

Board of Disciplinary Appeals

**IN THE MATTER OF  
STEPHEN YOUNG KANG  
STATE BAR CARD NO. 24007465**

**www**

CAUSE NO. 57701

*Stephen Young Kang - Petition For Compulsory Discipline*  
*Page 1*

*Plaintiff, v. Stephen Young Kang, Defendant*, in the United States District Court for the Central District of California, wherein Respondent pled guilty to counts Eight, Twenty-Two and Twenty-Nine of the First Superseding Indictment, which charged Respondent in Counts Eight and Twenty-Two with Wire Fraud in violation of 18 U.S.C. § 1343 and Count Twenty-Nine with Tax Evasion in violation of 26 U.S.C. § 7201.

5. On or about April 6, 2016, a Judgment and Probation/Commitment Order (Exhibit 3) was entered in Cause No. 15-478(A)-GW, styled *United States of America v. Stephen Young Kang*, in the United States District Court for the Central District of California, wherein Respondent pled guilty to Wire Fraud and Tax Evasion and was committed to the custody of the Bureau of Prisons to be imprisoned for a term of sixty-three (63) months. This term consists of sixty-three (63) months on each of Counts Eight and Twenty-Two and sixty (60) months on Count Twenty-Nine, all to be served concurrently. Upon release from imprisonment, Respondent shall be placed on supervised release for a period of three (3) years.

6. On or about April 6, 2016, an Amended Judgment and Probation/Commitment Order (Exhibit 4) was entered in Cause No. 15-478(A)-GW, styled *United States of America v. Stephen Young Kang*, in the United States District Court for the Central District of California, wherein Respondent pled guilty to Wire Fraud and Tax Evasion and was committed to the custody of the Bureau of Prisons to be imprisoned for a term of sixty-three (63) months. This term consists of sixty-three (63) months on each of Counts Eight and Twenty-Two and sixty (60) months on Count Twenty-Nine, all to be served concurrently. Upon release from imprisonment, Respondent shall be placed on supervised release for a period of three (3) years. Respondent was further ordered to pay restitution in the amount of \$8,765,834.24. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, are true and correct copies of the following documents in the Kang criminal case: First Superseding Indictment (Exhibit 1),

Plea Agreement for Defendant Stephen Young Kang (Exhibit 2), Judgment and Probation/Commitment Order (Exhibit 3) and Amended Judgment and Probation/Commitment Order (Exhibit 4). Petitioner expects to introduce certified copies of Exhibits 1 through 4 at the time of hearing of this cause.

7. Respondent, Stephen Young Kang, whose bar card number is 24007465, is the same person as the Stephen Young Kang who is the subject of the First Superseding Indictment and Judgments described above, true and correct copies of which are attached hereto as Exhibits 1 through 4.

8. Attached hereto as Exhibit 5 and made a part hereof for all intents and purposes as if the same were copied verbatim herein is a true and correct copy of an affidavit of Judith Gres DeBerry, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the First Superseding Indictment and Judgments entered in the Kang criminal case. Petitioner expects to introduce the original of said affidavit at the time of hearing of this cause.

9. The offenses for which Respondent was convicted are intentional crimes as defined by Rule 1.06(T), Texas Rules of Disciplinary Procedure. They are as well serious crimes as defined by Rule 1.06(AA), Texas Rules of Disciplinary Procedure.

10. Having been convicted of intentional crimes and such conviction currently being appealed, Respondent should be suspended as an attorney licensed to practice law in Texas during the pendency of the appeal. Further, upon a showing by Petitioner that the order has become final after determination of the appeal, Respondent should be disbarred as provided by Rule 8.05, Texas Rules of Disciplinary Procedure.


PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order suspending Respondent during his appeal, and for such other and further relief to which Petitioner may be entitled to receive including costs of court and attorney's fees.

Respectfully submitted,

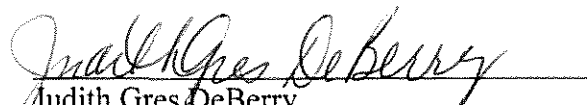
**Linda A. Acevedo**  
Chief Disciplinary Counsel

**Judith Gres DeBerry**  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
STATE BAR OF TEXAS  
P.O. Box 12487, Capitol Station  
Austin, Texas 78711-2487  
Telephone: 512.427.1350  
Facsimile: 512.427.4167  
Email: [jdeberry@texasbar.com](mailto:jdeberry@texasbar.com)

  
Judith Gres DeBerry  
State Bar Card No. 24040780  
ATTORNEYS FOR PETITIONER


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent for personal service on Stephen Young Kang, #69430-112, CI Taft, 1500 Cadet Road, Taft, California 93268, on this 24 day of May 2016.

  
Judith Gres DeBerry

**NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 29th day of July 2016.**

  
\_\_\_\_\_  
Judith Gres DeBerry

# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Effective February 19, 2015*

### Contents

<b>SECTION 1: GENERAL PROVISIONS .....</b>	<b>1</b>
Rule 1.01 Definitions.....	1
Rule 1.02 General Powers .....	1
Rule 1.03 Additional Rules in Disciplinary Matters.....	1
Rule 1.04 Appointment of Panels.....	1
Rule 1.05 Filing of Pleadings, Motions, and Other Papers.....	1
Rule 1.06 Service of Petition.....	2
Rule 1.07 Hearing Setting and Notice .....	3
Rule 1.08 Time to Answer.....	3
Rule 1.09 Pretrial Procedure.....	3
Rule 1.10 Decisions.....	4
Rule 1.11 Board of Disciplinary Appeals Opinions .....	4
Rule 1.12 BODA Work Product and Drafts .....	5
Rule 1.13 Record Retention.....	5
Rule 1.14 Costs of Reproduction of Records .....	5
Rule 1.15 Publication of These Rules.....	5
<b>SECTION 2: ETHICAL CONSIDERATIONS .....</b>	<b>5</b>
Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases.....	5
Rule 2.02 Confidentiality .....	5
Rule 2.03 Disqualification and Recusal of BODA Members .....	5
<b>SECTION 3: CLASSIFICATION APPEALS .....</b>	<b>6</b>
Rule 3.01 Notice of Right to Appeal .....	6
Rule 3.02 Record on Appeal.....	6
<b>SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS.....</b>	<b>6</b>
Rule 4.01 Perfecting Appeal.....	6
Rule 4.02 Record on Appeal.....	7
Rule 4.03 Time to File Record .....	9
Rule 4.04 Copies of the Record.....	10
Rule 4.05 Requisites of Briefs.....	10

Rule 4.06 Oral Argument .....	11
Rule 4.07 Decision and Judgment .....	11
Rule 4.08 Appointment of Statewide Grievance Committee .....	12
Rule 4.09 Involuntary Dismissal .....	12
<b>SECTION 5: PETITIONS TO REVOKE PROBATION .....</b>	<b>12</b>
Rule 5.01 Initiation and Service .....	12
Rule 5.02 Hearing .....	12
<b>SECTION 6: COMPULSORY DISCIPLINE .....</b>	<b>12</b>
Rule 6.01 Initiation of Proceeding .....	12
Rule 6.02 Interlocutory Suspension .....	12
<b>SECTION 7: RECIPROCAL DISCIPLINE .....</b>	<b>13</b>
Rule 7.01 Initiation of Proceeding .....	13
Rule 7.02 Order to Show Cause .....	13
Rule 7.03 Attorney’s Response .....	13
<b>SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS .....</b>	<b>13</b>
Rule 8.01 Appointment of District Disability Committee .....	13
Rule 8.02 Petition and Answer .....	14
Rule 8.03 Discovery .....	14
Rule 8.04 Ability to Compel Attendance .....	15
Rule 8.05 Respondent’s Right to Counsel .....	15
Rule 8.06 Hearing .....	15
Rule 8.07 Notice of Decision .....	15
Rule 8.08 Confidentiality .....	15
<b>SECTION 9: DISABILITY REINSTATEMENTS .....</b>	<b>15</b>
Rule 9.01 Petition for Reinstatement .....	15
Rule 9.02 Discovery .....	16
Rule 9.03 Physical or Mental Examinations .....	16
Rule 9.04 Judgment .....	16
<b>SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS .....</b>	<b>16</b>
Rule 10.01 Appeals to the Supreme Court .....	16

## **SECTION 1: GENERAL PROVISIONS**

### **Rule 1.01 Definitions**

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

### **Rule 1.02 General Powers**

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and

determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

### **Rule 1.03 Additional Rules in Disciplinary Matters**

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

### **Rule 1.04 Appointment of Panels**

- (a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.
- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

### **Rule 1.05 Filing of Pleadings, Motions, and Other Papers**

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.
- (1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.
- (2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA



for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) **Exceptions.**

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.
- (ii) The following documents must not be filed electronically:
  - a) documents that are filed under seal or subject to a pending motion to seal; and
  - b) documents to which access is otherwise restricted by court order.
- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

- (5) **Format.** An electronically filed document must:

- (i) be in text-searchable portable

document format (PDF);

- (ii) be directly converted to PDF rather than scanned, if possible; and

- (iii) not be locked.

- (b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

- (c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

- (d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

- (e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

## Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition may be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or

her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

#### **Rule 1.07 Hearing Setting and Notice**

- (a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.
- (b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.
- (c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.
- (d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately

following the docket call, the Chair will set and announce the order of cases to be heard.

#### **Rule 1.08 Time to Answer**

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

#### **Rule 1.09 Pretrial Procedure**

- (a) **Motions.**
  - (1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.
  - (2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:
    - (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
    - (ii) if an appeal has been perfected, the date when the appeal was perfected;
    - (iii) the original deadline for filing the item in question;

- (iv) the length of time requested for the extension;
  - (v) the number of extensions of time that have been granted previously regarding the item in question; and
  - (vi) the facts relied on to reasonably explain the need for an extension.
- (b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.
- (c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.
- (d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:
  - (1) marked;
  - (2) indexed with the title or description of the item offered as an exhibit; and
  - (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

#### **Rule 1.10 Decisions**

- (a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

- (b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:
  - (1) as required by the TRDP; and
  - (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.
- (c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

#### **Rule 1.11 Board of Disciplinary Appeals Opinions**

- (a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.
- (b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.
- (c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

### **Rule 1.12 BODA Work Product and Drafts**

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA’s adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

### **Rule 1.13 Record Retention**

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

### **Rule 1.14 Costs of Reproduction of Records**

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

### **Rule 1.15 Publication of These Rules**

These rules will be published as part of the TDRPC and TRDP.

## **SECTION 2: ETHICAL CONSIDERATIONS**

### **Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases**

- (a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

- (b) A current BODA member must not serve as an expert witness on the TDRPC.
- (c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

### **Rule 2.02 Confidentiality**

- (a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.
- (b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.
- (c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

### **Rule 2.03 Disqualification and Recusal of BODA Members**

- (a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.
- (b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.
- (c) These rules do not disqualify a lawyer who is a member of, or associated with,

the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

### **SECTION 3: CLASSIFICATION APPEALS**

#### **Rule 3.01 Notice of Right to Appeal**

- (a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.
- (b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

#### **Rule 3.02 Record on Appeal**

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

### **SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS**

#### **Rule 4.01 Perfecting Appeal**

- (a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the

appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

- (b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.

