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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar  Charles T. Calix Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1255  Bar # 146853	Case Number(s): 13-O-10594	For Court use only  <div style="text-align: center;"> <b>FILED</b>  <b>JAN 13 2014</b> <i>P.B.</i>                      STATE BAR COURT                      CLERK'S OFFICE                      LOS ANGELES                 </div>
In Pro Per Respondent  David Yu-Kai Tang Law Offices of David Tang 8311 Westminster Boulevard, Suite 330 Westminster, CA 92683 (949) 701-0506  Bar # 182347	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>	
In the Matter of: DAVID YU-KAI TANG  Bar # 182357  A Member of the State Bar of California (Respondent)	<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 June 11, 1996.
- (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.

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*12/10/13*



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

**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:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was 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. See Attachment at page 8.

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- (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.
- (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.

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- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

No Prior Discipline: Attachment at page 8.  
Prefiling Stipulation. See Attachment at page 8.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of one (1) year.
- 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 two (2) 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 thirty (30) days.
- 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.

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- (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: .
- (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:
  - Substance Abuse Conditions
  - Medical Conditions
  - Law Office Management Conditions
  - 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:

- (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:**



8. On September 1, 2011, Respondent prepared and filed a "Schedule B – Personal Property" and a "Statement of Financial Affairs" stating that Rico's business named "Rico Guitars" had a current value of \$10,000, which was purportedly based, in part, on the \$5,000 value of its inventory, supplies, bank deposits, and equipment. The valuations were speculations made and passed on to Respondent by the owner of MRI. The valuations were inaccurate and substantially understated the true value of the business and its inventory. Respondent was told and knew that the valuations were speculative and that there were no efforts made to ascertain the true and accurate value of the business and its inventory.

#### CONCLUSIONS OF LAW:

9. By accepting from MRI \$700 on March 31, 2011, and \$1,000 on August 15, 2011, as compensation for representing Rico, without obtaining Rico's informed written consent to receive such compensation, Respondent accepted compensation for representing a client from one other than the client, in willful violation of the Rules of Professional Conduct, rule 3-310(F).

10. By preparing and filing Schedule B and the Statement of Financial Affairs stating that Rico Guitars had a value of \$10,000 and an inventory valued at \$5,000, when he knew that the valuations were speculative and that there were no efforts made to ascertain the true and accurate value of the business and its inventory, Respondent was grossly negligent in misrepresenting the value of the business and its inventory to the bankruptcy court thereby committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

#### AGGRAVATING CIRCUMSTANCES.

**Harm (Std. 1.2(b)(iv)):** Respondent's unreasonable evaluation of Rico Guitars and its inventory harmed the administration of justice, because the Bankruptcy Court, Trustees, and creditors rely on the accuracy of the documents filed by attorneys in bankruptcy cases in making decisions, and errors may adversely impact those decisions and the administration of justice. (See Federal Rules of Bankruptcy Procedure, Rule 9011(b) [by presenting a pleading to the Court, attorneys certifies that to the best of the their knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the factual contentions have or will have evidentiary support]; and *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.)

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent has been an attorney since 1996 without any prior record of discipline. However, his misconduct caused harm to the administration of justice, and therefore, the mitigation is entitled to only nominal weight. (See *Borré v. State Bar* (1991) 52 Cal.3d 1047, 1053.)

**Prefiling Stipulation:** Respondent admitted to the misconduct and entered into this stipulation fully resolving these matters prior to the filing of a Notice of Disciplinary Charges. (See *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 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.4th 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 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.) 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.)

Respondent admits to committing violations of rule 3-310(F), Rules of Professional Conduct (“rule”), and Business and Professions Code section 6106. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the Standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable Standards.

The most severe sanction applicable to Respondent’s misconduct is found in Standard 2.3, which applies to Respondent’s violation of Business and Professions Code section 6106. Standard 2.3 provides for suspension or disbarment for acts of moral turpitude, fraud, intentional dishonesty, and/or concealment toward a court, client or another person depending on the magnitude of the misconduct, the harm to the victim, and the degree to which it relates to the practice of law.

Here, Respondent was grossly negligent in misrepresenting the value of Rico’s business and its inventory to the bankruptcy court, which is serious and directly related to the practice of law. Bankruptcy Courts, trustees, and creditors rely on the accuracy of the information in documents filed by attorneys in bankruptcy cases in making decisions, and errors may adversely impact those decisions and the administration of justice thereby cause harm to the Court, creditors, and administration of justice. While Respondent is entitled to mitigation for entering into a pre-filing stipulation and some mitigation for his lack of prior record of discipline in 17 years of practice, Respondent’s misconduct significantly harmed the administration of justice, and therefore, a period of actual suspension is warranted under Standard 2.3.

Balancing all of the factors, an actual suspension is appropriate based on Respondent’s grossly negligent misrepresentations to the bankruptcy court and failure to obtain his client’s informed written consent to accept compensation for representation of the client from MRI. The application of the Standards to the facts of this case demonstrate that a 30-day actual suspension from the practice of law coupled with a one-year stayed suspension and a two-year period of probation will adequately protect the public, maintain high professional standards, and preserve public confidence in the legal profession and the administration of justice.

Supreme Court case law also supports a 30-day actual suspension. In *Garlow v. State Bar* (1982) 30 Cal.3d 912, Garlow signed his client's name to a declaration, misrepresented to the court that his client had signed the declaration, and instructed his client to give false testimony. Garlow had two prior private reprovls and one public reprovl, which the Supreme Court found demonstrated a habitual lack of appreciation and respect for the duties of an attorney. The Supreme Court imposed a six-month actual suspension. In *Bach v. State Bar* (1987) 43 Cal.3d 848, Bach misrepresented to the court that he had not received notice of a judge's order. Bach had a prior record of public reprovl. The Supreme Court ordered a 60-day actual suspension, one-year stayed suspension, and three-year probation. Although the misconduct in *Garlow, supra*, 30 Cal.3d at p. 912 was more severe, and Garlow and Bach had prior records of discipline, those cases demonstrate that misrepresentations to the court are serious matters deserving actual suspension.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 18, 2013, the prosecution costs in this matter are \$2,865. 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**

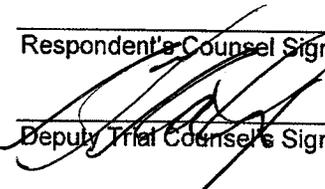
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: DAVID YU-KAI TANG, No. 182347	Case number(s): 13-O-10594
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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>12/11/13</u> Date	 Respondent's Signature	<u>David Yu-Kai Tang</u> Print Name
<u>12/12/13</u> Date	 Deputy Trial Counsel's Signature	<u>N/A</u> Print Name
		<u>Charles T. Calix</u> Print Name

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In the Matter of: DAVID YU-KAI TANG, No. 182357	Case Number(s): 13-O-10594
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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.

David Yu-Kai Tang's membership number on pages 1 and 11 of the stipulation is corrected to 182357.

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.)**

1-13-14  
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 January 13, 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:

**DAVID Y. TANG  
LAW OFC DAVID TANG  
8311 WESTMINSTER BLVD STE 330  
WESTMINSTER, CA 92683**

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

**Charles T. Calix, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 13, 2014.



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Paul Barona  
Case Administrator  
State Bar Court