PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **STEVEN CHRISTOPHER RIVAS,** A Member of the State Bar, No. 213649.	)	**Case Nos.: 15-O-13859, 16-O-14241, 16-O-15010, 16-O-15280-DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent **Steven Christopher Rivas** (Respondent) is charged here with 14 counts of misconduct including violations of (1)Business and Professions Code[1] section 6106 (moral turpitude – misappropriation) [three counts]; (2) rule 4-100(A) of the Rules of Professional Conduct[2] (failure to maintain client funds in trust account) [three counts]; (3) section 6068, subdivision (a) (failure to obey laws – failure to pay medical liens) [three counts]; (4) rule 4-100(B)(3) (failure to render accounts of client funds); (5) rule 3-110(A) (failure to act with competence [two counts]; (6) rule 3-700(D)(2) (failure to return unearned fees); and (7) section 6106 (moral turpitude – misrepresentation). The court finds culpability and recommends discipline as set forth below.

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

[2] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

PERTINENT PROCEDURAL HISTORY

This decision results from the filing of two separate notices of disciplinary charges. The initial notice of disciplinary charges (NDC) was filed by the State Bar of California in case No. 15-O-13859 on August 16, 2016. When Respondent did not file a timely response to that NDC, the State Bar filed a motion for entry of his default on September 13, 2016. Less than a week later, on September 19, 2016, Respondent, then acting as counsel for himself, filed his response to the NDC, denying all of the allegations of culpability contained therein.

On September 19, 2016, an initial status conference was held. At that time a trial date of December 13, 2016, was set.

On October 14, 2016, a substitution of attorney was filed by Respondent, naming attorney Samuel Bellicini as his attorney.

On November 9, 2016, the parties filed a joint stipulation to abate the pending case because of the anticipated filing by the State Bar of new charges against Respondent in the near future. On November 11, 2016, the requested abatement order was issued.

On November 28, 2016, the NDC in case Nos. 16-O-14241, 16-O-15280, and 16-O-15010 was filed.

On December 28, 2016, Respondent filed a response to the new NDC. In his response to Count 5 of the new charges, Respondent admitted that he "mishandled the money belonging to the lien holder" but otherwise denied the allegations of that count.

On January 9, 2017, a status conference was held in the cases. At that time the cases were consolidated and given a trial date of April 18, 2017, with a five-day trial estimate.

Trial was commenced on April 18, 2017, and completed on April 19, 2017,[3] at which time the matter was submitted for decision. The State Bar was represented at trial by Senior Trial Counsel Kim Kasreliovich. Respondent was represented at trial by Samuel Bellicini.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's responses to the notices of disciplinary charges, the stipulation of undisputed facts filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on June 4, 2001, and has been a member of the State Bar at all relevant times.

Case No. 15-O-13859 (Rivas Matter)

Paul Rivas (Paul) is Respondent's cousin. On August 18, 2010, Paul, his wife Joanna (Joanna), and their two children were involved in an automobile accident. Paul, Joanna, and their minor daughter, Megan, were injured.

The Rivases then went to Respondent in December 2010 to represent them in pursuing their personal injury claims. Because the Rivas' vehicle had been rear-ended by an insured driver, Respondent anticipated that his new clients' claims could be readily resolved and he indicated to his new clients that he would represent them for free.

On July 19, 2012, when Respondent had been unable to obtain any pre-litigation settlement of the three claims and was becoming concerned about the running of the applicable statute of limitations, Respondent filed a complaint on behalf of the injured three family

[3] Because the trial of this matter could have been completed in one day but had to be extended into the second day solely because of the unavailability of a prosecution witness, the parties stipulated, and this court ordered, that the costs assessed to Respondent would be predicated on the trial having lasted only one day.

members in the San Diego Superior Court.[4] Because Megan was still a minor, her grandfather, Fred Rivas (Fred) [father of Paul] was appointed to serve as her guardian ad litem in the litigation. Fred is a disbarred attorney who was then working as a paralegal in Respondent's office.

On July 13, 2013, the parties attended a mediation during which the three plaintiffs' cases was settled for a total of $65,000, with $50,000 of this sum being allocated to Joanna, $6,000 to Paul, and $9,000 to Megan (but the latter amount being subject to obtaining court approval of a minor's compromise). This money was to be paid by Farmers Insurance on behalf of the defendant-driver.

Anthem Blue Cross had provided medical insurance coverage for much, but not all, of the extensive medical services received by Paul, Joanna, and Megan as a result of the accident. Under its policy, it had contractual liens on the proceeds of their personal injury claims. Meridian Resource Company had been retained by the insurer to enforce those liens.

On July 16, 2013, three days after the mediation, Meridian, on behalf of Anthem Blue Cross, wrote Respondent to confirm that the total amount of its liens on the recoveries of the three Rivas plaintiffs was $31,900.48. This overall lien resulted from medical expenses of $1,390.60 being paid by Anthem Blue Cross on behalf of Paul; $27,878.76 being paid on behalf of Joanna; and $2,631.12 being paid on behalf of Megan. (See Ex. 9, pp. 2-4, and Ex. 17, p. 19.) This figure had also been provided by Meridian to Respondent before the mediation on July 13, 2013.

[4] The son, also in the accident, was not injured in it and was not named as a party in the lawsuit.

On July 29, 2013, Respondent wrote to Meridian, acknowledging that the total amount of Joanna's medical expenses paid by Anthem Blue Cross was $27,878.76.[5] Taking the position that most of those expenses had resulted from a pre-existing condition, rather than from the accident, Respondent offered to settle Meridian's lien on Joanna's $50,000 settlement for $2,787.87, a reduction of 90% of the lien.

Paul, Joanna, and Megan had also received medical attention after the accident from Dawson and Ma Chiropractic, which had contractual liens, signed by Respondent and his clients, on the proceeds of their personal injury settlements. The Dawson and Ma Chiropractic patient ledgers indicate total charges of $2,130 for Joanna, $1,800 for Paul, and $730 for Megan. (Ex. 13, pp. 13-16.) Adding the amounts of these three liens to the $31,900 Meridian lien reveals overall medical liens totaling $36,560 against the $65,000 of settlement proceeds. Broken down more appropriately by plaintiff/patient, Joanna's $50,000 settlement was subject to medical liens totaling $30,008.76; Paul's $6,500 settlement was subject to liens totaling $3,190.60; and Megan's $9,000 settlement was subject to liens totaling $3,361.12.

On July 30, 2013, Respondent received two settlement checks from Farmers Insurance, one for $50,000 and the other for $6,000, which he then deposited into his client trust account at Citizens Bank. These checks represented Farmers' funding of the settlements with Paul and Joanna, but not the settlement with Megan (which required approval of a minor's compromise). On July 31, 2013, the day after receiving these checks, Respondent transferred $5,000 from his client trust account to his operating account, dropping the balance of the funds held in trust to $52,514.53, below the amount that he was then required to be maintaining in trust. (Ex. 15,

[5] The amount of Meridian's lien against Megan's portion of the settlement was $2,631 and the amount of the chiropractor's lien was $730. Although Respondent represented to the superior court in his application for a minor's compromise that the original amount of the chiropractor's lien had been $1,000 (see Ex. 17, p. 31), that representation is inconsistent with the chiropractor's patient ledger for Megan. (See Ex. 13, p. 16.)

p. 7.)[6] Respondent had neither the consent of his clients or the lien holders nor any legal authority to unilaterally withdraw any portion of the $56,000 from his trust account at that time.[7]

At the time of the mediation and resulting settlement, Respondent had never presented to his clients for execution any written attorney's fee agreement, and none has ever been either presented to or executed by the clients since that time. Instead, because Respondent had originally agreed to handle the matter without a fee, emphasizing that the Rivases were "family," his clients were of the belief that there would be no fee for his services or that his fee would be at a very reduced rate.

On August 1, 2013, the balance in Respondent's CTA had been further reduced to $47,514.53, as a result of an additional unilateral transfer by Respondent of another $5,000 from the CTA to Respondent's operating account. (Ex. 15, p. 9.)

On August 6, 2013, Respondent issued a check on his client trust account to Paul Rivas in the amount of $4,125. He also presented his clients with a "breakdown" of the settlement proceeds being paid by Farmers Insurance. Starting with the fact that Farmers would be paying a

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[6] While all but the last four digits of the bank account to which the funds were transferred are redacted, a comparison of those four digits to the identical last four digits of a check issued on the operating account (see Ex. 14, p. 2) makes clear that the transfer was to that account.

[7] No oral agreement had been reached with the clients regarding what legal fees would be owed to Respondent in the event they were successful in their personal injury lawsuit. In the absence of such an agreement, Respondent had no clear contractual entitlement to any portion of the funds and instead had only a right to seek a quantum meruit recovery of the reasonable value of his services. Moreover, even if there had been an oral agreement regarding Respondent's contingency fee, Respondent's failure to comply with section 6147, which requires, inter alia, that there be a written contingency fee agreement, signed by his clients, and that a copy of that signed agreement be provided to the clients, would make any such oral agreement voidable at the option of the clients. In that event, Respondent would again only be entitled to recover a reasonable fee. (Section 6147, subd. (b).) In neither of those situations would Respondent be entitled to unilaterally determine his own fee and then withdraw that sum from the clients' funds in his client trust account without the knowledge and consent of his clients. (See, e.g., *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034 [attorney who withdrew CTA funds under mistaken belief that client had authorized use of funds for fees culpable of willful misappropriation and moral turpitude]; see also *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 587-588.)

total of $65,000, Respondent indicated that Paul was to receive a "payout" of $4,125; Joanna was to receive $19,125; and Megan was to receive $6,750. This breakdown then provided that the "remaining balance to cover all medical liens totaling over $50,000.00 and attorneys fees." (Ex. 8.) The Rivases understood this language to mean that, if there was any surplus of settlement funds after the medical liens had been resolved and any legal fees had been paid, they would receive that surplus. Undisclosed to the Rivases, either by the document or by Respondent at the time, was Respondent's intent to construe this document as entitling him to keep all of the remaining funds from the settlement, except for those portions that he might be required to pay to resolve the outstanding liens. Respondent also did not disclose to his clients that, while the "breakdown" indicated that the total amount of the liens "exceeded $50,000," the actual amount of these liens was well less than that number;[8] that he had already put into play a scheme whereby he was seeking to settle the liens for a small fraction of that amount; and that he had already offered to settle Meridian's $27,878.76 lien against the $50,000 Joanna settlement for only $2,787.87.

