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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar FUMIKO D. KIMURA Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015-2299 Tel: (213) 765-1380 Bar # 208763	Case number(s) 03-O-04591-RMT	(for Court's use) <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER FILED</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">JUL 27 2006</div> <div style="text-align: center; font-size: 0.8em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent ERICA A. TABACHNICK 900 Wilshire Blvd., Suite 1000 Los Angeles, California 90017 Tel: (213) 895-4640 Bar # 94324	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of ERNEST LUTZ Bar # 182089 A Member of the State Bar of California (Respondent)		

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 3, 1996
(date)
- (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 and order consist of 29 pages.
- (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."
- (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.

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(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 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years:
for the two (2) billing cycles following the effective date of the Supreme Court Order
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) Prior record of discipline [see standard 1.2(f)]

(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 or a separate attachment entitled "Prior Discipline."

(2) **Dishonesty:** Respondent's misconduct was 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.

(4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (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.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. 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 or person who was the object of the misconduct.
- (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 in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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.

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- (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 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:

- *** Respondent submitted character letters from medical providers, lawyers, and his clients. Respondent continues to do business with the medical providers who have been paid late, and he also enjoys a good reputation in the legal community as an honest and trustworthy lawyer.

See page 23 (Attachment page 14)

"Other Factors in Consideration"

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of three (3) 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 1.4(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 five (5) years which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of 15 months

- 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 1.4(c)(ii), 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 general law, pursuant to standard 1.4(c)(ii), 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.

(Do not write above this line.)

- (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 checked="" 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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended. Reason: _____
- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, 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 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, 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:**

See page 26 (Attachment page 17)

"Other Conditions Negotiated by the Parties"

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Law Office Management Conditions

- a. Within ___ days/ 15 months/ ___ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within ___ days/ 18 months ___ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 10 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- ***
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.
- *** Respondent is required to take five (5) hours in law office management / ethics and five (5) hours in other MCLE approved courses.

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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 of the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay the 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

c. Client Funds Certificate *** See page 26 (Attachment page 17)
 "Other Conditions Negotiated by the Parties" ***

- 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:
 - a. 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";

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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.

Respondent voluntarily attended the Client Trust Accounting School on June 2, 2006. The parties agree that if Respondent provides satisfactory proof of attendance and passage of the test given at the end of that session to the Office of Probation within three (3) months of the effective date of the discipline, Respondent is not required to take the course again. If Respondent fails to provide such proof to the Office of Probation as stated, Respondent is required to comply with condition (d).

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ERNEST LUTZ
CASE NUMBER: 03-O-04591-RMT

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Respondent was admitted to the practice of law in the State of California on June 3, 1996, and was a member at all times pertinent to these charges.

At all times relevant herein, Respondent maintained a client trust account at Bank of America, designated account no. 16645-09811 ("client trust account").

At all times relevant herein, Respondent deposited money received by and on behalf of his clients into his client trust account.

Violation of Business and Professions Code, § 6106 [Moral Turpitude-Misappropriation]

Facts

The Alvarado Matter

1. In November 2002, Respondent represented client Ricardo (Richard) Alvarado ("Alvarado") in a personal injury matter.
2. On November 11, 2002, the balance in Respondent's client trust account was \$3,439.53.
3. On or about November 11, 2002, Allstate Insurance issued a settlement check to Respondent on behalf of Alvarado in the amount of \$95,000. The settlement check for \$95,000 was made payable to "Ricardo Alvarado, Atty Ernest Lutz & Tustin Hospital."
4. On or about November 12, 2002, Respondent endorsed the check on behalf of Alvarado

and Tustin Hospital and deposited the settlement check for \$95,000 into his client trust account.

5. On November 12, 2002, after depositing the settlement check for \$95,000 on Alvarado's behalf, the balance in Respondent's client trust account rose to \$98,439.53.

6. On or about November 15, 2002, Respondent issued client trust account check number 2313 in the amount of \$15,000 to Alvarado.

7. On or about November 15, 2002, Respondent issued client trust account check number 2314 in the amount of \$26,493 to Tustin Hospital on Alvarado's behalf.

