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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		ORIGINAL
Counsel For The State Bar Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182 Bar # 281574	Case Number(s): 15-O-10784-WKM	For Court use only <div style="text-align: center; font-size: 1.5em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center;"> FILED APR 15 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Arthur Margolis Margolis & Margolis LLP 2000 Riverside Dr. Los Angeles, CA 90039 (323) 953-8996 Bar # 57703	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: DENNIS GERALD GESELOWITZ Bar # 85907 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <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 **May 31, 1979**.
- (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 **15** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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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):
- 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 in this matter.** (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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **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.
- (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. Please see attachment, page 11.
- (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. **Please see attachment, page 11.**
- (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. **Please see attachment, page 12.**
- (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:

Community Service, please see attachment, page 12.
Pretrial Stipulation, please see attachment, page 12.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law 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:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of **one year**, 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 **ninety (90) days**.
- 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

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- 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: .

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- (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: DENNIS GERALD GESELOWITZ	Case Number(s): 15-O-10784-WKM
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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

- 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

- 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

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:
- 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";

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: DENNIS GERALD GESELOWITZ

CASE NUMBER: 15-O-10784-WKM

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. 15-O-10784-WKM (Complainant: Fernando Ruiz)

FACTS:

1. On August 4, 2010, Fernando Ruiz ("Ruiz") and Ruiz's sister employed respondent to represent them in an auto accident personal injury matter. At this time, both Ruiz and his sister signed the same retainer agreement employing respondent as their attorney. The retainer agreement provided for attorney's fees of 33 1/3% of the gross amounts of any recovery obtained prior to filing a lawsuit.
2. In the underlying auto accident, Ruiz incurred the following medical expenses: \$754.75 with CARE Ambulance Services, Inc.; \$2,442.00 with UC Irvine Physicians Billing Group; \$471.00 with Orthopaedic Faculty of Irvine; \$5,105.00 with U.S. Care Chiropractic Center; and \$26,197.00 with UC Irvine Medical Center. Ruiz's medical expenses totaled \$34,969.75.
3. In December 2010, Ruiz's medical bill with UC Irvine Physicians Billing Group was paid by the Emergency Medical Services Fund in the amount of \$2,442.00, on Ruiz's behalf. In February 2011, Ruiz's medical bill with the Orthopedic Faculty of Irvine was paid by the Emergency Medical Services Fund in the amount of \$471.00, on Ruiz's behalf.
4. On March 17, 2011, respondent sent a letter to the Farmers Insurance Group ("Farmers"), the adverse driver's insurer, requesting a settlement of \$30,000 for Ruiz.
5. On April 8, 2011, Farmers wrote a letter to respondent, offering a settlement of \$15,000 for Ruiz, which was the policy limit for the adverse driver. Respondent received the letter.
6. On April 14, 2011, respondent accepted the \$15,000 settlement offer, on behalf of Ruiz, and, with Ruiz's consent, mailed a signed release of all claims to Farmers. Farmers received the signed release.
7. On April 21, 2011, Farmers mailed a settlement draft to respondent for \$15,000, made payable to Ruiz and respondent. Respondent received the settlement draft.
8. On April 27, 2011, respondent deposited the \$15,000 settlement draft into his client trust account ("CTA") at Pacific City Bank, account number XXXX366. Respondent was paid \$5,000 as his attorney fees, leaving \$10,000 in the CTA as Ruiz's portion of the settlement.

9. On May 2, 2011, respondent sent a letter to Ruiz confirming Ruiz's agreement of the settlement and the settlement amount. Respondent also advised Ruiz that respondent would negotiate with Ruiz's medical providers in regard to reducing their medical bills due to the amount of the settlement.

10. On August 1, 2011, and February 9, 2012, respondent sent letters updating Ruiz about the negotiations with the medical providers due to the medical bills exceeding the settlement amount.

11. In late 2011, respondent began closing down his law practice because respondent had obtained employment as a controller for a corporation. Respondent had maintained Ruiz's and Ruiz's sister's cases in the same file. Ruiz's sister's case had been resolved prior to Ruiz's case. At this time, respondent instructed his staff to send the closed files to a storage facility. Respondent's staff inadvertently sent Ruiz's file to the storage facility because the file indicated that Ruiz's sister's case had been resolved.

12. In early 2013, respondent's accountant instructed the firm to close all bank accounts, except the CTA, in order to file formal dissolution papers for the law firm effective in 2014. The office manager misunderstood and, unbeknownst to respondent, began electronically transferring funds out of the CTA and into the general operating account at Pacific City Bank to pay office expenses and costs of closing down respondent's office. Although respondent was the only signatory for the CTA, respondent's office manager was able to electronically transfer funds.

13. Between April 24, 2013 and February 12, 2015, respondent's office manager made electronic transfers from respondent's CTA to the general operating account, such that the balance in respondent's CTA fell below \$10,000 on April 24, 2013, July 8, 2013, October 2, 2013, November 8, 2013, November 25, 2013, June 20, 2014 and June 27, 2014, resulting in a balance of \$1,660.13 on January 30, 2015, which resulted in a grossly negligent misappropriation of \$8,339.87.