On August 9, 2013, Respondent issued a check to Joanna Rivas in the amount of $19,125. On that date, Respondent, as a fiduciary, was required to maintain in the CTA sufficient funds from the Paul and Joanna settlements to cover the medical liens attaching to those two settlements. Those two liens totaled $33,199.36. Just subtracting Respondent's two client payouts, totaling $23,250, from the $56,000 received from Farmers, shows that Respondent had failed to maintain in his CTA the funds required to secure those two liens, even assuming that no other withdrawals had been made from the account.

[8] As previously noted, the Dawson and Ma Chiropractic patient ledgers for the Rivases indicate total charges of $2,130 for Joanna, $1,800 for Paul, and $730 for Megan. (Ex. 13, pp. 13-16.) Adding the amounts of those three liens to the $31,900 Meridian lien yields a grand total of $36,560.

During the month of August 2013, only $3,700 of new money was deposited into Respondent's CTA. Nonetheless, he continued to make significant transfers of thousands of dollars from his CTA to his operating account throughout the balance of the month: **$5,000** on August 8; **$3,500** on August 13; **$3,500** on August 16; **$3,500** on August 19; **$2,500** on August 21; **$2,500** on August 23; and **$2,500** on August 27. (Ex. 15, p. 9.) By the last day of August 2013, the balance of the CTA had been reduced to $10,212.33.

These large transfers continued in September 2013. Before any new money had been deposited into the account, an additional $8,000 had been transferred from Respondent's CTA to his operating account. (Ex. 15, p. 11.) On September 6, 2013, the balance of Respondent's CTA was down to $2,326.

Three months later, on November 13, 2013, the balance of Respondent's CTA had been further reduced to just $40.14. None of the liens, totaling $33,199.36, against the proceeds of the Paul and Joanna Rivas' settlements had yet been resolved or paid. In addition, neither client had authorized Respondent to pay any portion of the funds to himself, and Respondent had not disclosed to his clients the fact that he had been transferring their settlement proceeds to his operating account. Hence, at that point Respondent had misappropriated $33,159.22 of the Paul and Joanna settlement funds from his CTA.[9]

On December 17, 2013, Respondent again offered to pay Meridian $2,787.87 in full satisfaction of Meridian's claim against the Joanna $50,000 settlement. (Ex. 11, p. 2.) In his letter, he indicated that he would be addressing Meridian's liens against the Paul and Megan Rivas' settlements in a separate letter. No evidence was submitted to this court to indicate that any such letter was ever sent.

[9] Calculated by comparing the $33,199.36 of liens against those funds, which was required to still be maintained in the account, against the $40.14 balance of funds then still in the account.

On December 18, 2013, Respondent issued a $2,000 check to Dawson and Ma Chiropractic "for payment for Joanna, Paul and Megan Rivas." This check was not issued on Respondent's client trust account, but instead utilized funds from his operating account. (Ex. 14.) The letter accompanying this payment does not indicate that Dawson and Ma Chiropractic had agreed to settle its three liens for that $2,000 payment. Instead, the records of Dawson and Ma Chiropractic indicate that this check was merely credited as a payment on the accounts of Paul and Joanna Rivas, with reduced but still outstanding balances remaining after that payment was received. No credit resulted from this payment toward Megan's charges at Dawson and Ma Chiropractic.[10]

On January 9, 2014, Meridian agreed to accept $2,787.87 in full settlement of its claims "related to the above-referenced date of loss [8/18/2010]." Although Respondent had offered this sum to settle only the lien against the Joanna settlement, the language of the letter was broad enough to indicate that the settlement would extend to the liens against the other two settlements as well. The letter, however, indicated that its settlement offer was only valid for two months from the date of its letter. (Ex. 12.) Despite this deadline, Respondent did not pay the $2,787.87 to Meridian within that two-month period. Instead, he did not fund this proffered agreement until March 9, 2017, more than three years later. That 2017 payment was, of course, well after the charges in this disciplinary matter had been filed and even after the Rivas portion of this case had been scheduled to be tried in December 2016.

On December 10, 2014, Respondent opened a new CTA at Chase Bank with an initial deposit of $2,000.

[10] On March 15, 2017, Dr. Ma of Dawson and Ma Chiropractic executed a statement that his office had agreed to take payment of $2,000 to settle the accounts of Paul and Joanna Rivas and that the Megan account had already been paid in full. (Ex. 1017.) As a result, that firm's liens have now been resolved.

On December 31, 2014, Paul Rivas requested by text message that Respondent provide an accounting of funds. Respondent did not respond to this request for an accounting. On that day, the balance of the Chase CTA was $27.36. The balance of Respondent's CTA at Citizens Bank was $25.98. (Ex. 15, p. 44.)

On January 23, 2015, the balance of Respondent's Chase CTA was $12.36. There were no funds remaining in Respondent's CTA at Citizens Bank. [11]

On July 16, 2015, Paul Rivas again texted a request to Respondent for an accounting. No accounting was forthcoming.

Although an agreement had been reached at the July 2013 mediation to settle Megan's personal injury case for $9,000, that settlement was subject to the requirement that it be approved by the court as a minor's compromise. It was for that reason that Farmers did not fund the agreement in July 2013, as it had the Paul and Joanna settlements.

Respondent, however, did not display any diligence in seeking to obtain court approval of the Megan settlement, and he generally delegated to non-attorneys the responsibility for preparing the documents necessary to obtain that approval. As is discussed more fully below, this lack of attention by Respondent resulted in petitions for court approval of the minor's compromise being repeatedly rejected and approval of the settlement not being obtained until September 4, 2015, more than two years after the settlement had been reached in July 2013. It was not until October 16, 2015, that the Megan settlement was finally funded by Farmers.

Count 1 – Section 6106 [Moral Turpitude – Misappropriation]

In this count, the State Bar alleges that "Between July 30, 2013 and November 13, 2013, Respondent dishonestly or grossly negligently misappropriated for Respondent's own purposes $21,509.86 [sic] that Respondent's clients, or third-party lienholders, were entitled to receive.

[11] The daily balance of Respondent's CTA at Citizens Bank remained a negative number throughout January 2015 and until the account was formally closed at the end of February 2015.

Respondent thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section, 6106."

Section 6106 of the Business and Professions Code prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410; *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 208, citing *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020; *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 478.)

In the absence of client consent, an attorney may not unilaterally withhold or appropriate entrusted funds even though he may be entitled to reimbursement. (*Crooks v. State Bar* (1970) 3 Cal.3d 346, 358; *Most v. State Bar* (1967) 67 Cal.2d 589, 597.) Withholding and appropriating client funds without client consent clearly supports a finding that an attorney misappropriated funds in violation of section 6106. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034; *Jackson v. State Bar* (1975) 15 Cal.3d 372, 380-381; *In the Matter of Davis, supra*, 4 Cal. State Bar Ct. Rptr. 576, 587-588.)

Rule 4-100(A) of the Rules of Professional Conduct requires that all funds received or held for the benefit of clients by an attorney or law firm, including advances for costs and expenses, shall be deposited and maintained in a designated client trust account. This obligation includes funds held by the attorney for the purpose of paying medical liens. (*In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 286; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 10.) When an attorney receives settlement funds subject to medical liens, the attorney is obligated to maintain in trust such funds as are subject to the

liens until such liens are resolved. Failure of the attorney to do so constitutes a violation of rule 4-100(A) and, if the misappropriation is intentional, reckless, or the result of gross negligence, is an act of moral turpitude, in violation of section 6106. (See, e.g., *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 125-127.)

It is well-settled that the mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) "[O]nce the trust account balance is shown to have dipped below the appropriate amount, an inference of misappropriation may be drawn." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.)

Between Respondent's receipt of the $56,000 on July 30, 2013, and November 13, 2013, the balance of the Rivas settlement funds in his client trust account was reduced to $40.14. Other than the two "payouts" of $4,125 to Paul on August 6, 2013, and $19,125 to Joanna on August 9, 2013, the remaining disbursals of the funds were transfers of the funds by Respondent from the trust account to himself. Those transfers were without any contractual or legal entitlement, represented misappropriations by Respondent of funds belonging to the clients and/or subject to medical liens, and represented multiple acts of moral turpitude, in willful violation of the prohibition of section 6106.

