

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>DISBARMENT</b>			<b>PUBLIC MATTER</b>
<b>Counsel For The State Bar</b>  <b>Ashod Mooradian</b> <b>Senior Trial Counsel</b> <b>845 S. Figueroa Street</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1004</b>  <b>Bar # 194283</b>	<b>Case Number(s):</b> <b>13-O-11570</b>	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>  <b>AUG 15 2014</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>	
<b>Counsel For Respondent</b>  <b>Richard L. Knight, Esq.</b> <b>The Law Office of Richard L. Knight</b> <b>2710 Alpine Blvd., Suite O, PMB 141</b> <b>Alpine, CA 91901</b> <b>(619) 637-6033</b>  <b>Bar # 228526</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING; ORDER OF</b> <b>INVOLUNTARY INACTIVE ENROLLMENT</b>  <b>DISBARMENT</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>		
<b>In the Matter of:</b> <b>CARTER FRENCH JOHNSTON</b>  <b>Bar # 131860</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>			

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 14, 1987**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(15)** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."



BS  
7.30.14

(Do not write above this line.)

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs to be awarded to the State Bar.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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

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

(Do not write above this line.)

- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment at page 12.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

None

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

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

(Do not write above this line.)

---

(13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**See Attachment at page 12-13.**

**D. Discipline:**        **Disbarment.**

**E. Additional Requirements:**

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (2) ☐ **Restitution:** Respondent must make restitution to                    in the amount of \$                    plus 10 percent interest per year from                    . If the Client Security Fund has reimbursed                    for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than                    days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

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

IN THE MATTER OF:                      CARTER FRENCH JOHNSTON

CASE NUMBERS:                        13-O-11570

**FACTS AND CONCLUSIONS OF LAW.**

Carter French Johnston ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes.

Case No. 13-O-11570 (Complainant: SBI)

**FACTS:**

1. Since 2002, Respondent has known Deborah and Douglas Tumlinson and has enjoyed a friendly, religious and attorney client relationship with the Tumlinsons.
2. In October 2007, the Tumlinsons' home and outbuildings located at 20403 Rancho Villa Road in Ramona, California were damaged in a fire that they claimed was caused by San Diego Gas & Electric ("SDG&E") and others.
3. In April 2008, the Tumlinsons sued SDG&E and other defendants for the damages they suffered from the fire in a case that was consolidated with the cases of other fire victims entitled *In re 2007 Wildfire Individual Litigation – Witch Creek/Guejito Fires* bearing San Diego Superior Court case number 37-2008-0081779-CU-PO-CTL ("the Lawsuit").
4. From April 2008 until January 2011, the law firm of Singleton & Associates represented the Tumlinsons in the Lawsuit. From January 2011 to May 2012, the Tumlinsons represented themselves *pro per*. The Tumlinsons have never mediated or settled the Lawsuit and the Lawsuit is still pending.
5. On May 20, 2010, Mrs. Tumlinson contacted Respondent regarding the drafting of a letter that she wanted Respondent to send to a real estate broker named Eileen Castberg to assist the Tumlinsons in purchasing a home in Valley Center. Mrs. Tumlinson further provided Respondent with information that had to be included in the letter including the representation that a settlement had been reached in the Lawsuit. Mrs. Tumlinson then requested that Respondent draft a letter incorporating all of the information she provided and then send it to Ms. Castberg.
6. In the letter dated May 20, 2010, Respondent stated: 1) that he was "an attorney of record" for the Tumlinsons; 2) that the Tumlinsons reached a settlement amount in the Lawsuit; and 3) that the Tumlinsons plan to use \$600,000 of their funds to purchase the home in Valley Center so that there will be no financing needed to purchase the Valley Center home.
7. Respondent did not take any steps verify the truthfulness of any of the information provided to him by Mrs. Tumlinson before he incorporated them into the May 20, 2010 letter and sent it to Ms.

