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**FILED**

**JAN 28 2013**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**PUBLIC MATTER**

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of: ) Case No. 12-O-14642  
14 JUSTIN MOONGYU LEE, )  
No. 187507, ) **NOTICE OF DISCIPLINARY CHARGES**  
15 )  
16 A Member of the State Bar. )  
17 )

**NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- 21 **(1) YOUR DEFAULT WILL BE ENTERED;**
- 22 **(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- 23 **(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;**
- 24 **(4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
25 ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
26 FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
27 RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**



1 The State Bar of California alleges:

2 JURISDICTION

3 1. JUSTIN MOONGYU LEE ("Respondent") was admitted to the practice of law in the  
4 State of California on January 22, 1997, was a member at all times pertinent to these charges,  
5 and is currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 12-O-14642  
8 Rules of Professional Conduct, rule 4-100(A)  
[Failure to Maintain Client Funds in Trust Account]

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

13 3. In or about 2009 through in or about 2010, Respondent traveled to Asia seeking  
14 foreign nationals who were interested in obtaining permanent residency in the United States  
15 pursuant to section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)  
16 ("EB-5 Program").

17 4. The EB-5 program provides that individuals who invest at least \$500,000.00 in a new  
18 commercial enterprise ("target enterprise") that creates at least 10 full-time jobs in the United  
19 States are, along with their spouse and immediate family, eligible for permanent residency in the  
20 United States.

21 5. On or about February 1, 2010, Ling Ye and Lei Zhang, citizens of the People's  
22 Democratic Republic of China, retained Respondent to prepare and submit an I-526 petition to  
23 the United States Citizenship and Immigration Services (USCIS) to obtain permanent residency  
24 in the United States for themselves and their minor child through the EB-5 Program. In addition,  
25 Mr. Ye and Ms. Zhang also agreed to pay Respondent \$15,000.00 for these legal services.

26 6. On or about August 4, 2010, acting on Respondent's advice and direction, Ms. Zhang  
27 signed a subscription agreement with American Immigration Investment Fund I, LLC (AIIF).  
28 Respondent signed the subscription agreement as managing member of the AIIF.

1           7. Pursuant to the terms of the subscription agreement signed by Ms. Zhang, she would  
2 remit \$530,000.00 to an AIIF escrow account for the specific purpose of obtaining immigration  
3 benefits under the EB-5 Program. The subscription agreement further provided that upon  
4 approval of Ms. Zhang's I-526 petition by USCIS \$500,000.00 of her remitted funds would be  
5 released from the AIIF escrow account to the target enterprise. The remaining \$30,000.00 would  
6 be retained by AIIF as an administrative and operating expense. However, in the event that Ms.  
7 Zhang's I-526 Petition was denied by USCIS, the entire \$530,000.00 would be refunded to Ms.  
8 Zhang within 30 days of the notice of denial. In addition, the subscription agreement specified  
9 that the target enterprise would be Nexsun, a corporation owned and controlled by Respondent  
10 and/or Respondent's wife, Rebecca Lee.

11           8. On or about August 4, 2010, acting on Respondent's advice and direction, Ms. Zhang  
12 also signed an AIIF escrow agreement. The escrow agreement appointed Wilshire State Bank as  
13 the escrow agent, provided the authorization for the deposit of \$500,000.00 into the escrow  
14 account and set out the terms and conditions for the release of \$500,000.00 from the escrow  
15 account to AIIF upon the approval of Ms. Zhang's I-526 Petition or for the return of the  
16 \$500,000.00 to Ms. Zhang in the event of the denial of Ms. Zhang's I-526 Petition. Respondent  
17 also signed the escrow agreement as President of AIIF.

18           9. Between on or about August 11, 2010 and on or about August 17, 2010, Ms. Zhang  
19 made five wire transfers totaling \$530,000.00 into AIIF's bank account number \*\*\*\*\*722<sup>1</sup> held  
20 at Wilshire State Bank (the "AIIF general account"). At all time relevant herein, the AIIF  
21 general account was not a bank account labeled "Trust Account," "Client's Funds Account" or  
22 words of similar import.

23           10. On or about August 17, 2010, Respondent issued check number 1010 from AIIF bank  
24 account number \*\*\*\*\*722, in the amount of \$500,000.00 which was then deposited into bank  
25 account \*\*\*\*\*036<sup>2</sup> held at Wilshire State Bank (the "escrow account").

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27  
28 <sup>1</sup> The account number has been redacted to protect the account and account holder.

<sup>2</sup> The account number has been redacted to protect the account and account holder.

1 11. On or about August 18, 2010, prior to the approval or denial of Ms. Zhang's I-526  
2 Petition by the USCIS, Respondent issued check number 1006 from the escrow account, in the  
3 amount of \$500,000.00, made payable to Nexsun.

