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**State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p><b>Jennifer Kishimizu Pinney</b> Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1349</p> <p>Bar # 280869</p>	<p>Case Number(s): 17-C-02284-YDR</p> <p align="center"><b>PUBLIC MATTER</b></p> <p align="center"><b>FILED</b></p> <p align="center"><b>JAN 03 2018</b></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center">kwiktag® 226 164 800</p> 	<p>For Court use only</p>
<p>In Pro Per Respondent</p> <p><b>David Michael Livingston</b> Livingston Bakhtiar 3435 Wilshire Blvd. Ste. 1669 Los Angeles, CA 90010 (213) 632-0692</p> <p>Bar # 204347</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>DAVID MICHAEL LIVINGSTON</b></p> <p>Bar # 204347</p> <p>A Member of the State Bar of California (Respondent)</p>		

**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 2, 1999**.
- (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 **16** 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: **two 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
  - (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. **See page 12.**
- (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 page 12.
- (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)  **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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline: See page 12.**

**Good Character: See page 13.**

**Pretrial Stipulation: See page 13.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **three (3) 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 (3) 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 **two (2) 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

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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: **September 5, 2017.**
- (5)  **Other Conditions:**



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- 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:
- 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";
  - 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.



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**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.



respondent's paralegal and administrative assistant, respectively, for a period of approximately six months from March 2014 to September 2014.

7. Respondent claimed to hire K.K. and J.K. as independent contractors, but did not prepare W-2 or 1099 tax forms for them. Respondent was unaware of what type of education or experience they had and paid them approximately \$400.00 per week.

8. K.K. informed the District Attorney Investigator that respondent had paid him a percentage of the fees for each settled case. J.K. informed the District Attorney Investigator that respondent and K.K. split attorney fees.

9. Respondent rented a separate office for K.K. and J.K. that was in the same building, but on a different floor from his office. K.K. and J.K.'s office was on the 7th floor while respondent maintained an office on the 11th floor.

10. While K.K. and J.K. were employed by respondent, they prepared fraudulent car accident insurance claims through respondent's law office, sending letters on respondent's letterhead and using respondent's client trust account.

11. Respondent maintained a client trust account where K.K. and J.K. used respondent's client trust account checks to issue disbursements of fraudulent insurance settlements to the client and fraudulent medical providers.

12. Respondent represented Client One and Client Two in a fraudulent insurance claim in March 2014. Respondent signed a representation letter dated March 14, 2014 written on his letterhead that was sent to an insurance company. However, respondent never met with either client. Fraudulent insurance settlement checks made payable to L/O of David Livingston and Client One for \$7,000.00 and L/O of David Livingston and Client Two for \$6,500.00 were deposited at a check cashing business on August 5, 2014. Respondent claimed that he never received or endorsed the checks.

13. Client One admitted to the District Attorney Investigator that her insurance claim was fraudulent and that K.K. coordinated a fictitious collision and insurance claim for the purpose of assisting her in disposing of her vehicle. Client One met with K.K. and J.K. at an office on Wilshire Boulevard and they advised her to visit a specific chiropractor's office to maximize an insurance settlement. Client One denied being represented by an attorney and did not know of respondent.

14. Respondent represented K.K.'s wife, Client Three, and K.K.'s other daughter, Client Four, in a fraudulent insurance claim in March 2014. Respondent was not aware that Client Three was K.K.'s wife. Respondent also was not aware that K.K. was the named insured on his wife's insurance policy. Fraudulent insurance settlement checks were issued to Client Three for \$9,000.00 and Client Four for \$5,700.00. Respondent admitted that the bank information on the back of the check was respondent's client trust account.

15. Respondent represented J.K.'s boyfriend, Client Five, in a fraudulent insurance claim. Respondent was not aware that he represented J.K.'s boyfriend and did not know what happened with the claim. Client Five admitted to the District Attorney Investigator that his claim was fraudulent and that K.K. and J.K. handled the paperwork for the fraudulent insurance claim.

16. Respondent represented Client Six in an insurance claim in March 2014. When respondent was contacted by Client Five's daughter inquiring what happened with her mother's claim, respondent contacted the insurance company and was informed that a settlement check had been issued by the insurance company. An insurance settlement check made payable to L/O of David Livingston and Client Six for \$3,605.00 was endorsed and deposited at a check cashing business. Respondent claimed that he never received or endorsed the check and the client did not receive her share of the settlement funds.

17. On April 3, 2015, respondent sent an email to J.K. regarding Client Six and demanded that a letter be produced indicating that he had substituted out of the matter in March 2014. He demanded to know how an insurance check was cashed after he had supposedly substituted out of Client Six's case. Respondent wished that he had never done business with her father, K.K., and stated that the trouble K.K. had caused respondent was never going to end.