Respondent's claim that his clients' execution of the "breakdown" document in August 2013 somehow entitled him to withdraw the funds and keep any funds that were not needed to resolve the various medical liens is without merit. While Respondent states that his clients agreed to receive only the "payouts" specified in the breakdown agreement, there is nothing in the document and no credible evidence that the clients ever agreed to any such arrangement. Instead, subsequent actions of the parties indicate the absence of any such agreement. For

example, while the minor's compromise requirement for the Megan settlement was still unsatisfied, Respondent and Paul Rivas exchanged emails in which they debated the amount of fees Respondent was to receive. Had there already been an agreement guaranteeing but limiting the amount of money Megan was to receive, there would have been no reason for any such discussion. At no time in that interchange did Respondent ever indicate that the fee issue had previously been resolved by the purported "breakdown" agreement. Further, when Respondent eventually pursued the minor's compromise, he did not structure it to effect the payout reflected in the breakdown. In his first, but ultimately aborted, effort at a minor's compromise, he suggested that Megan was to receive only $3,389.00, far less than the $6,750 figure in the "breakdown" document. Later, in a subsequent minor's compromise petition, one that he took credit for having personally drafted (see Ex. 1013, Decl., p. 5, lines 1-9), Respondent arranged for Megan to receive only $6,020 of the $9,000 settlement. Moreover, while Respondent now seeks to justify the purported "breakdown" agreement by claiming that he had agreed to become personally responsible for paying all of the existing liens with the settlement funds exceeding the three payouts (or with his own funds, if necessary), in each of the proposed minor's compromises that he submitted to the court he asked the court to approve using a portion of Megan's "payout," rather than any of the surplus funds he was supposed to be retaining, to resolve the chiropractor's lien on her funds. Ultimately, this is precisely what the court did. Had there been the "breakdown" agreement that Respondent now claims, this conduct by him would have been a clear breach of it.

More significantly, even if the Rivas clients orally agreed to Respondent's proffered "breakdown" agreement, it would not have entitled Respondent to have withdrawn the funds that he did. In the first instance, at least one of his $5,000 withdrawals took place before he had even presented the "breakdown" document to his clients. More significantly, Respondent's decision

to enter into such an agreement with his existing clients would have required him to comply with rule 3-300. (See *In re Silverton* (2005) 36 Cal.4th 81, 85-88.) The purported agreement described by Respondent here is remarkably similar to that addressed by the court in *Silverton.* As described by the Supreme Court in its decision:

> The Review Department determined that the arrangement involving a compromise of the medical bills was a business transaction, in that "the authorization to compromise constituted an immediate transfer from the Hous of both the ownership and possessory interest in all funds remaining after payment to the Hous of their distributive share of the settlement proceeds and the payment of attorney fees as called for in the original retainer agreement" in exchange for an upfront payment by the attorney. The transaction was therefore barred unless Silverton could show that "(A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and [¶] (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and [¶] (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition." (Rule 3-300; see generally *Fletcher v. Davis* (2004) 33 Cal.4th 61, 69–70 [14 Cal.Rptr.3d 58, 90 P.3d 1216].) The Review Department determined that Silverton (1) failed to disclose to the Hous information necessary for a reasonable understanding of the transaction, (2) failed to provide the Hous with written notice of their right to seek independent legal counsel, and (3) failed to discharge his burden to show the transaction was fair and reasonable to the Hous. In particular, Silverton failed to share with his clients, as he had with cocounsel Watson, his confidence that the medical bills could be compromised at a lower amount. (See *Mayhew v. Benninghoff* (1997) 53 Cal.App.4th 1365, 1369 [62 Cal.Rptr.2d 27].)

(36 Cal.4th at p. 86.)

> The Supreme Court went on to conclude:
>
> We have undertaken an independent determination of the law and facts in this matter (*In re Rose* (2000) 22 Cal.4th 430, 457 [93 Cal.Rptr.2d 298, 993 P.2d 956]) and accept and adopt the conclusions of the Review Department that Silverton violated rule 3-300 with respect to the Hou matter [.]

(36 Cal.4th at p. 89.)

As was the case in *Silverton*, Respondent here (1) failed to disclose to the Rivases information necessary for a reasonable understanding of the transaction, (2) failed to provide them with written notice of their right to seek independent legal counsel, (3) failed to discharge his burden to show the transaction was fair and reasonable to the Rivases, and (4) failed to share with his clients his confidence that the medical bills could be compromised at a lower amount and that he was already in the process of doing so.

In sum, no justification exists for Respondent's unauthorized withdrawals of the funds belonging to the clients and subject to the medical liens. Instead, those withdrawals represented repeated and intentional acts of moral turpitude in willful violation of section 6106.

Count 2 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

Rule 4-100(A) requires that "funds received or held for the benefit of clients" shall be deposited in a client trust account. Under this non-delegable duty, an attorney must maintain such client funds in trust until outstanding balances are settled. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 277-278; *In the Matter of Blum*, *supra*, 4 Cal. State Bar Ct. Rptr. 403, 411; *In the Matter of Bleecker*, *supra*, 1 Cal. State Bar Ct. Rptr. 113, 123.)

In this count, the State Bar alleges that Respondent received $56,000 of settlement proceeds on behalf of two of his three Rivas clients; that those funds were subject to medical liens of the clients' two medical providers; that Respondent failed to maintain a balance of $21,550 in his client trust account on behalf of the clients and the medical lienholders; and that his failure to maintain those funds in trust violated his duties under rule 4-100(A).

In his response to this count in the NDC, Respondent admitted to "mishandling money belonging to Meridian" in violation of rule 4-100(A), but otherwise denied the allegations of this count.

This court concurs with Respondent's admission that he violated rule 4-100(A) by his failure to maintain sufficient funds in his client trust account, but finds that his "mishandling" of funds was not limited to the money belonging to Meridian. As discussed above, the misconduct also extended to funds belonging to his clients and to funds subject to the various contractual liens. The amount of funds "mishandled" by Respondent is equal to, and indeed exceeds, the $21,550 alleged in the NDC.

However, because the conduct underlying this violation is essentially the same as that underlying the finding above, that Respondent is culpable of the more serious misconduct of committing acts of moral turpitude (misappropriation) in willful violation of section 6106, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403; *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. 119, 127.)

Count 3 – Business and Professions Code Section 6068, subd. (a) [Failure to Uphold Laws – Failure to Pay Medical Liens]

On January 9, 2014, Meridian agreed to accept $2,787.87 in full satisfaction of its lien claims against the Rivas' settlement proceeds. Respondent had previously offered to pay this sum in settlement of the Meridian lien if Meridian agreed to accept it in satisfaction of the significantly greater lien. Despite the fact that Meridian had, on January 9, 2014, accepted Respondent's offer to pay, Respondent did not pay the $2,787.87 to it until March 9, 2017, when he sent Meridian a check for $2,787.87 "in full satisfaction of their claim." This payment was, of course, well after the charges in this disciplinary matter had been filed and after this Rivas portion of the case had been scheduled to be tried in December 2016. Moreover, although

Meridian's agreed lien obligation, until it was paid, should have always been secured by the retention in trust by Respondent of a sufficient portion of the settlement funds to satisfy the lien, Respondent failed to maintain in trust such funds. Instead, on March 23, 2015, the amount of all funds held by Respondent in his trust account was $7.00. On June 8, 2015, it was $2.47. (Ex. 16, pp. 22, 48.)

In this count, the State Bar alleges that Respondent's failure to promptly pay the lien after the amount of it had been agreed, coupled with his failure to retain sufficient proceeds of the settlement proceeds in trust to cover the lien, constituted violations by him of his fiduciary duties and, therefore, violations of section 6068, subdivision (a). In the NDC, the State Bar specifically refers to the California Supreme Court's decision in *Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156, as authority for this count.

To the extent that Respondent failed to maintain funds subject to existing medical liens in his client trust account, that conduct violated his duties under section 6106 and rule 4-100(A), as discussed above. To the extent the State Bar relies on Respondent's failure to promptly pay out client funds to satisfy existing medical liens, that failure violated Respondent's obligations under rule 4-100(B)(4), which requires attorneys to "[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive." This obligation includes the duty to pay valid medical liens where the attorney is holding client funds for that purpose. (See, e.g., *In the Matter of Dyson*, *supra*, 1 Cal. State Bar Ct. Rptr. 280, 286; *In the Matter of Mapps*, *supra*, 1 Cal. State Bar Ct. Rptr. 1, 10.)

While this court agrees that Respondent's conduct, described above, failed to comply with his professional obligations, this court declines to find that section 6068, subdivision (a), provides a platform for the imposition of discipline here for that misconduct. Respondent's

failure to maintain the settlement proceeds in his client trust account is already the basis for a finding of culpability by this court. There is no justification for a duplication of charges for that misconduct. Moreover, repeated decisions of the Supreme Court and the Review Department of this court make clear that the broad language of subdivision (a) of section 6068 does not provide a basis for imposing discipline for conduct violating other more specific disciplinary statutes and Rules of Professional Conduct. (See, e.g., *Baker v. State Bar* (1989) 49 Cal.3d 804, 815; *Sands v. State Bar* (1989) 49 Cal.3d 919, 931 [section 6068, subd. (a), provides no culpability for violation of section 6106]; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 278-280 [violations of sections 6147 and 6148 are not disciplinable offenses under section 6068, subdivision (a), because breach of those sections "may be charged as violations of the Rules of Professional Conduct."]; and *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 482-487.) In *In the Matter of Dyson, supra*, 1 Cal. State Bar Ct. Rptr. 280, 286, this court specifically held that a respondent's failure to promptly pay a medical lien "does not amount to a separate violation of [Respondent's] duties under section 6068(a)[.]" The same conclusion was reached in the very first published decision of this court, *In the Matter of Mapps, supra,* 1 Cal. State Bar Ct. Rptr. 1, 9-10.

The State Bar's reliance on the Supreme Court's decision in the *Johnstone* matter to seek additional culpability under section 6068, subdivision (a), is inexplicable. The respondent in that matter was found culpable only of a violation of section 6106, not section 6068, subdivision (a). (See 64 Cal.2d at p. 156.) That decision provides no basis for disregarding the many adverse decisions cited above.

While it would have been possible for the State Bar to have pursued here a violation of rule 4-100(B)(4) (see *In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. 602, 617-618), it did not do so. At the same time, had it done so, Respondent's culpability for violating that rule

would have also been addressed by section 6106 and, hence, would have provided no additional weight in determining the appropriate discipline. (*In the Matter of Sampson, supra*, 3 Cal. State Bar Ct. Rptr. 119, 127-128.)