4 12. Respondent did not inform Mr. Ye and/or Ms. Zhang that on or about August 18,  
5 2010 he had disbursed Ms. Zhang's \$500,000.00 from the escrow account to Nexsun.

6 13. On or about August 18, 2010, Respondent deposited or caused to be deposited check  
7 number 1006 into Nexsun bank account held at Wilshire State Bank.

8 14. Between on or about August 18, 2010 and on or about December 31, 2010, Nexsun  
9 completely spent or otherwise disbursed Ms. Zhang's \$500,000.00.

10 15. Respondent knew or was grossly negligent in not knowing that between on or about  
11 August 18, 2010 and on or about December 31, 2010, Nexsun completely spent or otherwise  
12 disbursed Ms. Zhang's \$500,000.00.

13 16. Respondent did not inform Mr. Ye and/or Ms. Zhang that as of on or about December  
14 31, 2010, Nexsun had completely spent or otherwise disbursed Ms. Zhang's \$500,000.00.

15 17. On or about July 20, 2011, Respondent's office sent Mr. Ye an email informing him  
16 that USCIS had denied Ms. Zhang's I-526 Petition on July 13, 2011.

17 18. By not maintaining at least \$500,000.00 in a client trust account between on or about  
18 August 17, 2010 and on or about August 13, 2011, Respondent failed to maintain the balance of  
19 funds received for the benefit of a client and deposited in a bank account labeled "Trust  
20 Account," "Client's Funds Account" or words of similar import.

21 COUNT TWO

22 Case No. 12-O-14642  
23 Business and Professions Code, section 6106  
[Moral Turpitude - Misappropriation]

24 19. Respondent wilfully violated Business and Professions Code, section 6106, by  
25 committing an act involving moral turpitude, dishonesty or corruption, as follows:

26 20. The allegations of Counts One are incorporated by reference.

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1 21. Between on or about August 17, 2010 and on or about August 13, 2011, Respondent  
2 dishonestly or with gross negligence misappropriated approximately \$500,000.00 of Ms.  
3 Zhang's funds.

4 22. By misappropriating approximately \$500,000.00 of Ms. Zhang's funds between on or  
5 about August 17, 2010 and on or about August 13, 2011, Respondent committed an act involving  
6 moral turpitude, dishonesty or corruption.

7 COUNT THREE

8 Case No. 12-O-14642  
9 Business and Professions Code, section 6068(m)  
[Failure to Inform Client of Significant Development]

10 23. Respondent wilfully violated Business and Professions Code, section 6068(m), by  
11 failing to keep a client reasonably informed of significant developments in a matter in which  
12 Respondent had agreed to provide legal services, as follows:

13 24. The allegations of Counts One are incorporated by reference.

14 25. By not informing Mr. Ye and/or Ms. Zhang that on or about August 18, 2010 he had  
15 disbursed Ms. Zhang's \$500,000.00 from the escrow account to Nexsun and by not informing  
16 Mr. Ye and/or Ms. Zhang that as of on or about December 31, 2010, Nexsun had completely  
17 spent or otherwise disbursed Ms. Zhang's \$500,000.00, Respondent failed to keep a client  
18 reasonably informed of significant developments in a matter in which Respondent had agreed to  
19 provide legal services.

20 COUNT FOUR

21 Case No. 12-O-14642  
22 Business and Professions Code, section 6106  
[Moral Turpitude - Misrepresentation]

23 26. Respondent wilfully violated Business and Professions Code, section 6106, by  
24 committing an act involving moral turpitude, dishonesty or corruption, as follows:

25 27. The allegations of Counts One are incorporated by reference.

26 28. On or about December 5, 2011, Mr. Ye sent Respondent an email demanding the  
27 refund of the \$530,000.00. Respondent received the email.

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1 29. On or about December 5, 2011, Respondent replied to Mr. Ye's email stating, "I will  
2 check the status of your case and investment capital and will speak to you with answers shortly."

3 30. This statement was misleading. At the time he made this statement to Mr. Ye  
4 Respondent knew that he had personally paid \$500,000.00 of Ms. Zhang's money to Nexsun in  
5 violation of both the AIF subscription agreement and the escrow agreement. In addition, at the  
6 time he made this statement to Mr. Ye Respondent knew or was grossly negligent in not  
7 knowing that Nexsun had completely spent or otherwise disbursed Ms. Zhang's \$500,000.00.  
8 Further, the statement was misleading to Mr. Ye because it indicates that Respondent did not  
9 already know the status of the \$500,000.00.

10 31. By misrepresenting to Mr. Ye that he needed to check the status of Ms. Zhang's  
11 \$500,000.00, Respondent committed an act involving moral turpitude, dishonesty or corruption.

12 COUNT FIVE

13 Case No. 12-O-14642

14 Business and Professions Code, section 6068(a)

15 [Failure to Comply With Laws – Breach of Common Law Fiduciary Duty]

16 32. Respondent wilfully violated Business and Professions Code, section 6068(a), by  
17 failing to support the Constitution and laws of the United States and of this state, as follows:

18 33. The allegations of Counts One are incorporated by reference.