18. The following checks were written on respondent's client trust account checks for fraudulent insurance claims and signed by respondent:

- a. Check No. 1683: Dated July 7, 2014, Paid to Dr. H.C.K. for \$1,500.00, Memo: "Settlement – [Client Three]"
- b. Check No. 1684: Dated July 7, 2014, Paid to Dr. B.S. for \$1,500.00, Memo: "Settlement – [Client Three]"
- c. Check No. 1686: Dated July 7, 2014, Paid to Client Four for \$3,230.00, Memo: "Settlement"
- d. Check No. 1687: Dated July 7, 2014, Paid to Dr. H.C.K. for \$1,900.00, Memo: "Settlement – [Client Four]"

19. Following the date of respondent's guilty plea in his criminal matter, respondent paid \$17,739.46 as part of his share of restitution.

#### CONCLUSIONS OF LAW:

20. The facts and circumstances surrounding the above-described violations involved moral turpitude.

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's repeated failure to supervise his non-attorney employees resulted in at least four known fraudulent claims submitted to insurance companies, each of which constitutes an act of misconduct.

**Significant Harm (Std. 1.5(j)):** Respondent's failure to supervise his non-attorney employees in their submission of fraudulent claims to insurance companies resulted in the improper distribution of several thousand dollars, resulting in a criminal conviction, causing harm to the public and the administration of justice.

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to the California State Bar on December 2, 1999. Respondent was discipline-free for approximately 15 years from the time of admission to March 2014

when the misconduct began. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of discipline-free practice is entitled to significant mitigation].) However, the mitigation in this case is tempered by the serious nature of the misconduct.

**Good Character:** Respondent submitted 11 character letters attesting to respondent's good character. The affiants have known respondent from four to 19 years and include two attorneys, one private investigator, one paralegal, one neighbor, one pastor, one cousin and four former clients. The authors are aware of respondent's misconduct and they nonetheless attest to respondent's good character, particularly that he is a hard-working and honest attorney. (See *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 467, 471 [six character witnesses can establish good character, even though not every witness knew all of the details of the respondent's misconduct].)

**Pretrial 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 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)-(c).)

In this matter, respondent was involved in an insurance fraud scheme that involved 15 co-defendants in a criminal matter filed in Los Angeles County Superior Court, case number BA455219. On June 23, 2017, respondent pleaded guilty to a misdemeanor violation of Penal Code section 549 for unlawfully soliciting, accepting, and referring business to and from an individual with reckless disregard for

whether the individual intended to engage in insurance fraud. Respondent was sentenced to three years of summary probation, and ordered to serve one day in county jail with credit for time served of one day, complete 200 hours of community service, and pay restitution. Respondent paid restitution in the amount of \$17,739.46.

The facts and circumstances surrounding respondent's misdemeanor conviction for Penal Code section 549 involved moral turpitude through respondent's gross negligence in the supervision of his employees who engaged in acts constituting the unlawful practice of law and committed insurance fraud.

In *In the Matter of Oheb* (Review Dept. 2006) 4 Cal State Bar Ct. Rptr. 920, the Court declined to find that a conviction for Penal Code section 549 involved moral turpitude per se when a respondent pled to the "reckless disregard" element of the violation. However, the Court held that the facts and circumstances surrounding Oheb's two felony convictions of section 549 involved moral turpitude.

In *Oheb*, the Court found that respondent engaged in acts of moral turpitude by his involvement in capping and fee splitting with a non-attorney, his recklessness in entering into his business relationship with a resigned attorney and failure to supervise his work, his deceit in falsely recording his financial and bank records regarding the nature of his payment to his non-attorney employee, and his repeated failures to competently represent his clients. Oheb's misconduct was aggravated by multiple acts of wrongdoing, personal gain, substantial harm and failure to make complete restitution, and minimally mitigated by cooperation with the State Bar, good character evidence and lack of prior discipline for five years of practice. Given that, Oheb was disbarred from the practice of law.

Here, respondent committed acts of moral turpitude by engaging in criminally reckless misconduct in the course of his practice of law. By allowing his paralegal to run a personal injury practice with little to no supervision, respondent aided in the unlawful practice of law and the commission of insurance fraud. Through respondent's gross negligence, he allowed his paralegal to sign and represent clients without his knowledge, submit fraudulent claims to insurance providers, fraudulently endorse a settlement check, and improperly deposit settlement checks through check cashing businesses. Therefore, the facts and circumstances surrounding respondent's conviction clearly demonstrate that respondent engaged in moral turpitude through his gross negligence.

Unlike *Oheb*, where the presumed level of discipline for a felony conviction involving moral turpitude was disbarment, here, Standard 2.15(c) applies. Standard 2.15(c) states, "[d]isbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude."