- (1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

- (2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

- (c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

- (d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.
- (e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

#### **Rule 4.02 Record on Appeal**

- (a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.
- (b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.
- (c) **Responsibility for Filing Record.**
  - (1) Clerk's Record.
    - (i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.
    - (ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of

fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

- (iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

#### **(2) Reporter's Record.**

- (i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:
  - a) a notice of appeal has been filed;
  - b) a party has requested that all or part of the reporter's record be prepared; and
  - c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.
- (ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

#### **(d) Preparation of Clerk's Record.**

- (1) To prepare the clerk's record, the

evidentiary panel clerk must:

- (i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);
  - (ii) start each document on a new page;
  - (iii) include the date of filing on each document;
  - (iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;
  - (v) number the pages of the clerk's record in the manner required by (d)(2);
  - (vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and
  - (vii) certify the clerk's record.
- (2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.
- (3) The table of contents must:
- (i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each

document begins;

- (ii) be double-spaced;
  - (iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;
  - (iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and
  - (v) if the record consists of multiple volumes, indicate the page on which each volume begins.
- (e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:
- (1) file each computer file in text-searchable Portable Document Format (PDF);
  - (2) create electronic bookmarks to mark the first page of each document in the clerk's record;
  - (3) limit the size of each computer file to 100 MB or less, if possible; and
  - (4) directly convert, rather than scan, the record to PDF, if possible.
- (f) **Preparation of the Reporter's Record.**
- (1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The

reporter's record must be certified by the court reporter for the evidentiary panel.

- (2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.
- (3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.
- (4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.
- (5) A court reporter or recorder must not lock any document that is part of the record.
- (6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.
- (g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.
- (h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record

that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

- (i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

#### **Rule 4.03 Time to File Record**

- (a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.
- (b) **If No Record Filed.**
  - (1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.
  - (2) If no reporter's record is filed due to appellant's fault, and if the clerk's



record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

- (i) the appellant failed to request a reporter's record; or
  - (ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.
- (c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.
- (d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

#### **Rule 4.04 Copies of the Record**

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

#### **Rule 4.05 Requisites of Briefs**

- (a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after

the clerk's record or the reporter's record is filed, whichever is later.

- (b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.
- (c) **Contents.** Briefs must contain:
- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
  - (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
  - (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
  - (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
  - (5) a statement, without argument, of the basis of BODA's jurisdiction;
  - (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
  - (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
  - (8) the argument and authorities;
  - (9) conclusion and prayer for relief;
  - (10) a certificate of service; and
  - (11) an appendix of record excerpts pertinent to the issues presented for review.
- (d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part

of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

- (e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.
- (f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:
  - (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;
  - (2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or
  - (3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

#### **Rule 4.06 Oral Argument**

- (a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to

timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

- (b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:
  - (1) the appeal is frivolous;
  - (2) the dispositive issue or issues have been authoritatively decided;
  - (3) the facts and legal arguments are adequately presented in the briefs and record; or
  - (4) the decisional process would not be significantly aided by oral argument.
- (c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

#### **Rule 4.07 Decision and Judgment**

- (a) **Decision.** BODA may do any of the following:
  - (1) affirm in whole or in part the decision of the evidentiary panel;
  - (2) modify the panel's findings and affirm the findings as modified;
  - (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
  - (4) reverse the panel's findings and

remand the cause for further proceedings to be conducted by:

- (i) the panel that entered the findings; or
  - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.
- (b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

#### **Rule 4.08 Appointment of Statewide Grievance Committee**

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

#### **Rule 4.09 Involuntary Dismissal**

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring

a response or other action within a specified time.

### **SECTION 5: PETITIONS TO REVOKE PROBATION**

#### **Rule 5.01 Initiation and Service**

- (a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.
- (b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

#### **Rule 5.02 Hearing**

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

### **SECTION 6: COMPULSORY DISCIPLINE**

#### **Rule 6.01 Initiation of Proceeding**

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

#### **Rule 6.02 Interlocutory Suspension**

- (a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA may suspend the Respondent's license to

practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

- (b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

- (1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.
- (2) If the criminal sentence is not fully probated:
  - (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
  - (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.
- (c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court

attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

## **SECTION 7: RECIPROCAL DISCIPLINE**

### **Rule 7.01 Initiation of Proceeding**

The Commission for Lawyer Discipline may initiate an action for reciprocal discipline by filing a petition with BODA under TRDP Part IX and these rules. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

### **Rule 7.02 Order to Show Cause**

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

### **Rule 7.03 Attorney's Response**

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

## **SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS**

### **Rule 8.01 Appointment of District Disability Committee**

- (a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2),

or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

- (b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.
- (c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.
- (d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.
- (e) Should any member of the District Disability Committee become unable to serve, the BODA Chair may appoint a substitute member.

## **Rule 8.02 Petition and Answer**

- (a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service may be made in person or by certified mail, return receipt requested. If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk.
- (b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.
- (c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

## **Rule 8.03 Discovery**

- (a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.
- (b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam

ordered by the District Disability Committee.

- (1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
- (2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.
- (c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

#### **Rule 8.04 Ability to Compel Attendance**

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

#### **Rule 8.05 Respondent's Right to Counsel**

- (a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.
- (b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk

within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

#### **Rule 8.06 Hearing**

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

#### **Rule 8.07 Notice of Decision**

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

#### **Rule 8.08 Confidentiality**

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

### **SECTION 9: DISABILITY REINSTATEMENTS**

#### **Rule 9.01 Petition for Reinstatement**

- (a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.
- (b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms

or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

- (c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

### **Rule 9.02 Discovery**

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

### **Rule 9.03 Physical or Mental Examinations**

- (a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.
- (b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
- (c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

- (d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.
- (e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

### **Rule 9.04 Judgment**

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

## **SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS**

### **Rule 10.01 Appeals to the Supreme Court**

- (a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.
- (b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.
- (c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

FILED  
2015 OCT 20 PM 4:04  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
January 2015 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN YOUNG KANG,

Defendant.

CR No. 15-478 (A) -GW

F I R S T  
S U P E R S E D I N G  
I N D I C T M E N T

[18 U.S.C. § 1343: Wire Fraud;  
18 U.S.C. § 1957: Engaging in  
Monetary Transactions in Property  
Derived from Specified Unlawful  
Activity; 18 U.S.C. § 1028A(a)(1):  
Aggravated Identity Theft; 26  
U.S.C. § 7201: Tax Evasion; 18  
U.S.C. §§ 981(a)(1)(C) and 982, 28  
U.S.C. § 2461(c), and 26 U.S.C.  
§ 7301: Criminal Forfeiture]

The Grand Jury charges:

COUNTS ONE THROUGH TWENTY-TWO

[18 U.S.C. § 1343]

A. INTRODUCTORY ALLEGATIONS

1. At all times relevant to this Indictment:

a. Defendant STEPHEN YOUNG KANG ("defendant KANG")  
resided in Newport Beach, California, in Orange County, within the  
Central District of California.

EXHIBIT

1



1           b. Defendant KANG was an attorney licensed to practice  
2 law in the State of California and the State of Texas.

3           c. Defendant KANG exercised control over the following  
4 bank accounts:

5           i. Wells Fargo Bank Account Number xxxxxx6600 in the  
6 name of Stephen Kang, Attorney at Law ("Kang Account 6600");

7           ii. Wells Fargo Bank Account Number xxxxxx8639 in the  
8 name of Gulf Technologies, Inc. ("Gulf Account 8639"); and

9           iii. Amegy Bank Account Number xxx2567 in the name of  
10 SGK Holdings Inc. ("SGK Account 2567").

11           d. Prosperity Bank Account Number xxxxxx3161 was an  
12 Interest on Lawyer's Trust Account ("IOLTA") located in Texas in the  
13 name of TEXAS ACCESS TO JUSTICE FDN and associated with the law  
14 office of N.H. (the "Prosperity Trust Account 3161").

15           e. C.K. and S.K. were a married couple who resided in  
16 Laguna Woods, California.

17           f. G.F. was an individual who worked in Laguna Hills,  
18 California.

19           g. M.B. was an individual who resided in Sugar Land,  
20 Texas.

21           h. J.S. was an individual who resided in Irvine,  
22 California.

23           i. Ottogi America, Inc. ("Ottogi") was a California  
24 corporation, with its principal place of business in Gardena,  
25 California.

26           j. To obtain an EB-5 immigration visa, an individual must  
27 invest \$1,000,000 in a commercial enterprise in the United States (or  
28 \$500,000 in a targeted high unemployment or rural area) that would

1 create or preserve ten permanent full-time jobs for qualified United  
2 States workers.

3 B. THE SCHEME TO DEFRAUD

4 2. Beginning as early as in or about June 2010, and continuing  
5 through in or about at least September 2015, in Los Angeles and  
6 Orange Counties, within the Central District of California, and  
7 elsewhere, defendant KANG, knowingly and with intent to defraud,  
8 devised, participated in, and executed a scheme to defraud clients to  
9 whom defendant KANG had agreed to provide legal or investment  
10 services, including, but not limited to, C.K., S.K., G.F., Ottogi,  
11 M.B., and J.S., as to material matters, and to obtain money and  
12 property from such victims by means of material false and fraudulent  
13 pretenses, representations, and promises, and the concealment of  
14 material facts.

15 C. THE MANNER AND MEANS OF THE SCHEME TO DEFRAUD

16 3. The scheme to defraud operated, in substance, in the  
17 following manner:

18 a. In or about July 2011, defendant KANG agreed to  
19 provide legal and investment services to C.K. and S.K. in connection  
20 with the filing of an EB-5 immigration visa application. Defendant  
21 KANG represented to C.K. and S.K. that he would assist with the EB-5  
22 visa process and invest C.K. and S.K.'s money in a manner that would  
23 facilitate the filing of the EB-5 visa application.

24 b. In reliance on defendant KANG's representation that he  
25 would invest C.K. and S.K.'s money in manner that would facilitate  
26 the EB-5 visa process and in accordance with defendant KANG's  
27 instructions, between in or about July 2011 and in or about December  
28

1 2011, C.K. and S.K. wired a total of approximately \$1,015,000 to SGK  
2 Account 2567.

3 c. In truth and in fact, defendant did not invest C.K.  
4 and S.K.'s money in a manner that would facilitate the filing of C.K.  
5 and S.K.'s EB-5 visa application. Instead, defendant KANG used all  
6 or part of C.K. and S.K.'s money for his own personal and business  
7 expenses, and to pay other individuals who had invested money with  
8 defendant KANG, including G.F. Defendant KANG also transferred  
9 portions of C.K. and S.K.'s money to bank accounts held in the name  
10 of defendant KANG's wife.

11 d. To conceal the fact that he had diverted C.K. and  
12 S.K.'s investment for his own purposes and to pay other individuals  
13 who invested money with defendant KANG, when C.K. and S.K. demanded a  
14 return of their investment funds, defendant KANG used money he  
15 received from other clients, including Ottogi and G.F., to repay a  
16 portion of C.K. and S.K.'s investment.

17 e. Starting as early as August 2011 and continuing  
18 through at least August 2013, defendant KANG represented to G.F. that  
19 payments G.F. had received from SGK Account 2567 were purportedly  
20 income from a prior investment G.F. made with defendant Kang.

21 f. In truth and in fact, defendant KANG used money that  
22 he obtained from other clients, including C.K., S.K., and Ottogi, to  
23 make some or all of these investment payments to G.F.

