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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000</p> <p>Bar # 228137</p>	<p>Case Number(s): 11-O-12837-RAP</p>	<p>For Court use only</p> <p style="text-align: center;">FILED DEC 15 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>John Y. Tu 119 S Atlantic Blvd #305 Monterey Park, CA 91754 (626) 458-9700</p> <p>Bar # 146945</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: John Yaheng Tu</p> <p>Bar # 146945</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</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 11, 1990.
- (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 10 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."

(Effective January 1, 2011)



- (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: 2013, 2014 & 2015. (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 [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 06-O-11095, Supreme Court Order S179830
 - (b) Date prior discipline effective May 2, 2010
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct rule 3-300 and Business and Professions Code section 6106.
 - (d) Degree of prior discipline Three Years Stayed Suspension and Three Years Probation, with 18 months actual suspension.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court Case No. 05-H-03835 S148041, effective February 17, 2007, fo a violation of Rules of Professional Conduct rule 1-110, resulting in One Year Stayed Suspension and One Year Probation with conditions.

State Bar Court Case No. 03-O-01980, effective May 4, 2004, Rules of Professional Conduct 3-110(A) and rule 3-510(A)(2), resulting in One Year Private Repraval.

- (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.

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- (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:

N/A

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. Respondent has been candid and cooperative. (Std. 1.2(e)(v); Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071, 1079; Pineda v. State Bar (1989) 49 Cal.3d 753, 760.)
- (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. Respondent is remorseful and his shortcomings were not out of any maleficent intent. (Std. 1.2(e)(vii); In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.) Concerted efforts to satisfy conditions, albeit late, are better than utter non-compliance.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of 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:

Respondent's actions did not involve bad faith. (Cf. *Mattman v. State Bar* (1987) 43 Cal.3d 924, 951.) Respondent mistakenly believed that he had 18 months to comply with his Ethics School obligation and proof of compliance with his MCLE Requirement (i.e. November 2, 2011). This belief was not reasonable because he received an informational packet from the Office of Probation laying out the terms of his probation requirements.

Respondent completed 12 credits of continuing legal education the week of April 20, 2011. Proof of compliance was due no later than May 2, 2011. However, Respondent did not provide proof of satisfying his MCLE Requirement until June 24, 2011. Respondent acknowledges that his personal confusion as to his deadline was not reasonable.

Here, Respondent has demonstrated that he is capable of compliance and intends to comply with the conditions of his previously imposed probation and has demonstrated his undertaking of rehabilitative steps by coming into belated compliance with his probation conditions.

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 1.4(c)(ii) 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 SIX MONTHS.
- 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 1.4(c)(ii), 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 1.4(c)(ii), 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.
- (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: Respondent successfully completed State Bar Ethics School on August 4, 2011 in case no. 06-O-11095, Supreme Court Order S179830.
- (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 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 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: Respondent is already required to take and pass the MPRE in relation to State Bar Court case no. 06-O-11095 and as a condition of Supreme Court order S179830, effective May 2, 2010.
- (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:
- (5) **Other Conditions:**

Attachment language (if any):

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

IN THE MATTER OF: JOHN YAHENG TU, 146945
CASE NUMBER: 11-O-12837-RAP

Respondent JOHN TU, admits the facts set forth in the stipulation are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

FACTS

1. On April 2, 2010, the Supreme Court of California filed Order No. S179830 (State Bar Court Case No. 06-O-11095 ("Order")). The Order directed Respondent to comply with the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed December 17, 2009 ("Stipulation"). The Order was mailed to Respondent, who received it. The Stipulation included, in part, the following requirements:
 2. That Respondent be placed on probation for a period of 3 years, which was to commence upon the effective date of the Order;
 3. That Respondent be actually suspended from the practice of law in the State of California for a period of eighteen months;
 4. That Respondent submit written quarterly reports ("QR") to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation;
 5. That Respondent attend State Bar Ethics School and pass the examination administered within one year of the effective date of the Order; and
 6. That Respondent complete 12 hours of Minimum Continuing Legal Education approved courses in law office management, attorney client relations and/or general legal ethics and submit satisfactory proof thereof to the Office of Probation within one year of the effective date of the Order ("MCLE Requirement"). The Order became effective on May 2, 2010.
 7. Respondent did not complete Ethics School and passage of the examination administered following, until August 4, 2011. Respondent was required to complete Ethics School by May 2, 2011.

