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STATE BAR COURT
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LOS ANGELES

8 STATE BAR COURT

9 HEARING DEPARTMENT - LOS ANGELES

10 In the Matter of

Case No. 12-O-14642

11 JUSTIN MOONGYU LEE,
12 No. 187507,

RESPONSE OF JUSTIN MOONGYU LEE
TO THE NOTICE OF DISCIPLINARY
CHARGES

13 A Member of the State Bar.

14
15 TO THE COURT, ALL INTERESTED PARTIES HEREIN, AND THEIR ATTORNEYS
16 OF RECORD:

17 Respondent, Justin Moongyu Lee ("Respondent"), hereby submits his Response
18 ("Response") to the Notice of Disciplinary Charges ("Charges") filed by the State Bar Court
19 against him in Case Number 12-O-14642. The Respondent asserts his rights to have the
20 information, evidence, and witnesses of this proceeding and its documents to be privileged to the
21 extent set forth in Code of Civil Procedure Sections 6086.1 and 6094 and under California law.

22 Since the Charges filed against the Respondent are based on the EB5 Investment Program,
23 the Respondent sets forth a brief description of the EB5 Program and then a chronology of the
24 facts that occurred in the EB5 investment of Zhang Lei and her husband, Ye Ling, at issue in this
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1 action to establish that none of the six Counts are valid and this matter should be dismissed in its
2 entirety.

3 I. Factual Background

4 A. EB5 Program

5 Individuals who are foreign nationals and non-residents of the United States of America,
6 may apply for permanent residence status in the US under Section 203(b)(5) of the Immigration
7 and Nationality Act, 8 U.S.C. Section 1153(b)(5) (aka the "EB5 Program"). In 1990, the US
8 Congress created the EB5 Program with the purpose of promoting immigration of non-resident
9 individuals who can invest money in the US to create jobs for US workers. The EB5 Program is
10 governed by the U.S. Citizenship and Immigration Services ("USCIS"), which approves the
11 individuals as investors for the EB5 Program, the projects that qualify for their investment in the
12 US, and the geographic areas that qualify for these investment projects (these areas are commonly
13 called "Regional Centers"). (8 C.F. R. 204.6(e) and (m)). To qualify for the EB5 Program, a
14 foreign national investor must meet the requirements below:
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18 1. The investor must invest capital (defined as any assets to be used in the
19 enterprise) in a new commercial enterprise in the US that creates full-time jobs for at least 10
20 workers. (8 C.F.R. Section 204.6(e), (g), and (j))

21 2. The minimum investment of the EB5 Program is \$500,000 as long as the
22 money will be invested in specific geographic regions, called a "targeted employment area" or
23 "TEA", designated by US Immigration law as a rural area of less than 20,000 in population or an
24 area with unemployment of at least 150% of the national US average. 8 C.F.R. Section
25 204.6(f)(2).
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1 3. Such an investment must be entirely at risk to generate a loss or a profit. (8
2 C.F.R. Section 204.6(j)(2)) Any agreement to protect against this risk makes this portion of the
3 investment invalid for the EB5 Program under 8 C.F.R. Section 204.6(e) pursuant to *Matter of*
4 *Izummi*, 22 I&N Dec. 169, 180-188 (BIA 1998).

5 4. The EB5 investor must prove that the source of the investment money was
6 obtained by lawful means. 8 C.F.R. Section 204.6(j)(3)

7 5. After this \$500,000 investment is made or is in the active process of being
8 made, the foreign national investor has to be engaged in the management of the enterprise that
9 received the investment either through daily managerial control or by formulating policy for the
10 new enterprise. 8 C.F.R. Section 204.6(j)(5).

11 The foregoing paragraphs are based on the Policy Memorandum posted February 13, 2013
12 by the U.S. Citizenship and Immigration Services on “EB-5 Adjudications Policy” (See Exhibit 1
13 to Request for Judicial Notice in Support of Response (“RJN”); this document can be found at
14 <http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Draft%20Memorandum%20for%20Comment/drafteb5adjudication.pdf>. (Declaration of Justin Moongyu Lee in Support of
15 Response of Justin Moongyu Lee to the Notice of Disciplinary Charges (Lee Decl. ¶8), Exh. 1)

16 B. EB5 Program With Nexsun Ethanol, LLC And Kansas Biofuel Regional Center,
17 LLC

18 At all times herein, the Respondent was and is a principal of the law firm operated by LK
19 Corporation. While Thomas E. Kent (“Mr. Kent”) was a principal of Lee & Kent Corporation, a
20 professional corporation (“LK Corporation”), he and the Respondent were co equals as principals
21 of LK Corporation. Mr. Kent left the employment of LK Corporation full-time in September,
22 2011, but still visited and used the office and handled a few client matters and finally dissolved his
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1 employment and connection with LK Corporation as of December 31, 2011. The Respondent is
2 currently the sole managing partner and sole principal of LK Corporation. The Respondent built
3 the business of LK Corporation and had invested in its infrastructure before he admitted Mr. Kent
4 as a non-equity partner before 2006. From before 2006 to his leaving LK Corporation at the 2011
5 year end, Mr. Kent was a partner at LK Corporation and was entirely responsible for all client
6 contact and approval of clients and deciding legal services to provide to clients of LK Corporation
7 without the approval or authorization of the Respondent. (Lee Decl. ¶9)

9 At all times herein, Mr. Kent was an experienced attorney with respect to the procedures of
10 obtaining a valid investment from a potential investor in a valid EB5 Program investment and in
11 providing legal advice to a potential and actual investor in a valid EB5 Program investment, such
12 an investor includes Ling Ye and his wife, Zhang Lei, whom Respondent never has spoken to until
13 this dispute arrived in November, 2011. (Lee Decl. ¶10)

15 To qualify as an EB5 Program investment, Mr. Kent created Nexsun Ethanol, LLC by
16 filing its articles of organization with the Kansas Secretary of State on October 19, 2006. He also
17 became a director, vice chairman, executive vice president, and general counsel for Nexsun
18 Ethanol, LLC. The Respondent was a director, chairman, and initial C.E.O. of Nexsun Ethanol,
19 LLC. (Lee Decl. ¶11, Exh. 2)

21 Mr. Kent acted as legal counsel for the Respondent and KBRC to make the latter an
22 approved Regional Center by the USCIS. It was approximately an \$80 million project. (Lee Decl.
23 ¶12)

25 On or about December 5, 2006, the Kansas Department of Commerce sent a letter to the
26 USCIS in Laguna Niguel, California. This letter identified the biorefinery site for Nexsun Ethanol,
27 LLC about six to seven miles west of the city of Ulysses as a “targeted employment area” for
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1 purposes of 8 C.F.R. Section 204.6(e) and (i) because this area is rural and has experienced
2 unemployment at least 150% of the national average. (Lee Decl. ¶13, Exh. 3)

3 In response to Respondent's application for USCIS approval of the Kansas Biofuel
4 Regional Center, LLC ("KRBC") under the EB5 Program for 21 counties in southwest Kansas, the
5 USCIS approved KBRC as a Regional Center to produce "fuel grade ethanol" in a letter to
6 Respondent dated April 17, 2007. (Lee Decl. ¶13A, Exh. 4)

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8 In 2007, Prairie Horizon Agri-Energy, LLC ("Prairie LLC") became a significant investor
9 by investing \$2.5 million in Nexsun Ethanol, LLC. Prairie LLC managed the entire biofuel plant
10 project of Nexsun Ethanol, LLC, which included constructing and operating the plant. To further
11 manage this project, Prairie LLC replaced the Respondent as CEO with Mike Erhart in July, 2007
12 and staffed its board of directors with Prairie LLC personnel. For these actions, Nexsun Ethanol,
13 LLC provided compensation to Prairie LLC. (Lee Decl. ¶14, Exh. 3A)

14
15 In late 2007 and under the direction of the board members of Nexsun Ethanol LLC and
16 Mike Erhart, it broke ground for construction of its plant in late 2007 in Ulysses, Kansas. (Lee
17 Decl. ¶15)

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19 Also in 2007, the Respondent and Mr. Kent formed business entities, including limited
20 liability companies, in order to fund them with investors under the EB5 Program. By the end of
21 2007, there were three of these entities that owned interests in Nexsun Ethanol, LLC to fund its
22 new plant construction as a new commercial enterprise: Biofuel Venture III, LLC; Biofuel Venture
23 IV, LLC; and Biofuel Venture V, LLC. The Respondent has never owned any ownership interest
24 in any of the foregoing three entities, American Immigrant Investment Fund I, LLC, and Nexsun
25 Ethanol, LLC. Nexsun Ethanol, LLC has been an "active status" Kansas limited liability company
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1 from October 19, 2006 to the present and still had these four business entities as owners as of its
2 last filed annual report in 2011. (Lee Decl. ¶16, Exh. 5)

3 Under the management of Mike Erhart and the directors from Prairie, LLC, Nexsun
4 Ethanol, LLC completed substantial construction on the biofuel plan but it was not completed due
5 to lack of funds. In 2009, Prairie LLC withdrew its support for Nexsun Ethanol, LLC, both as an
6 investor and to manage its project, because of the U.S. financial crises. As a result of this
7 withdrawal, Mr. Erhart resigned as CEO of Nexsun Ethanol, LLC and its directors provided by
8 Prairie LLC resigned. Mr. Erhart's resignation forced the Respondent to become the C.E.O. of
9 Nexsun Ethanol, LLC in 2009. (Lee Decl. ¶17).