24 g. In or about June 2013, defendant KANG represented that  
25 he would facilitate for G.F. an additional \$200,000 investment in SGK  
26 Holdings, Inc. Defendant KANG instructed G.F. to transfer  
27 approximately \$200,000 to Kang Account 6600 and falsely represented  
28 to G.F. that Kang Account 6600 was an attorney trust account.



1           h.     In reliance on defendant KANG's representation  
2 regarding the additional \$200,000 investment and defendant KANG's  
3 false representations regarding the source of the prior payments to  
4 G.F. in connection with G.F.'s previous investments, between on or  
5 about June 26, 2013, and on or about July 8, 2013, G.F. transferred  
6 approximately \$200,000 to SGK Account 2567 from G.F.'s personal and  
7 business accounts. Defendant KANG also caused G.F. to be provided  
8 with a false "Asset Purchase Agreement," which stated that G.F. had  
9 purchased a \$200,000 investment in SGK Holdings, Inc. from the "Moses  
10 L. Butt Living Trust" and that \$200,000 had been transferred to the  
11 "Moses L. Butt Living Trust" from Kang Account 6600 on or about July  
12 10, 2013.

13           i.     In truth and in fact, G.F.'s money was neither  
14 invested in SGK Holdings, Inc. nor transferred to the "Moses L. Butt  
15 Living Trust" from Kang Account 6600. Instead, defendant KANG used  
16 all or part of G.F.'s \$200,000 for his own personal or business  
17 expenses, and to pay other individuals who had invested money with  
18 defendant KANG, including, but not limited to, a payment of  
19 approximately \$60,000 to C.K. and S.K. on or about June 28, 2013.

20           j.     Starting as early as October 2012 and continuing  
21 through at least October 2014, defendant KANG agreed to act as  
22 Ottogi's legal representative in connection with, among other things,  
23 the purchase of certain real estate lots (the "target lots") in  
24 Gardena, California on Ottogi's behalf. To facilitate defendant  
25 KANG's legal representation of Ottogi, defendant KANG caused Ottogi  
26 executives to execute power of attorney agreements, which provided  
27 defendant KANG and N.H. (an attorney in Houston, Texas) with  
28

1 authority to use Ottogi funds in connection with the purchase of the  
2 target lots on Ottogi's behalf.

3 k. In reliance on defendant KANG's representations to  
4 Ottogi and in accordance with the terms of the power of attorney  
5 agreements that defendant KANG caused Ottogi's executives to execute,  
6 between October 2012 and March 2014, Ottogi wired a total of  
7 approximately \$3.7 million from Ottogi's bank accounts at Shinhan  
8 Bank America into Prosperity Trust Account 3161, which was associated  
9 with the law office of N.H. Based on defendant KANG's  
10 representations, Ottogi believed that the funds transferred to  
11 Prosperity Trust Account 3161 would be used for the purchase of the  
12 target lots on Ottogi's behalf.

13 l. In truth and in fact, defendant KANG did not use the  
14 money that Ottogi transferred into Prosperity Trust Account 3161 to  
15 purchase the target lots on Ottogi's behalf and did not purchase the  
16 target lots on Ottogi's behalf. Instead, after Ottogi wired money  
17 into Prosperity Trust Account 3161, defendant KANG caused the vast  
18 majority of Ottogi's money to be transferred from Prosperity Trust  
19 Account 3161 to other bank accounts that defendant KANG controlled.  
20 Defendant KANG then used all or part of the Ottogi money that was  
21 diverted into the accounts that he controlled for his own personal  
22 and business expenses, and to pay other individuals who had invested  
23 money with defendant KANG, including C.K., S.K., and G.F., and  
24 transferred portions of Ottogi's money to bank accounts held in the  
25 name of defendant KANG's wife. Defendant KANG also caused Ottogi  
26 funds to be directly transferred from Prosperity Trust Account 3161  
27 to C.K. to repay a portion of the EB-5 visa-related investment money  
28 C.K. and S.K. provided to defendant KANG.



1           m. To conceal and further the scheme to defraud Ottogi,  
2 defendant KANG presented fabricated, forged, or falsified documents  
3 to Ottogi, Ottogi executives, and other individuals, representing  
4 that he was in the process of purchasing or had already purchased the  
5 target lots.

6           n. In or about August 2013, defendant KANG agreed to  
7 assist Ottogi in establishing a trust account at Amegy Bank in  
8 Houston, Texas, to deposit additional Ottogi funds. Defendant KANG  
9 then represented to Ottogi that an account at Amegy Bank had been  
10 established on Ottogi's behalf and that Ottogi's executives were  
11 signatories on the account. Defendant KANG also provided Ottogi with  
12 instructions for wiring Ottogi's funds into the purported Ottogi  
13 trust account at Amegy Bank. In reliance on defendant KANG's  
14 representations, Ottogi transferred approximately \$420,000 to the  
15 purported Ottogi trust account at Amegy Bank. Between in or about  
16 August 2013 and in or about June 2014, defendant KANG caused  
17 fabricated, forged, or false documents to be presented to Ottogi  
18 indicating that there was a \$420,000 balance in an account at Amegy  
19 Bank in the name of "Ottogi Care of SK Holdings."

20           o. In truth and in fact, a trust account for Ottogi was  
21 never established at Amegy Bank. Instead, defendant KANG had  
22 provided Ottogi with the account information and wire transfer  
23 information for SGK Account 2567. Defendant KANG then used the money  
24 that Ottogi transferred to SGK Account 2567 for his own personal and  
25 business expenses, and to pay other individuals who had invested  
26 money with defendant KANG, including G.F.

27           p. In or about April 2013, defendant KANG agreed to  
28 invest approximately \$500,000 of M.B.'s money in a corporation

1 purportedly called Pegasus Capital Ltd., L.L.C. ("Pegasus").

2 Defendant KANG instructed M.B. to transfer the money to Kang Account  
3 6600 and falsely represented to M.B. that Kang Account 6600 was a  
4 trust account. In reliance on defendant KANG's representations, on  
5 or about April 30, 2013, M.B. transferred approximately \$500,000 to  
6 Kang Account 6600.

7           q. In truth and in fact, defendant KANG did not invest  
8 M.B.'s money in Pegasus. Instead, defendant KANG used all or part of  
9 M.B.'s money for his own personal or business expenses, and  
10 transferred portions of M.B.'s money from Kang Account 6600 to other  
11 individuals, including defendant KANG's wife, without M.B.'s  
12 authorization.

13           r. When M.B. requested that defendant KANG return the  
14 approximately \$500,000 investment to M.B., defendant KANG repeatedly  
15 represented that he would repay the money M.B. invested and, in or  
16 about June 2015, provided M.B. with a payment of \$15,000. On or  
17 about September 3, 2015, in connection with the repayment of the  
18 remaining portion of M.B.'s approximately \$500,000 investment,  
19 defendant KANG entered into a signed, written agreement to provide  
20 M.B. with a "first priority security interest" in an AAA Life  
21 Insurance Company term life insurance policy, number xxxxxx7455 (the  
22 "AAA Life Insurance Policy 7455"), purportedly belonging to defendant  
23 KANG's estate. Defendant KANG represented to M.B., among other  
24 things, that defendant KANG's wife and children would not have any  
25 ability to make a claim on AAA Life Insurance Policy 7455.

26           s. In truth and in fact, the sole beneficiary for AAA  
27 Life Insurance Policy 7455 is defendant KANG's wife. Additionally,  
28 defendant KANG failed to disclose to M.B. that the death benefit for



1 AAA Life Insurance Policy 7455 was only \$250,000, and that defendant  
2 KANG's application for AAA Life Insurance Policy 7455 was first  
3 applied for and approved on August 28, 2015. Defendant KANG also  
4 failed to disclose to M.B. that on or about August 31, 2015, he  
5 caused J.S. to be presented with a similar written agreement signed  
6 by defendant KANG, in which defendant KANG would agree to provide  
7 J.S. with the same "first priority security interest" in AAA Life  
8 Insurance Policy 7455.

9 t. Between in or about April 2014 and in or about August  
10 2014, defendant KANG and J.S. agreed that defendant KANG would invest  
11 a total of approximately \$345,000 of J.S.'s money in the oil and gas  
12 industry. Defendant KANG instructed J.S. to transfer his money to  
13 Kang Account 6600 and falsely represented to J.S. that Kang Account  
14 6600 was an attorney trust account. Defendant KANG also represented  
15 to J.S. that the money had been invested or would be invested in Gulf  
16 Technologies, Inc. In reliance on defendant KANG's representations,  
17 between on or about April 25, 2014, and on or about August 7, 2014,  
18 J.S. transferred approximately \$345,000 to Kang Account 6600 for  
19 defendant KANG to invest on his behalf.

20 u. In truth and in fact, defendant KANG did not invest  
21 J.S.'s money in Gulf Technologies, Inc. Instead, defendant KANG used  
22 all or part of J.S.'s money for his own personal or business  
23 expenses, and transferred portions of J.S.'s money from Kang Account  
24 6600 to other individuals without J.S.'s authorization.

25 v. To conceal the fact that he had used J.S.'s investment  
26 money for his own purposes, when J.S. requested that defendant KANG  
27 return J.S.'s investment, defendant KANG continued to falsely  
28 represent that J.S.'s money had been invested with Gulf Technologies,



1 Inc. and promised that he would attempt to get J.S.'s money back for  
2 him from Gulf Technologies, Inc.

3 D. THE USE OF THE WIRES

4 4. On or about the following dates, in Los Angeles and Orange  
5 Counties, within the Central District of California, and elsewhere,  
6 defendant KANG, for the purpose of executing the above-described  
7 scheme to defraud, transmitted or caused the transmission of the  
8 following items by means of wire communication in interstate and  
9 foreign commerce:

<u>COUNT</u>	<u>DATE</u>	<u>ACT</u>
ONE	7/28/2011	Wire transfer of approximately \$30,000 from the Shinhan Bank America account of C.K. held in Orange County, California, to SGK Account 2567 held in Houston, Texas
TWO	10/26/2012	Wire transfer of approximately \$350,000 from the Shinhan Bank America account of Ottogi held in Los Angeles, California, to Prosperity Trust Account 3161 held in Houston, Texas
THREE	10/29/2012	Wire transfer of approximately \$255,000 from Prosperity Trust Account 3161 held in Houston, Texas to Gulf Account 8639 held in Orange County, California
FOUR	11/2/2012	Wire transfer of approximately \$980,000 from Shinhan Bank America account of Ottogi held in Los Angeles, California to Prosperity Trust Account 3161 held in Houston, Texas
FIVE	11/5/2012	Wire transfer of approximately \$435,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
SIX	11/14/2012	Wire transfer of approximately \$210,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
SEVEN	11/19/2012	Wire transfer of approximately \$150,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
EIGHT	1/3/2013	Wire transfer of approximately \$1,010,000 from the Shinhan Bank America account of Ottogi held in Los Angeles, California, to Prosperity Account 3161 held in Houston, Texas