While disbarment is not necessary in this instance due to the brief duration of respondent's misconduct, a limited number of clients and the mitigation evidence provided, a sustained period of actual suspension is appropriate. Respondent's misconduct is aggravated by multiple acts of misconduct and significant harm. Respondent's misconduct is mitigated by his 15 years of practice without a prior record of discipline, good character evidence and execution and filing of a pretrial stipulation. However, respondent's mitigation is tempered by the serious nature of the misconduct.

In weighing the nature of the misconduct, along with respondent's mitigation and aggravation, discipline consisting of three years stayed suspension and three years of probation with conditions including two years of actual suspension and until respondent demonstrates rehabilitation, fitness to practice and present learning and ability in the law, and the completion of Ethics and Client Trust Accounting (CTA) School is appropriate. This level of discipline is consistent with case law.

In *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, Jones agreed with a non-attorney to set up a personal injury practice and to split fees with the non-attorney. For more than two years, the non-attorney acted without proper supervision by Jones, handled all aspects of the practice, solicited clients illegally, collected over \$600,000 in attorney's fees in Jones's name without any performance of services, and misused nearly \$60,000 withheld from client settlements for payment to medical providers. Jones did not take realistic steps to end the non-attorney's illegal solicitations, even after he learned that they were occurring. Eventually, Jones turned the non-attorney in to the police, reported himself to the State Bar, and fully cooperated in the criminal prosecution of the non-attorney and in his own disciplinary proceeding. In aggravation, Jones committed multiple acts of misconduct and caused considerable harm to medical lienholders. In mitigation, Jones cooperated with the police, State Bar, and potential victims; established good character and community activities; and paid \$57,000 of his own funds to lienholders to remedy the non-attorney's misconduct. The Court recommended a three-year stayed suspension, three-years of probation, and actual suspension for two years and until proof of rehabilitation, fitness to practice, and present learning and ability in the general law.

In *In re Arnoff* (1978) 22 Cal.3d 740, the Supreme Court actually suspended an attorney for two years following his conviction of conspiracy to commit capping. A non-attorney controlled Arnoff's law office and the relationship lasted two years and involved 500 cases. Arnoff agreed to split fees, but there was insufficient evidence that Arnoff knew that the non-attorney was making kickbacks to doctors for referrals to Arnoff. His misconduct was mitigated by heavy emotional duress and health pressures, good character evidence, evidence of rehabilitation, and 20 years of practice without discipline.

Here, respondent's misconduct was not as extensive and did not involve as many client matters as in *Jones* and *Arnoff*. However, respondent set up a personal injury practice to operate in an unethical manner, failed to supervise his non-attorney employees, and disregarded trust account responsibilities, warranting a similar level of discipline as imposed in *Jones* and *Arnoff*.

In light of the foregoing, discipline consisting of three years stayed suspension and three years of probation with conditions including completion of Ethics and CTA School and two years of actual suspension and until respondent demonstrates rehabilitation, fitness to practice and present learning and ability in the law is appropriate to protect the public, the courts and the legal profession, maintain high professional standards by attorneys, and preserve public confidence in the legal profession. (Std. 1.1.)

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 8, 2017, the discipline costs in this matter are \$2,629.00. 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**

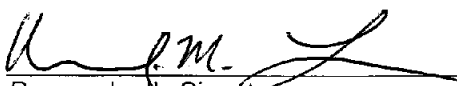
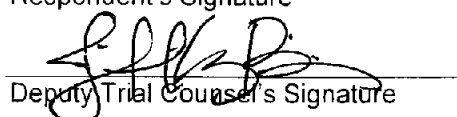
Respondent may not receive MCLE credit for completion of State Bar Ethics School or State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>DAVID MICHAEL LIVINGSTON</b>	Case number(s): <b>17-C-02284-YDR</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>12/13/17</u> Date	 Respondent's Signature	<u>David Michael Livingston</u> Print Name
<u>12/14/17</u> Date	 Deputy Trial Counsel's Signature	<u>Jennifer Kishimizu Pinney</u> Print Name



(Do not write above this line.)

In the Matter of: DAVID MICHAEL LIVINGSTON	Case Number(s): 17-C-02284-YDR
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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.)**

December 27, 2017  
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 January 3, 2018, 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:

DAVID M. LIVINGSTON  
LIVINGSTON BAKHTIAR  
3435 WILSHIRE BLVD STE 1669  
LOS ANGELES, CA 90010

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

ASAMI J. KISHIMIZU PINNEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 3, 2018.

  
\_\_\_\_\_  
Louisa Ayrapetyan  
Case Administrator  
State Bar Court