California Supreme Court.¹³¹⁴

10 **Denial of Due Process**

11 Harper is also being denied his Constitutional right to due process.¹⁵ Harper is
12 unable to adequately proceed without a loss of his due process rights. The
13 California Supreme Court remanded the matter to the State Bar Court Hearing
14 Department specifically to conduct further evidentiary hearings as to disparate
15 impact and disparate treatment and, the hearing department was specifically
16 ordered to:
17

- 18 1. Determine whether the State Bar's facially neutral disciplinary practices at

19
20 ¹¹[https://www.latimes.com/california/story/2021-03-06/how-california-state-bar-enabled-](https://www.latimes.com/california/story/2021-03-06/how-california-state-bar-enabled-tom-girardi)
21 [tom-girardi](https://www.latimes.com/california/story/2021-03-06/how-california-state-bar-enabled-tom-girardi)

22 ¹²[https://www.law.com/therecorder/2022/01/24/state-bar-hires-outside-counsel-to-investi](https://www.law.com/therecorder/2022/01/24/state-bar-hires-outside-counsel-to-investigate-handling-of-girardi-complaints/)
23 [gate-handling-of-girardi-complaints/](https://www.law.com/therecorder/2022/01/24/state-bar-hires-outside-counsel-to-investigate-handling-of-girardi-complaints/)

24 ¹³*Los Angeles Times Communications v State Bar S269401*

25 ¹⁴In response to the State Bar admitting "mistakes" in handling of complaints against
26 Girardi, it commissioned a study that recognized the State Bar's methods for handling attorney
27 trust issues were deficient and recommended new rules to take effect in 2022. One
28 recommendation is that in instances where there was No fraud or theft there should be no
discipline.

¹⁵US Constitution Article 14; California Constitution Article I, section 8.

1 issue including, but not limited to the weight given petitioner's previous
2 discipline for reportable action bank matters, had the effect of discriminating
3 against Harper based on race.¹⁶

- 4 2. The Supreme Court further ordered The State Bar court to determine whether
5 Harper was disciplined more harshly than a similarly situated white male
6 attorney based on the data underlying the Farkas study and the Robertson
7 report and to reopen discovery to permit Harper to obtain all data reviewed for
8 purposes of the Farkas study and Robertson report.¹⁷

9 While discovery has been reopened, the reopening is limited. In furtherance of
10 the Supreme Court Remand Order, the Hearing Department promulgated a burden
11 of proof Harper must meet.¹⁸ However, Harper must have the necessary evidence.
12 To date, the State Bar has only produced some incomplete statistics which were not
13 the only information used by Farkas and Robertson.¹⁹ Most recently, OCTC
14 produced Harper's prior investigative and complaint files.²⁰

15 Notwithstanding the limited voluntary compliance by the State Bar Office of
16 Chief Trial Counsel (OCTC), the Hearing Department must issue Harper an Order
17 for any discovery. Thus far, Harper's requests for discovery have been futile.

18 **The Hearing Department is not in compliance with the Supreme Court**
19 **Order.**

20 Here, the Hearing Department has determined while Harper may petition for
21

22 ¹⁶See, *In re Gregory Harper on Discipline S265240*

23 ¹⁷See fn6

24 ¹⁸See hearing department order.

25 ¹⁹See declaration and supplemental declaration of Ron Pi. The records produced are not
26 in compliance with the January 27, 2021 Remand Order.

27 ²⁰The most recent disclosure follows motions for discovery by Harper.

1 discovery it has ruled the OCTC is in compliance with the Supreme Court mandate.
2 Harper is unable to obtain an expert witness as all candidates have informed
3 Harper they need all of the data reviewed by Farkas and Robertson. Harper cannot
4 provide it. Therefore, review should be granted to address the denial of due process.

5 **FACTUAL AND PROCEDURAL BACKGROUND**

6 The discovery process thus far includes OCTC providing Harper with limited
7 statistical data.²¹ OCTC has also provided after repeated requests Harper's prior
8 complaints and discipline files from 1992 and 2003. Given the amount of time
9 required to properly address the disparate impact analysis, the Petitioner filed a
10 motion to be restored to active status pending a review of the data or other actions
11 by the review department which was denied.

