FILED JUNE 15, 2011

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **TIMOTHY WADE HESSLER,** **Member No. 231689,** A Member of the State Bar.	)	Case Nos. 07-O-13650-LMA (07-O-14322; 07-O-14560) **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this default disciplinary matter, respondent **Timothy Wade Hessler** is charged with multiple acts of professional misconduct in three client matters, including (1) failing to perform competently; (2) failing to communicate with client; (3) failing to return client files; (4) failing to obey court order; (5) failing to cooperate with the State Bar; (6) failing to maintain client funds; and (7) misappropriating more than $105,000 of settlement funds.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution.

II. Significant Procedural History

On April 21, 2008, the State Bar of California, Office of the Chief Trial Counsel (State Bar), filed and properly served on respondent a Notice of Disciplinary Charges (NDC) through his counsel, Jonathan Arons. Respondent filed an answer to the NDC.

After having received respondent's resignation with charges pending, the court abated this matter on October 24, 2008.

On January 19, 2011, the California Supreme Court declined to accept respondent's voluntary resignation and ordered this disciplinary matter to proceed promptly.

Accordingly, this matter was unabated on February 7, 2011. Because respondent failed to file a response to an order to show cause or to appear at the February 28, 2011 status conference, the court struck respondent's answer to the NDC and entered his default. Respondent was enrolled as an inactive member effective March 7, 2011. The matter was submitted on March 28, 2011, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. Respondent also admitted to certain facts in his stipulation as to facts filed October 28, 2008.

Respondent was admitted to the practice of law in California on June 23, 2004, and has since been a member of the State Bar of California.

A. Case No. 07-O-13650 – The Pridgen Matter

On or about November 18, 2004, Kai Malik Pridgen was involved in an auto accident with a truck operated by Simms Trucking Company.

On or about November 16, 2006, respondent filed, on behalf of Pridgen, a complaint for damages in *Kai Malik Pridgen v. Simms Trucking Company*, Sacramento County Superior Court, case No. 06AS04931 (Pridgen matter).

On or about March 27, 2007, the court mailed notice to respondent, at his official membership records address, that a case management conference had been scheduled for June 7, 2007. The notice contained other relevant information regarding case management. Respondent received this notice.

Respondent and Pridgen did not appear at the June 7, 2007 hearing. The court issued an Order to Show Cause for Failure to Appear and sanctioned respondent $150 to be paid within 10 days for failure to file Case Management Statement in a timely manner in accordance with Local Rule 11.055 (Case Management Program – "CMP").

On or about June 8, 2007, a copy of the Minute Order and Order to Show Cause was served on respondent at his official membership records address. Respondent received this order and notice.

On or about June 12, 2007, a notice for an Order to Show Cause (OSC) Regarding Failure to Appear was issued by the court. The OSC hearing was scheduled for July 26, 2007, and its notice was mailed to respondent at his official membership records address. Respondent received this notice.

At the July 26, 2007 OSC hearing, the Pridgen matter was dismissed without prejudice for failure to comply with CMP guidelines. Respondent received notice of this dismissal.

The next day, a copy of the Minute Order and Order of Dismissal was served on respondent at his official membership records address, which respondent received.

On or about August 23, 2007, Pridgen wrote to respondent, requesting a copy of his filed and endorsed complaint, a status update on his matter and information on how to access medical

services for treatment of injuries sustained in the accident. Respondent received this letter, but did not respond in any manner.

On or about August 31, 2007, Pridgen terminated respondent's services and hired another attorney, Kenneth Valinoti, to represent him in the auto accident.

On or about August 31, 2007, attorney Valinoti wrote to respondent, informing him that his services had been terminated and requesting the Pridgen file, including any records, reports, correspondence and other evidentiary materials. Valinoti enclosed a Substitution of Attorney form already endorsed by Pridgen, which respondent was to sign and return. Respondent received this letter and Substitution of Attorney form. Respondent did not provide the file at this time.

Between on or about August 31 and October 15, 2007, Valinoti or his assistant(s) contacted respondent at his official membership records telephone number at least 10 times requesting the Pridgen file. Respondent received these messages but did not respond, nor did he provide the file to Valinoti.

On or about October 15, 2007, Valinoti's assistant wrote to respondent again, requesting the Pridgen file. The letter represented the twelve attempt to obtain the file from respondent. Respondent received this letter.

Finally, on or about October 17, 2007, Valinoti received the file from respondent.

On or about September 17, 2007, the State Bar opened an investigation, pursuant to a complaint filed by Valinoti on behalf of Pridgen.

