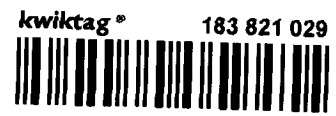


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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p><b>Hugh G. Radigan</b>                      Deputy Trial Counsel                      845 South Figueroa Street                      Los Angeles 90017-2515                      (213) 765-1206</p> <p>Bar # 94251</p>	<p>Case Number(s):                      13-C-16128-DFM                      13-C-12698-DFM                      13-O-13095 (INV)                      13-O-14683 (INV)                      14-O-02945 (INV)</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</p> <p style="text-align: center;">SEP 19 2014</p> <p style="text-align: center;">STATE BAR COURT                      CLERK'S OFFICE                      LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Scott Bryan Whitenack</b>                      3388 Orcutt Road                      Santa Maria, California 93455                      (818) 230-8141</p> <p>Bar # 102950</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of:  <b>SCOTT BRYAN WHITENACK</b></p> <p>Bar # 102950</p> <p>A Member of the State Bar of California                      (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**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 **June 10, 1982**.
- (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 **21** 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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8-15-14

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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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **The two billing cycles immediately following the effective date of the Supreme Court order in this matter.** (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.

**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.
- (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 17.**
- (8)  **Restitution:** Respondent failed to make restitution.
- (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.

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- (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:**

See attachment at page 17.

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **three (3) years**.

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

(b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of **three (3) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3)  **Actual Suspension:**

(a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **two (2) years**.

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor 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 probation 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 probation conditions.
- (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)  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:

- (1)  **Multistate Professional Responsibility Examination:** 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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

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**further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason:

- (2)  **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.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: **February 3, 2014.**
- (5)  **Other Conditions:**

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In the Matter of: <b>SCOTT BRYAN WHITENACK</b>	Case Number(s): 13-C-16128 DFM 13-C-12698 DFM 13-O-13095 (INV) 13-O-14683 (INV) 14-O-02945 (INV)
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**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 two (2) meetings per month of either/or:
  - Alcoholics Anonymous
  - Narcotics Anonymous
  - The Other Bar
  - Other program

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 (10<sup>th</sup>) 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 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:

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As separate reporting requirements and conditions of probation, Respondent must comply with the following additional substance abuse conditions:

Compliance with Current Recommended Treatment as ordered in the Superior Court, County of Los Angeles, Case No. 3BR01327, People v. Scott Whitenack, :

Respondent shall comply with all treatment conditions currently recommended by Dr. Nancy Smith, M.D. ("Dr. Smith"), of Santa Maria, CA for Respondent's treatment plan from the County of Santa Barbara Alcohol, Drug and Mental Health Services CARES program.

Within thirty (30) days of the effective date of discipline herein, Respondent shall provide a complete copy of those current treatment conditions required by Dr. Smith. Should any terms of his treatment plan from the County of Santa Barbara Alcohol, Drug and Mental Health Services CARES program change, Respondent shall provide written notice of the change to the Office of Probation within thirty (30) days of such change.

Respondent shall report his compliance with these conditions by statement under penalty of perjury in each written quarterly report to the Office of Probation and he shall provide such satisfactory proof of his compliance as the Office of Probation may request.

Consent for Release of Treatment and Recovery Information:

Respondent shall provide a written consent to all alcohol or drug recovery or treatment providers, including testing facilities, who provide services as identified in these Substance Abuse Conditions to release information to the Office of Probation regarding his treatment, compliance, and status. Revocation of any consent or waiver under this section shall constitute a violation of probation conditions.



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In the Matter of: <b>SCOTT BRYAN WHITENACK</b>	Case Number(s): <b>13-C-16128 DFM</b> <b>13-C-12698 DFM</b> <b>13-O-13095 (INV)</b> <b>13-O-14683 (INV)</b> <b>14-O-02945 (INV)</b>
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## Financial Conditions

### a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Paedick Gharapanianse	\$2,976.09	July 11, 2013

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **two years from the effective date of the discipline order herein**.

### b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- 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.

### c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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

IN THE MATTER OF:       SCOTT BRYAN WHITENACK

CASE NUMBERS:         13-C-16128, 13-C-12698, 13-O-13095 (INV), 13-O-14683 (INV)  
and 14-O-02945(INV)

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved moral turpitude.