Castberg. Further, in the May 20, 2010 letter, Respondent did not indicate in any way that the information contained in the letter was originally provided to him by Mrs. Tumlinson. Instead, the May 20, 2010 letter was written as if Respondent was personally stating each representation and that each representation was a true and accurate fact that could be relied upon by Ms. Castberg.

8. In truth and fact, at the time that Respondent drafted and sent the May 20, 2010 letter to Ms. Castberg, Respondent did not represent the Tumlinsons in the Lawsuit and the Tumlinsons had not settled the Lawsuit.

9. In late September 2010, the Tumlinsons caused US Claims to be contacted to see if it would advance funds to the Tumlinsons against a pending settlement the Tumlinsons claimed they had with SDG&E in the Lawsuit (i.e., pre-settlement funding).

10. On September 29, 2010, Eli Wenick, a pre-settlement funding broker, sent an email to Deborah Tumlinson requesting a letter from her attorney. Mr. Wenick specified that Mrs. Tumlinson's attorney needs to send a letter that: 1) identifies the attorney as attorney of record in the Lawsuit; 2) includes the attorney's state bar number; 3) includes the case number for the Lawsuit; 4) includes the amount of the settlement; 5) the amount of any attorney's fee; 6) the amount the Tumlinsons would receive after fees; 7) scheduled pay dates; 8) the name of the settling party; and 9) whether the insurance or the settling party will pay out the settlement; and 10) attaching a copy of the settlement agreement.

11. On September 30, 2010, Mrs. Tumlinson forwarded Mr. Wenick's email to Respondent and requested that Respondent draft a letter to Mr. Wenick that same day. Mrs. Tumlinson further provided Respondent with information that had to be included in the letter including the representation that a settlement had been reached in the Lawsuit. Mrs. Tumlinson then requested that Respondent draft a letter incorporating all of the information she provided and then send it to Mr. Wenick.<sup>1</sup>

12. In the final version of the September 30, 2010 letter, Respondent stated: 1) that he was a California licensed attorney in good standing; 2) that he represented the Tumlinsons; 3) that the settlement amount to the Tumlinsons totaled \$2,490,000, and that after legal fees and expenses in the amount of \$737,500, the Tumlinsons were to receive \$1,752,500; 4) that there were no other liens against the settlement amount; 5) that the scheduled payout date was expected to be thirty days after a hearing on October 18, 2010, when the executed confidential settlement agreement was to be approved by the appointed judge; 6) that the settlement agreement could not be attached to the letter because of the requirement that the agreement remain confidential; 7) that he had been appointed to receive the settlement proceeds and was instructed to disburse \$715,000 to Mr. Wenick on or before December 18, 2010; and 8) in the "Re:" line of the September 30, 2010 letter, Respondent wrote "Disbursement of Settlement Proceeds [¶] Tumlinson vs. SDG&E (Malone, et al. v. SDG&E, et al, 37-2008-081779-CU-PO-CTL." (sic.).

13. Significantly, Respondent's first draft of the September 30, 2010 letter also included all the same above-described eight statements found in the final version, except that each representation was preceded by the phrase "I believe." When Respondent sent this first draft to Mrs. Tumlinson by email, she rejected this first draft of the September 30, 2010 letter specifically requesting that Respondent remove the phrase "I believe" wherever it appeared.

---

<sup>1</sup> In the September 30, 2010 letter, Respondent incorrectly called Mr. Wenick by the name Mr. Wenich.

14. Respondent then removed all instances of the phrase "I believe" and sent the above-described final version of the September 30, 2010 letter to Mr. Wenick.

15. Again, Respondent did not take any steps verify the truthfulness of any of the information provided to him by Mrs. Tumlinson before he incorporated them into the September 30, 2010 letter and sent it to Mr. Wenick. Further, in the September 30, 2010 letter, Respondent did not indicate in any way that the information contained in the letter was originally provided to him by Mrs. Tumlinson. Instead, the September 30, 2010 letter was written as if Respondent was personally stating each representation and that each representation was a true and accurate fact that could be relied upon by Mr. Wenick.

