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Public Matter

FILED ^{MS}

03/30/2021

STATE BAR COURT

CLERK'S OFFICE

LOS ANGELES

11 STATE BAR COURT

12 HEARING DEPARTMENT - LOS ANGELES

13
14 In the Matter of:) Case No. SBC-21-O-30192
15 THOMAS VINCENT GIRARDI,)
State Bar No. 36603,) NOTICE OF DISCIPLINARY CHARGES
16) (OCTC Case Nos. 20-O-15684; 20-O-17192;
17) and 20-O-17505)
An Attorney of the State Bar.)

18 **NOTICE - FAILURE TO RESPOND!**

19 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
20 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
21 **THE STATE BAR COURT TRIAL:**

- 22 (1) **YOUR DEFAULT WILL BE ENTERED;**
23 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
24 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
25 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
26 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
27 **AND THE DEFAULT IS SET ASIDE, AND;**
28 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT AND MAY
RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS
WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES
PROC. OF STATE BAR, RULES 5.80 ET SEQ. & 5.137.)

1 The State Bar of California alleges:

2 JURISDICTION

3 1. Thomas Girardi ("respondent") was admitted to the practice of law in the State of
4 California on January 13, 1965. Respondent was a licensed attorney at all times pertinent to
5 these charges and is currently a licensed attorney of the State Bar of California.

6 COUNT ONE

7 Case No. 20-O-15684
8 Business and Professions Code, section 6106
9 [Moral Turpitude – False Statement in a Settlement Disbursement]

10 2. In or about May 2018, Judy Selberg employed Girardi Keese ("respondent's firm"),
11 respondent's law firm, to represent her with respect to her claims arising out of a boat accident
12 that occurred on April 21, 2018, which killed Ms. Selberg's husband. On or about August 19,
13 2019, Ms. Selberg signed respondent's firm's fee agreement. Pursuant to the fee agreement,
14 respondent's firm agreed to accept a 33.33% contingency fee as compensation for the firm's
15 legal services if Ms. Selberg's claims were resolved any time after 30 days of her execution of
16 the fee agreement and: (i) 30 days before the first mediation or arbitration date (if the matter was
17 set for mediation or arbitration); or (ii) 30 days before the first trial date.

18 3. On or about February 24, 2020, more than 30 days after Ms. Selberg's execution of
19 the fee agreement, and 30 days before the first mediation or arbitration date or the first trial date
20 being set in connection with her claims, Ms. Selberg agreed to resolve her claims for
21 \$500,000.00.

22 4. On or about March 5, 2020, respondent caused a document titled "Consent To
23 Settlement And Authorization To Make Disbursements" ("disbursement") to be prepared.
24 Pursuant to respondent's explicit instruction, the disbursement provided that respondent's firm
25 was entitled to a 40% contingency fee, or \$200,000.00, as compensation for the firm's legal
26 services in connection with Ms. Selberg's claims.

27 5. On or about March 5, 2020, Ms. Selberg signed the disbursement.

28 6. Respondent knew that the disbursement was false and misleading, because
respondent knew, on or about March 5, 2020, and at all times after that date, that pursuant to the

1 fee agreement, respondent's firm was only entitled to a 33.33% contingency fee, or \$166,650.00,
2 as compensation for the firm's legal services in connection with Ms. Selberg's claims, because
3 Ms. Selberg's claims were resolved more than 30 days after Ms. Selberg's execution of the fee
4 agreement and 30 days before the first mediation or arbitration date or the first trial date being
5 set in connection with her claims. Respondent thereby committed an act involving moral
6 turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section
7 6106.

8 7. A violation of section 6106 may result from intentional conduct or grossly negligent
9 conduct. Respondent is charged with intentionally making a false statement in a disbursement.
10 However, should the evidence at trial demonstrate that respondent committed the misconduct as
11 a result of gross negligence, respondent must still be found culpable of violating section 6106
12 because a false statement made in a disbursement through gross negligence is a lesser included
13 offense of intentionally making a false statement in a disbursement.