1	NINE	1/4/2013	Wire transfer of approximately \$150,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
2			
3	TEN	1/11/2013	Wire transfer of approximately \$200,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
4			
5	ELEVEN	1/28/2013	Wire transfer of approximately \$170,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
6			
7	TWELVE	2/12/2013	Wire transfer of approximately \$200,000 from Prosperity Trust Account 3161 held in Houston, Texas, to the Shinhan Bank America account of C.K. and S.K. held in Los Angeles, California
8			
9			
10	THIRTEEN	2/12/2013	Wire transfer of approximately \$150,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
11			
12	FOURTEEN	5/29/2013	Wire transfer of approximately \$406,000 from the Shinhan Bank America Bank account of Ottogi held in Los Angeles, California, to Prosperity Trust Account 3161 held in Houston, Texas
13			
14	FIFTEEN	5/29/2013	Wire transfer of approximately \$100,000 from the Shinhan Bank America account of Ottogi held in Los Angeles, California, to Prosperity Trust Account 3161 held in Houston, Texas
15			
16			
17	SIXTEEN	5/30/2013	Wire transfer of approximately \$500,000 from Prosperity Trust Account 3161 held in Houston, Texas, to Gulf Account 8639 held in Orange County, California
18			
19	SEVENTEEN	6/28/2013	Wire transfer of approximately \$60,000 from Kang Account 6600 held in Houston, Texas, to the Shinhan Bank America account of C.K. held in Orange County, California
20			
21	EIGHTEEN	8/6/2013	Wire transfer of approximately \$420,000 from the Shinhan Bank America account of Ottogi held in Los Angeles, California, to SGK Account 2567 held in Houston, Texas
22			
23	NINETEEN	2/5/2014	Wire transfer of approximately \$300,000 from the Shinhan Bank America account of Ottogi held in Los Angeles, California, to Prosperity Trust Account 3161 held in Houston, Texas
24			
25	TWENTY	3/11/2014	Wire transfer of approximately \$570,000 from Shinhan Bank America account of Ottogi held in Los Angeles, California, to Prosperity Trust Account 3161 held in Houston, Texas
26			
27			
28			

1	TWENTY-ONE	4/25/2014	Wire transfer of approximately \$249,975
2			from the BBCN Bank account for J.S.'s
3			business held in Los Angeles, California,
4			to Kang Account 6600 held in Houston, Texas
5	TWENTY-TWO	9/3/2015	Interstate email from defendant KANG at
6			stephenkang@earthlink.net, sent at
7			approximately 9:34 a.m., to M.B. at
8			[m.b.]@yahoo.com



## COUNTS TWENTY-THREE THROUGH TWENTY-FIVE

[18 U.S.C. § 1957]

5. The Grand Jury realleges and incorporates by reference paragraphs 1 through 3 of this Indictment as though fully set forth herein.

6. On or about the following dates, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG, knowing that the funds involved represented the proceeds of some form of unlawful activity, engaged in the following monetary transactions, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, namely, wire fraud in violation of Title 18, United States Code, Section 1343:

<u>COUNT</u>	<u>DATE</u>	<u>TRANSACTION</u>
TWENTY-THREE	2/10/2014	Transfer of \$11,800 from Kang Account 6600 by check number 4269, payable to E.M.
TWENTY-FOUR	3/13/2014	Transfer of \$10,800 from Kang Account 6600 by check number 4297, payable to E.M.
TWENTY-FIVE	3/14/2014	Transfer of \$15,000 from Kang Account 6600 by check number 4305, payable to M Bar Restaurant

COUNT TWENTY-SIX

[18 U.S.C. § 1028A(a)(1)]

7. The Grand Jury realleges and incorporates by reference paragraphs 1 through 3 of this Indictment as though fully set forth herein.

8. On or about November 2, 2013, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG knowingly transferred, possessed, and used, without lawful authority, a means of identification that defendant KANG knew belonged to another person, that is, the name and forged signature of N.H. on a settlement agreement purporting to relate to the purchase of two of the target lots on behalf of Ottogi, during and in relation to wire fraud, a felony violation of Title 18, United States Code, Section 1343, as charged in Counts Two, Four, Eight, and Fourteen of this Indictment.

COUNT TWENTY-SEVEN

[18 U.S.C. § 1028A(a)(1)]

9. The Grand Jury realleges and incorporates by reference paragraphs 1 through 3 of this Indictment as though fully set forth herein.

10. On or about November 4, 2013, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG knowingly transferred, possessed, and used, without lawful authority, a means of identification that defendant KANG knew belonged to another person, that is, the name and forged signature of M.T. on a letter purportedly dated November 1, 2013, regarding the funds transferred from Ottogi to SGK Account 2567, during and in relation to wire fraud, a felony violation of Title 18, United States Code, Section 1343, as charged in Count Eighteen of this Indictment.

COUNT TWENTY-EIGHT

[26 U.S.C. § 7201]

11. The Grand Jury realleges and incorporates by reference paragraph 1 of this First Superseding Indictment as though fully set forth herein.

12. During the calendar year 2012 and continuing through on or about April 15, 2013, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG had and received a taxable income of at least approximately \$1,330,000 and upon that taxable income owed to the United States of America an income tax of at least approximately \$446,657. Defendant KANG was required by law, on or before April 15, 2013, to prepare and file an income tax return with the Internal Revenue Service, reporting such taxable income, and to pay such income tax.

13. Beginning in or about January 2012, and continuing through on or about April 15, 2013, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG willfully attempted to evade and defeat the assessment and payment of the income tax due and owing by him to the United States of America for calendar year 2012 by failing to file an income tax return on or before April 15, 2013, as required by law, to any proper officer of the Internal Revenue Service; failing to pay the income tax to the Internal Revenue Service; and concealing and attempting to conceal from all proper officers of the United States his true and correct taxable income by committing the following affirmative acts, amongst others:

a. Using Prosperity Trust Account 3161, which was associated with the law office of N.H., to receive money defendant



1 KANG obtained from his client, Ottogi, in order to make it appear  
2 that this money would be used on Ottogi's behalf, when, in fact, as  
3 defendant KANG knew, it would instead be transferred and used for  
4 defendant KANG's own benefit;

5 b. Causing the transfer of funds from Prosperity Trust  
6 Account 3161 to Gulf Account 8639, which was a corporate account, to  
7 make it appear that the funds would be used on the corporation's  
8 behalf when, in fact, defendant KANG knew the money would not be used  
9 for the corporation's benefit and would instead be transferred and  
10 used for defendant KANG's own benefit; and

11 c. Causing the transfer of funds from Gulf Account 8639,  
12 to SGK Account 2567, another corporate account, to make it appear  
13 that the funds would be used on the corporation's behalf when, in  
14 fact, defendant KANG knew the money would not be used for the  
15 corporation's benefit and would instead be transferred and used for  
16 defendant KANG's own benefit.



COUNT TWENTY-NINE

[26 U.S.C. § 7201]

14. The Grand Jury realleges and incorporates by reference paragraph 1 of this First Superseding Indictment as though fully set forth herein.

15. During the calendar year 2013 and continuing through on or about April 15, 2014, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG had and received a taxable income of at least approximately \$1,516,000 and upon that taxable income owed to the United States of America an income tax of at least approximately \$571,743. Defendant KANG was required by law, on or before April 15, 2014, to prepare and file an income tax return with the Internal Revenue Service, reporting such taxable income, and to pay such income tax.

16. Beginning in or about January 2013, and continuing through on or about April 15, 2014, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG willfully attempted to evade and defeat the assessment and payment of the income tax due and owing by him to the United States of America for calendar year 2013 by failing to file an income tax return on or before April 15, 2014, as required by law, to any proper officer of the Internal Revenue Service; failing to pay the income tax to the Internal Revenue Service; and concealing and attempting to conceal from all proper officers of the United States his true and correct taxable income by committing the following affirmative acts, amongst others:

a. Using Prosperity Trust Account 3161, which was associated with the law office of N.H., to receive money defendant

1 KANG obtained from his client, Ottogi, in order to make it appear  
2 that this money would be used on Ottogi's behalf, when, in fact, as  
3 defendant KANG knew, it would instead be transferred and used for  
4 defendant KANG's own benefit;

5 b. Using SGK Account 2567, which was a corporate account,  
6 to receive money defendant KANG obtained from his client, Ottogi, in  
7 order to make it appear that this money would be used for Ottogi's  
8 benefit, when, in fact, as defendant KANG knew, it would instead be  
9 transferred and used for defendant KANG's own benefit;

10 c. Causing the transfer of funds from Prosperity Trust  
11 Account 3161 to Gulf Account 8639, which was a corporate account, to  
12 make it appear that the funds would be used on the corporation's  
13 behalf when, in fact, defendant KANG knew the money would not be used  
14 for the corporation's benefit and would instead be transferred and  
15 used for defendant KANG's own benefit; and

16 d. Causing the transfer of funds from Gulf Account 8639,  
17 to SGK Account 2567, another corporate account, to make it appear  
18 that the funds would be used on the corporation's behalf when, in  
19 fact, defendant KANG knew the money would not be used for the  
20 corporation's benefit and would instead be transferred and used for  
21 defendant KANG's own benefit.

COUNT THIRTY

[26 U.S.C. § 7201]

17. The Grand Jury realleges and incorporates by reference paragraph 1 of this First Superseding Indictment as though fully set forth herein.

18. During the calendar year 2014 and continuing through on or about April 15, 2015, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG had and received a taxable income of at least approximately \$609,100 and upon that taxable income owed to the United States of America an income tax of at least approximately \$212,125. Defendant KANG was required by law, on or before April 15, 2015, to prepare and file an income tax return with the Internal Revenue Service, reporting such taxable income, and to pay such income tax.

19. Beginning in or about January 2014, and continuing through on or about April 15, 2015, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, defendant KANG willfully attempted to evade and defeat the assessment and payment of the income tax due and owing by him to the United States of America for calendar year 2014 by failing to file an income tax return on or before April 15, 2015, as required by law, to any proper officer of the Internal Revenue Service; failing to pay the income tax to the Internal Revenue Service; and concealing and attempting to conceal from all proper officers of the United States his true and correct taxable income by committing the following affirmative acts, amongst others:

a. Using Prosperity Trust Account 3161, which was associated with the law office of N.H., to receive money defendant

1 KANG obtained from his client, Ottogi, in order to make it appear  
2 that this money would be used on Ottogi's behalf, when, in fact, as  
3 defendant KANG knew, it would instead be transferred and used for  
4 defendant KANG's own benefit.



FORFEITURE ALLEGATION ONE

[18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

1. Pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Rule 32.2(a), Fed. R. Crim. P., if defendant STEPHEN YOUNG KANG ("defendant KANG") is convicted of any of the offenses set forth in Counts One through Twenty-Two of this First Superseding Indictment, he shall forfeit to the United States the following property:

a. All right, title and interest in any and all property, real or personal, constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of any offense charged in each such Count; and

b. A sum of money equal to the total value of the property described in subparagraph a.

2. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b) and Title 28, United States Code, Section 2461(c), defendant KANG shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as the result of any act or omission of defendant KANG, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property that cannot be divided without difficulty.

FORFEITURE ALLEGATION TWO

[18 U.S.C. § 982]

1. Pursuant to Title 18, United States Code, Section 982, and Rule 32.2(a), Fed. R. Crim. P., if defendant STEPHEN YOUNG KANG ("defendant KANG") is convicted of any of the offenses set forth in Counts Twenty-Three through Twenty-Five of this First Superseding Indictment, he shall forfeit to the United States the following property:

a. Any property, real or personal, involved in such offense, and any property traceable to such property.