This count is dismissed with prejudice.

Count 4 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

In this count, the State Bar alleges that, after receiving the $56,000 in settlement funds, Respondent "thereafter failed to render an appropriate accounting to the clients regarding those funds following the clients' request for such accounting on or about December 14, 2014 and July 16, 2015, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3)."

Rule 4-100(B)(3) requires a member to "maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]"

Respondent was asked by Paul on several occasions, including in December 2014, to provide an accounting, including a full accounting of Joanna's case and a whole breakdown of the fees assessed. No accounting was prepared by Respondent until March 17, 2017, just before the commencement of the trial of this disciplinary case, and even that accounting was not accurate.

Respondent's failure to provide an accounting for more than two years after the clients requested one constituted a willful violation by him of his obligations under Rule 4-100(B)(3). (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)

Count 5 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges:

> In or about December 2010, Paul and Joanna Rivas employed Respondent to perform legal services, namely, to represent them in connection with a personal injury matter, which Respondent intentionally, recklessly, or

repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by the following:

A) failing to file a Petition for a Minor's Compromise with the Court until May 2, 2014, even though the matter was settled in July 2013;

B) improperly filing the Petition for a Minor's Compromise on three separate occasions on or about May 2, 2014, November 5, 2014, and January 30, 2015, each of which was rejected by the Court; and

C) failing to file an acceptable Petition for a Minor's Compromise until August 17, 2015.

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

During the State Bar's investigation of this matter, Respondent acknowledged that "The complaint from my Cousin Paul is well taken. There is no excuse for needing 4 attempts to get the [Minor's Compromise] Petition accepted. And whether you say it took one year (my view) or two (Complainant's view) to get the court order, it's still too long." (Ex. 1013; Decl. p. 6, lines 11-13.) In this proceeding, however, Respondent has denied any culpability for that delay. This court finds to the contrary.

When the Rivases' personal injury suit was settled, it was understood that Megan's portion would need to be approved by the court as a minor's compromise. As a result, although Megan's guardian ad litem signed a receipt and release of liability on July 17, 2013, acknowledging receipt of the $9,000 settlement payment (Ex. 6, p. 3), Farmers waited until after the minor's compromise had been filed and approved before actually releasing the settlement funds.

No effort was made to file a minor's compromise on behalf of Megan for the balance of 2013. In January 2014, according to Respondent's sworn statement to the State Bar during its investigation, Respondent had a petition prepared and then personally tried to file it in the San Bernardino Superior Court, despite the facts that Megan's personal injury action was venued in

the San Diego Superior Court and the proffered petition utilized the San Diego court's file number. Perhaps not surprisingly, the San Bernardino court rejected the attempted filing and Respondent "was told to file it in San Diego County." (Ex. 1013, Decl., p. 4, lines 21-24.)

Although Respondent already had a prepared petition seeking approval of Megan's settlement, he then failed to make any effort to file it in the San Diego court until May 2, 2014, more than three months later. No explanation has been given for this delay, given that the petition had already been prepared.

The petition filed on May 2, 2014, was signed by Respondent, was purportedly reviewed by him, is demonstrably flawed, and was rejected by the court. Glaring problems included, but are not limited to, the following: (1) putting the wrong file number on the petition; (2) indicating that the case being settled was pending in the "Superior Court of California, County of Riverside"; (3) having the petition filed by Paul Rivas, although Megan was still represented in the litigation by the appointed guardian ad litem, Fred Rivas; (4) checking the box indicating that Megan had "recovered completely" while providing only an aged medical report indicating that her condition was "guarded"; (5) failing to complete the portion of the form inquiring whether the Petitioner (here Paul) was also a claimant receiving money as a result of the same incident (Question 12b(2)); (6) failing to provide a completed or accurate declaration by Respondent regarding his claim for a 25 percent contingency fee, despite the stated requirement that he fill out and execute under penalty of perjury the attached Attachment 14a (Question 14);[12] and, most significantly, (7) providing incomplete, inaccurate, conflicting, and completely confusing

[12] Question 14 required Respondent, as Megan's attorney, to fill out the Attachment 14a under penalty of perjury, explaining the basis for the amount of the requested fees, discussing the applicable factors set out in the Probate Code, and attaching a copy of any written fee agreement. A review of the Attachment 14a attached to this petition reveals that Respondent did sign the affidavit under penalty of perjury. He just failed to put any information in it, other than to represent that he was the attorney for the Petitioner (Paul Rivas), but not the Plaintiff (Megan). (Ex. 17, p. 12; see also response to Question 18e.)

information regarding the liens to which the Megan settlement was subject. (See Ex. 17, p. 6.) The result of this garbled information was that Respondent ended up requesting that Megan receive a net payout from her $9,000 settlement of only $3,389 - in stark contrast to the $6,750 "payout" contained in the "breakdown" document.

In late 2016, Respondent provided two written declarations under penalty of perjury regarding his involvement in the preparation of this first petition submitted to the San Diego court. An analysis of his self-described role in the petition's preparation makes clear that his involvement in the document's preparation was scant at best. In his first declaration, submitted to the San Diego court in August 2015 as part of a subsequent petition for the requested minor's compromise, Respondent reported that the petition had been largely prepared by Fred Rivas, then a paralegal in Respondent's office, despite the fact that Fred "had recently badly broken his right elbow and humerus, and the broken bone was not set for approximately six weeks" and "[Fred] was on potent pain medication." After Respondent then goes on in this declaration to describe how busy he personally was with other matters during that time, he then recounts:

> I personally reviewed the Minor's Compromise that was submitted but my limited attention was focused on making sure The Firm's fee request was limited to 25% and the third party lien holders were previously satisfied with adult plaintiff payouts and only the Chiropractor, Dr. Ma, remained to be compensated. Those issues were portrayed properly in the initial Minor's Compromise, however, the remainder of the petition was ill-conceived and properly rejected by the Court."

(Ex. 17, pp. 29-30.)

In stark contrast to Respondent's assertion above - that his limited review of the petition had focused on the lien information to make certain that it accurately showed that only the chiropractor's lien remained to be paid and that he had found that the reported information "was portrayed properly" - are the observations of the San Diego Superior Court in rejecting the

petition. With regard to the accuracy of the information regarding the existing liens, the court noted:

> At Item 13, it is indicated that there were $3,361 in medical expense with $2,631 being paid by a medical plan. At 13b.(f)(i) it is indicated that no reimbursement is requested by the plan. Then at 13 b.(5)(a) it is stated that there are liens in the amount of $3,361 but that the lienholders have agreed to accept the total sum of $730. At Para. 15b.(3) Petitioner requests "other expenses" of $2,631 as shown in item 14b. Item 14b is not marked so it is unknown what the $2,631 represents, although it appears to represent the paid medical expenses of $2,631 and the outstanding amount owed of $730 (yet, Petitioner states no reimbursement was required above the $730) [see also 17.c. stating the total amount from the settlement to pay for medical expenses is $3,361.]
>
> The balance of proceeds to be paid to the minor, as stated on the petition, is $3,389.

(Ex. 17, p. 14.)

Had Respondent exercised any diligence in supervising the work of his paralegal in preparing this petition prior to twice seeking to file it, the problems with the confusing information in it regarding the liens would have been immediately obvious - especially given the impact it had on the proposed payout.

Respondent's second sworn statement regarding his role in the preparation of the petition was prepared by him on September 30, 2015, little more than a month after his first declaration, and was provided by him to the State Bar in conjunction with its investigation. It also makes clear how little supervision he exercised over the preparation of the petitions seeking approval of the minor's compromise. In this declaration, he first reported on the initial botched effort to file the petition in the San Bernardino court and then states:

> A few months later in May of 2014 a second attempt was made in San Diego. The petition was rejected for unknown reasons. I reviewed the document with particular emphasis paid to the firm receiving no more than twenty five percent (25%) and the remaining funds being placed in a blocked account until Megan reached the age of 18.

(Ex. 1013, Decl. p. 5, lines 3-6.)

If Respondent had actually reviewed the May 2014 petition "with particular emphasis paid to ... the remaining funds being placed in a blocked account" he would have noticed that the petition did not ask that the funds be placed in a blocked account. Instead, it requested that the funds ($3,389.00) "be paid or delivered to a parent of the minor ... without bond." (Ex. 17, p. 9.) Moreover, if he had been actively involved in trying to get the petition filed, he would have also known that this was one of the very reasons given by the San Diego court for denying the May 2014 petition. (See Ex. 17, p. 14 ["Finally, the Court believes the balance due the minor should be deposited into a blocked account."].)

At some time after Fred Rivas was fired by Respondent's firm, Respondent turned the minor's compromise issue over to a newly-hired paralegal (Arcie Rios), who then "prepared the compromise over the months of September and October 2014." Respondent recounted in his declaration that this paralegal's "first attempt was rejected due to a mathematical error." (Ex. 1013, Decl. p. 5, lines 7-13.) Although Respondent does not elaborate on the nature of this mathematical error, the court's order rejecting the new submittal makes clear how obvious the mistake should have been to Respondent, had he been exercising any diligence in supervising this paralegal's work:

> The recently submitted proposed order states that the balance to be paid to the minor is $7,980. This is after taking deductions from the $9,000 for attorneys' fees of $2,250 and medical expenses of $730. No mention is made of the $2,631 in medical expenses. If fees of $2,250 are allowed and the medical expenses of $730 deducted, this does not result in a balance to the minor of $7,980.

(Ex. 17, p. 14.)

