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<b>State Bar Court of California</b> Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1157  Bar # 228137	Case number(s) 04-0-14645-RAP  <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div>	(for Court's use)  <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center;">AUG 05 2005 <i>for</i></div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent KAVEH ARDALAN 1851 E. 1st Street #900 Santa Ana, CA 92705  Bar # 188775	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  STAYED SUSPENSION; NO ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of KAVEH ARDALAN  Bar # 188775 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, 1997  
(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 12 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):

- (a) ☒ costs added to membership fee for calendar year following effective date of discipline  
(b) ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:  
\_\_\_\_\_  
(hardship, special circumstances or other good cause per rule 282, Rules of Procedure)  
(c) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"  
(d) ☐ 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.

(5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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) ☐ **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.

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- (10) ☐ **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.
- (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:

#### D. Discipline

1. ☒ Stayed Suspension.

(a) ☒ Respondent must be suspended from the practice of law for a period of six (6) 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: \_\_\_\_\_

The above-referenced suspension is stayed.

2. ☒ Probation.

Respondent is placed on probation for a period of one (1) year, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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**E. Additional Conditions of Probation:**

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.
- (3) ☒ Within 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.
- (4) ☒ 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 in each report 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.

- (5) ☐ 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.
- (6) ☒ 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.
- (7) ☒ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: \_\_\_\_\_
- (8) ☐ 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.
- (9) ☐ 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 type="checkbox"/> Financial Conditions             |

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**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 within one year. 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) ☒ **Other Conditions:**

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 Client Trust Accounting (CTA) School, and passage of the test given at the end of that session.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:      KAVEH ARDALAN, Member Number 188775

CASE NUMBER(S):      04-O-14645-RAP

**FACTS AND CONCLUSIONS OF LAW**

**Count One – B&P Code § 6106**

Respondent maintained a checking account at Bank of America, designated account no. 16646-10659 ("client trust account").

Respondent deposited money received by and on behalf of his clients into his Bank of America client trust account.

On or about April 13, 2004, Respondent issued client trust account check number 2140 in the amount of \$185. Check number 2140 was made payable to the USCIS (Bureau of U.S. Citizenship and Immigration Services) and included the notation "Angel Gutierrez." Respondent received funds from the client to cover the amount on the check, but failed to ensure that the deposit had cleared before issuing check number 2140. As a result, there were insufficient funds in the client trust account to sufficiently cover check number 2140. On or about April 16, 2004, the balance in the client trust account was \$64.23. Bank of America received check number 2140 and returned the check unpaid due to insufficient funds. At the time he issued check number 2140, Respondent knew, or should have known, that there were insufficient funds in the client trust account to cover check number 2140. On or about April 19, 2004, Bank of America notified Respondent that check number 2140 had been returned due to insufficient funds.

Respondent mismanaged the client trust account by not waiting for deposits to clear before issuing checks. Respondent issued client trust account checks when he knew or should have known that there were insufficient funds in his client trust account to cover the checks in wilful violation of Business and Professions Code section 6106.

**Count Two – RPC rule 4-100(A)**

From in or about January 2004 through in or about May 2004, Respondent issued five checks drawn upon his client trust account to pay business expenses. Specifically, Respondent issued

client trust account checks 2116, 2142, and 2144 from his client trust account to his landlord, Stephan A. DeSales, for rent of his office space.

On or about January 4, 2004, Respondent issued check number 2125 from his client trust account made payable to the "DMV." Check number 2125 did not reference a client or a client matter. On or about February 25, 2004, Respondent issued check number 2127 from his client trust account to "Metro Publishing." Check number 2127 did not reference a client or a client matter. Between, but not limited to, in or about March 2004 and in or about August 2004, American Express withdrew five dollars each month from Respondent's client trust account.

Respondent improperly issued checks for personal and/or business purposes from his client trust account and allowed a credit card company to withdraw funds automatically each month from his client trust account. By depositing or commingling funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, Respondent wilfully violated the Rules of Professional Conduct rule 4-100(A).

### **PENDING PROCEEDINGS**

The disclosure date referred to, on page one, paragraph A.(7), was July 27, 2005.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 27, 2005, the estimated prosecution costs in this matter are approximately \$2,296. 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.

### **AUTHORITIES SUPPORTING DISCIPLINE**

Business and Professions Code § 6106 provides, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a crime for disbarment or suspension."

Courts have held that the wilful misappropriation of a client's funds involves moral turpitude. *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034. While moral turpitude as included in section 6106 generally requires a certain level of intent, guilty knowledge, or wilfulness, the law



is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410. Attorneys assume a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795.

