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**State Bar Court of California  
Hearing Department  
San Francisco  
DISBARMENT**

<b>Counsel For The State Bar</b>  <b>Manuel Jimenez</b> <b>Senior Trial Counsel</b> <b>180 Howard Street</b> <b>San Francisco, CA 94105-1639</b> <b>(415) 538-2288</b>  <b>Bar # 218234</b>	<b>Case Number(s):</b> <b>12-O-18233-PEM</b>	<b>For Court use only</b>  <b>FILED</b> <i>Lee</i>  <b>APR 15 2014</b>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>Counsel For Respondent</b>  <b>Carol Langford</b> <b>100 Pringle Avenue, Suite 570</b> <b>Walnut Creek, CA 94596</b> <b>(925) 938-3870</b>  <b>Bar # 124812</b>	<b>Submitted to: Assigned Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</b>  <b>DISBARMENT</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of:</b> <b>MICHAEL EDWARD SCHOLTES</b>  <b>Bar # 87695</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **November 29, 1979**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (11) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs to be awarded to the State Bar.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☐ Prior record of discipline
- (a) ☐ State Bar Court case # of prior case
- (b) ☐ Date prior discipline effective
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline
- (e) ☐ If respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See attachment at page 8.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See attachment at page 8.**
- (8) ☒ **Restitution:** Respondent failed to make restitution. **See page 8 .**
- (9) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

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(13) ☐ No mitigating circumstances are involved.

**Additional mitigating circumstances:**

**No Prior Discipline - see attachment, page 8.**  
**Pretrial Stipulation - see attachment, page 8.**

**D. Discipline:        Disbarment.**

**E. Additional Requirements:**

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (2) ☒ **Restitution:** Respondent must make restitution to **Edelmira Lara** in the amount of \$ **\$46,030.17** plus 10 percent interest per year from **April 1, 2011**. If the Client Security Fund has reimbursed **Edelmira Lara** for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than **30** days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      MICHAEL EDWARD SCHOLTES

CASE NUMBER:                          12-O-18233

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 12-O-18233 (Complainant: Edelmira Lara)

**FACTS:**

1. On September 29, 2006, Edelmira Lara ("Lara") employed Respondent to litigate a probate claim against the estate of Tallak Edmund Wralstad, in the matter of the *Estate of Tallak Edmund Wralstad*, case number RP06288554, in the Alameda County Superior Court ("Wralstad matter").
2. In March 2008, the parties to the Wralstad matter entered into a settlement agreement, the terms of which included that Lara would receive 50 percent of any preliminary or final distribution from the estate. Lara's final distribution was dependent upon the settling of the estate by the trustees.
3. On October 26, 2009, Respondent sent a letter to opposing counsel in the Wralstad matter which stated that Respondent believed that Lara moved to Mexico and that he was unable to contact Lara. At the time Respondent made the statement, he knew it was untrue.
4. On February 28, 2010, Respondent sent Lara a billing statement reflecting a balance due of \$7,626.66, representing a past-due balance of \$5,598.66 and \$2,028 in new charges.
5. Between June 29, 2010 and August 2, 2010, Respondent continued working on the Wralstad matter for a total of 20.2 hours at \$156 an hour, totaling \$3,151.20.
6. On June 29, 2010, Respondent prepared and filed with the court a document entitled, Alternative Petition for Preliminary or Final Distribution. Respondent filed concurrently a Declaration of Michael E. Scholtes in Support of Alternative Petition for Preliminary or Final Distribution. Respondent declared, under penalty of perjury, that Lara was living in Mexico. At the time Respondent made the statement, he knew it was untrue.
7. On August 2, 2010, Lara owed Respondent a total of \$10,777.86 in legal fees.
8. On August 3, 2010, Respondent received a check for \$45,000 as a preliminary distribution to Lara in the Wralstad matter. On that date, Respondent deposited the check into his trust account. Respondent did not inform Lara of the distribution or receipt of funds.

9. On August 4, 2010, Respondent removed \$10,000 for his fees without Lara's knowledge or consent.

10. On October 18, 2010, Respondent received a check for \$33,656.79, as a final distribution to Lara in the Wralstad matter. On that date Respondent deposited the check into his trust account. Respondent did not inform Lara of the distribution or receipt of funds. As of October 18, 2010, Respondent was required to maintain at least \$78,565.79 in his trust account for the benefit of Lara.

11. On November 1, 2010, Respondent filed with the court a receipt for distribution which stated that his client resided outside of the United States. At the time Respondent made the statement, he knew it was untrue.

12. From August 2, 2010 to April 1, 2011, Respondent intentionally removed from his trust account and misappropriated the entire \$78,565.79 of Lara's funds for his own use and purpose.

13. On November 15, 2012, Lara's subsequent attorney sent a letter to Respondent demanding that Respondent pay Lara \$78,565.79. Respondent failed to deliver the funds to Lara or her subsequent attorney.

14. On December 7, 2013, Respondent made partial restitution of \$25,000 to Lara. Respondent still owes Lara \$43,565.79. To date, Respondent has failed to pay \$43,565.79 of those funds to Lara.