2. Pursuant to Title 21, United States Code, Section 853(p) and Title 18, United States Code, Section 982(b)(2), the defendant shall forfeit substitute property, if, by any act or omission of the defendant, the property described in paragraph 1, or any portion thereof, cannot be located upon the exercise of due diligence; has been transferred, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property that cannot be divided without difficulty. Substitution of assets shall not be ordered, however, where defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of \$100,000.00 or more in any twelve month period.

FORFEITURE ALLEGATION THREE

[26 U.S.C. § 7301 and 28 U.S.C. § 2461(c)]

1. Pursuant to Title 26, United States Code, Section 7301, Title 28, United States Code, Section 2461(c), and Rule 32.2(a), Fed. R. Crim. P., if defendant STEPHEN YOUNG KANG ("defendant KANG") is convicted of any of the offenses set forth in Counts Twenty-Eight through Thirty of this First Superseding Indictment, he shall forfeit to the United States the following property:

a. Any property sold or removed by defendant KANG in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which was removed, deposited, or concealed, with intent to defraud the United States of such tax or any part thereof.

b. All property manufactured into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax.

c. All property whatsoever, in the place or building, or any yard or enclosure, where the property described in subsection (a) or (b) is found, or which is intended to be used in the making of property described in subsection (a), with intent to defraud the United States of tax or any part thereof, on the property described in subsection (a).

d. All property used as a container for, or which shall have contained, property described in subsection (a) or (b).

e. Any property (including aircraft, vehicles, vessels, or draft animals) used to transport or for the deposit or concealment of property described in subsection (a) or (b), or any property used to transport or for the deposit or concealment of property which is



1 intended to be used in the making or packaging of property described  
2 in subsection (a).

3       2. Pursuant to Title 21, United States Code, Section 853(p),  
4 as incorporated by Title 18, United States Code, Section 982(b) and  
5 Title 28, United States Code, Section 2461(c), defendant KANG shall  
6 forfeit substitute property, up to the total value of the property  
7 described in the preceding paragraph if, as the result of any act or  
8 omission of defendant KANG, the property described in the preceding  
9 paragraph, or any portion thereof: (a) cannot be located upon the  
10 exercise of due diligence; (b) has been transferred, sold to or  
11 deposited with a third party; (c) has been placed beyond the  
12 jurisdiction of the court; (d) has been substantially diminished in

13 ///

14 ///

15 ///



1 value; or (e) has been commingled with other property that cannot be  
2 divided without difficulty.

3 A TRUE BILL

4  
5 151  
6 Foreperson

7 EILEEN M. DECKER  
United States Attorney

8 LAWRENCE S. MIDDLETON  
Assistant United States Attorney  
9 Chief, Criminal Division

10 

11 SCOTT M. GARRINGER  
Assistant United States Attorney  
12 Deputy Chief, Criminal Division

13 RUTH C. PINKEL  
Assistant United States Attorney  
14 Chief, General Crimes Section

15 WILLIAM CROWFOOT  
Assistant United States Attorney  
16 Acting Deputy Chief, General  
17 Crimes Section

18 JULIAN L. ANDRÉ  
ANIL J. ANTONY  
Assistant United States Attorneys  
19 General Crimes Section  
20

1 EILEEN M. DECKER  
United States Attorney  
2 LAWRENCE S. MIDDLETON  
Assistant United States Attorney  
3 Chief, Criminal Division  
JULIAN L. ANDRÉ (Cal. Bar No. 251120)  
4 ANIL J. ANTONY (Cal. Bar No. 258839)  
Assistant United States Attorneys  
5 General Crimes Section  
1200 United States Courthouse  
6 312 North Spring Street  
Los Angeles, California 90012  
7 Telephone: (213) 894-6683/6579  
Facsimile: (213) 894-0141  
8 E-mail: julian.l.andre@usdoj.gov  
anil.j.antony@usdoj.gov  
9

10 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 STEPHEN YOUNG KANG,

17 Defendant.  
18

No. CR 15-478 (A) -GW

PLEA AGREEMENT FOR DEFENDANT  
STEPHEN YOUNG KANG

19 1. This constitutes the plea agreement between defendant  
20 STEPHEN YOUNG KANG ("defendant") and the United States Attorney's  
21 Office for the Central District of California (the "USAO") in the  
22 above-captioned case. This agreement is limited to the USAO and  
23 cannot bind any other federal, state, local, or foreign prosecuting,  
24 enforcement, administrative, or regulatory authorities.

25 DEFENDANT'S OBLIGATIONS

26 2. Defendant agrees to:

27 a. At the earliest opportunity requested by the USAO and  
28 provided by the Court, appear and plead guilty to Counts Eight,

EXHIBIT

2

1 Twenty-Two, and Twenty-Nine of the first superseding indictment in  
2 United States v. Stephen Young Kang, CR No. 15-478(A)-GW, which  
3 charges defendant in Counts Eight and Twenty-Two with wire fraud, in  
4 violation in violation of 18 U.S.C. § 1343, and in Count Twenty-Nine  
5 with tax evasion, in violation of 26 U.S.C. § 7201.

6 b. Not contest facts agreed to in this agreement.

7 c. Abide by all agreements regarding sentencing contained  
8 in this agreement.

9 d. Appear for all court appearances, surrender as ordered  
10 for service of sentence, obey all conditions of any bond, and obey  
11 any other ongoing court order in this matter.

12 e. Not commit any crime; however, offenses that would be  
13 excluded for sentencing purposes under United States Sentencing  
14 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not  
15 within the scope of this agreement.

16 f. Be truthful at all times with Pretrial Services, the  
17 United States Probation Office, and the Court.

18 g. Pay the applicable special assessments at or before  
19 the time of sentencing unless defendant lacks the ability to pay and  
20 prior to sentencing submits a completed financial statement on a form  
21 to be provided by the USAO.

22 h. Not seek the discharge of any restitution obligation,  
23 in whole or in part, in any present or future bankruptcy proceeding.

24 3. Defendant admits that defendant received at least  
25 \$1,516,000 of unreported income for calendar year 2013, some portion  
26 of which was taxable income. Defendant agrees that:

27 a. Defendant will file, prior to the time of sentencing,  
28 an initial return for calendar year 2013 correctly reporting

1 defendant's income and taxable income for calendar year 2013; and  
2 will, if requested to do so by the Internal Revenue Service, provide  
3 the Internal Revenue Service with information regarding the year  
4 covered by the return; will pay at or before sentencing all taxes and  
5 all penalties and interest assessed by the Internal Revenue Service  
6 on the basis of the return, unless the Court determines that he is  
7 financially unable to do so at the time of sentencing; regardless of  
8 whether the Court determines that defendant is financially able to  
9 pay all taxes, penalties, and interest due and payable at the time of  
10 sentencing, defendant will, after sentencing, remain responsible for  
11 paying all such taxes, penalties, and interest and any additional  
12 taxes, penalties, and interest thereafter determined by the Internal  
13 Revenue Service to be owing, including any additional amounts due to  
14 any computational errors.

15           b. Nothing in this agreement forecloses or limits the  
16 ability of the Internal Revenue Service to examine and make  
17 adjustments to defendant's return after it is filed.

18           c. Defendant will not, after filing the return, file any  
19 claim for refund of taxes, penalties, or interest for amounts  
20 attributable to the return filed in connection with this plea  
21 agreement.

22           d. Defendant is liable for the fraud penalty imposed by  
23 the Internal Revenue Code, 26 U.S.C. § 6651(f), for the failure to  
24 file a tax return for calendar year 2013.

25           e. Defendant gives up any and all objections that could  
26 be asserted to the Examination Division of the Internal Revenue  
27 Service receiving materials or information obtained during the  
28

1 criminal investigation of this matter, including materials and  
2 information obtained through grand jury subpoenas.

3 THE USAO'S OBLIGATIONS

4 4. The USAO agrees to:

5 a. Not contest facts agreed to in this agreement.

6 b. Abide by all agreements regarding sentencing contained  
7 in this agreement.

8 c. At the time of sentencing, move to dismiss the  
9 remaining counts of the indictment and underlying indictment as  
10 against defendant. Defendant agrees, however, that at the time of  
11 sentencing the Court may consider any dismissed charges in  
12 determining the applicable Sentencing Guidelines range, the propriety  
13 and extent of any departure from that range, and the sentence to be  
14 imposed.

15 d. At the time of sentencing, provided that defendant  
16 demonstrates an acceptance of responsibility for the offenses up to  
17 and including the time of sentencing, recommend a two-level reduction  
18 in the applicable Sentencing Guidelines offense level, pursuant to  
19 U.S.S.G. § 3E1.1(a). There is no agreement between the parties as to  
20 U.S.S.G. § 3E1.1(b).

21 NATURE OF THE OFFENSES

22 5. Defendant understands that for defendant to be guilty of  
23 the crime charged in Counts Eight and Twenty-Two of the first  
24 superseding indictment, that is, wire fraud, in violation of Title  
25 18, United States Code, Section 1343, the following must be true:

26 a. Defendant knowingly participated in, devised, or  
27 intended to devise a scheme or plan to defraud, or a scheme or plan  
28

1 for obtaining money or property by means of false or fraudulent  
2 pretenses, representations, or promises;

3           b. The statements made or facts omitted as part of the  
4 scheme were material; that is, they had a natural tendency to  
5 influence, or were capable of influencing, a person to part with  
6 money or property;

7           c. Defendant acted with the intent to defraud, that is,  
8 the intent to deceive or cheat; and

9           d. Defendant used, or caused to be used, a wire  
10 communication to carry out or attempt to carry out an essential part  
11 of the scheme.

12           6. Defendant understands that for defendant to be guilty of  
13 the crime charged in Count Twenty-Nine of the first superseding  
14 indictment, that is, tax evasion, in violation of Title 26, United  
15 States Code, Section 7201, the following must be true:

16           a. Defendant made an affirmative attempt to evade or  
17 defeat a tax or payment thereof;

18           b. Additional tax is due and owing; and

19           c. Defendant acted willfully.

20                           PENALTIES AND RESTITUTION

21           7. Defendant understands that the statutory maximum sentence  
22 that the Court can impose for each violation of Title 18, United  
23 States Code, Section 1343 is: 20 years imprisonment; a five-year  
24 period of supervised release; a fine of \$250,000 or twice the gross  
25 gain or gross loss resulting from the offense, whichever is greatest;  
26 and a mandatory special assessment of \$100.

27           8. Defendant understands that the statutory maximum sentence  
28 that the Court can impose for each violation of Title 26, United

1 States Code, Section 7201 is: 5 years imprisonment; a three-year  
2 period of supervised release; a fine of \$100,000; and a mandatory  
3 special assessment of \$100.

4 9. Defendant understands, therefore, that the total maximum  
5 sentence for all offenses to which defendant is pleading guilty is:  
6 45 years imprisonment; a 5-year period of supervised release; a fine  
7 of \$500,000 or twice the gross gain or gross loss resulting from the  
8 offenses under Title 18, United States Code, Section 1343, whichever  
9 is greatest, plus \$100,000; and a mandatory special assessment of  
10 \$300.