19 34. Respondent failed to refund the \$530,000.00 to Ms. Zhang within 30 days of the  
20 notice of denial of the I-526 Petition by USCIS

21 35. By disbursing Ms. Zhang's \$500,000.00 to Nexsun on or about August 18, 2010 in  
22 breach of the retainer agreement, the subscription agreement and the escrow agreement and by  
23 failing to safeguard Ms. Zhang's \$530,000.00 such that it would be available for repayment to  
24 Mr. Ye and/or Ms. Zhang if her I-526 Petition was denied by USCIS, Respondent breached his  
25 fiduciary duties that he owed to Mr. Ye and/or Ms. Zhang and failed to support the Constitution  
26 and laws of the United States and of this state.

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1 47. On or about May 30, 2012, Mr. Ye and Ms. Zhang, through their attorney, filed a  
2 motion to enforce the settlement agreement pursuant to Code of Civil Procedure section 664.6  
3 (“motion”).

4 48. On or about October 18, 2012, the Court granted Mr. Ye and Ms. Zhang’s motion and  
5 entered judgment in the amount of \$250,000.00, jointly and severally, against Respondent and all  
6 other defendants.

7 49. Up through the present date, Respondent has not paid any portion of the remaining  
8 \$250,000.00 to Mr. Ye and Ms. Zhang.

9 50. By failing to pay Mr. Ye and Ms. Zhang any portion of the remaining \$250,000.00 up  
10 through the present date, Respondent, failed to pay promptly, as requested by a client, any funds  
11 in Respondent’s possession which the client is entitled to receive.

12 COUNT SEVEN

13 Case No. 12-O-14642  
14 Rules of Professional Conduct, rule 3-310(B)(1)  
[Conflict - Relationship with a Party or Witness]

15 51. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(B)(1), by  
16 accepting or continuing representation of a client without providing written disclosure to the  
17 client that Respondent has a legal, business, financial, professional and personal relationship  
18 with a party or witness in the same matter, as follows:

19 52. The allegations of Counts One are incorporated by reference.

20 53. At all times relevant herein, Respondent did not provide a written disclosure to Mr.  
21 Ye and/or Ms. Zhang that notified them of his legal, business, financial, professional and  
22 personal relationship with AIIF. In truth and in fact, Respondent was the owner, President and  
23 managing member of AIIF.

24 54. At all times relevant herein, Respondent did not provide a written disclosure to Mr.  
25 Ye and/or Ms. Zhang that notified them of his legal, business, financial, professional and  
26 personal relationship with Nexsun. In truth and in fact, Respondent was the owner, President  
27 and managing member of Nexsun and many other Nexsun subsidiaries and sister entities in  
28 California and other states.

1           55. At all times relevant herein, Respondent did not provide a written disclosure to Mr.  
2 Ye and/or Ms. Zhang that notified them of his legal, business, financial, professional and  
3 personal relationship with Wilshire State Bank. In truth and in fact, Wilshire State Bank was  
4 Respondent's long-standing financial institution where he had formed a legal, business, financial,  
5 professional relationship as well as a close personal ties with the manager and other officers of  
6 the bank.

7           56. By not providing Mr. Ye and/or Ms. Zhang a written disclosure notifying them of his  
8 legal, business, financial, professional and personal relationship with AIF, Nexsun and Wilshire  
9 State Bank, Respondent accepted or continued representation of a client without providing  
10 written disclosure to the client that Respondent has a legal, business, financial, professional and  
11 personal relationship with a party or witness in the same matter.

12                           **NOTICE - INACTIVE ENROLLMENT!**

13           **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR  
14 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
15 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL  
16 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO  
17 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN  
18 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE  
19 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE  
20 RECOMMENDED BY THE COURT.**

21                           **NOTICE - COST ASSESSMENT!**

22           **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC  
23 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS  
24 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING  
25 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND  
26 PROFESSIONS CODE SECTION 6086.10.**

27                           Respectfully submitted,

28                           THE STATE BAR OF CALIFORNIA  
                              OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: January 28, 2013

By:   
ASHOD MOORADIAN  
Deputy Trial Counsel

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**DECLARATION OF SERVICE BY UNITED STATES POSTAL SERVICE**

**CERTIFIED MAIL**

**CASE NUMBER: 12-O-14642**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

**NOTICE OF DISCIPLINARY CHARGES**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7196 9008 9111 0442 9539, at Los Angeles, on the date shown below, addressed to:

**Frank C. Lincoln  
Frank Cromwell Lincoln  
PO Box 1905  
Los Angeles, CA 90078**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: January 28, 2013

Signed: *Paula Heider*  
Paula Heider  
Declarant