8. On or about December 11, 2002, Respondent issued client trust account check number 2336 in the amount of \$4,700 to Irvine Imaging Services on Alvarado's behalf.

9. On or about December 11, 2002, Respondent issued another client trust account check number 2337 in the amount of \$3,660 to Irvine Imaging Services on Alvarado's behalf.

10. As of January 30, 2003, Respondent had made no further disbursements to or on behalf of Alvarado. As of January 30, 2003, Respondent was required to maintain at least \$4,459 in settlement funds in his client trust account on behalf of Alvarado.

11. On January 30, 2003, the balance in Respondent's client trust account had fallen to \$817.38.

12. On or about February 3, 2003, Respondent issued client trust account check number 2359 to Universal Accounts in the amount of \$2,459 as payment of one of Alvarado's medical bills.

13. When Respondent issued check number 2359, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Alvarado to cover the check and that there were insufficient funds in the client trust account to cover the check.

14. On or about February 28, 2003, when client trust account check number 2359 was presented for payment, the balance in Respondent's client trust account was \$1,030.61. Bank of America returned check number 2359 due to insufficient funds.

15. On or about March 4, 2003, Bank of America issued a Notice of Insufficient Funds regarding client trust account check number 2359 to Respondent and to the State Bar of California.

16. On or about March 6, 2003, the balance in Respondent's client trust account had fallen to \$52.61 until Respondent deposited a check for \$300.00 into his client trust account. As a result, the balance in his client trust account rose to \$352.61.

17. On or about March 7, 2003, Respondent deposited a settlement check in the amount of \$7,000 into his client trust account on behalf of another client unrelated to Alvarado or Alvarado's personal injury matter.

18. As a result of the deposit, on or about March 7, 2003, the balance in Respondent's client trust account rose to \$7,352.61.

19. On or about March 14, 2003, Respondent issued client trust account check number 2374 in the amount of \$2,000 to Dr. Jay A. Vogel on Alvarado's behalf. At the time Respondent issued check number 2374, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Alvarado to cover the check and that the check was therefore being issued and would clear against another client's funds.

20. On or about April 23, 2003, Respondent issued client trust account check number 2404 to Universal Accounts in the amount of \$2,479 (\$2,459 plus a \$20 returned check fee) to replace check number 2359, which had been returned due to insufficient funds. At the time Respondent issued check number 2404, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Alvarado to cover the check and that the check was therefore being issued and would clear against another client's funds.

21. By failing to maintain at least \$3,641.62 (\$4,459 - \$817.38) in settlement funds on behalf of Alvarado in his client trust account and by converting at least \$3,641.62 of Alvarado's funds to his own use and purpose, Respondent misappropriated client funds.

The Garibay Matter

22. The allegations of paragraphs 1 through 21 are incorporated by reference.

23. In May 2003, Respondent represented client Alexandria Garibay ("Garibay") in a personal injury matter.

24. On or about May 23, 2003, Respondent deposited a settlement check in the amount of \$3,080 into his client trust account on behalf of Garibay. The settlement check for \$3,080 was made payable to "Alexandria Garibay and Ernest Lutz, her attorney."

25. As of June 6, 2003, Respondent had not disbursed any of the \$3,080 in funds to Garibay or to anyone on Garibay's behalf.
26. As of June 6, 2003, Respondent was required to maintain at least \$2,052 in his client trust account on behalf of Garibay and Garibay's medical provider, Firestone Chiropractic Center.
27. On or about June 6, 2003, Respondent withdrew \$1,000 in cash from his client trust account. As a result, on or about June 6, 2003, the balance in Respondent's client trust account fell to \$184.30.
28. On June 9, 2003, Respondent deposited a settlement check in the amount of \$3,130 into his client trust account on behalf of another client unrelated to Garibay or her matter. As a result of this deposit, on or about June 9, 2003, the balance in Respondent's client trust account rose to \$3,314.30.
29. On or about June 13, 2003, Respondent issued client trust account check number 2444 in the amount of \$1,026 and made payable to Alexandra Garibay. The notation on the memo section of check number 2444 stated "Full P.I. settlement." At the time Respondent issued check number 2444, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Garibay to cover the check and that the check was therefore being issued and would clear against another client's funds.
30. On June 13, 2003, the balance in Respondent's client trust account was \$1,259.30.
31. On June 16, 2003, the balance in Respondent's client trust account had fallen to \$302.
32. On or about June 19, 2003, when client trust account check number 2444 was presented for payment, the balance in Respondent's client trust account was \$1,002. Bank of America paid check number 2444 against insufficient funds.
33. On or about June 20, 2003, Bank of America issued a Notice of Insufficient Funds regarding client trust account number 2444 to Respondent and to the State Bar of California.
34. In or about November 2003, Respondent issued a check to Firestone Chiropractic Center in the amount of \$1,026 as payment for Garibay's outstanding medical bill.
35. By failing to maintain at least \$1,867.70 (\$2,052 - \$184.30) in settlement funds on behalf of Garibay in his client trust account and by converting at least \$1,867.70 of Garibay's funds to his own use and purpose, Respondent misappropriated client funds.

