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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Eli D. Morgenstern Senior Trial Counsel State Bar of California 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1334 Bar # 190560	Case Number(s): 15-O-10045	For Court use only <div style="text-align: center;"> FILED FEB 03 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent John Kenneth Saur Law Offices of John K. Saur 28241 Crown Valley Pkwy, Ste. F323 Laguna Niguel, CA 92677 (949) 481-2453 Bar # 64558	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: John Kenneth Saur Bar # 64558 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 27, 1975..**
- (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 **(11)** 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."

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- (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(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **13-O-10550**.
 - (b) Date prior discipline effective **April 8, 2014**.
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 4-100(B)(3)**.
 - (d) Degree of prior discipline **Public reproof**.
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
See Stipulation attachment, page 8.
- (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.

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- (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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See Stipulation attachment, page 8.**
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Lack of Candor/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 Stipulation attachment, page 8.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution. See Stipulation attachment, page 8.
- (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

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

Additional mitigating circumstances: Pretrial Stipulation. See Stipulation attachment, page 8.

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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 **Sandra Clawson** in the amount of \$ **9,463.98** plus 10 percent interest per year from **March 19, 2012**. If the Client Security Fund has reimbursed **Sandra Clawson** 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 **N/A** days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

8. On June 28, 2012, respondent received two checks issued by 21st Century Insurance in the total amount of \$19,493.02: (1) one check made payable to Humana in the amount of \$17,745.73; and (2) a second check made payable to respondent and Mr. Clawson in the amount of \$1,747.29.

9. In October 2012, respondent mailed, and Mr. Clawson received, the check in the amount of \$1,747.29.

10. In January 2013, respondent mailed, and Humana received, the check in the amount of \$17,745.73.

11. In July 2013, respondent and Mrs. Clawson exchanged e-mails concerning the status of the Clawsons' settlement funds.

12. On July 2, 2013, respondent sent Mrs. Clawson an email stating that Humana and Medicare were disputing their share of the Clawsons' settlement funds. In fact, no such dispute existed. On July 2, 2013, respondent knew that Humana and Medicare were not engaged in a dispute over their share of the Clawsons' settlement funds.

13. On July 12, 2013, respondent sent Mrs. Clawson an email stating that he had determined that the dispute between Humana and Medicare was in the amount of no more than \$20,000, and that he would be able to disburse \$10,000 to the Clawsons immediately. In fact, Humana and Medicare were not disputing their share of the Clawsons' settlement funds. On July 12, 2013, respondent knew that Humana and Medicare were not engaged in a dispute over their share of the Clawsons' settlement funds.

14. On July 18, 2013, respondent issued a check to Mrs. Clawson in the amount of \$10,000. On July 26, 2013, the Clawsons deposited the check in their bank account.

15. Between December 2013, and September 2014, respondent and Mrs. Clawson exchanged emails concerning the status of the Clawsons' settlement funds.

16. On September 9, 2014, respondent sent Mrs. Clawson an email blaming his former bookkeeper for the delay in paying the Clawsons their settlement funds. Respondent also explained that he no longer maintained the settlement funds, and was unable to pay the remaining amount owed to them in a lump sum.

17. On September 24, 2014, respondent sent Mrs. Clawson an email proposing that he pay the Clawsons a total of \$15,750 in nine monthly payments of \$1,750.

18. Between September 24, 2014, and January 26, 2015, respondent paid the Clawsons \$3,250. In total, respondent paid \$13,250 to the Clawsons. To date, respondent owes the Clawsons an additional \$9,463.98 (\$22,173.98-\$13,250).

CONCLUSIONS OF LAW:

By failing to maintain \$22,173.98, the Clawsons' portion of their settlement funds, in his client trust account, respondent failed to maintain client funds in trust, in willful violation of Rules of Professional Conduct, rule 4-100(A).

By intentionally misappropriating \$21,569.99 of the Clawsons' settlement funds, respondent committed an act of moral turpitude, dishonesty, or corruption in violation of Business and Professions Code, section 6106.

By stating to Mrs. Clawson in e-mails that Humana and Medicare were disputing their share of the Clawsons' settlement funds, when he knew that the statement was false, respondent committed an act of moral turpitude, dishonesty, or corruption in violation of Business and Professions Code, section 6106.

