



DEPARTMENT OF CONSUMER AFFAIRS
 CALIFORNIA BOARD OF ACCOUNTANCY
 2000 EVERGREEN STREET, SUITE 250
 SACRAMENTO, CA 95815-3832
 TELEPHONE: (916) 263-3680
 FACSIMILE: (916) 263-3675
 WEB ADDRESS: <http://www.cba.ca.gov>



**CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
 ENFORCEMENT ADVISORY COMMITTEE (EAC)**

**EAC MEETING
 NOTICE & AGENDA**

**Thursday, January 29, 2015
 9:00 a.m. – 5:00 p.m.**

Doubletree By Hilton Berkeley Marina
 200 Marina Blvd
 Berkeley, CA 94710
 Telephone: (510) 548-7920

- 9:00 – 9:05 I. Roll Call and Call to Order (**Jeffrey De Lyser, Chair**).
- 9:05 – 9:20 II. Report of the Committee Chair (**Jeffrey De Lyser, Chair**).
- A. Introduction of Sarah Huchel, Consultant, California State Assembly Committee on Business and Professions.
- B. Presentation and Discussion Regarding Requirements for Reporting Actions Taken at Board Meetings In Accordance With California Government Code Section 11123 (**Dominic Franzella, Enforcement Chief**).
- C. Approval of the December 11, 2014 EAC Meeting Minutes.
- 9:20 – 9:35 III. Report of the CBA Liaison (**Katrina Salazar**).
- A. Report of the January 22, 2015 CBA and Committee Meetings.
- 9:35 – 10:00 IV. Report of the Enforcement Chief (**Dominic Franzella**).
- A. Enforcement Activity Report.
- B. Report on Accusations and Final Disciplinary Orders Since December 11, 2014.
- 10:00 – 10:05 V. Public Comments for Items not on the Agenda.
- 10:05 – 11:30 VI. Review Enforcement Files on Individual Licensees.
[Closed Session: The EAC will meet in closed session to review and deliberate on enforcement files as authorized by Government Code

section 11126(c)(2) and Business and Professions Code section 5020.]

LUNCH

1:00 – 5:00 VII. Conduct Closed Hearings.
[The Committee will meet in closed session as authorized by Government Code Sections 11126(c)(2) and (f)(3), and Business and Professions Code Section 5020 to conduct a closed session to interview and consider disciplinary action against an individual licensee or applicant prior to the filing of an Accusation.]

VIII. Adjournment.

Please note: Action may be taken on any item on the agenda. All times are approximate. In accordance with the Bagley-Keene Open Meetings Act, all meetings of the EAC are open to the public. Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the EAC prior to the EAC taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the EAC, but the EAC Chair may, at her discretion, apportion available time among those who wish to speak. Individuals may appear before the EAC to discuss items not on the agenda; however, the EAC can neither discuss nor take official action on these items at the time of the same meeting. (Government Code sec.11125.7(a). CBA members who are not members of the EAC may be attending the meeting. However, if a majority of members of the full board are present at the EAC meeting, members who are not members of the EAC may attend the meeting only as observers.

The meeting is accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Allison Nightingale at (916) 561-1723, or by email at anightingale@cba.ca.gov, or send a written request to the CBA office at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

For further information regarding this meeting, please contact:

Allison Nightingale, Management Services Technician
(916) 561-1723 or anightingale@cba.ca.gov
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

An electronic copy of this agenda can be found at <http://www.dca.ca.gov/cba/calendar.shtml>.



California
LEGISLATIVE INFORMATION

AB-2720 State agencies: meetings: record of action taken. (2013-2014)

Assembly Bill No. 2720

CHAPTER 510

An act to amend Section 11123 of the Government Code, relating to public meetings.

[Approved by Governor September 20, 2014. Filed with Secretary of State
September 20, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2720, Ting. State agencies: meetings: record of action taken.

The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body, as defined, be open and public and all persons be permitted to attend any meeting of a state body. The act defines various terms for its purposes, including "action taken," which means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision, or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order, or similar action.

This bill would require a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11123 of the Government Code is amended to read:

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly

pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

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**Attachment 2**

**California Business and Professions Code
Division 3, Chapter 1, Article 1, Section 5017.1
Administration**

5017.1

The board shall post, within 10 days of board approval, the finalized minutes from meetings of the board that are open and public pursuant to Section 5017 on the board's Internet Web site. The minutes shall remain on the board's Internet Web site for at least three years. Providing a link on the Internet Web site to the minutes shall satisfy this requirement.



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EAC Item II.B.
January 30, 2015

**Presentation and Discussion Regarding Requirements for Reporting Actions
Taken at Board Meetings in Accordance With California Government Code
Section 11123**

Presented by: Dominic Franzella, Enforcement Chief

Date: December 12, 2014

Purpose of the Item

The purpose of this agenda item is to provide the Enforcement Advisory Committee (EAC) with the new procedures staff will follow to meet the requirement to publicly report on each action taken in accordance with California Government Code (Government Code) section 11123.

Action Needed

No specific action is required on this agenda item.

Background

The Bagley-Keene Open Meeting Act defines various terms, including “action taken” which is defined as a “collective commitment or promise by the members of the state body to make a positive or negative decision, or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order, or similar action.”

Effective January 1, 2015, Government Code section 11123 was amended, by the passage of Assembly Bill 2720 (**Attachment 1**), to require that all state bodies publicly report any action taken and the vote or abstention on that action of each member present for the action. Pursuant to Business and Professions Code section 5017.1 (**Attachment 2**), the California Board of Accountancy (CBA) keeps minutes which are publicly posted on the CBA website.

Comments

To ensure the CBA is in compliance with the new provisions that took effect January 1, 2015, the following procedures will be followed after each action at the CBA and committee meetings, including the Committee on Professional Conduct, Enforcement Program Oversight Committee, Legislative Committee, Strategic Planning Committee, EAC, Peer Review Oversight Committee, Mobility Stakeholder Group, and Qualifications Committee:

**Presentation and Discussion Regarding Requirements for Reporting Actions
Taken at Board Meetings in Accordance With California Government Code
Section 11123**

Page 2 of 2

- After a motion and a second have been put forth for a vote, a roll call vote will be taken, in alphabetical order, by the Board Relations Analyst or the committee's staff liaison.
- Members will state their vote as yes, no, or abstain, which will be recorded by the Board Relations Analyst or committee's staff liaison.
- When the roll call vote is complete, the CBA President or committee Chair will state if the motion passed or failed.

Additionally, the meeting minutes will document each members vote as "Yes," "No," or "Abstain." If a member is temporarily absent, it will be noted on the minutes.

Fiscal/Economic Impact

None.

Recommendation

None.

Attachments

1. Assembly Bill 2720
2. Business and Professions Code section 5017.1

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**DRAFT**

DEPARTMENT OF CONSUMER AFFAIRS
 CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
 ENFORCEMENT ADVISORY COMMITTEE (EAC)

EAC Item II.C.
 January 29, 2015

**MINUTES OF THE
 DECEMBER 11, 2014
 EAC MEETING**

Hilton San Diego Airport/Harbor Island
 1960 Harbor Island Drive
 San Diego, CA 92101
 Telephone: (619) 291- 6700

I. Roll Call and Call to Order.

The regularly scheduled meeting of the EAC was called to order at 9:03 a.m. on December 11, 2014 by EAC Chair, Jeffrey De Lyser.

Members

Jeffrey De Lyser, Chair	Present
Joseph Rosenbaum, Vice-Chair	Present
Joseph Buniva	Present
Gary Caine	Present
Nancy Corrigan	Present
Mary Rose Caras	Present
William Donnelly	Present
Robert A. Lee	Present
Mervyn McCulloch	Present
Katherine Allanson	Present
Seid Sadat	Present
Michael Schwarz	Present
Dale Best	Present

CBA Member Liaison

Herschel Elkins

CBA Staff and Legal Counsel

Patti Bowers, Executive Officer
 Rafael Ixta, Chief, Enforcement Division
 Paul Fisher, Supervising Investigative CPA
 Vincent Johnston, Enforcement Manager
 David Jones, Investigative CPA
 Marla Weitzman, Investigative CPA

Dorothy Osgood, Acting Supervising Investigative CPA
Kay Lewis, Investigative CPA
Tina MacGregor, Investigative CPA
Erica Lee, Enforcement Analyst
Chandalou Gonzales, Enforcement Analyst
Allison Nightingale, Enforcement Technician
Carl Sonne, Deputy Attorney General (DAG), Department of Justice

II. Review Enforcement Files on Individual Licensees.

The EAC adjourned into closed session under the provisions of Government Code section 11126(c)(2) and Business and Professions Code (BPC) section 5020. EAC members convened into closed session at 9:04 a.m. and reconvened into open session at 10:40 a.m.

III. Report of the Committee Chair (**Jeffrey De Lyser**).

A. Appointment(s)/Reappointment(s) to the EAC.

Mr. De Lyser reported that he was appointed Chair, Joseph Rosenbaum was appointed Vice-Chair, Nancy Corrigan was re-appointed, and Katherine Allanson was appointed to the EAC.

B. Approval of the October 23, 2014 EAC Meeting Minutes.

It was moved by Mr. Lee, seconded by Mr. Sadat, and unanimously carried to approve the minutes of the October 23, 2014 EAC meeting.

The minutes for this meeting will be submitted to the CBA members for review and adoption at the March 2015 CBA meeting.

IV. Report of the CBA Liaison (**Herschel Elkins**).

A. Report of the November 20-21, 2014 CBA and Committee Meetings.

Mr. Elkins reported that at the November CBA meeting, the CBA elected Jose Campos, CPA as President, Katrina Salazar, CPA as Vice-President, and Alicia Berhow as Secretary-Treasurer to the CBA.

Mr. Elkins also reported that the Peer Review Report, which is due to the Legislature on January 1, 2015, was approved.

Mr. Elkins reported on fee levels and their impact on the Accountancy Fund Reserve. The CBA approved a fee increase, which will eliminate the current negative cash flow, bringing revenues and expenditures into alignment, and maintain a six month Accountancy Fund reserve. Mr. Elkins also reported that proposed regulations to implement the fee increase will be presented to the CBA in March 2015.

Mr. Elkins reported that the CBA approved proposed legislative language and directed staff to pursue legislation, which would provide the CBA and Administrative Law Judges the statutory authority to impose permanent practice restrictions as part of a final disciplinary order. Mr. Elkins also reported that the CBA directed staff to pursue legislation to clarify restoration requirements for a retired status license.

V. Report of the Enforcement Chief (**Rafael Ixta**).

A. Enforcement Activity Report.

Mr. Ixta provided an overview of the report. Mr. Ixta reported that the number of complaints received had doubled from 463 to 945 complaints since the previous reporting period. Mr. Ixta also reported that the majority of the complaints received were from internal units within the CBA such as convictions, peer review, and continuing education deficiencies. Mr. Ixta also reported that the total number of investigations closed had nearly doubled from 307 to 597 and the average days to close investigations had decreased from 162 to 150 since the last report.

Mr. Ixta reported that there are currently 41 Attorney General (AG) referrals for Fiscal Year 2014/15 with 17 referred since the previous report. He also reported that with the recent increase in staffing and change to the peer review and retroactive fingerprinting requirements, the volume of the AG referrals has increased.

B. Discussion Regarding the Survey of EAC Members Conducted in November 2014.

Mr. Ixta reported that the six-question survey was e-mailed to the EAC Members after the October 23, 2014 EAC Meeting. Feedback was 100 percent satisfaction from all EAC Members. However, in response to question six regarding any other feedback, one of the EAC members reported difficulty with travel from the Burbank Airport to the October 23, 2014 EAC meeting location.

VI. Public Comments for Items Not on the Agenda.

Ms. Bowers stated that Rafael Ixta is retiring, and she selected Dominic Franzella as the new Chief of Enforcement. Ms. Bowers also reported there will be internal transitioning of staff presently assigned to assist the EAC.

VII. Conduct Closed Hearings.

[The Committee will meet in closed session as authorized by Government Code sections 11126(c)(2) and (f)(3) and Business and Professions Code section 5020 to conduct closed sessions to interview and consider possible disciplinary action against an individual licensee or applicant prior to the filing of an accusation.]

VIII. Adjournment.

The next EAC meeting is scheduled for January 29, 2015 at the Doubletree By Hilton Berkeley Marina.

Having no further business to conduct, the EAC general meeting adjourned at approximately 11:22 a.m. to reconvene in closed session at 1:00 p.m. Closed session adjourned at approximately 3:00 p.m.

Jeffrey De Lyser, CPA, Chair
Enforcement Advisory Committee

Prepared by: Allison Nightingale, Enforcement Technician

**California Board of Accountancy
Enforcement Activity Report**

Report as of November 30, 2014

EAC Item IV.A.
January 29, 2015

Complaints

Complaints/Records of Convictions	FY 2012/13	FY 2013/14	FY 2014/15
Received	3,271	3,255	1,144
<i>Internal – Peer Review (Failure to Respond)</i>	<i>1,800</i>	<i>1,481</i>	<i>0</i>
<i>Internal – Peer Review (Other)*</i>	<i>508</i>	<i>411</i>	<i>214</i>
<i>Internal – All Other</i>	<i>510</i>	<i>969</i>	<i>731</i>
<i>External</i>	<i>453</i>	<i>394</i>	<i>199</i>
Assigned for Investigation	2,951	2,969	804
Closed – No Action	329	289	341
Average Days from Intake to Closure or Assignment for Investigation	3	4	3
Pending	3	0	0
Average Age of Pending Complaints (days)	3	0	0

* Peer Review (Other) internal complaints typically include investigation of failed peer review reports, failure to comply with peer review citations, filing an incorrect Peer Review Reporting Form, or renewing a license without undergoing a peer review when a peer review is required.

Comments

- The California Board of Accountancy (CBA) received nearly 200 additional complaints since the last reporting period.
- The majority of the complaints received are from internal units within the CBA. The top three reasons that comprise the internal complaints continue to be conviction of a crime, peer review (failing to submit the Peer Review Reporting (PR-1) form and/or discrepancies between the licensees' responses on the PR-1 form and accounting and auditing continuing education question on the license renewal application), and various continuing education deficiencies.
- This fiscal year, the CBA received 199 external complaints, which is comparable to the same period last year. These complaints are received from various sources such as the public, anonymous persons, societies/trade organizations, licensees, and other government agencies. The top reasons that comprise external complaints are unlicensed practice and peer review.
- The number cases closed with no action taken has risen from approximately eight percent in the last fiscal year to 29 percent to date this fiscal year. The rise is attributed to the high number of Criminal Offender Record Information cases resulting from the implementation of mandatory fingerprinting that are ultimately closed.

California Board of Accountancy Enforcement Activity Report

Report as of November 30, 2014

Investigations

Investigations	FY 2012/13	FY 2013/14	FY 2014/15
Assigned	2,951	2,969	804
<i>Internal – Peer Review (Failure to Respond)</i>	1,794	1,481	0
<i>Internal – Peer Review (Other)</i>	437	407	214
<i>Internal – All Other</i>	361	740	420
<i>External</i>	359	341	170
Closed	2,872	2,669	750
Average Days to Close	73	74	144
Total Investigations Pending	518	825	884
<i>< 18 Months</i>	500	774	806
<i>18-24 Months</i>	17	42	67
<i>> 24 Months</i>	1	9	11
Average Age of Open Cases (days)	166	202	223
Median Age of Open Cases (days)	104	153	173

Chart A pie graph on Page 9 illustrates the percentage of open cases by length of time.

Comments

- The CBA closed 153 investigations and the average days to close investigations decreased from 150 to 144 since the previous report. The CBA is consistently closing investigations while experiencing an increase in workload.
- The CBA presently has 11 investigations that have been pending over 24 months. These cases are the most complex investigations requiring additional time to resolve. The status of the investigations are as follows:
 - Three investigations are on-going.
 - Two investigations are pending Investigative Hearings set for January 29, 2015.
 - An Investigative Hearing was conducted on December 11, 2014, and the case will be referred to the Attorney General (AG) once the report is finalized.
 - Five investigations have reports in process and will be referred to the AG.

California Board of Accountancy Enforcement Activity Report

Report as of November 30, 2014

Discipline

Attorney General Referrals	FY 2012/13	FY 2013/14	FY 2014/15
Referrals	62	74	44
Accusations Filed	50	34	15
Statements of Issues Filed	3	8	6
Petitions for Revocation of Probation Filed	3	2	0
Closed	58	31	35
<i>Via Stipulated Settlement</i>	39	21	31
<i>Via Proposed Decision</i>	5	4	0
<i>Via Default Decision</i>	14	6	4
Discipline Pending	57	95	109
<i>< 18 Months</i>	52	82	95
<i>18-24 Months</i>	2	10	9
<i>> 24 Months</i>	3	3	5

Chart B pie graph on Page 9 illustrates the percentage of cases pending at the AG Office by length of time.

Comments

- There are five cases pending at the AG's Office for more than 24 months. The current status of the cases, which includes four carried over from the last report, are as follows:
 - A writ was filed with the California Superior Court in August 2012 following adoption of a proposed decision and denial of a Petition for Reconsideration in July 2012. A Superior Court hearing was held in June 2013 and the Court issued a tentative decision in September 2013; however, additional testimony was taken on February 27, 2014 and arguments were heard on March 27, 2014. A decision was issued on August 28, 2014 denying the writ of mandate. The stay previously issued was dissolved and the CBA's decision revoking the Petitioner's license became effective. However, the Petitioner immediately filed a Notice of Appeal with the Appellate Court seeking a stay of the decision. A hearing regarding a motion requesting a trial took place on December 12, 2014.
 - The matter was heard by an Administrative Law Judge (ALJ) and the proposed decision was non-adopted by the CBA. This matter was deliberated at the November 20-21, 2014 CBA meeting. The decision was signed by the CBA Vice-President in December 2014 and will be effective January 18, 2015.

California Board of Accountancy Enforcement Activity Report

Report as of November 30, 2014

- Two cases are scheduled for a hearing with the Office of Administrative Hearings (OAH) on January 7, 2015 and February 26, 2015, respectively.
- An OAH hearing was held in September 2014 and the matter was held open by the ALJ until October 2014 to allow the Respondent to submit mitigating evidence. The CBA is waiting for the Proposed Decision from the ALJ.

California Board of Accountancy Enforcement Activity Report

Report as of November 30, 2014

Citations and Fines

Citations	FY 2012/13	FY 2013/14	FY 2014/15
Total Citations Issued	1,883	1,522	115
Total Fines Assessed	\$532,400	\$399,020	\$37,900
Peer Review (Failure to Respond)	1,800	1,481	0
<i>Peer Review Fines Assessed</i>	<i>\$450,000</i>	<i>\$370,250</i>	<i>\$0</i>
Other Citations	83	41	115
<i>Other Fines Assessed</i>	<i>\$82,400</i>	<i>\$28,770</i>	<i>\$37,900</i>
Other Fines Average	\$993	\$702	\$330
Average number of days from receipt of a complaint to issuance of a citation	67	33	135
Top 3 Violations Resulting in Citation			
1:	Response to CBA Inquiry (Reg 52)	Response to CBA Inquiry (Reg 52)	CE Basic Requirements (Reg 87)
2:	CE Basic Requirements (Reg 87)	CE Basic Requirements (Reg 87)	Name of Firm (BPC 5060)
3:	Practice Without Permit (BPC 5050)	Name of Firm (BPC 5060)	Response to CBA Inquiry (Reg 52)

Comments

- As noted in previous reports, the current year average for number of days to issue a citation is higher than the two previous fiscal years due to the high volume and efficiency with which Peer Review (Failure to Respond) citations were issued.
- The Other Fines Average amount of \$330 is lower than the two previous fiscal years. The fine amount assessed varies from \$100 to \$5,000 and is determined on a case-by-case basis. Factors that may increase or decrease the fine amount include aggravating or mitigating circumstances, and length of time the violation existed.

California Board of Accountancy Enforcement Activity Report

Report as of November 30, 2014

Probation Monitoring

Monitoring Activities	
Number of Licensees on Probation as of Last Report	74
New Probationers	9
Total Number of Probationers	83
Out-of-State Probationers	5
Probation Orientations Held	2

- Upon completion of the disciplinary process, matters are referred to a CBA Probation Monitor for tracking and compliance with the terms of probation. The last probation meetings were held in conjunction with the Enforcement Advisory Committee (EAC) meeting on December 10, 2014.
- Additional probation orientations are in the process of being scheduled in conjunction with the January 29, 2015 EAC meeting.
- In 2015, staff will provide the CBA with an educational presentation on probation monitoring activities.

California Board of Accountancy Enforcement Activity Report

Report as of November 30, 2014

Criminal Offender Record Information (CORI)

CORI Fingerprints	FY 2014/15
Notification Letters Sent	8,219
CORI Compliances Received	4,991
Non-Compliance Notifications	128

CORI Enforcement Cases	FY 2014/15
Received	216
Assigned for Investigation	29
Closed – No Action	180
Non-Compliance Citation and Fines Issued	7

Comments

- Effective January 1, 2014, all licensees renewing their license in active status are required to have fingerprints on file for the purpose of conducting a state and federal criminal offender record information background check.

California Board of Accountancy Enforcement Activity Report

Report as of November 30, 2014

Mobility

Enforcement Aspects of Mobility	FY 2013/14	FY 2014/15
Pre-Notification Forms Received	15	2
Cessation Event Forms Received	0	0
SEC Discipline Identified	37	12
PCAOB Discipline Identified	11	4
Out-of-State Accounting Firm Registrants That Reported Other Discipline	10	1
Complaints Against Practice Privilege Holders	2	7

Effective July 1, 2013, the CBA implemented a no notice, no fee practice privilege model in California. This table depicts the enforcement aspects of mobility, including the receipt and investigation of Practice Privilege Pre-Notification Forms and Notification of Cessation Event Forms.

Comments

- Staff sent letters to all CPAs who were disciplined from either the Securities and Exchange Commission or the Public Company Accounting Oversight Board to inform them that they must seek CBA authorization prior to practicing in California.

