

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BAHMAN KHODAYARI,

Plaintiff and Appellant,

v.

CHARLES MASHBURN,

Defendant and Respondent.

B231779

(Los Angeles County  
Super. Ct. No. BC448748)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[CHANGE IN JUDGMENT]

**THE COURT:\***

It is ordered that the opinion filed herein on November 15, 2011, be modified as follows:

1. On page 1, the word “Affirmed” is changed to “Affirmed in part, Reversed in Part and Remanded.”
2. On pages 2-3, the sentence that starts with the word “Because” and continues through the end of the paragraph is changed to “Because appellant did not comply with these requirements, the trial court properly sustained the demurrer. However, appellant’s appeal from the probation violations is still pending, and therefore, under *Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th

1194, 1210-1211, the remedy is to stay the malpractice action “during the period in which [appellant] timely and diligently pursues postconviction remedies.”

3. On page 7, “(3)” through the end of the paragraph is changed to “(3) because appellant did not comply with these requirements, the demurrer was properly sustained; and (4) because appellant’s appeal from the probation violations is still pending, the remedy is to stay this action while appellant timely and diligently pursues postconviction remedies.”

4. On pages 17-18, the last 2 paragraphs are changed to “Because appellant failed to allege his actual innocence of his probation violations, i.e., facts showing that he timely paid restitution and fully cooperated with the financial evaluator, and also made no showing that he obtained post-violation exoneration, the demurrer to all his causes of action was properly sustained. At oral argument, the parties agreed that appellant’s appeal from the probation violation is still pending. That being so, the proper remedy under *Coscia, supra*, 25 Cal.4th at pages 1210-1211, is to “stay the malpractice action during the period in which . . . plaintiff timely and diligently pursues postconviction remedies.” We therefore remand the case to the trial court with orders to stay the action.

#### **DISPOSITION**

The judgment is affirmed insofar as the demurrer was sustained. It is reversed insofar as leave to amend was denied. The case is remanded to the trial court with a direction to stay the action during the period within which appellant diligently pursues postconviction remedies. Respondent is to recover costs on appeal.”

This modification changes the judgment.

Appellant’s petition for rehearing is denied.