Case No. 13-C-16128 (Conviction Proceedings)

**PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:**

1. 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.
2. On October 2, 2013, an amended complaint was filed in the Superior Court, County of San Luis Obispo, Case No. 13-7060, *People v. Scott Whitenack*, accusing Respondent of violating the following criminal statutes: Penal Code section 459 [misdemeanor burglary-second degree], Penal Code section 529 [misdemeanor false personation], Penal Code section 484(a) [misdemeanor petty theft], Penal Code section 647(f) [misdemeanor public intoxication], Vehicle Code section 14601.1(a) [misdemeanor driving when privilege suspended or revoked for other reason], and Vehicle Code section 31 [misdemeanor false information to a police officer].
3. On October 9, 2013, Respondent entered a plea of nolo contendere to Penal Code section 484(a) and Vehicle Code section 14601.1(a). The remaining counts were dismissed. A \$500 fine was deemed paid and the imposition of sentence was suspended for ninety days. The sentence of 31 days county jail was deemed served. Respondent's probation required that he obey all laws, and that he pay restitution of \$30. Respondent was additionally ordered to not come within 100 yards of Avila Bay Club in Avila Beach.
4. On February 21, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed for the offense(s) for which Respondent was convicted, which the Review Department determined involved moral turpitude as a matter of law.

**FACTS:**

5. On August 18, 2013, Respondent was stopped by the Pismo Beach Police at approximately midnight due to a non-functioning middle brake light and rear license plate light on his vehicle. Upon being requested to produce his license, registration and insurance, Respondent tossed his lit cigarette at the officer's feet. Unable to produce any of the requested information, Respondent then changed his

story that he was driving to get gas for his vehicle to that he was headed back to a local bar to retrieve his wallet.

6. Respondent then misrepresented to the officer that his name was Bryan Scott. When asked if his license was suspended or revoked, Respondent denied this. Detecting objective symptoms of alcohol intoxication, including slurred speech, confusion, blood shot eyes and a strong smell of alcohol as Respondent continued speaking, the officer placed Respondent under arrest after he refused field sobriety testing.

7. Respondent insisted upon a blood test and upon arrival at a local medical facility, refused that test invoking his Fifth Amendment rights.

8. In a separate incident on August 3, 2013, Respondent unlawfully entered the Avila Bay Athletic Club and took personal property comprised of two necklaces, from Scott Dratna. The necklaces had been brought to the club to be raffled off as part of the private event.

9. When the necklaces were discovered missing, Respondent was confronted by a patron at the event who questioned why one of the necklaces was being worn by Respondent's female companion, at which time Respondent stated he had purchased the necklaces and resented being asked to pay for them twice. Respondent then left the premises with the necklaces.

10. At the time of the theft Respondent gave a false name in order to secure access to a private event. Utilizing the information Respondent provided on a waiver to gain access to the event, the investigating officer contacted Respondent's sister whose phone number Respondent provided on the sign in sheet. Through the sister it was determined that Respondent sometimes used the name Scott Belli.

11. On September 9, 2013, while executing an arrest warrant at Respondent's mother's home, Respondent was found in the garage, wrapped in a pink sheet attempting to hide himself.

12. Once the officer had cuffed Respondent, he became belligerent and demanded to know the charges. Respondent insulted the officers stating they were uneducated, could not read or write, and called one of the officers "a piece of s\_\_\_ pig with no education" and that "your wife is at home getting f\_\_\_ by another guy right now [expletives modified]". Respondent continued his belligerence throughout the course of his transportation to the booking location.

#### CONCLUSIONS OF LAW:

13. The facts and circumstances surrounding the above-described violation of Vehicle Code section 14601.1(a) (driving while license suspended) did not involve moral turpitude but did involve other misconduct warranting discipline.

14. As determined by the Review Department in its order referring this matter for hearing, and as described above, the violation of Penal Code section 484(a) (petty theft) involved moral turpitude.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

Case No. 13-C-12698 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

15. 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.
16. On May 6, 2013, a complaint was filed in the Superior Court, County of Los Angeles, Case No. 3BR01327, *People v. Scott Whitenack*, accusing Respondent of violating the following criminal statutes: Penal Code section 496(a) [misdemeanor possession of stolen property]. On April 24, 2014, the court ordered the complaint amended by interlineation to add a violation of Penal Code section 415(2) [misdemeanor disturbing the peace by loud and unreasonable noise].
17. On April 24, 2014, Respondent entered a plea of nolo contendere to Penal Code section 415(2). The remaining count was dismissed. Sentence was suspended and Respondent was placed on summary probation for a period of thirty-six months. Respondent was given credit for eight days served in Los Angeles County Jail and assessed a total of \$220 in fines. Respondent's probation required that he stay away from 244 North Lima Street, Burbank, California, enroll in and complete one year of counseling (Cares Program), and obey all laws and orders of the court.
18. On June 5, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