Division Highlights and Future Considerations

- Six new Investigative CPAs were hired and began working in the months of November and December 2014. It is anticipated that one additional new Investigative CPA will be hired and begin working by December 31, 2014. All of these are new positions created through approval from the legislature. Of the seven new Investigative CPAs, three will be working in the Sacramento office and four will be working in remote locations. All of the new Investigative CPAs went through a week long training session at the CBA office.
- Dominic Franzella was named Chief of Enforcement effective December 15, 2014.
- Rafael Ixta retired from his position as Chief of Enforcement effective December 18, 2014.

**California Board of Accountancy
Enforcement Activity Report**
Report as of November 30, 2014

Chart A – Open Investigations as of November 30, 2014

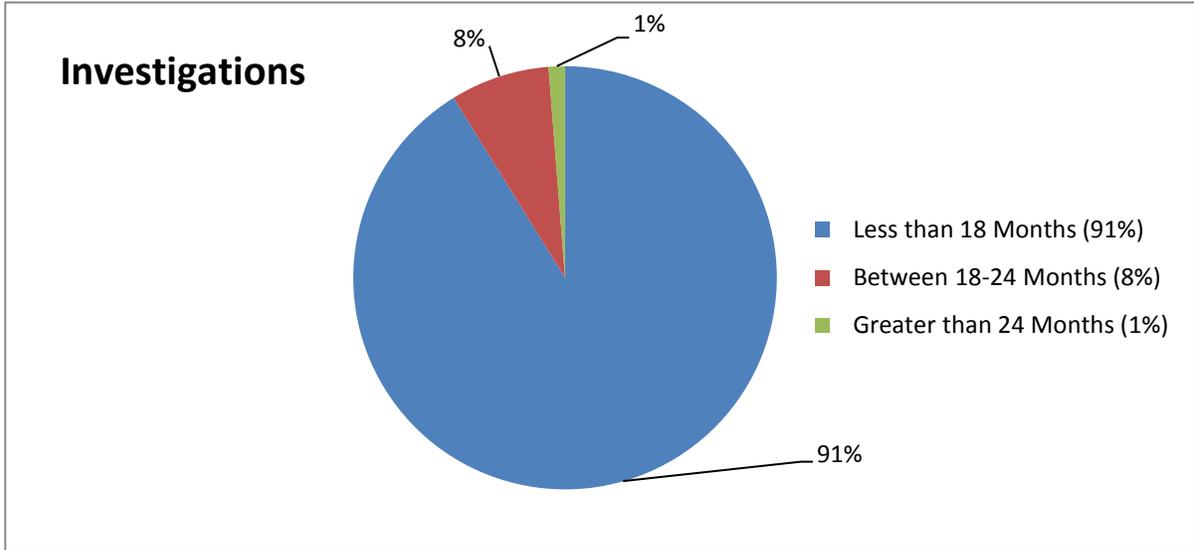
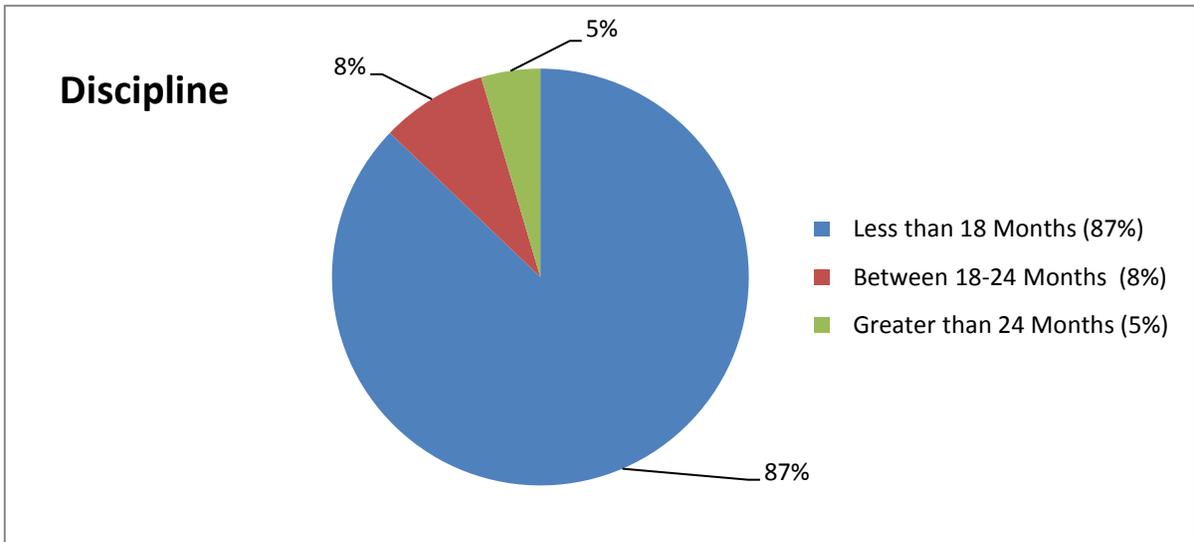


Chart B – Discipline Pending at the Attorney General Office as of November 30, 2014





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EAC Item IV.B.
 January 30, 2015

Report on Accusations and Final Disciplinary Orders Since December 11, 2014

Presented by: Dominic Franzella, Enforcement Chief

Date: January 1, 2015

Purpose of the Item

The purpose of this agenda item is to provide the Enforcement Advisory Committee (EAC) with information related to accusations filed and final disciplinary orders effective since the December 2014 EAC meeting.

Action Needed

No specific action is required on this agenda item.

Background

At the conclusion of the October 2014 EAC meeting, members completed a survey via SurveyMonkey providing comments and feedback on various aspects of the meeting. Among the comments was a request for staff to bring information related to accusations filed and final disciplinary orders effective since the prior EAC meeting. As a result, staff have placed this topic as a standing agenda item for all future EAC meetings.

Comments

Since the December 1, 2014 EAC meeting, the CBA has filed three accusations and eight disciplinary orders have taken effect. All matters are listed below with the accusations and disciplinary orders provided in **Attachments 1-11**.

Accusations

AC-2012-52	Rabinovitz, Brian	Filed December 1, 2014
AC-2014-49	Lucia, Donald	Filed December 6, 2014
AC-2015-9	Casey, Diane	Filed December 1, 2014

Disciplinary Orders

AC-2013-30	Republicano, Victor	Stipulated Settlement
AC-2013-43	TCA Partners	Stipulated Settlement
AC-2013-44	Jackson, Richard	Stipulated Settlement
AC-2013-45	Tucker, Jerrel	Stipulated Settlement
AC-2013-46	Sullenger, Inger	Stipulated Settlement
AC-2014-11	Mitchell, Michael	Stipulated Settlement
	Michael S. Mitchell CPA, Inc.	Stipulated Settlement

Report on Accusations and Final Disciplinary Orders Since December 11, 2014

Page 2 of 2

AC-2014-27	Duban, Dennis Duban Accountancy Corporation Duban Accountancy, LLP	Stipulated Settlement Stipulated Settlement Stipulated Settlement
AC-2014-58	Teruel, Robbie	Default Decision

Fiscal/Economic Impact

None.

Recommendation

None.

Attachments

1. AC-2012-52 Rabinovitz, Brian
2. AC-2014-49 Lucia, Donald
3. AC-2015-9 Casey, Diane
4. AC-2013-30 Republicano, Victor
5. AC-2013-43 TCA Partners
6. AC-2013-44 Jackson, Richard
7. AC-2013-45 Tucker, Jerrel
8. AC-2013-46 Sullenger, Inger
9. AC-2014-11 Mitchell, Michael; Michael S. Mitchell CPA, Inc.
10. AC-2014-27 Duban, Dennis; Duban Accountancy Corporation; Duban Accountancy, LLP
11. AC-2014-58 Teruel, Robbie

**THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD**

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 MATTHEW A. KING
Deputy Attorney General
4 State Bar No. 265691
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
matthew.king@doj.ca.gov
6 (213) 897-7446

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
12 Against:

Case No. AC-2012-52
OAH No. 2014010513

13 **BRIAN RABINOVITZ**
954 Blue Mountain Circle
14 Westlake Village, CA 91362

FIRST AMENDED ACCUSATION

[Gov. Code, § 11503.]

15 **Certified Public Accountant Certificate No.**
16 **98088**

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Patti Bowers brings this First Amended Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of
22 Consumer Affairs.

23 2. On July 16, 2007, the California Board of Accountancy issued Certified Public
24 Accountant Certificate Number 98088 to Respondent Brian Rabinovitz. The Certified Public
25 Accountant Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2014, unless it is renewed.

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1 JURISDICTION

2 3. This First Amended Accusation is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

6 4. Section 141 states:

7 (a) For any licensee holding a license issued by a board under the jurisdiction
8 of the department, a disciplinary action taken by another state, by any agency of the
9 federal government, or by another country for any act substantially related to the
10 practice regulated by the California license, may be a ground for disciplinary action
11 by the respective state licensing board. A certified copy of the record of the
12 disciplinary action taken against the licensee by another state, an agency of the
13 federal government, or another country shall be conclusive evidence of the events
14 related therein.

15 (b) Nothing in this section shall preclude a board from applying a specific
16 statutory provision in the licensing act administered by that board that provides for
17 discipline based upon a disciplinary action taken against the licensee by another
18 state, an agency of the federal government, or another country.

19 5. Section 5109 states:

20 The expiration, cancellation, forfeiture, or suspension of a license, practice
21 privilege, or other authority to practice public accountancy by operation of law or
22 by order or decision of the board or a court of law, the placement of a license on a
23 retired status, or the voluntary surrender of a license by a licensee shall not deprive
24 the board of jurisdiction to commence or proceed with any investigation of or action
25 or disciplinary proceeding against the licensee, or to render a decision suspending
26 or revoking the license.

27 6. Section 5033.1 defines "license" to include a "certificate."

28 7. Section 5100 states, in pertinent part:

After notice and hearing the board may revoke, suspend, or refuse to renew
any permit or certificate granted under Article 4 (commencing with Section 5070)
and Article 5 (commencing with Section 5080), or may censure the holder of that
permit or certificate for unprofessional conduct that includes, but is not limited to,
one or any combination of the following causes:

...

(h) Suspension or revocation of the right to practice before any governmental
body or agency.

...

(l) The imposition of any discipline, penalty, or sanction on a registered
public accounting firm or any associated person of such firm, or both, or on any
other holder of a permit, certificate, license, or other authority to practice in this
state, by the Public Company Accounting Oversight Board or the United States

1 Securities and Exchange Commission, or their designees under the Sarbanes-Oxley
2 Act of 2002 or other federal legislation...

3 **FEDERAL REGULATIONS**

4 8. Section 201.101, subdivision (a)(3), of Title 17 of the Code of Federal Regulations
5 defines a “disciplinary proceeding” before the Securities and Exchange Commission to mean an
6 action under section 201.102, subdivision (e), of the same Title.

7 9. Section 201.102, subdivision (e), of Title 17 of the Code of Federal Regulations
8 states, in relevant part:

9 “(e) Suspension and disbarment

10 ...

11 (3) Temporary suspensions. An order of temporary suspension shall become effective
12 upon service on the respondent. No order of temporary suspension shall be entered by the
13 Commission pursuant to paragraph (e)(3)(i) of this section more than 90 days after the date
14 on which the final judgment or order entered in a judicial or administrative proceeding
15 described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) of this section has become effective,
16 whether upon completion of review or appeal procedures or because further review or
17 appeal procedures are no longer available.

18 (i) The Commission, with due regard to the public interest and without preliminary
19 hearing, may, by order, temporarily suspend from appearing or practicing before it any
20 attorney, accountant, engineer, or other professional or expert who has been by name:

21 (A) Permanently enjoined by any court of competent jurisdiction, by reason of his or
22 her misconduct in an action brought by the Commission, from violating or aiding and
23 abetting the violation of any provision of the Federal securities laws or of the rules and
24 regulations thereunder; or

25 (B) Found by any court of competent jurisdiction in an action brought by the
26 Commission to which he or she is a party or found by the Commission in any administrative
27 proceeding to which he or she is a party to have violated (unless the violation was found not
28 to have been willful) or aided and abetted the violation of any provision of the Federal
securities laws or of the rules and regulations thereunder.

24 **COST RECOVERY**

25 10. Section 5107 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation of the
27 California Accountancy Act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

1 STATEMENT OF FACTS

2 11. On April 21, 2005, the SEC filed a civil fraud action against Exotics.com, Inc.
3 (Exotics.com), and several individuals, including Respondent, entitled *Securities and Exchange*
4 *Commission v. Exotics.com, Inc., et al.* (D. Nev., April 25, 2005, CV-S-05-0531-PMP-RJJ) (SEC
5 civil action). After five years of litigating the matter, on or about March 15, 2010, pursuant to an
6 Offer Settlement, a final judgment was entered against Respondent, permanently enjoining him
7 from future violations of Rule 2-02 of Regulation S-X (failure to function as an independent
8 auditor). Respondent was also ordered to pay a \$30,000 civil money penalty. The underlying
9 circumstances of the action are as follows:

10 12. In 2001 and 2002, while Respondent was employed by Merdinger, Fruchter, Rosen &
11 Corso, P.C. (MFRC) as a non-equity partner, he supervised MFRC's audit and other engagements
12 concerning Exotics.com. Exotics.com was engaged in the business of owning, operating, and
13 licensing adult-oriented websites. Exotics.com was a Nevada corporation with stock registered
14 with the SEC and traded on the Over-the-Counter Bulletin Board.

15 13. The SEC's complaint in the SEC civil action alleged, among other things, that
16 Respondent and others participated in a manipulative scheme that resulted in Exotics.com filing
17 materially false statements in its SEC filings. The complaint further alleged Respondent and audit
18 staff, under his supervision committed acts and omissions, including creating some of the
19 company's books and records, that caused them to become non-independent during audits of
20 Exotics.com and that Respondent approved the issuance by MFRC of audit reports which, among
21 other things, falsely stated that the audits had been conducted by an independent auditor and in
22 accordance with Generally Accepted Auditing Standards (GAAS). The complaint also alleged
23 that Respondent and audit staff, under his supervision engaged in a number of improper
24 accounting practices that caused Exotics.com's financial statements to depart from Generally
25 Accepted Accounting Principles (GAAP).

26 14. On March 24, 2010, pursuant to the above-referenced Offer Settlement, in the related
27 administrative proceeding, entitled *In the Matter of Brian K. Rabinovitz, CPA*, Administrative
28 Proceeding File No. 3-13832, the SEC issued an Order Instituting Administrative Proceedings

1 against Respondent pursuant to Rule 102(e) of the Commission's Rules to Practice, Making
2 Findings, and Imposing Remedial Sanctions for being permanently enjoined by the U.S. District
3 Court for violating SEC Rule 2-02 of Regulation S-X. The Order suspended Respondent's
4 privilege of appearing or practicing before the SEC as an accountant.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Suspension of Right to Practice Before Governmental Body or Agency)**

7 15. Respondent is subject to disciplinary action under Code section 5100, subdivision (h),
8 for unprofessional conduct in that on March 24, 2010, the SEC, a governmental body or agency,
9 suspended Respondent's right to practice before it. Complainant realleges paragraphs 11-14.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(SEC Discipline)**

12 16. Respondent is subject to disciplinary action under Code section 5100, subdivision (l),
13 for unprofessional conduct in that on March 24, 2010, the SEC imposed discipline on Respondent
14 by suspending his right to appear or practice before it. (SEC Administrative Proceeding File No.
15 3-13832.) A suspension before the SEC is considered disciplinary action under the SEC's own
16 rules. (Commodities and Securities Exchanges, 17 C.F.R. §§ 200.101(a)(3), 102(e) (2006).)
17 Complainant realleges paragraphs 11-14.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Disciplinary Action by an Agency of the Federal Government)**

20 17. Respondent is subject to disciplinary action under Code section 141 in that on March
21 24, 2010, an agency of the federal government, to wit, the SEC, took disciplinary action against
22 Respondent in the form of a suspension of his right to appear or practice before it. A suspension
23 before the SEC is considered disciplinary action under the SEC's own rules. (Commodities and
24 Securities Exchanges, 17 C.F.R. §§ 200.101(a)(3), 102(e) (2006).) Complainant realleges
25 paragraphs 11-14.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 98088, issued to Brian Rabinovitz;
2. Ordering Brian Rabinovitz to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;
3. Ordering Brian Rabinovitz to pay the Board an administrative penalty pursuant to Business and Professions Code section 5116; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 12/1/2014



PATTI BOWERS
Executive Officer
California Board of Accountancy
State of California
Complainant

LA2012507336

**THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD**

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
4 State Bar No. 261887
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-0962
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC- 2014-49

12 **DONALD GENE LUCIA**
275 N. Feguson Avenue, Unit 1
13 Bozeman, MT 59718

ACCUSATION

14 Certified Public Accountant License No. 36308

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Patti Bowers (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the California Board of Accountancy, Department of
20 Consumer Affairs.

21 2. On or about December 3, 1982, the California Board of Accountancy issued
22 Certified Public Accountant License No. 36308 to Donald Gene Lucia (Respondent). This
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on September 30, 2016, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the California Board of Accountancy (CBA),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 expects to be paid a commission, shall disclose that fact to any client or entity to whom the person
2 engaged in the practice of public accountancy recommends or refers a product or service to which
3 the commission relates.

4 (e) The board shall adopt regulations to implement, interpret, and make specific the
5 provisions of this section including, but not limited to, regulations specifying the terms of any
6 disclosure required by subdivision (d), the manner in which the disclosure shall be made, and
7 other matters regarding the disclosure that the board deems appropriate. These regulations shall
8 require, at a minimum, that a disclosure shall comply with all of the following:

9 (1) Be in writing and be clear and conspicuous.

10 (2) Be signed by the recipient of the product or service.

11 (3) State the amount of the commission or the basis on which it will be computed.

12 (4) Identify the source of the payment and the relationship between the source of the
13 payment and the person receiving the payment.

14 (5) Be presented to the client at or prior to the time the recommendation of the
15 product or service is made.

16 (f) For purposes of this section, "fee" includes, but is not limited to, a commission,
17 rebate, preference, discount, or other consideration, whether in the form of money or otherwise."

18 7. Section 5116 states, in pertinent part:

19 "(a) The board, after appropriate notice and an opportunity for hearing, may order any
20 licensee or applicant for licensure or examination to pay an administrative penalty as provided in
21 this article as part of any disciplinary proceeding or other proceeding provided for in this
22 chapter."

23 **REGULATORY PROVISION**

24 8. California Code of Regulations, title 16, section 56 states:

25 "(a) A licensee shall not accept any fee or commission permitted by Business and
26 Professions Code Section 5061 unless he or she complies with the provisions of this section and
27 Section 56.1

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1 (b) A licensee who may receive a fee or commission pursuant to Business and
2 Professions Code Section 5061 shall furnish to the client, at or prior to the time the
3 recommendation of the product or service is made, a written disclosure statement in 12 point type
4 or larger that contains the following information:

5 (1) The fact that the fee or commission is to be paid for professional services and that
6 a fee or commission cannot be accepted solely for the referral of the client to the products or
7 services of a third party.

8 (2) A description of the product(s) or service(s) which the licensee is recommending
9 to the client, the identity of the third party that is expected to provide the product or service, the
10 business relationship of the licensee to the third party, a description of any fee or commission
11 which may be received by the licensee, including, but not limited to, any supplemental fee or
12 commission or other compensation allocable to the client being provided with the product or
13 service of the third party. Where the product(s) or service(s) cannot be specifically identified at
14 the time of the initial disclosure, this information shall be included in a supplemental disclosure
15 within 30 days of receipt of the fee or commission.

16 (3) The dollar amount or value of the fee or commission payment(s) or the basis on
17 which the payment(s) shall be computed.

18 (c) The written disclosure shall be on letterhead of the licensed firm or shall be signed
19 by the licensee. The disclosure statement shall be signed and dated by the client and contain an
20 acknowledgment by the client that the client has read and understands the information contained
21 in the disclosure. Supplemental disclosures as described in subsection (b)(2) of Section 56 need
22 not be signed by the client or by the licensee. The licensee shall retain the disclosure statements
23 for a period of five years and shall provide copies to the client.”

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COST RECOVERY

9. Section 5107, subdivision (a), states, in pertinent part:

“The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.”

STATEMENT OF FACTS

10. In or around October 2004, Respondent referred his client, M.R., to a licensed insurance agent for the purpose of discussing financial investments. Following an initial meeting Respondent set up between M.R. and the insurance agent, M.R. and his wife D.R. retained the insurance agent as their financial advisor.

11. On or about December 17, 2004, M.R. was issued a 419 Single Employer Welfare Benefit Plan and Trust sold to him by the insurance agent. Respondent received a \$50,677.00 commission on the sale of this policy.

12. On or about January 4, 2006, D.R. was issued a 419 Single Employer Welfare Benefit Plan and Trust sold to her by the same insurance agent. Respondent received a \$25,320.00 commission on this policy.

13. Respondent never provided M.R. or D.R. with a written disclosure of the commissions he would receive from the sale of their 419 Plans.

FIRST CAUSE FOR DISCIPLINE

(Failure to Provide Client with Written Disclosure of Commission)

14. Respondent is subject to disciplinary action under section 5100, subdivision (g), in conjunction with section 5061, subdivision (e)(1), and California Code of Regulations, title 16, section 56, subdivision (b), in that he failed to provide his clients M.R. and D.R. with written disclosure of the commissions he was to receive on the sale of their 419 investment plans.

Complainant hereby incorporates paragraphs 10-13, above, as though set forth fully.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accounting License No. 36308, issued to Donald Gene Lucia;
2. Ordering Donald Gene Lucia to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;
3. Ordering Donald Gene Lucia to pay the California Board of Accountancy an administrative penalty, pursuant to Business and Professions Code section 5116; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 12/5/2014


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

LA2014511866
51621565.docx

**THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD**

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 State Bar No. 13264
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2015-9

13 **DIANE MARY CASEY**
24310 Moulton Parkway O-570
14 **Laguna Hills, CA 92637**

A C C U S A T I O N

15 **Certified Public Accountant Certificate**
16 **No. CPA 59209**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as the
21 Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about August 1, 1991, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number CPA 59209 to Diane Mary Casey (Respondent). The
24 Certified Public Accountant Certificate expired on July 1, 2013, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the California Board of Accountancy (CBA),
27 Department of Consumer Affairs, under the authority of the following laws. All section references
28 are to the Business and Professions Code (Code) unless otherwise indicated.

