

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>REPROVAL</b>			<b>PUBLIC MATTER</b>
<b>Counsel For The State Bar</b>  Meredith A. McKittrick Deputy Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1204  Bar # 234484	<b>Case Number(s):</b> 09-C-14102-RAP	<b>For Court use only</b>  <div style="text-align: center;">  </div> <div style="text-align: center;">  </div> <div style="text-align: center;"> <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>	
<b>Counsel For Respondent</b>  Dana M. Cole Cole & Loeterman 1925 Century Park E Ste 2000 Los Angeles, CA 90067 (310)556-8300  Bar # 89105	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING		
<b>In the Matter of:</b> Martin L. Winfield, Jr.  Bar # 250570  A Member of the State Bar of California (Respondent)	<b>PUBLIC REPROVAL</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

**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 August 27, 2007.
- (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 12 pages, not including the order.



(Do not write above this line.)

- (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".
- (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: Costs to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the Hearing Department's order.. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

- (1)  Prior record of discipline [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:

(Do not write above this line.)

---

- (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."
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.

(Do not write above this line.)

- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

See Stipulation page 9.

**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 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.

(Do not write above this line.)

- (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 reprobation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reprobation 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 reprobation.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.

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

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

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

**F. Other Conditions Negotiated by the Parties:**

(Do not write above this line.)

In the Matter of: Martin L. Winfield, Jr.	Case Number(s): 09-C-14102-RAP
--	-----------------------------------

### Substance Abuse Conditions

- a.  Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b.  Respondent must attend at least four meetings per month of:
- Alcoholics Anonymous
  - Narcotics Anonymous
  - The Other Bar
  - Other program Any abstinence-based, self-help group of Respondent's own choosing, including inter alia, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include: (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See O'Connor v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program.]) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol. Before Respondent attends the first self-help group meeting, Respondent must contact the Office of Probation and obtain approval for the program Respondent selected. If Respondent wants to change groups, Respondent must obtain the Office of Probation's approval prior to attending a meeting with the new self-help group.
- As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (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

(Do not write above this line.)

---

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:



6. On June 8, 2009, at approximately 1:30 a.m. two Officers of the Inglewood Police Department observed Respondent's vehicle lose traction with the road's surface and "fish tail" as Respondent was travelling through the curve at the intersection of Crenshaw and 8<sup>th</sup> Avenue at a speed of approximately 55 miles per hour in a 40 mile per hour zone.

7. Respondent was subsequently contacted by the officers and observed to exhibit objective signs and symptoms of being under the influence of alcohol.

8. Respondent admitted to the officers to consuming alcoholic beverages, stating he had consumed three such beverages beginning at 9:00 p.m. the previous evening.

9. Respondent was administered a series of field sobriety tests, which he was not able to successfully complete.

10. Respondent was placed under arrest by the officers.

11. Respondent elected to provide a breath specimen for chemical testing, with the results of such testing being .22% and .20% blood alcohol content.

12. On July 14, 2009, a misdemeanor complaint was filed against Respondent in Los Angeles Superior Court charging him with misdemeanor violations of California Vehicle Code sections 23152(a) [driving under the influence] and 23152(b) [driving with a blood alcohol level of .08% or higher]. The results of the chemical test were later excluded for the purposes of trial and the charge for a violation of California Vehicle Code section 23152(b) [driving with a blood alcohol level of .08% or higher] was dismissed.

13. On September 23, 2010, Respondent entered pleas of no contest to violations of California Vehicle Code section 23152(a) [driving under the influence] and California Vehicle Code section 23103 pursuant to 23103.5 [reckless driving after having consumed alcohol].

14. On March 23, 2012, Respondent was sentenced for the violation of California Vehicle Code section 23103 pursuant to 23103.5 [reckless driving after having consumed alcohol] alone. The count charging a violation of California Vehicle Code section 23152(a) [driving under the influence] was dismissed. Respondent was placed on 36 months summary probation subject to terms and conditions of that probation.

#### CONCLUSIONS OF LAW:

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

#### ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**Candor/Cooperation:** Respondent has cooperated with the State Bar in this matter, and has entered into a stipulated settlement of this matter obviating the need for a trial. Such cooperation is deserving of consideration. (*Silva-Vidor v. State Bar* (1989) 49 Cal. 3d 1071, 1079.)

#### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4<sup>th</sup> 184, 205; std 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertan* (2005) 36 Cal.4<sup>th</sup> 81, 92, quoting *In re Brown* (1995) 12 Cal.4<sup>th</sup> 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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 3.4 provides that conviction of a crime not involving moral turpitude but involving other misconduct warranting discipline shall result in a sanction prescribed under part B of the Standards as appropriate to the nature and extent of the misconduct. In reference to part B of the Standards, the most appropriate standard to apply is Standard 2.10. Standard 2.10 calls for a range of sanctions from reproof to suspension accounting for the gravity of the offense, harm to the victim, and with consideration given to the purposes of attorney discipline set forth in Standard 1.3.