10 In December, 2009, the Respondent, Mr. Kent, and their supporting team from LK
11 Corporation made their trip to China to solicit investors for the EB5 Program. This was the only
12 trip that the Respondent made to China to obtain EB5 Program Investors. Since Mr. Kent and the
13 Respondent did not obtain any such investors, they completely stopped going to China and to
14 soliciting Chinese investors for EB5 Program investments. (Lee Decl. ¶18)

15 From 2008 to 2012, the Respondent travelled to China and Korea to obtain funds for the
16 Nexsun Ethanol, LLC project from institutional investors, not individual investors under the EB5
17 Program. Because of poor global economic conditions, the Respondent was unsuccessful in
18 raising the investment needed from these institutional investors. (Lee Decl. ¶19)

19 C. EB5 Program With American Immigrant Investment Fund, I, LLC And Kansas
20 Biofuel Regional Center, LLC

21 On or about November 24, 2009, the LK Corporation created American Immigrant
22 Investment Fund, I, LLC ("AIIFI") as a California limited liability company, and Respondent
23 serving as its agent for service of process in Los Angeles, California as established to be used as a
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1 pooling entity as a matter of formality and as required by the approved KBRC EB5 Program. (Lee
2 Decl. ¶20, Exh. 6)

3 On or about December 3, 2009, AIIFI and KBRC entered into an “Advisory Agreement”,
4 which states that AIIFI “was formed in December, 2009 to pool investment monies of foreign
5 nationals seeking immigration benefits under the [EB5 Program]”. This agreement permitted
6 AIIFI to make EB5 Program investments in Nexsun Ethanol, LLC. Under this agreement, KBRC
7 stated it would not guarantee to AIIFI or any investor any investment results and “shall not be
8 liable for any investment losses.” Mr. Kent signed this Advisory Agreement for KBRC. The
9 Respondent signed this Advisory Agreement for AIIFI. (Lee Decl. ¶21, Exh. 7)

11 D. Retainer Agreement Between Mr. Ye And Mr. Kent

12 On or about January 11, 2010, Mr. Ling Ye, the husband of Zhang Lei, visited the offices
13 of LK Corporation at 915 Wilshire Blvd. suite 2050, Los Angeles, CA 90017 and stated that he
14 wanted to make investments in biofuel projects to Mr. Kent. Mr. Ye stated to Mr. Kent and
15 Hellen Kang, a paralegal at LK Corporation (“Ms. Kang”), that he had heard from another investor
16 that LK Corporation had represented investors to make such investments, and he wanted to make
17 such an investment too. In a series of emails between Mr. Ye and Ms. Kang in January, 2010, Mr.
18 Kent – the attorney, principal, and partner managing the office of LK Corporation at that time –
19 and Ms. Kang explained to Mr. Ye that his \$500,000 investment in the AIIFI would be loaned to
20 Nexsun Ethanol, LLC secured by its assets and that the attorney fee would be \$15,000 for LK
21 Corporation to represent Mr. Ye in his EB5 Program investment. Mr. Ye wrote Ms. Kang to state
22 that he understood that his \$500,000 investment, if made, in AIIFI was at risk for a total loss and
23 that Mr. Ye was interested in real estate projects with more risk than the AIIFI investment because
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1 he is a “risking taking guy” with his investments for a potentially higher return. (Declaration of
2 Helen Kang in Support of the Response (“Kang Decl.”) ¶4, Exh. 8)

3 After further communication, on February 1, 2010, Mr. Ye retained LK Corporation (i.e.
4 the “Law Offices of Lee & Kent”) for legal services related to preparing the paperwork to obtain
5 an EB5 visa by signing a Retainer Agreement. Mr. Kent signed this Retainer Agreement and Ms.
6 Kang proceeded his case under Mr. Kent’s supervision. (Kang Decl. ¶5; Lee Decl. ¶22, Exh. 9)
7 Ms. Kang is not related to Respondent, and at all times herein, Ms. Kang was working under the
8 direct supervision and direction of Mr. Kent. (Kang Decl. ¶3)

9 The Retainer Agreement limited the work of the law firm to assisting Mr. Ye “to obtain
10 immigration benefits through the EB5 Investment Program. [LK Corporation agreed] to prepare
11 all documentation required for the processing of [Mr. Ye’s] immigration petition and perform all
12 necessary legal services incident thereto.” Mr. Ye’s wife, Zhang Lei, did not sign a retainer
13 agreement with LK Corporation to make an EB5 Program investment. (Lee Decl. ¶22, Exh. 9)

14 Respondent was not present in executing this agreement and was not aware of such retainer.
15 The Retainer Agreement states that Mr. Ye granted to LK Corporation a general power of attorney
16 “to prepare and execute” for Mr. Ye “any and all required documentation for the processing of
17 [Mr. Ye’s] immigration petition, including without limitation, immigration service forms and
18 petitions, entering into contracts, preparing financial statements, preparing and filing tax returns,
19 executing bank account authorizations, issuing checks, managing funds and entering into
20 financing or investment agreements.” This agreement does not identify that Mr. Ye is acting as
21 his wife’s agent with LK Corporation and does not refer to any investment by Mr. Ye and his wife,
22 Ms. Lei, into AIFI and/or Nexsun Ethanol, LLC even though Mr. Ye has declared that he was her
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1 “agent at all relevant times in connection with her application for the EB-5 immigrant investor
2 visa.” (Lee Decl. ¶23, Exh. 9, 10)

3 On or about February 1, 2010, Mr. Ye paid the Retainer Agreement fee by a wire transfer
4 of \$16,535.00 -- \$15,000 for the fee and \$1,535 for fees and costs -- directly to the Client Trust
5 Account for the Respondent and Mr. Kent. Mr. Kent signed the Retainer Agreement to confirm
6 that Mr. Ye had paid and LK Corporation had accepted the \$15,000 retainer fee. (Lee Decl. ¶24,
7 Exh. 11)

9 The Retainer Agreement states that Mr. Ye granted to LK Corporation a general power of
10 attorney “to prepare and execute” for Mr. Ye “any and all required documentation for the
11 processing of [Mr. Ye’s] immigration petition, including without limitation, immigration service
12 forms and petitions, entering into contracts, preparing financial statements, preparing and filing
13 tax returns, executing bank account authorizations, issuing checks, managing funds and entering
14 into financing or investment agreements.” (Lee Decl. ¶25, Exh. 9)

16 Mr. Kent did not advise Respondent of the Retainer Agreement with Mr. Ye and that his
17 wife was Ms. Lei. The Respondent was unaware of Mr. Ye and Ms. Lei when Mr. Ye entered into
18 the Retainer Agreement with Mr. Kent. Mr. Ye was the client of Mr. Kent, and Mr. Ye and Ms.
19 Lei had no contact with the Respondent. The Respondent has never met Mr. Ye and Ms. Lei and
20 has never spoken to them until this dispute arose and was unaware that they were a client when
21 they made their investment into AIIFI but heard that Mr. Kent retained a Chinese client. This
22 transaction occurred without Respondent’s personal knowledge. The first time Mr. Ye contacted
23 Respondent was in October, 2011. (Lee Decl. ¶26)

26 Whatever conflicts of interest that existed, if any, between LK Corporation, Respondent,
27 AIIF, Nexsun Ethanol, LLC, and Mr. Kent with Mr. Ye and Ms. Lei were only known to Mr. Kent.
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1 He was a principal of LK Corporation with responsibility to disclose these conflicts of interest to
2 Mr. Ye, Ms. Lei, and the Respondent before Ms. Lei made her investment in AIIF. The
3 Respondent was unaware of Ms. Lei's status as the wife of Mr. Ye when she made her EB5
4 Program investment of \$500,000 into AIIF in August, 2012 because Mr. Kent never disclosed this
5 information to Respondent. As a principal and partner, Mr. Kent was making the decisions at LK
6 Corporation in 2010 while Respondent was frequently travelling in China and Korea to find
7 institutional investors to fund the project of Nexsun Ethanol, LLC from January, 2009 to October,
8 2010. (Lee Decl. ¶27)

10 E. Investment Of Ms. Lei Into American Immigrant Investor Fund, I, LLC

11 Even though only Mr. Ye signed the Retainer Agreement for an investment under the EB5
12 Program with Mr. Kent, Mr. Ye's wife, Zhang Lei, obtained her own funds to invest the \$500,000
13 into AIIFI. Mr. Ye did not invest any money into the EB5 Program at issue. (Lee Decl., ¶28, Exh.
14 9, 10, 11 and 20 on page 8 from first page of Exh. 20, para. 4)