On or about October 22 and November 13, 2007, a State Bar investigator wrote to respondent regarding the Pridgen matter. The letters were not returned as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Pridgen matter and further notified him of his obligation to cooperate with the investigation. Respondent did not respond to the letters or otherwise communicate with the investigator.

Conclusions of Law

1. ***Count 1(A): Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))*** [1]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

By failing to appear at the June 7 and July 26, 2007 hearings and by causing the Pridgen matter to be dismissed for his failure to appear, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

2. ***Count 1(B): Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))*** [2]

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to respond to Pridgen's August 23, 2007 request for a status update and other information, by failing to inform Pridgen that he failed to appear in court on June 7 and July 26, 2007, and by failing to inform Pridgen that his matter had been dismissed, respondent failed to respond to Pridgen's reasonable status inquiry and failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

---

[1] References to rules are to the Rules of Professional Conduct, unless otherwise indicated.

[2] References to sections are to the provisions of the Business and Professions Code.

3. Count 1(C): Failure to Return Client File (Rule 3-700(D)(1))

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client papers and property.

By not releasing Pridgen's file to Valinoti until October 17, 2007, a month and a half after the client's request, respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers, in willful violation of rule 3-700(D)(1).

4. Count 1(D): Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By failing to respond to the State Bar's October 22 and November 13, 2007 letters and failing to cooperate in the State Bar's investigation of the Pridgen complaint, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

B. Case No. 07-O-14322 – The Thordsen Matter

On or about January 23, 2004, Curtis Thordsen was injured in an accident. Later in 2004, Thordsen hired respondent to represent him in a lawsuit against General Motors for the injuries sustained in the accident.

On or about July 20, 2004, respondent opened and thereafter continued to maintain his attorney client trust account (CTA) at WestAmerica Bank.

On or about August 28, 2006, Thordsen signed liens with several medical providers and respondent signed a consent to those liens. The liens were eventually sold and assigned to MedFin Manager, LLC (MedFin), as follows:

	Medical Providers	*Amount of Liens*	*Date Sold*
1.	Douglas Kindall, M.D.	$2,835.00	11/7/06
2.	Douglas Kindall, M.D.	$2,335.00	11/7/06
3.	Josefina Aquino, Kali Eswaran, M.D., Inc.	$780.00	10/4/06
4.	Josefina Aquino, Kali Eswaran, M.D., Inc.	$250.00	12/8/06
5.	Michael Ridgeway, M.D.	$7,695.00	9/19/06
6.	Michael Henry, Rehabilitation Management Systems, Inc.	$3,220.50	10/4/06
7.	Sutter Memorial Hospital	$157,546.72	10/6/06
8.	Pasquale Montesano, Spine Surgery Associates, Inc.	$12,955.00	9/28/06
9.	Pasquale Montesano, Spine Surgery Associates, Inc.	$19,270.00	9/28/06
10.	Diagnostic Pathology Medical Group, Inc.	$127.17	10/6/06
11.	Timberlake	$117.45	10/12/06
	Total Amount of MedFin Liens	***$207,131.84***	

On or about July 3, 2007, on behalf of Thordsen, respondent settled the personal injury matter against GM for $500,000.

On or about July 17, 2007, respondent deposited check No. 14661 in the amount of $500,000 made payable to Timothy Hessler, attorney and Curtis Thordsen, into his CTA.

On or about July 31, 2007, respondent provided Thorsden with the disbursement schedule for *Thordsen v. G.M.*, as follows:

(1) $165,000 in attorney's fees;

(2) reimbursement to respondent of $10,000 loan to Thordsen;

(3) costs of $60,000;

(4) MedFin lien of $208,000[3] less 10% negotiated reduction for a total of $187,200; and

(5) $197,800 to Thordsen.

On or about July 30, 2007, respondent wired Thordsen $197,800 from his CTA. Thereafter, respondent was required to hold at least $187,200 for the benefit of the lien holder MedFin or pay the funds to MedFin.

From on or about July 30, 2007 through at least April 21, 2008, respondent did not pay any of the sums due MedFin on behalf of Thordsen.

On or about September 1, 2007, Thordsen terminated respondent's services and hired attorney David Brown to represent his interests with regard to the outstanding lien issue with MedFin and respondent. Respondent received actual notice of his termination.

On or about September 12, 2007, MedFin filed suit against Thordsen and respondent in Sacramento County Superior Court, case No. 07AS04151, alleging breach of contract as well as fraud and seeking $207,131.84 in damages, interest and other associated fees and costs. MedFin had as of the filing of the suit withdrawn its 10% reduction ($20,713.18). Respondent's failure to pay the liens caused these damages to Thordsen.

On or about September 28, 2007, the balance in respondent's CTA fell to $94,445.30.