The Kim Matter

36. The allegations of paragraphs 22 through 35 are incorporated by reference.
37. In October 2002, Respondent represented client Yeong Chun Kim ("Kim") in a personal injury matter.
38. On or about October 22, 2002, Respondent deposited a settlement check in the amount of \$15,000 into his client trust account on behalf of Kim. The settlement check for \$15,000 was payable to "Kim Chun Yeong and her attorney, Ernest Lutz."
39. On or about October 30, 2002, Respondent deposited a second settlement check in the amount of \$10,000 into his client trust account on behalf of Kim. The settlement check for \$10,000 was made payable to "Ernest Lutz Law Office and Young (sic) C. Kim."
40. By October 30, 2002, Respondent had deposited a total of \$25,000 in settlement funds into his client trust account on Kim's behalf.
41. On or about November 2, 2002, Respondent issued client trust account check number 2316 made payable to Kim in the amount of \$5,000.
42. Between November 2, 2002 and February 4, 2003, Respondent did not disburse any other funds to Kim or to anyone on Kim's behalf.
43. As of January 30, 2003, Respondent was required to maintain at least \$9,188.77 in his client trust account on behalf of Kim and Kim's medical provider, Cooperative Care.
44. On or about January 30, 2003, the balance in Respondent's client trust account had fallen to \$817.38.
45. On or about January 31, 2003, Respondent deposited \$3,500 in funds unrelated to Kim or Kim's personal injury matter into his client trust account. As a result of this deposit, the balance in Respondent's client trust account rose to \$4,317.38.
46. On or about February 3, 2003, Respondent issued client trust account check number 2360 to himself in the amount of \$1,000. On or about February 5, 2003, client trust account check number 2360 was presented for payment and paid by Bank of America. As a result, on or about February 5, 2003, the balance in Respondent's client trust account fell to \$3,317.38.
47. On or about February 5, 2003, Respondent issued client trust account check number 2362

to Kim in the amount of \$4,287.77. At the time Respondent issued check number 2362, the balance in the client trust account was \$3,317.38. Therefore, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Kim to cover the amount of check number 2362.

48. On or about February 11, 2003, when client trust account check number 2362 was presented for payment, the balance in Respondent's client trust account was \$4,117.38. Bank of America paid check number 2362 against insufficient funds.

49. On or about February 12, 2003, Bank of America issued a Notice of Insufficient Funds regarding client trust account check number 2362 to Respondent and to the State Bar of California.

50. As of March 4, 2003, Respondent had not disbursed any additional funds to Kim or anyone on her behalf. Therefore, on or about March 4, 2003, Respondent was required to maintain at least \$4,901 in his client trust account on behalf of Kim and Kim's medical provider, Cooperative Care.

51. On March 4, 2003 the balance in Respondent's client trust account had fallen to \$52.61.

52. Between March 10, 2003 and April 11, 2003, Respondent deposited settlement checks totaling \$24,880 into his client trust account on behalf of other clients unrelated to Kim or Kim's personal injury matter.

53. On April 17, 2003, the balance in Respondent's client trust account was \$2,678.11.

54. On April 18, 2003, Respondent deposited a settlement check in the amount of \$23,000 into his client trust account on behalf of another client unrelated to Kim or to Kim's matter.

