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**State Bar Court of California  
Hearing Department  
San Francisco  
ALTERNATIVE DISCIPLINE PROGRAM**

<b>Counsel For The State Bar</b>  <b>Susan I. Kagan</b> <b>Senior Trial Counsel</b> <b>180 Howard St.</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2037</b>  <b>Bar # 214209</b>	<b>Case Number (s)</b> <b>13-C-16137-PEM;</b> <b>14-C-05705</b> <b>14-C-05804</b>	<b>(for Court's use)</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>MS</i>  <b>MAY - 9 2016</b>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>Counsel For Respondent</b>  <b>Eric H. Schweitzer</b> <b>Schweitzer &amp; Davidian, P.C.</b> <b>620 DeWitt Avenue, Suite 102</b> <b>Clovis, CA 93612</b> <b>(559) 322-1500</b>  <b>Bar # 179776</b>	<b>Submitted to: Program Judge</b>	
<b>In the Matter Of:</b> <b>ROBERT SHERMAN WYNNE</b>  <b>Bar # 145410</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>	<b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</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 **December 19, 1989**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."



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- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case **05-O-02396. See Attachment at p. 9.**
- (b)  Date prior discipline effective **August 7, 2009**
- (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(l) [failure to comply with Agreement in Lieu of Discipline]**
- (d)  Degree of prior discipline **Private Reproval**
- (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involved uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7)  **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.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment at p. 9.

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- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

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**Additional mitigating circumstances:**

**Pretrial Stipulation. See Attachment at p. 9.**



placed under arrest for violating Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

7. On September 16, 2013, the Fresno County District Attorney filed a criminal complaint in the Fresno County Superior Court, case no. M13925471, charging respondent with three counts of violating the Vehicle Code, as follows: Count One- violation of section 23152(b) [Driving with 0.08 or more blood alcohol]; Count Two- violation of section 23151(a) [Driving under the Influence] ; and Count Three- violation of section 31 [False Information to Police Officer].

8. On September 23, 2014, the court entered respondent's plea of nolo contendere to a count of violation of Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

#### CONCLUSIONS OF LAW:

9. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

#### Case No. 14-C-05705 (Conviction Proceedings)

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

10. 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.

11. On October 30, 2014, the California Highway Patrol filed a criminal complaint in Fresno County Superior Court, case no. M14928143, charging respondent with four counts of violating the Vehicle Code, as follows: Count One- violation of section 23152(b) [Driving with 0.08 or more blood alcohol]; Count Two- violation of section 23151(a) [Driving under the Influence]; Count Three- violation of section 20002(a) [Hit and Run, Damage to Property]; and Count Four- violation of section 14601.5(a) [Driving on a Suspended License]. It was further alleged that respondent had a blood alcohol content of .15 percent or higher, that respondent refused to submit to a chemical test and that respondent committed the offenses within 10 years of suffering a prior conviction for violating section 23152(b) [conviction on June 27, 2008].

12. On March 16, 2015, the California Highway Patrol filed a first amended criminal complaint in Fresno County Superior Court, case no. M14928143, charging respondent with four counts of violating the Vehicle Code, as follows: Count One- violation of section 23152(b) [Driving with 0.08 or more blood alcohol]; Count Two- violation of section 23151(a) [Driving under the Influence]; Count Three- violation of section 20002(a) [Hit and Run, Damage to Property]; and Count Four- violation of section 14601.5(a) [Driving on a Suspended License]. It was further alleged that respondent committed the offenses within 10 years of suffering a prior conviction for violating section 23152(b) [conviction on June 20, 2013].

13. On January 15, 2016, the court entered respondent's plea of nolo contendere to a violation of Vehicle Code sections 23152(b) [Driving with 0.08 or more blood alcohol] and 14601.5(a) [Driving on a Suspended License] and the court dismissed the remaining counts in light of the plea.

14. On January 15, 2016, the court imposed a conditional sentence and placed respondent on probation for a period of five years. The court ordered that respondent, among other things, serve 140

days in custody, with a referral to electronic monitoring, pay fees and fines and attend an 18-month alcohol program.

15. On \_\_\_\_\_, 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(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

#### FACTS:

16. At approximately 2:30 p.m. on September 13, 2014, respondent drove his car to a friend's house and parked in the driveway. Prior to the visit, respondent had been drinking alcohol. Respondent's friend found respondent passed out in the driver's seat. Respondent's friend woke respondent up and invited him into the house. Respondent brought in and drank from a Clamato juice bottle. Respondent's friend noticed that respondent had slurred speech, trouble walking and appeared to be "on drugs or alcohol." At 5:00 p.m., respondent left the residence, entered his car and passed out again. Ten minutes later, respondent woke up and backed out of the driveway, hitting a parked car. Respondent then drove away from the scene. Respondent's friend called the police. A police officer drove to respondent's residence and found respondent in his car which was parked in the driveway. Respondent was slumped over and passed out in the driver's seat with the motor running. The police officer contacted respondent and requested his driver's license, registration and insurance. Respondent reported that he was not aware of a collision. The officer detected the odor of alcohol beverage emitting from within the vehicle and noticed that respondent had slurred speech and red watery eyes. The officer also saw several empty bottles of Clamato juice within respondent's car. When questioned, respondent initially denied having consumed any alcohol. Respondent later admitted to having consumed a pint of vodka. Respondent refused to perform any field sobriety tests. Respondent was placed under arrest for violating Vehicle Code section 23152(a) [Driving under the Influence] per Vehicle Code section 40300.5.