After these first three unsuccessful efforts at filing an appropriate petition for a minor's compromise, Respondent reported to the State Bar that "the error in the Minor's Compromise was addressed and quickly refiled in San Diego." He then went on in his declaration to report on the outcome of that fourth filing effort:

> The Rivas Firm had relocated to Los Angeles County and switched banking institutions. Mrs. Rios [the new paralegal] mistakenly used the old firm credit card and the filing fee could not be processed. The clerk in San Diego returned the petition to the previous address and the package was not forwarded to my Claremont office. After a month or so, about March of 2015, I personally contacted the San Diego Superior Court and learned that the six dollar filing fee was charged to an expired credit card. I obtained the tracking number and learned that the petition was in the state of Tennessee. I called FedEx in Tennessee and was promised my package would be sent next day air to my office. A week to two weeks later when the package was still not delivered, I called Tennessee again. I was again told that my important legal document would be shipped next day air to my office. A week later the package was still missing. I called a third time and a nice gal informed me that the package had been destroyed two days earlier.

(Ex. 1013, Decl., p. 5, lines 14-27.)

The ongoing incompetence of Respondent's subordinates in the handling of this minor's compromise requirement makes Respondent's ongoing lack of any urgency in personally monitoring the situation especially troublesome to this court. This concern is magnified when one reviews the text messages then being sent to Respondent by Paul Rivas, expressing unhappiness about the ongoing delay in securing the money owed to his daughter.

On March 13, 2015, after several prior unanswered texts to Respondent, Paul sent the following text message to Respondent: "Steve It's been 90 days and still no word on Meg case. Haven't received any response from you and tried reaching out to you but no response." In response, Respondent replied:

> They rejected the packet. They did not give a reason. Arcie called the Clerk's office and they said they were gonna mail it to us and there "might be" an explanation from the judge. We have not received it yet. That was a month ago. I reviewed the packet and it appeared solid. So I'm not sure what the hell happened. I'm in SF on a case ....We can meet next week."

On April 27, 2015, more than a month later, Paul, not having heard anything further, texted Respondent: "Hi Steve Can you tell me what's up with Megan case. It's almost 5 months

now and still no closure. We are approaching 2 years now." Shortly after receiving this text, Respondent provided the following response:

> Paul, I personally called on it last week. I also met with Arcie last Thursday to address this issue. A clerk was saying I owed them 35 bucks for the return package. I, of course, said what package? It was never returned to us! In any event, we had prepaid the postage prior to re-filing the minors comp. She said she would track the document and send me an email. I will check my email tonight and get back to you. Give me until the end of the week to get it refiled. I'm almost home.
>
> Lastly, I want to say that I reviewed the minors comp request and it was flawless. I've done about 20 minors comps in my career and cannot understand what could have gone wrong. The court in San Diego has me baffled. I will find out tomorrow and contact you immediately.

(Ex. 4, pp. 6-7.)

Despite Respondent's assurance that the petition would be re-filed by the end of the next week, it was not. Nor was it filed by the end of the next month. On June 23, 2015, Paul sent Respondent a text asking the status of the case. "Is there a way I can go to san diego to settle megs case. I really need to settle this now ... 2 years and counting." In response, Respondent replied on June 24, 2015:

> We got the document back. I will review and update, then refile This week. I've been buried with civil discovery and immigration cases. Happy Father's Day. LJ no longer works for me and I've been training a new girl for a couple of weeks. She's pretty good already. She'll get that damn thing lodged with the San Diego court if I have to make her drive down there.

(Ex. 4, p. 9.)

The following week, on June 29, 2015, Paul texted Respondent to inquire, "Did megs paperwork get delivered last week." Respondent quickly responded the same day:

> Yessir. The document was in Tennessee, where packages go to die. It went out for service Thursday of last week. It will go through this time.

Despite Respondent's assurances that the petition had gone out for service the prior Thursday, no petition was filed by Respondent in June. Nor was one filed in July. Instead,

Respondent's declaration, provided to the State Bar in September 2015, contains the following chronology of what happened:

> After the FedEx fiasco, I made two attempts to piece together the Minor's Compromise that Mrs. Rios had drafted and file them in San Diego. I was given notice of the courts concerns regarding Joanna Rivas receiving the majority of the settlement funds. It was at this time that I decided to tackle the project myself. I spent no less than twenty hours going through the file and learning the logic of the Minor's Compromise procedure. On August 17, 2015, I sent a courier to file my draft of the Minor's Compromise (please see Minor's Compromise, attached hereto as Exhibit F). To my knowledge, the Minor's Compromise for Megan Rivas is now complete. We await a final order with checks to follow.

(Ex. 1013, Decl., p. 6, lines 1-9.)

While Respondent's belated decision to become personally involved in preparing and filing the minor's compromise petition resulted in the settlement eventually being approved, this petition sought to have Megan receive only $6,075 from the $9,000 settlement, less than the payout set forth in his breakdown of July 2013. Further, although Respondent has testified in this proceeding that the Rivases agreed that he could keep the settlement funds exceeding those payouts in exchange for his commitment to use that money to pay all existing liens, the petition he filed in August 2015 used a portion of Megan's payout to pay the chiropractor's $730 lien. Finally, despite Respondent's agreement in December 2014, confirmed in writing by him at the time, that he would seek only a 20 percent contingency fee for the Megan settlement (see Ex. 4, p. 15), his petition sought, and he received, a fee calculated at 25 percent, the maximum allowed by the Probate Code.

Respondent's lack of diligence in pursuing the required court approval of Megan's settlement, his decision to delegate the preparation and filing of the required papers to non-attorney staff, who were not adequately supervised by him, and his own lack of competence in preparing and reviewing the papers sent to the court constitute reckless and repeated failures by him to act with competence, in willful violation of rule 3-110(A). (*In the Matter of Klein*

(Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7 [delay of six months in filing bankruptcy petition is reckless failure to perform]; *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641-642 [delay of over two months in obtaining temporary restraining order to protect client from harassing phone calls was reckless failure to perform].)

Case No. 16-O-14241 (Campbell Matter)

In mid-2014, August Campbell retained Respondent to file an adjustment of status on Campbell's behalf. Campbell was a Canadian citizen, married to a citizen of the United States. The contemplated adjustment of status was dependent on that marital status. Campbell paid Respondent an advanced legal fee of $1,000 and $1,070 to cover the cost of the filing fee for the anticipated petition.

After retaining Respondent to prepare and file the petition, problems developed in Campbell's marriage, resulting in Campbell and Respondent agreeing to withhold the filing of any adjustment petition until those marital problems had been resolved. In the interim, Respondent continued to hold both the advanced legal fee and the money advanced for the filing fee.

In early 2016, Campbell notified Respondent that he was in a position to go forward with his petition for an adjustment of status and requested Respondent to submit it fairly promptly, indicating that he was interested in joining the Army Reserve, which required him to have a green card, and that he also needed the green card to get a Hazmat Endorsement for his commercial license. "There are opportunities out there Steve but I desperately need your help to succeed." (Ex. 31, p. 1.) In response, Respondent replied that he was meeting with his secretary "LJ" [Laura Jean Borao, hereinafter Borao] that night and she would be contacting Campbell the next day. (*Ibid.*)

On March 25 and 28, 2016, Campbell texted Respondent to determine the status of the filing of the adjustment petition, noting that he had received no notification from the United States Citizenship and Immigration Services (USCIS) of the filing of the petition.[13] On April 4, 2016, Campbell again texted Respondent, indicating that Borao had previously informed him that the petition had been sent out, but that nothing had yet been received back from USCIS. In this email, Campbell inquired whether USCIS had now sent back a receipt. When Respondent did not reply to this text, Campbell sent a follow-up text on the next day, April 5, 2016.

Although Borao had previously indicated to Campbell that the petition had already been sent to the USCIS for filing, there is much evidence to suggest that such was not the case. Respondent replied to Campbell's inquiry of April 6, 2016, indicating that "It will be received by Friday ... come hell or high water. Sorry for the delay." (Ex. 31, p. 4.) More significantly, Respondent presented to this court as evidence a copy of a portion of his check register, indicating that the check for the filing fee was not written until April **11**, 2016, at least a week after Campbell had been assured that the petition had been previously filed and several weeks after Campbell had been inquiring about the petition's filing status. (Ex. 1029.)

On May 6, 2016, still not having received word that the adjustment petition had been filed, Campbell again texted Respondent to get a status report. In this text, he inquired whether Respondent had received any verification from USCIS that it had cashed or received payment from Respondent with regard to the petition. In response, Respondent replied by text: "No word yet. It's been out a month at least. I hate when this Shit happens." (Ex. 31, p. 6.)

Campbell then began to inquire of Respondent's secretary Borao regarding the status of the petition. On May 9, 2016, Borao emailed Campbell that "they have received a bulk and are going through them. I will keep you posted[.]" Thereafter, on May 17 and then again on May

[13] Campbell had created an account with USCIS, which he could log into to check on the status of his cases.

26, 2016, Campbell inquired of Borao by email regarding whether the adjustment petition had been filed. On both occasions, Borao responded that there was no indication that it had been accepted by the federal authority. Her response to the May 26 inquiry went on to speculate that the reason for the problem was because Respondent's check to cover the filing fee had bounced. She then recommended that Campbell hire another attorney to handle the matter:

> Nothing. I have ask Steve [Respondent] several times if that check cleared for $1070.00. he hasn't replied to me. I checked on line and they haven't received it. you should of got something by now August. This is effing stupid!!! The only thing I can think of August is that check he wrote not clearing.[14] If I was you I would have another attorney take care of this problem, because this attorney doesn't return calls or txt. I already told another client not to make payments until he sees some kind of progress going on I'm sorry August. If I had the money I would of sent it a long time ago, and I'm serious about that. I will locate your file and send you all your originals and what ever you need.

(Ex. 32, p. 1.)

