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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER		
Counsel For The State Bar Timothy G. Byer Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1325 Bar # 172472		Case Number(s): 13-O-12709, 13-O-16445, 13-O-16740		For Court use only FILED FEB 27 2015 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
Counsel For Respondent David A. Clare 444 West Ocean Blvd., Ste. 800 Long Beach, CA 90802 (562) 624-2837 Bar # 44791		Submitted to: Settlement Judge			
In the Matter of: Klayton Khishaveh Bar # 236903 A Member of the State Bar of California (Respondent)		STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED			

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 2, 2005**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective January 1, 2014)



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **2016, 2017**. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property. **See Attachment, page 12.**
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment, page 12.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See Attachment, page 13.**
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment, page 13.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-trial Stipulation. See Attachment, page 13.

No Prior Disciplinary Record. See Attachment, page 13.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **three years**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **four years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **two years**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

(1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .

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- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

(Do not write above this line.)

In the Matter of: Klayton Khishaveh	Case Number(s): 13-O-12709, 13-O-16445, 13-O-16740
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(\$1,400 going to the client, \$1,400 going to the attorney for costs [sic], and \$1,400 going to medical providers)" and requesting that Dr. Fratto reduce her \$2,789 lien and instead accept a "pro-rata share of the medical expenses" in the sum of \$1,112.73.

10. Upon receiving the faxed lien reduction request, Dr. Fratto called Respondent's office and asked for a copy of the settlement draft in the Hernandez matter in order that she might confirm the representation concerning the amount of the settlement. Respondent never responded to that request.

11. On February 17, 2011, Owen McIntosh, an attorney representing Dr. Fratto, mailed Respondent a letter in which he reiterated Dr. Fratto's request for a copy of the Hernandez settlement draft. Respondent never responded to that request. McIntosh repeated the request in a subsequent letter mailed to Respondent on February 24, 2011. Respondent never responded to that request.

12. On May 10, 2011, Dr. Fratto again mailed a letter to Respondent requesting that he file an interpleader action to resolve the disbursement of the Hernandez settlement funds. Respondent never responded to that request.

13. On October 20, 2011, Dr. Fratto filed a civil complaint against Respondent in Los Angeles Superior Court, East District, entitled *Fratto Hopstock Chiropractic, Inc. v. Klayton Khishaveh, et al.*, Case No. KC062383R, seeking damages for breach of contract and fraud.

14. On December 14, 2011, one day before Respondent's answer to the civil complaint was due for filing, Respondent called Dr. Fratto to discuss settlement of the action. In that call, Respondent admitted that he had settled Hernandez's matter for \$6,500, but asserted that he had been forced to pay Hernandez's approximately \$3,000 in property damages from that sum. He also threatened to file a cross-complaint against Dr. Fratto if she did not agree to settle her case before he filed an answer.

15. Respondent's assertion that he had paid property damages from the bodily injury settlement was false, as those damages were paid from the property damage settlement described in paragraph #2 above.

16. On February 21, 2013, Respondent settled Dr. Fratto's civil case for payment of \$3,500.

17. Between February 14, 2011 and February 21, 2013, Respondent failed to maintain a balance of \$2,789 on behalf of Dr. Fratto in Respondent's client trust account.

18. Between February 14, 2011, and about February 21, 2013, Respondent grossly negligently misappropriated for his own purposes \$2,789 that Dr. Fratto was entitled to receive, pursuant to a lien Dr. Fratto held against Respondent's client's recovery.

CONCLUSIONS OF LAW:

19. By faxing a letter to Dr. Fratto in which he falsely asserted that Hernandez's case had settled for \$4,200, when he knew that the Hernandez case had settled for \$6,500; and by falsely asserting to Dr. Fratto, in their telephone conversation of December 14, 2011, that he had paid approximately \$3,000 in property damages from Hernandez's bodily injury settlement, when he knew that property damages had been paid from a separate property damage settlement, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

20. By failing to maintain a balance of \$2,789 on behalf of Dr. Fratto in Respondent's client trust account between February 14, 2011 and February 21, 2013, Respondent failed to maintain his client's funds in trust, in willful violation of Rules of Professional Conduct, rule 4-100(A).

21. By paying Dr. Fratto on February 21, 2013 the funds he first received on her behalf on February 8, 2011, Respondent failed to pay client funds promptly, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

22. By grossly negligently misappropriating \$2,789 that Dr. Fratto was entitled to receive, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Case No. 13-O-16445 (State Bar Investigation)

FACTS:

23. From March 2011 to October 2013, Respondent deposited personal funds belonging to Respondent in his CTA, on the following dates and in the following amounts:

<u>Date</u>	<u>Amount</u>
3/1/2011	\$8,500
3/7/2011	\$5,000
9/20/2011	\$3,000
9/20/2011	\$6,700
12/14/2011	\$1,500
2/27/2013	\$10,000
10/1/2013	\$500