16. In truth and fact, at the time that Respondent drafted and sent the September 30, 2010 letter to Mr. Wenick: 1) Respondent did not represent the Tumlinsons in the Lawsuit; 2) the Tumlinsons had not settled the Lawsuit and consequentially the Tumlinsons were not going to receive \$2,490,000 or \$1,752,500 and they did not have legal fees and expenses that totaled \$737,500; 3) there were liens against any future settlement obtained by the Tumlinsons; 4) there was no hearing set for October 18, 2010 or an appointed judge; 5) that there was no confidential settlement agreement entered into by the Tumlinsons for the Lawsuit that was to be approved by the appointed judge; 6) that there was no scheduled payout of the settlement to the Tumlinsons thirty days after the October 18, 2010 hearing; and 7) Respondent was not appointed to receive any settlement on behalf of the Tumlinsons.

17. On October 1, 2010, Mrs. Tumlinson contacted Respondent and requested that he send to Brett Smith of US Claims the same letter that he sent to Mr. Wenick on September 30, 2010. Respondent then sent Mr. Smith a letter that was identical to the September 30, 2010 letter except that it was addressed to Mr. Smith and it was dated October 1, 2010.

18. Once again, Respondent did not take any steps verify the truthfulness of any of the information in the October 1, 2010 letter before he sent it to Mr. Smith. Further, in the October 1, 2010 letter, Respondent did not indicate in any way that the information contained in the letter was originally provided to him by Mrs. Tumlinson. Instead, the October 1, 2010 letter was written as if Respondent was personally stating each representation and that each representation was a true and accurate fact that could be relied upon by Mr. Smith.

19. In truth and fact, at the time that Respondent drafted and sent the October 1, 2010 letter to Mr. Smith: 1) Respondent did not represent the Tumlinsons in the Lawsuit; 2) the Tumlinsons had not settled the Lawsuit and consequentially the Tumlinsons were not going to receive \$2,490,000 or \$1,752,500 and they did not have legal fees and expenses that totaled \$737,500; 3) there were liens against any future settlement obtained by the Tumlinsons; 4) there was no hearing set for October 18, 2010 or an appointed judge; 5) that there was no confidential settlement agreement entered into by the Tumlinsons for the Lawsuit that was to be approved by the appointed judge; 6) that there was no scheduled payout of the settlement to the Tumlinsons thirty days after the October 18, 2010 hearing; and 7) Respondent was not appointed to receive any settlement on behalf of the Tumlinsons.

20. After sending the October 1, 2010 letter, Respondent was contacted by Rudolph DeGeorge, the General Counsel and Director of Underwriting for US Claims regarding the Tumlinsons' purported settlement of the Lawsuit. Mr. DeGeorge was not satisfied with the documents he had been provided by Mrs. Tumlinson and was requesting additional documents and information.

21. In response and on behalf of Mrs. Tumlinson, Respondent provided Mr. DeGeorge with a draft of a Confidential Settlement Agreement purportedly made between the Tumlinsons and defendants



SDG&E and Sempra Energy for the amount of \$2,490,000. The draft Confidential Settlement Agreement contained handwritten notes of what appeared to be instructions to Respondent from Mrs. Tumlinson which stated as follows: "I initialed and Doug initialed. Sent it back by fax. When will we have full agreement?" In addition, the draft Confidential Settlement Agreement appeared to be initialed (but not signed) by both Mr. and Mrs. Tumlinson and was to be signed by Respondent and Kenneth R. Chiate, Esq., as attorney for defendants SDG&E and Sempra Energy.

22. At the time that Respondent provided Mr. DeGeorge with the draft Confidential Settlement Agreement, the Tumlinsons had not settled the Lawsuit and that the Confidential Settlement Agreement was a fake document.