Campbell then acted to hire another attorney and on May 31, 2016, terminated Respondent and requested Borao to forward to him his papers.

Although Respondent had not yet completed his work of actually filing the adjustment petition, he neither provided an accounting to Campbell regarding any fee that he might be claiming nor promptly refunded to Campbell any unearned fees. Campbell then complained to the State Bar.

On March 17, 2017, shortly before the scheduled trial in this matter, Respondent sent a letter of apology and a cashier's check in the amount of $2,070 to August Campbell, representing a return of all funds that Campbell had previously deposited with Respondent.

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[14] Respondent was obligated to maintain in his client trust account the $1,070 advanced by Campbell to pay for the anticipated filing fee. He did not do so. While the records of the client trust account subpoenaed by the State Bar end with the last day of March 2016, the balance of Respondent's CTA on March 28, 2016 was $24.83. (Ex. 16, p. 95.) This is strong evidence, albeit not clear and convincing, supporting Borao's speculation that the petition had not been filed because Respondent's check bounced.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent's failure to file the adjustment petition for two years after he had been retained to do so constituted intentional, reckless and repeated failures by him to act with competence, in willful violation of rule 3-110(A).

The evidence at trial failed to provide clear and convincing evidence that Respondent's failure to file the Campbell's status adjustment petition reflected a violation of rule 3-110(A). The uncontradicted evidence at trial was that virtually all of the two-year delay in preparing the petition resulted from Campbell's marital problems and that Respondent agreed and needed to withhold filing the petition until Campbell's marital status had stabilized. In sum, nothing about that delay reflects any lack of competence by Respondent.

While this court certainly does not endorse the subsequent lack of any real diligence by Respondent and his office in following up on and then responding to the problems with the petition being lost in the mail and/or mishandled by USCIS, given how quickly Campbell terminated Respondent after the problem became apparent, that lack of diligence does not rise to the level of being intentional, reckless or repeated.

For all of the above reasons, this count is dismissed with prejudice.

Count 2 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) provides that a member whose employment has terminated shall promptly refund any part of a fee paid in advance that has not been earned.

Although Respondent might have provided some services for Campbell by preparing papers to file on Campbell's behalf, he failed to follow up on the matter to see that those papers were, in fact, filed, despite numerous expressions of concern by the client that the petition had not been filed and ongoing indications that the filing fee had not been cashed. Eventually, on the

advice and encouragement of Respondent's secretary, who had been involved in the aborted filing, Campbell terminated his relationship with Respondent and hired another attorney.

Respondent's disregard for the need to follow up on the attempted filing, despite his client's expressions of concern, meant that Respondent had not completed the work for which he had been paid and, in turn, had the effect of depriving his client of any value from any work that Respondent had actually performed. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 424 [attorney may not retain advanced fees if minimal services performed are of no value to client].) Under such circumstances, Respondent was required, at a minimum, to provide an accounting to his client and then refund that portion of the fee that remained unearned. Respondent failed to do either on a timely basis. Instead, it was not until March 17, 2017, that Respondent refunded the entire legal fee to his client, at least a portion of which was unearned, together with the $1,070 filing fee that been advanced by the client and never received by USCIS.

Respondent's failure to refund the unearned portion of the fee for nearly a year after he had been terminated by the client, and then only after a formal complaint by the client had resulted in the filing of disciplinary charges against him, represented a willful violation by him of his obligations under rule 3-700(D)(2).

Case No. 16-O-15010 (Cerna Matter)
Case No. 16-O-15280 (Dannelley Matter)

On June 10, 2014, Martin Cerna (Cerna) and Brittney Dannelley (Dannelley) hired Respondent to handle personal injury claims by them resulting from an automobile accident that occurred on June 1, 2014. Respondent, Cerna, and Dannelley thereafter signed medical liens with Placentia Chiropractic for Cerna and Dannelley to receive treatment from that facility.

On January 19, 2015, Respondent sent a letter to Mercury Insurance Group, demanding that it pay benefits to Cerna and Dannelley pursuant to the "med pay" portion of its policy. This

policy contained a provision making such benefits reimbursable in the event the expenses related to personal injuries for which a claim was being made against others. Respondent's letter to Mercury indicated (1) that Cerna had incurred medical expenses totaling $3,090.27, including $1,347.47 at Placentia Chiropractic Center; and (2) that Dannelley had incurred expenses of $4,391.89, including $1,181.89 at Placentia Chiropractic Center. In his letter, Respondent informed Mercury that the expenses resulted from injuries sustained by Cerna and Dannelley due to an auto accident with Chris Nivela and gave the claim number of the claim against the other driver's insurance company, Infinity Insurance.

On February 17, 2015, Respondent had a conversation with a claim representative of Mercury. In a letter to Mercury from Respondent that same day, Respondent asked that Mercury, which was requesting an "EOB" from Respondent's clients, not delay making at least a partial payment of the claim: "Can you make a distribution and have them sign a reimbursement agreement?" (Ex. 1023.)

Prior to settlement, Mercury Insurance issued two checks for Cerna for medical expenses: one for $958.21 on March 18, 2015, and one for $946.47 on April 3, 2015, for a total of $1,904.68. On May 12, 2015, Mercury issued a check to Dannelley for medical expenses in the amount of $752. The Rivas firm was named as a payee on all three checks and the checks were sent to him by the insurer. Respondent testified that he deposited these checks into his account, while retaining one-third of them as his fee for securing them.

The Cerna/Dannelley personal injury case settled for $9,000 in May 2015, with Infinity Insurance issuing on May 15, 2015, a $4,000 check to Cerna and a $5,000 check to Dannelley. Both checks also named the Rivas firm as an additional payee. On May 26, 2015, Respondent deposited these two checks, totaling $9,000, into his Chase CTA.

On May 29, 2015, Respondent paid Cerna and Dannelley a total of $4,000 as their shares of the settlement and retained the remaining $5,000. Of this sum, Respondent was entitled to retain $3,000 as his fee, resulting in the remaining balance of the settlement proceeds being well below the cumulative total of the liens and reimbursement claims of Mercury Insurance and Placentia Chiropractic. Worse, on June 1, 2015, the balance in Respondent's CTA dropped to $463.47.

On June 11, 2015, Mercury sent two letters to Respondent, one requesting reimbursement for the medical expense funds of $1,904.68 paid by it to Cerna, the other requesting reimbursement of the $752 paid by it to Dannelley. (Ex. 26, pp. 1-2.) Each of these letters was explicit in reminding Respondent that "As provided in the policy, reimbursement must be made to us when the bodily injury claim has been settled with the other party or their carrier."

Mercury sent additional letters to Respondent requesting reimbursement on June 18, 2015, July 9, 2015, and July 31, 2015 (which included an offer to reduce the requested amount for prompt payment), August 21, 2015, and October 22, 2015 (also including an offer to reduce for prompt payment). Mercury also subsequently e-mailed Respondent on July 6, 2016. In several of its letters, Mercury provided Respondent with the names of cases affirming its right to receive reimbursement for advanced medical payments.

On June 30, 2015, the balance in Respondent's CTA was $3.08.

On July 8, 2015, Respondent sent a letter to Placentia Chiropractic offering to settle the matter for $1,500. In this letter, Respondent falsely represented that he had lowered his fee to 25 percent "because the plaintiffs are young and starting up a new family." In fact, Respondent had not lowered his fee at all. Placentia Chiropractic declined the offer but countered at a reduced rate of $1,850 and asked to see a disbursement of the settlement. Respondent did not reply to that offer and did not provide the requested disbursement record.

After writing repeatedly to Respondent regarding its demands for reimbursement, Mercury began writing directly to Cerna and Dannelley, demanding reimbursement of the funds previously paid to them through Respondent. The first of these letters was sent on September 11, 2015, followed by letters dated November 16, 2015, December 4, 2015, December 31, 2015, January 22, 2016, March 11, 2016, April 11, 2016, and May 18, 2016. In the latter letters, the insurer made threats of referring the collection matter to legal counsel.

Cerna and Dannelley, upset and concerned by the collection letters being sent to them, repeatedly contacted Respondent, both to notify him of the letters they were receiving and to seek his assistance in resolving the situation. As set out more fully below, Respondent's replies both provided his clients with false reassurances about the situation and reflected a complete indifference by Respondent to the rights of the creditors and the potential liabilities of his clients.

On November 2, 2015, after Dannelley had contacted Respondent about the Mercury letters, Respondent responded:

> Good morning, Brittany. Please do not worry about the winding up of the case. This is what I do for a living. It commonly takes between 3 to 12 months to wind it all up. You received a fair amount. We will take care of the rest. [¶] I'm super busy on two deadlines today. We can talk tomorrow evening if you like.

(Ex. 29, p. 1.)

There is no evidence that Respondent did anything to "wind up" the case after receiving the expression of concern by his client. Instead, on December 8, 2015, Dannelley, after receiving another demand letter from Mercury, sent the following text to Respondent: "Hey I just got another letter from Mercury. Just want to clarify that I do not need to be concerned." In response, Respondent replied:

> Nope. It's just like every other case. Your settlement was not big enough to reimburse those guys. It may take a letter and a call from me, as opposed to an understudy. December is the month to handle all these ancillary tasks. Mix [sic] schedule clears next week. Keep in touch.

There is no evidence that Respondent took any steps in December to resolve Mercury demand of reimbursement by Cerna and Dannelley. As a result, it continued to send demand letters to them. On February 4, 2016, Dannelley sent another concerned text to Respondent: "Hey Steve we keep getting letter from Mercury saying we owe, just wanna make sure everything was taken care of? And we don't need to worry about that[.]" Once again, Respondent made no effort to pay any portion of the settlement funds that had been entrusted to him to resolve Mercury's demands now directed at his clients.