16 i. Mr. Kent Gave All Of The Information In The Confidential
17 Information Memorandum Of AIIFI And Business Plan Of Nexsun Ethanol, LLC To Mr. Ye And
18 His Wife, Zhang Lei

19 Before Ms. Lei made her \$500,000 investment into AIIFI under the EB5 Program, she and
20 her husband, Mr. Yee, received a Confidential Information Memorandum ("CIM") of AIIFI from
21 Mr. Kent, which stated that an EB5 Program investment in AIIFI required a \$530,000
22 Subscription Fee per investor to purchase a "Unit" in AIIFI for \$500,000 and to AIIFI's
23 administrative expenses for \$30,000 administrative fee. The CIM at page one states that it is
24 "provided to prospective investors on a confidential basis so they can consider an investment in
25 [AIIFI] formed to pool investment monies of foreign nationals seeking certain immigration
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1 benefits through the EB5 investment program (the "Program")..., which grants...permanent
2 resident status in the United States to those who make qualifying investments under the [EB5
3 Program]." "[T]o Participate in the Program, qualified investors must enter into a Subscription
4 Agreement with [AIIFI] and remit the sum of...(\$530,000) ("Subscription Fee") to [AIIFI's]
5 designated bank account...and complete the required immigration procedures...." (Lee Decl.,
6 ¶29, Exh. 12)
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8 The CIM at pages one and two states that AIIFI is solely engaged in the business of
9 "assisting investors seeking immigration benefits under the Program to locate qualified
10 investments". Based on the recommendations of the Kansas Biofuel Regional Center, LLC – a
11 regional center approved by USCIS – and the requirements of the EB5 Program, AIIFI has
12 "identified and recommended making" an investment of \$500,000 in Nexsun Ethanol, LLC to
13 develop and construct "an ethanol production facility and ancillary businesses in Ulysses, Kansas."
14 (Lee Decl., ¶30, Exh. 12)
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16 A potential investor in AIIFI requested a copy of its business plan and marketing materials
17 from the Managing Member of AIIFI by submitting to AIIFI an executed Escrow Agreement and
18 Subscription Agreement and by depositing the \$530,000 with Wilshire State Bank as Escrow
19 Agent. A condition to close this Escrow Agreement for the issuance of the AIIFI Unit to an
20 investor was that the investor's I-526 Application was approved by USCIS and the investment in
21 Nexsun Ethanol, LLC was an approved qualifying investment under the EB5 Program. Once
22 these conditions occurred, then an investor would be an owner/member of AIIFI and the
23 investment would be irrecoverable. In addition, each investor in AIIFI would be represented on
24 the board of directors of Nexsun Ethanol, LLC to satisfy the EB5 Program's requirements that the
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1 investor directly participate in policy making and/or management of Nexsun Ethanol, LLC. (Lee
2 Decl., ¶31, Exh. 12 CIM, page 2, para. 4, 5; page 11, 12)

3 The CIM stated that, under the AIIFI Subscription Agreement, an investor could withdraw
4 and receive a refund from AIIFI only if the investor failed the Visa Process. (CIM, page 3) The
5 CIM at page 14 stated that the investment was a five year commitment unless the investor failed
6 the Visa Process, which is defined at CIM page 8 as denial of the I-526 Petition, denial of Form I-
7 485, refusal by the State Department to issue a visa to the investor, or a US port of entry excludes
8 the investor from admission to the US. The CIM at page six stated that each prospective investor
9 “should consult each investor’s own advisors as to immigration, legal, tax, and related matters
10 concerning their immigration petition and investment in [AIIF].” Each investor was responsible to
11 pay his own costs for this advice. The CIM expressly stated that it was not legal or tax advice and
12 that AIIF had not “engaged any legal or other advisors to represent prospective investors.” (Lee
13 Decl., ¶32, CIM, page 3, 6)

14 The CIM stated that an “investment in AIIF involves certain risks, including with regard to
15 general and local economic conditions, the particular risks related to business enterprise of Nexsun,
16 that investment returns may be below market for similar investments, that some or all of the
17 investor’s capital may not be returned and that the Units represent an illiquid investment which
18 cannot be transferred.” (CIM page 3, 11) The CIM stated there was “no guarantee that investors
19 will obtain the desired immigration benefits (permanent residency status)”, that the financial
20 projections of Nexsun Ethanol, LLC will be accurate, or that the investment in Nexsun Ethanol,
21 LLC will create the jobs needed under the EB5 Program. Finally, the CIM stated that “In making
22 an investment decision, investors must rely on such investor’s own examination of the terms of the
23 offering, including the merits and risks involved.” (Lee Decl., ¶33, Exh. 12, CIM page 4)

1 The CIM at page 5 states that an investor, his spouse, and his children less than 21 years of
2 age may be granted permanent resident status. (Lee Decl., ¶34)

3 The CIM at page 9 states that the Managing Member, under the AIIFI operating agreement,
4 has sole discretion regarding decisions when an investor is entitled to withdraw from his AIIFI
5 investment. (Lee Decl., ¶35)

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7 The CIM at page 10 states that Nexsun Ethanol, LLC “plans on repaying the
8 loan/investment upon maturity through earnings and/or from refinancing the project.” (Lee Decl.,
9 ¶36)

10 The CIM at page 14 states that the Managing Member will send to each member of AIIFI
11 “generally within 90 days” after each fiscal year, an audited balance sheet, income statement, cash
12 flow statement, and change in member equity statement prepare under generally accepted
13 accounting principles. Further, each investor is responsible for his own tax advice about this
14 investment in AIIFI. (Lee Decl., ¶37)

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16 Before Ms. Lei made her \$500,000 investment into AIIFI under the EB5 Program, she and
17 her husband, Mr. Yee, received a Business Plan of Nexsun Ethanol, LLC, which describes in 43
18 pages the ethanol product to be produced, marketed, and sold; the market forces and risks that are
19 involved in an investment in the ethanol plant that Nexsun Ethanol, LLC is to build (for risks of
20 loss to an investment: see pages 30 to 34); and that this entire project is projected to generate over
21 \$9,000,000 a year in distributions to shareholders after 10 years of operations (see page 38). (See
22 the entire Nexsun Business Plan at Lee Decl., ¶38, Exh. 13)

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1 ii. Escrow Agreement And Subscription Agreement Signed And Submitted By
2 Ms. Zhang Lei / Her Purchase Of 60 Units Of Membership Interest In AIIFI With Her \$530,000
3 Investment / AIIFI's Loan To Nexsun Ethanol, LLC / Investment Procedure Not Followed By Mr.
4 Kent / USCIS Denies Ms. Lei's I-526

5 Though Mr. Kent was an experienced attorney in handling EB5 Program investments for
6 LK Corporation, he issued 60 Units of membership interest in AIIFI in Certificate Number 7
7 ("Certificate") to Zhang Lei on August 4, 2010 before she had paid any money to AIIFI, the
8 Escrow Agent, or Wilshire State Bank. This is contrary to the instructions of the CIM, the Escrow
9 Agreement and the Subscription Agreement of this investment. As a principal of LK Corporation
10 and while the Respondent was out of the US on business in Asia, Mr. Kent instructed the
11 Respondent's wife and agent, Rebecca T. Lee, to sign the Certificate for the Respondent as
12 president of AIIFI. Mr. Kent signed the Certificate as AIIFI's vice president. (Lee Decl., ¶39,
13 Exh. 14)

14 Ms. Lei made five wire transfers to pay the Subscription Fee of \$530,000 to AIIFI's
15 general banking account as follows: \$125,000 on August 11, 2010; \$120,000 on August 12, 2010;
16 \$115,000 on August 13, 2010; \$110,000 on August 16, 2010; and \$60,000 on August 17, 2010.
17 None of these wire transfers were ever transferred to the client trust account of LK Corporation.
18 All of these wire transfers occurred after Mr. Kent had issued the Certificate to Ms. Lei on August
19 4, 2010. (Lee Decl. ¶40, Exh. 15)