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4. Section 5109 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

5. Section 5050 of the Code provides, in pertinent part, that except as otherwise provided, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the Board.

6. Section 5051 of the Code states:

Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of this chapter if he or she does any of the following:

- (a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.
- (b) Maintains an office for the transaction of business as a public accountant.
- (c) Offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records.
- (d) Prepares or certifies for clients reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining credit, for filing with a court of law or with any governmental agency, or for any other purpose.
- (e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.
- (f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.
- (g) Prepares or signs, as the tax preparer, tax returns for clients.
- (h) Prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans.
- (i) Provides management consulting services to clients.

1 The activities set forth in subdivisions (f) to (i), inclusive, are 'public accountancy'
2 only when performed by a certified public accountant or public accountant, as defined in
3 this chapter.

4 A person is not engaged in the practice of public accountancy if the only services he
5 or she engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does
6 not hold himself or herself out, solicit, or advertise for clients using the certified public
7 accountant or public accountant designation. A person is not holding himself or herself
8 out, soliciting, or advertising for clients within the meaning of this section solely by reason
9 of displaying a CPA or PA certificate in his or her office or identifying himself or herself
10 as a CPA or PA on other than signs, advertisements, letterhead, business cards,
11 publications directed to clients or potential clients, or financial or tax documents of a
12 client.

13 7. Section 5060 of the Code states:

14 (a) No person or firm may practice public accountancy under any name which is
15 false or misleading.

16 (b) No person or firm may practice public accountancy under any name other than
17 the name under which the person or firm holds a valid permit to practice issued by the
18 board.

19 (c) Notwithstanding subdivision (b), a sole proprietor may practice under a name
20 other than the name set forth on his or her permit to practice, provided the name is
21 registered by the board, is in good standing, and complies with the requirements of
22 subdivision (a).

23

24 8. Section 5076 of the Code¹ states:

25 (a) In order to renew its registration, a firm, as defined in Section 5035.1, shall have
26 a peer review report of its accounting and auditing practice accepted by a board-
27 recognized peer review program no less frequently than every three years.

28 (b) For purposes of this article, the following definitions apply:

 (1) "Peer review" means a study, appraisal, or review conducted in accordance with
professional standards of the professional work of a firm, and may include an evaluation
of other factors in accordance with the requirements specified by the board in regulations.
The peer review report shall be issued by an individual who has a valid and current
license, certificate, or permit to practice public accountancy from this state or another
state and is unaffiliated with the firm being reviewed.

 (2) "Accounting and auditing practice" includes any services that are performed
using professional standards defined by the board in regulations.

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¹ Amended by Stats.2010, c. 415 (S.B.1491), § 4.

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9. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

....

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

....

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 45² states:

....

(b) The operative date of existing California-licensed firms to begin reporting peer review results shall be based on a firm's license number according to the following schedule: for license numbers ending with 01-33 the reporting date is no later than July 1, 2011; for license numbers ending with 34-66 the reporting date is no later than July 1, 2012; for license numbers ending with 67-00 the reporting date is no later than July 1, 2013.

(c) A firm licensed after the operative date of this Article that performs accounting and auditing services or a firm not previously required to undergo a peer review shall have a peer review report accepted by a Board-recognized peer review program no later than 18-months after the completion of the services as required by Section 40. Upon the acceptance of the peer review report, the firm shall report specific peer review information to the Board on form PR-1 (1/10).

11. California Code of Regulations, title 16, section 52(a) states:

A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

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² 2010 CA REG TEXT 206963 (NS)

1 **COSTS & PENALITES**

2 12. Section 5107, subdivision (a) of the Code states:

3 The executive officer of the board may request the administrative law judge, as part
4 of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
5 certificate found to have committed a violation or violations of this chapter to pay to the
6 board all reasonable costs of investigation and prosecution of the case, including, but not
7 limited to, attorneys' fees. The board shall not recover costs incurred at the administrative
8 hearing.

9 13. Section 5116 of the Code provides, in pertinent part, that the Board may order any
10 licensee or applicant for licensure or examination to pay an administrative penalty as part of any
11 disciplinary proceeding. Administrative penalties shall be in addition to any other penalties or
12 sanctions imposed on the licensee or other person, including, but not limited to, license revocation,
13 license suspension, denial of the application for licensure, denial of the petition for reinstatement,
14 or denial of admission to the licensing examination. Payment of these administrative penalties may
15 be included as a condition of probation when probation is ordered.

16 **FACTUAL ALLEGATIONS**

17 14. On February 28, 2013, the CBA received a copy of a memo dated February 1, 2013,
18 from the CBA's Peer Review Unit (PRU) to open a complaint against Respondent for possible
19 violation of Business and Professions Code section 5076 for renewing her license without having a
20 peer review. In addition to the memo, the PRU included e-mail and regular correspondence from
21 the California Society of Certified Public Accountants (CalCPA) and Respondent.

22 15. On June 6, 2011, Respondent sent an e-mail to the Peer Review at CalCPA requesting
23 a peer review by the National Peer Review Committee (NPRC).³

24 16. On September 7, 2011, a letter from the PRU was sent to Respondent stating that the
25 CBA had previously notified Respondent on July 1, 2010 and April 1, 2011 that she was required
26 to submit her Peer Review Reporting Form (Form) to the CBA no later than July 1, 2011. The

27 ³ CalCPA administers the American Institute of CPAs (AICPA) Peer Review Program for
28 enrolled firms with their main office in California, Arizona and Alaska. The AICPA administers
this program through the National Peer Review Committee (NPRC) for firms required to be
registered with the Public Company Accounting Oversight Board (PCAOB). A peer review is a
periodic outside review of a firm's accounting and auditing practice aimed at helping the firm
maintain and improve the quality of its services.

1 letter instructed Respondent to provide proof that either she was not subject to the peer review
2 requirements, or that she had obtained an extension of time from the CalCPA to complete the peer
3 review. Respondent replied via a letter dated October 5, 2011, stating that the CBA's letter was
4 delivered to the wrong address and that she had already submitted the information required for
5 scheduling reviews on June 6, 2011. Respondent stated she would follow-up with CBA as soon as
6 the review was completed.

7 17. On October 11, 2011, the PRU called Respondent and told her the CBA still needed
8 confirmation from CalCPA of her enrollment for a peer review. Respondent provided the CBA
9 with a copy of a letter from the AICPA, dated November 10, 2011, stating that Respondent's firm
10 had been enrolled in a Peer Review Program and that her peer review was due on June 30, 2012.

11 18. On March 16, 2012, the PRU sent a letter to Respondent reminding her that she was
12 required to report her peer review information to the CBA no later than July 1, 2011, and
13 requested information regarding Respondent's peer review no later than March 30, 2012. No
14 response was received.

15 19. On July 9, 2012, the PRU sent a second letter to Respondent reminding her that she
16 was required to report her peer review information to the CBA no later than July 1, 2011, and
17 requested information regarding Respondent's peer review no later than August 3, 2012. No
18 response was received.

19 20. In a letter dated November 19, 2012, from the CalCPA Peer Review Program, the
20 California Peer Review Committee accepted the report on the most recent system peer review of
21 "Your Bookkeeper, Inc." Respondent was directed to "Submit an audit engagement and
22 workpapers to the team captain for a post issuance review. The team captain will review and
23 submit a report of his findings to the Peer Review Committee. This report is due to the committee
24 by May 31, 2013. This review will be performed at your firm's expense." In Respondent's
25 acknowledgement of the letter, which she signed on July 11, 2013, she included a handwritten note
26 stating "Due to illness I did not perform an audit engagement."

27 21. On March 22, 2013, the CBA mailed a letter to Respondent at her address of record
28 via certified and regular mail, requesting an update of her peer review. On March 29, 2013 and

1 April 9, 2013, both letters were returned by the post office marked "Return to Sender – Not
2 Deliverable as Addressed."

3 22. On July 1, 2013, Respondent's Certified Public Accountant Certificate expired and has
4 not been renewed.

5 23. In a letter dated May 6, 2014, from the CalCPA Peer Review Program, the California
6 Peer Review Committee determined that Respondent's most recent peer review was complete and
7 the next review would be due June 30, 2015.

8 24. On May 14, 2014, the CBA called Respondent and e-mailed her information regarding
9 her peer review, delinquent license and practice activities. On May 16, 2014, Respondent e-mailed
10 the CBA stating that she was working on responding to their requests for information. To date,
11 Respondent has not complied with CBA's request.

12 25. On July 18, 2014, the PRU provided information to the Investigative CPA Supervisor
13 regarding information from the AICPA website that Respondent failed her peer review and that
14 she was grossly negligent in her work. According to the System Review Report from Farber Hass
15 Hurley LLP, Certified Public Accountants, in accordance with the Standards for Performing and
16 Reporting on Peer Reviews, dated June 29, 2012, Respondent's firm, "Your Bookkeeper Inc.," in
17 effect for the year ending December 31, 2011, had deficiencies in the system of quality control for
18 the accounting and auditing practice which was not suitably designed or complied with to provide
19 the firm with reasonable assurance of performing and/or, reporting in conformity with the
20 applicable professional standards in all material respects. Respondent's firm "Your Bookkeeper
21 Inc." received a peer review rating of FAIL. In Respondent's reply to the peer review, dated July
22 12, 2012, she stated "The firm has adopted a quality control document and the firm plans to
23 implement practice monitoring by December of 2012."

24 26. Respondent's firm, "Your Bookkeeper, Inc." has been registered as a corporation with
25 the California Secretary of State since June 21, 2002. Respondent maintains a website at
26 <http://www.yourbookkeeper.com/>. The website advertises that Respondent's firm provides
27 "professional accounting, tax, and financial management services including outsourced controllers
28 and bookkeepers, payroll processing, tax planning and compliance, and other nontraditional

1 services.” The firm “Your Bookkeeper, Inc.” is not registered with the CBA. Respondent’s CPA
2 certificate expired on July 1, 2013.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Willful Violation of the Accountancy Act or Rule/Regulation Promulgated by the Board)**

5 27. Respondent is subject to disciplinary action under section Business and Professions
6 Code sections 498 and 5100, subdivisions (b) and (g) in that she renewed her Certified Public
7 Accountant Certificate for the renewal period ending on June 30, 2011, knowing that she had not
8 completed the mandatory peer review due July 1, 2011, as described in paragraphs 14-26, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Failure to Obtain a Peer Review)**

11 28. Respondent is subject to disciplinary action under section Business and Professions
12 Code section 5100(g) in that Respondent failed to comply with the provisions of Business and
13 Professions Code section 5076 and California Code of Regulations, title 16, section 45, which
14 required she obtain a peer review, due no later that July 1, 2011, prior to the renewal of her CPA
15 certificate, as described in paragraphs 14-26, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Practice of Public Accounting Without a Valid CPA Certificate)**

18 29. Respondent is subject to disciplinary action under section Business and Professions
19 Code sections 5050 and 5100(g) in that Respondent’s CPA certificate expired on July 1, 2013, yet
20 she currently advertises accounting services on her website, as described in paragraph 26, above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unregistered Firm Name)**

23 30. Respondent is subject to disciplinary action under section Business and Professions
24 Code sections 5060 and 5100(g) in that Respondent’s firm “Your Bookkeeper, Inc.” is not
25 registered with the CBA, as described in paragraph 26, above.

26 ///

27 ///

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Respond to Board Inquiries)**

3 31. Respondent is subject to disciplinary action under Business and Professions Code
4 section 5100(g) and California Code of Regulations, title 16, section 52(a) in that Respondent
5 failed to respond to the CBA's multiple requests for information regarding the status of her peer
6 review, as described in paragraphs 14-26, above.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the California Board of Accountancy issue a decision:

10 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
11 Accountant Certificate Number CPA 59209, issued to Diane Mary Casey;

12 2. Ordering Diane Mary Casey to pay the California Board of Accountancy the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 5107;

15 3. Ordering Diane Mary Casey to pay the California Board of Accountancy an
16 administrative penalty pursuant to Business and Professions Code section 5116; and

17 4. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: 12/1/2014


21 PATTI BOWERS
22 Executive Officer
23 California Board of Accountancy
24 Department of Consumer Affairs
25 State of California
26 Complainant

27
28 SD2014707959

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VICTOR PHILIP REPUBLICANO
875-A Island Drive # 250
Alameda, CA 94502

Certified Public Accountant License No.
CPA 55813

Respondent.

Case No. AC-2013-30

OAH No. 2013071314

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on

1-1-15

It is so ORDERED

12-2-14

William A. Jolley

FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER
Deputy Attorney General
4 State Bar No. 141461
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1404
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:
11 **VICTOR PHILIP REPUBLICANO**
12 **875-A Island Drive # 250**
13 **Alameda, CA 94502**
14 **Certified Public Accountant License No.**
CPA 55813
15 Respondent.

Case No. AC-2013-30
OAH No. 2013071314

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
21 Accountancy. She brought this action solely in her official capacity and is represented in this
22 matter by Kamala D. Harris, Attorney General of the State of California, by Jonathan D. Cooper,
23 Deputy Attorney General.

24 2. Respondent Victor Philip Republicano ("Respondent") is represented in this
25 proceeding by Arthur V. Pearson; Murphy Pearson Bradley & Feeney; 88 Kearny Street, Suite
26 1000; San Francisco, CA 94108.

27 3. On or about May 11, 1990, the California Board of Accountancy issued Certified
28 Public Accountant License Number CPA 55813 to Victor Philip Republicano (Respondent). The

1 Certified Public Accountant License expired on September 1, 2009, and was not renewed until
2 September 1, 2011. Thereafter, the license has been in full force and effect and, as of the date of
3 this stipulation, will expire on August 31, 2015, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. AC-2013-30 was filed before the California Board of Accountancy
6 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The
7 Accusation and all other statutorily required documents were properly served on Respondent on
8 April 30, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

9 5. A copy of Accusation No. AC-2013-30 is attached as exhibit A and incorporated
10 herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 6. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. AC-2013-30. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
18 his own expense; the right to confront and cross-examine the witnesses against him; the right to
19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
20 the attendance of witnesses and the production of documents; the right to reconsideration and
21 court review of an adverse decision; and all other rights accorded by the California
22 Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 **CULPABILITY**

26 9. Respondent understands and agrees that the charges and allegations in the pending
27 Accusation, if proven at hearing, constitute cause for imposing discipline upon his Certified
28 Public Accountant Certificate.

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Certified Public Accountant License No. CPA 55813
3 issued to Respondent Victor Philip Republicano (Respondent) is revoked. However, the
4 revocation is stayed and Respondent is placed on probation for three (3) years on the following
5 terms and conditions.

6 **1. Obey All Laws**

7 Respondent shall obey all federal, California, other states' and local laws, including those
8 rules relating to the practice of public accountancy in California.

9 **2. Cost Reimbursement**

10 Respondent shall reimburse the CBA \$10,000.00 for its investigation and prosecution costs.
11 The payment shall be made in ten quarterly payments and are due at the same time that written
12 quarterly reports are due.

13 **3. Submit Written Reports**

14 Respondent shall submit, within 10 days of completion of the quarter, written reports to the
15 CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury,
16 such other written reports, declarations, and verification of actions as are required. These
17 declarations shall contain statements relative to respondent's compliance with all the terms and
18 conditions of probation. Respondent shall immediately execute all release of information forms
19 as may be required by the CBA or its representatives.

20 **4. Personal Appearances**

21 Respondent shall, during the period of probation, appear in person at interviews/meetings as
22 directed by the CBA or its designated representatives, provided such notification is accomplished
23 in a reasonable manner.

24 **5. Comply With Probation**

25 Respondent shall fully comply with the terms and conditions of the probation imposed by
26 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
27 its monitoring and investigation of the respondent's compliance with probation terms and
28 conditions.

1 **6. Practice Investigation**

2 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
3 professional practice. Such a practice investigation shall be conducted by representatives of the
4 CBA, provided notification of such review is accomplished in a reasonable manner.

5 **7. Comply With Citations**

6 Respondent shall comply with all final orders resulting from citations issued by the
7 California Board of Accountancy.

8 **8. Tolling of Probation for Out-of-State Residence/Practice**

9 In the event respondent should leave California to reside or practice outside this state,
10 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
11 California residency or practice outside the state shall not apply to reduction of the probationary
12 period, or of any suspension. No obligation imposed herein, including requirements to file
13 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
14 or otherwise affected by such periods of out-of-state residency or practice except at the written
15 direction of the CBA.

16 **9. Violation of Probation**

17 If respondent violates probation in any respect, the CBA, after giving respondent notice and
18 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was
19 stayed. If an accusation or a petition to revoke probation is filed against respondent during
20 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
21 probation shall be extended until the matter is final.

22 The CBA's Executive Officer may issue a citation under California Code of Regulations,
23 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
24 licensee on probation.

25 **10. Completion of Probation**

26 Upon successful completion of probation, respondent's license will be fully restored.

27 **11. Restitution**

28 Respondent shall make restitution to P.D. in the amount of \$10,000.00, and shall provide

1 the CBA with a written receipt from P.D. attesting that restitution in the amount of \$10,000.00
2 has been paid. Respondent shall prepare and submit a repayment plan to the CBA for approval.
3 Restitution shall be completed six months before the termination of probation.

4 **12. Engagement Letters**

5 Respondent shall use engagement letters with each engagement accepted during probation
6 and shall provide copies of same to the CBA or its designee upon request.

7 **13. Ethics Continuing Education**

8 Respondent shall, within 12 months of the Effective Date of this Order, complete four hours
9 of continuing education in course subject matter pertaining to the following: a review of
10 nationally recognized codes of conduct emphasizing how the codes relate to professional
11 responsibilities; case-based instruction focusing on real-life situational learning; ethical dilemmas
12 facing the accounting profession; or business ethics, ethical sensitivity, and consumer
13 expectations. Courses must be a minimum of one hour as described in California Code of
14 Regulations Section 88.2. Said courses shall be in addition to continuing education requirements
15 for relicensing.

16 If respondent fails to complete said courses within the time period provided, respondent
17 shall so notify the CBA and shall cease practice until respondent completes said courses, has
18 submitted proof of same to the CBA, and has been notified by the CBA that he may resume
19 practice. Failure to complete the required courses shall constitute a violation of probation.

20 **14. Regulatory Review Course**

21 Respondent shall, within 12 months of the Effective Date of this Order, complete a CBA-
22 approved course or courses on the provisions of the California Accountancy Act and the
23 California Board of Accountancy Regulations specific to the practice of public accountancy in
24 California emphasizing the provisions applicable to current practice situations. The course(s) also
25 will include an overview of historic and recent disciplinary actions taken by the CBA,
26 highlighting the misconduct which led to licensees being disciplined. The course(s) shall be a
27 minimum of two hours. Said courses(s) shall be in addition to continuing education requirements
28 for relicensing.

1 If respondent fails to complete said course(s) within the time period provided, respondent
2 shall so notify the CBA and shall cease practice until respondent completes said course(s), has
3 submitted proof of same to the CBA, and has been notified by the CBA that he or she may
4 resume practice. Failure to complete the required course(s) shall constitute a violation of
5 probation.

6 **15. Continuing Education Courses**

7 Respondent shall, within 12 months of the Effective Date of this Order, complete and
8 provide proper documentation of sixteen hours of professional education courses in the subjects
9 of forensic accounting and valuation. Said courses(s) shall be in addition to continuing education
10 requirements for relicensing.

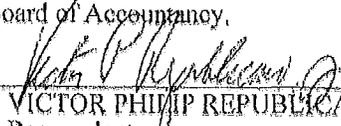
11 Failure to satisfactorily complete the required courses as scheduled shall constitute a
12 violation of probation.

13 **16. Active License Status**

14 Respondent shall at all times maintain an active license status with the CBA, including
15 during any period of suspension. If the license is expired at the time the CBA's decision becomes
16 effective, the license must be renewed within 30 days of the effective date of the decision.

17 **ACCEPTANCE**

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Arthur Pearson. I understand the stipulation and the effect it will
20 have on my Certified Public Accountant License. I enter into this Stipulated Settlement and
21 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
22 Decision and Order of the California Board of Accountancy.

23 DATED: 9/19/2014 
24 VICTOR PHILIP REPUBLICANO
25 Respondent

26 *///*

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I have read and fully discussed with Respondent Victor Philip Republicano the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/17/14 
Arthur V. Pearson
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy.

Dated: 9/22/14 Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JONATHAN D. COOPER
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. AC-2013-30

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOR
Supervising Deputy Attorney General
3 JONATHAN D. COOPER
Deputy Attorney General
4 State Bar No. 141461
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1404
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2013-30

11 **VICTOR PHILIP REPUBLICANO**
12 **875-A Island Drive # 250**
13 **Alameda, CA 94502**

ACCUSATION

14 **Certified Public Accountant License No.**
15 **CPA 55813**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs

22 2. On or about May 11, 1990, the California Board of Accountancy issued Certified
23 Public Accountant License Number CPA 55813 to Victor Phillip Republicano (Respondent). The
24 Certified Public Accountant License expired on September 1, 2009, and was not renewed until
25 September 1, 2011. Thereafter, the license has been in full force and effect and will expire on,
26 August 31, 2013, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the California Board of Accountancy (CRA),

1 Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 5070.6 of the Code states:

4 Except as otherwise provided in [Chapter 1, commencing with section 5000.1], an expired
5 permit may be renewed at any time within five years after its expiration upon the filing of an
6 application for renewal on a form prescribed by the board, payment of all accrued and unpaid
7 renewal fees and providing evidence satisfactory to the board of compliance as required by
8 Section 5070.5. If the permit is renewed after its expiration, its holder, as a condition precedent
9 to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this
10 section shall be effective on the date on which the application is filed, on the date on which the
11 accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid,
12 whichever last occurs. If so renewed, the permit shall continue in effect through the date
13 provided in Section 5070.5 that next occurs after the effective date of the renewal, when it shall
14 expire if it is not again renewed.