19. On April 9, 2013, a neighbor of Respondent noticed that a piece of lawn furniture was missing from her residence. While jogging through the neighborhood, the neighbor spotted the missing furniture in front of Respondent's residence and summoned the police.
20. While investigating the matter at Respondent's residence, the officers involved were advised of a suspicious pajama clad male in the neighborhood looking into nearby backyards and requested to respond. Respondent was the suspicious person and upon identifying himself to the officers, advised them that he had purchased the subject piece of lawn furniture at a garage sale in Santa Maria two weeks earlier, at which time he was arrested.

CONCLUSIONS OF LAW:

21. The facts and circumstances surrounding the above-described violation of Penal Code section 415(2) [misdemeanor disturbing the peace by loud and unreasonable noise] did not involve moral turpitude but did involve other misconduct warranting discipline.

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

Case No. 13-O-13095 (INV) (State Bar Investigation)

FACTS:

22. Respondent issued six checks, representing personal funds in his client trust account (CTA) between March 18, 2013 and April 12, 2013, totaling \$5,509.88 against a negative balance. Three of the checks were paid and three were returned insufficient funds or NSF. The involved checks are as follows:

<u>Check Number</u>	<u>Check Amount</u>	<u>Date of Presentation</u>	<u>Bank Action</u>	<u>Negative Account Balances</u>
1043	\$20.00	3/18/13	Paid	\$-108.00
1046	\$ 90.00	3/18/13	Paid	\$-108.00
1050	\$66.83	3/25/13	Paid	\$-174.83
1049	\$253.05	4/4/13	Returned	\$-174.83
1052	\$4970.00	4/4/13	Returned	\$-174.83
1051	\$110.00	4/12/13	Returned	\$-174.83

23. The involved checks were issued for Respondent's personal obligations, and constitute commingling.

24. On June 14, 2013, the assigned State Bar investigator requested a written response to the investigation from Respondent no later than June 30, 2013. Respondent requested no extensions of time to respond. Respondent received the June 14, 2013 letter, but failed to respond.

CONCLUSIONS OF LAW:

25. By depositing personal funds into his CTA and issuing checks from his CTA to pay for his personal expenses, Respondent commingled funds belonging to Respondent in a client trust account in willful violation of Rules of Professional Conduct, rule 4-100(A).

26. By repeatedly issuing checks drawn upon the client trust account when he knew, or was grossly negligent in not knowing, that there were insufficient funds to cover the checks, Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

27. By not providing any response to the allegations under investigation as requested by the investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of Business and Professions code section 6068(i).

Case No. 13-O-14683 (INV) (Complainant: Paedick Gharapanianse)

FACTS:

28. After being arrested on May 4, 2013 on criminal charges, Respondent contacted a bail bondsmen, Paedick Gharapanianse at After Dark Bail Bonds, (hereinafter After Dark), who posted a \$26,000 bond on behalf of Respondent. Respondent paid After Dark \$2,080 for the services with a check drawn on a closed CTA.

29. The bank refused to honor the check and returned it to After Dark as drawn on a closed CTA.

30. After Dark and Respondent failed to informally resolve this dispute and as a result, After Dark sued Respondent in small claims court where After Dark secured a judgment for \$2,855 plus \$121.09 in costs, entered July 11, 2013.

31. After Dark conducted a debtors examination of Respondent on October 29, 2013, at which time the parties exited the courtroom and Respondent advised Gharapanianse to stop chasing him for money and that as an experienced attorney he would effectively evade and frustrate his efforts should he persist.

32. Respondent misrepresented to the State Bar investigator that he met with Gharapanianse at the debtors examination and resolved the matter. This representation was not true, and the judgment remains unsatisfied.

CONCLUSIONS OF LAW:

33. By issuing a check to After Dark drawn upon a client trust account when he knew, or was grossly negligent in not knowing, that the account was closed, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

34. By misrepresenting to the State Bar investigator that he had resolved the small claims judgment with After Dark at the debtors exam hearing, when Respondent knew that the statement was false, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Case No. 14-O-02945 (INV) (Complainant: SBI)

FACTS:

35. On December 2, 2013, the State Bar Court Review Department filed an order in Case No. 13-C-16128 (hereinafter "the order"). The order included a requirement that Respondent comply with Rule 9.20, California Rules of Court, by performing the acts specified in Rule 9.20 (a) and (c) within 30 and 40 days, respectively, after the effective date of the Disciplinary Order.

