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State Bar Court of California Hearing Department Los Angeles REPROVAL			PUBLIC MATTER
Counsel For The State Bar Sean Beckley Deputy Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1226 Bar # 260003	Case Number(s): 12-C-10497-RAP	For Court use only <div style="text-align: center;"> FILED AUG 15 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center;"> kwiktag* 152 141 519  </div>	
In Pro Per Respondent Segovia Au Phan 16821 Saybrook Ln. Huntington Beach, CA 92649 (714) 846-8388 Bar # 279597	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: Segovia Au Phan Bar # 279597 A Member of the State Bar of California (Respondent)			

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 December 2, 2011.
- (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 entirely 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 are added to membership fee for calendar year following effective date of discipline (public reproof).
- ☐ Case ineligible for costs (private reproof).
- ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years ~~the~~ two billing cycles following the effective date of the Hearing Department's order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.

- (9) The parties understand that:

- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ Prior record of discipline [see standard 1.2(f)]
- (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

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- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was 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 page 9.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (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.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. 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 or person who was the object of the misconduct.
- (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 in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of

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any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

- (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 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 convincing proof of subsequent rehabilitation.
- (13) ☒ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of one year.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent

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must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☒ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.

☒ No MPRE recommended. Reason: The protection of the public and interests of the Respondent do not require passage of the MPRE in this case. *See In the Matter of Respondent G* (Review Dept. 1992), 2 Cal. State Bar Ct. Rptr. 181.

- (11) ☒ The following conditions are attached hereto and incorporated:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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In the Matter of:
SEGOVIA AU PHAN
Member # 279597

Case Number(s):
12-C-10497 - RAP

Substance Abuse Conditions

- a. ☒ Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. ☒ Respondent must attend at least three meetings per month of:
- ☐ Alcoholics Anonymous
 - ☐ Narcotics Anonymous
 - ☐ The Other Bar
 - ☒ Other program Any abstinence-based self-help group of Respondent's own choosing, including inter alia, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include : (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (*See O'Connor v. Calif.* (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program.]) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol. Before Respondent attends the first self-help group meeting, Respondent must contact the Office of Probation and obtain approval for the program Respondent selected. If Respondent wants to change groups, Respondent must obtain the Office of Probation's approval prior to attending a meeting with the new self-help group.
- As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.
- c. ☐ Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. ☐ Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. ☐ Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of

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this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:	SEGOVIA AU PHAN
CASE NUMBER(S):	12-C-10497 – RAP

Case No. 12-C-10497 (Conviction Proceedings)

CRIMINAL PROCEEDINGS:

1. On November 10, 2011, a complaint was filed in Orange County Superior Court case no. 11WM14933, charging Respondent with misdemeanor violations of Vehicle Code section 23152(a) [driving under the influence], count one, Vehicle Code section 23152(b) [driving with a blood-alcohol level of .08% or higher], count two, and Vehicle Code section 20002(a) [hit and run causing property damage], count three, for an incident that occurred October 2, 2011.

2. On March 1, 2012, Respondent pled guilty to counts two and three and was convicted of those charges. Count one was dismissed. Imposition of sentence was suspended and the Respondent was placed on three years informal probation with the following terms and conditions, among others: complete 9 days of Cal Trans, complete a 6 month Level 2 First Offender Alcohol program, attend a MADD Victim's Impact Panel, and comply with standard alcohol conditions including that he not drive with a measurable amount of alcohol in his system.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

3. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

4. On March 1, 2012, Respondent was convicted of violating California Vehicle Code sections 23152(b) [driving with a blood-alcohol level of .08% or higher] and 20002(a) [hit and run causing property damage].

5. On April 23, 2012, the Review Department of the State Bar Court issued an order referring this matter to the Hearing Department to determine if the facts and circumstances surrounding the convictions involve moral turpitude or other misconduct warranting discipline.

FACTS AND CIRCUMSTANCES SURROUNDING THE OFFENSE:

6. Around 1:00 a.m. on October 2, 2011, Respondent was driving his vehicle eastbound on Edinger Ave. in Huntington Beach when he struck a truck legally parked on the south curb. The collision caused the truck to roll across four lanes of traffic, through a chain link fence, and into the bottom of the Orange County Flood control channel. Vehicle damage was \$9359.00.

7. Respondent failed to stop and get out of his vehicle and instead immediately drove away from the scene.

8. A short time later a police officer responding to a report of a hit and run in the area pulled Respondent over. The officer observed Respondent's vehicle with extensive front end damage, making extremely loud noises, and with smoke pouring from the engine compartment. When the officer approached the vehicle he further observed that the damage was fresh and that the driver's side airbag had deployed.

9. While speaking with Respondent the officer detected the odor of alcohol from Respondent's breath and person and that Respondent's speech was slurred as he spoke.

