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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  <b>R. Kevin Bucher</b> Senior Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1630  Bar # 132003	Case Number(s): <b>14-O-04003</b>	For Court use only  <b>FILED</b>  JUN 14 2017 <i>AC</i>  STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent  <b>Arthur L. Margolis</b> 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-4740  Bar # 57703	<b>PUBLIC MATTER</b>	
In the Matter of: <b>EUGENE DUKJOON KIM</b>  Bar # 194100  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**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 7, 1997**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **18** 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."
- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **three billing cycles following the effective date of the Supreme Court order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

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

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case **12-O-11308**
  - (b)  Date prior discipline effective **January 17, 2014**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code, section 6106, Rules of Professional Conduct, rules 4-100(A), 4-100(B)(1).**
  - (d)  Degree of prior discipline **One year actual suspension.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.  
  
See attachment, Page 14.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **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. **See attachment, page 14**

- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See attachment, page 14.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 14.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

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- (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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Good Character - See attachment, page 15.**  
**Prefiling Stipulation - See attachment, page 15.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **three years**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.
- (2)  **Probation:**
- Respondent must be placed on probation for a period of **three years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3)  **Actual Suspension:**
- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **one year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

### E. Additional Conditions of Probation:

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.  
 No Ethics School recommended. Reason: .
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:

- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions  |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **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.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

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In the Matter of: <b>EUGENE DUKJOON KIM</b>	Case Number(s): <b>14-O-04003</b>
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### Financial Conditions

#### a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
David de Jesus Andrade Cifuentes	\$6,125.28	October 29, 1009
Carmen Vargas	\$3,933.34	October 29, 2009
Sara Chavez	\$4,000	October 29, 2009

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

#### b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
David de Jeusu Andrade Cifuentes	\$150	Quarterly, commencing 30 days after the effective date of the present discipline.
Carmen Vargas	\$150	Quarterly, commencing 30 days after the effective date of the present discipline.
Sara Chavez	\$150	Quarterly, commencing 30 days after the effective date of the present discipline.

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

#### c. Client Funds Certificate

(Effective January 1, 2011)

Financial Conditions

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- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
  - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

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- b. Respondent has kept and maintained the following:
  - i. A written ledger for each client on whose behalf funds are held that sets forth:
    - 1. the name of such client;
    - 2. the date, amount and source of all funds received on behalf of such client;
    - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
    - 4. the current balance for such client.
  - ii. a written journal for each client trust fund account that sets forth:
    - 1. the name of such account;
    - 2. the date, amount and client affected by each debit and credit; and,
    - 3. the current balance in such account.
  - iii. all bank statements and cancelled checks for each client trust account; and,
  - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
  - i. each item of security and property held;
  - ii. the person on whose behalf the security or property is held;
  - iii. the date of receipt of the security or property;
  - iv. the date of distribution of the security or property; and,
  - v. the person to whom the security or property was distributed.
- 2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
- 3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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

IN THE MATTER OF:                                  EUGENE DUKJOON KIM

CASE NUMBER:                                      14-O-04003

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 14-O-04003 (Complainants: David De Jesus Andrade Cifuentes, Carmen Vargas and Sara Chavez)