11 10. Defendant understands and agrees that, in connection with  
12 defendant's guilty plea to Count Twenty-Nine of the first superseding  
13 indictment, the Court: (a) may order defendant to pay restitution in  
14 the form of any additional taxes, interest, and penalties that  
15 defendant owes to the United States based upon the count of  
16 conviction and any relevant conduct; and (b) must order defendant to  
17 pay the costs of prosecution, which may be in addition to the  
18 statutory maximum fine stated above. The government estimates that  
19 applicable amount of restitution in connection with Count Twenty-Nine  
20 (including relevant conduct) is approximately \$2,500,000, but  
21 recognizes that this amount is disputed and could change based on  
22 facts that come to the attention of the parties prior to sentencing.

23 11. Defendant understands that, in connection with defendant's  
24 guilty pleas to Counts Eight and Twenty-Two of the first superseding  
25 indictment, defendant will be required to pay full restitution to the  
26 victims of the offenses to which defendant is pleading guilty.  
27 Defendant agrees that, in return for the USAO's compliance with its  
28 obligations under this agreement, the Court may order restitution to



1 persons other than the victims of the offenses to which defendant is  
2 pleading guilty and in amounts greater than those alleged in the  
3 counts to which defendant is pleading guilty. In particular,  
4 defendant agrees that the Court may order restitution to any victim  
5 of any of the following for any losses suffered by that victim as a  
6 result: (a) any relevant conduct, as defined in U.S.S.G. § 1B1.3, in  
7 connection with the offenses to which defendant is pleading guilty;  
8 and (b) any counts dismissed pursuant to this agreement as well as  
9 all relevant conduct, as defined in U.S.S.G. § 1B1.3, in connection  
10 with those counts. The USAO estimates that the applicable amount of  
11 restitution in connection with Counts Eight and Twenty-Two (including  
12 relevant conduct) is approximately \$8,000,000, but recognizes that  
13 this amount is disputed and could change based on facts that come to  
14 the attention of the parties prior to sentencing.

15 12. Defendant understands that supervised release is a period  
16 of time following imprisonment during which defendant will be subject  
17 to various restrictions and requirements. Defendant understands that  
18 if defendant violates one or more of the conditions of any supervised  
19 release imposed, defendant may be returned to prison for all or part  
20 of the term of supervised release authorized by statute for the  
21 offense that resulted in the term of supervised release, which could  
22 result in defendant serving a total term of imprisonment greater than  
23 the statutory maximum stated above.

24 13. Defendant understands that, by pleading guilty, defendant  
25 may be giving up valuable government benefits and valuable civic  
26 rights, such as the right to vote, the right to possess a firearm,  
27 the right to hold office, and the right to serve on a jury.  
28 Defendant understands that once the Court accepts defendant's guilty



1 plea, it will be a federal felony for defendant to possess a firearm  
2 or ammunition. Defendant understands that the conviction in this  
3 case may also subject defendant to various other collateral  
4 consequences, including but not limited to revocation of probation,  
5 parole, or supervised release in another case and suspension or  
6 revocation of a professional license. Defendant understands that  
7 unanticipated collateral consequences will not serve as grounds to  
8 withdraw defendant's guilty plea.

9 14. Defendant understands that, if defendant is not a United  
10 States citizen, the felony conviction in this case may subject  
11 defendant to: removal, also known as deportation, which may, under  
12 some circumstances, be mandatory; denial of citizenship; and denial  
13 of admission to the United States in the future. The Court cannot,  
14 and defendant's attorney also may not be able to, advise defendant  
15 fully regarding the immigration consequences of the felony conviction  
16 in this case. Defendant understands that unexpected immigration  
17 consequences will not serve as grounds to withdraw defendant's guilty  
18 plea.

19 FACTUAL BASIS

20 15. Defendant admits that defendant is, in fact, guilty of the  
21 offenses to which defendant is agreeing to plead guilty. Defendant  
22 and the USAO agree to the statement of facts provided below and agree  
23 that this statement of facts is sufficient to support pleas of guilty  
24 to the charges described in this agreement and to establish the  
25 Sentencing Guidelines factors set forth in paragraph 17 below but is  
26 not meant to be a complete recitation of all facts relevant to the  
27 underlying criminal conduct or all facts known to either party that  
28 relate to that conduct.

1 Defendant admits that beginning as early as October 2012, and  
2 continuing through in or about at least September 2015, in Los  
3 Angeles and Orange Counties, and elsewhere, defendant knowingly and  
4 with intent to defraud, devised, participated in, and executed a  
5 scheme to defraud clients to whom defendant had agreed to provide  
6 legal or investment services (the "scheme to defraud"), including  
7 Ottogi America, Inc. ("Ottogi") and M.B., as to material matters, and  
8 to obtain money and property from such victims by means of material  
9 false and fraudulent pretenses, representations, and promises, and  
10 the concealment of material fact.

11 As an integral part of the scheme to defraud, defendant agreed  
12 to act as Ottogi's legal representative and to purchase on Ottogi's  
13 behalf certain real estate lots in Gardena, California (the "target  
14 lots"). Defendant instructed Ottogi to transfer funds for the  
15 purchase of the target lots to Prosperity Bank Account Number  
16 xxxxxx3161, an Interest on Lawyer's Trust Account ("IOLTA") located  
17 in Texas (the "Prosperity Trust Account 3161"), and falsely  
18 represented to Ottogi that the funds transferred into Prosperity  
19 Trust Account 3161 would be used to purchase the target lots on  
20 Ottogi's behalf. Defendant did not use the money that Ottogi  
21 transferred into Prosperity Trust Account 3161 to purchase the target  
22 lots on Ottogi's behalf. Instead, without Ottogi's authorization,  
23 defendant caused Ottogi's money to be transferred to other bank  
24 accounts that defendant controlled, including a Wells Fargo Bank  
25 Account Number xxxxxx6600 in the name of Stephen Kang, Attorney at  
26 Law ("Kang Account 6600"), a Wells Fargo Bank Account Number  
27 xxxxxx8639 in the name of Gulf Technologies, Inc. ("Gulf Account  
28 8639"), and an Amegy Bank Account Number xxx2567 in the name of SGK

1 Holdings Inc. ("SGK Account 2567"), and to some of defendant's other  
2 clients.

3 For the purpose of carrying out an essential part of the scheme  
4 to defraud, on or about January 3, 2013, defendant caused the  
5 transmission of an interstate wire transfer of approximately  
6 \$1,010,000 from the Shinhan Bank America account of Ottogi, which was  
7 held in Los Angeles, California, to Prosperity Trust Account 3161,  
8 which was held in Texas.

9 As an integral part of the scheme to defraud, in or about April  
10 2013, defendant falsely represented to M.B. that he would invest  
11 approximately \$500,000 of M.B.'s money in a corporation called  
12 Pegasus Capital Ltd., L.L.C. ("Pegasus"). Defendant instructed M.B.  
13 to transfer the money to Kang Account 6600 and falsely represented to  
14 M.B. that Kang Account 6600 was a trust account. In reliance on  
15 these false and fraudulent representations, M.B. transferred \$500,000  
16 to Kang Account 6600 on or about April 30, 2013. But Defendant did  
17 not invest M.B.'s \$500,000 in Pegasus as he had promised.

18 To further and conceal the above described scheme to defraud and  
19 lull M.B., after M.B. requested that defendant return his investment,  
20 in or about September 2015, defendant agreed to provide M.B. with a  
21 "first priority security interest" in an AAA Life Insurance Company  
22 term life insurance policy, number xxxxxx7455 (the "Life Insurance  
23 Policy"). Defendant, however, failed to disclose material  
24 information regarding the Life Insurance Policy, including the Life  
25 Insurance Policy's beneficiary and death benefit, and the date upon  
26 which the Life Insurance Policy was applied for and approved.

27 For the purpose of carrying out an essential part of the above  
28 described scheme to defraud, on or about September 3, 2015, defendant

1 transmitted an interstate email regarding the return of M.B.'s  
2 \$500,000 investment and the Life Insurance Policy from Orange County,  
3 California to M.B. in Sugar Land, Texas by using defendant's email  
4 address stephenkang@earthlink.net.

5 During the calendar year 2013, in Los Angeles and Orange  
6 Counties and elsewhere, defendant had and received unreported income  
7 of at least \$1,516,000, some portion of which was taxable income, and  
8 upon which a substantial income tax was due and owing by him to the  
9 United States of America. Defendant further admits that he knew that  
10 he was required by law, on or before April 15, 2014, to prepare and  
11 file an income tax return for calendar year 2013 with the Internal  
12 Revenue Service, reporting his taxable income, and to pay such income  
13 tax.

14 Defendant admits that he willfully attempted to evade and defeat  
15 the assessment of the income tax due and owing by him to the United  
16 States of America for calendar year 2013 by failing to file an income  
17 tax return on or before April 15, 2014, as required by law, to any  
18 proper officer of the Internal Revenue Service and failing to pay the  
19 income tax to the Internal Revenue Service. Defendant further admits  
20 that he concealed and attempted to conceal from all proper officers  
21 of the United States his true and correct taxable income by  
22 committing the following affirmative acts of evasion: (1) using  
23 Prosperity Trust Account 3161, which was associated with the law  
24 office of N.H., to conceal that money defendant obtained from his  
25 client, Ottogi would be used for defendant's own benefit; (2) causing  
26 the transfer of funds from Prosperity Trust Account 3161 to Gulf  
27 Account 8639, which was a corporate account, to conceal that the  
28 money would be used for defendant's own benefit; and (3) causing the

1 transfer of funds from Gulf Account 8639, to SGK Account 2567,  
 2 another corporate account, to conceal that the money would be used  
 3 for defendant's own benefit.

#### 4 SENTENCING FACTORS

5 16. Defendant understands that, in determining defendant's  
 6 sentence, the Court is required to calculate the applicable  
 7 Sentencing Guidelines range and to consider that range, possible  
 8 departures under the Sentencing Guidelines, and the other sentencing  
 9 factors set forth in 18 U.S.C. § 3553(a). Defendant understands that  
 10 the Sentencing Guidelines are advisory only, that defendant cannot  
 11 have any expectation of receiving a sentence within the calculated  
 12 Sentencing Guidelines range, and that after considering the  
 13 Sentencing Guidelines and the other § 3553(a) factors, the Court will  
 14 be free to exercise its discretion to impose any sentence it finds  
 15 appropriate up to the maximum set by statute for the crimes of  
 16 conviction.

17 17. Defendant and the USAO agree to the following applicable  
 18 Sentencing Guidelines factors:

19	Base Offense Level:	7	[U.S.S.G. § 2B1.1(b)(1)]
20	Adjustments [Abuse of	+2	[U.S.S.G. § 3B1.3]
21	Position of Trust]:		

22 Defendant and the USAO reserve the right to argue that additional  
 23 specific offense characteristics (including loss amount),  
 24 adjustments, and departures under the Sentencing Guidelines are  
 25 appropriate.

26 18. Defendant understands that there is no agreement as to  
 27 defendant's criminal history or criminal history category.



1           19. Defendant and the USAO reserve the right to argue for a  
2 sentence outside the sentencing range established by the Sentencing  
3 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),  
4 (a)(2), (a)(3), (a)(6), and (a)(7).

5                           WAIVER OF CONSTITUTIONAL RIGHTS

6           20. Defendant understands that, by pleading guilty, defendant  
7 gives up the following rights:

8                   a. The right to persist in a plea of not guilty.

9                   b. The right to a speedy and public trial by jury.

10                  c. The right to be represented by counsel -- and if  
11 necessary have the Court appoint counsel -- at trial. Defendant  
12 understands, however, that, defendant retains the right to be  
13 represented by counsel -- and if necessary have the Court appoint  
14 counsel -- at every other stage of the proceeding.