15 5. Section 5109 of the Code states:

16 The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or
17 other authority to practice public accountancy by operation of law or by order or decision of the
18 board or a court of law, the placement of a license on a retired status, or the voluntary surrender
19 of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with
20 any investigation of or action or disciplinary proceeding against the licensee, or to render a
21 decision suspending or revoking the license.

22 6. Section 5116 of the Code states:

23 (a) The board, after appropriate notice and an opportunity for hearing, may order any
24 licensee or applicant for licensure or examination to pay an administrative penalty as provided in
25 this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

26 (b) The board may assess administrative penalties under one or more provisions of this
27 article. However, the total administrative penalty to be paid by the licensee shall not exceed the
28 amount of the highest administrative penalty authorized by this article.

1 (c) The board shall adopt regulations to establish criteria for assessing administrative
2 penalties based upon factors, including, but not limited to, actual and potential consumer harm,
3 nature and severity of the violation, the role of the person in the violation, the person's ability to
4 pay the administrative penalty, and the level of administrative penalty necessary to deter future
5 violations of this chapter.

6 (d) Administrative penalties assessed under this article shall be in addition to any other
7 penalties or sanctions imposed on the licensee or other person, including, but not limited to,
8 license revocation, license suspension, denial of the application for licensure, denial of the
9 petition for reinstatement, or denial of admission to the licensing examination. Payment of these
10 administrative penalties may be included as a condition of probation when probation is ordered.

11 (e) All administrative penalties collected under this article shall be deposited in the
12 Accountancy Fund.

13 STATUTES AND REGULATIONS

14 7. Section 5050 of the Code states, in pertinent part:

15 (a) Except as provided in subdivision (b) and (c) of this section, in subdivision (a) of
16 Section 5054, and in Section 5096.12, no person shall engage in the practice of public
17 accountancy in this state unless the person is the holder of a valid permit to practice public
18 accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1
19 (commencing with Section 5096.).

20 ...
21 8. Section 5051 of the Code states:

22 Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in
23 the practice of public accountancy within the meaning and intent of [Chapter 1 of Division 3
24 (commencing with Section 5000)] if he or she does any of the following:

25 (a) Holds himself or herself out to the public in any manner as one skilled in the knowledge,
26 science, and practice of accounting, and as qualified and ready to render professional service
27 therein as a public accountant for compensation.

28 (b) Maintains an office for the transaction of business as a public accountant.

1 (c) Offers to prospective clients to perform for compensation, or who does perform on
2 behalf of clients for compensation, professional services that involve or require an audit,
3 examination, verification, investigation, certification, presentation, or review of financial
4 transactions and accounting records.

5 (d) Prepares or certifies for clients reports on audits or examinations of books or records of
6 account, balance sheets, and other financial, accounting and related schedules, exhibits,
7 statements, or reports that are to be used for publication, for the purpose of obtaining credit, for
8 filing with a court of law or with any governmental agency, or for any other purpose.

9 (e) In general or as an incident to that work, renders professional services to clients for
10 compensation in any or all matters relating to accounting procedure and to the recording,
11 presentation, or certification of financial information or data.

12 (f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares
13 reports, all as a part of bookkeeping operations for clients.

14 (g) Prepares or signs, as the tax preparer, tax returns for clients.

15 (h) Prepares personal financial or investment plans or provides to clients products or
16 services of others in implementation of personal financial or investment plans.

17 (i) Provides management consulting services to clients.

18 The activities set forth in subdivisions (f) to (i), inclusive, are 'public accountancy' only
19 when performed by a certified public accountant or public accountant, as defined in this chapter.

20 A person is not engaged in the practice of public accountancy if the only services he or she
21 engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does not hold
22 himself or herself out, solicit, or advertise for clients using the certified public accountant or
23 public accountant designation. A person is not holding himself or herself out, soliciting, or
24 advertising for clients within the meaning of this section solely by reason of displaying a CPA or
25 PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than
26 signs, advertisements, letterhead, business cards, publications directed to clients or potential
27 clients, or financial or tax documents of a client.

28 ///

1 public accountant' or any abbreviation thereof or the words 'public accountant' or any
2 abbreviation thereof shall be prima facie evidence in any prosecution, proceeding or hearing
3 brought under this article that the person whose name is so displayed caused or procured the
4 display or uttering of such card, sign, advertisement or other printed, engraved or written
5 instrument or device. Any such display or uttering shall be prima facie evidence that the person
6 whose name is so displayed holds himself or herself out as a certified public accountant, or a
7 public accountant holding a permit to practice public accountancy in this State under the
8 provisions of this chapter. In any prosecution or hearing under this chapter, evidence of the
9 commission of a single act prohibited by this chapter shall be sufficient to justify a conviction
10 without evidence of a general course of conduct.

11 12. California Code of Regulations, Title 16, section 63, states:

12 A licensee shall not advertise or use other forms of solicitation in any manner which is
13 false, fraudulent, misleading, or in violation of Section 17500 of the Business and Professions
14 Code.

15 COSTS

16 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
20 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
21 included in a stipulated settlement.

22 14. Section 5107(a) of the Code states:

23 The executive officer of the board may request the administrative law judge, as part of the
24 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
25 found to have committed a violation or violations of this chapter to pay to the board all reasonable
26 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
27 The board shall not recover costs incurred at the administrative hearing.

28 ///

1 FACTUAL SUMMARY

2 15. Respondent's Certified Public Accountant license expired on September 1, 2009, due
3 to Respondent's failure to submit required documents.

4 16. On or about October 22, 2010, Respondent entered into a contract to perform services
5 for L.L.¹ and thereafter performed accounting services for L.L. The contract stated prominently
6 that Respondent was a certified public accountant, and specified that Respondent was to be
7 retained to provide accounting services. The contract stated, untruthfully, that Respondent
8 employed staff, senior associates, managers, principals and directors, who worked at various
9 rates. In actuality, Respondent employed no such persons. Pursuant to the contract, Respondent
10 demanded and received a retainer of \$10,000.00.

11 17. On or about December 17, 2010, after the Board received a complaint regarding
12 Respondent's unlicensed practice, the Board sent Respondent a letter demanding that Respondent
13 cease and desist from practicing as a certified public accountant. On or about January 20, 2011,
14 the Board re-sent the letter to Respondent, and Respondent acknowledged receipt thereof.

15 18. On or about April 1, 2011, Respondent entered into a contract to perform services for
16 P.D., and thereafter performed accounting services for her. The contract stated prominently that
17 Respondent was a certified public accountant, and specified that Respondent was to be retained to
18 provide accounting services. The contract stated, untruthfully, that Respondent employed staff,
19 senior associates, managers, principals and directors, who worked at various rates. In actuality,
20 Respondent employed no such persons. Pursuant to the contract, Respondent demanded and
21 received a retainer of \$10,000.00. During the course of Respondent's contract with P.D.,
22 Respondent demanded and received a total of \$20,000.00 in fees from P.D. for accounting
23 services as of May 20, 2011.

24 19. On or about June 22, 2011, the Board again sent Respondent a letter ordering him to
25 cease and desist from holding himself out to be a licensed certified public accountant.

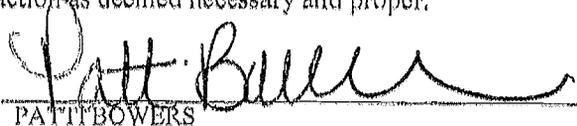
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27 ¹ All non-parties are identified by letters in order to preserve privacy. The names of the
28 non-parties will be disclosed in response to a request for discovery.

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3. Ordering Victor Philip Republicano to an administrative penalty, pursuant to
Business and Professions Code section 5116;

4. Taking such other and further action as deemed necessary and proper.

DATED: April 30, 2013



PATT BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

TCA PARTNERS LLP
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountancy Partnership
Certificate No. PAR 6980

OAH No. 2014010481

And

RICHARD EDSON JACKSON, Partner
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountant Certificate No.
36244

And

JERREL LEE TUCKER, Partner
9074 N. Sierra Vista
Fresno, CA 93720
Certified Public Accountant Certificate No.
72045

And

INGER ALICE SULLENGER, Partner
3046 Whispering Meadow Ln.
Plain City, UT 84404
Certified Public Accountant Certificate No.
88971

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 1-1-15

It is so ORDERED 12-2-14



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **TCA PARTNERS, LLP**
13 **1111 Herndon Avenue, #211**
Fresno, CA 93720
14 **Certified Public Accountancy Partnership**
Certificate No. PAR 6980
15
16 **And**
17 **RICHARD EDSON JACKSON, Partner**
1111 Herndon Avenue, #211
Fresno, CA 93720
18 **Certified Public Accountant Certificate No.**
36244
19
20 **And**
21 **JERREL LEE TUCKER, Partner**
9074 N. Sierra Vista
Fresno, CA 93720
22 **Certified Public Accountant Certificate No.**
72045
23
24 **And**
25 **INGER ALICE SULLENGER, Partner**
3046 Whispering Meadow Ln.
Plain City, UT 84404
26 **Certified Public Accountant Certificate No.**
88971
27
28 Respondents.

Case Nos. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

OAH No. 2014010481

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
(TCA PARTNERS, LLP ONLY)

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
5 Accountancy. She brought this action solely in her official capacity and is represented in this
6 matter by Kamala D. Harris, Attorney General of the State of California, by Phillip L. Arthur,
7 Deputy Attorney General.

8 2. Respondents TCA Partners LLP ("Respondent TCA"), Richard Edson Jackson
9 ("Respondent Jackson"), Jerrel Lee Tucker ("Respondent Tucker"), and Inger Alice Sullenger
10 ("Respondent Sullenger") are represented in this proceeding by attorney Joshua S. Goodman,
11 Esq., whose address is: 417 Montgomery St., 10th Fl., San Francisco, CA 94104. Respondent
12 TCA is proceeding through Respondents Jackson and Tucker, its authorized partners.

13 3. On or about May 12, 2005, the California Board of Accountancy issued Certified
14 Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent TCA).
15 The Certified Public Accountancy Partnership Certificate was in full force and effect at all times
16 relevant to the charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-
17 2013-46 and will expire on May 31, 2015, unless renewed.

18 4. On or about December 3, 1982, the California Board of Accountancy issued Certified
19 Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent Jackson). The
20 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
21 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
22 will expire on March 31, 2016, unless renewed.

23 5. On or about September 20, 1996, the California Board of Accountancy issued
24 Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent Tucker).
25 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
26 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
27 will expire on November 30, 2015, unless renewed.

28 ///

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 17. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the CBA may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Certified Public Accountancy Partnership Certificate No.
8 6980 issued to Respondent TCA Partners LLP (Respondent TCA) is revoked. However, the
9 revocation is stayed and Respondent TCA is placed on probation for five (5) years on the
10 following terms and conditions.

11 **1. Obey All Laws**

12 Respondent TCA shall obey all federal, California, other states' and local laws, including
13 those rules relating to the practice of public accountancy in California.

14 **2. Submit Written Reports**

15 Respondent TCA shall submit, within 10 days of completion of the quarter, written reports
16 to the CBA on a form obtained from the CBA. The Respondent shall submit, under penalty of
17 perjury, such other written reports, declarations, and verification of actions as are required. These
18 declarations shall contain statements relative to Respondent's compliance with all the terms and
19 conditions of probation. Respondent TCA shall immediately execute all release of information
20 forms as may be required by the CBA or its representatives.

21 **3. Personal Appearances**

22 Respondent TCA shall, during the period of probation, appear in person at
23 interviews/meetings as directed by the CBA or its designated representatives, provided such
24 notification is accomplished in a timely manner.

25 **4. Comply With Probation**

26 Respondent TCA shall fully comply with the terms and conditions of the probation imposed
27 by the CBA and shall cooperate fully with representatives of the California Board of
28 Accountancy in its monitoring and investigation of the Respondent's compliance with probation

1 terms and conditions.

2 **5. Practice Investigation**

3 Respondent TCA shall be subject to, and shall permit, a practice investigation of the
4 Respondent's professional practice. Such a practice investigation shall be conducted by
5 representatives of the CBA, provided notification of such review is accomplished in a timely
6 manner.

7 **6. Comply With Citations**

8 Respondent TCA shall comply with all final orders resulting from citations issued by the
9 California Board of Accountancy.

10 **7. Tolling of Probation for Out-of-State Residence/Practice**

11 In the event Respondent TCA should leave California to reside or practice outside this state,
12 Respondent TCA must notify the CBA in writing of the dates of departure and return. Periods of
13 non-California residency or practice outside the state shall not apply to reduction of the
14 probationary period, or of any suspension. No obligation imposed herein, including requirements
15 to file written reports, reimburse the CBA costs, and make restitution to consumers, shall be
16 suspended or otherwise affected by such periods of out-of-state residency or practice except at the
17 written direction of the CBA.

18 **8. Violation of Probation**

19 If Respondent TCA violates probation in any respect, the CBA, after giving Respondent
20 TCA notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
21 order that was stayed. If an accusation or a petition to revoke probation is filed against
22 Respondent TCA during probation, the CBA shall have continuing jurisdiction until the matter is
23 final, and the period of probation shall be extended until the matter is final.

24 The CBA's Executive Officer may issue a citation under California Code of Regulations,
25 Title 16, section 95, to a licensee for a violation of a term or condition contained in a decision
26 placing that licensee on probation.

27 **9. Completion of Probation**

28 Upon successful completion of probation, Respondent TCA's license will be fully restored.

1 **10. Review of Audit and Review Engagements**

2 During the course of probation, Respondent TCA shall annually provide the Board with a
3 listing of all audit and review engagements Respondent TCA knows it will undertake in the
4 subsequent twelve month period. Along with the list of audit and review engagements,
5 Respondent TCA shall provide the Board with the date on which the final audit and review report
6 for each audit and review engagement is due. During each year of probation, the Board will
7 specify the date on which the list of audit and review engagements is due, allowing at least fifteen
8 (15) days for Respondent TCA to provide the list of engagements and their due dates to the
9 Board.

10 From the list of audit and review engagements and their due dates specified each year by
11 Respondent TCA, the Board will select twenty-five percent (25%) but no more than fifteen (15)
12 audit and review engagements whose work papers and final reports shall be reviewed by a
13 qualified outside CPA approved by the Board. The Board may select all twenty-five percent
14 (25%) but no more than fifteen (15) audit or review engagements to be reviewed at one time, or
15 may select up to twenty-five percent (25%) but no more than fifteen (15) audit and review
16 engagements to be reviewed throughout the course of each year of probation. Respondent TCA
17 shall maintain all work papers and final reports for all audit and review engagements undertaken
18 by Respondent TCA during the course of probation, enabling inspection by the Board or qualified
19 outside CPA.

20 Upon completion of the review of the work papers and final reports for each selected audit
21 or review engagement, Respondent TCA shall submit a copy of the report with the reviewer's
22 conclusions and findings to the Board. Review by the qualified outside CPA shall be at
23 Respondent TCA's expense.

24 **11. Peer Review**

25 During the period of probation, all audit, review, and compilation reports and work papers
26 shall be subject to peer review by a Board-recognized peer review program provider pursuant to
27 California Business and Professions Code section 5076 and California Code of Regulations, Title
28 16, Division 1, Article 6, at Respondent TCA's expense. The specific engagements to be

1 reviewed shall be at the discretion of the peer reviewer. The peer review shall be completed
2 within a period of time designated and specified in writing by the CBA or its designee, which
3 time frame shall be incorporated as a condition of this probation. The review shall evaluate
4 Respondent TCA and the firm's system of quality control, including its organizational structure,
5 the policies and procedures established by the firm, and the firm's compliance with its quality
6 control system as determined on the basis of a review of selected engagements.

7 Within 45 days of the peer review report being accepted by a Board-recognized peer review
8 program provider, Respondent TCA shall submit to the CBA a copy of the peer review report,
9 including any materials documenting the prescription of remedial or corrective actions imposed
10 by the Board-recognized peer review program provider. Respondent TCA shall also submit, if
11 available, any materials documenting completion of any or all of the prescribed remedial or
12 corrective actions.

13 **12. Continuing Education Courses**

14 Respondent TCA shall have all those audit staff practicing in Respondent TCA's audit
15 practice complete 16 hours of professional continuing education courses. The courses shall be
16 completed at the expense of Respondent TCA. The courses shall be completed within 120 days
17 of the effective date of this Order. The continuing education courses shall be in audit practice
18 subjects including audit tools, testing, and techniques concerning areas that are commonly
19 assessed to be high risk areas in current audit practice. Respondent TCA shall provide a copy of
20 the agenda and related materials for review by the CBA for approval within 30 days from the
21 effective date of this Order. Within 30 days following completion of the continuing education
22 courses, Respondent TCA shall provide a list of those personnel who attended and proper
23 documentation of course completion. For those accountants and auditors who attend, the 16
24 hours of training shall not be counted towards the CBA's continuing education requirements (set
25 forth in Business and Professions Code section 5027 and California Code of Regulations, title 16,
26 section 87), but otherwise may be counted towards requirements for federal or non-CBA purposes
27 or programs.

28 ///

1 13. **Cost Reimbursement**

2 Respondent TCA agrees that the CBA's total investigation and prosecution costs in this
3 matter are \$62,601.32 and that such costs will not be reimbursed by Respondent TCA but will be
4 separately reimbursed by each individual Respondent.

5 14. **Administrative Penalty**

6 Respondent TCA shall pay to the CBA an administrative penalty in the amount of
7 \$125,000.00 for violation of the California Accountancy Act. The payment shall be made within
8 six months of the date the CBA's decision is final.

9 15. **Dissemination of Order**

10 Within fifteen days of the effective date of the CBA's Order, Respondent TCA shall
11 disseminate this Stipulated Settlement and Disciplinary Order to all of its professional staff
12 officed in California and shall confirm such dissemination in writing to the CBA.

13 16. **Maintain and Use Published Materials and/or Checklists Consistent with**
14 **Practice**

15 Respondent TCA shall maintain and use published materials and/or checklists consistent
16 with its practice. Such materials and checklists shall be produced for on-site review by the CBA
17 or its designee upon reasonable notice.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the effect it will have on my Certified Public Accountancy Partnership Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: _____

TCA PARTNERS LLP
By Its Authorized Representative Richard Edson
Jackson

DATED: 10/16/14


TCA PARTNERS LLP
By Its Authorized Representative Jerral Yoo, Partner

I have read and fully discussed with Respondent TCA Partners LLP the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

Joshua S. Goodman, Esq.
Attorney for Respondent TCA Partners LLP

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the effect it will have on my Certified Public Accountancy Partnership Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: _____

TCA PARTNERS LLP
By Its Authorized Representative Richard Edson
Jackson

DATED: _____

TCA PARTNERS LLP
By Its Authorized Representative Jerrel Lee Tucker

I have read and fully discussed with Respondent TCA Partners LLP the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

I approve its form and content.

DATED: 10-14-14



Joshua S. Goodman, Esq.
Attorney for Respondent TCA Partners LLP

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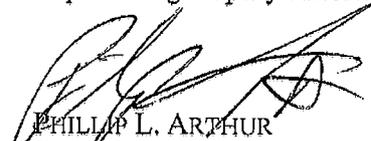
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy,

Dated: 10/20/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General



PHILLIP L. ARTHUR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case Nos. AC-2013-43, AC-2013-44, AC-
2013-45, AC-2013-46

12
13 **TCA PARTNERS, LLP**
1111 Herndon Avenue, #211
14 Fresno, CA 93720
Certified Public Accountancy Partnership
15 Certificate No. PAR 6980

ACCUSATION

And
16 **RICHARD EDSON JACKSON, Partner**
1111 Herndon Avenue, #211
17 Fresno, CA 93720
Certified Public Accountant Certificate No.
18 36244

And
19 **JERREL LEE TUCKER, Partner**
9074 N. Sierra Vista
20 Fresno, CA 93720
Certified Public Accountant Certificate No.
21 72045

And
22 **INGER ALICE SULLENGER, Partner**
1111 E. Herndon Avenue, #211
23 Fresno, CA 93720
Certified Public Accountant Certificate No.
24 88971

25 Respondents.

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27 ///

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1 Complainant alleges:

2 PARTIES

3 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
4 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

5 2. On or about May 12, 2005, the California Board of Accountancy issued Certified
6 Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent). The
7 Certified Public Accountancy Partnership Certificate was in full force and effect at all times
8 relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

9 3. On or about December 3, 1982, the California Board of Accountancy issued Certified
10 Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent). The Certified
11 Public Accountant Certificate was in full force and effect at all times relevant to the charges
12 brought herein and will expire on March 31, 2014, unless renewed.

13 4. On or about September 20, 1996, the California Board of Accountancy issued
14 Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent). The
15 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
16 charges brought herein and will expire on November 30, 2013, unless renewed.

17 5. On or about April 21, 2004, the California Board of Accountancy issued Certified
18 Public Accountant Certificate No. 88971 to Inger Alice Sullenger (Respondent). The Certified
19 Public Accountant Certificate was in full force and effect at all times relevant to the charges
20 brought herein and will expire on October 31, 2014, unless renewed¹.

21 JURISDICTION

22 6. This Accusation is brought before the California Board of Accountancy (CBA),
23 Department of Consumer Affairs, under the authority of the following laws. All section
24 references are to the Business and Professions Code (Code) unless otherwise indicated.

25 ///

26 ///

27 ¹ Unless otherwise specified, the term "Respondents" refers to Respondents TCA,
28 Jackson, Tucker, and Sullenger collectively.

1 understand the nature, timing, extent, and results of the auditing or other procedures performed,
2 evidence obtained, and conclusions reached, and to determine the identity of the persons who
3 performed and reviewed the work.

4 “(c) Failure of the audit documentation to document the procedures applied, tests
5 performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a
6 presumption that the procedures were not applied, tests were not performed, information was not
7 obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable
8 presumption affecting the burden of proof relative to those portions of the audit that are not
9 documented as required in subdivision (b). The burden may be met by a preponderance of the
10 evidence.

