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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Anthony J. Garcia Supervising Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1089 Bar # 171419	Case Number(s): 15-O-10060	For Court use only <div style="text-align: center;"> FILED JAN 15 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Susan L. Margolis 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996 Bar # 104629	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: MARIO ESTUARDO DIAZ Bar # 76235 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 **December 21, 1977**.
- (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 **11-O-16037**
 - (b) Date prior discipline effective **July 9, 2014**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **4-100(A), 6106 (Misappropriation)**
 - (d) Degree of prior discipline **3 years probation, including 2 years actual suspension**
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith. **See page 8.**
- (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 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.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (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) **Lack of 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:

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:**

Check number 1488, payable to Modesta Perez, \$80,000; and
Check number 1489, payable to Modesta Perez, \$20,300.44.

7. Mr. Booth gave the checks and the disbursement sheet to respondent who agreed to deliver the funds and the disbursement sheet to Mrs. Perez.

8. On June 4, 2014, instead of delivering the checks to Mrs. Perez, respondent signed Mrs. Perez's name on the back of all six settlement checks without her permission. Between June 4, 2014, and June 11, 2014, respondent deposited checks numbered 1484, 1485, 1486, and 1487, totaling \$320,000, into his client trust account maintained at Wells Fargo bank.

9. On June 19, 2014, respondent went to the office of attorney Victor Jacobovitz and asked him to deposit check number 1488, in the amount of \$80,000, into Jacobovitz's client trust account (CTA). Respondent told Jacobovitz that respondent did not have a client trust account and that the funds were respondent's share of Mrs. Perez's settlement. Jacobovitz deposited check number 1488 into his CTA.

10. On June 23, 2014, Jacobovitz issued a check from his CTA payable to respondent in the amount of \$80,000 and delivered it to respondent.

11. On June 26, 2014, respondent went to Jacobovitz's office again and asked Jacobovitz to deposit check number 1489, in the amount of \$20,300.44, into Jacobovitz's CTA. Respondent again told Jacobovitz that respondent did not have a client trust account and that the funds were respondent's share of Mrs. Perez's settlement. Jacobovitz deposited check number 1489 into his CTA.

12. On July 2, 2014, Jacobovitz issued a check from his CTA payable to respondent in the amount of \$11,000 and delivered it to respondent. On July 7, 2014, Jacobovitz issued a check from his CTA payable to respondent in the amount of \$9,033 and delivered it to respondent. Respondent used the funds that he received from Jacobovitz for his own personal purposes. Respondent allowed Jacobovitz to keep the remainder, \$267.44, as payment for previously incurred expenses.

13. By delivering Mrs. Perez's settlement funds to Jacobovitz without Mrs. Perez's approval or knowledge, and thereafter receiving and using those same funds for respondent's own purposes, respondent intentionally misappropriated \$100,300.44 of Mrs. Perez's funds.

14. On September 9, 2014, the balance in respondent's client trust account was \$30. Respondent used Ms. Perez's funds for his own purposes. On September 9, 2014, Respondent intentionally misappropriated \$319,970 of Modesta Perez's settlement funds from his client trust account.

15. By his actions, respondent intentionally misappropriated a total of \$420,270.44 of Mrs. Perez's settlement funds.

16. On April 15, 2015, Mrs. Perez, after hiring new counsel, sued respondent in Imperial County Superior Court, case no. ECU08665, alleging that respondent misappropriated her funds and committed malpractice in her legal matter.

17. On April 20, 2015, respondent delivered a cashier's check in the amount of \$420,300.44 to Mr. Booth as partial settlement of Mrs. Perez's lawsuit. Mr. Booth deposited the funds into his client trust account, and on May 8, 2015, Mr. Booth delivered the funds to Mrs. Perez.

18. On August 17, 2015, respondent delivered an additional \$115,000 to Mrs. Perez as partial settlement of Mrs. Perez's lawsuit, along with an agreement to pay an additional \$50,000 within two years.

CONCLUSIONS OF LAW:

19. By failing to maintain a balance of \$420,300.44 on behalf of Modesta Perez in his client trust account, respondent willfully violated Rules of Professional Conduct, rule 4-100(A).

20. By signing Modesta Perez's name on the back of six settlement checks without Modesta Perez's permission, respondent committed an act or acts involving moral turpitude, dishonesty and corruption in willful violation of Business and Professions Code, section 6106.

21. By intentionally misappropriating for respondent's own purposes \$100,300.44 that respondent's client, Modesta Perez was entitled to receive, respondent committed an act or acts involving moral turpitude, dishonesty and corruption in willful violation of Business and Professions Code, section 6106.

22. By intentionally misappropriating for respondent's own purposes \$319,970 that respondent's client, Modesta Perez was entitled to receive, respondent committed an act involving moral turpitude, dishonesty and corruption in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): The Supreme Court disciplined respondent in case number 11-O-16037, effective June 9, 2014. The Court suspended respondent for three years, stayed, placed him on probation for three years including a two-year actual suspension and until he shows proof of his rehabilitation. It found that respondent was culpable of moral turpitude for his grossly negligent misappropriation of more than \$42,000 of his client's funds and that he failed to maintain client funds in trust. Respondent misappropriated client funds in June 2006. Respondent received substantial mitigation for his "lengthy and stellar career, impressive community service, outstanding character evidence, remorse and cooperation."