15                  d. The right to be presumed innocent and to have the  
16 burden of proof placed on the government to prove defendant guilty  
17 beyond a reasonable doubt.

18                  e. The right to confront and cross-examine witnesses  
19 against defendant.

20                  f. The right to testify and to present evidence in  
21 opposition to the charges, including the right to compel the  
22 attendance of witnesses to testify.

23                  g. The right not to be compelled to testify, and, if  
24 defendant chose not to testify or present evidence, to have that  
25 choice not be used against defendant.

26                  h. Any and all rights to pursue any affirmative defenses,  
27 Fourth Amendment or Fifth Amendment claims, and other pretrial  
28 motions that have been filed or could be filed.

1                                    WAIVER OF APPEAL OF CONVICTION

2            21. Defendant understands that, with the exception of an appeal  
3 based on a claim that defendant's guilty pleas were involuntary, by  
4 pleading guilty defendant is waiving and giving up any right to  
5 appeal defendant's convictions on the offenses to which defendant is  
6 pleading guilty.

7                                    LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

8            22. Defendant agrees that, provided the Court imposes a term of  
9 imprisonment within or below the range corresponding to an offense  
10 level of 27 and the criminal history category calculated by the  
11 Court, defendant gives up the right to appeal all of the following:  
12 (a) the procedures and calculations used to determine and impose any  
13 portion of the sentence; (b) the term of imprisonment imposed by the  
14 Court; (c) the fine imposed by the court, provided it is within the  
15 statutory maximum; (d) the amount and terms of any restitution order,  
16 provided it requires payment of no more than the total of the amounts  
17 set forth in paragraphs 10 and 11 above; (e) the term of probation or  
18 supervised release imposed by the Court, provided it is within the  
19 statutory maximum; and (f) any of the following conditions of  
20 probation or supervised release imposed by the Court: the conditions  
21 set forth in General Orders 318, 01-05, and/or 05-02 of this Court;  
22 the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and  
23 3583(d); and the alcohol and drug use conditions authorized by 18  
24 U.S.C. § 3563(b)(7).

25            23. The USAO agrees that, provided (a) all portions of the  
26 sentence are at or below the statutory maximum specified above and  
27 (b) the Court imposes a term of imprisonment within or above the  
28 range corresponding to an offense level of 27 and the criminal

1 history category calculated by the Court, the USAO gives up its right  
2 to appeal any portion of the sentence, with the exception that the  
3 USAO reserves the right to appeal the following: the amount of  
4 restitution ordered if that amount is less than the total of the  
5 amounts set forth in paragraphs 10 and 11 above. .

6 WAIVER OF COLLATERAL ATTACK

7 24. Defendant gives up any right to bring a post-conviction  
8 collateral attack on the convictions or sentence, including any order  
9 of restitution, except a post-conviction collateral attack based on a  
10 claim of ineffective assistance of counsel, a claim of newly  
11 discovered evidence, or an explicitly retroactive change in the  
12 applicable Sentencing Guidelines, sentencing statutes, or statutes of  
13 conviction.

14 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

15 25. Defendant agrees that, if any count of conviction is  
16 vacated, reversed, or set aside, the USAO may: (a) ask the Court to  
17 resentence defendant on any remaining counts of conviction, with both  
18 the USAO and defendant being released from any stipulations regarding  
19 sentencing contained in this agreement, (b) ask the Court to void the  
20 entire plea agreement and vacate defendant's guilty pleas on any  
21 remaining counts of conviction, with both the USAO and defendant  
22 being released from all their obligations under this agreement, or  
23 (c) leave defendant's remaining convictions, sentence, and plea  
24 agreement intact. Defendant agrees that the choice among these three  
25 options rests in the exclusive discretion of the USAO.

26 RESULT OF WITHDRAWAL OF GUILTY PLEA

27 26. Defendant agrees that if, after entering guilty pleas  
28 pursuant to this agreement, defendant seeks to withdraw and succeeds

1 in withdrawing defendant's guilty pleas on any basis other than a  
2 claim and finding that entry into this plea agreement was  
3 involuntary, then (a) the USAO will be relieved of all of its  
4 obligations under this agreement; and (b) should the USAO choose to  
5 pursue any charge that was either dismissed or not filed as a result  
6 of this agreement, then (i) any applicable statute of limitations  
7 will be tolled between the date of defendant's signing of this  
8 agreement and the filing commencing any such action; and  
9 (ii) defendant waives and gives up all defenses based on the statute  
10 of limitations, any claim of pre-indictment delay, or any speedy  
11 trial claim with respect to any such action, except to the extent  
12 that such defenses existed as of the date of defendant's signing this  
13 agreement.

14 EFFECTIVE DATE OF AGREEMENT

15 27. This agreement is effective upon signature and execution of  
16 all required certifications by defendant, defendant's counsel, and an  
17 Assistant United States Attorney.

18 BREACH OF AGREEMENT

19 28. Defendant agrees that if defendant, at any time after the  
20 signature of this agreement and execution of all required  
21 certifications by defendant, defendant's counsel, and an Assistant  
22 United States Attorney, knowingly violates or fails to perform any of  
23 defendant's obligations under this agreement ("a breach"), the USAO  
24 may declare this agreement breached. All of defendant's obligations  
25 are material, a single breach of this agreement is sufficient for the  
26 USAO to declare a breach, and defendant shall not be deemed to have  
27 cured a breach without the express agreement of the USAO in writing.  
28 If the USAO declares this agreement breached, and the Court finds

1 such a breach to have occurred, then: (a) if defendant has previously  
2 entered guilty pleas pursuant to this agreement, defendant will not  
3 be able to withdraw the guilty pleas, and (b) the USAO will be  
4 relieved of all its obligations under this agreement.

5 29. Following the Court's finding of a knowing breach of this  
6 agreement by defendant, should the USAO choose to pursue any charge  
7 that was either dismissed or not filed as a result of this agreement,  
8 then:

9 a. Defendant agrees that any applicable statute of  
10 limitations is tolled between the date of defendant's signing of this  
11 agreement and the filing commencing any such action.

12 b. Defendant waives and gives up all defenses based on  
13 the statute of limitations, any claim of pre-indictment delay, or any  
14 speedy trial claim with respect to any such action, except to the  
15 extent that such defenses existed as of the date of defendant's  
16 signing this agreement.

17 c. Defendant agrees that: (i) any statements made by  
18 defendant, under oath, at the guilty plea hearing (if such a hearing  
19 occurred prior to the breach); (ii) the agreed to factual basis  
20 statement in this agreement; and (iii) any evidence derived from such  
21 statements, shall be admissible against defendant in any such action  
22 against defendant, and defendant waives and gives up any claim under  
23 the United States Constitution, any statute, Rule 410 of the Federal  
24 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
25 Procedure, or any other federal rule, that the statements or any  
26 evidence derived from the statements should be suppressed or are  
27 inadmissible.



COURT AND PROBATION OFFICE NOT PARTIES

30. Defendant understands that the Court and the United States Probation Office are not parties to this agreement and need not accept any of the USAO's sentencing recommendations or the parties' agreements to facts or sentencing factors.

31. Defendant understands that both defendant and the USAO are free to: (a) supplement the facts by supplying relevant information to the United States Probation Office and the Court, (b) correct any and all factual misstatements relating to the Court's Sentencing Guidelines calculations and determination of sentence, and (c) argue on appeal and collateral review that the Court's Sentencing Guidelines calculations and the sentence it chooses to impose are not error, although each party agrees to maintain its view that the calculations in paragraph 17 are consistent with the facts of this case. While this paragraph permits both the USAO and defendant to submit full and complete factual information to the United States Probation Office and the Court, even if that factual information may be viewed as inconsistent with the facts agreed to in this agreement, this paragraph does not affect defendant's and the USAO's obligations not to contest the facts agreed to in this agreement.

32. Defendant understands that even if the Court ignores any sentencing recommendation, finds facts or reaches conclusions different from those agreed to, and/or imposes any sentence up to the maximum established by statute, defendant cannot, for that reason, withdraw defendant's guilty pleas, and defendant will remain bound to fulfill all defendant's obligations under this agreement. Defendant understands that no one -- not the prosecutor, defendant's attorney, or the Court -- can make a binding prediction or promise regarding

1 the sentence defendant will receive, except that it will be within  
2 the statutory maximum.

3 NO ADDITIONAL AGREEMENTS

4 33. Defendant understands that, except as set forth herein,  
5 there are no promises, understandings, or agreements between the USAO  
6 and defendant or defendant's attorney, and that no additional  
7 promise, understanding, or agreement may be entered into unless in a  
8 writing signed by all parties or on the record in court.

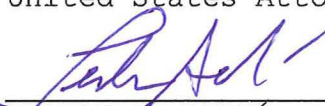
9 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

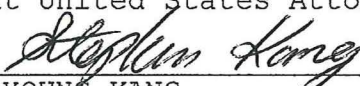
10 34. The parties agree that this agreement will be considered  
11 part of the record of defendant's guilty plea hearing as if the  
12 entire agreement had been read into the record of the proceeding.

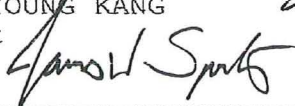
13  
14 AGREED AND ACCEPTED

15 UNITED STATES ATTORNEY'S OFFICE  
16 FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

17 EILEEN M. DECKER  
18 United States Attorney

19   
20 JULIAN L. ANDRÉ  
Assistant United States Attorney

21   
22 STEPHEN YOUNG KANG  
Defendant

23   
24 JAMES W. SPERTUS  
Attorney for Defendant  
25 STEPHEN YOUNG KANG  
26  
27  
28

November 6, 2015  
Date

November 5, 2015  
Date

November 6, 2015  
Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.



STEPHEN YOUNG KANG  
Defendant




Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am STEPHEN YOUNG KANG's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his [her] rights, of possible pretrial motions that might be filed, of possible defenses

1 that might be asserted either prior to or at trial, of the sentencing  
2 factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing  
3 Guidelines provisions, and of the consequences of entering into this  
4 agreement. To my knowledge: no promises, inducements, or  
5 representations of any kind have been made to my client other than  
6 those contained in this agreement; no one has threatened or forced my  
7 client in any way to enter into this agreement; my client's decision  
8 to enter into this agreement is an informed and voluntary one; and  
9 the factual basis set forth in this agreement is sufficient to  
10 support my client's entry of guilty pleas pursuant to this agreement.

11   
12 \_\_\_\_\_  
13 JAMES W. SPERTUS  
14 Attorney for Defendant  
15 STEPHEN YOUNG KANG

November 6, 2015  
\_\_\_\_\_  
Date

**United States District Court  
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No.

CR 15-478(A)-GWJS-3Defendant STEPHEN YOUNG KANGSocial Security No. 7 5 8 5

akas: \_\_\_\_\_

(Last 4 digits)

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
02	29	2016

**COUNSEL**James W. Spertus; Diane H. Bang, Retained.

(Name of Counsel)

**PLEA****GUILTY**, and the court being satisfied that there is a factual basis for the plea.**NOLO  
CONTENDERE****NOT  
GUILTY****FINDING**There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:**18 U.S.C. § 1343: WIRE FRAUD and 26 U.S.C. § 7201: TAX EVASION as charged in the First Superseding Indictment.****JUDGMENT  
AND PROB/  
COMM  
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: **Sixty-three months.**

It is ordered that the defendant shall pay to the United States a special assessment of \$300, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Defendant shall pay restitution in an amount to be determined. Restitution Hearing is set for March 28, 2016 at 8:00 a.m. Government's brief will be filed by March 18, 2016. Defendant will respond by no later than March 24, 2016.