14. In July and December 2014, Ruiz received collection letters mailed and addressed to him for his unpaid medical bill with U.S. Care Chiropractic Center.

15. On December 23, 2014, Ruiz filed a complaint with the State Bar against respondent due to Ruiz's receipt of the collection letters from U.S. Chiropractic Center. On January 30, 2015, the State Bar sent a letter to respondent investigating Ruiz's State Bar complaint. Respondent received the letter.

16. Upon receiving the January 30, 2015 letter from the State Bar, respondent learned that Ruiz's case was unresolved, and he contacted the office manager to retrieve Ruiz's wrongfully closed file.

17. On February 12, 2015, the office manager deposited \$10,000.00 of the office manager's own personal funds into respondent's CTA. At this time, respondent also retrieved Ruiz's file from storage.

18. On February 17, 2015, respondent contacted U.S. Chiropractic Care and settled Ruiz's \$5,105.00 medical bill for \$1,000.00. At this time, respondent sent a \$1,000.00 check from respondent's CTA, as payment to U.S. Chiropractic Care, which they received.

19. On February 19, 2015, respondent settled Ruiz's CARE Ambulance Service, Inc. medical bill for \$1,186.65. At this time, respondent sent a \$1,186.65 check from respondent's CTA, as payment to CARE Ambulance Service, Inc., which they received.

20. On February 26, 2016, respondent contacted the UC Irvine Medical Center/Lien Management and settled Ruiz's \$26,197.00 medical bill for \$5,239.40. At that time, respondent sent a \$5,239.40 check from respondent's CTA, as payment to UC Irvine Medical Center/Lien Management, which they received.

21. On March 11, 2016, respondent sent the remainder of the settlement funds, a check from respondent's CTA, in the amount of \$2,573.95, to Ruiz. At this time, respondent also waived his fees and sent an additional \$5,000 to Ruiz for a total of \$7,573.95. Respondent waived his fees because he felt that he did not meet his own standards of excellence in serving his client.

22. In February 2015, respondent voluntarily studied the State Bar Client Trust Accounting Handbook to prevent future misconduct by respondent. Respondent obtained the State Bar Client Trust Accounting Handbook from the State Bar's website.

CONCLUSIONS OF LAW:

23. By failing to promptly negotiate medical liens of \$5,105.00 with U.S. Care Chiropractic Center and \$26,197.00 with UC Irvine Medical Center; by failing to supervise office staff in the closure of an active file; and by failing to supervise office staff in transferring settlement funds out of respondent's CTA; respondent repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

24. By failing to maintain a balance of \$10,000.00, on behalf of Ruiz and Ruiz's medical providers in respondent's CTA between April 27, 2011 and February 12, 2015, respondent failed to maintain client funds in trust, in willful violation of Rules of Professional Conduct, rule 4-100(A).

25. By grossly negligently misappropriating \$8,339.87 of Ruiz's settlement funds, respondent committed an act involving moral turpitude in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed multiple acts of misconduct by failing to perform, failing to maintain client funds in his CTA, and the misappropriation of client funds.

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Respondent was admitted to practice on May 31, 1979. Respondent had 33 years of discipline-free practice prior to the current misconduct, which is entitled to significant mitigation. Respondent's 33 years of discipline free practice demonstrates that the current misconduct is an aberration and not likely to recur. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; see *Friedman v. State Bar* (1990) 50 Cal.3d 235, 242 [20 years in the practice of law without discipline is afforded significant weight in mitigation].)

Good Character (Std. 1.6(f)): Respondent has submitted eight character letters from references who have attested to respondent's good character. All of the character references have knowledge of the underlying misconduct. The character references represent a broad range of professional backgrounds, which include two CPAs, an owner of a real estate company, a photographer, film producer, veterinarian, business owner and nurse. The references have known respondent for an extended period of time spanning five to sixty years; six of the references have known respondent for over 25 years. Three of the references were former clients of respondent. The character references attested to respondent's high moral character and integrity. (*In re Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 29 [seven character references considered significant mitigation].)

Community Service: Prior to immigrating to the United States, respondent practiced law in South Africa during the early 1970s. In his practice, respondent handled a great deal of pro-bono work advocating for the black community in Germiston and Natalspruit. Respondent was a proponent for the education and rights of black people during apartheid. During the abolishment of apartheid, respondent helped draft educational material to encourage a peaceful transition. Respondent provided declarations documenting numerous pro bono legal cases he assisted in regarding business transactions, contracts and tax, personal injury, and family law for faculty and staff at a high school located in Los Angeles, during the time he served there as a Chief Accounting Officer and in house counsel (2011-2012), as well as two others in dire financial straits. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [where civic service was recognized as a mitigating circumstance].)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into this stipulation prior to trial, thereby saving State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].) Respondent has also acknowledged his misconduct by entering into this pretrial stipulation.