On or about October 2, 2007, attorney Brown wrote a letter to respondent, informing him that his services had been terminated and requesting the Thordsen file.

On or about October 10, 2007, respondent replied to Brown, promising to deliver the Thordsen file no later than October 15, 2007. Respondent also acknowledged the MedFin liens.

[3] Respondent had apparently rounded the lien amount from $207,131.84 to $208,000.

On or about October 17, 2007, Brown wrote to respondent, requesting information and accounting regarding the money held by respondent on behalf of Thordsen and the lien holder MedFin. Respondent received this letter, but did not respond in any way.

On or about October 31, 2007, Brown again wrote to respondent, informing him that as of that date the Thordsen file had not been received. Brown again asked for the file and an accounting of the funds held by respondent on behalf of Thordsen and MedFin. Respondent received this letter, but did not respond in any way.

On or about November 30, 2007, the balance in respondent's CTA dipped to $81,832.38.

In or around the week of April 7, 2008, respondent finally provided Brown with the Thordsen file.

As of April 21, 2008, Thordsen and respondent continued to be obligated to MedFin for the liens.

On or about October 29, 2007, the State Bar opened an investigation, pursuant to a complaint filed by Thordsen.

On or about November 28 and December 17, 2007, a State Bar investigator wrote to respondent regarding the Thordsen complaint. The investigator's letters were not returned as undeliverable or for any other reason. The letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar. Respondent did not respond to the letters or otherwise communicate with the investigator.

Conclusions of Law

1. ***Count 2(A): Failure to Maintain Funds in Trust Account (Rule 4-100(A))***

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith.

On July 31, 2007, based on respondent's accounting to Thordsen, respondent owed $187,200 to MedFin. Because the balance in respondent's CTA dropped to $81,832.38 on November 30, 2007, respondent failed to maintain at least $105,367.62 of Thordsen's settlement funds in the CTA ($187,200 - $81,832.38 = $105,367.62).

Respondent had a fiduciary duty to hold in trust at least $105,367.62 of entrusted funds belonging to MedFin in his CTA. Thus, by not maintaining at least $105,367.62 of Thordsen's settlement funds in the CTA, respondent failed to maintain the settlement funds in a client trust account on behalf of Thordsen in willful violation of rule 4-100(A).

2. Count 2(B): Moral Turpitude (§ 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

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.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

Here, respondent received $500,000 for the benefit of Thordsen. But after he had deposited the funds into his CTA and disbursed $197,800 to the client, the balance fell below the amount of entrusted funds of $187,200. Because the CTA balance fell to $81,832.38 on November 30, 2007, respondent misappropriated at least $105,367.62 of Thordsen's settlement funds, which were to be used to pay the lien in favor of MedFin, and committed an act of moral turpitude in willful violation of section 6106.

3. Count 2(C): Failure to Return Client File (Rule 3-700(D)(1))

By not releasing Thordsen's file to Brown until the week of April 7, 2008, after more than seven months after his employment was terminated, respondent failed to release promptly to a client all the client papers in willful violation of rule 3-700(D)(1).

4. Count 2(D): Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to respond to the State Bar's November 28 and December 17, 2007 letters and failing to cooperate in the State Bar's investigation of the Thordsen matter, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

C. Case No. 07-O-14560 – The Vang Matter

On or about July 21, 2006, respondent filed a wrongful death action based on an auto accident on behalf of his client, Yia Vang, in *Vang v. Emilio Guzman Quintero; Moua Xiong; and Does 1 to 100* (the Vang matter) in Sutter County Superior Court, case No. CVCS 06-1221.

On the same day, the Sutter County Superior Court set a status conference for July 16, 2007. The order was personally served on respondent's agent, Kay Reinhart, and respondent received it. Respondent did not appear at the July 16, 2007 status conference hearing.

Thereafter, the court set six other status conferences in which respondent repeatedly failed to appear and was sanctioned for his failure to appear, as follows:

Status Conference	***Sanctions***
July 30, 2007	$250 for failure to appear at the July 16, 2007 status conference;
August 13, 2007	$1,000 for failure to appear at the July 30, 2007 status conference and $500 for failing to timely pay the $250 sanction;
October 9, 2007	$2,000 for failure to appear at the August 13, 2007 status conference;
October 29, 2007	

December 3, 2007	$1,000 for failure to appear at the October 29, 2007 status conference; and
January 7, 2008	$500 for failure to pay the $1,000 sanctions imposed on December 3, 2007. The $500 sanctions was ordered due and payable "forthwith."

As of on or about January 8, 2008, respondent had paid none of the sanctioned amounts totaling $5,250.