**FACTS:**

1. Respondent was retained in June 2009 by David de Jesus Andrade Cifuentes (“Cifuentes”), Carmen Vargas (“Vargas”) and Sara Chavez (“Chavez”) to handle an automobile accident claim. Respondent did not advise the clients of the potential for a conflict of interests between the driver, Cifuentes, and his passengers, Vargas and Chavez, nor did he get informed written consent to waive any potential conflict of interests. At respondent’s behest, all three clients sought treatment with the same chiropractor, and respondent signed three medical liens, one for each client, with this provider.
2. There was initially some communication between respondent’s office and Cifuentes. The property damage portion of the case was settled and on June 15, 2009, respondent’s office received two settlement checks from the insurance company for the property damage totaling \$3,575.41. The checks were deposited into respondent’s client trust account at Hamni Bank, account no.xxxxx8685 (“CTA”) on June 15, 2009. On July 28, 2009, a third settlement check for the property damage in the amount of \$375 was received by respondent’s office. The check was deposited into respondent’s CTA on July 28, 2009. Cifuentes received a payment of \$500.00 from this amount, but nothing else. Of the total settlement amount, less attorney’s fees, Cifuentes was entitled to receive an additional \$2,258.61. At no time did respondent disperse the \$2,258.61 to Cifuentes.
3. On November 4, 2009, respondent’s office received on behalf of respondent’s client, Carmen Vargas, a settlement check from Granite State Insurance Co. made payable to the “Law Offices of Eugene D. Kim & Associates and Carmen Vargas” in the sum of \$5,800 to settle a bodily injury claim. Respondent did not notify Vargas of the settlement or of the receipt of the settlement check. On November 4, 2009 the \$5,800 was deposited into respondent’s CTA on behalf of the client. Of the amount deposited, after attorney’s fees, Vargas was entitled to \$3,933.34. At no time did respondent disperse the \$3,933.34 to Vargas.
4. On November 5, 2009, respondent’s office received on behalf of respondent’s client, David de Jesus Andrade Cifuentes, a settlement check from Granite State Insurance Co. made payable to the “Law Offices of Eugene D. Kim & Associates and David Jose (sic) Andrade Cifuentes” in the sum of \$5,900 to settle a bodily injury claim. Respondent did not notify Cifuentes of the settlement or of the

receipt of the settlement check. On November 5, 2009, the \$5,900 was deposited into respondent's CTA on behalf of the client. Of the amount deposited, after attorney's fees, Cifuentes was entitled to \$3,866.67. At no time did respondent disperse the \$3,866.67 to Cifuentes.

5. On or about November 6, 2009, respondent's office received on behalf of respondent's client, Sara Chavez, a settlement check from Granite State Insurance Co. made payable to the "Law Offices of Eugene D. Kim & Associates and Sara Chavez" in the sum of \$6,000 to settle a bodily injury claim. Respondent did not notify Chavez of the settlement or of the receipt of the settlement check. On or about November 6, 2009, the \$6,000 was deposited into respondent's CTA on behalf of the client. Of the amount deposited, after attorney's fees, Chavez was entitled to \$4,000. At no time did respondent advise Chavez that the claim had settled or disperse the \$4,000 to Chavez.

6. On January 21, 2011, the balance of respondent's CTA dropped below the amount that should have been held in trust for each of the three clients; in fact, on that date, the balance of the CTA dropped to \$0. No replacement funds were re-deposited into the account. The account was closed on January 21, 2011.

7. Between approximately June 15, 2009 and July 26, 2010, respondent authorized his non-attorney employees to assist him in handling the personal injury claims of Cifuentes, Vargas and Chavez. During that period, Respondent did not adequately supervise the work of the non-attorney employees, which failure to supervise allowed the non-attorney employees to settle the clients' claims without communicating written settlement offers to the clients, falsely sign settlement agreements, and accept and ultimately steal the client settlement funds by depositing the funds into respondent's CTA then removing the funds for their personal use. Respondent failed to adequately supervise the management of his CTA and did not review his CTA records to determine whether client funds were being disbursed properly. At no time did respondent provide the clients with an accounting of the entrusted funds.

8. On July 26, 2010, respondent, after becoming aware of the misconduct of his non-attorney employees, made a report to the police alleging their criminal activities, including their stealing of client funds while they were employed by respondent and their theft of computers and client files. Respondent also voluntarily shut down his personal injury practice after learning of the misconduct of his non-attorney employees. Respondent did not advise his clients he was closing his law practice.

9. Between late 2009 and early 2013, Cifuentes called respondent's office at various times but would not be given any specific information about his or the other client's claims. In approximately early 2013, Cifuentes went to respondent's office and discovered for the first time that respondent had shut down his personal injury practice and moved out several months prior. The medical bills for the three clients went to collections, and they ended up paying the medical bills themselves.

10. Cifuentes, Vargas and Chavez thereafter hired a new attorney who learned in June 2013 that their claims had been settled, that their signatures had been falsified on the settlement agreements, and that Respondent's non-attorney employees allegedly had taken client files and stolen client money. Upon learning of the settlements, the clients demanded that respondent issue payment of all settlement funds.