23. After receiving the draft Confidential Settlement Agreement, Mr. DeGeorge had a telephone conversation with Respondent. During this telephone conversation, Respondent told Mr. DeGeorge that the Tumlinsons' claim in the Lawsuit was heard by a court-appointed mediator and that after the mediation, the parties had agreed to settle the case for \$2,490,000. When Mr. DeGeorge asked why a subsequent hearing on October 18, 2010 was necessary, Respondent stated that the mediator had to "sign off" on the settlement. Respondent further represented that payment of the settlement would be made within 30 days after the October 18, 2010 hearing and there were no conditions precedent to the settlement.

24. At the time of the telephone conversation between Respondent and Mr. DeGeorge: 1) the Tumlinsons had not had their claim heard by any mediator; 2) the Tumlinsons had not settled their case; 3) there was no hearing set for October 18, 2010 in the Lawsuit; and 4) no payment of any settlement amount would be made to the Tumlinsons at any time.

25. On October 7, 2010, US Claims entered into a Purchase Agreement with the Tumlinsons and advanced a net amount of \$676,130 to the Tumlinsons. In exchange for the advanced amount, the Tumlinsons agreed to sell, transfer, convey and assign to US Claims a \$796,504 interest in the settlement reached in the Lawsuit payable on or before January 6, 2011. As part of the Purchase Agreement, Respondent signed a written Acknowledgment of Authorization affirming that he represented the Tumlinsons as attorney of record in the Lawsuit. At the time Respondent signed the written Acknowledgment of Authorization affirming that he represented the Tumlinsons as attorney of record in the Lawsuit, Respondent was not the attorney of record for the Tumlinsons in the Lawsuit. In truth and fact, Respondent was not the attorney of record for the Tumlinsons in the Lawsuit until May 2012.

26. The Tumlinsons used the funds they obtained from US Claims to purchase a new home for \$552,000 in cash. The new home was purchased in the name of ERC Trust, a trust set up by Respondent on October 6, 2010.

27. On January 10, 2011, Darryl Levine, President of US Claims emailed Respondent and asked for status of the \$796,504 payment that was due by January 6, 2011. On January 11, 2011, Respondent replied by email stating:

Here is an update on the Tumlinson matter.

There is a hearing this week on the matter. The delay is because the Tumlinson's (sic.) are required to prove that the settlement amount was for reimbursement for losses, not damages, since damages are taxable and reimbursement is not taxable.

I will be able to give you a further update after the hearing.

28. In truth and fact, at the time Respondent sent the January 11, 2011 email to Mr. Levine: 1) there was no hearing that week in the Lawsuit; and 2) there was no delay because the Tumlinson had not settled the Lawsuit and consequentially any consideration of taxable damages or non-taxable reimbursement was entirely fabricated.

29. Between January 11, 2011 and August 5, 2011, Respondent took no action to correct any of the false and misleading statements that he had previously made to Ms. Castberg, Mr. Wenick, Mr. Smith, Mr. DeGeorge, Mr. Levine or any other representative of US Claims.

30. On August 5, 2011, Mr. DeGeorge called Respondent to discuss the status of the Tumlinsons' settlement and other related matters. It was during this conversation that Respondent admitted for the first time that he was not attorney of record for the Tumlinsons in the Lawsuit and that no hearing was held on October 18, 2010 in the Lawsuit.

31. On October 4, 2011, US Claims filed its First Amended Complaint against Respondent and the Tumlinsons in a matter entitled *Lifeline Funding LLC d/b/a US Claims vs. Carter Johnston, Deborah Tumlinson and Douglas Tumlinson* bearing San Diego Superior Court case number 37-2011-00070164-CU-FR-EC ("US Claims litigation") alleging causes of action for fraud, conversion, a violation of Penal Code section 496, breach of contract and breach of the covenant of good faith and fair dealing.