14 COUNT TWO

15 Case No. 20-O-15684
16 Rules of Professional Conduct, rule 1.15(a)
[Failure to Maintain Funds in Trust Account]

17 8. On or about June 25, 2020, respondent deposited, or caused to be deposited, a
18 settlement check issued by Total Dollar Insurance in the amount of \$504,400.00, the settlement
19 funds of respondent's client, Judy Selberg, into the client trust account of Girardi Keese
20 ("respondent's firm"), respondent's law firm, at Torrey Pines Bank, account no. xxxxxx5859¹
21 ("respondent's CTA"), on behalf of Ms. Selberg. At all times relevant to the charges, respondent
22 was the sole signatory on respondent's CTA and had sole and exclusive control over
23 respondent's CTA.

24 9. After deducting respondent's firm's fees and costs, Ms. Selberg was entitled to
25 receive \$334,144.55 as her net portion of the \$504,400.00. On or about July 24, 2020,
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¹ The full account number has been omitted for privacy reasons.

1 respondent issued a check from respondent's CTA made payable to Ms. Selberg in the amount of
2 \$50,000.00. On or about July 28, 2020, the check posted to respondent's CTA.

3 10. Between on or about July 28, 2020, and on or about November 20, 2020, respondent
4 was required to maintain \$284,144.55 (\$334,144.55-\$50,000.00), the remaining balance of
5 Ms. Selberg's net portion of the settlement, in respondent's CTA on behalf of Ms. Selberg.

6 11. Between on or about July 28, 2020, and on or about November 20,2020, before
7 respondent had disbursed any funds to, or on behalf of, Ms. Selberg from respondent's CTA, the
8 balance in respondent's CTA fell below \$284,144.55 multiple times, including on the following
9 dates:

10	<u>DATE</u>	<u>BALANCE</u>
11	08/24/20	\$240,596.29
12	08/25/20	\$239,396.35
13	09/25/20	\$179,996.49
14	10/09/20	\$146,538.79
15	10/21/20	\$86,185.66
16	10/26/20	\$78,684.69
17	11/10/20	\$61,699.52

18 12. By failing to maintain a balance of \$284,144.55 in respondent's CTA on behalf of
19 Ms. Selberg at all times between on or about July 28, 2020, and on or about November 20, 2020,
20 respondent willfully violated Rules of Professional Conduct, rule 1.15(a).

21 13. On or about November 20, 2020, respondent issued a check from respondent's client
22 trust account at Nano Banc, account no. xxxxx5251², made payable to Ms. Selberg in the amount
23 of \$100,000.00. After on or about November 20, 2020, respondent did not make any further
24 disbursements to, or on behalf of, Ms. Selberg from respondent's CTA, or any other account.

25 14. After on or about November 20, 2020, respondent was required to maintain a balance
26 of \$184,144.55 (\$284,144.55-\$100,000.00) in respondent's CTA on behalf of Ms. Selberg.

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² The full account number is omitted for privacy reasons.

1 15. Between on or about November 20, 2020, and on or about December 4, 2020, before
2 respondent had disbursed any funds to, or on behalf of, Ms. Selberg from respondent's CTA, the
3 balance in respondent's CTA continued to fall below \$184,144.55 multiple times, including on
4 the following dates:

<u>DATE</u>	<u>BALANCE</u>
11/23/20	\$26,765.65
11/30/20	\$22,382.91
12/04/20	\$14,384.85

9 16. By failing to maintain a balance of \$184,144.55 in respondent's CTA on behalf of
10 Ms. Selberg after on or about November 20, 2020, respondent willfully violated Rules of
11 Professional Conduct, rule 1.15(a).

12 COUNT THREE

13 Case No. 20-O-15684
14 Business and Professions Code, section 6106
[Moral Turpitude - Misappropriation]

15 17. On or about June 25, 2020, respondent deposited, or caused to be deposited, a
16 settlement check issued by Total Dollar Insurance in the amount of \$504,400.00, the settlement
17 funds of respondent's client, Judy Selberg, into the client trust account of Girardi Keese
18 ("respondent's firm"), respondent's law firm, at Torrey Pines Bank, account no. xxxxxx5859
19 ("respondent's CTA"), on behalf Ms. Selberg. At all times relevant to the charges, respondent
20 was the sole signatory on respondent's CTA and had sole and exclusive control over
21 respondent's CTA.