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 Silvertan* (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).)

The most severe sanction applicable to respondent's misconduct is found in Standard 2.1(b), which provides that "[a]ctual suspension is the presumed sanction for misappropriation involving gross negligence." While closing down his practice, respondent failed to adequately supervise his staff and monitor his CTA, which resulted in a misappropriation of \$8,339.81 involving gross negligence. Respondent's staff closed Ruiz's unresolved case along with the resolved companion case because the cases were in the same file. Respondent's staff also transferred Ruiz's settlement funds out of the CTA pursuant to the mistaken belief that respondent's CPA had instructed the firm to close down the firm's accounts, including the CTA. Respondent failed to monitor his CTA and gave his CPA and office manager control. While respondent did not intend to misappropriate funds, respondent is responsible for the actions of his staff and his gross negligence, which resulted in the misappropriation.

Respondent had 33 years of discipline-free practice prior to the misconduct, which is significant mitigation. Although not mitigation, in late January 2015, when the State Bar alerted respondent of Ruiz's unresolved matter and the transfer of funds out of the CTA, respondent immediately reopened Ruiz's matter and began negotiating with the medical providers. When providing the settlement check to Ruiz, respondent also gave his fees to Ruiz because respondent felt that he did not meet his own standards of excellence in serving his client. Although not mitigation, respondent also studied the State Bar Client Trust Accounting Handbook on his own to prevent future misconduct. Eight character references who have knowledge of respondent's misconduct and have known him for many years attested to respondent's good character, which is significant mitigation.

In mitigation, respondent has 33 years of discipline free practice, community service, extraordinary good character and the instant pretrial stipulation. Respondent's multiple acts of misconduct, which consist of failure to perform, failure to maintain client funds in trust and misappropriation are an aggravating factor. On balance, respondent's mitigation outweighs the aggravation. Therefore, discipline consisting of a one-year stayed suspension and a one-year probation with conditions including a ninety-day actual suspension is appropriate to fulfill the goals of attorney discipline.

This discipline is supported by case law. In *Brockway v. State Bar* (1991) 53 Cal.3d 51, the Supreme Court found that Brockway wilfully misappropriated \$500 of client funds in one matter and improperly acquired an interest adverse to his client in another matter. Regarding the misappropriation, Brockway refused to return the misappropriated funds even after the client demanded its return. In mitigation, Brockway had no prior record of discipline in 13 years of practice (but less than four years of practice before the misconduct occurred), lack of client harm, and good character evidence. However, the Supreme Court also noted its doubts about Brockway's candor and found that he acted with indifference. The Supreme Court ordered a one-year stayed suspension and two-year probation with conditions including a 90 days' actual suspension.

In the current matter, like Brockway, respondent provided evidence of good character. Respondent has 20 more years of discipline-free practice than Brockway, and did not refuse to return the misappropriated funds. Respondent's misappropriation was not intentional, but rather occurred through gross negligence unlike Brockway. The misappropriation of client funds was due to respondent's failure to monitor his CTA. Once respondent learned of the misappropriation, respondent immediately acted to resolve Ruiz's case. Therefore, the level of discipline here should be comparable to that in *Brockway*.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 5, 2016, the prosecution costs in this matter are \$5,378. 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

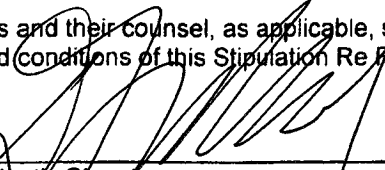
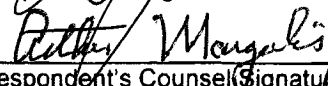
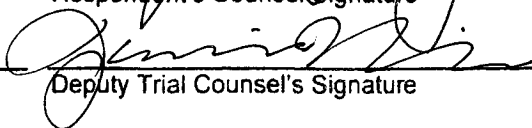
Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DENNIS GERALD GESELOWITZ	Case number(s): 15-O-10784-WKM
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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>4/7/16</u> Date	 Respondent's Signature	<u>Dennis Gerald Geselowitz</u> Print Name
<u>4/7/16</u> Date	 Respondent's Counsel's Signature	<u>Arthur Margolis</u> Print Name
<u>4/8/16</u> Date	 Deputy Trial Counsel's Signature	<u>Jamie Kim</u> Print Name

(Do not write above this line.)

In the Matter of: DENNIS GERALD GESELOWITZ	Case Number(s): 15-O-10784-WKM
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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.

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 4/15/16


DONALD F. MILES
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 April 15, 2016, 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:

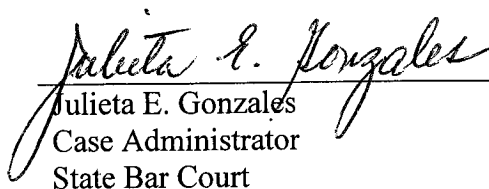
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

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:

Jamie J. Kim, Enforcement, Los Angeles

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



Julieta E. Gonzales
Case Administrator
State Bar Court