11 “(d) Audit documentation shall be maintained by a licensee for the longer of the following:

12 “(1) The minimum period of retention provided in subdivision (e):

13 “(2) A period sufficient to satisfy professional standards and to comply with applicable
14 laws and regulations.

15 “(e) Audit documentation shall be maintained for a minimum of seven years which shall be
16 extended during the pendency of any board investigation, disciplinary action, or legal action
17 involving the licensee or the licensee's firm. The board may adopt regulations to establish a
18 different retention period for specific categories of audit documentation where the board finds
19 that the nature of the documentation warrants it.

20 “(f) Licensees shall maintain a written documentation retention and destruction policy that
21 shall set forth the licensee's practices and procedures complying with this article.

22 13. Section 5101 of the Code states:

23 "After notice and hearing the board shall revoke the registration and permit to practice of a
24 partnership if at any time it does not have all the qualifications prescribed by the section of this
25 chapter under which it qualified for registration. After notice and hearing the board may revoke,
26 suspend or refuse to renew the permit to practice of a partnership or may censure the holder of
27 such permit for any of the causes enumerated in Section 5100 and for the following additional
28 causes:

1 information, to protect the personal information from unauthorized access, destruction, use,
2 modification, or disclosure.

3 "(d) For purposes of this section, the following terms have the following meanings:

4 "(1) "Personal information" means an individual's first name or first initial and his or her
5 last name in combination with any one or more of the following data elements, when either the
6 name or the data elements are not encrypted or redacted:

7 (A) Social security number. . ."

8 COST RECOVERY

9 16. Section 5107(a) of the Code states:

10 "The executive officer of the board may request the administrative law judge, as part of the
11 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
12 found to have committed a violation or violations of this chapter to pay to the board all reasonable
13 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
14 The board shall not recover costs incurred at the administrative hearing."

15 APPLICABLE PROFESSIONAL STANDARDS

16 17. Standards of practice pertinent to this Accusation and the engagements in issue
17 include, without limitation:

18 a. Generally Accepted Auditing Standards ("GAAS") issued by the American Institute
19 of Certified Public Accountants ("AICPA"). The ten GAAS (AU § 150) are interrelated and
20 discussed in the Statements on Auditing Standards ("SAS"). Among the SAS relevant herein, in
21 addition to AU § 150 which sets forth GAAS, are AU § 230 (Due Professional Care); AU § 311.
22 (Planning and Supervision); AU § 312 (Planning the Audit); AU § 314 (Understanding the Entity
23 and its Environment and Assessing the Risks of Material Misstatement); AU § 316
24 (Consideration of Fraud); AU § 318 (Performing Audit Procedures in Response to Assessed
25 Risks and Evaluating the Audit Evidence Obtained); AU § 326 (Audit Evidence); AU § 329
26 (Analytical Procedures); AU § 331 (Inventories); AU § 339 (Audit Documentation); AU § 350
27 (Audit Sampling) and AU § 560 (Subsequent Events).

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1 b. Generally Accepted Government Auditing Standards ("GAGAS") are discussed in
2 the GAO's Government Auditing Standards, 2007 Revision, as amended ("Yellow Book")
3 promulgated by the U.S. Government Accountability Office. The Yellow Book incorporates the
4 ten GAAS.

5 c. Single Audits are audits conducted under the standards set forth by the Office of
6 Management and Budget in OMB Circular A-133 in addition to the requirements of the Yellow
7 Book.

8 d. The Employee Retirement Income Security Act ("ERISA") of 1974 established
9 auditing and reporting guidelines for defined benefit and defined contribution plans with 100 or
10 more participants. The Auditing Standards Board issued the interpretative publication Audit and
11 Accounting Guide for Employment Benefit Plans ("Guide") to assist management of employee
12 benefit plans in the preparation of financial statements in conformity with US Generally Accepted
13 Accounting Principles ("GAAP") and to assist auditors in auditing and reporting on such financial
14 statements. The interpretive guide is non-authoritative but the auditor should be prepared to
15 address how the auditor complied with the SAS provisions addressed by the auditing guidance.
16 The Guide is codified by the "AAG-EBP" number. The Relevant AAG-EBP chapters include
17 Chapter 5 (Planning and General Auditing Considerations); Chapter 6 (Internal Control), Chapter
18 7 (Auditing Investments), Chapter 8 (Auditing Contributions Received and Related
19 Contributions); Chapter 9 (Auditing Benefit Payments); Chapter 10 (Auditing Participant Data,
20 Participant Allocations, and Plan Obligations), and Chapter 13 (The Auditor's Report).

21 **FACTUAL BACKGROUND**

22 **2008 County of Modoc Audit**

23 18. Respondent TCA Partners, LLP (TCA) issued an auditor's report on the financial
24 statements of the County of Modoc² (Modoc) for the year ending June 30, 2008. The auditor's
25 report, dated April 17, 2009, stated that the audit was conducted in accordance with GAGAS,
26

27 ² Deficiencies in Tucker's and Sullenger's work as outlined on the Modoc audit are
28 similar to deficiencies noted on other audits. Tucker's deficiencies are described in the North
Hawaii section and Sullenger's deficiencies in the San Diego section.

1 GAAS, and Circular A-133. Respondent Sullenger was the engagement partner. Respondent
2 Tucker was the reviewing partner.

3 19. On October 30, 2009, the State Controller's Office (SCO) issued its quality control
4 review of Respondent TCA's audit for Modoc, a governmental unit. The SCO's report disclosed
5 that TCA's audit was not performed in accordance with the standards and requirements set forth
6 in GAGAS, GAAS, and Circular A-133.

7 20. The SCO specifically noted the following deficiencies: the audit was not properly
8 planned, supervised and reviewed; the auditor failed to obtain a sufficient understanding of
9 internal controls, the auditor did not accurately assess audit risk; the auditor failed to obtain
10 sufficient appropriate audit evidence; the auditor failed to exercise due professional care; and the
11 auditor failed to comply with standards.

12 21. Because of the deficiencies, the SCO felt that users could not rely on the auditor's
13 opinions that Modoc's financial statements fairly presented the county's financial position or that
14 Modoc complied with federal program requirements.

15 22. The CBA received the referral from the SCO.

16 23. On November 11, 2009, TCA informed the Modoc County Administrative Officer
17 that TCA withdrew its audit report dated April 17, 2009 for the year ending June 30, 2008.

18 24. The CBA requested and received audit documentation for Modoc from respondents
19 TCA and Sullenger.

20 **2010 North Hawaii Community Hospital, Inc. Audit**

21 25. Respondent Tucker, through Respondent TCA, issued an auditor's report on the
22 financial statements of the North Hawaii Community Hospital, Inc. 401(K) Plan (North Hawaii)
23 for the year ending December 31, 2010. The auditor's report, dated June 29, 2011, stated that the
24 audit was conducted in accordance with GAAS and referenced supplemental information required
25 by the Department of Labor (DOL) and ERISA.

26 26. The CBA received a referral from the DOL. Their quality review of TCA's 2010
27 audit of North Hawaii noted multiple deficiencies in TCA's performance of the audit.

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1 27. The DOL noted that the audit was not properly planned; the auditor failed to obtain
2 sufficient appropriate audit evidence in the areas of internal controls, investments, contributions,
3 benefit payments, participant data, administrative expenses, and subsequent events; and the audit
4 was not conducted in accordance with GAAS.

5 28. Because of the deficiencies, the DOL felt that the auditor's opinion on the plan's
6 financial statements was not supported by the audit procedures performed.

7 29. The CBA requested and received audit documentation for North Hawaii from
8 respondents TCA and Tucker.

9 2011 San Diego American Indian Health Center Audit

10 30. Respondent Sullenger, through Respondent TCA, issued the auditor's report under
11 the requirements of OMB Circular A-133, known as a Single Audit, on the financial statements
12 for the San Diego American Indian Health Center (San Diego) for the year ending June 30, 2011.
13 The Single Audit report, dated December 7, 2011, stated that the audit was conducted in
14 accordance with GAAS and GAGAS, and referenced supplemental information required under
15 OMB Circular A-133.

16 31. The CBA requested and received audit documentation for San Diego from
17 respondents TCA, Sullenger, and Tucker.

18 2012 Ridgecrest Regional Hospital Audits

19 32. Respondent Jackson, through Respondent TCA, issued the auditor's report on the
20 financial statements for Ridgecrest Regional Hospital (Ridgecrest) for the fiscal year ending
21 January 31, 2012. The auditor's report was dated April 27, 2012, and stated that the audit was
22 conducted in accordance with GAAS.

23 33. Respondent Sullenger, through Respondent TCA, issued the Single Audit report for
24 Ridgecrest for the fiscal year ending January 31, 2012.³ The Single Audit report, dated July 17,
25 2012, stated that the audit was conducted in accordance with GAAS and GAGAS, and contained

26
27 ³ Deficiencies in Sullenger's work as outlined on the San Diego audit are similar to those
28 found on the Ridgecrest Single Audit and are not additionally described in the Ridgecrest section.
Only Jackson's deficiencies are described in the Ridgecrest section.

1 supplemental information required under OMB Circular A-133. Sullenger's audit documentation
2 reflected her reliance on work done by Respondent Jackson during the Ridgecrest financial
3 statement audit.

4 34. The CBA requested and received audit documentation for Ridgecrest from
5 Respondents TCA, Sullenger, and Tucker.

6 Peer Reviews

7 35. Respondent TCA received a system of quality control review (peer review) for the
8 year ended October 31, 2006. The qualified peer review report, dated May 8, 2007, included
9 comments that indicated that reviewed items did not conform to the requirements of professional
10 standards in all material respects. Issues noted in the letter of comments were that reference
11 materials were not consulted on engagements in specialized industries, including government
12 audits, and that firm policies did not require specific audit documentation when accepted auditing
13 procedures were not deemed necessary.

14 36. Respondent TCA received a peer review report that reflected a rating of Pass with
15 Deficiency (rating nomenclature was updated in 2009) for the review year ending October 31,
16 2009. The peer review report included deficiencies in the performance of an employee benefit
17 plan audit which included that required disclosures were omitted and certain tests specific to
18 employee benefit plans were not performed or documented. Deficiencies noted in the
19 performance of an audit performed under GAGAS included that disbursement testing did not
20 identify programs to which they corresponded and that compliance testing of controls was
21 insufficient.

22 37. The CBA reviewed the three additional audits described above that were performed
23 and issued by the Respondents subsequent to the receipt of the 2007 qualified peer review
24 containing comments, the 2009 SCO's notification of deficiencies and the 2010 Pass with
25 Deficiency peer review.

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1 c. Respondent Tucker did not obtain sufficient appropriate evidential matter to support
2 his opinion on the financial statements with regard to material balances presented in the financial
3 statements for investments and other assets, participant loan balances, and employer and
4 employee contributions (AU § 150.02, AU § 312.18, AU § 318.74, AU § 326.04, AU § 339.03,
5 AU § 339.10, AAG-EBP 7.65, AAG-EBP 7.66, AAG-EBP 8.06, AAG-EBP 10.05, and AAG-
6 EBP 10.19).

7 d. Respondent Tucker failed to perform proper cut-off procedures including, but not
8 limited to, contribution amounts, the timing of contribution deposits, and unrecorded liabilities
9 (AU § 150.02, AU § 339.03, AU § 339.10, AU § 560.11, AU § 560.12, AAG-EBP 8.06, and
10 AAG-EBP 10.19).

11 e. Respondent Tucker failed to apply auditing procedures to individual participant
12 accounts, participant loans, and other participant data to comply with ERISA requirements (AU §
13 339.03, AU § 339.10, AAG-EBP 8.02, AAG-EBP 9.02, AAG-EBP 10.02, and AAG-EBP 10.05).

14 f. Respondent Tucker failed to perform analytical review procedures in the review stage
15 of the audit (AU § 329.01, AU § 339.03, and AU § 339.10).

16 g. Respondent Tucker failed to exercise due professional care in the performance and
17 reporting on the North Hawaii audit by disclosing approximately 1,000 participant social security
18 numbers, un-redacted, in the audit documentation provided to the CBA during its investigation,
19 and by issuing a limited scope audit when he did not perform audit procedures necessary to allow
20 him to issue a limited scope audit report (AU § 150.02, AAG-EBP 7.66, AAG-EBP 13.26, AAG-
21 EBP 13.27, and California Civil Code section 1798.81.5).

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1 § 314.55, AU § 314.83, AU § 316.13, AU § 316.27, AU § 316.41, AU § 316.42, AU § 316.44,
2 AU § 316.83, AU § 326.35, AU § 339.03, and AU § 339.10).

3 c. Respondent Sullenger did not obtain sufficient appropriate evidential matter to
4 support her opinion on the financial statements with regard to material balances presented in the
5 financial statements, such as accounts receivable, accounts payable, and unearned revenue (AU §
6 150.02, AU §312.18, AU § 316.68, AU § 318.71, AU § 318.74, AU § 326.04, AU § 326.08, AU
7 § 329.05, AU § 339.03, AU § 339.10, and AU §350.26).

8 d. Respondent Sullenger failed to exercise due professional care in the performance and
9 reporting on the San Diego audit and by insufficient documentation regarding the ostensibly
10 corrected prior year "finding" regarding reconciliations (AU § 150.02 and Yellow Book 4.09).

11 RESPONDENTS TCA AND JACKSON

12 THIRD CAUSE FOR DISCIPLINE

13 (Gross Negligence/Repeated Negligent Acts)

14 40. Respondents TCA and Jackson are subject to disciplinary action under section 5100,
15 subsection (c) of the Code on the grounds that Respondents TCA and Jackson committed gross
16 negligence and/or repeated negligent acts in Respondent TCA's issuance of the 2012 Ridgecrest
17 audit report and performance by Respondent Jackson of audit procedures that departed extremely
18 from professional standards as follows:

19 a. Respondent Jackson failed to properly plan the audit (AU § 150.02, AU § 311.03, AU
20 § 311.19, AU § 311.20, AU § 311.21, AU § 318.08, AU § 318.09, AU § 326.17, AU § 329.17,
21 AU § 339.03, AU § 339.10, and AU § 339.18).

22 i. The audit planning memorandum referenced that there was little segregation of
23 duties and that compliance testing of controls would not be necessary. Respondent Jackson
24 planned to perform more substantive testing for balance sheet items. However, substantive
25 testing of Accounts Receivable, for example, does not reflect a substantive testing approach.

26 ii. The Audit Program reflected the general checklist of procedures to be
27 performed but without objectives to describe the nature, timing, or extent of planned audit
28 procedures.

1 iii. Audit Strategy Worksheets (ASW) did not describe the nature, timing, or extent
2 of planned audit procedures and did not support the low risk assessments.

3 b. Respondent Jackson failed to obtain a sufficient understanding of the entity and its
4 environment to assess risks and failed to assess the status and effectiveness of internal controls,
5 including those of supervision, override, and review. Jackson's understanding of risks was
6 contradicted by information in the fraud memo (AU § 150.02, AU § 312.11, AU § 314.26, AU §
7 314.40, AU § 314.54, AU § 314.55, AU § 314.83, AU § 316.13, AU § 316.15, AU § 316.27, AU
8 § 316.42, AU § 316.44, AU § 316.83, AU § 318.71, AU § 318.74, AU § 326.35, AU § 339.03,
9 and AU § 339.10).

10 c. Respondent Jackson did not obtain sufficient appropriate evidentiary matter to
11 support his opinion on the financial statements with regard to material balances presented in the
12 financial statements for accounts receivable, accounts payable, and inventories (AU § 150.02, AU
13 § 312.18, AU § 316.68, AU § 318.09, AU § 326.04, AU § 331.01, AU § 331.09, AU § 331.10,
14 AU § 331.11, AU § 331.12, AU § 339.03, and AU § 339.10).

15 d. Respondent Jackson failed to exercise due professional care in the performance and
16 reporting on the Ridgecrest audit (AU § 150.02).

17 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Violation of Business and Professions Code section 5097)**

20 41. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (e) of the Code on the grounds that Respondents violated section
22 5097 of the Code in conjunction with California Code of Regulations, title 16, section 68.2 by
23 failing to comply with audit documentation requirements as more particularly set forth in
24 paragraphs 38-40 and all of their subparts.

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1 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Report Conforming to Professional Standards)**

4 42. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
5 under section 5062 of the Code on the grounds that Respondents' audit documentation does not
6 support the opinions rendered in the audit reports and, therefore, the audit reports do not conform
7 to professional standards, as more particularly set forth in paragraphs 38-40 and all of their
8 subparts.

9 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Compliance With Standards)**

12 43. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
13 under California Code of Regulations, title 16, section 58 on the grounds that Respondents failed
14 to comply with all applicable professional standards, including but not limited to GAGAS, GAAS
15 and ERISA regarding the audit documentation and performance of the audit, as more particularly
16 set forth in paragraphs 38-40 and all of their subparts.

17 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Willful Violation)**

20 44. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (g) of the Code on the grounds that Respondents willfully violated
22 various provisions of the Business and Professions Code and California Code of Regulations, as
23 more particularly set forth in paragraphs 18-43 and all of their subparts.

24 **PRAYER**

25 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the California Board of Accountancy issue a decision:

- 27 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
28 Accountancy Partnership Certificate No. 6980, issued to TCA Partners LLP;

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2. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. 36244, issued to Richard Edson Jackson;
3. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. 72045, issued to Jerrel Lee Tucker;
4. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. 88971, issued to Inger Alice Sullenger;
5. Ordering TCA Partners LLP, Richard Edson Jackson, Jerrel Lee Tucker, and Inger Alice Sullenger to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107; and
6. Taking such other and further action as deemed necessary and proper.

DATED: November 27, 2013 Patti Bowers

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TCA PARTNERS LLP
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountancy Partnership
Certificate No. PAR 6980

And

RICHARD EDSON JACKSON, Partner
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountant Certificate No.
36244

And

JERREL LEE TUCKER, Partner
9074 N. Sierra Vista
Fresno, CA 93720
Certified Public Accountant Certificate No.
72045

And

INGER ALICE SULLENGER, Partner
3046 Whispering Meadow Ln.
Plain City, UT 84404
Certified Public Accountant Certificate No.
88971

Respondents.

Case No. AC-2013-43, AC-2013-44, AC-
2013-45, AC-2013-46

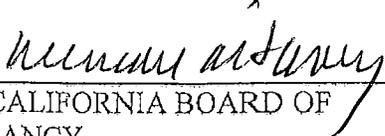
OAH No. 2014010481

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 1-1-15.

It is so ORDERED 12-2-14.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **TCA PARTNERS LLP**
13 **1111 Herndon Avenue, #211**
Fresno, CA 93720
14 **Certified Public Accountancy Partnership**
Certificate No. PAR 6980

15 **And**

16 **RICHARD EDSON JACKSON, Partner**
17 **1111 Herndon Avenue, #211**
Fresno, CA 93720
18 **Certified Public Accountant Certificate No.**
36244

19 **And**

20 **JERREL LEE TUCKER, Partner**
21 **9074 N. Sierra Vista**
Fresno, CA 93720
22 **Certified Public Accountant Certificate No.**
72045

23 **And**

24 **INGER ALICE SULLENGER, Partner**
25 **3046 Whispering Meadow Ln.**
Plain City, UT 84404
26 **Certified Public Accountant Certificate No.**
88971

27 Respondents.
28

Case No. AC-2013-43, AC-2013-44, AC-
2013-45, AC-2013-46

OAH No. 2014010481

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
(RICHARD EDSON JACKSON ONLY)**

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
5 Accountancy. She brought this action solely in her official capacity and is represented in this
6 matter by Kamala D. Harris, Attorney General of the State of California, by Phillip L. Arthur,
7 Deputy Attorney General.

8 2. Respondents TCA Partners LLP ("Respondent TCA"), Richard Edson Jackson
9 ("Respondent Jackson"), Jerrel Lee Tucker ("Respondent Tucker"), and Inger Alice Sullenger
10 ("Respondent Sullenger") are represented in this proceeding by attorney Joshua S. Goodman,
11 Esq., whose address is: 417 Montgomery St., 10th Fl., San Francisco, CA 94104.

12 3. On or about May 12, 2005, the California Board of Accountancy issued Certified
13 Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent TCA).
14 The Certified Public Accountancy Partnership Certificate was in full force and effect at all times
15 relevant to the charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-
16 2013-46 and will expire on May 31, 2015, unless renewed.

17 4. On or about December 3, 1982, the California Board of Accountancy issued Certified
18 Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent Jackson). The
19 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
20 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
21 will expire on March 31, 2016, unless renewed.

22 5. On or about September 20, 1996, the California Board of Accountancy issued
23 Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent Tucker).
24 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
26 will expire on November 30, 2015, unless renewed.

27 6. On or about April 21, 2004, the California Board of Accountancy issued Certified
28 Public Accountant Certificate No. 88971 to Inger Alice Sullenger (Respondent Sullenger). The

1 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
2 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
3 will expire on October 31, 2014, unless renewed.¹

4 JURISDICTION

5 7. Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 was filed
6 before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is
7 currently pending against Respondents. The Accusation and all other statutorily required
8 documents were properly served on Respondents on December 9, 2013. Respondents timely filed
9 their Notices of Defense contesting the Accusation.

10 8. A copy of Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 is
11 attached as exhibit A and incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 9. Respondent Jackson has carefully read, fully discussed with counsel, and understands
14 the charges and allegations in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-
15 46. Respondent Jackson has also carefully read, fully discussed with counsel, and understands
16 the effects of this Stipulated Settlement and Disciplinary Order.

17 10. Respondent Jackson is fully aware of his legal rights in this matter, including the right
18 to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 11. Respondent Jackson voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

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27 ¹ Unless otherwise specified, the term "Respondents" refers to Respondents TCA,
28 Jackson, Tucker, and Sullenger collectively.

1 CULPABILITY

2 12. Respondent Jackson understands and agrees that if proven at a hearing, the charges
3 and allegations in Accusation No, AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46
4 constitute cause for disciplining Respondent Jackson's Certified Public Accountant Certificate.

5 13. Respondent Jackson agrees that his Certified Public Accountant Certificate is subject
6 to discipline and agrees to be bound by the CBA's probationary terms as set forth in the
7 Disciplinary Order below.