22 18. After deducting the firm's fees and costs, Ms. Selberg was entitled to receive
23 \$334,144.55 as her net portion of the \$504,400.00 settlement. On or about July 24, 2020,
24 respondent issued a check from respondent's CTA made payable to Ms. Selberg in the amount of
25 \$50,000.00. On or about July 28, 2020, the check posted to respondent's CTA.

26 19. Between on or about July 28, 2020, and on or about November 20, 2020, respondent
27 was required to maintain \$284,144.55 (\$334,144.55-\$50,000.00), the remaining balance of
28 Ms. Selberg's net portion of the settlement, in respondent's CTA on behalf of Ms. Selberg.

1 20. On or about November 10, 2020, before respondent had disbursed any funds to, or on
2 behalf of, Ms. Selberg from respondent's CTA, the balance in respondent's CTA was
3 \$61,699.52. Respondent willfully and intentionally misappropriated at least \$222,445.03
4 (\$284,144.55-\$61,699.52) of Ms. Selberg's net portion of the settlement.

5 21. On or about November 20, 2020, respondent issued a check from respondent's client
6 trust account at Nano Banc, account no. xxxxx5251, made payable to Ms. Selberg in the amount
7 of \$100,000.00. After on or about November 20, 2020, respondent did not make any further
8 disbursements to, or on behalf of, Ms. Selberg from respondent's CTA, or any other account.

9 22. After on or about November 20, 2020, respondent was required to maintain a balance
10 of \$184,144.55 (\$284,144.55-\$100,000.00), the remaining balance of Ms. Selberg's net portion
11 of the settlement, in respondent's CTA on behalf of Ms. Selberg.

12 23. On or about December 4, 2020, before respondent had disbursed any funds to, or on
13 behalf of, Ms. Selberg from respondent's CTA, the balance in respondent's CTA was
14 \$14,384.15. Respondent willfully and intentionally misappropriated at least an additional
15 \$47,314.67 (\$61,699.52-\$14,384.85) of Ms. Selberg's net portion of the settlement.

16 24. In total, respondent willfully and intentionally misappropriated at least \$269,759.70
17 (\$222,445.03 + \$47,314.67) of Ms. Selberg's net portion of the settlement. Respondent thereby
18 committed an act involving moral turpitude, dishonesty or corruption in willful violation of
19 Business and Professions Code, section 6106.

20 25. A violation of section 6106 may result from intentional conduct or grossly negligent
21 conduct. Respondent is charged with committing an intentional misappropriation. However,
22 should the evidence at trial demonstrate that respondent misappropriated funds as a result of
23 grossly negligent conduct, respondent must still be found culpable of violating section 6106
24 because misappropriation through gross negligence is a lesser included offense of intentional
25 misappropriation.

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1 Ms. Selberg, sent letters to respondent, all of which respondent received, requesting that
2 respondent pay the remaining portion of Ms. Selberg's net settlement funds, or \$284,144.55, to
3 Ms. Selberg.

4 32. On or about November 20, 2020, respondent issued a check from respondent's client
5 trust account at Nano Banc, account no. xxxxx5251, made payable to Ms. Selberg in the amount
6 of \$100,000.00.

7 33. On or about November 23, 24, 25, and 30, 2020, December 1, 3 (two separate letters),
8 4 (two separate letters), 8 (3 separate letters), 14, 24, 29, 31, 2020, and January 7, 8, and 28,
9 2021, Mr. Seuthe, on behalf of Ms. Selberg, sent letters to respondent, all of which respondent
10 received, requesting that respond pay the remaining portion of Ms. Selberg's net settlement
11 funds, or \$184,144.55 (\$284,144.55-\$100,000.00), to Ms. Selberg.

12 34. To date, respondent has failed to distribute \$184,144.55, the remaining portion of Ms.
13 Selberg's net settlement funds, to Ms. Selberg

14 35. By failing to distribute the entire portion of Ms. Selberg's settlement funds to
15 Ms. Selberg, respondent failed to promptly distribute \$334,144.55 in respondent's possession
16 that Ms. Selberg is entitled to receive, in willful violation of Rules of Professional Conduct, rule
17 1.15(d)(7).