By failing to pay the Clawsons the full amount of their settlement funds, despite their repeated inquiries, respondent failed to pay promptly, as requested by a client, client funds in his possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): On April 8, 2014, respondent was publicly reprovved in Case No. 13-O-10550 for failing to render an accounting to his client in violation Rules of Professional Conduct, rule 4-100(B)(3).

Multiple Acts of Misconduct (Std. 1.5(b)): During his representation of the Clawsons, respondent failed to maintain and misappropriated the Clawsons' settlement funds, made misrepresentations to them concerning their funds, and failed to pay the Clawsons the full amount of their settlement funds. Respondent's multiple acts of serious misconduct is a significant aggravating factor.

Harm (Std. 1.5(f)): By failing to pay the Clawsons the entire amount of their settlement funds, respondent has caused financial harm to them.

Failure to Make Restitution (Std. 1.5(i)): To date, respondent owes the Clawsons the principal amount of \$9,463.98.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into this stipulation prior to trial, thereby saving the State Bar Court 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 Silvertown* (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).)

In this matter, respondent admits to committing multiple acts of misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent’s misconduct is found in Standard 2.1(a), which applies to respondent’s misappropriation of the Clawsons’ settlement funds. Standard 2.1(a) provides that disbarment is the presumed sanction for intentional misappropriation of entrusted funds, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate.

Here, the amount misappropriated is not insignificantly small. (See *Chang v. State* (1989) 49 Cal.3d 114, 128 [Supreme Court finding misappropriation of over \$7,000 to be significant].) Respondent’s agreement to enter into this stipulation, the only mitigating factor present, is not sufficiently compelling to warrant a deviation from Standard 2.1(a). The contrary is true: the aggravating factors clearly predominate. After respondent misappropriated his clients’ settlement funds, respondent misrepresented the status of those funds in response to his client’s inquiries. (See *Edwards v. State Bar* (1991) 52 Cal.3d 21, 38 [“An attorney who deliberately takes a client’s funds, intending to keep them permanently, and answers the client’s inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception.”].) To date, respondent has failed to pay his clients the full amount of their settlement funds, which has caused financial harm to them. Moreover, respondent’s prior record of discipline involves misconduct concerning client funds. These aggravating factors further compel the presumed sanction in Standard 2.1(a).

The case law also supports the recommended discipline. The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.)

The Supreme Court has imposed disbarment even on attorneys with no prior record of discipline and in cases involving a single misappropriation. (See, e.g., *In re Abbott* (1977) 19 Cal.3d 249 [misappropriation of \$29,500]; *Chang v. State Bar, supra*, 49 Cal.3d 114 [misappropriation of almost \$7,900]; and *Kelly v. State Bar* (1988) 45 Cal.3d 649 [misappropriation of \$20,000].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of December 7, 2015, the prosecution costs in this matter are \$3,624. 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.

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In the Matter of: JOHN KENNETH SAUR	Case number(s): 15-O-10045
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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.

1-4-16 *John Saur* John Kenneth Saur
Date Respondent's Signature Print Name

1-7-16 *Eli Morgenstern* Eli D. Morgenstern
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: JOHN KENNETH SAUR	Case Number(s): 15-O-10045
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DISBARMENT ORDER

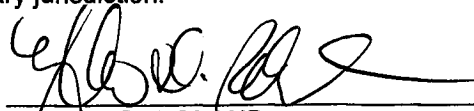
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 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.

February 3, 2016
Date


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 February 3, 2016, 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:

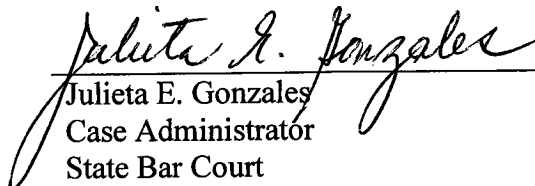
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOHN KENNETH SAUR
LAW OFFICE OF JOHN K SAUR
28241 CROWN VALLEY PKWY
STE F323
LAGUNA NIGUEL, CA 92677

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 3, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court