8 CONTINGENCY

9 14. This stipulation shall be subject to approval by the California Board of Accountancy.
10 Respondent Jackson understands and agrees that counsel for Complainant and the staff of the
11 California Board of Accountancy may communicate directly with the CBA regarding this
12 stipulation and settlement, without notice to or participation by Respondent Jackson or his
13 counsel. By signing the stipulation, Respondent Jackson understands and agrees that he may not
14 withdraw his agreement or seek to rescind the stipulation prior to the time the CBA considers and
15 acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated
16 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
17 be inadmissible in any legal action between the parties, and the CBA shall not be disqualified
18 from further action by having considered this matter.

19 15. The parties understand and agree that Portable Document Format (PDF), electronic,
20 and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable
21 Document Format (PDF), electronic, and facsimile signatures thereto, shall have the same force
22 and effect as the originals.

23 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
26 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
27 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
28 writing executed by an authorized representative of each of the parties.

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5. Comply With Probation

Respondent Jackson shall fully comply with the terms and conditions of the probation imposed by the CBA and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.

6. Practice Investigation

Respondent Jackson shall be subject to, and shall permit, a practice investigation of the Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the CBA, provided notification of such review is accomplished in a timely manner.

7. Comply With Citations

Respondent Jackson shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

8. Tolling of Probation for Out-of-State Residence/Practice

In the event Respondent Jackson should leave California to reside or practice outside this state, Respondent Jackson must notify the CBA in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the CBA.

9. Violation of Probation

If Respondent Jackson violates probation in any respect, the CBA, after giving Respondent Jackson notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent Jackson during probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

The CBA's Executive Officer may issue a citation under California Code of Regulations,

1 Title 16, section 95, to a licensee for a violation of a term or condition contained in a decision
2 placing that licensee on probation.

3 **10. Completion of Probation**

4 Upon successful completion of probation, Respondent Jackson 's license will be fully
5 restored.

6 **11. Review of Audit and Review Engagements**

7 During the course of probation, Respondent Jackson shall annually provide the Board with
8 a listing of all audit and review engagements Respondent Jackson knows he will undertake in the
9 subsequent twelve month period. Along with the list of audit and review engagements,
10 Respondent Jackson shall provide the Board with the date on which the final audit and review
11 report for each audit and review engagement is due. During each year of probation, the Board
12 will specify the date on which the list of audit and review engagements is due, allowing at least
13 fifteen (15) days for Respondent Jackson to provide the list of engagements and their due dates to
14 the Board.

15 From the list of audit and review engagements and their due dates specified each year by
16 Respondent Jackson, the Board will select twenty-five percent (25%) but no more than fifteen
17 (15) audit and review engagements whose work papers and final reports shall be reviewed by a
18 qualified outside CPA approved by the Board. The Board may select all twenty-five percent
19 (25%) but no more than fifteen (15) audit or review engagements to be reviewed at one time, or
20 may select up to twenty-five percent (25%) but no more than fifteen (15) audit and review
21 engagements to be reviewed throughout the course of each year of probation. Respondent
22 Jackson shall maintain all work papers and final reports for all audit and review engagements
23 undertaken by Respondent Jackson during the course of probation, enabling inspection by the
24 Board or qualified outside CPA.

25 Upon completion of the review of the work papers and final reports for each selected audit
26 or review engagement, Respondent Jackson shall submit a copy of the report with the reviewer's
27 conclusions and findings to the Board. Review by the qualified outside CPA shall be at
28 Respondent Jackson's expense.

1 **12. Continuing Education Courses**

2 Within the probationary term, Respondent Jackson shall complete and provide proper
3 documentation of the following courses: eight hours of an audit documentation course, twenty-
4 four hours of accounting and auditing training, and eight hours of audit of 401(k) Plans.

5 Respondent Jackson shall also complete four hours of continuing education in the course
6 subject matter pertaining to the following: a review of nationally recognized codes of conduct
7 emphasizing how the codes relate to professional responsibilities; case-based instruction focusing
8 on real-life situational learning; ethical dilemmas facing the accounting profession; or, business
9 ethics, ethical sensitivity, and consumer expectations within 120 days from the effective date of
10 this Order. The courses must be a minimum of one hour as described in California Code of
11 Regulations, title 16, section 88.2.

12 This shall be in addition to continuing education requirements for relicensing.

13 If Respondent Jackson fails to complete said courses within the time period provided,
14 Respondent Jackson shall so notify the CBA and shall cease practice until Respondent Jackson
15 completes said courses, has submitted proof of same to the CBA, and has been notified by the
16 CBA that he may resume practice.

17 Failure to satisfactorily complete the required courses as scheduled shall constitute a
18 violation of probation.

19 **13. Active License Status**

20 Respondent Jackson shall at all times maintain an active license status with the CBA,
21 including during any period of suspension. If the license is expired at the time the CBA's
22 decision becomes effective, the license must be renewed within 30 days of the effective date of
23 the decision.

24 **14. Samples - Audit, Review or Compilation**

25 During the period of probation, if Respondent Jackson undertakes an audit, review, or
26 compilation engagement, Respondent Jackson shall submit to the CBA as an attachment to the
27 required quarterly report a listing of the same. The CBA or its designee may select one or more
28 from each category and the resulting report and financial statement and all related working papers

1 must be submitted to the CBA or its designee upon request.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the
5 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the California Board of Accountancy.

8
9 DATED: 10/15/14 *Richard Edson Jackson*
10 RICHARD EDSON JACKSON
11 Respondent

11 ///

12 I have read and fully discussed with Respondent Richard Edson Jackson the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15 DATED: _____
16 Joshua S. Goodman, Esq.
17 Attorney for Respondent Richard Edson Jackson

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the California Board of Accountancy.

20
21 Dated: _____ Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 KENT D. HARRIS
25 Supervising Deputy Attorney General
26
27 PHILLIP L. ARTHUR
28 Deputy Attorney General
Attorneys for Complainant

27 SA2013111406
28 11500669_1.docx

1 must be submitted to the CBA or its designee upon request.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the
5 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the California Board of Accountancy.

8
9 DATED: _____
10 RICHARD EDSON JACKSON
11 Respondent

11 ///

12 I have read and fully discussed with Respondent Richard Edson Jackson the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15 DATED: 10-14-14 _____
16 Joshua S. Goodman, Esq.
17 Attorney for Respondent Richard Edson Jackson

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the California Board of Accountancy.

20
21 Dated: 10/20/14 Respectfully submitted;
22 KAMALA D. HARRIS
23 Attorney General of California
24 KENT D. HARRIS
25 Supervising Deputy Attorney General
26
27 PHILIP L. ARTHUR
28 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

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KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General
PHILLIP L. ARTHUR
Deputy Attorney General
State Bar No. 238339
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-0032
Facsimile: (916) 327-8643
E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TCA PARTNERS, LLP
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountancy Partnership
Certificate No. PAR 6980
And
RICHARD EDSON JACKSON, Partner
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountant Certificate No.
36244
And
JERREL LEE TUCKER, Partner
9074 N. Sierra Vista
Fresno, CA 93720
Certified Public Accountant Certificate No.
72045
And
INGER ALICE SULLENGER, Partner
1111 E. Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountant Certificate No.
88971

Respondents.

Case Nos. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

ACCUSATION

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1 Complainant alleges:

2 **PARTIES**

3 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
4 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

5 2. On or about May 12, 2005, the California Board of Accountancy issued Certified
6 Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent). The
7 Certified Public Accountancy Partnership Certificate was in full force and effect at all times
8 relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

9 3. On or about December 3, 1982, the California Board of Accountancy issued Certified
10 Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent). The Certified
11 Public Accountant Certificate was in full force and effect at all times relevant to the charges
12 brought herein and will expire on March 31, 2014, unless renewed.

13 4. On or about September 20, 1996, the California Board of Accountancy issued
14 Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent). The
15 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
16 charges brought herein and will expire on November 30, 2013, unless renewed.

17 5. On or about April 21, 2004, the California Board of Accountancy issued Certified
18 Public Accountant Certificate No. 88971 to Inger Alice Sullenger (Respondent). The Certified
19 Public Accountant Certificate was in full force and effect at all times relevant to the charges
20 brought herein and will expire on October 31, 2014, unless renewed¹.

21 **JURISDICTION**

22 6. This Accusation is brought before the California Board of Accountancy (CBA),
23 Department of Consumer Affairs, under the authority of the following laws. All section
24 references are to the Business and Professions Code (Code) unless otherwise indicated.

25 ///

26 ///

27 ¹ Unless otherwise specified, the term "Respondents" refers to Respondents TCA,
28 Jackson, Tucker, and Sullenger collectively.

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7. Section 5100 of the Code states, in pertinent part:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

"...

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

"...

"(e) Violation of Section 5097.

"...

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter. . . ."

REGULATIONS

8. California Code of Regulations, title 16, section 52 (Regulations), states:

"(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

"(b) A licensee shall respond to any subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer within 30 days and in accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

"(c) A licensee shall appear in person upon written notice or subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer.

///

///

1 understand the nature, timing, extent, and results of the auditing or other procedures performed,
2 evidence obtained, and conclusions reached, and to determine the identity of the persons who
3 performed and reviewed the work.

4 “(c) Failure of the audit documentation to document the procedures applied, tests
5 performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a
6 presumption that the procedures were not applied, tests were not performed, information was not
7 obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable
8 presumption affecting the burden of proof relative to those portions of the audit that are not
9 documented as required in subdivision (b). The burden may be met by a preponderance of the
10 evidence.

11 “(d) Audit documentation shall be maintained by a licensee for the longer of the following:

12 “(1) The minimum period of retention provided in subdivision (e);

13 “(2) A period sufficient to satisfy professional standards and to comply with applicable
14 laws and regulations.

15 “(e) Audit documentation shall be maintained for a minimum of seven years which shall be
16 extended during the pendency of any board investigation, disciplinary action, or legal action
17 involving the licensee or the licensee's firm. The board may adopt regulations to establish a
18 different retention period for specific categories of audit documentation where the board finds
19 that the nature of the documentation warrants it.

20 “(f) Licensees shall maintain a written documentation retention and destruction policy that
21 shall set forth the licensee's practices and procedures complying with this article.

22 13. Section 5101 of the Code states:

23 "After notice and hearing the board shall revoke the registration and permit to practice of a
24 partnership if at any time it does not have all the qualifications prescribed by the section of this
25 chapter under which it qualified for registration. After notice and hearing the board may revoke,
26 suspend or refuse to renew the permit to practice of a partnership or may censure the holder of
27 such permit for any of the causes enumerated in Section 5100 and for the following additional
28 causes:

1 information, to protect the personal information from unauthorized access, destruction, use,
2 modification, or disclosure.

3 “(d) For purposes of this section, the following terms have the following meanings:

4 “(1) "Personal information" means an individual's first name or first initial and his or her
5 last name in combination with any one or more of the following data elements, when either the
6 name or the data elements are not encrypted or redacted:

7 (A) Social security number. . . .”

8 COST RECOVERY

9 16. Section 5107(a) of the Code states:

10 "The executive officer of the board may request the administrative law judge, as part of the
11 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
12 found to have committed a violation or violations of this chapter to pay to the board all reasonable
13 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
14 The board shall not recover costs incurred at the administrative hearing."

15 APPLICABLE PROFESSIONAL STANDARDS

16 17. Standards of practice pertinent to this Accusation and the engagements in issue
17 include, without limitation:

18 a. Generally Accepted Auditing Standards ("GAAS") issued by the American Institute
19 of Certified Public Accountants ("AICPA"). The ten GAAS (AU § 150) are interrelated and
20 discussed in the Statements on Auditing Standards ("SAS"). Among the SAS relevant herein, in
21 addition to AU § 150 which sets forth GAAS, are AU § 230 (Due Professional Care); AU § 311.
22 (Planning and Supervision); AU § 312 (Planning the Audit); AU § 314 (Understanding the Entity
23 and its Environment and Assessing the Risks of Material Misstatement); AU § 316
24 (Consideration of Fraud); AU § 318 (Performing Audit Procedures in Response to Assessed
25 Risks and Evaluating the Audit Evidence Obtained); AU § 326 (Audit Evidence); AU § 329
26 (Analytical Procedures); AU § 331 (Inventories); AU § 339 (Audit Documentation); AU § 350
27 (Audit Sampling) and AU § 560 (Subsequent Events).

28 ///

1 b. Generally Accepted Government Auditing Standards ("GAGAS") are discussed in
2 the GAO's Government Auditing Standards, 2007 Revision, as amended ("Yellow Book")
3 promulgated by the U.S. Government Accountability Office. The Yellow Book incorporates the
4 ten GAAS.

5 c. Single Audits are audits conducted under the standards set forth by the Office of
6 Management and Budget in OMB Circular A-133 in addition to the requirements of the Yellow
7 Book.

8 d. The Employee Retirement Income Security Act ("ERISA") of 1974 established
9 auditing and reporting guidelines for defined benefit and defined contribution plans with 100 or
10 more participants. The Auditing Standards Board issued the interpretative publication Audit and
11 Accounting Guide for Employment Benefit Plans ("Guide") to assist management of employee
12 benefit plans in the preparation of financial statements in conformity with US Generally Accepted
13 Accounting Principles ("GAAP") and to assist auditors in auditing and reporting on such financial
14 statements. The interpretive guide is non-authoritative but the auditor should be prepared to
15 address how the auditor complied with the SAS provisions addressed by the auditing guidance.
16 The Guide is codified by the "AAG-EBP" number. The Relevant AAG-EBP chapters include
17 Chapter 5 (Planning and General Auditing Considerations); Chapter 6 (Internal Control), Chapter
18 7 (Auditing Investments), Chapter 8 (Auditing Contributions Received and Related
19 Contributions); Chapter 9 (Auditing Benefit Payments); Chapter 10 (Auditing Participant Data,
20 Participant Allocations, and Plan Obligations), and Chapter 13 (The Auditor's Report).

21 **FACTUAL BACKGROUND**

22 2008 County of Modoc Audit

23 18. Respondent TCA Partners, LLP (TCA) issued an auditor's report on the financial
24 statements of the County of Modoc² (Modoc) for the year ending June 30, 2008. The auditor's
25 report, dated April 17, 2009, stated that the audit was conducted in accordance with GAGAS,

26
27 ² Deficiencies in Tucker's and Sullenger's work as outlined on the Modoc audit are
28 similar to deficiencies noted on other audits. Tucker's deficiencies are described in the North
Hawaii section and Sullenger's deficiencies in the San Diego section.

1 GAAS, and Circular A-133. Respondent Sullenger was the engagement partner. Respondent
2 Tucker was the reviewing partner.

3 19. On October 30, 2009, the State Controller's Office (SCO) issued its quality control
4 review of Respondent TCA's audit for Modoc, a governmental unit. The SCO's report disclosed
5 that TCA's audit was not performed in accordance with the standards and requirements set forth
6 in GAGAS, GAAS, and Circular A-133.

7 20. The SCO specifically noted the following deficiencies: the audit was not properly
8 planned, supervised and reviewed; the auditor failed to obtain a sufficient understanding of
9 internal controls, the auditor did not accurately assess audit risk; the auditor failed to obtain
10 sufficient appropriate audit evidence; the auditor failed to exercise due professional care; and the
11 auditor failed to comply with standards.

12 21. Because of the deficiencies, the SCO felt that users could not rely on the auditor's
13 opinions that Modoc's financial statements fairly presented the county's financial position or that
14 Modoc complied with federal program requirements.

15 22. The CBA received the referral from the SCO.

16 23. On November 11, 2009, TCA informed the Modoc County Administrative Officer
17 that TCA withdrew its audit report dated April 17, 2009 for the year ending June 30, 2008.

18 24. The CBA requested and received audit documentation for Modoc from respondents
19 TCA and Sullenger.

20 **2010 North Hawaii Community Hospital, Inc. Audit**

21 25. Respondent Tucker, through Respondent TCA, issued an auditor's report on the
22 financial statements of the North Hawaii Community Hospital, Inc. 401(K) Plan (North Hawaii)
23 for the year ending December 31, 2010. The auditor's report, dated June 29, 2011, stated that the
24 audit was conducted in accordance with GAAS and referenced supplemental information required
25 by the Department of Labor (DOL) and ERISA.

26 26. The CBA received a referral from the DOL. Their quality review of TCA's 2010
27 audit of North Hawaii noted multiple deficiencies in TCA's performance of the audit.

28 ///

1 27. The DOL noted that the audit was not properly planned; the auditor failed to obtain
2 sufficient appropriate audit evidence in the areas of internal controls, investments, contributions,
3 benefit payments, participant data, administrative expenses, and subsequent events; and the audit
4 was not conducted in accordance with GAAS.

5 28. Because of the deficiencies, the DOL felt that the auditor's opinion on the plan's
6 financial statements was not supported by the audit procedures performed.

7 29. The CBA requested and received audit documentation for North Hawaii from
8 respondents TCA and Tucker.

9 **2011 San Diego American Indian Health Center Audit**

10 30. Respondent Sullenger, through Respondent TCA, issued the auditor's report under
11 the requirements of OMB Circular A-133, known as a Single Audit, on the financial statements
12 for the San Diego American Indian Health Center (San Diego) for the year ending June 30, 2011.
13 The Single Audit report, dated December 7, 2011, stated that the audit was conducted in
14 accordance with GAAS and GAGAS, and referenced supplemental information required under
15 OMB Circular A-133,

16 31. The CBA requested and received audit documentation for San Diego from
17 respondents TCA, Sullenger, and Tucker.

18 **2012 Ridgecrest Regional Hospital Audits**

19 32. Respondent Jackson, through Respondent TCA, issued the auditor's report on the
20 financial statements for Ridgecrest Regional Hospital (Ridgecrest) for the fiscal year ending
21 January 31, 2012. The auditor's report was dated April 27, 2012, and stated that the audit was
22 conducted in accordance with GAAS.

23 33. Respondent Sullenger, through Respondent TCA, issued the Single Audit report for
24 Ridgecrest for the fiscal year ending January 31, 2012.³ The Single Audit report, dated July 17,
25 2012, stated that the audit was conducted in accordance with GAAS and GAGAS, and contained

26
27 ³ Deficiencies in Sullenger's work as outlined on the San Diego audit are similar to those
28 found on the Ridgecrest Single Audit and are not additionally described in the Ridgecrest section.
Only Jackson's deficiencies are described in the Ridgecrest section.

1 supplemental information required under OMB Circular A-133. Sullenger's audit documentation
2 reflected her reliance on work done by Respondent Jackson during the Ridgecrest financial
3 statement audit.

4 34. The CBA requested and received audit documentation for Ridgecrest from
5 Respondents TCA, Sullenger, and Tucker.

6 Peer Reviews

7 35. Respondent TCA received a system of quality control review (peer review) for the
8 year ended October 31, 2006. The qualified peer review report, dated May 8, 2007, included
9 comments that indicated that reviewed items did not conform to the requirements of professional
10 standards in all material respects. Issues noted in the letter of comments were that reference
11 materials were not consulted on engagements in specialized industries, including government
12 audits, and that firm policies did not require specific audit documentation when accepted auditing
13 procedures were not deemed necessary.

14 36. Respondent TCA received a peer review report that reflected a rating of Pass with
15 Deficiency (rating nomenclature was updated in 2009) for the review year ending October 31,
16 2009. The peer review report included deficiencies in the performance of an employee benefit
17 plan audit which included that required disclosures were omitted and certain tests specific to
18 employee benefit plans were not performed or documented. Deficiencies noted in the
19 performance of an audit performed under GAGAS included that disbursement testing did not
20 identify programs to which they corresponded and that compliance testing of controls was
21 insufficient.

22 37. The CBA reviewed the three additional audits described above that were performed
23 and issued by the Respondents subsequent to the receipt of the 2007 qualified peer review
24 containing comments, the 2009 SCO's notification of deficiencies and the 2010 Pass with
25 Deficiency peer review.

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1 RESPONDENTS TCA AND TUCKER

2 FIRST CAUSE FOR DISCIPLINE⁴

3 (Gross Negligence/Repeated Negligent Acts)

4 38. Respondents TCA and Tucker are subject to disciplinary action under section §100,
5 subsection (o) of the Code on the grounds that Respondents TCA and Tucker committed gross
6 negligence and/or repeated negligent acts in Respondent TCA's issuance of the 2010 North
7 Hawaii audit report and performance by Respondent Tucker of audit procedures that departed
8 extremely from professional standards as follows:

9 a. Respondent Tucker failed to properly plan the audit (AU 150.02, AU 311.03, AU
10 311.08, AU 311.09, AU § 311.13, AU § 311.14, AU § 311.19, AU § 311.20, AU § 311.21, AU §
11 318.09, AU § 326.17, AU § 329.01, AU § 329.06, AU § 339.03, AU § 339.10, AU § 339.18, and
12 AAG-EBP 5.28).

13 i. The understanding with the client lacked required wording regarding
14 management's responsibilities in ensuring compliance with applicable laws and regulations,
15 informing the auditor about known or suspected fraud and did not describe any procedures
16 relative to the supplemental information.

17 ii. Respondent Tucker's audit strategy did not describe areas of risk and did not
18 include the nature, timing, and extent of procedures that responded to the planned risk
19 assessment.

20 iii. Respondent Tucker did not apply preliminary analytical procedures.

21 b. Respondent Tucker did not obtain a sufficient understanding of the nature of North
22 Hawaii and its environment to assess risks, including control risk. Comments in the
23 documentation centered on management and did not consider risks or controls present in fiduciary
24 entities (AU § 150.02, AU § 312.11, AU § 314.26, AU § 314.40, AU § 314.54, AU § 314.55, AU
25 § 314.83, AU 316.41, AU § 316.83, AU § 339.03, AU § 339.10, and AAG-EBP 6.08).

26 ///

27 _____
28 ⁴ Deficiencies noted in North Hawaii are similar to deficiencies noted in Modoc.