On March 8, 2016, Dannelley texted Respondent to express concern that she and Cerna were now receiving demand communications from Placentia Chiropractic Center. In her text, she complained that "you told me awhile ago that u took care of it and said that we were getting 250$ back. I'm confused." After Respondent apparently advised Dannelley to provide the chiropractor's office with his phone number, she indicated that she would do so. Within two hours, she reported back to Respondent that the office already had his number. Thirteen days later, on March 21, 2016, Dannelley sent Respondent a text complaining, "Steve the chiropractor has tried calling your office On the agreement we signed that i have in front of me it says you we're [sic] going to pay. You told me you already paid, what's going on[?]" (Ex. 29, p. 3.) Respondent texted the following response:

> Brit, sorry so slow to get back. I'm moving offices again. Claremont is too dang far. I'm dealing with the chiro....don't worry your pretty head..."

When Dannelley responded that same day with the concern "They said there [sic] going to Bill us they just called today" (Ex. 29, p. 4), Respondent replied:

> Hey, I don't know who the crazy bastard is that's calling you, but he/she hasn't spoken to me. I'm no longer in Claremont, so contacting them is a waste of time. I'm way way too busy to address this today. I have 2 projects that must be foiled by 10am, and another by noon. Any lien associated with the case is with The Rivas Firm. Do not worry about those. The lien holders that are reasonable get paid within 6 months, those who aren't , well, they get paid when they get reasonable....no matter what

their collection tactics are. It's just business, Brit. I've been doing this stuff for 15 years.... [XX] Now, I really have to run, Sweetheart. Ciao."

(Ex. 29, pp. 4-5.)

Between Respondent's text on March 21, 2016, indicating that he was dealing with the chiropractor, and May 2016, Respondent took no steps to resolve the chiropractor's lien and/or the collections threats being directed at Cerna and Dannelley. Nor did he do anything to resolve the reimbursement claims of Mercury. On May 2, 2016, Dannelley texted her ongoing concern to Respondent: Mercury and chiro have both reached out to you Steve they get no response." Respondent merely replied the next day, Tuesday, May 3, 2016:

Thanks for the heads up. I'll call them on Friday. Hahaha."

(Ex. 29, p. 5 [underlining added].)

There is no evidence that Respondent contacted the chiropractor's office on that following Friday. Instead, on May 2, 2016, the chiropractor's office contacted the State Bar to initiate a complaint against Respondent. In its letter to the State Bar, a representative of the billing department of chiropractor's office's summarized the many communications that office had directed to Respondent about the outstanding Cerna/Dannelley liens and complained that no communication had been received from Respondent since his settlement offer of July 8, 2015. In this letter, the billing department representative noted that Respondent had received both the proceeds of the settlement and the "med pay" benefits that had been forwarded to cover medical expenses incurred by Cerna and Dannelley, including those at Placentia Chiropractic Center. (Ex. 25, pp. 2-3.)

On April 3, 2017, well after the charges had been filed against him in this matter, Respondent sent a check to Placentia Chiropractic Center for $1,850 on behalf of Cerna and Dannelley. (Ex. 1032.) On April 10, 2017, he sent a letter and cashier's check in the amount of $1,772 to Mercury Insurance on behalf of Cerna and Dannelley. (Ex. 1033.)

Counts 3 and 6 – Section 6106 [Moral Turpitude – Misappropriation]
Counts 5 and 8 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

At the time Respondent deposited the $9,000 of settlement proceeds on May 26, 2015, he had received a total of $11,656.68 on behalf of his clients from the two involved insurance companies, $9,000 from Infinity Insurance and $2,656.58 from Mercury. After deducting from that figure the thirty-three and one-third percent contingency fee he testified to at trial, this would yield a remaining balance of $7,771.12 to cover existing liens and then be disbursed to clients. The existing liens at the time totaled $5,186.04, made up of Mercury's $2,656.68 claim and Placentia Chiropractic Center's liens totaling $2,529.36. Deducting the amount of the liens from the $7,771.12 balance of funds available to satisfy those liens shows that there was only $2,585 available to be legally disbursed by Respondent to his clients on May 29, 2015. Instead, Respondent distributed a total of $4,000 to them at that time. To the extent that this distribution to the clients exceeded the $2,585 figure, it represented a misappropriation by Respondent of the funds entrusted to him to hold as a fiduciary. This fiduciary duty ran to the benefit of the lienholders, as well as to the clients, and precluded him from distributing to the clients funds that were encumbered by existing liens. (*In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632-633.)

Worse, Respondent's misappropriation of the funds did not end with his distribution of funds to the clients. While he still should have been maintaining over $3,700 in his client trust account after the improper $4,000 disbursement to his clients, by June 30, 2015, the balance in Respondent's CTA was only $3.08. Because no portion of the $5,186.04 in liens had yet been satisfied, this means that Respondent had misappropriated within six weeks of his receipt of the settlement funds all but $3.08 of that $5,186.04 lien amount - or $5,182.96 of funds that should have been available to pay either the lien holders or the clients.

As was also the case in the Rivas matter, above, Respondent's misappropriation of the client funds did not take place at one time, but instead was accomplished through a series of individuals transfers by Respondent of the funds to a separate account. (See Ex. 16, p. 48.) Each of those many withdrawals represented a separate misappropriation. (*In the Matter of Song, supra*, 5 Cal. State Bar Ct. Rptr. 273, 279.) This series of withdrawals, coupled with the length of time that Respondent retained the funds for his own purposes and exacerbated by his demonstrated disregard for the rights of the lien holders, the security of his clients, and his ethical obligations, makes clear that these misappropriations were intentional acts of moral turpitude, in willful violation of the prohibition of section 6106.

Turning to Counts 5 and 8, in which the State Bar alleges that Respondent's conduct also violated rule 4-100(A), this court agrees that Respondent violated rule 4-100(A) by his failure to maintain the $5,182.96 in funds in his client trust account while all of the existing liens remained unresolved. However, because the conduct underlying this violation is essentially the same as that underlying the finding that Respondent is culpable of the more serious misconduct of committing acts of moral turpitude - misappropriation, in willful violation of section 6106, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry, supra,* 3 Cal. State Bar Ct. Rptr. 390, 403; *In the Matter of Sampson, supra,* 3 Cal. State Bar Ct. Rptr. 119, 127.)

Counts 4 and 7 – Business and Professions Code Section 6068, subd. (a) [Failure to Uphold Laws – Failure to Pay Medical Liens]

In these counts, the State Bar alleges that Respondent's failures to promptly pay the liens of the chiropractor and Mercury, coupled with his failure to retain sufficient proceeds of the settlement proceeds in trust to cover those liens, constituted violations by him of his fiduciary duties and, therefore, violations of section 6068, subdivision (a). Once again, the State Bar

specifically refers to the California Supreme Court's decision in *Johnstone v. State Bar*, *supra*, 64 Cal.2d 153, 155-156, as authority for this count.

To the extent that Respondent failed to maintain funds subject to existing liens in his client trust account, that conduct violated his duties under section 6106 and rule 4-100(A), as discussed above. To the extent the State Bar relies on Respondent's failure to promptly pay out client funds to satisfy existing medical liens, that failure also violated Respondent's obligations under rule 4-100(B)(4), which requires attorneys to "[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive." This obligation includes the duty to pay valid medical liens where the attorney is holding client funds for that purpose. (See, e.g., *In the Matter of Dyson*, *supra*, 1 Cal. State Bar Ct. Rptr. 280, 286; *In the Matter of Mapps*, *supra*, 1 Cal. State Bar Ct. Rptr. 1, 10.)

While this court agrees that Respondent's conduct, described above, failed to comply with his professional obligations, for the same reasons discussed with regard to Count 3 of case No. 15-O-13859, above, this court declines to find that section 6068, subdivision(a), provides a platform for the imposition of additional discipline for that misconduct.

These two counts are dismissed with prejudice.

Count 9 - Section 6106 [Moral Turpitude – Concealment/Misrepresentation]

In this count, the State Bar alleges that "Between May 29, 2015 and December 8, 2015, Respondent stated to his client, Brittney Dannelley, that he had paid all lienholders related to her personal injury settlement when Respondent knew or was grossly negligent in not knowing that the statement was false, and thereby committed an act involving moral turpitude, dishonesty, or corruption in violation of Business and Professions Code, section 6106."

Under section 6106, "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." If this statute means anything, it means that an attorney may not intentionally lie to a client about the status of that client's matter.

Respondent repeatedly represented to Dannelley that he had satisfied the liens of the chiropractor when he was fully aware that he had not done so. He made these representations at a time when Dannelley was expressing concern about the fact that she and Cerna were receiving demand letters from the chiropractor. These false representations by Respondent to his client constituted intentional acts of moral turpitude, in willful violation of the prohibition of section 6106.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, [15] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are a significant aggravating factor here. (Std. 1.5(b).) In addition to the various counts for which he has been found culpable, multiple improper CTA withdrawals constitute multiple acts of misconduct, despite the fact that culpability was alleged and found in a single count. (*In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. 273, 279.)

Significant Harm/Failure to Make Restitution

Respondent's misconduct significantly harmed his clients. (Std. 1.5(f).)

[15] All further references to standard(s) or std. are to this source.

From the $56,000 received by Respondent on behalf of Paul and Joanna Rivas, he paid out $2,787.87 to Meridian; $4,000 to Dawson and Ma Chiropractic;[16] $4,125 to Paul Rivas; and $19,125 to Joanna Rivas, for a total payout of $30,037.87. Subtracting that sum from the $56,000 deposit yields a remaining surplus of $25,962.13, to cover any attorneys' fees and costs owed to Respondent. Even if Respondent's fees were calculated at 40 percent of the $56,000 recovery, he would still be obligated to refund a portion of this money to his clients. At the other extreme, if it were determined that he had agreed to represent the Rivases without cost to them, he would have been obligated to refund all of the surplus funds to his clients. His actions in unilaterally withdrawing and withholding all of the surplus funds, up to and through the trial of this matter, has resulted in significant harm to those clients. That Respondent has failed to make restitution of those funds is also a significant aggravating factor. (Std. 1.5(m).)