18 COUNT FIVE

19 Case No. 20-O-15684
20 Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

21 36. Respondent failed to cooperate and participate in a disciplinary investigation pending
22 against respondent by failing to provide a substantive response to the State Bar's letters of
23 December 10, 2020 and January 6, 2021, which respondent received, that requested respondent's
24 response to the allegations of misconduct being investigated in case no. 20-O-15684, in willful
25 violation of Business and Professions Code, section 6068(i).

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1 COUNT SIX

2 Case No. 20-O-17192
3 Business and Professions Code section 6103
4 [Failure to Obey a Court Order]

5 37. At all times relevant to the charges herein, respondent’s law firm, Girardi Keese
6 (“respondent’s firm”), and the law firm of Edelson, P.C. (“Edelson firm”) represented the
7 plaintiffs identified in this paragraph (collectively, “plaintiffs”), as well as the plaintiffs’ minor
8 children (“minor plaintiffs”), in the following wrongful death lawsuits, all of which were a subset
9 of cases in the Multidistrict Litigation matter entitled *In Re: Lion Air Flight JT 610 Crash*,
10 United States District Court, for the Northern District of Illinois, Lead Case No. 18-cv-07686
11 (“Lion Air matter”), the lawsuit involving the crash of Lion Air Flight JT 610 on October 29,
2018, which killed all 189 people aboard the flight:

<u>Plaintiff</u>	<u>Case No.</u>
Anice Kasim	19-cv-2982
Septiana Damayanti	19-cv-2979
Dian Daniaty Binti Udin Zaenudin	19-cv-2987
Bias Misyadi	19-cv-2980

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17 38. After multiple settlement conferences between on or about October 30, 2019, and in
18 or about February 2020, the matters involving the plaintiffs were settled. As part of the
19 settlement process, an attorney employed by the Edelson firm filed a declaration under seal in
20 each of the plaintiffs’ matters with the Court in the Lion Air matter seeking Court approval of the
21 respective settlements for the minor plaintiffs.

22 39. In response to the four sealed declarations, the Court in the Lion Air matter issued
23 orders (“Orders”) between on or about February 24, 2020, and on or about March 9, 2020 in the
24 plaintiffs’ matters directing that, “The settlement funds shall be distributed . . . in accordance
25 with the process identified in Plaintiff’s counsel’s sealed affidavit.”

26 40. The “process identified in Plaintiff’s counsel’s sealed affidavit” stated: “The
27 settlement funds for the minor plaintiffs in this case shall be initially paid to a trust account
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1 established by Girardi Keese [respondent’s firm] for the benefit of the Plaintiffs, including the
2 minors . . . Plaintiffs’ net proceeds . . . shall be sent as soon as practicable via wire transfer
3 to . . .” the Plaintiffs’ financial institutions.

4 41. At all relevant times to the charges herein, respondent had actual notice of the Orders.

5 42. Between on or about March 4, 2020, and on or about March 30, 2020, the law firm
6 representing one of the defendants in the Lion Air matter, wired the respective confidential
7 settlements of the minor plaintiffs into respondent’s client trust account at Torrey Pines Bank,
8 account no. xxxxxx5859 (“respondent’s CTA”). At all times relevant to the charges herein,
9 respondent was the sole signatory on respondent’s CTA and had sole and exclusive control over
10 respondent’s CTA.

11 43. After receiving the respective confidential settlements of the minor plaintiffs into
12 respondent’s CTA, respondent was required, pursuant to the Orders in the Lion Air matter, to
13 send the net proceeds of the minor plaintiffs’ respective settlements to the plaintiffs as soon as
14 practicable via wire transfer to the plaintiffs’ respective financial institutions.

15 44. However, in contravention of the Orders, respondent failed to send the entire portion
16 of the net proceeds of the minor plaintiffs’ respective settlements to the plaintiffs via wire
17 transfer to the plaintiffs’ respective financial institutions. To date, respondent has failed to pay
18 \$500,000.00 to each of the plaintiffs’ respective financial institutions. Respondent owes a total
19 of \$2,000,000.00 to the minor plaintiffs.

20 45. On or about December 14, 2020, the Court in the Lion Air matter found respondent to
21 be in civil contempt for violating its Orders, entered a \$2,000,000.00 judgment against
22 respondent, and ordered respondent’s assets frozen.