20 The Escrow Agreement requires Ms. Lei to deposit \$530,000 into AIIFI's general bank
21 account at Wilshire State Bank, the Escrow Agent. After she executed the Subscription
22 Agreement and paid the \$530,000 into AIIFI's bank account (Account Number 1900722), then
23 AIIFI was to transfer \$500,000 for Ms. Lei's 60 Units of membership interest in AIIFI to the
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1 Escrow Account of Wilshire State Bank and held there until Ms. Lei's I-526 Petition is approved
2 by the USCIS. Once this transfer from AIIFI's bank account to the Escrow Account occurs, then
3 Ms. Lei's purchase of the Units is completed and Ms. Lei is made a member of the board of
4 directors of AIIFI. Under the direction of Mr. Kent and at his request, Mrs. Lee (wife of
5 Respondent) -- as agent for the managing member of AIIFI, the Respondent, and for Ms. Lei as
6 investor and for LK Corporation as Ms. Lei's legal counsel (since the Escrow Account of AIIFI is
7 held for the benefit of both AIIFI and Ms. Lei as investor) -- signed Exhibit A and Exhibit B to the
8 Escrow Agreement as instructions. This Exhibit A to the Escrow Agreement advised and
9 authorized Wilshire State Bank as Escrow Agent to transfer Ms. Lei's \$500,000 investment from
10 the AIIFI general bank account to the Escrow Account of AIIFI at Wilshire State Bank. This
11 transfer made Ms. Lei the owner of 60 Units of AIIFI and a member of its board of directors in
12 exchange for the money. Exhibit B to the Escrow Agreement advised Wilshire State Bank as
13 Escrow Agent to transfer the \$500,000 from the Escrow Account of AIIFI to the bank account of
14 Nexsun Ethanol, LLC to make the loan in the same amount by AIIFI to Nexsun Ethanol, LLC.
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16 (Lee Decl. ¶41, Exh. 16)
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19 On August 17, 2010 and under the direction of Mr. Kent, the following persons signed the
20 Amended Subscription Agreement: Ms. Lei signed for herself as investor, Mr. Kent signed for LK
21 Corporation as Mr. Lei's representative, and Mrs. Lee signed for the Respondent as the managing
22 member of AIIFI. (Lee Decl. ¶42, Exh. 17)
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24 On August 17, 2010, AIIFI drew a \$500,000 check on its general bank account at Wilshire
25 State Bank and deposited it into AIIFI's Escrow Account of that bank (Account Number 1901036).
26 Under the direction of Mr. Kent and with his acknowledgment, Mrs. Lee signed the \$500,000
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1 check for AIIFI as the agent for its managing member, the Respondent, and deposited this check
2 into AIIFI's Escrow Account. (Lee Decl. ¶43, Exh. 18)

3 Instead of submitting the I-526 Petition and waiting for the approval of USCIS on that
4 petition as required by the CIM, Escrow Agreement and Subscription Agreement, Mr. Kent
5 requested that Mrs. Lee sign the Exhibit B to AIIFI's Escrow Account, which authorized AIIFI to
6 loan the \$500,000 that it received from Ms. Lei to Nexsun Ethanol, LLC, and to issue the check
7 against AIIFI's Escrow Account to make this loan to Nexsun Ethanol, LLC by depositing this
8 check into its bank account on August 18, 2010. Since then, Nexsun Ethanol, LLC has spent this
9 amount with other funds on developing its ethanol plan and its construction as discussed in the
10 CIM and required by the EB5 Program regulations. (See Lee Decl. ¶44, Exh. 12 for CIM, Exh. 16
11 for Exhibit B, and Exh. 19 for the \$500,000 cancelled check drawn on AIIFI's Escrow Account
12 and deposited in the business checking account of Nexsun Ethanol, LLC on August 18, 2010 and
13 its bank statement that records the deposit).
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16 Wilshire State Bank was paid to act as the Escrow Agent for the funding of the investors
17 into AIIFI, for which the Respondent is the acting president and a managing member, and other
18 EB5 Program investments. The Respondent did not provide Wilshire State Bank with any other
19 inducement to act as the Escrow Agent in the funding of AIIFI. All fees that Wilshire State Bank
20 charges AIIFI are paid from the \$30,000 Administrative Fee that each investor in AIIFI, such as
21 Ms. Lei, paid. (Lee Decl. ¶45)
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24 On or about September 1, 2010 (8 months after retaining Mr. Kent) and after numerous
25 correspondences for documents and communications via email and telephone, Ms. Lei signed her
26 I-526 Petition. On or about September 10, 2010, Mr. Kent signed this I-526 Petition and
27 thereafter submitted it to the USCIS for its decision. As of September 10, 2010, LK Corporation
28

1 earned its retainer fee of \$15,000 for the work that it performed for Mr. Ye and his wife, Ms. Lei.
2 (Lee Decl. ¶46, Exh. 9, 11, and 20, which is a redacted version of the I-526 Petition and proof of
3 its submission to USCIS) In October or November, 2010, LK Corporation transferred the \$15,000
4 fee from its Client Trust Account to its general bank account. The alleged \$530,000 investment
5 fund was never deposited and part of Lee & Kent's client trust account. (Lee Decl. ¶46, Exh. 19,
6 20)
7

8 The Respondent was unaware of the actions taken by Mr. Kent with respect to the
9 investment of Ms. Lei as described herein and his preparation of her I-526 Petition. Mr. Kent was
10 the partner responsible for the proper preparation of Mr. Lei's I-526 Petition with the USCIS. All
11 of the communications and legal services performed by LK Corporation for Mr. Ye and Ms. Lei
12 occurred under the instructions and directions and approval of Mr. Kent. (Lee Decl. ¶47)
13

14 Since February 1, 2010, Ms. Kang had corresponded with Mr. Ye to collect documents and
15 assisted Mr. Kent in preparing Zhang Lei's I-526 Petition under the supervision and direction of
16 Mr. Kent. To the best of her knowledge, Mr. Lee never met the client and was not involved in the
17 preparation of Zhang Lei's I-526 Petition. (Ms. Kang ¶6)
18

19 After submitting the I-526 Petition, the USCIS requested additional evidence to support the
20 petition. Mr. Kent provided this evidence, but the USCIS did not find it sufficient and denied the
21 petition on or about July 18, 2011 because the translation of her source of lawful funds from the
22 sale of her real property and her loan in China to fund her \$530,000 investment was not valid or
23 sufficient. (Lee Decl. ¶48, Exh. 21; Kang Decl. ¶7)
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1 F. Mr. Ye Agrees To Refile I-526, Then Refuses To Do So After Mr. Kent Leaves LK
2 Corporation As Full-Time Employee; Ms. Lei Sues Respondent For Return Of Her Entire
3 Investment

4 After the USCIS denied Ms. Lei's I-526 Petition, Mr. Ye was advised of this denial. To
5 the best of Ms. Kang's knowledge, this petition was the only one denied by the USCIS for an
6 investor in AIIFI. As of August, 2010, LK Corporation had already obtained approval from the
7 USCIS for the I-526 for 41 investors, and Mr. Lei was the only investor, out of 45 investors, for
8 whom the USCIS denied her I-526 application. (Lee Decl. ¶49, Exh. 20, 21; Kang Decl. ¶7)

9
10 On August 21, 2011, Mr. Ye sent an email to Ms. Kang at LK Corporation to agree to have
11 LK Corporation refile Ms. Lei's I-526 Petition with the USCIS. (Kang Decl. ¶7, Exh. 22)

12
13 Mr. Kent left the law firm at the end of August, 2011 and ceased full-time employment
14 with the law firm, but he was still visiting and using the office until the end of 2011 when he
15 dissolved finally his employment and connection with the law firm. (Lee Decl. ¶9; Kang Decl. ¶8)

16
17 On September 29, 2011, Mr. Ye sent an email to Ms. Kang to state that he decided not to
18 file Zhang Lei's I-526 Petition. (Kang Decl. ¶9, Exh. 23)

19
20 In November, 2011, Ms. Lei sought to recover her entire investment from AIIFI, which
21 reserved the sole discretion of its Managing Member to decide whether to repurchase such an
22 investment made by Ms. Lei as stated in the CIM. On January 18, 2012, Ms. Lei filed a complaint
23 against the Respondent, LK Corporation, and AIIF (collectively "Defendants") in Los Angeles
24 Superior Court for Case Number BC477129, but not against Mr. Kent even though he solely
25 managed the legal representation for LK Corporation in this matter. (Lee Decl. ¶50, Exh. 24)

26
27 The Respondent entered into a "Settlement Term Sheet" on January 30, 2012 that stated
28 that it was to be part of a "Final long-form settlement to come". The Respondent's attorney was in

1 drug rehabilitation during the defense of the Respondent and did not properly advise him as a
2 client. The Respondent was under a severe amount of stress and depression from the pressures of
3 finding more money to fund more development of Nexsun Ethanol, LLC when he entered into this
4 term sheet. (Lee Decl. ¶51, Exh. 25)

5 The term sheet committed the Respondent to make payments to Ms. Lei's attorney Lee
6 Tran & Lian APLC: \$150,000 by February 3, 2012, March 2, 2012, April 3, 2012, and May 3,
7 2012. Nexsun paid Ms. Lei's attorney \$150,000 on February 3, 2012. AIIFI paid another
8 \$150,000 on March 12, 2012 to this attorney. Nexsun had not sufficient funds to refund and make
9 these payments. On July 11, 2012, the Respondent paid \$5,000 to Plaintiff's attorney. On August
10 1, 2012, AIIFI paid \$5,000 to Plaintiff's attorney. The total payments under this term sheet are
11 \$310,000. (Lee Decl. ¶52, Exh. 25, 26)

12 No such "long-form" settlement was ever completed by the parties. Respondent's counsel
13 did not appear in court, and the Court entered judgment on October 18, 2012 in Case Number
14 BC477129 for Ms. Lei based on the term sheet. The Respondent filed an appeal of this judgment
15 on December 14, 2012 to challenge the judgment as invalid. (Lee Decl. ¶53, Exh. 24-26)