12 **LEGAL DISCUSSION**

13 **I. HARPER IS UNABLE TO FULLY UTILIZE THE SUPREME** 14 **COURT'S ORDER**

15 **A. What is data?**

16 Data is information. *National Lawyers Guild v City of Hayward* 9 Cal.5th 488
17 (2020) [Public Record Act response involving video]; *Ibarra v Superior Court*, 217
18 *Cal.App.4th* 695 (2017) [Personal information in personnel records.]; *City of Los*
19 *Angeles v Superior Court* 111 Cal.App.4th 883 (2003) [Payroll records and other
20 personal information]; *Federated Police Officers Association v Superior Court* 218
21 Cal.App.4th 18 (2013) [Reports and other information on police officers].
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25 ²¹ The link to the data is as follows:
26 [https://castatebar-my.sharepoint.com/:f/g/personal/ron_pi_calbar_ca_gov/Ert-In7XmKdIrAgUw](https://castatebar-my.sharepoint.com/:f/g/personal/ron_pi_calbar_ca_gov/Ert-In7XmKdIrAgUw3qD1TwBGd_xSiyzDWvjykh9X9IyGA?e=7bb8rP)
27 [3qD1TwBGd_xSiyzDWvjykh9X9IyGA?e=7bb8rP](https://castatebar-my.sharepoint.com/:f/g/personal/ron_pi_calbar_ca_gov/Ert-In7XmKdIrAgUw3qD1TwBGd_xSiyzDWvjykh9X9IyGA?e=7bb8rP)
28 Password: SungTang@300

1 Notwithstanding the Hearing Department recommended disbarment for a
2 third offense. Discipline imposed for the 1992 offense was probation. The 2003 case
3 carried an actual suspension for 90 days. Again, there was no theft or fraud. While
4 there was technical non-compliance with trust accounting rules, similarly situated
5 white male attorneys suffered no or substantially lighter discipline.²² Pursuant to
6 the Supreme Court edict, Harper seeks to introduce this evidence and is unable to
7 do so.
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10 The State Bar itself is now under investigation why it did not protect the public
11 and made “mistakes” in applying its disciplinary policies and procedures such that
12 it commissioned a study on trust accounting. The State Bar recognized its policies
13 are inadequate and is in receipt of recommendations for comprehensive change.²³
14 This case involves racial discrimination through disparate impact and treatment in
15 State Bar court proceedings where discovery is limited. It is either voluntary or by
16 court Order. Here, since the court and the State Bar Office of Chief Trial Counsel
17 (OCTC) have not provided a factual definitive and conclusive statement as to what
18 data was reviewed by professors Farkas and Robertson discovery is necessary. As
19 contractors with OCTC they have been available to them. Neither will
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25 eventually admitted “mistakes” in handling of the matter of Thomas V. Girardi resulting in no
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notwithstanding State Bar complaints for over 40 years.

27 ²³*Final Report and Recommendations from the Committee on Special Discipline Case*
28 *Audit for the Development of a California Trust Account Program State Bar Trustees meeting*
Agenda Item 701 November 18, 2021 Jose Cisneros

1 communicate with Harper without a court order. Of paramount importance to
2 Harper is that notwithstanding facially neutral policies, he and other Black male
3 attorneys receive substantially harsher discipline than white male attorneys and,
4 are disbarred at a rate four times greater than white male attorneys.²⁴

5
6 While, the State Bar's mission is to protect the public it should treat
7 everyone fairly. Harper's challenge of the recommendation was based on partially
8 the 2019 State Bar sponsored study of racial disparities in discipline by Andrew
9 Farkas of UC Irvine and, a follow up report in 2020 by professor Christopher
10 Robertson of Boston University covering disciplinary actions from 1990 through
11 2018.²⁵ The Supreme Court ordered further evidentiary hearings including
12 discovery of necessary information, regarding this alleged racial discrimination,
13 especially whether Harper was disciplined more harshly than any similarly
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21 Girardi also had unprosecuted reportable bank matters. The Times reported
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27 ²⁴ See Farkas study.

