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State Bar Court of California Hearing Department Los Angeles REPROVAL		
<p>Counsel For The State Bar</p> <p>Ann J. Kim Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1230</p> <p>Bar # 259222</p>	<p>Case Number(s): 14-C-00016-RAP</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</p> <p style="text-align: center; font-size: 1.2em; font-weight: bold;">SEP 30 2014</p> <p style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p style="text-align: center; font-size: 0.8em;">kwiktag® 183 821 089</p> 
<p>In Pro Per Respondent</p> <p>Richard James Schnieders 822 Okra Court Carlsbad, CA 92011 (310) 883-8175</p> <p>Bar # 156649</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: RICHARD JAMES SCHNIEDERS</p> <p>Bar # 156649</p> <p>A Member of the State Bar of California (Respondent)</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 **December 16, 1991**.
- (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: (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 [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 or a separate attachment entitled "Prior Discipline."

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- (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.
- (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) **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

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product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline: see stipulation, at page 8.
Pretrial Stipulation: see stipulation, at page 8.

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 reproval for a period of **1 (one) year**.
- (2) During the condition period attached to the reproval, 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 reproval. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of

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Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent 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 reproof.
- (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 reproof.

No MPRE recommended. Reason: **Respondent's misconduct did not involve the practice of law, and therefore the MPRE is not necessary to protect the public, courts, and the legal profession.**

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

- | | |
|---|---|
| <input 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:

Additional Reproof Conditions

Respondent recognizes that a repeat conviction for DUI suggests an alcohol and/or drug problem that needs to be addressed before it affects Respondent's legal practice. Respondent agrees to take the steps necessary to control the use of alcohol and/or drugs such that it will not affect Respondent's law practice in the future. Respondent's agreement to participate in an abstinence-based self-help group (as defined herein), as a condition of discipline, is part of Respondent's efforts to address such concerns.

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As a condition of reprobation, and during the period of reprobation, Respondent must attend a minimum of two (2) meetings per month of any abstinence-based self-help group of Respondent's choosing, including without limitation Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include a subculture to support recovery, including abstinence-based group meetings. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [no First Amendment violation where probationer given choice between AA and secular program.]) Respondent is encouraged, but not required, to obtain a "sponsor" during the term of participation in these meetings.

The program called "Moderation Management" is not acceptable because it is not abstinence-based and allows the participant to continue consuming alcohol.

Respondent must contact the Office of Probation and obtain written approval for the program Respondent has selected prior to attending the first self-help group meeting. If Respondent wants to change groups, Respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group.

Respondent must provide to the Office of Probation satisfactory proof of attendance at the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of his or her own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program, to abstain from alcohol and illegal drugs, and to undergo random urinalysis testing to complement abstinence.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: RICHARD JAMES SCHNIEDERS
CASE NUMBER: 14-C-00016

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 other misconduct warranting discipline.

Case No. 14-C-00016 (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 December 17, 2013, Respondent was convicted of violating Vehicle Code section 23152(a) [driving under the influence], a misdemeanor. Respondent was sentenced, his conviction is final, and the time for appeal has passed.
3. On July 10, 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:

4. On October 4, 2013, the Carlsbad Police Department responded to a call from a woman who reported that a reckless driver was driving a silver Honda on the wrong side of the road, drove over a curve, drove in circles in the roadway, then pulled into the Shell gas station.
5. The police responded to the Shell gas station and located a silver Honda sedan in the parking lot. The Honda was stopped across the painted parking spaces and the front bumper was touching the metal guardrail. The officer noticed that Respondent was seat-belted in and passed out with his head facing down. The officer could hear the car's engine running. When the officer unlocked the driver's door, he noticed that the car was in drive but was being stopped by the metal guardrail. He also smelled the odor of alcohol.
6. The officer woke Respondent, whose eyes were watery, unfocused, and whose speech was slurred. Respondent denied drinking and would not cooperate with two field sobriety tests. The officer arrested Respondent and looked inside the car. The officer observed one open bottle of vodka (375 mL, 2/3 full), one empty bottle of vodka, and two empty cans of beer (24 oz. each).

7. The officer took Respondent to the police station, where blood was drawn to check Respondent's blood alcohol level. Respondent's blood alcohol level was 0.30%.