16 As an attorney, Respondent takes personal responsibility and initiative to resolve disputes
17 with a client as much as is in his power even though he is am not personally obligated under the
18 law to accept such responsibility. This personal credo of Respondent was a contributing factor to
19 why he acted promptly within two weeks of Ms. Lei's filed complaint in January 18, 201 to make
20 arrangements with Nexsun Ethanol, LLC and AIIFI to make payments to her to refund her AIIFI
21 investment. This personal credo also explains why he personally paid \$10,000 to Ms. Lei's
22 attorney. Despite Respondent's best efforts, Nexsun Ethanol, LCL; AIIFI; and Respondent were
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1 not able to repay her entire investment. But, Respondent was able to make \$310,000 of payments
2 to Ms. Lei within eight months after her filing her lawsuit. (Lee Decl. ¶54, Exh. 24-26)

3 As an attorney, Respondent accepts that he is fully responsible when a client is not
4 satisfied and is not protected to the fullest extent. If there are any mistakes or errors in this matter,
5 then Respondent takes full responsibility for them, and he feels contrition for them. However, the
6 factual allegations in this matter are not accurate and need to be corrected. (Lee Decl. ¶55)

7
8 II. Argument

9 A. Respondent Took Personal Responsibility And Initiative As Soon As He Could To
10 Protect His Client's Interest To The Best Of His Ability By Refunding Ms. Lei's Investment

11 The facts establish that Ms. Lei filed a lawsuit in Los Angeles Superior Court against the
12 Respondent on January 18, 2012 in Case Number BC477129 in an attempt to recover her AIIFI
13 investment and that, in less than two weeks, the Respondent took personal responsibility to make
14 payments to refund Ms. Lei's investment of \$530,000 under the short form agreement even though
15 the Respondent was under no legal obligation to do so. The facts establish that Mr. Ye and his
16 wife never signed any contract that personally obligated the Respondent to act to refund her AIIFI
17 investment as his personal obligation. The Retainer Agreement is signed by Mr. Kent for LK
18 Corporation. The parties to the Escrow Agreement and Subscription Agreement are LK
19 Corporation, Ms. Lei, AIIFI, and Wilshire State Bank. (Exh. 9, 16, 17) Through the
20 Respondent's efforts, Ms. Lei was refunded \$310,000 of her investment. Respondent requests that
21 this argument be incorporated into the State Bar's decision in this matter and to incorporate this
22 argument into all of the Argument Sections hereafter.
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1 B. Respondent Properly Maintained Client Funds In LK Corporation's Client Trust
2 Account For Client Funds Received From Mr. Ye And Ms. Lei And Did Not Violate Rule Of
3 Professional Conduct 4-100(A)

4 The Respondent generally and specifically denies the allegations in paragraphs 2 to 18 of
5 Count One.

6 As set forth in Exhibits 9, 11, 15, and 19 in the Facts above, the only client funds received
7 from Mr. Ye and Ms. Lei in the amount of \$16,535 were directly deposited by wire transfer into
8 the Client Trust Account of the Law Offices of Lee & Kent, which is the law firm operated by LK
9 Corporation, on February 1, 2010, the same day the client, Mr. Ye, and Mr. Kent signed the
10 Retainer Agreement (See Exh. 9). The \$16,535 comprised the \$15,000 retainer and \$1,535 for
11 filing fees and costs. The LK Corporation earned the \$15,000 by filing the I-526 of Ms. Lei.
12 Afterwards, Mr. Ye decided to refile but later changed his mind not to refile even though LK
13 Corporation advised him to do so because all of the other 45 investors into AIIFI had the USCIS
14 approve their I-526.
15

16 The investment of Ms. Lei into AIIFI of \$530,000 is not client funds under Rule of
17 Professional Conduct 4-100(A), was directly paid into AIIFI's general bank account by Ms. Lei
18 for her purchase of her Units in AIIFI, and was never commingled with the personal funds of the
19 Respondent or client trust account of LK Corporation. As a result, the Respondent did not violate
20 Rule of Professional Conduct 4-100(A). *Arm v. State Bar*, 50 Cal. 3d 763 (1990). (See Exh. 16-
21 21 for accounting of the \$530,000). As a result, the paragraph 18 allegation of the Charges is an
22 invalid allegation because the \$530,000 invested by Ms. Lei into AIIFI in August, 2010 is not
23 client funds of Ms. Lei to be deposited into the LK Corporation's client trust account. Had the
24 Respondent done such a transaction, this would have been a breach of the Escrow Agreement and
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1 Subscription Agreement, and a breach of the LK Corporation's fiduciary duty to Ms. Lei, who
2 agreed and knew that she had to invest \$500,000 in an approved EB5 Program investment, such as
3 AIIFI, to qualify for permanent resident status under the EB5 Program. For the Respondent, Mr.
4 Kent, or any other agent of LK Corporation to deposit Ms. Lei's \$530,000 into its Client Trust
5 Account and to maintain it there between August 13 to 17, 2010 would be a breach of the Escrow
6 Agreement, Subscription Agreement, and be a valid basis for alleging a breach of fiduciary duty
7 against LK Corporation if there were any such claims.
8

9 The Respondent denies the allegations of paragraph 3 of the Charges because he only took
10 one trip in 2009 to solicit EB5 Program investors to China. In 2010, the Respondent did not make
11 any trip to solicit any EB5 Program investors in "Asia."
12

13 The Respondent denies the allegations of paragraph 4 of the Charges because it states that
14 the immediate family of the EB5 Program investor can obtain permanent status in the US when
15 such an individual has to be a spouse or under 21 years old. Moreover, the Facts above set forth
16 the requirements for an EB5 Program investor, which include more requirements than alleged at
17 paragraph 4 of the Charges.
18

19 The Respondent denies the allegation in paragraph 5 of the Charges that Lei Zhang
20 retained the Respondent for legal services to represent her in the EB5 Program investment. The
21 principal of LK Corporation who signed the retainer agreement with Mr. Ye, not Ms. Lei, is Mr.
22 Kent, not the Respondent, who was out of the US at that time and unaware of Mr. Kent signing up
23 Mr. Ye as a client of LK Corporation. LK Corporation and Mr. Kent did not prepare an I-526
24 Petition for Mr. Ye. Respondent did not speak to Mr. Ye until November 2011 (over one year and
25 nine months after Mr. Ye's first contact with Mr. Kent).
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1 The Respondent denies the allegation in paragraph 6 of the Charges because the
2 Respondent was out of the US, did not sign the Subscription Agreement, and did not provide any
3 advice and direction to Ms. Lei for her to sign a Subscription Agreement with AIIFI on or about
4 August 4, 2010. The Facts establish Mr. Kent, on behalf of LK Corporation and as its principal
5 and partner, signed the Amended Subscription Agreement with Ms. Lei on or about August 4,
6 2010. Ms. Lei was acting under the advice and direction of Mr. Kent to execute this agreement.
7
8 The Respondent's wife, Mrs. Lee, signed the Amended Subscription Agreement at the direction of
9 Mr. Kent for AIIFI's managing member, the Respondent. (See Lee Decl. Exh. 17)

10 The Respondent denies the allegation in paragraph 7 and 17 of the Charges because Mr.
11 Kent was the partner and principal in charge of the investment of Ms. Lei under the Subscription
12 Agreement in August, 2010. Mr. Kent violated the Subscription Agreement by issuing the
13 Certificate to Ms. Lei on August 4, 2010 before she paid any money to AIIFI and submitting
14 executed Escrow Agreements and Subscription Agreements to Mr. Kent. Then he had Mrs. Lee
15 sign for Respondent as managing member of AIIFI to approve the transfer of the \$500,000 to
16 AIIFI for the purchase of the AIIFI Units and then to loan the \$500,000 to Nexsun Ethanol, LLC
17 before Mr. Kent had submitted the I-526 Petition for Ms. Lei to the USCIS for approval. (See Exh.
18 16 to 21) Mr. Kent was responsible for preparing the I-526 Petition improperly, which was
19 rejected for being improperly attested to for lawful funds by Ms. Lei even though she submitted
20 the proper information to do so. (See Exh. 21)

21 Ms. Lei and Mr. Ye violated their covenant of good faith and fair dealing with LK
22 Corporation and the Respondent because Mr. Ye first accepted LK Corporation's request to refile
23 Ms. Lei's I-526 Petition for approval in August 21, 2011 after he found out about the USCIS
24 denial of Ms Lei's petition. (Exh. 22) In January, 2010 in an earlier email to Ms. Kang, Mr. Ye
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1 stated he liked riskier projects to invest in than biofuel plants, such as Nexsun Ethanol, LLC. (Exh.
2 8) However, after Mr. Kent left full-time employment with LK Corporation at the end of August,
3 2011, Mr. Ye rejected this refiling with the USCIS even though it had approved all of the other
4 EB5 Program Investors in AIIFI. Mr. Ye and Ms. Lei have a duty under the covenant of good
5 faith and fair dealing in the Retainer Agreement to refile her I-526 with the USCIS. "Every
6 contract imposes upon each party a duty of good faith and fair dealing in its performance and its
7 enforcement." "The covenant of good faith finds particular application in situations where one
8 party is invested with a discretionary power affecting the rights of another. Such power must be
9 exercised in good faith." (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.*
10 (1992) 2 Cal.4th 342, 371—372)
11

12
13 The Respondent and his wife have never been and are not owners of Nexsun Ethanol, LLC,
14 which is not a corporation as alleged in paragraph 7 of the Charges. Moreover, the Respondent
15 and his wife do not control Nexsun Ethanol, LLC since they are not its owners.