23 46. By disobeying or violating order(s) of the Court in the Lion Air matter requiring
24 respondent to do or forbear an act connected with or in the course of respondent’s profession,
25 which respondent knew was final and binding and which respondent ought in good faith to do or
26 forbear, respondent willfully violated Business and Professions Code section 6103.

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COUNT SEVEN

Case No. 20-O-17192
Rules of Professional Conduct, Rule 1.15(a)
[Failure to Maintain Client Funds in Trust Account]

47. Between on or about March 4, 2020, and on or about March 30, 2020, respondent’s law firm, Girardi Keese (“respondent’s firm”), received wire transfers into the firm’s client trust account at Torrey Pines Bank, account no. xxxxxx5859 (“respondent’s CTA”), on behalf of the firm’s clients, Anise Kasim, Septiana Damayanti, Dian Daniaty Binti Udin Zaenudin, and Bias Ramadhan A.S. Bin Misyadi (collectively, “plaintiffs”), and the plaintiffs’ minor children (“minor plaintiffs”), in connection with the respective confidential settlements of the minor plaintiffs in the matter entitled *In Re: Lion Air Flight JT 610 Crash*, United States District Court, for the Northern District of Illinois, Lead Case No. 18-cv-07686 (“Lion Air matter”). At all times relevant to the charges, respondent was the sole signatory on respondent’s CTA and had sole and exclusive control over respondent’s CTA. By on or about September 3, 2020, respondent owed \$500,000.00, the unpaid portion of their respective net settlements, to each minor plaintiff. By on or about September 3, 2020, respondent owed a total of \$2,000,000.00 to the minor plaintiffs. On or about September 3, 2020, the balance in respondent’s CTA was \$239,396.25. On or about December 4, 2020, before respondent had disbursed any portion of the \$2,000,000.00 from respondent’s CTA to, or on behalf of the minor plaintiffs, the balance in respondent’s CTA was \$14,384.85. Thus, respondent failed to maintain a balance of \$2,000,000.00 on behalf of the minor plaintiffs in respondent’s CTA, in willful violation of the Rules of Professional Conduct, rule 1.15(a).

COUNT EIGHT

Case No. 20-O-17192
Business and Professions Code section 6106
[Moral Turpitude - Misappropriation]

48. Between on or about March 4, 2020, and on or about March 30, 2020, respondent’s law firm, Girardi Keese (“firm”), received wire transfers into respondent’s client trust account at Torrey Pines Bank, account no. xxxxxx5859 (“respondent’s CTA”), on behalf of the firm’s clients, Anise Kasim, Septiana Damayanti, Dian Daniaty Binti Udin Zaenudin, and Bias

1 Ramadhan A.S. Bin Misyadi (collectively, “plaintiffs”), and the plaintiffs’ respective minor
2 children (“minor plaintiffs”), in connection with the respective confidential settlements of the
3 minor plaintiffs in the matter titled *In Re: Lion Air Flight JT 610 Crash*, United States District
4 Court, for the Northern District of Illinois, Lead Case No. 18-cv-07686 (“Lion Air matter”). At
5 all relevant times to the charges herein, respondent was sole signatory on respondent’s CTA, and
6 had sole and exclusive control over respondent’s CTA.

7 49. By on or about September 3, 2020, respondent owed \$500,000.00, the unpaid portion
8 of their respective net settlements, to each minor plaintiff. By on or about September 3, 2020,
9 respondent owed a total of \$2,000,000.00 to the minor plaintiffs. To date, respondent continues
10 to owe a total of \$2,000,000.00 to the minor plaintiffs.

11 50. On or about December 4, 2020, before respondent had disbursed any portion of the
12 remaining \$2,000,000.00 from respondent’s CTA to, or on behalf of the minor plaintiffs, the
13 balance in respondent’s CTA was \$14,384.85. Thus, by on or about December 4, 2020,
14 respondent willfully and intentionally misappropriated at least \$1,985,615.15 (\$2,000,000.00 -
15 \$14,384.85) that the minor plaintiffs were entitled to receive from the net portion of their
16 respective settlements. Respondent thereby committed an act involving moral turpitude,
17 dishonesty, or corruption in willful violation of Business and Professions Code section 6106.