32. On December 14, 2012, after a three-day bench trial, the Court issued its Statement of Decision in the US Claims litigation finding, among other things that Respondent was liable for fraud because he made false or misleading representations with knowledge of their falsity, and that US Claims actually relied on those representations. The Tumlinsons were also found liable for fraud, conversion and breach of contract. In addition, the Court found that Respondent and the Tumlinsons each engaged in conduct with "malice and fraud" entitling US Claims to an award of punitive damages.

33. On January 17, 2013, a Judgment was entered in the US Claims litigation ordering that US Claims shall recover the sum of \$1,559,119 in compensatory damages from Respondent and the Tumlinsons. Further, Respondent was ordered to pay \$6,000 in punitive damages to US Claims. In addition, the Tumlinsons were ordered to pay \$60,000 in punitive damages to US Claims.

34. On May 21, 2014, the Court of Appeals, Fourth Appellate District, Division One issued its opinion in Court of Appeal case number D063745 affirming the trial court's Judgment in the US Claims litigation.

35. The trial court's Judgment in the US Claims litigation is now final.

#### CONCLUSIONS OF LAW:

36. By stating in a letter to Eileen Castberg, dated May 20, 2010, that: 1) Respondent was "an attorney of record" for Deborah and Douglas Tumlinson; and 2) the Tumlinsons reached a settlement of their claims in the Lawsuit, when Respondent knew or was grossly negligent in not knowing the statements were false, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

37. By stating in a letter to Eli Wenick, dated September 30, 2010, that: 1) Respondent was "an attorney of record" for Deborah and Douglas Tumlinson; 2) the Tumlinsons reached a settlement of their

claims in the Lawsuit; 3) the settlement amount to the Tumlinsons totaled \$2,490,000, and that after legal fees and expenses in the amount of \$737,500, the Tumlinsons were to receive \$1,752,500; 4) there were no other liens against the Tumlinsons' settlement; 5) the scheduled payout date was expected to be thirty days after a hearing on October 18, 2010, when the executed confidential settlement agreement was to be approved by the appointed judge; 6) the settlement agreement could not be attached to the letter because of the requirement that the agreement remain confidential; and 7) Respondent had been appointed to receive the settlement proceeds and was instructed to disburse \$715,000 to Mr. Wenick on or before December 18, 2010, when Respondent knew or was grossly negligent in not knowing the statements were false, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

38. By stating in a letter to Brett Smith, dated October 1, 2010, that: 1) Respondent was "an attorney of record" for Deborah and Douglas Tumlinson; 2) the Tumlinsons reached a settlement of their claims in the Lawsuit; 3) the settlement amount to the Tumlinsons totaled \$2,490,000, and that after legal fees and expenses in the amount of \$737,500, the Tumlinsons were to receive \$1,752,500; 4) there were no other liens against the Tumlinsons' settlement; 5) the scheduled payout date was expected to be thirty days after a hearing on October 18, 2010, when the executed confidential settlement agreement was to be approved by the appointed judge; 6) the settlement agreement could not be attached to the letter because of the requirement that the agreement remain confidential; and 7) Respondent had been appointed to receive the settlement proceeds and was instructed to disburse \$791,783.83 to Mr. Smith on or before December 18, 2010, when Respondent knew or was grossly negligent in not knowing the statements were false, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

39. By providing Rudolph DeGeorge, General Counsel and Director of Underwriting for US Claims, on October 6, 2010, with a draft of a Confidential Settlement Agreement purportedly made between Deborah and Douglas Tumlinson and defendants SDG&E and Semptra Energy for the amount of \$2,490,000 and which indicated Respondent was attorney of record for the Tumlinsons, when Respondent knew or was grossly negligent in not knowing that the Tumlinsons had not settled the Lawsuit, that Respondent was not attorney of record for the Tumlinsons and that the Confidential Settlement Agreement provided to US Claims was false and misleading, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