28 ²⁵ See Farkas study and Robertson report.

1 Girardi avoided criminal prosecution due to complications from Alzheimer disease
2 and dementia. Girardi defaulted when prosecuted for misappropriations of over 2
3 million dollars. Girardi was accused, without prior State Bar prosecution with
4 misappropriating upwards of 25 million dollars from clients and failing to pay
5 vendors, suppliers, other attorneys and liens.²⁶ Following demands from the
6 California Legislature, the State Bar hired outside counsel to investigate why, in
7 light of multiple complaints of reportable action bank matters for over 40 years the
8 public apparently was never protected from Girardi's conduct.²⁷ The issue of why
9 and how this happened and subsequent demand for Girardi's State Bar records is
10 being contested by the State Bar in the California Supreme Court.²⁸²⁹

14 CONCLUSION

15 Due to the non-compliance with the Supreme Court Order, Harper is unable to
16 access Farkas or Robertson without court orders for discovery. The information is
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20 ²⁶<https://www.latimes.com/california/story/2021-03-06/how-california-state-bar-enabled-tom-girardi>

21
22
23 ²⁷<https://www.law.com/therecorder/2022/01/24/state-bar-hires-outside-counsel-to-investigate-handling-of-girardi-complaints/>

24
25 ²⁸*Los Times Communications v State Bar S269401*

26
27 ²⁹In response to the State Bar admitting "mistakes" in handling of complaints against
28 Girardi, it commissioned a study that recognized the State Bar's methods for handling attorney trust issues were deficient and recommended new rules to take effect in 2022. A recommendation is that in instances where there was no fraud or theft there should be no discipline.

1 clearly relevant and must be provided. To do less is a violation of the Supreme
2 Court order and a denial of due process. It has been over a year since the Supreme
3 Court's order. It has been 5 years since this case was filed by OCTC. Given the
4 proposed rule changes in trust accounting, the time between the violations in 1992,
5 2003 and 2017, there may not have been any disciplinary action. If Harper had
6 been treated like many similarly situated white male attorneys his discipline would
7 not have been so draconian. Indeed, disbarment here is unduly harsh, unwarranted
8 and unjust. There was no fraud or theft. Given the above and the passage of time
9 Harper requests being returned to the active rolls of attorneys pending the
10 resolution of this matter.
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14 Therefore, in light of the foregoing the Petitioner herein requests this Petition
15 be granted.

16 Dated: March 14, 2022

17 Respectfully submitted,

18 /s/ GREGORY HARPER
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TABLE OF AUTHORITIES

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US Constitution Article 14.....6

State Bar Board of Trustees Reports

Final Report and Recommendations from the Committee on Special Discipline Case Audit for the development of a California Trust Account Program State Bar Trustees Meeting Agenda Item 701 November 18, 2021 Jose Cisneros6, 9

WORD COUNT

CERTIFICATE OF COMPLIANCE Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of Gregory Harper is produced using 12-point Century Schoolbook type including footnotes and contains approximately 2782 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: March 14, 2022

/s/Gregory Harper
Attorney in Pro Per


STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT
En Banc

FILED
2/9/2022 *✓*
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	17-O-01313
)	
GREGORY HARPER,)	ORDER
)	
State Bar No. 146119.)	
_____)	

On December 27, 2021, respondent Gregory Harper filed three pleadings all titled Request for Interlocutory Review, with attached appendices. Harper challenges a hearing judge's December 8, 2021 order regarding Harper's second motion to compel further discovery. On January 7, 2022, we ordered the Office of Chief Trial Counsel of the State Bar (OCTC) to respond to respondent's pleadings pursuant to rule 5.150(E) of the Rules of Procedure of the State Bar. OCTC filed its response on January 19, 2022. Respondent had 10 days after service of the response to file a reply, which he did not do.