8. Respondent did not file his January 10 QR until January 31, 2011, 21 days late.
9. Respondent did not provide proof of completion of his MCLE Requirement until June 24, 2011. Respondent was required to provide proof of completion of his MCLE Requirement by May 2, 2011.

CONCLUSIONS OF LAW

10. By not timely completing attendance of Ethics School and passage of the examination administered following, by not timely filing his January 10, 2011 QR and by not timely providing proof of completion of his MCLE Requirement, Respondent failed to timely comply with conditions attached to disciplinary probation, in wilful violation of Business and Professions Code section 6068(k).

SUPPORTING AUTHORITY

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

The Standards for Attorney Sanctions for Professional Misconduct, Rules Proc. Of State Bar, Title IV, provide for suspension to disbarment where an attorney violates Business and Professions Code section 6068(k) and disbarment for an attorney with a record of two instances of prior discipline. (Standards 1.6(a), 1.7(b) & 2.6(a).)

The standards are guidelines (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and are afforded great weight (*In re Silvertan* (2005) 36 Cal.4th 81, 91-92) but are not applied in a talismanic fashion (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994). A determination of discipline balances the standards with mitigation and aggravation. (Std. 1.6(b); *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1089; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-11.)

Based on the circumstances, Respondent, once he was alerted to his errant impression as to his deadlines, took prompt efforts to belatedly satisfy the spirit of the probation conditions. Respondent's deadline to attend ethics school was May 2, 2011. The last available ethics school before the deadline was offered on April 28, 2011. The next course was offered on June 9, 2011. Respondent missed the June 9, 2011 course. Respondent attended the next available ethics school on August 4, 2011. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567 – an attorney in a probation revocation proceeding failed to complete restitution payment until 9 months past the deadline and failed to complete ethics school until 6 weeks past the deadline resulting in 30-days actual suspension.)

Here, a six-month actual suspension with a standard 1.4(c)(ii) rehabilitation hearing requirement is sufficient to protect the public.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was November 7, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 7, 2011, the estimated prosecution costs in this matter are approximately \$3,269. Respondent acknowledges that this is an estimate and that additional State Bar Court costs may be included in any final cost assessment (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)). Should this stipulation be rejected or relief from the stipulation be granted, the costs in this matter may increase due to further proceedings.

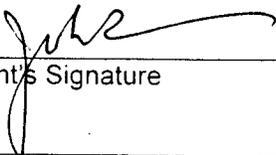
Respondent must pay installment of disciplinary costs within the time provided or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c); also see Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 5.134 (old rule 286) and Business and Professions Code section 6140.7 money judgments).

(Do not write above this line.)

In the Matter of: John Yaheng Tu, 146945	Case number(s): 11-O-12837-RAP
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>Dec. 7, 2011</u>		John Tu
Date	Respondent's Signature	Print Name
<u>Dec 7, 2011</u>		Jean Cha
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: John Yaheng Tu, 146945	Case Number(s): 11-O-12837-RAP
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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.

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.)**

12/14/11
Date


Judge of the State Bar Court

RONALD F. MILES

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 December 15, 2011, 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:

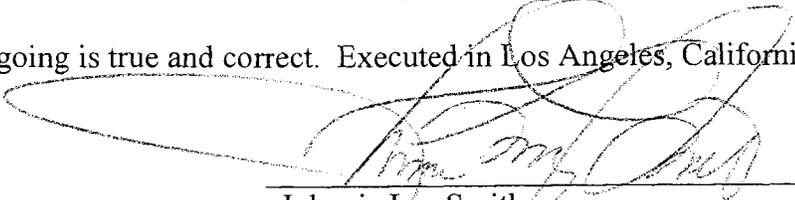
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOHN Y. TU
119 S ATLANTIC BLVD #305
MONTEREY PARK, CA 91754

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

Jean Hee Cha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 15, 2011.



Johnnie Lee Smith
Case Administrator
State Bar Court