1 c. Respondent Tucker did not obtain sufficient appropriate evidential matter to support
2 his opinion on the financial statements with regard to material balances presented in the financial
3 statements for investments and other assets, participant loan balances, and employer and
4 employee contributions (AU § 150.02, AU § 312.18, AU § 318.74, AU § 326.04, AU § 339.03,
5 AU § 339.10, AAG-EBP 7.65, AAG-EBP 7.66, AAG-EBP 8.06, AAG-EBP 10.05, and AAG-
6 EBP 10.19).

7 d. Respondent Tucker failed to perform proper cut-off procedures including, but not
8 limited to, contribution amounts, the timing of contribution deposits, and unrecorded liabilities
9 (AU § 150.02, AU § 339.03, AU § 339.10, AU § 560.11, AU § 560.12, AAG-EBP 8.06, and
10 AAG-EBP 10.19).

11 e. Respondent Tucker failed to apply auditing procedures to individual participant
12 accounts, participant loans, and other participant data to comply with ERISA requirements (AU §
13 339.03, AU § 339.10, AAG-EBP 8.02, AAG-EBP 9.02, AAG-EBP 10.02, and AAG-EBP 10.05).

14 f. Respondent Tucker failed to perform analytical review procedures in the review stage
15 of the audit (AU § 329.01, AU § 339.03, and AU § 339.10).

16 g. Respondent Tucker failed to exercise due professional care in the performance and
17 reporting on the North Hawaii audit by disclosing approximately 1,000 participant social security
18 numbers, un-redacted, in the audit documentation provided to the CBA during its investigation,
19 and by issuing a limited scope audit when he did not perform audit procedures necessary to allow
20 him to issue a limited scope audit report (AU § 150.02, AAG-EBP 7.66, AAG-EBP 13.26, AAG-
21 EBP 13.27, and California Civil Code section 1798.81.5).

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1 § 314.55, AU § 314.83, AU § 316.13, AU § 316.27, AU § 316.41, AU § 316.42, AU § 316.44,
2 AU § 316.83, AU § 326.35, AU § 339.03, and AU § 339.10).

3 c. Respondent Sullenger did not obtain sufficient appropriate evidential matter to
4 support her opinion on the financial statements with regard to material balances presented in the
5 financial statements, such as accounts receivable, accounts payable, and unearned revenue (AU §
6 150.02, AU § 312.18, AU § 316.68, AU § 318.71, AU § 318.74, AU § 326.04, AU § 326.08, AU
7 § 329.05, AU § 339.03, AU § 339.10, and AU § 350.26).

8 d. Respondent Sullenger failed to exercise due professional care in the performance and
9 reporting on the San Diego audit and by insufficient documentation regarding the ostensibly
10 corrected prior year "finding" regarding reconciliations (AU § 150.02 and Yellow Book 4.09).

11 **RESPONDENTS TCA AND JACKSON**

12 **THIRD CAUSE FOR DISCIPLINE.**

13 **(Gross Negligence/Repeated Negligent Acts)**

14 40. Respondents TCA and Jackson are subject to disciplinary action under section 5100,
15 subsection (c) of the Code on the grounds that Respondents TCA and Jackson committed gross
16 negligence and/or repeated negligent acts in Respondent TCA's issuance of the 2012 Ridgecrest
17 audit report and performance by Respondent Jackson of audit procedures that departed extremely
18 from professional standards as follows:

19 a. Respondent Jackson failed to properly plan the audit (AU § 150.02, AU § 311.03, AU
20 § 311.19, AU § 311.20, AU § 311.21, AU § 318.08, AU § 318.09, AU § 326.17, AU § 329.17,
21 AU § 339.03, AU § 339.10, and AU § 339.18).

22 i. The audit planning memorandum referenced that there was little segregation of
23 duties and that compliance testing of controls would not be necessary. Respondent Jackson
24 planned to perform more substantive testing for balance sheet items. However, substantive
25 testing of Accounts Receivable, for example, does not reflect a substantive testing approach.

26 ii. The Audit Program reflected the general checklist of procedures to be
27 performed but without objectives to describe the nature, timing, or extent of planned audit
28 procedures.

1 iii. Audit Strategy Worksheets (ASW) did not describe the nature, timing, or extent
2 of planned audit procedures and did not support the low risk assessments.

3 b. Respondent Jackson failed to obtain a sufficient understanding of the entity and its
4 environment to assess risks and failed to assess the status and effectiveness of internal controls,
5 including those of supervision, override, and review. Jackson's understanding of risks was
6 contradicted by information in the fraud memo (AU § 150.02, AU § 312.11, AU § 314.26, AU §
7 314.40, AU § 314.54, AU § 314.55, AU § 314.83, AU § 316.13, AU § 316.15, AU § 316.27, AU
8 § 316.42, AU § 316.44, AU § 316.83, AU § 318.71, AU § 318.74, AU § 326.35, AU § 339.03,
9 and AU § 339.10).

10 c. Respondent Jackson did not obtain sufficient appropriate evidentiary matter to
11 support his opinion on the financial statements with regard to material balances presented in the
12 financial statements for accounts receivable, accounts payable, and inventories (AU § 150.02, AU
13 § 312.18, AU § 316.68, AU § 318.09, AU § 326.04, AU § 331.01, AU § 331.09, AU § 331.10,
14 AU § 331.11, AU § 331.12, AU § 339.03, and AU § 339.10).

15 d. Respondent Jackson failed to exercise due professional care in the performance and
16 reporting on the Ridgecrest audit (AU § 150.02).

17 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Violation of Business and Professions Code section 5097)**

20 41. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (e) of the Code on the grounds that Respondents violated section
22 5097 of the Code in conjunction with California Code of Regulations, title 16, section 68.2 by
23 failing to comply with audit documentation requirements as more particularly set forth in
24 paragraphs 38-40 and all of their subparts.

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1 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

2 **FIFTH CAUSE FOR DISCIPLINE**

3 (Report Conforming to Professional Standards)

4 42. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
5 under section 5062 of the Code on the grounds that Respondents' audit documentation does not
6 support the opinions rendered in the audit reports and, therefore, the audit reports do not conform
7 to professional standards, as more particularly set forth in paragraphs 38-40 and all of their
8 subparts.

9 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

10 **SIXTH CAUSE FOR DISCIPLINE**

11 (Compliance With Standards)

12 43. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
13 under California Code of Regulations; title 16, section 58 on the grounds that Respondents failed
14 to comply with all applicable professional standards, including but not limited to GAGAS, GAAS
15 and ERISA regarding the audit documentation and performance of the audit, as more particularly
16 set forth in paragraphs 38-40 and all of their subparts.

17 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 (Willful Violation)

20 44. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (g) of the Code on the grounds that Respondents willfully violated
22 various provisions of the Business and Professions Code and California Code of Regulations, as
23 more particularly set forth in paragraphs 18-43 and all of their subparts.

24 **PRAYER**

25 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the California Board of Accountancy issue a decision:

27 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
28 Accountancy Partnership Certificate No. 6980, issued to TCA Partners LLP;

1 2. Revoking or suspending or otherwise imposing discipline upon Certified Public
2 Accountant Certificate No. 36244, issued to Richard Edson Jackson;

3 3. Revoking or suspending or otherwise imposing discipline upon Certified Public
4 Accountant Certificate No. 72045, issued to Jerrel Lee Tucker;

5 4. Revoking or suspending or otherwise imposing discipline upon Certified Public
6 Accountant Certificate No. 88971, issued to Inger Alice Sullenger;

7 5. Ordering TCA Partners LLP, Richard Edson Jackson, Jerrel Lee Tucker, and Inger
8 Alice Sullenger to pay the California Board of Accountancy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 5107; and

11 6. Taking such other and further action as deemed necessary and proper.

12 DATED: November 27, 2013 Patti Bowers

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TCA PARTNERS LLP
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountancy Partnership
Certificate No. PAR 6980

And

RICHARD EDSON JACKSON, Partner
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountant Certificate No.
36244

And

JERREL LEE TUCKER, Partner
9074 N. Sierra Vista
Fresno, CA 93720
Certified Public Accountant Certificate No.
72045

And

INGER ALICE SULLENGER, Partner
3046 Whispering Meadow Ln.
Plain City, UT 84404
Certified Public Accountant Certificate No.
88971

Respondents.

Case No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

OAH No. 2014010481

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 1-1-15

It is so ORDERED 12-2-14


FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **TCA PARTNERS LLP**
13 **1111 Herndon Avenue, #211**
14 **Fresno, CA 93720**
15 **Certified Public Accountancy Partnership**
16 **Certificate No. PAR 6980**

17 **And**

18 **RICHARD EDSON JACKSON, Partner**
19 **1111 Herndon Avenue, #211**
20 **Fresno, CA 93720**
21 **Certified Public Accountant Certificate No.**
22 **36244**

23 **And**

24 **JERREL LEE TUCKER, Partner**
25 **9074 N. Sierra Vista**
26 **Fresno, CA 93720**
27 **Certified Public Accountant Certificate No.**
28 **72045**

And

INGER ALICE SULLENGER, Partner
3046 Whispering Meadow Ln.
Plain City, UT 84404
Certified Public Accountant Certificate No.
88971

Respondents.

Case No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

OAH No. 2014010481

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
(JERREL LEE TUCKER ONLY)**

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
5 Accountancy. She brought this action solely in her official capacity and is represented in this
6 matter by Kamala D. Harris, Attorney General of the State of California, by Phillip L. Arthur,
7 Deputy Attorney General.

8 2. Respondents TCA Partners LLP ("Respondent TCA"), Richard Edson Jackson
9 ("Respondent Jackson"), Jerrel Lee Tucker ("Respondent Tucker"), and Inger Alice Sullenger
10 ("Respondent Sullenger") are represented in this proceeding by attorney Joshua S. Goodman,
11 Esq., whose address is: 417 Montgomery St., 10th Fl., San Francisco, CA 94104.

12 3. On or about May 12, 2005, the California Board of Accountancy issued Certified
13 Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent TCA).
14 The Certified Public Accountancy Partnership Certificate was in full force and effect at all times
15 relevant to the charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-
16 2013-46 and will expire on May 31, 2015, unless renewed.

17 4. On or about December 3, 1982, the California Board of Accountancy issued Certified
18 Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent Jackson). The
19 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
20 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
21 will expire on March 31, 2016, unless renewed.

22 5. On or about September 20, 1996, the California Board of Accountancy issued
23 Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent Tucker).
24 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
26 will expire on November 30, 2015, unless renewed.

27 6. On or about April 21, 2004, the California Board of Accountancy issued Certified
28 Public Accountant Certificate No. 88971 to Inger Alice Sullenger (Respondent Sullenger). The

1 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
2 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
3 will expire on October 31, 2014, unless renewed.¹

4 JURISDICTION

5 7. Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 was filed
6 before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is
7 currently pending against Respondents. The Accusation and all other statutorily required
8 documents were properly served on Respondents on December 9, 2013. Respondents timely filed
9 their Notices of Defense contesting the Accusation.

10 8. A copy of Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 is
11 attached as exhibit A and incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 9. Respondent Tucker has carefully read, fully discussed with counsel, and understands
14 the charges and allegations in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-
15 46. Respondent Tucker has also carefully read, fully discussed with counsel, and understands the
16 effects of this Stipulated Settlement and Disciplinary Order.

17 10. Respondent Tucker is fully aware of his legal rights in this matter, including the right
18 to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 11. Respondent Tucker voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 ///

27 ¹ Unless otherwise specified, the term "Respondents" refers to Respondents TCA,
28 Jackson, Tucker, and Sullenger collectively.

1 CULPABILITY

2 12. Respondent Tucker understands and agrees that if proven at a hearing, the charges
3 and allegations in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46
4 constitute cause for disciplining Respondent Tucker's Certified Public Accountant Certificate

5 13. Respondent Tucker agrees that his Certified Public Accountant Certificate is subject
6 to discipline and agrees to be bound by the CBA's probationary terms as set forth in the
7 Disciplinary Order below.

8 CONTINGENCY

9 14. This stipulation shall be subject to approval by the California Board of Accountancy.
10 Respondent Tucker understands and agrees that counsel for Complainant and the staff of the
11 California Board of Accountancy may communicate directly with the CBA regarding this
12 stipulation and settlement, without notice to or participation by Respondent Tucker or his counsel.
13 By signing the stipulation, Respondent Tucker understands and agrees that he may not withdraw
14 his agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon
15 it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
16 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
17 inadmissible in any legal action between the parties, and the CBA shall not be disqualified from
18 further action by having considered this matter.

19 15. The parties understand and agree that Portable Document Format (PDF), electronic,
20 and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable
21 Document Format (PDF), electronic, and facsimile signatures thereto, shall have the same force
22 and effect as the originals.

23 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
26 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
27 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
28 writing executed by an authorized representative of each of the parties.

1 5. **Comply With Probation**

2 Respondent Tucker shall fully comply with the terms and conditions of the probation
3 imposed by the CBA and shall cooperate fully with representatives of the California Board of
4 Accountancy in its monitoring and investigation of the Respondent's compliance with probation
5 terms and conditions.

6 6. **Practice Investigation**

7 Respondent Tucker shall be subject to, and shall permit, a practice investigation of the
8 Respondent's professional practice. Such a practice investigation shall be conducted by
9 representatives of the CBA, provided notification of such review is accomplished in a timely
10 manner.

11 7. **Comply With Citations**

12 Respondent Tucker shall comply with all final orders resulting from citations issued by the
13 California Board of Accountancy.

14 8. **Tolling of Probation for Out-of-State Residence/Practice**

15 In the event Respondent Tucker should leave California to reside or practice outside this
16 state, Respondent Tucker must notify the CBA in writing of the dates of departure and return.
17 Periods of non-California residency or practice outside the state shall not apply to reduction of the
18 probationary period, or of any suspension. No obligation imposed herein, including requirements
19 to file written reports, reimburse the CBA costs, and make restitution to consumers, shall be
20 suspended or otherwise affected by such periods of out-of-state residency or practice except at the
21 written direction of the CBA.

22 9. **Violation of Probation**

23 If Respondent Tucker violates probation in any respect, the CBA, after giving Respondent
24 Tucker notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
25 order that was stayed. If an accusation or a petition to revoke probation is filed against
26 Respondent Tucker during probation, the CBA shall have continuing jurisdiction until the matter
27 is final, and the period of probation shall be extended until the matter is final.

28 The CBA's Executive Officer may issue a citation under California Code of Regulations,

1 Title 16, section 95, to a licensee for a violation of a term or condition contained in a decision
2 placing that licensee on probation.

3 **10. Completion of Probation**

4 Upon successful completion of probation, Respondent Tucker 's license will be fully
5 restored.

6 **11. Review of Audit and Review Engagements**

7 During the course of probation, Respondent Tucker shall annually provide the Board with a
8 listing of all audit and review engagements Respondent Tucker knows he will undertake in the
9 subsequent twelve month period. Along with the list of audit and review engagements,
10 Respondent Tucker shall provide the Board with the date on which the final audit and review
11 report for each audit and review engagement is due. During each year of probation, the Board
12 will specify the date on which the list of audit and review engagements is due, allowing at least
13 fifteen (15) days for Respondent Tucker to provide the list of engagements and their due dates to
14 the Board.

15 From the list of audit and review engagements and their due dates specified each year by
16 Respondent Tucker, the Board will select twenty-five percent (25%) but no more than fifteen (15)
17 audit and review engagements whose work papers and final reports shall be reviewed by a
18 qualified outside CPA approved by the Board. The Board may select all twenty-five percent
19 (25%) but no more than fifteen (15) audit or review engagements to be reviewed at one time, or
20 may select up to twenty-five percent (25%) but no more than fifteen (15) audit and review
21 engagements to be reviewed throughout the course of each year of probation. Respondent Tucker
22 shall maintain all work papers and final reports for all audit and review engagements undertaken
23 by Respondent Tucker during the course of probation, enabling inspection by the Board or
24 qualified outside CPA.

25 Upon completion of the review of the work papers and final reports for each selected audit
26 or review engagement, Respondent Tucker shall submit a copy of the report with the reviewer's
27 conclusions and findings to the Board. Review by the qualified outside CPA shall be at
28 Respondent Tucker's expense.

1 **12. Continuing Education Courses**

2 Within the probationary term, Respondent Tucker shall complete and provide proper
3 documentation of the following courses: eight hours of an audit documentation course, twenty-
4 four hours of accounting and auditing training, and eight hours of audit of 401(k) Plans.

5 Respondent Tucker shall also complete four hours of continuing education in the course
6 subject matter pertaining to the following: a review of nationally recognized codes of conduct
7 emphasizing how the codes relate to professional responsibilities; case-based instruction focusing
8 on real-life situational learning; ethical dilemmas facing the accounting profession; or, business
9 ethics, ethical sensitivity, and consumer expectations within 120 days from the effective date of
10 this Order. The courses must be a minimum of one hour as described in California Code of
11 Regulations, title 16, section 88.2.

12 This shall be in addition to continuing education requirements for relicensing.

13 If Respondent Tucker fails to complete said courses within the time period provided,
14 Respondent Tucker shall so notify the CBA and shall cease practice until Respondent Tucker
15 completes said courses, has submitted proof of same to the CBA, and has been notified by the
16 CBA that he may resume practice.

17 Failure to satisfactorily complete the required courses as scheduled shall constitute a
18 violation of probation.

19 **13. Active License Status**

20 Respondent Tucker shall at all times maintain an active license status with the CBA,
21 including during any period of suspension. If the license is expired at the time the CBA's
22 decision becomes effective, the license must be renewed within 30 days of the effective date of
23 the decision.

24 **14. Samples - Audit, Review or Compilation**

25 During the period of probation, if Respondent Tucker undertakes an audit, review, or
26 compilation engagement, Respondent Tucker shall submit to the CBA as an attachment to the
27 required quarterly report a listing of the same. The CBA or its designee may select one or more
28 from each category and the resulting report and financial statement and all related working papers

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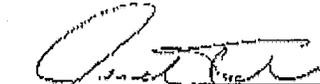
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must be submitted to the CDA or its designee upon request.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 10/16/14


JERALD LEE TUCKER
Respondent

///

I have read and fully discussed with Respondent Jerald Lee Tucker the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve (as form and content).

DATED: _____

Joshua S. Goodman, Esq.
Attorney for Respondent Jerald Lee Tucker

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

PHILIP T. ARTHUR
Deputy Attorney General
Attorney for Comptroller

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1 must be submitted to the CBA or its designee upon request.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the
5 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the California Board of Accountancy.

8

9 DATED: _____
10 JERREL LEE TUCKER
11 Respondent

12 ///

13 I have read and fully discussed with Respondent Jerrel Lee Tucker the terms and conditions
14 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
15 its form and content.

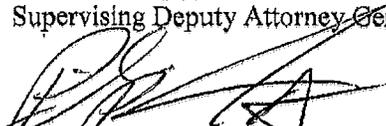
16 DATED: 10-14-14 _____
17 Joshua S. Goodman, Esq.
18 Attorney for Respondent Jerrel Lee Tucker

19 ENDORSEMENT

20 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
21 submitted for consideration by the California Board of Accountancy.

22 Dated: 10/20/14

23 Respectfully submitted,
24 KAMALA D. HARRIS
25 Attorney General of California
26 KENT D. HARRIS
27 Supervising Deputy Attorney General

28 
29 PHILLIP L. ARTHUR
30 Deputy Attorney General
31 Attorneys for Complainant

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Exhibit A

Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case Nos. AC-2013-43, AC-2013-44, AC-
2013-45, AC-2013-46

12
13 **TCA PARTNERS, LLP**
1111 Herndon Avenue, #211
14 Fresno, CA 93720
15 **Certified Public Accountancy Partnership**
Certificate No. PAR 6980

ACCUSATION

And

16 **RICHARD EDSON JACKSON, Partner**
1111 Herndon Avenue, #211
17 Fresno, CA 93720
18 **Certified Public Accountant Certificate No.**
36244

And

19 **JERREL LEE TUCKER, Partner**
9074 N. Sierra Vista
20 Fresno, CA 93720
21 **Certified Public Accountant Certificate No.**
72045

And

22 **INGER ALICE SULLENGER, Partner**
1111 E. Herndon Avenue, #211
23 Fresno, CA 93720
24 **Certified Public Accountant Certificate No.**
88971

25 Respondents.

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Complainant alleges:

PARTIES

1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about May 12, 2005, the California Board of Accountancy issued Certified Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent). The Certified Public Accountancy Partnership Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

3. On or about December 3, 1982, the California Board of Accountancy issued Certified Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.

4. On or about September 20, 1996, the California Board of Accountancy issued Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

5. On or about April 21, 2004, the California Board of Accountancy issued Certified Public Accountant Certificate No. 88971 to Inger Alice Sullenger (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed¹.

JURISDICTION

6. This Accusation is brought before the California Board of Accountancy (CBA), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

///

///

¹ Unless otherwise specified, the term "Respondents" refers to Respondents TCA, Jackson, Tucker, and Sullenger collectively.

1 understand the nature, timing, extent, and results of the auditing or other procedures performed,
2 evidence obtained, and conclusions reached, and to determine the identity of the persons who
3 performed and reviewed the work.

4 “(c) Failure of the audit documentation to document the procedures applied, tests
5 performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a
6 presumption that the procedures were not applied, tests were not performed, information was not
7 obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable
8 presumption affecting the burden of proof relative to those portions of the audit that are not
9 documented as required in subdivision (b). The burden may be met by a preponderance of the
10 evidence.

11 “(d) Audit documentation shall be maintained by a licensee for the longer of the following:

12 “(1) The minimum period of retention provided in subdivision (e);

13 “(2) A period sufficient to satisfy professional standards and to comply with applicable
14 laws and regulations.

15 “(e) Audit documentation shall be maintained for a minimum of seven years which shall be
16 extended during the pendency of any board investigation, disciplinary action, or legal action
17 involving the licensee or the licensee's firm. The board may adopt regulations to establish a
18 different retention period for specific categories of audit documentation where the board finds
19 that the nature of the documentation warrants it.

20 “(f) Licensees shall maintain a written documentation retention and destruction policy that
21 shall set forth the licensee's practices and procedures complying with this article.