16
17 The Respondent denies the allegations of paragraph 8 of the Charges because Ms. Lei
18 acted on Mr. Kent's advise to execute the Escrow Agreement. As discussed in the preceding five
19 paragraphs, the Respondent was out of the US when Mr. Kent, Ms. Lei, and the Respondent's wife
20 executed the Escrow Agreement. Thus, the Respondent did not sign the Escrow Agreement, his
21 agent, his wife, did at Mr. Kent's direction. Mr. Kent advised and directed Ms. Lei to sign the
22 Escrow Agreement and directed the Respondent's wife to sign all of this agreement and its
23 accompanying instructions on behalf of the Respondent -- without his approval -- to execute the
24 transfer of the \$500,000 investment in violation of the terms of the CIM, Escrow Agreement, and
25 Subscription Agreement by investing this \$500,000 before Mr. Kent had submitted Ms. Lei's I-
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1 526 to USCIS for approval and after Mr. Kent had issued the Certificate for the AIIFI Units to Ms.
2 Lei on or about August 4, 2010.

3 The Respondent denies the allegations of paragraph 9 of the Charges because Ms Lei's
4 \$530,000 investment into AIIFI's general account is not client funds to be deposited directly into
5 the LK Corporation client trust account. The Retainer Agreement was only for \$15,000. The
6 required investment as the Charges allege in paragraph 4 is \$500,000. This investment is made
7 directly into the EB5 Program investment, and not to LK Corporation's trust account. The CIM,
8 Escrow Agreement, and Subscription Agreement all require the EB5 Program Investment of Ms.
9 Lei to be deposited into AIIFI's bank account. If Respondent had Ms. Lei invest the \$530,000
10 directly into the Client Trust Account of LK Corporation, this would have been a breach of
11 Escrow Agreement and Subscription Agreement. Regardless, this never happened.
12

13
14 Respondent denies the allegations of paragraph 10 of the Charges because Respondent was
15 out of the US and not involved in Ms. Lei's investment into AIIFI in August, 2010. Mr. Kent was
16 the partner and principal of LK Corporation who directed the Respondent's wife, who is the
17 Respondent's agent, to prepare and issue Check Number 1010 in the amount of \$500,000 to draw
18 against the AIIFI general business account and to deposit it into the Escrow Account on or about
19 August 17, 2010. Both accounts were kept at Wilshire State Bank in Los Angeles, California.
20

21 (See Exh. 14 to 19)

22 Respondent denies the allegations of paragraph 11 of the Charges because the Respondent
23 was out of the US in August, 2010 and did not issue Check Number 1006 from the Escrow
24 Account to deposit into Nexsun Ethanol, LLC's bank account. (See Exh. 19) Mr. Kent was the
25 principal and partner of LK Corporation directed the Respondent's wife, who is the Respondent's
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1 agent, to issue this check against the Escrow Account to deposit into the bank account of Nexsun
2 Ethanol, LLC. (See Exh. 20)

3 Respondent denies the allegations of paragraph 12 of the Charges because the Respondent
4 was out of the US in August, 2010 and did not decide to disburse Ms. Lei's \$500,000 investment
5 into AIIFI in violation of the CIM, Escrow Agreement, and Subscription Agreement in August,
6 2010. (See Exh. 16-20) Mr. Kent was the principal and partner of LK Corporation directed the
7 Respondent's wife, who is the Respondent's agent, to issue checks against the AIIFI general bank
8 account and the Escrow Account to deposit into the bank account of Nexsun Ethanol, LLC even
9 though this action violated these agreements because Mr. Kent had not filed Ms Lei's I-526
10 Petition with the USCIS until September, 2010. Respondent was unaware of the foregoing
11 transactions since he was out of the country and Mr. Kent did not disclose them to the Respondent.
12 Mr. Kent was the responsible individual for LK Corporation to advise his clients, Mr. Ye and Ms.
13 Lei, the Mr. Kent had disbursed Ms. Lei's \$500,000 from the Escrow Account to Nexsun Ethanol,
14 LLC. Mr. Kent signed all of the agreements at issue with Mr. Ye and/or Ms. Lei. Mr. Kent was
15 advising and directing Ms. Lei to sign the Escrow Agreement and Subscription Agreement in
16 August, 2010. Any failure to advise Ms. Lei and Mr. Ye of this disbursement is the responsibility
17 of Mr. Kent since they are his clients.

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21 Respondent denies the allegations of paragraph 13 because Mr. Kent was directing the
22 disbursement of Ms. Lei's \$500,000 investment into AIIFI through its general account, its Escrow
23 Account, and then to the bank account of Nexsun Ethanol, LLC. Respondent was out of the US
24 when these disbursements occurred.

25
26 Respondent denies the allegations of paragraph 14 and 15 and 16 because the authority and
27 decision to spend the \$500,000 invested by Ms. Lei into AIIFI and then to be loaned to Nexsun
28

1 Ethanol, LLC was performed by Mr. Kent without the Respondent's knowledge because
2 Respondent was out of the US at this time. Respondent denies that he is grossly negligent in not
3 knowing whether Nexsun Ethanol, LLC spent none, part, or all of the loan by AIIFI to Nexsun
4 Ethanol, LLC of the \$500,000 invested by Ms. Lei. The transactions alleged in these paragraphs
5 occurred under Mr. Kent's direction and authorization. After the loan was made by AIIFI, Nexsun
6 Ethanol, LLC decided how to invest the money without Respondent's approval and authority.
7 Since the Respondent is not an owner and/or a creditor of Nexsun Ethanol, LLC and since it is a
8 private company with creditors and investors, Respondent does not have the right to demand
9 Nexsun Ethanol, LLC's private financial information since this information could be subject to a
10 protective order by any of these creditors and investors. Even if the Respondent could respond to
11 this request, Respondent would need to request an itemized report of how the \$500,000 investment
12 of Ms. Lei was spent from the accountants and managers at Nexsun Ethanol, LLC. Respondent is
13 unaware of any such report at this time. The allegation that Nexsun Ethanol, LLC spent Ms. Lei's
14 \$500,000 investment from August 18, 2010 to December 31, 2010 is not supported by any facts
15 and any witness competent to testify to how the \$500,000 investment was spent by Nexsun
16 Ethanol, LLC. There is no foundation for the State Bar to allege that the \$500,000 invested by Ms.
17 Lei was not spent properly by Nexsun Ethanol, LLC and/or by AIIFI or if this \$500,000 was spent
18 at all by Nexsun Ethanol, LLC. Pursuant to the CIM, Ms. Lei, as an owner of AIIFI, will receive
19 audited financial statements of AIIFI within about 90 days after AIIFI's fiscal year end. Since
20 AIIFI made a loan of \$500,000 to Nexsun Ethanol, LL, AIIFI has the rights of a creditor in
21 Nexsun Ethanol, LLC. Ms. Lei as an owner of AIIFI has the right to attempt to have AIIFI
22 enforce its creditor rights in Nexsun Ethanol, LLC. If the other 40 investors of AIIFI disagree
23 with her attempt, then Ms. Lei will need to take court action to do so. This paragraph describes
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1 the risks that Ms. Lei stated that she understood when she signed the Subscription Agreement that
2 she read the CIM and the Business Plan of Nexsun Ethanol, LLC and “knowingly assumes the
3 risks associated with a Purchase of a Unit and has sought independent professional advice in
4 connection therewith.” (See Exh. 17)

5 C. Respondent Did Not Misappropriate Client Funds And Did Not Violate Business &
6 Professions Code Section 6106
7

8 The Respondent generally and specifically denies the allegations in paragraphs 19 to 22 of
9 Count Two.

10 All of the Respondents denials in Count One are incorporated by reference for the same of
11 brevity and to avoid repetition.