8. On November 14, 2013, in San Diego County Superior Court case number CN325544, Respondent was charged with one count each of Vehicle Code sections 23152(a) [driving under the influence], 23152(b) [driving with 0.08 or more blood alcohol], and 23223 [possession of open container]. The charges of Vehicle Code sections 23152(a) and 23152(b) alleged that Respondent had a prior conviction for violation of Vehicle Code section 23152(b) [driving with 0.08 or more blood alcohol] on May 8, 2009 (while Respondent was a member of the State Bar).

9. On December 2, 2013, Respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence] and admitted the prior conviction and enhancement under Vehicle Code sections 23540 [second offense within ten years] and 23578 [excessive blood alcohol]. Pursuant to the plea agreement, one count of Vehicle Code section 23152(b) was dismissed and the remaining one count of Vehicle Code section 23223 was stricken.

10. On December 17, 2013, the court suspended the imposition of sentence and placed Respondent on formal probation for a period of five years. The court ordered that Respondent, among other things, install SCRAM GPS location monitoring for alcohol monitoring and home detention by December 20, 2013 and activate by January 2, 2014, commit 90 days to the sheriff in home detention, and complete a multiple-offender DUI program.

CONCLUSIONS OF LAW:

11. The facts and circumstances surrounding Respondent's misdemeanor conviction for a violation of Vehicle Code section 23152(a) did not involve moral turpitude but did involve other misconduct warranting discipline.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent had practiced law for almost 23 years without a prior record of discipline when the misconduct occurred. Respondent is entitled to some mitigating credit for no prior discipline even where the underlying conduct is found to be serious or significant. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Additional Mitigating Circumstances:

Pretrial Stipulation: Respondent has entered into a full stipulation. Respondent is entitled to mitigation for cooperating with the Office of Chief Trial Counsel prior to trial, thereby saving the State Bar Court time and resources. In addition, by entering into this stipulation, Respondent has acknowledged his misconduct and accepted responsibility for his actions. (*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].)

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).)

Respondent’s offense does not involve moral turpitude, but does involve other misconduct warranting discipline.

Standard 2.12 is the applicable standard where a respondent has been convicted of a crime that does not on its face or in the surrounding facts and circumstances involve moral turpitude. Standard 2.12 (b) provides that “Suspension or reproof is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.”

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In mitigation, Respondent has no prior record of discipline since being admitted in 1991 and has voluntarily entered into this stipulation. There are no aggravating circumstances.

Respondent has two convictions for offenses involving alcohol and driving. Respondent’s misconduct does not involve moral turpitude but is serious because it demonstrates a disregard for the law and the safety of others. However, the misconduct does not involve the practice of law and the conditions attached to this discipline, if complied with, are designed to minimize the likelihood of Respondent engaging in similar misconduct in the future. Therefore, discipline at the low end of the range discussed in Standard 2.12(b) is sufficient to achieve the purposes of discipline, protect the public, maintain the highest professional standards, and preserve public confidence in the legal profession. Accordingly, imposition of a public reproof is appropriate.

Case law also supports a public reproof. In *In re Kelley* (1990) 52 Cal. 3d 487, Kelly was convicted of a second driving under the influence (“DUI”) offense while on probation for a prior DUI. The Supreme Court found that the facts and circumstances surrounding Kelley’s criminal conviction constituted misconduct warranting discipline. The Supreme Court found that a public reproof was sufficient to protect the public from the threat of future professional misconduct.

In light of Respondent's misconduct in this matter, a public reproof is the appropriate level of discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 10, 2014, the prosecution costs in this matter are approximately \$2,447. 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: Richard James Schnieders	Case Number(s): 14-C-00016
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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.

SEPTEMBER 30, 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 30, 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:

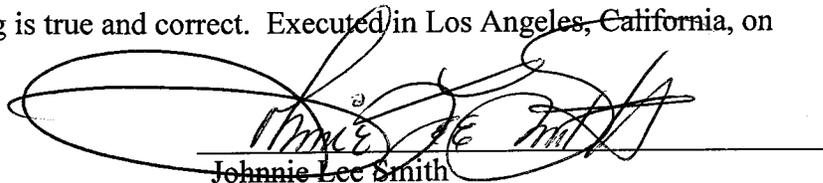
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**RICHARD J. SCHNIEDERS
R. JAMES SCHNIEDERS
822 OKRA CT
CARLSBAD, CA 92011**

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

ANN J. KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 30, 2014.



Johnnie Lee Smith
Case Administrator
State Bar Court