55. On April 18, 2003, after Respondent deposited the settlement check for \$23,000, the balance in Respondent's client trust account rose to \$25,678.11.

56. On or about April 21, 2003, Respondent issued client trust account check number 2399 made payable to Kim in the amount of \$2,500. The memo section of client trust account check number 2399 contained the notation "PI settlm." At the time Respondent issued check number 2399, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Kim to cover the check and that the check was therefore being issued and would clear against another client's funds.

57. On or about April 21, 2003, Respondent issued client trust account check number 2400 made payable to Kim in the amount of \$2,000. The memo section of client trust account check

number 2400 contained the notation "PI settlm." At the time Respondent issued check number 2400, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Kim to cover the check and that the check was therefore being issued and would clear against another client's funds.

58. On or about May 21, 2003, Respondent issued client trust account check number 2425 to Cooperative Care in the amount of \$401 on Kim's behalf as payment for an outstanding medical bill. At the time Respondent issued check number 2425, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Kim to cover the check and that the check was therefore being issued and would clear against another client's funds.

59. By failing to maintain at least \$8,371.39 (\$9,188.77 - \$817.38) in settlement funds on behalf of Kim in his client trust account and by converting at least \$8,371.39 of Kim's funds to his own use and purpose, Respondent misappropriated client funds.

The Wong Matter

60. The allegations of paragraphs 36 through 59 are incorporated by reference.

61. In December 2002, Respondent represented client Ida Wong ("Wong") in a personal injury matter.

62. On or about December 18, 2002, Respondent deposited a settlement check in the amount of \$8,000 into his client trust account on behalf of Wong. The settlement check for \$8,000 was payable to "Ida Wong and Law Offices of Ernest Lutz".

63. In or about December 2002, Respondent and Wong's medical provider, Hart Chiropractic & Rehabilitation ("Hart Chiropractic"), agreed to settle Wong's medical bill for \$900.

64. Between December 18, 2002 and January 31, 2003, Respondent did not disburse any funds to Wong or to anyone on Wong's behalf.

65. As of January 31, 2003, Respondent was required to maintain at least \$4,200 in the client trust account on behalf of Wong and Hart Chiropractic.

66. On or about January 31, 2003, the balance in Respondent's client trust account had fallen to \$817.38.

67. On January 31, 2003, Respondent deposited \$3,500 in funds unrelated to Wong or Wong's personal injury matter into his client trust account.

68. On February 12, 2003, Respondent deposited a settlement check in the amount of \$5,300 into his client trust account on behalf of another client unrelated to Wong or to Wong's matter.

69. On or about February 21, 2003, Respondent issued client trust account check number 2366 made payable to Wong in the amount of \$2,800. At the time Respondent issued check number 2366, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Wong to cover the check and that the check was therefore being issued and would clear against another client's funds.

70. As of February 16, 2003, Hart Chiropractic had not received any funds from Respondent to pay Wong's outstanding medical bill. As a result, on or about February 16, 2003, Victor Hugo ("Hugo") of Hart Chiropractic telephoned Respondent's office and left a message for Respondent regarding Wong's unpaid medical bill.

71. By August 3, 2003, Hart Chiropractic still had not received any funds from Respondent to resolve Wong's outstanding medical bill. As a result, on or about August 3, 2003, Hugo telephoned Respondent's office and left a message for Respondent regarding Wong's unpaid medical bill.

72. On or about March 2, 2004 and on or about June 15, 2004, Hugo telephoned Respondent's office and left messages each time for Respondent regarding Wong's unpaid medical bill.

73. On or about March 24, 2005, Hugo spoke to Pat from Respondent's office, who represented that a check would be sent out to Hart Chiropractic to pay Wong's unpaid medical bill. However, Respondent failed to issue the check.

74. On or about April 25, 2005, Hugo spoke to Pat in Respondent office who represented that a check would be sent out to Hart Chiropractic that day to pay Wong's unpaid medical bill.

75. In or about April 2005, Hart Chiropractic received a cashier's check from Respondent for \$900 as payment of Wong's medical bill.

76. On or about November 1, 2005, Respondent issued a cashier's check to Vista Bay in the amount of \$500 on Wong's behalf as payment for Wong's outstanding medical bill.