Dishonesty (Std. 1.5(d)): When respondent presented two checks to Jacobovitz bearing Mrs. Perez's signature he failed to tell Jacobovitz that he signed Mrs. Perez's name on the checks without Mrs. Perez's permission, and respondent lied to Jacobovitz when he told him that the settlement checks represented respondent's share of the settlement.

Harm (Std. 1.5(j)): Respondent deprived Mrs. Perez of her settlement funds for almost one year and Mrs. Perez was required to hire counsel to recover her money.

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).)

Standard 1.8(a) states when a member has a prior record of discipline, the sanction imposed for subsequent acts of misconduct must be greater than the previously imposed sanction with exceptions not relevant to this matter.

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." In this matter, Respondent admits to committing four acts of professional misconduct.

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.1(a), which applies to Respondent's violations of Business and Professions Code, section 6106. Disbarment is the presumed sanction for an intentional or dishonest misappropriation of entrusted funds unless the amount is insignificantly small, or sufficiently compelling mitigation clearly predominates. (Std. 2.1(a).)

The amount respondent misappropriated was not insignificantly small (*Chang v. State Bar, supra*, 49 Cal.3d at pp. 128-129 [\$7,898 held to be significant amount]), and there are several serious aggravating factors. Respondent has been previously disciplined for misappropriating client funds, dishonesty surrounded the current misappropriation, and respondent's client suffered significant harm. There is no evidence of mitigating factors.

The Supreme Court has repeatedly held that disbarment is the usual discipline for willful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) Respondent's intentional misappropriation of Mrs. Perez's settlement funds was not only a violation of the moral and legal standards that apply to all individuals in society, it was "one of the most serious breaches of professional trust that a lawyer can commit." (*Howard v. State Bar, supra*, 51 Cal.3d 215, 221.) Respondent's intentional misappropriation coupled with the aggravating factors present in this matter indicates that disbarment is the appropriate sanction

and will serve the purposes announced in Standard 1.1.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of October 15, 2015, the prosecution costs in this matter are approximately \$3,500. 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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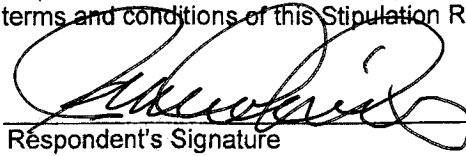
In the Matter of:
MARIO ESTUARDO DIAZ

Case number(s):
15-O-10060

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.

12/28/2015
Date


Respondent's Signature

Mario Estuardo Diaz
Print Name

January 4, 2016
Date


Respondent's Counsel Signature

Susan Margolis
Print Name

1/5/16
Date


Deputy Trial Counsel's Signature

Anthony Garcia
Print Name

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In the Matter of: MARIO ESTUARDO DIAZ	Case Number(s): 15-O-10060-WKM
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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.

See attached Modifications to Stipulation.

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 Mario Estuardo Diaz 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.

January 15, 2016
Date


W. KEARSE MCGILL
Judge of the State Bar Court

MODIFICATIONS TO STIPULATION

1. On page 1 of the stipulation, in the description portion of the caption, the term “Settlement Judge” is MODIFIED to read “Assigned Judge.”
2. On page 2 of the stipulation, in paragraph B(2): the “X” in the box and the reference to “See page 8” are DELETED.
3. On page 8 of the stipulation, in paragraphs 20, 21, and 22, the phrases “moral turpitude, dishonesty or corruption” are MODIFIED to read “moral turpitude and dishonesty.”
4. On page 8 of the stipulation, under the heading “Aggravating Circumstances.” the second paragraph, which begins: “Dishonesty (Std. 1.5(d))...,” is DELETED in its entirety as respondent’s misrepresentations to Attorney Jacobovitz, used to establish an aggravating circumstance, is also used as part of the Business and Professions Code section 6106 violation charged in count four of the notice of disciplinary charges, and are thus encompassed within the stipulated violations of section 6106 set forth in paragraph 21 of the stipulation. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 176; *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68; *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767, 777.)
5. On page 9 of the stipulation, in the sixth full paragraph, which begins “The amount respondent misappropriated ...,” the phrase “dishonesty surrounded the current misappropriation” is DELETED.

-X-X-X-

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 January 15, 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:

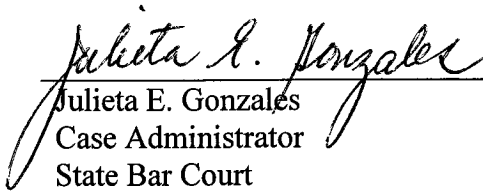
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUSAN LYNN 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:

Anthony J. Garcia, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 15, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court