11. In July 2014, Cifuentes, Vargas and Chavez filed a lawsuit against respondent, alleging breach of contract, fraud, professional negligence, breach of fiduciary duty, negligent misrepresentation, unjust enrichment, conversion and breach of the implied covenant of good faith and fair dealing. The State Bar became aware of the civil lawsuit during the investigation of the present matter, and respondent was aware the State Bar knew of the lawsuit. Respondent chose not to file a response to the civil complaint, and a civil default judgment of \$30,186.25 was entered against respondent in August 2015. Respondent did not report the judgment, of which he had notice, to the State Bar.

12. Respondent retained counsel who made attempts on respondent's behalf to contact the former clients, through their new attorney, by making telephone calls and leaving messages, and sending correspondence, to propose a payment plan, as respondent did not have sufficient funds to repay the clients in a lump sum. However, the former clients were non-responsive. To date, respondent has not made restitution to the clients for the funds to which they are entitled.

#### CONCLUSIONS OF LAW:

13. By accepting representation of Cifuentes, Vargas and Chavez, to perform legal services, namely to represent them in a personal injury matter arising from an automobile collision, and thereafter, through gross negligence, failing to complete the work for which he was retained by not dispersing settlement funds after the matter was resolved, and by failing to supervise the work of subordinate non-attorney employees, who performed legal services in that matter, respondent failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

14. By accepting representation of multiple clients in joint representation in a matter in which there was a potential conflict of interests between the driver and passengers in a personal injury matter involving an automobile collision, failing to advise the clients of the potential conflict, and failing to get informed written consent from his clients to waive any potential conflict of interests, respondent failed to inform the clients of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the clients and failed to obtain the written consent of each client, in willful violation of the Rules of Professional Conduct, rule 3-310(C)(1).

15. By allowing, through his failure to properly supervise, his non-attorney employees to settle the client's claims, and to execute, without his clients' knowledge or authority, settlement releases on their behalves, respondent through gross negligence committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

16. By failing to communicate the written settlement offers by the opposing party to his clients in the personal injury case, respondent did not communicate to the clients all amounts, terms and conditions of the offers, in willful violation of Business and Professions Code, section 6103.5.

17. By failing to notify Cifuentes of his receipt of a settlement check from Granite State Insurance Co. in the amount of \$5,900, respondent failed to notify his client of respondent's receipt of funds on the client's behalf, in willful violation Rules of Professional Conduct, rule 4-100(B)(1).

18. By failing to notify Vargas of his receipt of a settlement check from Granite State Insurance Co. in the amount of \$5,800, respondent failed to notify his client of respondent's receipt of funds on the client's behalf, in willful violation Rules of Professional Conduct, rule 4-100(B)(1).

19. By failing to notify Chavez of his receipt of a settlement check from Granite State Insurance Co. in the amount of \$6,000, respondent failed to notify his client of respondent's receipt of funds on the client's behalf, in willful violation Rules of Professional Conduct, rule 4-100(B)(1).

20. By failing to maintain in his CTA \$6,125.28, the amount due to Cifuentes for the settlement of the property damage claim and the bodily injury claim, respondent failed to maintain funds received or to be held for the benefit of his client in an account labeled "Trust Account", "Client Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

21. By failing to maintain in his CTA \$3,933.34, the amount due to Vargas for the settlement of the bodily injury claim, respondent failed to maintain funds received or to be held for the benefit of his client in an account labeled "Trust Account", "Client Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

22. By failing to maintain in his CTA \$4,000, the amount due to Chavez for the settlement of the bodily injury claim, respondent failed to maintain funds received or to be held for the benefit of his client in an account labeled "Trust Account", "Client Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

23. By allowing his non-attorney employees to deposit and then remove for personal use settlement funds in the amount of \$6,125.28 to be held for the benefit of Cifuentes, through his failure to properly supervise the non-attorney employees, respondent grossly negligently misappropriated funds which his client was entitled to receive, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

24. By allowing his non-attorney employees to deposit and then remove for personal use settlement funds in the amount of \$3,933.34 to be held for the benefit of Vargas, through his failure to properly supervise the non-attorney employees, respondent grossly negligently misappropriated funds which his client was entitled to receive, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

25. By allowing his non-attorney employees to deposit and then remove for personal use settlement funds in the amount of \$4000 to be held for the benefit of Chavez, through his failure to properly supervise the non-attorney employees, respondent grossly negligently misappropriated funds which his client was entitled to receive, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