On or about November 13, 2007, the State Bar opened an investigation, pursuant to a complaint filed by the Honorable Perry Parker.

On or about January 8 and January 28, 2008, a State Bar investigator wrote to respondent regarding the complaint filed by the Honorable Perry Parker. The investigator's letters were not returned as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the complaint filed by the Honorable Perry Parker. Respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

Conclusions of Law

1. ***Count 3(A): Failure to Perform Competently (Rule 3-110(A))***

By failing to appear at the seven scheduled status conferences (July 16, July 30, August 13, October 9, October 29, and December 3, 2007; and January 7, 2008), respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

2. ***Count 3(B): Failure to Obey a Court Order (§ 6103)***

By failing to pay the court ordered sanctions totaling $5,250, respondent willfully disobeyed court orders requiring him to do acts connected with or in the course of his profession which he ought in good faith to do in willful violation of section 6103.

3. Count 3(C): Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to respond to the State Bar's January 8 and 28, 2008 letters and failing to cooperate in the State Bar's investigation of the Vang matter, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[4] stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing in three client matters by failing to perform services, failing to return client files, failing to pay court-ordered sanctions and misappropriating more than $105,000 in settlement funds. (Std. 1.2(b)(ii).) Also, respondent's misconduct demonstrated a pattern of misconduct by repeatedly failing to appear at status conferences in the Vang matter.

Respondent's misconduct significantly harmed his clients in that multiple court sanctions were imposed in the Vang matter and the Pridgen case was dismissed due to respondent's failure to appear in court. (Std. 1.2(b)(iv).) Most egregious was respondent's misappropriation of the entrusted funds to be paid to Thordsen's lien holder, MedFin, which resulted in MedFin's lawsuit against respondent and Thordsen.

[4] Future references to standard(s) or std. are to this source.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. Although respondent acknowledged the MedFin liens to attorney Brown in October 2007, respondent has yet to return any portion of the entrusted funds. (Std. 1.2(b)(v).)

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing a response to the OSC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2, 2.3, 2.4, 2.6, and 2.10 apply in this matter.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(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.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Then the discipline must not be less than a one-year actual suspension, irrespective of mitigating circumstances. Here, the amount of misappropriation is more than $105,000.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty must result in actual suspension or disbarment.

Standard 2.4(b) provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproval or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Finally, standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges disbarment. The court agrees.

In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, the Supreme Court disbarred an attorney who intentionally misappropriated $29,000 from his law firm. In mitigation, the attorney had no prior record of discipline in 12 years of practice of law and suffered from emotional problems. The court did not find these factors sufficiently compelling to warrant less than disbarment.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Here, respondent had flagrantly breached his fiduciary duties to his client by taking the client funds without any explanation. And, no mitigation has been shown.

Respondent's misappropriation weighs heavily in assessing the appropriate level of discipline. The "misappropriation in this case . . . was not the result of carelessness or mistake; [respondent] acted deliberately and with full knowledge that the funds belonged to his client. Moreover, the evidence supports an inference that [respondent] intended to permanently deprive his client of [his] funds." (*Grim v. State Bar* (1991) 53 Cal.3d 21, 30.) "It is precisely when the attorney's need or desire for funds is greatest that the need for public protection afforded by the rule prohibiting misappropriation is greatest." (*Grim v. State Bar, supra,* 53 Cal.3d at p. 31.)

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (See *Grim v. State Bar, supra,* 53 Cal.3d 21.)

Respondent has offered no indication that this will not happen again. Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding. Although respondent attempted to resign with charges pending and the

Supreme Court declined his resignation, the court has no information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct absent his participation in this proceeding.

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Based on the severity of the offense, the serious aggravating circumstances, in particular, his multiple acts of client abandonment and misappropriation of more than $105,000, and the lack of any mitigating factors, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

VI. Recommendations

Therefore, the court recommends that respondent **Timothy Wade Hessler** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

A. Restitution

It is also recommended that respondent make restitution to the following:

1. **MedFin Manager, LLC,** in the amount of $187,200[5] plus 10% interest per annum from July 31, 2007 (or to the Client Security Fund to the extent of any payment from the fund to MedFin Manager, LLC, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and

[5] Although respondent is culpable of misappropriating more than $105,000 of entrusted funds, he owes at least $187,200 to MedFin under the lien agreement.

2. **Sutter County Superior Court** in the amount of $5,250 (or to the Client Security Fund to the extent of any payment from the fund to Sutter County Superior Court, plus costs, in accordance with Business and Professions Code section 6140.5).

B. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.[6]

C. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 5.111(D) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: June _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court

[6] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)