40. By stating, to Rudolph DeGeorge, General Counsel and Director of Underwriting for US Claims, during a telephone conversation on October 6, 2010, that: 1) the Tumlinsons' claim in the Lawsuit was heard by a court-appointed mediator and that after the mediation; 2) the parties had agreed to settle the case for \$2,490,000; 3) that the mediator had to "sign off" on the settlement; 4) that payment of the settlement would be made within 30 days after the October 18, 2010 hearing; and 5) that there were no conditions precedent to the settlement, when Respondent knew or was grossly negligent in not knowing the statements were false, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

41. By signing, on October 7, 2010, a written Acknowledgment of Authorization affirming that he represented the Deborah and Douglas Tumlinson as attorney of record in the Lawsuit when Respondent knew or was grossly negligent in not knowing that statement was false, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

42. By stating in an email sent to Darryl Levine, President of US Claims, dated January 11, 2011, that: 1) there was a hearing that week in the Lawsuit; and 2) there was a delay because the Deborah and Douglas Tumlinson were required to prove that the settlement amount was for reimbursement for losses, not damages, since damages are taxable and reimbursement is not taxable, when Respondent knew or was grossly negligent in not knowing the statements were false, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

43. By stating in writing to representatives of US Claims and in telephone conversations with representatives of US Claims, between January 11, 2011 and August 5, 2011, that: 1) Respondent was "an attorney of record" for Deborah and Douglas Tumlinson; 2) the Tumlinsons reached a settlement of their claims in the Lawsuit; 3) the settlement amount to the Tumlinsons totaled \$2,490,000, and that after legal fees and expenses in the amount of \$737,500, the Tumlinsons were to receive \$1,752,500; and 4) there were no other liens against the Tumlinsons' settlement, when Respondent knew or was grossly negligent in not knowing the statements were false, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

44. By not taking any action to correct any of the false and misleading statements that he had previously made to Eileen Castberg, Eli Wenick, Brett Smith, Rudolph DeGeorge, Darryl Levine or any other representative of US Claims, between January 11, 2011 and August 5, 2011, when he knew the statements that he had previously made were false, Respondent employed, for the purposes of maintaining the causes confided in him, means which are inconsistent with truth, in willful violation of Business and Professions Code, section 6068(d).

#### **AGGRAVATING CIRCUMSTANCES.**

**Multiple Acts of Misconduct (Std. 1.5(b)):** In this matter, Respondent committed multiple acts of professional misconduct. In this matter, Respondent committed seven counts in violation of Business and Professions Code [Misrepresentation], section 6106 and one count in violation of Business and Professions Code, section 6068(d) [Employing means inconsistent with the truth].

**Harm (Std. 1.5(f)):** In the current matter, Respondent's misconduct, in concert with the fraudulent conduct of the Tumlinsons caused US Claims significant harm by inducing US Claims to provide pre-settlement funding to the Tumlinsons in the amount of \$676,130. The significant financial losses occasioned upon US Claims by Respondent's misconduct is aggravating. (*In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487 [attorney who represented the administrator of a decedent's estate owed a duty of care both to the client and to the estate's beneficiary; harm caused to these parties by the attorney's misconduct was an aggravating factor].

#### **MITIGATING CIRCUMSTANCES.**

##### **Additional Mitigating Circumstances:**

**No Prior Record of Discipline:** Respondent had been in practice for nearly 24 years without a prior record when the first misconduct in this matter occurred. Although the misconduct in this matter is serious, involving misrepresentations of material fact, the significant period of time without discipline is entitled to some limited mitigation. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn.13.; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

**Pre-filing Stipulation:** Respondent has agreed to enter into this pre-filing stipulation to fully resolve this matter without the necessity of a trial, thereby saving the State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

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

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

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Here, Respondent has intentionally or grossly negligently committed misrepresentations of material fact in violation of Business and Professions Code section 6106 as well as a violation of Business and Professions Code sections 6068(d). Standards 1.7(b) and (c) require that where a Respondent has committed two or more acts of misconduct, and different sanctions are prescribed by the Standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable Standards.