77. By failing to maintain at least \$3,382.62 (\$4,200 - \$817.38) in settlement funds on behalf of Wong in his client trust account and by converting at least \$3,382.62 of Wong's funds to his own use and purpose, Respondent misappropriated client funds.

The Mendoza Matter

78. The allegations of paragraphs 60 through 77 are incorporated by reference.
79. In December 2002, Respondent represented clients Angel Mendoza ("Angel") and Martha Mendoza ("Mendoza") in a personal injury matter.
80. On or about December 31, 2002, Respondent deposited a settlement check in the amount of \$5,000 into his client trust account on behalf of Angel, a minor. The settlement check for \$5,000 was made payable to "Angel Mendoza and Martha Mendoza as Mother and Legal Guardian and Ernest Lutz as attorney."
81. On or about December 31, 2002, Respondent deposited a settlement check in the amount of \$5,800 into his client trust account on behalf of Mendoza. The settlement check for \$5,800 was made payable to "Martha Mendoza and Ernest Lutz as attorney."
82. In December 2002, Respondent had deposited a total of \$10,800 in settlement funds into his client trust account on behalf of Angel and Mendoza.
83. On or about January 22, 2003, Respondent issued client trust account check number 2354 in the amount of \$1,933.33 and made payable to Mendoza.
84. On or about January 22, 2003, Respondent issued client trust account check number 2355 in the amount of \$1,666.66 and made payable to Mendoza. The memo section of client trust account number 2355 stated that the funds were disbursed on behalf of Angel.
85. As of March 4, 2003, Respondent was required to maintain at least \$458.72 in his client trust account on behalf of Angel and her medical providers.
86. As of March 4, 2003, Respondent was required to maintain at least \$2,362.50 in his client trust account on behalf of Mendoza and her medical providers.
87. On March 4, 2003, the balance in Respondent's client trust account had fallen to \$52.61.
88. On or about May 20, 2003, Respondent issued client trust account check number 2423 to Kaiser Permanente in the amount of \$458.72 as payment for Angel Mendoza's outstanding medical bill. At the time Respondent issued check number 2423, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Angel to cover the check.
89. On June 16, 2003, the balance in Respondent's client trust account was \$302.00.

90. On June 20, 2003, Respondent deposited a settlement check in the amount of \$4,000 into his client trust account on behalf of another client unrelated to Angel or Mendoza's matter.

91. On or about June 23, 2003, Respondent issued client trust account check number 2451 to Cooperative Care in the amount of \$2,362.50 as payment for Martha Mendoza's outstanding medical bill. At the time Respondent issued check number 2451, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Mendoza to cover the check and that the check was therefore being issued and would clear against another client's funds.

92. By failing to maintain at least \$406.11 (\$458.72 - \$52.61) in settlement funds on behalf of Angel in his client trust account and by converting at least \$406.11 of Angel's funds to his own use and purpose, Respondent misappropriated client funds.

93. By failing to maintain at least \$2,309.89 (\$2,362.50-52.61) in settlement funds on behalf of Mendoza in his client trust account and by converting at least \$2,309.89 of Mendoza's funds to his own use and purpose, Respondent misappropriated client funds.

The Reyes Matter

94. The allegations of paragraphs 78 through 93 are incorporated by reference.

95. In February 2003, Respondent represented client Harlette Reyes ("Reyes") in a personal injury matter.

96. On or about February 12, 2003, Respondent deposited a settlement check in the amount of \$5,300 into his client trust account on behalf of Reyes. The settlement check for \$5,300 was made payable to "Harlette Reyes and Law Offices of Ernest Lutz."

97. On or about February 21, 2003, Respondent issued client trust account check number 2365 made payable to Reyes in the amount of \$2,000.

98. As of March 4, 2003, Respondent was required to maintain at least \$1,300 in his client trust account on behalf of Reyes and her medical providers.

99. On March 4, 2003, the balance in Respondent's client trust account had fallen to \$52.61.

100. On April 17, 2003, the balance in Respondent's client trust account was \$2,678.11.

101. On April 18, 2003, Respondent deposited a settlement check in the amount of \$23,000 into his client trust account on behalf of another client unrelated to Reyes or to Reyes' personal

injury matter.