10. The officer asked Respondent to step out of the vehicle. When Respondent did so, the officer observed that the Respondent's balance was unsteady and that he used the vehicle to steady himself.

11. Based on the observed symptoms of intoxication the officer conducted a DUI investigation. Upon completion of the officer's investigation the Respondent was placed under arrest for DUI and hit and run causing property damage.

12. A blood test taken after Respondent's arrest showed a blood-alcohol level of 0.19%.

13. As of February 28, 2012, the owner of the truck damaged by Respondent received \$9359.00 for vehicle damages.

CONCLUSIONS OF LAW:

14. The facts and circumstances surrounding Respondent's criminal convictions for violations of Vehicle Code 23152(b) and 20002(a), both misdemeanors, do not involve moral turpitude but do involve other misconduct warranting discipline.

HARM:

Respondent caused \$9359.00 in property damage to another person's vehicle and damage of an unknown value to the fence he pushed the vehicle through.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.4 provides that the conviction of a crime not involving moral turpitude but involving other misconduct shall warrant a sanction as prescribed under part B of the Standards as appropriate to the nature and extent of the misconduct. The Standard from part B most applicable is Standard 2.10 that calls for reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

In applying Standard 2.10 here, the gravity of the offense is shown by Respondent's driving with a 0.19% blood alcohol level and leaving the scene of the accident he caused without fulfilling his obligation to identify himself. Both are serious in nature and it is only fortuitous that no one was injured

or killed. The harm to the victim was the \$9359.00 in damage to another's vehicle and an unknown amount of damage to the fence. The damage to the other vehicle has been paid. The purpose of attorney discipline that should be addressed is the protection of the public.

A public reproof with conditions requiring compliance with his underlying criminal probation and imposing additional alcohol-related conditions is warranted under the Standards.

In addition, support for the discipline here comes from *In re Kelley* (1990) 52 Cal. 3d 487. *Kelley* involved an attorney, who, while still on probation for a prior DUI conviction, committed another DUI offense. In assessing the level of discipline in a criminal conviction case, even where those convictions do not directly involve the practice of law, the court has found it to be its duty to impose a discipline that will protect the public from potential harm. *Id.* at 496. While the Court acknowledged that Kelley's misconduct caused no harm to her clients, the court reasoned, "this fact alone does not insulate her from discipline aimed at ensuring that her potentially harmful misconduct does not recur... Petitioner's behavior evidences both a lack of respect for the legal system and an alcohol abuse problem. Both problems, if not checked, may spill over into petitioner's professional practice and adversely affect her representation of clients and her practice of law. Our task in disciplinary cases is preventative, protective and remedial, not punitive... Keeping this in mind, it is our responsibility to impose a discipline that will protect the public from this potential harm." *Id.*

The case here is similar to *Kelley* in that it involves at its core a serious alcohol-related driving offense. The matter here warrants discipline similar to *Kelley* – a public reproof.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 24, 2012, the prosecution costs in this matter are estimated to be \$2343.00. 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.

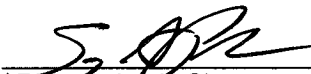
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In the Matter of SEGOVIA AU PHAN Member #279597	Case number(s): 12-C-10497 - RAP
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SIGNATURE OF THE PARTIES

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.

August 8, 2012
Date


Respondent's Signature

Segovia Au Phan
Print Name

_____, 2012
Date

Respondent's Counsel Signature

Print Name

August 8, 2012
Date


Deputy Trial Counsel's Signature

Sean Beckley
Print Name

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In the Matter of SEGOVIA AU PHAN Member #279597	Case number(s): 12-C-10497
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ All court dates in the Hearing Department 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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

08-09-2012


RICHARD A. PLATEL

Judge of the State Bar Court

RICHARD A. PLATEL

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 August 15, 2012, 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:

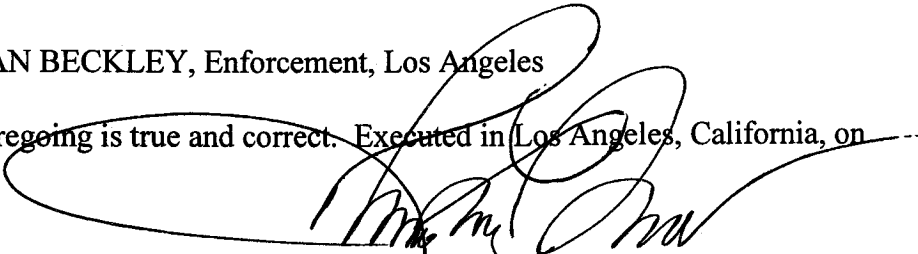
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SEGOVIA A. PHAN
16821 SAYBROOK LN
HUNTINGTON BEACH, CA 92649

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

SEAN BECKLEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 15, 2012.



Johnnie Lee Smith
Case Administrator
State Bar Court