36. On December 12, 2013, Respondent filed a motion to stay and vacate the order.

37. On December 20, 2013, the Review Department filed an order temporarily staying the order.

38. On January 2, 2014, the Review Department filed an order (hereinafter “interim suspension order”) denying Respondent’s motion and lifting the temporary stay rendering Respondent’s interim suspension effective February 3, 2014. On January 2, 2014, the Clerk of the State Bar Court Review Department transmitted a copy of the interim suspension order to Respondent. Respondent received the interim suspension order.

39. On February 10, 2014, a probation deputy in the Office of Probation of the State Bar of California sent an e-mail to Respondent with information regarding the terms and conditions of the interim suspension order, and supporting documents. Respondent received the e-mail.

40. The interim suspension order ordered Respondent to comply with Rule 9.20 (a) no later than March 5, 2014, and ordered Respondent to comply with Rule 9.20 (c) no later than March 15, 2014.

41. On February 26, 2014, Respondent executed a declaration of compliance with Rule 9.20 accompanied by a separate declaration. The declaration was filed March 3, 2014. The declaration stated under oath that as of February 1, 2014, Respondent had no clients. Respondent filed the declaration in a good faith attempt to comply with his Rule 9.20 obligation, even though the declaration was still non-compliant.

42. On March 6, 2014, a probation deputy mailed a letter to Respondent stating that: (a) the Office of Probation was rejecting the February 26<sup>th</sup> declaration because Respondent had failed to state whether he had clients as of January 2, 2014; (b) that the declaration does not state when he gave notice to his prior clients; (c) when he returned all papers/property to former clients; (d) and does not state that he notified opposing counsel or filed the appropriate notice with the court. Respondent received the letter.

43. On March 12, 2014, Respondent executed a supplemental declaration of compliance with Rule 9.20. The declaration was filed March 14, 2014. Respondent filed the declaration in a good faith attempt to comply with his Rule 9.20 obligation, even though the declaration was still non-compliant.

44. On March 19, 2014, a probation deputy mailed a letter to Respondent stating that: (a) the Office of Probation was rejecting the March 12<sup>th</sup> declaration because Respondent had failed to state that he had given certified mail return receipt notice to his clients; (b) failed to demonstrate compliance with 9.20 as to two client matters; (c) does not state that he notified opposing counsel via certified or registered mail or filed the appropriate notice with the court; and (d) made no mention with respect to the return of unearned fees. Respondent received the letter.

45. On March 27, 2014, Respondent executed a further declaration of compliance with Rule 9.20. The declaration was filed April 1, 2014.

46. On April 4, 2014, a probation deputy mailed a letter to Respondent stating that: (a) the Office of Probation was rejecting the March 27<sup>th</sup> declaration because Respondent had failed to unequivocally demonstrate compliance with rule 9.20. Three examples were itemized. Respondent received the letter.

47. On April 17, 2014, Respondent executed a revised declaration of compliance with Rule 9.20. The declaration was filed April 21, 2014.

48. On April 24, 2014, a probation deputy mailed a letter to Respondent stating that: (a) the Office of Probation was rejecting the April 17<sup>th</sup> declaration because Respondent had failed to



unequivocally demonstrate compliance with rule 9.20. Two additional examples were itemized. Respondent received the letter.

49. On July 5, 2014, Respondent executed a revised declaration of compliance with Rule 9.20. The declaration was filed July 8, 2014.

50. On July 11, 2014, a probation deputy mailed a letter to Respondent stating that: (a) the Office of Probation was rejecting the July 5<sup>th</sup> declaration because Respondent had failed to state that he had delivered all client papers or property and refunded all unearned fees for all matters. Additionally, Respondent admitted in the declaration that he failed to give opposing counsel and the court proper timely notice. Respondent received the letter.

51. On July 16, 2014, Respondent executed a revised declaration of compliance with Rule 9.20. The declaration was filed July 18, 2014.

52. On July 28, 2014, a probation deputy mailed a letter to Respondent stating that: (a) the Office of Probation was rejecting the July 5<sup>th</sup> declaration because Respondent admitted in the declaration that he failed to give opposing counsel and the court proper timely notice. Respondent received the letter.