102. On April 18, 2003, after Respondent deposited the settlement check for \$23,000, the balance in Respondent's client trust account rose to \$25,678.11.

103. On or April 18, 2003, Respondent issued client trust account check number 2396 to Firestone Chiropractic Center in the amount of \$1,300 as payment for Reyes's outstanding medical bill. At the time Respondent issued check number 2396, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Reyes to cover the check and that the check was therefore being issued and would clear against another client's funds.

104. By failing to maintain at least \$1,247.39 (\$1,300- \$52.61) in settlement funds on behalf of Reyes in his client trust account and by converting at least \$1,247.39 of Reyes's funds to his own use and purpose, Respondent misappropriated client funds.

The Parraga Matter

105. The allegations of paragraphs 94 through 104 are incorporated by reference.

106. In March 2003, Respondent represented client Cheryl Ann Parraga ("Parraga") in a personal injury matter.

107. On or about March 28, 2003, Respondent deposited a settlement check in the amount of \$7,100 into his client trust account on behalf of Parraga. The settlement check for \$7,100 was made payable to "Cheryl Ann Parraga and Law Offices of Ernest Lutz."

108. Between March 28, 2003 and April 16, 2003, Respondent did not disburse any settlement funds to Parraga or to anyone on Parraga's behalf.

109. As of April 16, 2003, Respondent was required to maintain at least \$4,757 in his client trust account on behalf of Parraga and her medical providers.

110. On April 16, 2003, the balance in Respondent's client trust account had fallen to \$2,678.11.

111. On April 18, 2003, Respondent deposited a settlement check in the amount of \$23,000 into his client trust account on behalf of a client unrelated to Parraga or Parraga's matter. As a result of the deposit, the balance in Respondent's client trust account rose to \$25,678.11.

112. On or April 18, 2003, Respondent issued client trust account check number 2392 to

Cooperative Care in the amount of \$900 as payment for Parraga's outstanding medical bill.

113. On or about April 18, 2003, Respondent issued client trust account check number 2394 made payable to Parraga in the amount of \$3,857. At the time Respondent issued check number 2394, Respondent knew or in the absence of gross negligence should have known that there were no longer sufficient funds in the client trust account on behalf of Parraga to cover the check and that the check was therefore being issued and would clear against another client's funds.

114. By failing to maintain at least \$2,078.89 (\$4,757- \$2,678.11) in settlement funds on behalf of Parraga in his client trust account and by converting at least \$2,078.89 of Parraga's funds to his own use and purpose, Respondent misappropriated client fund.

Conclusions of Law

By misappropriating client funds, Respondent repeatedly committed acts involving moral turpitude, dishonesty, or corruption in wilful violation of Business and Professions Code, section 6106.

Violation of Rules of Professional Conduct, rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

Facts

115. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:

116. The allegations of paragraphs 105 through 114 are incorporated by reference.

Conclusions of Law

By failing to maintain settlement funds in his client trust account on behalf of clients Alvarado, Garibay, Kim, Wong, Angel, Mendoza, Reyes and Parraga and their medical providers, Respondent repeatedly failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation of rule 4-100(A), Rules of Professional Conduct.

Violation of Business and Professions Code, § 6106 [Moral Turpitude-Issuing Checks Against Insufficient Funds]

Facts

117. The allegations of paragraphs 36 through 59 are incorporated by reference.

118. On or about February 12, 2003, Bank of America issued a Notice of Insufficient Funds to Respondent notifying him that client trust account check number 2362 had been paid against insufficient funds.

119. On or about March 4, 2003, Bank of America issued a Notice of Insufficient Funds to Respondent notifying him that client trust account check number 2359 had been returned because of insufficient funds.

120. On or about June 20, 2003, Bank of America issued a Notice of Insufficient Funds to Respondent notifying him that client trust account check number 2444 had been paid against insufficient funds.

121. Respondent issued client trust account checks numbers 2362, 2359 and 2444 when he knew or in the absence of gross negligence should have known that there were insufficient funds in Respondent's client trust account to pay them.

Conclusions of Law

By repeatedly issuing checks drawn upon Respondent's client trust account when he knew or in the absence of gross negligence, should have known that there were insufficient funds, Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violations of Business and Professions Code, section 6106.