24. From October 2011 to in or about September 2013, Respondent issued the following checks drawn upon his CTA, when he was grossly negligent in not knowing that there were insufficient funds in the CTA to pay them:

<u>Check No.</u>	<u>Posted Date</u>	<u>Amount</u>	<u>Returned/Paid</u>
1158	10/5/2011	\$333.00	Paid against insufficient funds
1159	10/6/2011	\$1,455.00	Paid against insufficient funds
1172	4/23/2012	\$2,038.82	Paid against insufficient funds
1194	5/4/2012	\$600.00	Paid against insufficient funds
1223	9/23/2013	\$2,500.00	Paid against insufficient funds

CONCLUSIONS OF LAW:

25. By depositing and commingling funds belonging to Respondent in his CTA, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A).

26. By issuing checks drawn upon his CTA, when he was grossly negligent in not knowing that there were insufficient funds in the CTA to pay them, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Case No. 13-O-16740 (State Bar Investigation)

FACTS:

27. On May 28, 2013, Workers' Compensation Administrative Law Judge Geoffrey H. Sims ordered Respondent to pay sanctions in the amount of \$1,000 to the Workers' Compensation Appeals Board, in the case entitled *Aurelio Guerrero v. 5 Star Ranch, et al.*, Workers' Compensation Appeals Board Case No. ADJ 8486452, within 20 days.

28. Respondent paid the sanctions on October 1, 2013.

29. Respondent never reported the sanctions order to the State Bar.

CONCLUSIONS OF LAW:

30. By not paying the \$1,000 in sanctions the court imposed on Respondent on or about May 28, 2013, in connection with the case entitled *Aurelio Guerrero v. 5 Star Ranch, et al.*, Workers' Compensation Appeals Board Case No. ADJ 8486452, within 20 days of May 28, 2013, as ordered by Judge Sims, Respondent disobeyed or violated an order of the court requiring Respondent to do an act connected with or in the course of Respondent's profession which Respondent ought in good faith to do, in willful violation of Business and Professions Code, section 6103.

31. By not reporting to the State Bar the \$1,000 in sanctions the court imposed on Respondent on or about May 28, 2013, in connection with the case entitled *Aurelio Guerrero v. 5 Star Ranch, et al.*, Workers' Compensation Appeals Board Case No. ADJ 8486452, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent, in willful violation of Business and Professions Code section, 6068(o)(3).

AGGRAVATING CIRCUMSTANCES.

Trust Violations (Std. 1.5(e)): Respondent failed to maintain client ledgers for any clients whose funds were entrusted to him between February 2011 and September 2013. Respondent failed to maintain \$2,789 in trust for Dr. Fratto between February 14, 2011 and February 21, 2013 and by gross negligence misappropriated those funds. On numerous occasions, Respondent commingled his own funds with his clients' entrusted funds.

Harm (Std. 1.5(f)): Respondent forced Dr. Fratto to bring a lawsuit in order to recover funds he was required to keep in trust for her, and then needlessly extended the litigation for two years, thereby significantly harming the public and the administration of justice.

Indifference (Std. 1.5(g)): Respondent stopped communicating with Dr. Fratto when she requested a copy of the Hernandez settlement draft, which he knew contradicted the settlement sum he had represented to her, and after she sued him following months of non-responses to her letters, he filed a cross-complaint against her and continued to litigate the dispute for another year, actions which demonstrate indifference toward rectification of or atonement for the consequences of his misconduct.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent has committed acts in violation of Business and Professions Code sections 6106, 6103, and 6068(o)(3), and in violation of Rules of Professional Conduct, rules 4-100(A), and 4-100(B)(4).

MITIGATING CIRCUMSTANCES.

Pre-trial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

No Prior Disciplinary Record: Although Respondent has no record of prior discipline, his admission on June 2, 2005 was less than six years prior to the start of this misconduct, so the lightest possible weight (if any) is accorded that fact. Five years of practice without discipline is described as nominal weight, nominal means existing in name only, not relevant or substantial. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr.61, 67. See also *In re Distefano* (1975) 13 Cal. 3d 476, 481 [4 years].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertan* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the

member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing eight acts of professional misconduct, for which different Standards apply. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The two most severe sanctions applicable to Respondent's misconduct are found in Standard 2.1(b), which applies to Respondent's grossly negligent misappropriations, and Standard 2.7, which applies to Respondent's violations of Business and Professions Code section 6106. The two applicable Standards are equal in severity, both providing a range of discipline from disbarment to actual suspension.

Standard 2.1(b) provides that disbarment or actual suspension is appropriate for misappropriation involving gross negligence. Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact, the degree of sanction depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

Respondent's acts of moral turpitude related to Respondent's practice of law, in that he made his misrepresentations while attempting to deceive a lienholder concerning the amount of the settlement so that he could obtain a reduction in the amount the lienholder would accept in satisfaction of the lien. The lienholder eventually obtained payment from Respondent as settlement of her civil action, but Respondent's refusal to pay that lien until after two years of unnecessarily protracted litigation caused significant harm to the public and to the administration of justice. The extent of Respondent's misrepresentations (carried on by Respondent over more than two years, directly related to his practice of law) supports a lengthy period of actual suspension, although the lack of harm to the victim supports a level less than disbarment. Two years of actual suspension is within the range provided by Standard 2.7, and is appropriate under the circumstances.