12 As set forth in Exhibits 9, 11, 15, and 19 in the Facts above, the only client funds received
13 from Mr. Ye and Ms. Lei in the amount of \$16,535 were directly deposited by wire transfer into
14 the Client Trust Account of the Law Offices of Lee & Kent, which is the law firm operated by LK
15 Corporation, on February 1, 2010, the same day Mr. Ye and Mr. Kent signed the Retainer
16 Agreement (See Exh. 9). The \$16,535 comprised the \$15,000 retainer and \$1,535 for filing fees
17 and costs. The LK Corporation did not take the \$15,000 as earned until the I-526 of Ms. Lei was
18 denied and Mr. Ye decided not to refile even though LK Corporation advised him to do so because
19 all of the other 45 investors into AIIFI had the USCIS approve their I-526.
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22 The investment of Ms. Lei into AIIFI of \$530,000 is not client funds under Rule of
23 Professional Conduct 4-100(A), was directly paid into AIIFI’s general bank account by Ms. Lei
24 for her purchase of her Units in AIIFI, and was never commingled with the personal funds of the
25 Respondent. As a result, the Respondent did not violate Rule of Professional Conduct 4-100(A).
26 *Arm v. State Bar*, 50 Cal. 3d 763 (1990). (See Exh. 16-21 for accounting of the \$530,000). As a
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1 result, the paragraph 18 allegation of the Charges is an invalid allegation because the \$530,000
2 invested by Ms. Lei into AIIFI in August, 2010 are not client funds to be deposited into the LK
3 Corporation's client trust account. To do so would be a breach of the Escrow Agreement and
4 Subscription Agreement, and a breach of the LK Corporation's fiduciary duty to Ms. Lei, who
5 agreed and knew that she had to invest \$500,000 in an approved EB5 Program investment, such as
6 AIIFI, to qualify for permanent resident status under the EB5 Program. For the Respondent, Mr.
7 Kent, or any other agent of LK Corporation to deposit Ms. Lei's \$530,000 into its Client Trust
8 Account and to maintain it there between August 13 to 17, 2010 would be a breach of the Escrow
9 Agreement, Subscription Agreement, and be a valid basis for alleging a breach of fiduciary duty
10 against LK Corporation if any.
11

12
13 D. Respondent Denies That He Violated Business & Professions Code Section
14 6068(m) As Alleged In Count Three.

15 The Respondent denies specifically and generally all of the allegations in paragraph 23 to
16 25 for Count Three of the Charges. The Respondent's responses and denials of the Charges'
17 allegations to paragraphs 1 to 24 are incorporated herein by reference for brevity and to avoid
18 repetition, which includes the Factual History of this pleading.
19

20 Mr. Kent was responsible to inform Ms. Lei and Mr. Ye of the transfer of the \$500,000
21 from the Escrow Account at Wilshire State Bank to Nexsun Ethanol, LLC as a loan from AIIFI to
22 Nexsun Ethanol, LLC for \$500,000 in August, 2010. The Respondent is unaware of any unique
23 accounting workpaper at Nexsun Ethanol, LLC that identifies how these \$500,000 loan proceeds
24 from AIIFI, not Ms. Lei, were spent by Nexsun Ethanol, LLC, and that the Respondent has the
25 right to disclose to the State Bar without its subpoena of these records. The Respondent is not an
26 owner and is not a creditor of Nexsun Ethanol, LLC, which is a private company that has owners
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1 and creditors that have a right to keep its finances private information and to object to their
2 disclosure if such a subpoena was served. The Respondent is not an owner and/or creditor of
3 AIIFI, which is also a private company with the same subpoena issues as Nexsun Ethanol, LLC.

4 Respondent never even knew that Mr. Ye and Ms. Lei were clients of LK Corporation and
5 that Ms. Lei was an investor in AIIFI in August, 2010 to the 2010 year end because Mr. Kent
6 handled their EB5 Program legal services for that corporation as its principal and partner and he
7 failed to disclose this information to Respondent.

8
9 Based on the foregoing discussion, the Respondent denies that he violated Business &
10 Professions Code Section 6068(m).

11 E. Respondent Denies That He Violated Business & Professions Code Section 6106
12 As Alleged In Count Four.

13
14 The Respondent denies specifically and generally all of the allegations in paragraph 26 to
15 31 for Count Four of the Charges. The Respondent's responses and denials of the Charges'
16 allegations to paragraphs 1 to 25 are incorporated herein by reference for brevity and to avoid
17 repetition, which includes the Factual History of this pleading.

18
19 Mr. Kent was responsible to inform Ms. Lei and Mr. Ye of the transfer of the \$500,000
20 from the Escrow Account at Wilshire State Bank to Nexsun Ethanol, LLC as a loan from AIIFI to
21 Nexsun Ethanol, LLC for \$500,000 in August, 2010.

22 Respondent never even knew that Mr. Ye and Ms. Lei were clients of LK Corporation and
23 that Ms. Lei was an investor in AIIFI from August, 2010 to December, 2011 because Mr. Kent
24 handled their EB5 Program legal services for that corporation as its principal and partner and he
25 failed to disclose this information to Respondent. This is why the Respondent had to check the
26 status of Ms. Lei's investment – Mr. Ye did not make the investment – in December, 2011. The
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1 Facts clearly establish that Mr. Kent was entirely responsible for disbursing the \$500,000 before
2 Ms. Lei's I-526 Petition was submitted to the USCIS in September, 2010. The Facts also establish
3 that AIIFI, not Ms. Lei, disbursed the \$500,000 to Nexsun Ethanol, LLC as a loan in August, 2010.
4 This occurred entirely under the direction of Mr. Kent because Respondent was out of the US and
5 not involved in the representation and investment of Ms. Lei in 2010.
6

7 Based on the foregoing discussion, the Respondent denies that he violated Business &
8 Professions Code Section 6106.

9 F. Respondent Denies That He Violated Business & Professions Code Section 6068(a)
10 As Alleged In Count Five.

11 The Respondent denies specifically and generally all of the allegations in paragraph 32 to
12 35 for Count Five of the Charges. The Respondent's responses and denials of the Charges'
13 allegations to paragraphs 1 to 31 are incorporated herein by reference for brevity and to avoid
14 repetition, which includes the Factual History of this pleading. As stated in Count Five, it
15 realleges all of the Count One allegations.
16

17 Mr. Kent was responsible to inform Ms. Lei and Mr. Ye of the transfer of the \$500,000
18 from the Escrow Account at Wilshire State Bank to Nexsun Ethanol, LLC as a loan from AIIFI to
19 Nexsun Ethanol, LLC for \$500,000 in August, 2010 when Mr. Kent decided to release the
20 \$500,000 from the Escrow Account before he submitted her I-526 Petition and have it approved
21 by the USCIS. This transaction ignores the terms of the Escrow Agreement and Subscription
22 Agreement and was conducted by Mr. Kent acting as a partner and principal of LK Corporation
23 and without the knowledge and authorization of Respondent.
24

25 Respondent never even knew that Mr. Ye and Ms. Lei were clients of LK Corporation and
26 that Ms. Lei was an investor in AIIFI in August, 2010 because Mr. Kent handled their EB5
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1 Program legal services for LK Corporation as its principal and partner and he failed to disclose
2 this information to Respondent. The Facts clearly establish that Mr. Kent was entirely responsible
3 for disbursing the \$500,000 before Ms. Lei's I-526 Petition was submitted to the USCIS in
4 September, 2010. The Facts also establish that AIIFI, not Ms. Lei, disbursed the \$500,000 to
5 Nexsun Ethanol, LLC as a loan in August, 2010. This occurred entirely under the direction of Mr.
6 Kent because Respondent was out of the US and not involved in the representation and investment
7 of Ms. Lei in 2010.
8

9 As stated in the Factual History at Exhibits 20-23, Mr. Ye first agreed in August, 2011 to
10 have LK Corporation refile the revised I-526 Petition that was rejected by USCIS on July 13, 2011
11 because Mr. Kent failed to fill it out properly. Then after Mr. Kent left full-time employment with
12 LK Corporation at the end of August, 2010, Mr. Ye decided in September, 2011 not to have the
13 petition refiled even though he was the only investor not approved out of over 40 investors in
14 AIIFI and he had a duty under the covenant of good faith and fair dealing to refile. (Carma
15 Developers (Cal.), Inc. v. Marathon Development California, Inc. (1992) 2 Cal.4th 342, 371—372)
16
17

18 Based on the foregoing discussion, the Mr. Kent, not the Respondent, ignored his fiduciary
19 duties to Ms. Lei, when Mr. Kent directed her money at issue to be transferred from the Escrow
20 Account before he submitted her I-526 Petition to the USCIS. As a result, the Respondent denies
21 that he violated Business & Professions Code Section 6068(a) and any other laws and Constitution
22 of the State of California and the United States.
23

24 G. Respondent Denies That He Violated Rule Of Professional Conduct 4-100(B)(4)
25 As Alleged In Count Six.

26 The Respondent denies specifically and generally all of the allegations in paragraph 36 to
27 50 for Count Six of the Charges. The Respondent's responses and denials of the Charges'
28

1 allegations to paragraphs 1 to 35 are incorporated herein by reference for brevity and to avoid
2 repetition, which includes the Factual History of this pleading. Count Six realleges all of the
3 Count One allegations.