In this matter, the most severe sanction applicable to Respondent’s misconduct is found in Standard 2.7, which applies to Respondent’s violations of Business and Professions Code, section 6106. Standard 2.7 provides that “[d]isbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.”

Here, Respondent’s misconduct was making misrepresentations of material facts that were false and misleading to US Claims. The misrepresentations also had the effect of concealing the truth from US

Claims over a significant period of time between September 30, 2010 and August 5, 2011. Consequently, the magnitude of Respondent's misconduct was great as it involved several acts of moral turpitude and further because Respondent's actions directly led to the Tumlinsons obtaining \$676,130 from US Claims through false and misleading statements and documents. In addition, Respondent's misconduct occurred in connection with the representation of the Tumlinsons and was thus directly related to his practice of law. Accordingly, since the magnitude of Respondent's misconduct was great and his misconduct directly related to his practice of law, the degree of sanction provided for by Standard 2.7 will be disbarment.

In addition to an analysis pursuant to Standard 2.7, another important consideration is the mitigating and aggravating circumstances in this matter. In the current matter, there are mitigating circumstances, namely, Respondent's nearly twenty-four years without a prior record of discipline and cooperation for entering into a pre-filing stipulation. However, the weight of both of these mitigating circumstances are limited because Respondent's misconduct in this matter is very serious. On the other hand, there are two aggravating circumstances, namely, multiple acts of moral turpitude and the obligation to employ only those means that are consistent with the truth and significant harm when US Claims was induced to provide \$676,130 in pre-settlement funding to the Tumlinsons. Accordingly, Respondent's misconduct in this matter is more aggravated than mitigated.

Therefore, taking into account that Respondent committed several acts of moral turpitude in this matter, that the magnitude of Respondent's misconduct was great and it directly related to his practice of law, that Respondent's misconduct was surrounded by two significant and serious aggravating circumstances and two mitigating circumstance of limited weight, the appropriate level of discipline under Standard 2.7 that best serves the protection of the public, the courts and the profession, as well as the maintenance of high professional standards for attorneys and the preservation of public confidence in the legal profession is a disbarment.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

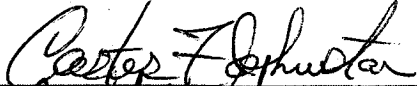

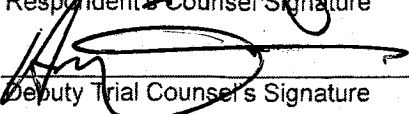
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 30, 2014, the prosecution costs in this matter are \$2,992. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: CARTER FRENCH JOHNSTON	Case number(s): 13-O-11570
---	-------------------------------

### SIGNATURE OF THE PARTIES

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

7/30/14		Carter French Johnston
Date	Respondent's Signature	Print Name
7/30/14		Richard L. Knight, Esq.
Date	Respondent's Counsel Signature	Print Name
7/31/14		Ashod Mooradian
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:  
CARTER FRENCH JOHNSTON

Case Number(s):  
13-O-11570

### DISBARMENT ORDER

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

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

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

Respondent Carter French Johnston is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date August 15, 2014

  
GEORGE E. SCOTT, JUDGE PRO TEM  
Judge of the State Bar Court



## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 15, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

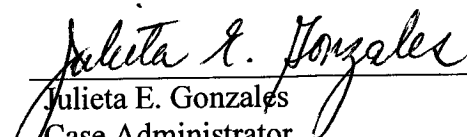
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD LYNN KNIGHT  
LAW OFFICE OF RICHARD L. KNIGHT  
2710 ALPINE BLVD STE O-141  
ALPINE, CA 91901

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

Ashod Mooradian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 15, 2014.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Case Administrator  
State Bar Court