Dishonesty/Concealment

Respondent's misconduct in the Rivas matter was accompanied by numerous acts of dishonesty and active concealment. He overstated the total amount of the liens against their funds and then concealed from them his efforts, ultimately successful, to resolve those liens at at significantly lower cost. He concealed from his clients the fact that he was actively transferring their funds from his client trust account, transfers beginning almost immediately after he received the funds. He indicated to the clients that he would reduce his fee in the Megan matter to 20 percent and then collected a 25 percent fee with prior disclosure to the clients. And he affirmatively misrepresented to Paul in June 2015 that the long-awaited minor's compromise had been filed during the prior week when it had not been – and would not be for another month.

[16] Giving Respondent the benefit of the ambiguity, this $4,000 figure assumes that the note of Dr. Ma in 2017, stating that his office's lien had been satisfied by a payment of $2,000, refers to a second $2,000 payment, rather than merely to the 2013 $2,000 payment.

Such dishonesty and concealment is a significant aggravating factor. (Std. 1.5(d),(f), and (l).)

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.5(g).) He remains defiant and has no insight regarding his unethical behavior.

Further, Respondent fails to demonstrate any realistic recognition of or remorse for his wrongdoings and instead continues to assert either that his conduct was not inappropriate or, in the alternative, that other people and factors, not of his own making, are responsible for outcomes that would otherwise appear to be his fault. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) His continued insistence that his mishandling of the funds of his clients was justified is "particularly troubling" because it suggests his conduct may recur. (*In the Matter of Davis*, *supra*, 4 Cal. State Bar Ct. Rptr. 576, 595.) This is a significant aggravating factor. (Std. 1.5(g); *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235; *In the Matter of Davis*, *supra*.)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

No Prior Discipline

Respondent practiced law in California for twelve years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is generally entitled to significant weight

in mitigation. (Std. 1.6(a); *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [entitled to significant mitigation]; *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88 ["entitled to full credit" for 10 years of discipline-free practice]; *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 589 ["an important mitigating circumstance"].) However, the weight to be given that fact here is reduced greatly by the fact that the misconduct here was serious and continued for a lengthy period of time. (*In the Matter of Song, supra,* 5 Cal. State Bar Ct. Rptr. 273, 279 [assigning limited weight to this factor under comparable circumstances]; *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 116; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44.)

Cooperation

Respondent cooperated with the State Bar by entering into a stipulation related to three of the four cases at issue. Although the stipulated facts were not difficult to prove (cf. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for cooperation by stipulating to facts not easily provable]) and Respondent admitted culpability only for limited portions of the charges against him, the stipulation was relevant and assisted the State Bar's prosecution of the case. The court therefore assigns mitigation, albeit limited, for that cooperation. (Std. 1.6(e); *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Restitution

Although Respondent misappropriated the funds of his clients for his own use, he eventually used small portions of those funds to satisfy the claims of the Rivas lienholders and to refund unearned fees to complainant Campbell.

The court declines to give Respondent any mitigation credit for those actions. The authorities are clear and consistent that restitution made only after the initiation of disciplinary proceedings is not a proper source of mitigation credit. (See, e.g., *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 249, citing *Warner v. State Bar* (1983) 34 Cal.3d 36, 47; *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483, 490; *In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. 602, 619; *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 496; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 714 [delay in making restitution is aggravating, not mitigating, factor]; and *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 663, citing *Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 663.)

Character Evidence

Respondent presented good character testimony from three witnesses, including two attorneys with whom he has been associated. Each expressed complimentary views regarding Respondent's personality and character.

These three witnesses do not constitute "a wide range of references in the legal and general communities." (Std. 1.6(f).) However, because two of the witnesses were attorneys, the court accords Respondent some, but limited, mitigation credit for this evidence. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from members of bench and bar entitled to serious consideration because judges and attorneys have "strong interest in maintaining the honest administration of justice"]; cf. *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled only to limited mitigation because they did not constitute a broad range of references]; *In the Matter of Riordan* (Review Dept.

2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [testimony of four character witnesses afforded diminished weight in mitigation].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton*, *supra*, 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

The most severe sanction is found at standard 2.1(a) which recommends disbarment for intentional or dishonest misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.

In considering here the application of standard 2.1(a), the amount of the misappropriated funds certainly cannot be characterized by this court as being "insignificantly small." Nor is there any compelling mitigation.

Turning to the case law, misappropriation of client funds has long been viewed by the courts as a particularly serious ethical violation. Misappropriation breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. (*McKnight v. State Bar*, *supra*, 53 Cal.3d 1025, 1035; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar*, *supra*, 45 Cal.3d 649, 656; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) The Supreme Court has also imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. (See, e.g., *In re Abbott* (1977) 19 Cal.3d 249 [taking of $29,500, showing of manic-depressive condition, prognosis uncertain].) In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, an attorney with over 11 years of practice and no prior record of discipline was disbarred for misappropriating approximately $29,000 in law firm funds over an 8-month period. In *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost $7,900 from his law firm, coincident with his termination by that firm, and was disbarred. (See also *In the Matter of Blum, supra,* 3 Cal. State Bar Ct. Rptr. 170 [no prior record of discipline, misappropriation of approximately $55,000 from a single client]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511

[misappropriation of nearly $40,000, misled client for a year, no prior discipline]; *Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for misappropriation in excess of $10,000 from multiple clients and failure to return files with no prior misconduct in eight years]; and *Kelly v. State Bar*, *supra*, 45 Cal.3d 649 [disbarment for misappropriation of $20,000 and failure to account with no prior discipline in seven years].)

The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 656; *Waysman v. State Bar*, *supra*, 41 Cal.3d 452, 457; *Cain v. State Bar*, *supra*, 25 Cal.3d 956, 961.) The Supreme Court has also imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. (See, e.g., *In re Abbott*, *supra*, 19 Cal.3d 249 [taking of $29,500, showing of manic-depressive condition, prognosis uncertain].) In *Kaplan v. State Bar*, *supra*, 52 Cal.3d 1067, an attorney with over 11 years of practice and no prior record of discipline was disbarred for misappropriating approximately $29,000 in law firm funds over an 8-month period. In *Chang v. State Bar*, *supra*, 49 Cal.3d 114, an attorney misappropriated almost $7,900 from his law firm, coincident with his termination by that firm, and was disbarred. (See also *In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. 273 [no prior record of discipline, misappropriation of $112,000]; *In the Matter of Blum*, *supra*, 3 Cal. State Bar Ct. Rptr. 170 [no prior record of discipline, misappropriation of approximately $55,000 from a single client]; *In the Matter of Spaith*, *supra*, 3 Cal. State Bar Ct. Rptr 511 [misappropriation of nearly $40,000, misled client for a year, no prior discipline]; *Kennedy v. State Bar*, *supra*, 48 Cal.3d 610 [disbarment for misappropriation in excess of $10,000 from multiple clients and failure to return files with no prior misconduct in eight years]; and *Kelly v. State Bar*, *supra*, 45 Cal.3d 649 [disbarment for misappropriation of $20,000 and failure to account with no prior discipline in seven years].)

The need for a recommendation to avoid future misappropriation of client funds by Respondent is made even clearer by his demonstrated and sustained indifference to the rights of lien holders, to his obligation to act as a fiduciary in handling the funds of his clients, especially funds subject to third-party liens, and to the risks of harm to his clients resulting from his indifference to those obligations. Respondent's mishandling of his clients' funds here occurred on numerous occasions over an extended period of time; it was accompanied by concealment and dishonesty; it was sought to be justified in inappropriate and inadequate ways; and Respondent has continued to retain some of the fruits of that misconduct despite being put on notice that it was improper for him to do so.

On that latter point, it is imperative that any discipline in this matter include an order requiring Respondent to make restitution to the Rivases of the funds that he continues to hold without legal justification. While Respondent may be entitled to a reasonable fee for the work he performed for those clients (over and above that already awarded to him for his services for Megan), he is not entitled to continue to have the use of the misappropriated funds while that entitlement remains undecided. At the same time, if and when obtains a determination or agreement regarding the amount of his earned fees, that amount should be credited against his restitution obligation.

For all of the above reasons, a recommendation of disbarment, with a requirement of restitution, is both appropriate and necessary.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **STEVEN CHRISTOPHER RIVAS**, State Bar No. 213649, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Restitution

It is recommended that Respondent make restitution to Paul and Joanna Rivas in the amount of $25,962.13, plus 10% interest per annum from November 13, 2013 (or to the Client Security Fund to the extent of any payment from the fund to Paul and/or Joanna Rivas, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Restitution is to be made within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later. (Rules Proc. of State Bar, rule 5.136.) In the event restitution is being made by Respondent directly to Paul and Joanna Rivas, Respondent is to receive credit toward his restitution obligation for any award of legal fees for his prior representation of those former clients. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **STEVEN CHRISTOPHER RIVAS**, State Bar No. 213649, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111.)

Dated: July 26, 2017

DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 26, 2017, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION
AND INVOLUNTARY INACTIVE ENROLLMENT ORDER

in a sealed envelope for collection and mailing on that date as follows:

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

SAMUEL C. BELLICINI
SAMUEL C. BELLICINI, LAWYER
1005 NORTHGATE DR # 240
SAN RAFAEL, CA 94903

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

KIMBERLY G. KASRELIOVICH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 26, 2017.

Louisa Ayrapetyan
Case Administrator
State Bar Court