It is not disputed that Respondent was grossly negligent in the management of the client trust account. However, the use was not the expenditure of client funds, rather it was the use of a client trust account as both a general account and a client trust account simultaneously.

The lack of an evil intent will not immunize an attorney from a conclusion of moral turpitude when the attorney's actions constitute gross carelessness and negligence violating the fiduciary duty to a client. *Murray v. State Bar* (1985) 40 Cal.3d 575, 582. Respondent was negligent in not following and understanding the purpose and use of a client trust account.

Rule 4-100 of the Rules of Professional Conduct discusses the preservation of the identity of funds and the property of a client. A violation occurs where the attorney "commingles funds or fails to deposit or manage the funds in [a] manner designated by the rule, even if no person is injured. [Citations.]" *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 (discussing rule 8-101, now 4-100). Here, Respondent used the client trust account for general office and personal purposes. Such use goes against the preservation of the identity of any client funds that were maintained in the client trust account. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 55 (discussing rule 8-101(A) which is now rule 4-100(A)). Respondent failed to adhere to the ethical duties and fiduciary obligations to maintain client trust funds is a violation under the rules and statutes governing professional conduct.

### MITIGATING CIRCUMSTANCES

Respondent has no prior record of discipline and was admitted to the practice of law in the State of California on June 3, 1997. Respondent was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Standard 1.2 (e)(i) indicates that the "absence of any prior record of discipline over *many years* of practice *coupled with* present misconduct which is not deemed serious" may be deemed a mitigating circumstance. (Italics added.)

In this case, Respondent was admitted in June 1997 and had no prior record of discipline before the misconduct that occurred as early as January 2004. There is a question, however, as to whether six and a half years constitutes "many years" as stated in the standard. For instance, in *In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 541,

which concerned rule 4-100(A) and (B) and 6106 violations, the court noted that the hearing judge found the absence of discipline in respondent's six and one-half years of practice prior to the misconduct was entitled to only minimal weight as a mitigating factor because it was a relatively short period of time.

Standard 1.2(e)(iii) provides that the "lack of harm to the client or person who is the object of the misconduct" shall be considered a mitigating circumstance. Here, Respondent's misconduct did not harm any clients as no client funds were used to pay respondent's personal expenses. Nor were any payees harmed. Further the payees were not clients.

Once contact with Respondent was effected, the lines of communication remained open and Respondent displayed spontaneous candor and cooperation with the State Bar. Although during the investigation Respondent was non responsive, once aware of the State Bar matter Respondent was deferential and cooperative. Respondent takes full responsibility for his actions and has made efforts to close his client trust account and will not be using one as his practice does not require one. Respondent demonstrates remorse and is eager to pay closer attention to his responsibilities regarding trust accounts.

Based on these factors the appropriate disposition has been agreed upon by the parties.

### **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>
04-O-14645	Three	Business and Professions Code section 6068(i)

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In the Matter of KAVEH ARDALAN	Case number(s): 04-0-14645-RAP
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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.

08/03/05  
Date

K. Arda  
Respondent's signature

Kaveh Ardalan  
Print name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent's Counsel's signature

\_\_\_\_\_  
Print name

8-3-05  
Date

Jean Cha  
Deputy Trial Counsel's signature

Jean Cha  
Print name

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In the Matter of Kaveh Ardalan	Case number(s): 04-0-14645-RAP
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### ORDER

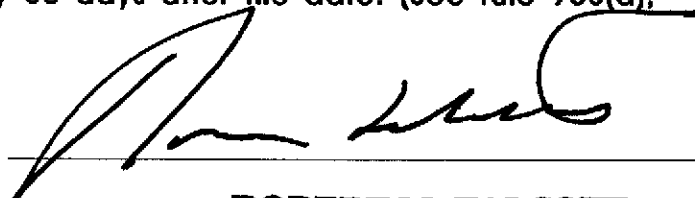
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ 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

8/4/05



**ROBERT M. TALCOTT**  
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 August 5, 2005, I deposited a true copy of the following document(s):

### **STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING, filed July 5, 2005**

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

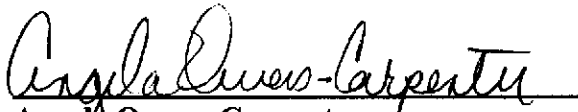
- [X]** by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KAVEH ARDALAN A/L  
1851 E 1<sup>ST</sup> STREET #900  
SANTA ANA CA 92705**

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

**JEAN CHA A/L, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 5, 2005**.

  
**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court