18 51. A violation of section 6106 may result from intentional conduct or grossly negligent
19 conduct. Respondent is charged with committing an intentional misappropriation. However,
20 should the evidence at trial demonstrate that respondent misappropriated funds as a result of
21 grossly negligent conduct, respondent must still be found culpable of violating section 6106
22 because misappropriation through gross negligence is a lesser included offense of intentional
23 misappropriation.

24 COUNT NINE

25 Case No. 20-O-17192
26 Business and Professions Code section 6106
[Moral Turpitude - Misrepresentation]

27 52. Between on or about March 4, 2020, and on or about March 30, 2020, respondent’s
28 law firm, Girardi Keese (“respondent’s firm”), received wire transfers into respondent’s client

1 trust account at Torrey Pines Bank, account no. xxxxxx5859 (“respondent’s CTA”), on behalf of
2 the firm’s clients, Anise Kasim, Septiana Damayanti, Dian Daniaty Binti Udin Zaenudin, and
3 Bias Ramadhan A.S. Bin Misyadi (collectively, “plaintiffs”), and the plaintiffs’ respective minor
4 children (“minor plaintiffs”), in connection with the respective confidential settlements of the
5 minor children in the matter titled *In Re: Lion Air Flight JT 610 Crash*, United States District
6 Court, for the Northern District of Illinois, Lead Case No. 18-cv-07686 (“Lion Air matter”).
7 Respondent was the sole signatory on respondent’s CTA and had sole and exclusive control over
8 respondent’s CTA.

9 53. On or about January 4, 2021, respondent left a voice mail message for Jay Edelson of
10 the law firm of Edelson, P.C. stating, “I want you to know that we paid all of the people [minor
11 plaintiffs.] We had to wait for releases and we couldn’t pay until the releases came through and
12 so they’re all paid.” On or about January 4, 2021, respondent knew that the January 4, 2021
13 voice mail message that he left with Mr. Edelson was false and misleading, because respondent
14 knew that he still had not paid \$500,000.00 to each of the minor plaintiffs, and that he owed a
15 total of \$2,000,000.00 to the minor plaintiffs. Respondent thereby committed an act involving
16 moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code
17 section 6106.

18 54. A violation of section 6106 may result from intentional conduct or grossly negligent
19 conduct. Respondent is charged with committing intentional misrepresentation. However,
20 should the evidence at trial demonstrate that respondent committed misrepresentation as a result
21 of gross negligence, respondent must still be found culpable of violating section 6106 because
22 misrepresentation through gross negligence is a lesser included offense of intentional
23 misrepresentation.

24 COUNT TEN

25 Case No. 20-O-17192
26 Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

27 55. Respondent failed to cooperate and participate in a disciplinary investigation pending
28 against respondent by failing to provide a substantive response to the State Bar’s letters of

1 January 25, 2021 and February 18, 2021, which respondent received, that requested respondent's
2 response to the allegations of misconduct being investigated in case no. 20-O-17192, in willful
3 violation of Business and Professions Code, section 6068(i).

4 COUNT ELEVEN

5 Case No. 20-O-17505
6 Rules of Professional Conduct, rule 1.15(a)
[Failure to Maintain Funds in Trust Account]

7 56. On or about May 22, 2020, respondent's law firm, Girardi Keese ("respondent's
8 firm"), received a wire transfer into respondent's client trust account at Torrey Pines Bank,
9 account no. xxxxxx5859 ("respondent's CTA") in the amount of \$128,750.00 on behalf of the
10 firm's clients, Josefina Hernandez and Michael Hernandez (collectively, "the Hernandezes"), in
11 connection with the settlement of the Hernandezes' claims in the matter titled *Josefina*
12 *Hernandez and Michael Hernandez v. AMS*, United States District Court for the Southern
13 District of West Virginia, Case No. 2:12-cv-05831. At all times relevant to the charges,
14 respondent was the sole signatory on respondent's CTA and had sole and exclusive control over
15 respondent's CTA. After deducting the firm's fees and costs, the Hernandezes were entitled to
16 \$55,944.02 as their net portion of the \$128,750.00.