Violation of Rules of Professions Conduct, rule 4-100(A) [Commingling Personal Funds in Client Trust Account]

Facts

122. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by depositing or commingling funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:

123. On or about January 23, 2003, Respondent received a cashier's check in the amount of \$5,000 from his mother, Arcelia Lutz. On or about January 23, 2003, Respondent

deposited the cashier's check for \$5,000 into his client trust account. The \$5,000 deposited into Respondent's client trust account was not related to legal services provided on behalf of his mother or on behalf of a client.

Conclusions of Law

By depositing and maintaining personal funds in his client trust account, Respondent commingled his personal funds in his client trust account in wilful violation of rule 4-100(A), Rules of Professional Conduct.

OTHER FACTORS IN CONSIDERATION

Respondent was admitted in June 1996 and has no prior record of discipline.

Respondent has been a solo practitioner and as his office began to grow, he spent more and more time in court and failed to pay proper attention to the management of his office and accounting, which resulted in grossly negligent misappropriation, totaling over \$23,000.00 in medical liens. The misappropriation involved some of the medical bills of eight clients over a period of approximately one year.

Immediately after the State Bar's involvement in 2003 due to NSF checks, Respondent paid all outstanding balances owed to medical providers. All medical providers were paid before the Notice of Disciplinary Charges was filed. Respondent acknowledged that he did not handle his client trust account properly and took steps to rectify the problems.

Since 2003, Respondent changed his office procedure regarding his client trust account, and in January 2004, Respondent opened a new client trust account so that future cases would not be affected by the old accounting problems. There were no complaints from Respondent's clients or medical providers.

On June 2, 2006, Respondent voluntarily attended the State Bar Client Trust Account School. In May, 2006, Respondent started therapy with a psychologist, Dr. Joseph Kestenbaum, to better understand why he suffered these lapses of judgment. Respondent also began volunteering in the kitchen at the Los Angeles Mission once per week in an effort to give back to the community.

AUTHORITIES SUPPORTING DISCIPLINE

Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California ("Standard")

Standard 1.3 states that the primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Standard 2.2(a) provides for disbarment for wilful misappropriation of entrusted funds or property. Only if the property or funds misappropriated is insignificantly small or if the most compelling mitigating circumstances predominate, shall disbarment not be imposed. If disbarment is not imposed, however, the discipline shall include an actual suspension of at least one year, irrespective of mitigating circumstances.

Standard 2.2(b) provides for a minimum actual suspension of 90 days, irrespective of mitigating circumstances, for commingling of entrusted funds or another violation of rule 4-100, Rules of Professional Conduct.

Standard 2.3 provides that an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Case Law

In the Matter of Robins (1991) 1 Cal. State Bar Ct. Rptr. 708. The respondent was actually suspended for one year. *Robins* engaged in grossly negligent misappropriation totaling over \$20,000.00 in medical liens which he failed to pay timely. The misappropriation involved the medical bills of eight clients over a period of six years. Respondent Lutz's misconduct involved grossly negligent misappropriation of over \$23,000.00 in medical liens he failed to pay timely. Respondent Lutz' misappropriation involved some of the medical bills of eight clients over a period of approximately one year.

In *Robins*, one of his clients was sued by a collection agency for a unpaid medical lien and the Court found that the client was significantly harmed. Respondent Lutz had no complaints from

his clients or medical providers. Furthermore, *Robins* did not make complete restitution until after the State Bar proceedings were instituted while Respondent Lutz paid all the medical providers back before the Notice of Disciplinary Charges was filed. However, Respondent Lutz' misconduct began approximately six years after his admission while the Court in *Robins* found Standard 1.2(e)(i) in mitigation.

In the Matter of Sampson (1994) 3 Cal. State Bar Ct. Rptr. 119. The respondent received a 18-month actual suspension. *Sampson* was found culpable of committing acts of moral turpitude by abdicating his responsibility to supervise his personal injury cases and recklessly disregarding his trust account obligations for almost a year. *Sampson* failed to pay a medical provider over \$29,000.00 for medical liens covering 14 clients. *Sampson* also failed to retain in his trust account settlement funds amounting to approximately \$14,000.00. *Sampson* was found to have violated the rule of professional conduct on trust accounts by failing to retain in trust more than \$34,000.00 in settlement funds although he did not engage in intentional misappropriation. *Sampson* also failed to perform legal services with competence and failed to notify his client of the receipt of a \$2,500.00 settlement.