4 Mr. Kent was responsible to inform Ms. Lei and Mr. Ye of the transfer of the \$500,000
5 from the Escrow Account at Wilshire State Bank to Nexsun Ethanol, LLC as a loan from AIIFI to
6 Nexsun Ethanol, LLC for \$500,000 in August, 2010 when Mr. Kent decided to release the
7 \$500,000 from the Escrow Account before he submitted her I-526 Petition and have it approved
8 by the USCIS. This transaction ignores the terms of the Escrow Agreement and Subscription
9 Agreement and was conducted by Mr. Kent acting as a partner and principal of LK Corporation
10 and without the knowledge and authorization of Respondent.
11

12
13 The Respondent denies the allegation at paragraph 39 that the Respondent was responsible
14 to refund the \$530,000 invested by Ms. Lei into AIIFI. To make the EB5 Program Investment, Ms.
15 Lei had to invest the \$530,000 into AIIFI's general bank account before the I-526 could be
16 submitted to USCIS. This is a requirement by the Escrow Agreement and the Subscription
17 Agreement and the regulations of the EB5 Program for a proper I-526 application. (Exh. 15-20)
18 As stated in the preceding paragraph, Mr. Kent ignored the terms of both of these agreements by
19 deciding to release the \$500,000 that Ms. Lei invested into AIIFI from the Escrow Account in
20 August, 2010 to AIIFI to loan this money to Nexsun Ethanol, LLC before he had submitted her I-
21 526 application to USCIS. Thus, Mr. Kent is the individual responsible for not refunding the
22 \$530,000 to Ms. Lei, not the Respondent, and preventing AIIFI from returning this money.
23

24
25 This \$530,000 is not "client funds" by Ms. Lei with LK Corporation and its agents but an
26 investment into an EB5 Program investment to qualify for permanent resident status. The person
27 that received the \$530,000 paid by Ms. Lei is AIIFI, not the Respondent. (Exh. 14 and 15) AIIFI
28

1 is the person responsible for the investment that Ms. Lei made, not the Respondent. Had Mr. Ye
2 decided to refile Ms. Lei's I-526 application, it would have been approved since he was the only
3 applicant denied by the USCIS in the AIIFI investment. It is unusual that the month after the
4 departure of Mr. Kent from LK Corporation as a full-time employee in August, 2011, Mr. Ye
5 reversed his earlier decision to refile Ms Lei's I-526 Petition and decided not to do so, especially
6 when over 41 other investors in AIIFI had been approved and Ms. Lei was the only AIIFI investor
7 that did not have her I-526 approved.

9 As stated in the Factual History above, the Respondent has appealed the lawsuit with Case
10 Number BC477429 and is challenging the judgment. Until the appeal is finalized, it is premature
11 for the State Bar to make allegations based on this judgment since Section 916 of the California
12 Code of Civil Procedure states: "an appeal stays proceedings in the trial court upon the judgment
13 or order appealed from...." Since the Respondent is appealing the judgment, Respondent's
14 position is that he is not obligated to pay any money under the judgment to anyone and on that
15 basis denies any allegation that he owes any money to Mr. Ye and Ms. Lei as alleged at
16 paragraphs 38 to 50.

19 The term sheet upon which the judgment is based states that Mr. Ye and Ms. Lei will enter
20 into another settlement agreement, called a "long form". No such agreement was ever finalized
21 between the parties. Moreover, Respondent's attorney was in drug rehabilitation during his
22 representation of the Respondent, and the Respondent was under a severe amount of stress and
23 depression from the pressures of finding more money to fund more development of Nexsun
24 Ethanol, LLC. To protect his client's interest and to the best of his ability, the Respondent has
25 made \$310,000 in payments to Mr. Ye and Ms. Lei. (Exh. 24-26)

1 The Respondent objects to the allegation in paragraph 50 that he has possession of any
2 client funds from Ms. Lei and Mr. Ye and that her \$530,000 investment in AIIFI is client funds
3 and that they are entitled to receive this money. As stated above, had Mr. Ye permitted LK
4 Corporation to refile Ms. Lei's I-526 Petition, it would have been approved.

5 H. Respondent Denies That He Violated Rule Of Professional Conduct 3-31-(B)(1) As
6 Alleged In Count Seven.
7

8 The Respondent denies specifically and generally all of the allegations in paragraph 51 to
9 56 for Count Seven of the Charges. The Respondent's responses and denials of the Charges'
10 allegations to paragraphs 1 to 50 are incorporated herein by reference for brevity and to avoid
11 repetition, which includes the Factual History of this pleading. As stated in Count Seven, it
12 realleges all of the Count One allegations.
13

14 Mr. Kent was responsible to inform Ms. Lei and Mr. Ye of the transfer of the \$500,000
15 from the Escrow Account at Wilshire State Bank to Nexsun Ethanol, LLC as a loan from AIIFI to
16 Nexsun Ethanol, LLC for \$500,000 in August, 2010 when Mr. Kent decided to release the
17 \$500,000 from the Escrow Account before he submitted her I-526 Petition and have it approved
18 by the USCIS. This transaction ignores the terms of the the Escrow Agreement and Subscription
19 Agreement and was conducted by Mr. Kent acting as a partner and principal of LK Corporation
20 and without the knowledge and authorization of Respondent.
21

22 Respondent never even knew that Mr. Ye and Ms. Lei were clients of LK Corporation and
23 that Ms. Lei was an investor in AIIFI in August, 2010 because Mr. Kent handled their EB5
24 Program legal services for LK Corporation as its principal and partner and he failed to disclose
25 this information to Respondent. The Facts clearly establish that Mr. Kent was entirely responsible
26 for disbursing the \$500,000 before Ms. Lei's I-526 Petition was submitted to the USCIS in
27
28

1 September, 2010. The Facts also establish that AIIFI, not Ms. Lei, disbursed the \$500,000 to
2 Nexsun Ethanol, LLC as a loan in August, 2010. This occurred entirely under the direction of Mr.
3 Kent because Respondent was out of the US and not involved in the representation and investment
4 of Ms. Lei in 2010.

5 The Respondent did not even know of Mr. Ye and Ms. Lei until October, 2011 when Mr.
6 Ye contacted the Respondent.
7

8 Mr. Ye was informed that LK Corporation was involved in investments under the EB5
9 Program in January, 2010. (Exh. 8) Ms. Lei signed the Certificate, the Escrow Agreement, and
10 the Subscription with written proof that Respondent was president of AIIFI and Mr. Kent was vice
11 president of AIIFI. Ms. Lei is an accredited investor who had significant contacts with Mr. Kent
12 to prepare the I-526 Petition, which contains the Subscription Agreement that identifies the
13 Respondent and Mr. Kent as officers of AIIFI. (Exh. 14-20) Respondent was never an owner of
14 AIIFI and Nexsun Ethanol, LLC. Since Ms. Lei and Mr. Ye are not US residents, they had to
15 have an agent for them in the US to represent their interests to satisfy the EB5 Program
16 requirement to manage or set policy for the investment. Mr. Kent and Respondent were those
17 agents for Ms. Lei in her AIIFI investment, that Nexsun Ethanol, LLC was the target investment,
18 that these entities were part of a qualified EB5 Program investment set up by Respondent and Mr.
19 Kent, and that Wilshire State Bank only was to act as the Escrow Agent and process payments for
20 Ms. Lei, AIIFI, and Nexsun Ethanol, LLC. Ms. Lei and Mr. Ye knew of the foregoing facts
21 because they are described and identified in the CIM, Business Plan of Nexsun Ethanol, LLC,
22 Certificate, Escrow Agreement, Subscription Agreement, I-526 Petition, and other documents at
23 Exhibits 1 to 20.
24
25
26
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1 As stated in the Factual History, the Respondent feels contrition for any mistakes or errors
2 that he made in this matter, especially those that involve not protecting the client's interest to the
3 fullest extent. Moreover, the Respondent accepts that he is fully responsible for these errors
4 and/or mistakes made in this matter. That said, the factual allegations in this matter are not
5 accurate and need to be corrected.
6

7 The Respondent undertook, within two weeks after Ms. Lei filed her complaint against the
8 Respondent in January 18, 2011 for her investment in AIIFI, personal responsibility for this
9 investment even though he was under no legal obligation to do so by entering into the short form
10 term sheet in an attempt to refund Ms. Lei her \$530,000 investment. The facts establish that Mr.
11 Ye and his wife never signed any contract that personally obligated the Respondent to act to
12 refund this investment as his personal obligation. The Retainer Agreement is signed by Mr. Kent
13 for LK Corporation. The Escrow Agreement and Subscription Agreement are between Ms. Lei,
14 AIIFI, and Wilshire State Bank.
15

16 As stated in the Factual History, Wilshire State Bank acted as the Escrow Agent and was
17 induced to do so for a fee and not because of any other relationship or business that Respondent
18 had with Wilshire State Bank.
19

20 Thus, Respondent denies that he violated the Rule of Professional Conduct 3-310(B)(1).

21 Dated: March 4, 2013

THE LEE LAW GROUP

22
23 By: 
24 Dixon Gardner
25 Attorneys for Respondent Justin M. Lee
26
27
28