After considering the pleadings, we find respondent has failed to show abuse of discretion or error of law by the hearing judge in the December 8, 2021 order. Therefore, his petitions are denied. (Rules Proc. of State Bar, rule 5.150(K).)



Acting Presiding Judge

CERTIFICATE OF ELECTRONIC SERVICE

(Rules Proc. of State Bar, rule 5.27.1.)

I, the undersigned, certify that I am a Court Specialist of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, on February 9, 2022, I transmitted a true copy of the following document(s):

ORDER FILED FEBRUARY 9, 2022

by electronic service to Gregory Harper at the following electronic service address as defined in rule 5.4(29) and as provided in rule 5.26.1 of the Rules of Procedure of the State Bar:

ghlaw@pacbell.net

by electronic service to Christopher G. Jagard at the following electronic service address as defined in rule 5.4(29) and as provided in rule 5.26.1 of the Rules of Procedure of the State Bar:

Christopher.Jagard@calbar.ca.gov

The above document(s) was/were served electronically. My electronic service address is ctroomA@statebarcourt.ca.gov and my business address is 845 South Figueroa Street, Los Angeles, CA 90017.

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

Date: February 9, 2022



Julieta Gonzalez
Court Specialist
State Bar Court

Exhibit A Ron Pi Declaration

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1. I am a Principal Program Analyst in the Office of Research and Institutional Accountability (“ORIA”) of the State Bar of California (“State Bar”). I am a duly authorized custodian of records for ORIA and in that capacity I am authorized to certify the authenticity of State Bar records. I have personal knowledge of the matters stated herein, and if called as a witness, I could and would testify competently thereto.

3. I was the principal State Bar staff member responsible for providing data to Professor George Farkas for the study dated October 31, 2019, entitled “Discrepancies by Race and Gender in Attorney Discipline by the State Bar of California: An Empirical Analysis.”

5. To provide Professors Farkas with the information necessary to produce the aforementioned report, I extracted data from the State Bar's discipline case management system and transformed that data into datasets that measures the complaint and discipline history of a cohort of attorneys who were admitted to the Bar from 1990 to 2009, with their complaint and discipline history tracked through the end of 2018.

Declaration of Ron Pi (Custodian of Records)

herein by following the general guidelines as promulgated by the Inter-university Consortium for Political and Social Research (ICPSR), which are widely adopted by peer-review journals to ensure data transparency in social science research.*

- “Data dictionary for datasets used in Farkas study.xlsx” lists the variables in the two data files, along with brief description of the variables;
- “Allegation and Associated Rule.xlsx” describes variable allegations and their categorization details used in the analyses;
- “ana_final_phase.do” is the original Stata script file with Stata code used to run various regression models presented in the report;
- “cohort_report_final.dta” provides the raw data in the native Stata format used in running various regression models, with the data file converted to CSV format;
- “cohort_report_final.csv” provides the same data file as above but converted to CSV format;
- “complnt_summary.dta” provides allegation data for generating summary statistics presented in the report;
- “complnt_summary.csv” contains the same data as above but converted to CSV format.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 7, 2021 at Fremont, California.

Ron Pi

RON PI

*See ISPSR’s website: <https://www.icpsr.umich.edu/web/pages/deposit/guide/index.html>.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **HARPER V STATE BAR OF
CALIFORNIA**

Case Number: **TEMP-4GWZ0892**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **ghlaw@pacbell.net**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	Petition for Review

Service Recipients:

Person Served	Email Address	Type	Date / Time
GREGORY HARPER Harper Legal Group Pro Per	ghlaw@pacbell.net	e-Serve	3/14/2022 6:39:57 PM
Christopher Jagard 191147	christopher.jagard@calbar.ca.gov	e-Serve	3/14/2022 6:39:57 PM
George Hue	george.hue@calbar.ca.gov	e-Serve	3/14/2022 6:39:57 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/14/2022

Date

/s/GREGORY HARPER

Signature

HARPER, GREGORY (Pro Per)

Last Name, First Name (PNum)

Harper Legal Group

Law Firm