On the other hand, Respondent Lutz engaged in grossly negligent misappropriation of over \$23,000.00 as stated under *Robins*, failed to maintain client funds in his client trust account for those eight clients and some of their medical providers, issued three checks against insufficient funds in his client trust account, and commingled by depositing into his client trust account a check received from his mother who was not his client.

In aggravation, the Court in *Sampson* found multiple acts of misconduct and significant harm to a medical provider. The medical provider had to file a lawsuit against *Sampson* for the unpaid medical liens and *Sampson* stipulated to a judgement in the amount of \$25,163.00. In mitigation, the Court found no prior record of discipline. *Sampson* was admitted to the practice of law in 1975.

Lipson v. State Bar (1991) 53 Cal.3d 1010. The Supreme Court stated, "Even where the most compelling mitigating circumstances do not clearly predominate, we have recognized extenuating circumstances relating to the facts of the misappropriation that render disbarment inappropriate." Wilful misappropriation covers a broad range of conduct. The Court found that the attorney's misconduct did not involve the deliberate intent and deceit which would require disbarment, and actually suspended the attorney instead of disbarment.

Respondent Lutz engaged in grossly negligent misappropriation, and immediately after the State Bar's involvement due to NSF checks, he paid all outstanding balances owed to medical providers before the Notice of Disciplinary Charges was filed, as stated under "Other Factors in Consideration." Furthermore, Respondent immediately acknowledged his wrongdoing and took steps to rectify the problems. Respondent changed his office procedures regarding his client

trust account. Respondent also voluntarily attended the Client Trust Account School and sought therapy with a psychologist to better understand his problems in order to avoid future misconduct. There were no complaints from his clients or medical providers. Although those factors listed under "Other Factors in Consideration" are not mitigation, his immediate recognition of wrongdoing and his effort to deal with the problems to prevent further misconduct make this disposition warranted. The multiple conditions required in this stipulation are designed to facilitate Respondent's rehabilitation and promote public protection.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES

Monitoring of Respondent's Client Trust Account by a Certified Public Accountant:

Respondent is required to have a certified public accountant monitor his Client Trust Account for the first three (3) years of his probation and until an order of the State Bar Court, relieving Respondent from this condition, is issued. To be relieved from this condition, Respondent must file a motion (or a stipulation signed by Respondent and the Office of Probation, if appropriate) with the State Bar Court after completing three (3) years of his probation.

Respondent must file a certificate from a certified public accountant with each quarterly report filed with the Office of Probation, certifying that:

- a. 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.

If Respondent does not possess any client funds, property or securities during the relevant period, Respondent must so state under penalty of perjury in the quarterly report filed with the Office of Probation for that reporting period, along with a certificate from a certified public accountant.

The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A (7), was June 30, 2006.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 30, 2006, the estimated prosecution costs in this matter are approximately \$3,654.00. Respondent acknowledges that this figure is an estimate only. 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.

(Do not write above this line.)

In the Matter of ERNEST LUTZ Member #: 182089	Case number(s): 03-O-04591-RMT
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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.

1-9-06
Date


Respondent's signature

ERNEST LUTZ
Print name

7/10/06
Date


Respondent's Counsel's signature

ERICA A. TABACHNICK
Print name

7/10/06
Date


Deputy Trial Counsel's signature

FUMIKO D. KIMURA
Print name

(Do not write above this line.)

In the Matter of ERNEST LUTZ Member #: 182089	Case number(s): 03-O-04591-RMT
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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.

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 135(b), 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 953(a), California Rules of Court.)

Date

7/18/06

Judge of the State Bar Court



CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 July 27, 2006, 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:

**ERICA TABACHNICK, A/L
900 WILSHIRE BLVD #1000
LOS ANGELES CA 90017**

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

FUMIKO KIMURA, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **July 27, 2006**.



Rose M. Luthi
Case Administrator
State Bar Court