#### CONCLUSIONS OF LAW:

15. By failing to notify Lara that he received distributions of funds of \$45,000 and \$33,656.79 on her behalf in the Wralstad matter, Respondent failed to notify a client of the receipt of client funds, in willful violation of Rules of Professional Conduct, rule 4-100(B)(1).

16. By removing \$78,565.79 that belonged to Lara from his trust account, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

17. By failing to deliver \$68,565.79 to Lara after her attorney made a demand for the return of the funds, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

18. By intentionally misappropriating \$68,565.79 of Lara's funds for his own use and benefit, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

19. By filing with the court a declaration and a receipt for distribution, in which Respondent intentionally falsely stated that Lara had moved out of the country, Respondent thereby sought to mislead the judge or judicial officer by an artifice or false statement of fact or law, in willful violation of Business and Professions Code section 6068(d).

## AGGRAVATING CIRCUMSTANCES.

**Harm** (Std. 1.5(f)): Respondent has caused significant harm by depriving Lara of the \$68,565.79 for three years.

**Multiple Acts of Misconduct** (Std. 1.5(b)): Respondent committed three acts of misconduct, demonstrating multiple acts of misconduct.

**Restitution** (Std. 1.5(i)): Respondent misappropriated \$68,565.79 from Lara. On December 7, 2013, Respondent made partial restitution of \$25,000. The Respondent still owes Lara \$43,565.79.

## MITIGATING CIRCUMSTANCES.

**No Prior Record of Discipline:** At the time of the misconduct, Respondent had practiced law for approximately 30 years without a prior record of discipline. Although Respondent's misconduct is serious, his 30 years of discipline-free practice is a mitigating circumstance (*See In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [where mitigative credit given for discipline-free practice despite serious misconduct].)

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matters, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)



In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing three acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.1(a), which applies to Respondent's intentional misappropriation of \$68,565.79, in violation of Business and Professions Code section 6106.

Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate.

In the instant case, the Respondent failed to notify his client of his receipt of funds and then misappropriated two distributions from the estate of Tallak Edmund Wralstad, totaling \$68,565.79 meant for Lara, a client he himself described as "a single, 63-year-old retired and disabled Safeway clerk." He also made two intentional misrepresentations to a court under penalty of perjury. Respondent's misconduct is serious and directly related to the practice of law. The amount misappropriated cannot be described as insignificantly small, and "the most compelling" mitigating circumstances do not predominate. This case is aggravated by the fact that Respondent's misconduct involved multiple acts of misconduct and significantly harmed Lara. The harm is ongoing because Respondent has not returned \$43,565.79, which rightfully belongs to Lara.

Respondent's misconduct is mitigated by his long time, discipline free practice. Such mitigation is limited because of the seriousness of the underlying misconduct. Respondent has entered into a pretrial stipulation, but on balance, the aggravating circumstances clearly outweigh the mitigating circumstances. Based on the serious ongoing nature of Respondent's misconduct, and taking into account the aggravating and mitigating circumstances, it is clear that Respondent is unwilling or unable to conform to his ethical responsibilities, and therefore disbarment is appropriate under Standard 2.1(a).

Disbarment is also supported by case law. (See *Grim v. State Bar* (1991) 53 Cal.3d 21, 29 [disbarment for intentionally misappropriating \$5,546, despite good character and cooperation]; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarment for intentionally misappropriating \$29,000 from law firm and lying about it, despite over 10 years of discipline-free practice]; *Weber v. State Bar* (1988) 47 Cal.3d 492 [disbarred for intentionally misappropriating \$24,000, attempting to conceal theft, displaying contempt for State Bar proceeding and lack of remorse, despite 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, remorse, and lack of harm].) Balancing the facts of this case, the applicable Standards, and case law, disbarment is warranted to serve the purposes of attorney discipline.

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 31, 2014, the prosecution costs in this matter are \$5,456. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

## **DISMISSALS.**

The parties respectfully request the court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
12-O-18233	One	Rules of Professional Conduct, rule 3-110(A)
12-O-18233	Two	Business and Professions Code section 6068(m)

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In the Matter of: MICHAEL EDWARD SCHOLTES	Case number(s): 12-O-18233
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<del>March</del> <u>April 1</u> , 2014 Date	<u>Michael Scholtes</u> Respondent's Signature	<u>Michael Edward Scholtes</u> Print Name
<u>March 24</u> , 2014 Date	<u>Carol Langford</u> Respondent's Counsel Signature	<u>Carol Langford</u> Print Name
<del>March</del> <u>April 3</u> , 2014 Date	<u>M. Jimenez</u> Deputy Trial Counsel's Signature	<u>Manuel Jimenez</u> Print Name

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In the Matter of: <b>MICHAEL EDWARD SCHOLTES</b>	Case Number(s): <b>12-O-18233</b>
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### DISBARMENT ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☒ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Respondent **MICHAEL EDWARD SCHOLTES** is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date April 14, 2014

  
**LUCY ARMENDARIZ**  
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 San Francisco, On April 15, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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


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

CAROL LANGFORD  
100 PRINGLE AVE #570  
WALNUT CREEK, CA 94596

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

Manuel Jimenez, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 15, 2014.

  
Laurretta Cramer  
Case Administrator  
State Bar Court