Here the gravity of the offense is reflected in Respondent’s choice to drive his vehicle while under the influence of alcohol. The gravity of his offense is only compounded by Respondent’s prior conviction for a violation of California Vehicle Code section 23152(b) [driving with a blood alcohol level of .08% or higher] on October 31, 2000.

Additional support for the level of discipline here come from the California Supreme Court in *In re Kelley* (1990) 52 Cal. 3d 487. The Supreme Court in *In re Kelley* (1990) 52 Cal. 3d 487, imposed discipline upon an attorney as a result of that attorney’s second conviction for a violation of California Vehicle Code section 23152(b) on the basis that the conviction involved other misconduct warranting discipline. Kelley amassed two separate convictions for violations of California Vehicle Code section 23152(b) over the span of a few years, incurring the second such conviction while she was on probation for the first conviction. (*Id.* at p. 491-492.) The Court in *Kelley* stated “Although it is true that petitioner’s misconduct caused no harm to her clients, this fact alone does not insulate her from discipline aimed at ensuring that her potentially harmful misconduct does not recur.” (*Id.* at p. 496.) Finding significant mitigation the Court publicly reproofed Kelley as a result of her second conviction for a violation of California Vehicle Code section 23152(b). (*Id.* at p. 499.)

Here, Respondent, like Kelley, has failed to conform his behavior to the standards set by the criminal law on two occasions over a period of nine years resulting first in a conviction for a violation of California Vehicle Code section 23152(b) [driving with a blood alcohol level of .08% or higher] on October 31, 2000, and then in his most recent no contest pleas to violations of California Vehicle Code section 23152(a) [driving under the influence] and section 23103 pursuant to 23103.5 [reckless driving after having consumed alcohol], and finally his sentencing for a violation of California Vehicle Code

section 23103 pursuant to section 23103.5 [reckless driving after having consumed alcohol]. As such, this matter warrants discipline at a level of public reproof in line with *Kelley*.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was November 19, 2012.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 16, 2012, the prosecution costs in this matter are \$4,569.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**EXCLUSION FROM MCLE CREDIT**

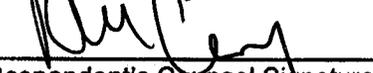
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of Martin L. Winfield, Jr.	Case number(s): 09-C-14102-RAP
---	-----------------------------------

**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 Fact, Conclusions of Law and Disposition.

<u>11/21/12</u>		<u>Martin L. Winfield, Jr.</u>
Date	Respondent's Signature	Print Name
<u>11/21/12</u>		<u>Dana M. Cole</u>
Date	Respondent's Counsel Signature	Print Name
<u>11/21/12</u>		<u>Meredith A. McKittrick</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Martin L. Winfield, Jr.	Case Number(s): 09-C-14102-RAP
--	-----------------------------------

### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reprovial, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

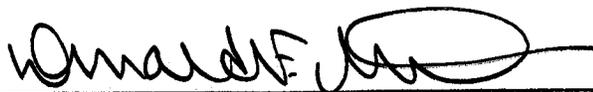
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

On p. 2, (8) Payment of Disciplinary Costs – After “billing cycles,” insert the years “(2014, 2015 and 2016).”

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 reprovial may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

11/26/12  
Date

  
DONALD F. MILES  
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 November 28, 2012, I deposited a true copy of the following document(s):

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

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

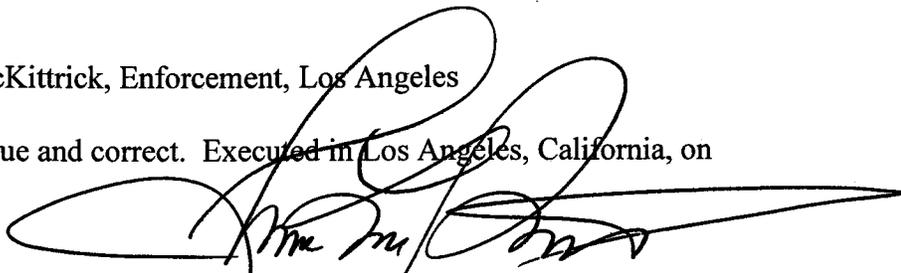
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DANA MICHAEL COLE  
COLE & LOETERMAN  
1925 CENTURY PARK E STE 2000  
LOS ANGELES, CA 90067

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

Meredith A. McKittrick, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 28, 2012.



Johnnie Lee Smith  
Case Administrator  
State Bar Court