17 57. In addition, the following individual and entities (collectively, "third-parties") were
18 entitled to receive the following amounts from the \$128,750.00:

<u>INDIVIDUAL/ENTITY</u>	<u>AMOUNT</u>
Timothy J. Yoo, Chapter 7 Trustee, Case No. 2:11-bk-54999	\$35,000.00
Anthem, Inc.	\$6,491.66
Medicare	\$301.32
Garretson Resolution Group	\$625.00

24 58. Respondent was required to maintain in respondent's CTA a total of \$98,362.00
25 (\$55,944.02 + \$35,000.00 + \$6,491.66 + \$301.32 + \$625.00) on behalf of the Hernandezes and
26 the third-parties.

27 59. On or about October 21, 2020, before respondent had disbursed any funds to, or on
28 behalf of, the Hernandezes or the third-parties, from respondent's CTA, the balance in

1 respondent's CTA was \$86,185.66. On or about December 4, 2020, before respondent had
2 disbursed any funds to, or on behalf of, the Hernandezes or the third-parties from respondent's
3 CTA, the balance in respondent's CTA was \$14,384.15. Thus, respondent failed to maintain a
4 balance in respondent's CTA a balance of \$98,362.00 on behalf of the Hernandezes and the
5 third-parties, in willful violation of Rules of Professional Conduct, rule 1.15(a).

6 COUNT TWELVE

7 Case No. 20-O-17105
8 Business and Professions Code, section 6106
9 [Moral Turpitude - Misappropriation]

10 60. On or about May 22, 2020, respondent's law firm, Girardi Keese ("respondent's
11 firm"), received a wire transfer into respondent's client trust account at Torrey Pines Bank,
12 account no. xxxxxx5859 ("respondent's CTA") in the amount of \$128,750.00 on behalf of the
13 firm's clients, Josefina Hernandez and Michael Hernandez (collectively, "the Hernandezes"), in
14 connection with the settlement of the Hernandezes' claims in the matter titled *Josefina
15 Hernandez and Michael Hernandez v. AMS*, United States District Court for the Southern
16 District of West Virginia, Case No. 2:12-cv-05831. At all times relevant to the charges,
17 respondent was the sole signatory on respondent's CTA and had sole and exclusive control over
18 respondent's CTA. After deducting the firm's fees and costs, the Hernandezes were entitled to
19 \$55,944.02 as their net portion of the \$128,750.00.

20 61. In addition, the following individual and entities (collectively, "third-parties") were
21 entitled to receive the following amounts from the \$128,750.00:

<u>INDIVIDUAL/ENTITY</u>	<u>AMOUNT</u>
Timothy J. Yoo, Chapter 7 Trustee, Case No. 2:11-bk-54999	\$35,000.00
Anthem, Inc.	\$6,491.66
Medicare	\$301.32
Garretson Resolution Group	\$625.00

22
23
24
25
26 62. Respondent was required to maintain in respondent's CTA a total of \$98,362.00
27 (\$55,944.02 + \$35,000.00 + \$6,491.66 + \$301.32 + \$625.00) on behalf of the Hernandezes and
28 the third-parties.

1 Mrs. Hernandez made numerous oral requests to respondent and respondent's firm, all of which
2 respondent was aware of, requesting that respondent pay the Hernandezes their portion of the
3 \$128,750.00, or \$55,944.02.

4 67. To date, respondent has failed to distribute any funds to the Hernandezes, and thereby
5 failed to promptly distribute \$55,944.02 in respondent's possession that the Hernandezes were
6 entitled to receive, in willful violation of Rules of Professional Conduct, rule 1.15(d)(7).

7 COUNT FOURTEEN

8 Case No. 20-O-17505
9 Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

10 68. On or about August 22, 2020, respondent left a voice mail message on the telephone
11 of Josefina and Michael Hernandez (collectively, "the Hernandezes"), his clients, in which
12 respondent stated that the Hernandezes had not received their net portion of the settlement funds
13 from the settlement of the matter titled *Josefina Hernandez and Michael Hernandez v. AMS*,
14 United States District Court for the Southern District of West Virginia, Case No. 2:12-cv-05831
15 ("civil matter"), because certain orders needed to be signed by the court and that the court had
16 not yet signed the orders, and that it was not the fault of respondent's law firm, Girardi Keese
17 ("respondent's firm"), that the Hernandezes had not received their net portion of their settlement
18 funds.