26. By failing to promptly pay to Cifuentes settlement funds in the amount of \$6,125.28, upon reasonable request by the client, respondent failed to pay promptly, as requested by respondent's client, any portion of the \$6,125.28, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

27. By failing to promptly pay to Vargas settlement funds in the amount of \$3,933.34, upon reasonable request by the client, respondent failed to pay promptly, as requested by respondent's client, any portion of the \$3,933.34, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

28. By failing to promptly pay to Chavez settlement funds in the amount of \$4,000, upon reasonable request by the client, respondent failed to pay promptly, as requested by respondent's client, any portion of the \$4,000, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

29. By failing to advise his clients that their claims had settled, and that he was closing his personal injury practice and moving his office, respondent failed to keep his client's reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

30. By failing to report to the State Bar the entry of the civil default judgment against him, of which respondent had notice, respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time he had knowledge of the entry of judgment against him attorney for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity, in willful violation of Business and Professions Code, section 6068(o)(2).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** In State Bar case no. 12-O-11308 (S213928), respondent was disciplined for misconduct including moral turpitude due to an unauthorized settlement and misappropriation, as a result of gross negligence arising from a failure to supervise the work of subordinate non-attorney employees, and failing to maintain client funds in a trust account or notify clients of the receipt of funds, and incurred a one year actual suspension. However, the misconduct in the prior matter occurred during the same time period, and under the same circumstances, as that in the present matter, and accordingly, the weight of the prior misconduct will be tempered by an analysis under *In re Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602) as more fully set forth below.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's several acts of misconduct, including failure to perform with competence, misappropriation, failure to maintain client funds in trust, moral turpitude for unauthorized settlement, failure to advise his clients of receipt of client funds, failures to advise his client of significant developments, and failure to self-report a judgment against him in a professional capacity, is evidence of multiple acts of misconduct.

**Refusal or Inability to Account for Entrusted Funds (Std. 1.5(i)):** By failing to take reasonable steps to review his trust account records to determine if the alleged funds to which his former clients claim to have been entitled had been held on their behalf, and by failing to provide an accounting of entrusted funds, respondent has displayed a refusal or inability to account for entrusted funds.

**Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)):** By failing to maintain his clients' settlement funds in trust, by failing to pay his clients' funds to which they were entitled, and by allowing, through his gross negligence, his non-attorney employees to withdraw the settlement funds without authority, respondent has caused significant actual harm to his clients.

**Failure to Make Restitution (Std. 1.5(m)):** By failing to make restitution to his former clients of funds that respondent should have known were deposited into his client trust account on his clients' behalf, respondent has failed to make restitution. However, the aggravation is tempered by the fact that respondent has made overtures to his clients' new counsel to resolve the restitution issue through a payment plan, though the overtures to date have not been successful.

## MITIGATING CIRCUMSTANCES.

**Good Character:** Respondent has provided six letters from witnesses, including letters from two attorneys, a police sergeant, a vice president of Radio Korea in Los Angeles, and the Minister of Loving Church for Disabled Los Angeles, all of whom are familiar with respondent's prior discipline and present circumstances and all of whom speak for respondent's good moral character. Respondent is entitled to limited mitigative credit for this demonstration of good character. (See *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387.)

**Prefiling Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

## 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).)

Standard 2.11 provides disbarment or actual suspension is the presumed sanction for an act involving moral turpitude, dishonesty fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the

impact on the administration of justice, if any; and the extent to which the misconduct related to the members practice of law.

In the present case there is no question that respondent's misconduct was related to the practice of law. Aggravating circumstances are predominant and clearly outweigh mitigation, and the misconduct, particularly the misappropriation of \$11,929.50, caused substantial harm to his clients. However, respondent is entitled to mitigation for good character and cooperation by entering into the present stipulation, and although it is not included as mitigation, his efforts to repay his clients' misappropriated funds does show a willingness to make his clients whole.