53. Respondent failed to file with the clerk of the State Bar Court a declaration of compliance with Rule 9.20 (a) and (c) as required by Rule 9.20(c).

#### CONCLUSIONS OF LAW:

54. By failing to comply with subdivision (a) of Rule 9.20 by March 5, 2014, and by failing to comply with subdivision (c) of Rule 9.20 by March 15, 2014, Respondent wilfully failed to comply timely with the provision of the order and therefore wilfully violated Business and Professions Code section 6103.

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to practice in California on June 10, 1982 and has no prior record of discipline. Although the current misconduct is serious, Respondent's lack of prior discipline over more than 31 years of practice before the misconduct occurred is entitled to mitigation. *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 127 [an attorney with 30 years of practice and no prior discipline was entitled to significant mitigation.]

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent committed multiple acts of misconduct, specifically violations of Rules of Professional Conduct, rule 4-100(A) [commingling personal funds in client trust account], and multiple counts of violation of Business and Professions Code section 6106 [moral turpitude], one count of violation of section 6068(i) [failure to cooperate] and one count of violation of section 6103 [failure to obey court order].

## **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 Silvertown* (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 these matters, Respondent is charged with committing eight 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.” Standard 1.7(b) provides where aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to recommend greater discipline than otherwise specified in a given standard.

Respondent has been convicted of petty theft, a crime involving moral turpitude. (*In re Rothrock* (1944) 25 Cal. 2nd 588, 590.) The most severe sanction applicable to respondent’s misconduct is set forth in standard 2.11(c), which applies to Respondent’s conviction for petty theft, a misdemeanor involving moral turpitude. Standard 2.11(c) provides that disbarment or actual suspension is appropriate for final conviction of a misdemeanor involving moral turpitude. In addition, Business and Professions Code section 6106 provides, “The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.” Similarly, section 6101 of the Business and Professions Code provides in pertinent part, “Conviction of

a felony or a misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.” In assessing the discipline appropriate in a particular case, the courts are permitted to temper the letter of the law with consideration peculiar to the offense and the offender. (*Howard v. State Bar* (1990) 51 Cal. 3<sup>rd</sup> 215, 221-222; *Greenbaum v State Bar* (1987) 43 Cal. 3<sup>rd</sup> 543 ,550.) To determine where along this broad range discipline should be fixed requires consideration of all of Respondent’s misconduct, along with aggravation and mitigation. Further, in *In re Morse* (1995) 11 Cal. 4<sup>th</sup> 184, 209 the California Supreme Court provided an abbreviated analysis for determining the appropriate level of State Bar discipline. The Supreme Court stated: “These decisions provide some guidance, but our determination of the appropriate level of discipline ultimately depends on the answers to two key questions. First, what did Morse do wrong? Second, what is the discipline most likely to protect the public, the courts, and the legal profession, or stated conversely, to deter Morse from future wrongdoing?” This same analysis can still be applied to the current Standards for Attorney Discipline.

In aggravation, Respondent’s statements to After Dark that he would thwart its ability to collect the debt undermine the public’s confidence in and perception of the legal profession and shows a lack of insight into his misconduct. The bail bondsman was required to file suit in small claims court to secure his rights at additional cost and expense. Concurrently, the misconduct associated with the abuse of his Client Trust Account to satisfy his personal obligations constitutes commingling.

The theft of the necklace from a charity event, coupled with Respondent’s conduct just prior to the petty theft conviction, coupled with his other conviction, requires that substantial actual suspension be imposed to protect the public and the profession from future repetition by Respondent.

Respondent’s compliance problems most recently experienced with respect to the Review Department order of January 2, 2014, entering his involuntary inactive status effective February 3, 2014, are further indicia of a challenged practitioner who poses a risk to his clients. Respondent has a long standing diagnosis of bipolar I disorder as well as alcohol dependence and marijuana dependence which Respondent had brought under control with the assistance of therapy and prescription medication resulting in a two and a half year period of symptom free behavior prior to January 2013. Unfortunately, Respondent relapsed, precipitating this rash of misconduct.

Taking the above into account, a level of discipline which includes a two year actual suspension is appropriate to protect the public. It is also within the Standards and satisfies the aspirations of *Morse, supra*.