19 69. Respondent knew that the statements in his voicemail message were false and
20 misleading, because respondent knew that: (i) on or about May 22, 2020 the firm received a wire
21 transfer into respondent's client trust account at Torrey Pines Bank, account no. xxxxxx5859
22 ("respondent's CTA") in the amount of \$128,750.00 on behalf of the Hernandezes, the
23 settlement funds from the settlement of the civil matter; and (ii) the court in the civil matter did
24 not need to sign any orders before respondent was permitted to disburse to the Hernandezes their
25 net portion of the settlement. Respondent thereby committed an act involving moral turpitude,
26 dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

27 70. A violation of section 6106 may result from intentional conduct or grossly negligent
28 conduct. Respondent is charged with committing intentional misrepresentation. However,

1 should the evidence at trial demonstrate that respondent committed misrepresentation as a result
2 of gross negligence, respondent must still be found culpable of violating section 6106 because
3 misrepresentation through gross negligence is a lesser included offense of intentional
4 misrepresentation.

5 **NOTICE - INACTIVE ENROLLMENT!**

6 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
7 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
8 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
9 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
10 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
11 INACTIVE ATTORNEY OF THE STATE BAR. YOUR INACTIVE
12 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
13 RECOMMENDED BY THE COURT.**

14 **NOTICE - COST ASSESSMENT!**

15 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
16 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
17 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
18 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
19 PROFESSIONS CODE SECTION 6086.10.**


20 **NOTICE - MONETARY SANCTION!**

21 **IN THE EVENT THIS MATTER RESULTS IN ACTUAL SUSPENSION,
22 DISBARMENT, OR RESIGNATION WITH CHARGES PENDING, YOU
23 MAY BE SUBJECT TO THE PAYMENT OF A MONETARY SANCTION
24 NOT TO EXCEED \$5,000 FOR EACH VIOLATION, TO A MAXIMUM OF
25 \$50,000 PER DISCIPLINARY ORDER, PURSUANT TO BUSINESS AND
26 PROFESSIONS CODE SECTION 6086.13. SEE RULE 5.137, RULES OF
27 PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

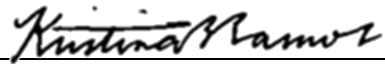
28 Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: March 29, 2021

By: 
Eli D. Morgenstern
Senior Trial Counsel

DATED: March 29, 2021

By: 
Kristina B. Ramos
Deputy Trial Counsel

DECLARATION OF SERVICE

CASE NUMBER(s): OCTC Case Nos. 20-O-15684, 20-O-17192, 20-O-17505

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**
 - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
 - By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**
 - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
 - By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**
 - I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').
 - By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**
 Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.
 - By Electronic Service: (CCP § 1010.6 and Rules of Proc. of State Bar, rule 5.26.2)**
 Based on rule 5.26.2, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the above-named document(s) to be transmitted by electronic means to the person(s) at the electronic address(es) listed below. If there is a signature on the document(s), I am the signer of the document(s), I am the agent of, or I am serving the document(s) at the direction of, the signer of the document(s). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*
- (for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 1) 9414-7266-9904-2171-3838-33 at Los Angeles, addressed to: *(see below)*
 2) 9414-7266-9904-2171-3838-26
- (for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS,
 Tracking No.: _____ addressed to: *(see below)*

Person Served	Business Address	Fax Number	Courtesy Copy to:
1) THOMAS VINCENT GIRARDI	GIRARDI & KEESE 1126 Wilshire Blvd Los Angeles, CA 90017-1904 <i>(via U.S. Certified Mail-Return Receipt Requested and via U.S. First-Class Mail)</i>		
		Electronic Address	
2) NICHOLAS VAN BRUNT	SHEPPARD MULLIN RICHTER & HAMPTON LLP 333 S Hope Street, Ste 4300 Los Angeles, CA 90071-1422 <i>(via U.S. Certified Mail-Return Receipt Requested and via U.S. First-Class Mail)</i>		

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: March 30, 2021

SIGNED: 
 KATHI PALACIOS
 Declarant