Respondent does have a record of a single prior discipline, however, the misconduct in the present matter occurred during the same time period, and under the same circumstances, as the misconduct giving rise to the prior discipline. Accordingly, it is appropriate to look at the misconduct in both cases in determining the appropriate level of discipline. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.) Had the two matters been brought together the total misappropriation of funds would have been nearly \$18,000, clearly egregious misconduct. However, as established and found by the Hearing Department in the prior discipline, State Bar case no. 12-O-11308 (S213928), respondent's misconduct, specifically the misappropriation of client funds, was the result of gross negligence arising from a failure to supervise the work of subordinate non-attorney employees, but nevertheless did constitute moral turpitude. Accordingly, the court found that disbarment was not appropriate and imposed a one year actual suspension. Had the present matter been brought at the same time as the prior matter, the level of discipline would have been higher, since the total misappropriation and number of client's affected and harmed is increased. Accordingly, additional discipline consisting of a three year suspension, stayed, and three years of probation with conditions including a one year actual suspension, and attendance and completion of State Bar Ethics School and Client Trust Accounting School, is appropriate to protect the interests of the public, the courts and the legal profession.

Since the total period of actual suspension for misconduct in multiple matters in the same time period will now reach two years, respondent must remain actually suspended until he proves to the State Bar his rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to Standard 1.2(c)(1).

Deviation from disbarment is consistent with case law. The courts have consistently held actual suspension is appropriate in matters involving misappropriation resulting from negligence. In *Edwards v. State Bar* (1990) 52 Cal. 3d 28, the attorney was found culpable of a single act of misappropriation through negligence. The court noted "[d]isbarment would rarely, if ever, be an appropriate discipline for an attorney whose only misconduct was a single act of negligent misappropriation, unaccompanied by acts of deceit or other aggravating factors. Thus, we have ordered discipline as light as 30 days of actual suspension when the misappropriation resulted from negligence and other mitigating factors were present[citation omitted]". The Supreme Court in *Edwards* reduced the Review Department's recommended two year actual suspension to a one year actual suspension. While the reasoning of the Court is consistent with a level of discipline less than disbarment, a higher level of discipline here is appropriate due to respondent's misappropriations in multiple client matters.

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 14, 2017, the discipline costs in this matter are \$3,215. 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.

**EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT**

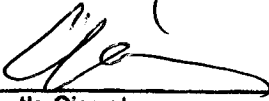
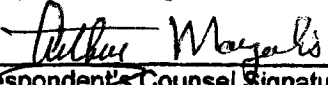
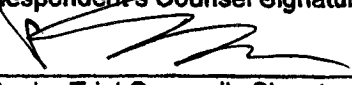
Respondent may not receive MCLE credit for completion of State Bar Ethics School and State Bar Client Trust Accounting School (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: <b>EUGENE DUKJOON KIM</b>	Case number(s): <b>14-O-04003</b>
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**SIGNATURE OF THE PARTIES**

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

<u>5/11/2017</u> Date	 Respondent's Signature	<u>Eugene Dukjoon Kim</u> Print Name
<u>5/16/17</u> Date	 Respondent's Counsel Signature	<u>Arthur L. Margolis</u> Print Name
<u>5-20-17</u> Date	 Senior Trial Counsel's Signature	<u>R. Kevin Bucher</u> Print Name

(Do not write above this line.)

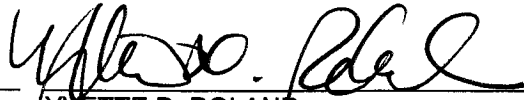
In the Matter of: <b>EUGENE DUKJOON KIM</b>	Case Number(s): <b>14-O-04003</b>
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### ACTUAL SUSPENSION ORDER

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.
1. On page 2 of the Stipulation, at paragraph B.(1)(e), "See attachment, Page 14" is moved to paragraph B.(1)(d).
  2. On page 7 of the Stipulation, at paragraph a., chart, column 3, first line after "Interest Accrues From," "October 29, 1009" is deleted, and in its place is inserted "October 29, 2009".
  3. On page 16 of the Stipulation, fourth full paragraph, line 4, "through negligence" is deleted.
  4. On page 16 of the Stipulation, fourth full paragraph, line 11, "grossly negligent" is inserted before "misappropriations".

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.)**

Date June 14, 2017   
YVETTE D. ROLAND  
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 June 14, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING

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

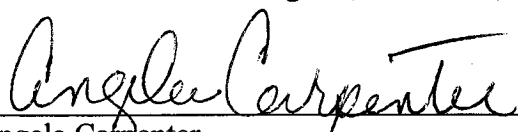
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

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

Ronald K. Bucher, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 14, 2017.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court