A disposition of two years of actual suspension for grossly negligent misappropriation combined with misrepresentation is also in accord with case law. Past decisions by the Supreme Court have imposed between one and two years of actual suspension for grossly negligent misappropriation of entrusted funds, including in cases finding additional misconduct. (See, e.g., McKnight v. State Bar (1991) 53 Cal.3d 1025 [one year of actual suspension for grossly negligent misappropriation, aggravated by failure to pay restitution and mitigated by some good character, aberrational misconduct, and mental problems]; Sugarman v. State Bar (1990) 51 Cal.3d 609 [one year of actual suspension for by grossly negligent misappropriation from one client and improper business transaction with another; mitigated by family problems and good faith efforts to improve office procedures]; Lawhorn v. State Bar, supra, 43 Cal.3d 1357 [two years of actual suspension for negligent misappropriation combined with misrepresentation to client, mitigated by marital problems and restitution paid after client threatened to file State Bar complaint].)

In Maltaman v. State Bar (1987) 43 Cal.3d 924, an attorney was disciplined with one year of actual suspension for attempting to mislead a civil court judge, and for disobedience of court orders amounting to moral turpitude. The attorney's misconduct was not accompanied by any mitigating circumstances, but was aggravated by his lack of insight and lack of candor.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of February 4, 2015, the prosecution costs in this matter are \$9,162. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT.

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and State Bar Client Trust Accounting School, ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:


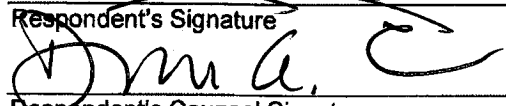
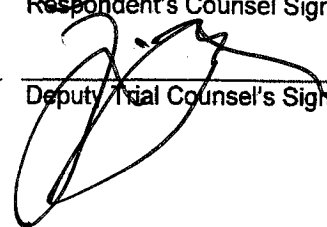
<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
13-O-12709	ONE	Business and Professions Code section 6106
13-O-12709	TWO	Business and Professions Code section 6106

(Do not write above this line.)

In the Matter of: Klayton Khishaveh	Case number(s): 13-O-12709, 13-O-16445, 13-O-16740
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>2/11/15</u> Date	 Respondent's Signature	<u>Klayton Khishaveh</u> Print Name
<u>2/11/15</u> Date	 Respondent's Counsel Signature	<u>David A. Clare</u> Print Name
<u>2.12.15</u> Date	 Deputy Trial Counsel's Signature	<u>Timothy G. Byer</u> Print Name

(Do not write above this line.)

In the Matter of: Klayton Khishaveh	Case Number(s): 13-O-12709, 13-O-16445, 13-O-16740
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 2 of the stipulation, the "X" in box B(5) is DELETED to remove the "Indifference" aggravation.

Instead, on page 3 of the stipulation, under the heading "Additional aggravating circumstances," the following text is INSERTED: "Lack of Insight and Lack of Remorse." On page 13 of the stipulation, the last line in the first paragraph is MODIFIED to read: "demonstrate that respondent lacks both insight and remorse for his misconduct. (See *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044.)"

On page 4 of the stipulation, the "X" in box D(1)(a)(i) is DELETED to remove the "and until" standard 1.2(c)(1) condition. (It is inappropriate to attach an "and until" condition to a period of *stayed* suspension.)

On page 11 of the stipulation, paragraph number 21 is DELETED. (The rule 4-100(B)(4) failure to pay violation found in paragraph 21 is duplicative of misappropriation violation found in paragraph 22.) On page 15 of the stipulation, the "Dismissals," section is MODIFIED to include a request that the court dismiss with prejudice count seven in case number 13-O-12709, which alleged a violation of rule 4-100(B)(4). (Duplicative counts are always dismissed with prejudice.)

On page 12 of the stipulation, in the paragraph titled "Trust Violations," the last two sentences are DELETED because the recited facts establish respondent's culpability for misappropriation and commingling. To treat them as an additional aggravating circumstance would be inappropriate.

On page 12 of the stipulation, in the paragraph titled "Harm," the phrase "thereby significantly harming the public and the administration of justice" at the end of the first sentence is MODIFIED to read: "thereby significantly harming Dr. Fratto." (See *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044.)

On page 13 of the stipulation, the title of the first paragraph is CHANGED to: "Lack of Insight and Lack of Remorse."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

2/24/15


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 27, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Timothy G. Byer, Enforcement, Los Angeles

Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 27, 2015.



Paul Barona
Case Administrator
State Bar Court