17. Initially, respondent agreed to a blood test, but later withdrew his consent. After obtaining a search warrant, respondent's blood was drawn and revealed that he had a blood alcohol content of .23 percent.

18. On October 30, 2014, the California Highway Patrol filed a criminal complaint in Fresno County Superior Court, case no. M14928143, charging respondent with four counts of violating the Vehicle Code. The complaint was amended on March 16, 2015.

19. On January 15, 2016, the court entered respondent's plea of nolo contendere to a violation of Vehicle Code sections 23152(b) [Driving with 0.08 or more blood alcohol] and 14601.5(a) [Driving on a Suspended License].

#### CONCLUSIONS OF LAW:

20. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 14-C-05804 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

21. 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.

22. On March 10, 2008, the California Highway Patrol filed a criminal complaint in the San Luis Obispo County Superior Court, case no. M414825, charging respondent with two counts of violating the Vehicle Code, as follows: Count One- violation of section 23152(a) [Driving under the Influence]; and Count Two- violation of section 23152(b) [Driving with 0.08 or more blood alcohol].

23. On June 23, 2008, the court entered respondent's plea of nolo contendere to a count of violation of Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol] and the court dismissed the remaining count in the furtherance of justice.

24. On June 27, 2008, the court suspended the imposition of sentence and placed respondent on informal probation for a period of three years. The court ordered that respondent, among other things, serve 14 days in custody with credit for time served, pay fees and fines and attend a "DUI 2nd Offenders Program."

25. On July 9, 2015, 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(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

26. On March 10, 2008, respondent was arrested for driving under the influence after it was determined that he was driving with a blood alcohol level of .19 percent.

27. Respondent was placed under arrest for violating Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

28. On March 10, 2008, the California Highway Patrol filed a criminal complaint in the San Luis Obispo County Superior Court, case no. M414825, charging respondent with two counts of violating the Vehicle Code, as follows: Count One- violation of section 23152(a) [Driving under the Influence]; and Count Two- violation of section 23152(b) [Driving with 0.08 or more blood alcohol].

29. On June 17, 2008, the court entered respondent's plea of nolo contendere to a count of violation of Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

30. Respondent was previously convicted of driving under the influence of alcohol on May 7, 2001, after being arrested on August 14, 1999.

## CONCLUSIONS OF LAW:

31. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

## AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has a prior record of discipline in Case No. 15-O-02396, effective August 7, 2009. Respondent was privately reprovved for failing to comply with an Agreement in Lieu of Discipline in violation of section 6068(l) of the Business and Professions Code.

**Multiple Acts (Std. 1.5(b)).** Respondent's four convictions represent multiple acts of misconduct.

## MITIGATING CIRCUMSTANCES.

**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 matter, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

## COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 28, 2016, the prosecution costs in this matter are \$4,463. 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 (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: ROBERT SHERMAN WYNNE	Case number(s): 13-C-16137- PEM; 14-C-05705; 14-C-05804
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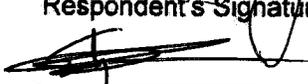
### SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>3-2-16</u> Date	 Respondent's Signature	<u>Robert Sherman Wynne</u> Print Name
<u>2/4/16</u> Date	 Respondent's Counsel Signature	<u>Eric H. Schweitzer</u> Print Name
<u>3/8/16</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name



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**DECLARATION OF SERVICE BY MAIL**

**RE: ROBERT WYNNE  
CASE NO. 13-C-16137, 14-C-05705, 14-C-05804**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit. That in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within.

**ALTERNATIVE DISCIPLINE PROGRAM STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

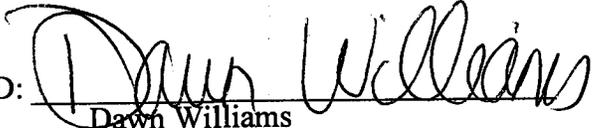
in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**Eric H. Schweitzer  
Schweitzer & Davidian, A.P.C.  
620 Dewitt Ave Ste 102  
Clovis, CA 93612**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: March 8, 2016

SIGNED:   
Dawn Williams  
Declarant

**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 May 9, 2016, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

By personally delivering a copy of said document(s) to:

SUSAN I. KAGAN  
180 HOWARD STREET, 6<sup>TH</sup> FLOOR  
SAN FRANCISCO, CA 94105

*Robert Wynne*  
~~ERIC H. SCHWEITZER~~  
180 HOWARD STREET, 6<sup>TH</sup> FLOOR  
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 9, 2016.



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Mazie Yip  
Case Administrator  
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 May 9, 2016, I deposited a true copy of the following document(s):

### STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

ERIC H. SCHWEITZER  
SCHWEITZER & DAVIDIAN, A.P.C.  
620 DEWITT AVE STE 102  
CLOVIS, CA 93612

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

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 9, 2016.



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Bernadette Molina  
Case Administrator  
State Bar Court