In assessing discipline for misdemeanors involving moral turpitude, guidance can also be found in *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Court Rptr. 737, 752, and *In the Matter of Moriarity* (Review Dept. 1990) 1 Cal State Bar Court Rptr. 245, 251. In *DeMassa*, a sixty day actual suspension was recommended for an attorney convicted of harboring a fugitive-client. The attorney’s act was denoted aberrational, well-motivated and not for personal gain, and construed as posing no risk of harm to the public, profession or courts. In *Moriarity*, the court recommended that an attorney convicted of filing three annual tax returns claiming fraudulent deductions be disciplined with a two year stayed suspension and no additional actual time beyond the already assessed seven months that the attorney had previously served as a result of his interim suspension. Significant mitigation was given to the attorney due to the emotional distress experienced as a result of his leg amputation, the sickness and subsequent death of his mother, his candor and remorse, his community service and evidence of good character.

The totality of Respondent’s misconduct, including theft, is more serious than the offenses of *DeMassa* and *Moriarity* and unlike both of these cases, Respondent presents only limited mitigation in

the form of no prior record of discipline. In addition to the theft, Respondent misrepresented to the State Bar that the underlying dispute associated with the bail bondsman had been resolved.

Misrepresentations to the State Bar diminish the public's confidence in the integrity of the legal profession. An attorney's false statements violate "the fundamental rules of ethics- that of common honesty- without which the profession is worse than valueless in the place it holds in the administration of justice." (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 (internal citations omitted).) Courts have repeatedly emphasized that honesty is one of the most fundamental rules of ethics for attorneys. (See *Borre v. State Bar* (1991) 52 Cal. 3<sup>rd</sup> 1047,1053; *Levin v. State Bar* (1989) 47 Cal. 3<sup>rd</sup> 1140, 1147.)

Again, considering the factors enumerated in Standard 1.7 and giving Respondent the appropriate mitigation merited by his extensive period of discipline free practice, tempered by the aggravation associated with these multiple acts of misconduct, this matter warrants a two year actual suspension, three year stayed suspension, three years of probation and the imposition of Standard 1.2(c)(1). This level of discipline is necessary to protect the public, to maintain respect for the profession and to not allow public confidence in the profession to be undermined.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 5, 2014, the prosecution costs in this matter are approximately \$3,258. 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.

#### **EXCLUSION FROM MCLE CREDIT**

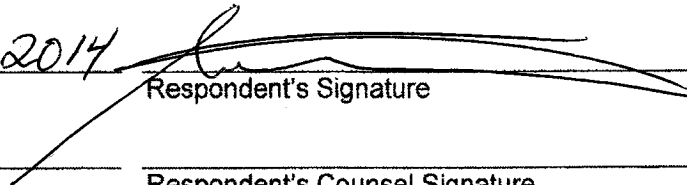
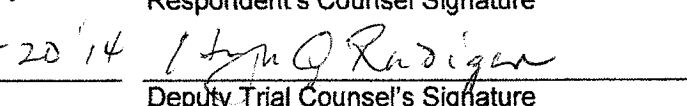
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course to be ordered as a condition of reproof or suspension (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>SCOTT BRYAN WHITENACK</b>	Case number(s): 13-C-16128, 13-C-12698, 13-O-13095 (INV), 13-O-14683 (INV) and 14-O-02945(INV)
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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.

<u>8-15-2014</u>		<u>Scott Bryan Whitenack</u>
Date	Respondent's Signature	Print Name
<u>August 20 '14</u>		<u>Hugh G. Radigan</u>
Date	Deputy Trial Counsel's Signature	Print Name

SW

(Do not write above this line.)

In the Matter of: SCOTT BRYAN WHITENACK	Case Number(s): 13-C-16128 et al.
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### ACTUAL SUSPENSION 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.

On page 4 of the stipulation, the "X" in the box next to paragraph E.(1) is deleted.

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.)**

SEPTEMBER 22, 2014  
Date

  
\_\_\_\_\_  
GEORGE E. SCOTT, JUDGE PRO TEM  
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 September 22, 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:

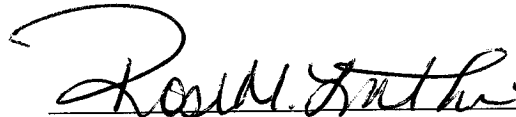
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SCOTT BRYAN WHITENACK  
3388 ORCUTT RD  
SANTA MARIA, CA 93455

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 22, 2014.



Rose M. Luthi  
Case Administrator  
State Bar Court