Restitution shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least 10% of defendant's gross monthly income but not less than \$200, whichever is greater, shall be made during the period of supervised release and shall begin 30 days after the commencement of supervision. Nominal restitution payments are ordered as the Court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the amount ordered.

If the defendant makes a partial payment, each payee shall receive approximately proportional payment unless another priority order or percentage payment is specified in the judgment.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The defendant shall comply with General Order No. 01-05.

All fines are waived as it is found that the defendant does not have the ability to pay a fine in addition to restitution.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Stephen Young Kang, is hereby committed on Count 8, 22, and 29 of the First Superseding Indictment to the custody of the Bureau of Prisons for a term of 63 months.

USA vs. **STEPHEN YOUNG KANG**Docket No.: **CR 15-478-GW**

This term consists of 63 months on each of Counts 8 and 22 of the First Superseding Indictment and 60 months on Count 29, all to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 8, 22, and 29 of the First Superseding Indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation Office, General Order 05-02, and General Order 01-05, including the three special conditions delineated in General Order 01-05.
2. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment.
3. The defendant shall cooperate in the collection of a DNA sample from the defendant.
4. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
5. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath and/or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
6. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the United States Probation Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant has reverted to the use of drugs, and the defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.
7. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the defendant's drug and alcohol dependency to the aftercare contractors during the period of community supervision, pursuant to 18 U.S.C. § 3672. The defendant shall provide payment and proof of payment as directed by the Probation Officer.
8. The defendant shall truthfully and timely file and pay taxes owed for the years of conviction, and shall truthfully and timely file and pay taxes during the period of community supervision. Further, the defendant shall show proof to the Probation Officer of compliance with this order.
9. The defendant shall not engage, as whole or partial owner, employee or otherwise, in any business involving loan programs, investment programs or any other business involving the solicitation of funds or cold-calls to customers without the express approval of the Probation Officer prior to engaging in such employment. Further, the defendant shall provide the Probation Officer with access to any and all business records, client lists, and other records pertaining to the operation of any business owned, in whole or in part, by the defendant, as directed by the Probation Officer.
10. The defendant shall not be employed in any position that requires licensing and/or certification by any local, state, or federal agency without the prior written approval of the Probation Officer.
11. The defendant shall apply all monies received from income tax refunds to the outstanding court-ordered financial obligation. In addition, the defendant shall apply all monies received from lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to the outstanding



USA vs. **STEPHEN YOUNG KANG**Docket No.: **CR 15-478-GW**

court-ordered financial obligation.

The Court authorizes the Probation Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

Defendant's self-surrender date shall be set on March 28, 2016.

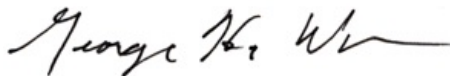
The Government's request to dismiss the remaining counts of the underlying Indictment and the First Superseding Indictment is granted.

The Court advises defendant of his rights to an appeal. The Court recommends, but does not order, that defendant (1) be placed in a 500-hour drug program while incarcerated; and (2) serve his term at the Prison Camp at Sheridan, Oregon.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

April 6, 2016

Date



GEORGE H. WU, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

April 6, 2016

Filed Date

By /S/ Javier Gonzalez

Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

#### STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

USA vs. **STEPHEN YOUNG KANG**Docket No.: **CR 15-478-GW**

☐ The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

#### STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15<sup>th</sup>) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
  - Private victims (individual and corporate),
  - Providers of compensation to private victims,
  - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

#### SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

#### RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on	_____	to	_____
Defendant noted on appeal on	_____		
Defendant released on	_____		
Mandate issued on	_____		
Defendant's appeal determined on	_____		
Defendant delivered on	_____	to	_____

USA vs. **STEPHEN YOUNG KANG**

Docket No.: **CR 15-478-GW**

at \_\_\_\_\_  
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Deputy Marshal

**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

\_\_\_\_\_  
Filed Date

By \_\_\_\_\_  
Deputy Clerk

---

---

**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
U. S. Probation Officer/Designated Witness

\_\_\_\_\_  
Date

**United States District Court  
Central District of California**

**\*\*AMENDED\*\***

UNITED STATES OF AMERICA vs.

Docket No.

CR 15-478(A)-GWJS-3Defendant STEPHEN YOUNG KANGSocial Security No. 7 5 8 5

akas: \_\_\_\_\_

(Last 4 digits)

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
02	29	2016

**COUNSEL**James W. Spertus; Diane H. Bang, Retained.

(Name of Counsel)

**PLEA****GUILTY**, and the court being satisfied that there is a factual basis for the plea.**NOLO  
CONTENDERE****NOT  
GUILTY****FINDING**There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:**18 U.S.C. § 1343: WIRE FRAUD and 26 U.S.C. § 7201: TAX EVASION as charged in the First Superseding Indictment.****JUDGMENT  
AND PROB/  
COMM  
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: **Sixty-three months.**

It is ordered that the defendant shall pay to the United States a special assessment of \$300, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Defendant shall pay restitution in the total amount of \$8,765,834.24 to victims as set forth in a separate victim list prepared by the probation office which this Court adopts and which reflects the Court's determination of the amount of restitution due to each victim. The victim list, which shall be forwarded to the fiscal section of the clerk's office, shall remain confidential to protect the privacy interests of the victims.

Restitution shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least 10% of defendant's gross monthly income but not less than \$200, whichever is greater, shall be made during the period of supervised release and shall begin 30 days after the commencement of supervision. Nominal restitution payments are ordered as the Court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the amount ordered.

If the defendant makes a partial payment, each payee (other than the Internal Revenue Service) shall receive an approximately proportional payment. Restitution to the Internal Revenue Service shall be paid after all other victims receive full restitution.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The defendant shall comply with General Order No. 01-05.

All fines are waived as it is found that the defendant does not have the ability to pay a fine in addition to restitution.

**EXHIBIT****4**

USA vs. **STEPHEN YOUNG KANG**Docket No.: **CR 15-478-GW**

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Stephen Young Kang, is hereby committed on Count 8, 22, and 29 of the First Superseding Indictment to the custody of the Bureau of Prisons for a term of 63 months. This term consists of 63 months on each of Counts 8 and 22 of the First Superseding Indictment and 60 months on Count 29, all to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 8, 22, and 29 of the First Superseding Indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation Office, General Order 05-02, and General Order 01-05, including the three special conditions delineated in General Order 01-05.
2. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment.
3. The defendant shall cooperate in the collection of a DNA sample from the defendant.
4. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
5. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath and/or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
6. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the United States Probation Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant has reverted to the use of drugs, and the defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.
7. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the defendant's drug and alcohol dependency to the aftercare contractors during the period of community supervision, pursuant to 18 U.S.C. § 3672. The defendant shall provide payment and proof of payment as directed by the Probation Officer.
8. The defendant shall truthfully and timely file and pay taxes owed for the years of conviction, and shall truthfully and timely file and pay taxes during the period of community supervision. Further, the defendant shall show proof to the Probation Officer of compliance with this order.
9. The defendant shall not engage, as whole or partial owner, employee or otherwise, in any business involving loan programs, investment programs or any other business involving the solicitation of funds or cold-calls to customers without the express approval of the Probation Officer prior to engaging in such employment. Further, the defendant shall provide the Probation Officer with access to any and all business records, client lists, and other records pertaining to the operation of any business owned, in whole or in part, by the defendant, as directed by the Probation Officer.
10. The defendant shall not be employed in any position that requires licensing and/or certification by any local, state, or federal agency without the prior written approval of the Probation Officer.
11. The defendant shall apply all monies received from income tax refunds to the outstanding court-ordered

USA vs. **STEPHEN YOUNG KANG**Docket No.: **CR 15-478-GW**

financial obligation. In addition, the defendant shall apply all monies received from lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.

The Court authorizes the Probation Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

It is further ordered that the defendant surrender himself to the institution designated by the Bureau of Prisons at or before 12 noon, on May 12, 2016. In the absence of such designation, the defendant shall report on or before the same date and time, to the United States Marshal located at the Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012.

The Government's request to dismiss the remaining counts of the underlying Indictment and the First Superseding Indictment is granted.

The Court advises defendant of his rights to an appeal. The Court recommends, but does not order, that defendant (1) be placed in a 500-hour drug program while incarcerated; and (2) serve his term at the Prison Camp at Sheridan, Oregon.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

April 6, 2016

Date



GEORGE H. WU, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

April 6, 2016

Filed Date

By /S/ Javier Gonzalez

Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

#### **STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE**

While the defendant is on probation or supervised release pursuant to this judgment:



USA vs. **STEPHEN YOUNG KANG**Docket No.: **CR 15-478-GW**

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

☐ The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

### STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15<sup>th</sup>) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
  - Private victims (individual and corporate),
  - Providers of compensation to private victims,
  - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

### SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. **STEPHEN YOUNG KANG**Docket No.: **CR 15-478-GW****RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

Defendant noted on appeal on \_\_\_\_\_

Defendant released on \_\_\_\_\_

Mandate issued on \_\_\_\_\_

Defendant's appeal determined on \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By \_\_\_\_\_

\_\_\_\_\_  
Date\_\_\_\_\_  
Deputy Marshal**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By \_\_\_\_\_

\_\_\_\_\_  
Filed Date\_\_\_\_\_  
Deputy Clerk**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_  
Defendant\_\_\_\_\_  
Date\_\_\_\_\_  
U. S. Probation Officer/Designated Witness\_\_\_\_\_  
Date

AFFIDAVIT

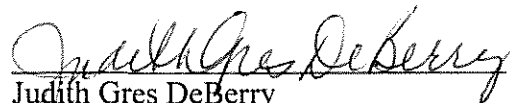
THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

BEFORE ME, the undersigned authority, on this day personally appeared Judith Gres DeBerry, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

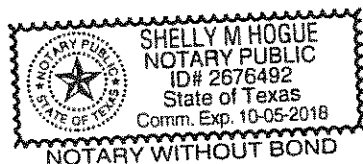
"My name is Judith Gres DeBerry. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

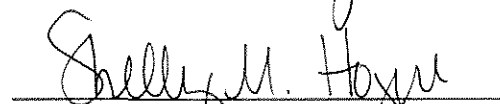
Based upon information and belief, Stephen Young Kang, whose Texas Bar Card Number is 24007465, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief Stephen Young Kang, named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Stephen Young Kang who is the subject of the Amended Judgment and Probation/Commitment Order entered in Cause No. 15-478(A)-GW, styled *United States of America v. Stephen Young Kang*, in the United States District Court for the Central District of California, wherein Respondent pled guilty to Wire Fraud and Tax Evasion and was committed to the custody of the Bureau of Prisons to be imprisoned for a term of sixty-three (63) months and ordered to pay restitution in the amount of \$8,765,834.24."

FURTHER Affiant saith not.

  
Judith Gres DeBerry

SWORN AND SUBSCRIBED before me on the 25 day of May 2016.



  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

EXHIBIT

5