22 13. Section 5101 of the Code states:

23 "After notice and hearing the board shall revoke the registration and permit to practice of a
24 partnership if at any time it does not have all the qualifications prescribed by the section of this
25 chapter under which it qualified for registration. After notice and hearing the board may revoke,
26 suspend or refuse to renew the permit to practice of a partnership or may censure the holder of
27 such permit for any of the causes enumerated in Section 5100 and for the following additional
28 causes:

1 information, to protect the personal information from unauthorized access, destruction, use,
2 modification, or disclosure.

3 "(d) For purposes of this section, the following terms have the following meanings:

4 "(1) "Personal information" means an individual's first name or first initial and his or her
5 last name in combination with any one or more of the following data elements, when either the
6 name or the data elements are not encrypted or redacted:

7 (A) Social security number. . . ."

8 COST RECOVERY

9 16. Section 5107(a) of the Code states:

10 "The executive officer of the board may request the administrative law judge, as part of the
11 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
12 found to have committed a violation or violations of this chapter to pay to the board all reasonable
13 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
14 The board shall not recover costs incurred at the administrative hearing."

15 APPLICABLE PROFESSIONAL STANDARDS

16 17. Standards of practice pertinent to this Accusation and the engagements in issue
17 include, without limitation:

18 a. Generally Accepted Auditing Standards ("GAAS") issued by the American Institute
19 of Certified Public Accountants ("AICPA"). The ten GAAS (AU § 150) are interrelated and
20 discussed in the Statements on Auditing Standards ("SAS"). Among the SAS relevant herein, in
21 addition to AU § 150 which sets forth GAAS, are AU § 230 (Due Professional Care); AU § 311.
22 (Planning and Supervision); AU § 312 (Planning the Audit); AU § 314 (Understanding the Entity
23 and its Environment and Assessing the Risks of Material Misstatement); AU § 316
24 (Consideration of Fraud); AU § 318 (Performing Audit Procedures in Response to Assessed
25 Risks and Evaluating the Audit Evidence Obtained); AU § 326 (Audit Evidence); AU § 329
26 (Analytical Procedures); AU § 331 (Inventories); AU § 339 (Audit Documentation); AU § 350
27 (Audit Sampling) and AU § 560 (Subsequent Events).

28 ///

1 b. Generally Accepted Government Auditing Standards ("GAGAS") are discussed in
2 the GAO's Government Auditing Standards, 2007 Revision, as amended ("Yellow Book")
3 promulgated by the U.S. Government Accountability Office. The Yellow Book incorporates the
4 ten GAAS.

5 c. Single Audits are audits conducted under the standards set forth by the Office of
6 Management and Budget in OMB Circular A-133 in addition to the requirements of the Yellow
7 Book.

8 d. The Employee Retirement Income Security Act ("ERISA") of 1974 established
9 auditing and reporting guidelines for defined benefit and defined contribution plans with 100 or
10 more participants. The Auditing Standards Board issued the interpretative publication Audit and
11 Accounting Guide for Employment Benefit Plans ("Guide") to assist management of employee
12 benefit plans in the preparation of financial statements in conformity with US Generally Accepted
13 Accounting Principles ("GAAP") and to assist auditors in auditing and reporting on such financial
14 statements. The interpretive guide is non-authoritative but the auditor should be prepared to
15 address how the auditor complied with the SAS provisions addressed by the auditing guidance.
16 The Guide is codified by the "AAG-EBP" number. The Relevant AAG-EBP chapters include
17 Chapter 5 (Planning and General Auditing Considerations); Chapter 6 (Internal Control), Chapter
18 7 (Auditing Investments), Chapter 8 (Auditing Contributions Received and Related
19 Contributions); Chapter 9 (Auditing Benefit Payments); Chapter 10 (Auditing Participant Data,
20 Participant Allocations, and Plan Obligations), and Chapter 13 (The Auditor's Report).

21 **FACTUAL BACKGROUND**

22 **2008 County of Modoc Audit**

23 18. Respondent TCA Partners, LLP (TCA) issued an auditor's report on the financial
24 statements of the County of Modoc² (Modoc) for the year ending June 30, 2008. The auditor's
25 report, dated April 17, 2009, stated that the audit was conducted in accordance with GAGAS,
26

27 ² Deficiencies in Tucker's and Sullenger's work as outlined on the Modoc audit are
28 similar to deficiencies noted on other audits. Tucker's deficiencies are described in the North
Hawaii section and Sullenger's deficiencies in the San Diego section.

1 GAAS, and Circular A-133. Respondent Sullenger was the engagement partner. Respondent
2 Tucker was the reviewing partner.

3 19. On October 30, 2009, the State Controller's Office (SCO) issued its quality control
4 review of Respondent TCA's audit for Modoc, a governmental unit. The SCO's report disclosed
5 that TCA's audit was not performed in accordance with the standards and requirements set forth
6 in GAGAS, GAAS, and Circular A-133.

7 20. The SCO specifically noted the following deficiencies: the audit was not properly
8 planned, supervised and reviewed; the auditor failed to obtain a sufficient understanding of
9 internal controls, the auditor did not accurately assess audit risk; the auditor failed to obtain
10 sufficient appropriate audit evidence; the auditor failed to exercise due professional care; and the
11 auditor failed to comply with standards.

12 21. Because of the deficiencies, the SCO felt that users could not rely on the auditor's
13 opinions that Modoc's financial statements fairly presented the county's financial position or that
14 Modoc complied with federal program requirements.

15 22. The CBA received the referral from the SCO.

16 23. On November 11, 2009, TCA informed the Modoc County Administrative Officer
17 that TCA withdrew its audit report dated April 17, 2009 for the year ending June 30, 2008.

18 24. The CBA requested and received audit documentation for Modoc from respondents
19 TCA and Sullenger.

20 **2010 North Hawaii Community Hospital, Inc. Audit**

21 25. Respondent Tucker, through Respondent TCA, issued an auditor's report on the
22 financial statements of the North Hawaii Community Hospital, Inc. 401(K) Plan (North Hawaii)
23 for the year ending December 31, 2010. The auditor's report, dated June 29, 2011, stated that the
24 audit was conducted in accordance with GAAS and referenced supplemental information required
25 by the Department of Labor (DOL) and ERISA.

26 26. The CBA received a referral from the DOL. Their quality review of TCA's 2010
27 audit of North Hawaii noted multiple deficiencies in TCA's performance of the audit.

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1 27. The DOL noted that the audit was not properly planned; the auditor failed to obtain
2 sufficient appropriate audit evidence in the areas of internal controls, investments, contributions,
3 benefit payments, participant data, administrative expenses, and subsequent events; and the audit
4 was not conducted in accordance with GAAS.

5 28. Because of the deficiencies, the DOL felt that the auditor's opinion on the plan's
6 financial statements was not supported by the audit procedures performed.

7 29. The CBA requested and received audit documentation for North Hawaii from
8 respondents TCA and Tucker.

9 2011 San Diego American Indian Health Center Audit

10 30. Respondent Sullenger, through Respondent TCA, issued the auditor's report under
11 the requirements of OMB Circular A-133, known as a Single Audit, on the financial statements
12 for the San Diego American Indian Health Center (San Diego) for the year ending June 30, 2011.
13 The Single Audit report, dated December 7, 2011, stated that the audit was conducted in
14 accordance with GAAS and GAGAS, and referenced supplemental information required under
15 OMB Circular A-133.

16 31. The CBA requested and received audit documentation for San Diego from
17 respondents TCA, Sullenger, and Tucker.

18 2012 Ridgecrest Regional Hospital Audits

19 32. Respondent Jackson, through Respondent TCA, issued the auditor's report on the
20 financial statements for Ridgecrest Regional Hospital (Ridgecrest) for the fiscal year ending
21 January 31, 2012. The auditor's report was dated April 27, 2012, and stated that the audit was
22 conducted in accordance with GAAS.

23 33. Respondent Sullenger, through Respondent TCA, issued the Single Audit report for
24 Ridgecrest for the fiscal year ending January 31, 2012.³ The Single Audit report, dated July 17,
25 2012, stated that the audit was conducted in accordance with GAAS and GAGAS, and contained

26
27 ³ Deficiencies in Sullenger's work as outlined on the San Diego audit are similar to those
28 found on the Ridgecrest Single Audit and are not additionally described in the Ridgecrest section.
Only Jackson's deficiencies are described in the Ridgecrest section.

1 supplemental information required under OMB Circular A-133. Sullenger's audit documentation
2 reflected her reliance on work done by Respondent Jackson during the Ridgecrest financial
3 statement audit.

4 34. The CBA requested and received audit documentation for Ridgecrest from
5 Respondents TCA, Sullenger, and Tucker.

6 Peer Reviews

7 35. Respondent TCA received a system of quality control review (peer review) for the
8 year ended October 31, 2006. The qualified peer review report, dated May 8, 2007, included
9 comments that indicated that reviewed items did not conform to the requirements of professional
10 standards in all material respects. Issues noted in the letter of comments were that reference
11 materials were not consulted on engagements in specialized industries, including government
12 audits, and that firm policies did not require specific audit documentation when accepted auditing
13 procedures were not deemed necessary.

14 36. Respondent TCA received a peer review report that reflected a rating of Pass with
15 Deficiency (rating nomenclature was updated in 2009) for the review year ending October 31,
16 2009. The peer review report included deficiencies in the performance of an employee benefit
17 plan audit which included that required disclosures were omitted and certain tests specific to
18 employee benefit plans were not performed or documented. Deficiencies noted in the
19 performance of an audit performed under GAGAS included that disbursement testing did not
20 identify programs to which they corresponded and that compliance testing of controls was
21 insufficient.

22 37. The CBA reviewed the three additional audits described above that were performed
23 and issued by the Respondents subsequent to the receipt of the 2007 qualified peer review
24 containing comments, the 2009 SCO's notification of deficiencies and the 2010 Pass with
25 Deficiency peer review.

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1 c. Respondent Tucker did not obtain sufficient appropriate evidential matter to support
2 his opinion on the financial statements with regard to material balances presented in the financial
3 statements for investments and other assets, participant loan balances, and employer and
4 employee contributions (AU § 150.02, AU § 312.18, AU § 318.74, AU § 326.04, AU § 339.03,
5 AU § 339.10, AAG-EBP 7.65, AAG-EBP 7.66, AAG-EBP 8.06, AAG-EBP 10.05, and AAG-
6 EBP 10.19).

7 d. Respondent Tucker failed to perform proper cut-off procedures including, but not
8 limited to, contribution amounts, the timing of contribution deposits, and unrecorded liabilities
9 (AU § 150.02, AU § 339.03, AU § 339.10, AU § 560.11, AU § 560.12, AAG-EBP 8.06, and
10 AAG-EBP 10.19).

11 e. Respondent Tucker failed to apply auditing procedures to individual participant
12 accounts, participant loans, and other participant data to comply with ERISA requirements (AU §
13 339.03, AU § 339.10, AAG-EBP 8.02, AAG-EBP 9.02, AAG-EBP 10.02, and AAG-EBP 10.05).

14 f. Respondent Tucker failed to perform analytical review procedures in the review stage
15 of the audit (AU § 329.01, AU § 339.03, and AU § 339.10).

16 g. Respondent Tucker failed to exercise due professional care in the performance and
17 reporting on the North Hawaii audit by disclosing approximately 1,000 participant social security
18 numbers, un-redacted, in the audit documentation provided to the CBA during its investigation,
19 and by issuing a limited scope audit when he did not perform audit procedures necessary to allow
20 him to issue a limited scope audit report (AU § 150.02, AAG-EBP 7.66, AAG-EBP 13.26, AAG-
21 EBP 13.27, and California Civil Code section 1798.81.5).

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1 § 314.55, AU § 314.83, AU § 316.13, AU § 316.27, AU § 316.41, AU § 316.42, AU § 316.44,
2 AU § 316.83, AU § 326.35, AU § 339.03, and AU § 339.10).

3 c. Respondent Sullenger did not obtain sufficient appropriate evidential matter to
4 support her opinion on the financial statements with regard to material balances presented in the
5 financial statements, such as accounts receivable, accounts payable, and unearned revenue (AU §
6 150.02, AU § 312.18, AU § 316.68, AU § 318.71, AU § 318.74, AU § 326.04, AU § 326.08, AU
7 § 329.05, AU § 339.03, AU § 339.10, and AU § 350.26).

8 d. Respondent Sullenger failed to exercise due professional care in the performance and
9 reporting on the San Diego audit and by insufficient documentation regarding the ostensibly
10 corrected prior year "finding" regarding reconciliations (AU § 150.02 and Yellow Book 4.09).

11 **RESPONDENTS TCA AND JACKSON**

12 **THIRD CAUSE FOR DISCIPLINE.**

13 **(Gross Negligence/Repeated Negligent Acts)**

14 40. Respondents TCA and Jackson are subject to disciplinary action under section 5100,
15 subsection (c) of the Code on the grounds that Respondents TCA and Jackson committed gross
16 negligence and/or repeated negligent acts in Respondent TCA's issuance of the 2012 Ridgecrest
17 audit report and performance by Respondent Jackson of audit procedures that departed extremely
18 from professional standards as follows:

19 a. Respondent Jackson failed to properly plan the audit (AU § 150.02, AU § 311.03, AU
20 § 311.19, AU § 311.20, AU § 311.21, AU § 318.08, AU § 318.09, AU § 326.17, AU § 329.17,
21 AU § 339.03, AU § 339.10, and AU § 339.18).

22 i. The audit planning memorandum referenced that there was little segregation of
23 duties and that compliance testing of controls would not be necessary. Respondent Jackson
24 planned to perform more substantive testing for balance sheet items. However, substantive
25 testing of Accounts Receivable, for example, does not reflect a substantive testing approach.

26 ii. The Audit Program reflected the general checklist of procedures to be
27 performed but without objectives to describe the nature, timing, or extent of planned audit
28 procedures.

1 iii. Audit Strategy Worksheets (ASW) did not describe the nature, timing, or extent
2 of planned audit procedures and did not support the low risk assessments,

3 b. Respondent Jackson failed to obtain a sufficient understanding of the entity and its
4 environment to assess risks and failed to assess the status and effectiveness of internal controls,
5 including those of supervision, override, and review. Jackson's understanding of risks was
6 contradicted by information in the fraud memo (AU § 150.02, AU § 312.11, AU § 314.26, AU §
7 314.40, AU § 314.54, AU § 314.55, AU § 314.83, AU § 316.13, AU § 316.15, AU § 316.27, AU
8 § 316.42, AU § 316.44, AU § 316.83, AU § 318.71, AU § 318.74, AU § 326.35, AU § 339.03,
9 and AU § 339.10).

10 c. Respondent Jackson did not obtain sufficient appropriate evidentiary matter to
11 support his opinion on the financial statements with regard to material balances presented in the
12 financial statements for accounts receivable, accounts payable, and inventories (AU § 150.02, AU
13 § 312.18, AU § 316.68, AU § 318.09, AU § 326.04, AU § 331.01, AU § 331.09, AU § 331.10,
14 AU § 331.11, AU § 331.12, AU § 339.03, and AU § 339.10).

15 d. Respondent Jackson failed to exercise due professional care in the performance and
16 reporting on the Ridgecrest audit (AU § 150.02).

17 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Violation of Business and Professions Code section 5097)**

20 41. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (e) of the Code on the grounds that Respondents violated section
22 5097 of the Code in conjunction with California Code of Regulations, title 16, section 68.2 by
23 failing to comply with audit documentation requirements as more particularly set forth in
24 paragraphs 38-40 and all of their subparts.

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1 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Report Conforming to Professional Standards)**

4 42. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
5 under section 5062 of the Code on the grounds that Respondents' audit documentation does not
6 support the opinions rendered in the audit reports and, therefore, the audit reports do not conform
7 to professional standards, as more particularly set forth in paragraphs 38-40 and all of their
8 subparts.

9 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Compliance With Standards)**

12 43. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
13 under California Code of Regulations, title 16, section 58 on the grounds that Respondents failed
14 to comply with all applicable professional standards, including but not limited to GAGAS, GAAS
15 and ERISA regarding the audit documentation and performance of the audit, as more particularly
16 set forth in paragraphs 38-40 and all of their subparts.

17 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Willful Violation)**

20 44. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (g) of the Code on the grounds that Respondents willfully violated
22 various provisions of the Business and Professions Code and California Code of Regulations, as
23 more particularly set forth in paragraphs 18-43 and all of their subparts.

24 **PRAYER**

25 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the California Board of Accountancy issue a decision:

- 27 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
28 Accountancy Partnership Certificate No. 6980, issued to TCA Partners LLP;

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2. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. 36244, issued to Richard Edson Jackson;

3. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. 72045, issued to Jerrel Lee Tucker;

4. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. 88971, issued to Inger Alice Sullenger;

5. Ordering TCA Partners LLP, Richard Edson Jackson, Jerrel Lee Tucker, and Inger Alice Sullenger to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107; and

6. Taking such other and further action as deemed necessary and proper.

DATED: November 27, 2013 Patti Bowers

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TCA PARTNERS LLP
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountancy Partnership
Certificate No. PAR 6980

And

RICHARD EDSON JACKSON, Partner
1111 Herndon Avenue, #211
Fresno, CA 93720
Certified Public Accountant Certificate No.
36244

And

JERREL LEE TUCKER, Partner
9074 N. Sierra Vista
Fresno, CA 93720
Certified Public Accountant Certificate No.
72045

And

INGER ALICE SULLENGER, Partner
3046 Whispering Meadow Ln.
Plain City, UT 84404
Certified Public Accountant Certificate No.
88971

Respondents.

Case No. AC-2013-43, AC-2013-44, AC-
2013-45, AC-2013-46

OAH No. 2014010481

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 1-1-15

It is so ORDERED 12-2-14


FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12
13 **TCA PARTNERS LLP**
1111 Herndon Avenue, #211
Fresno, CA 93720
14 **Certified Public Accountancy Partnership**
Certificate No. PAR 6980

Case No. AC-2013-43, AC-2013-44, AC-
2013-45, AC-2013-46

OAH No. 2014010481

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
(INGER ALICE SULLENGER ONLY)

15 **And**

16
17 **RICHARD EDSON JACKSON, Partner**
1111 Herndon Avenue, #211
Fresno, CA 93720
18 **Certified Public Accountant Certificate No.**
36244

19 **And**

20
21 **JERREL LEE TUCKER, Partner**
9074 N. Sierra Vista
Fresno, CA 93720
22 **Certified Public Accountant Certificate No.**
72045

23 **And**

24
25 **INGER ALICE SULLENGER, Partner**
3046 Whispering Meadow Ln.
Plain City, UT 84404
26 **Certified Public Accountant Certificate No.**
88971

27 Respondents.
28

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
5 Accountancy. She brought this action solely in her official capacity and is represented in this
6 matter by Kamala D. Harris, Attorney General of the State of California, by Phillip L. Arthur,
7 Deputy Attorney General.

8 2. Respondents TCA Partners LLP ("Respondent TCA"), Richard Edson Jackson
9 ("Respondent Jackson"), Jerrel Lee Tucker ("Respondent Tucker"), and Inger Alice Sullenger
10 ("Respondent Sullenger") are represented in this proceeding by attorney Joshua S. Goodman,
11 Esq., whose address is: 417 Montgomery St., 10th Fl., San Francisco, CA 94104.

12 3. On or about May 12, 2005, the California Board of Accountancy issued Certified
13 Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent TCA).
14 The Certified Public Accountancy Partnership Certificate was in full force and effect at all times
15 relevant to the charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-
16 2013-46 and will expire on May 31, 2015, unless renewed.

17 4. On or about December 3, 1982, the California Board of Accountancy issued Certified
18 Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent Jackson). The
19 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
20 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
21 will expire on March 31, 2016, unless renewed.

22 5. On or about September 20, 1996, the California Board of Accountancy issued
23 Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent Tucker).
24 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
26 will expire on November 30, 2015, unless renewed.

27 6. On or about April 21, 2004, the California Board of Accountancy issued Certified
28 Public Accountant Certificate No. 88971 to Inger Alice Sullenger (Respondent Sullenger). The

1 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
2 charges brought in Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 and
3 will expire on October 31, 2014, unless renewed.¹

4 JURISDICTION

5 7. Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 was filed
6 before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is
7 currently pending against Respondents. The Accusation and all other statutorily required
8 documents were properly served on Respondents on December 9, 2013. Respondents timely filed
9 their Notices of Defense contesting the Accusation.

10 8. A copy of Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46 is
11 attached as exhibit A and incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 9. Respondent Sullenger has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. AC-2013-43, AC-2013-44, AC-2013-
15 45, AC-2013-46. Respondent Sullenger has also carefully read, fully discussed with counsel, and
16 understands the effects of this Stipulated Settlement and Disciplinary Order.

17 10. Respondent Sullenger is fully aware of her legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the
20 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas
21 to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 11. Respondent Sullenger voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 ///

27 ¹ Unless otherwise specified, the term "Respondents" refers to Respondents TCA,
28 Jackson, Tucker, and Sullenger collectively.

1 **5. Comply With Probation**

2 Respondent Sullenger shall fully comply with the terms and conditions of the probation
3 imposed by the CBA and shall cooperate fully with representatives of the California Board of
4 Accountancy in its monitoring and investigation of the Respondent's compliance with probation
5 terms and conditions.

6 **6. Practice Investigation**

7 Respondent Sullenger shall be subject to, and shall permit, a practice investigation of the
8 Respondent's professional practice. Such a practice investigation shall be conducted by
9 representatives of the CBA, provided notification of such review is accomplished in a timely
10 manner.

11 **7. Comply With Citations**

12 Respondent Sullenger shall comply with all final orders resulting from citations issued by
13 the California Board of Accountancy.

14 **8. Tolling of Probation for Out-of-State Residence/Practice**

15 In the event Respondent Sullenger should leave California to reside or practice outside this
16 state, Respondent Sullenger must notify the CBA in writing of the dates of departure and return.
17 Periods of non-California residency or practice outside the state shall not apply to reduction of the
18 probationary period, or of any suspension. No obligation imposed herein, including requirements
19 to file written reports, reimburse the CBA costs, and make restitution to consumers, shall be
20 suspended or otherwise affected by such periods of out-of-state residency or practice except at the
21 written direction of the CBA.

22 **9. Violation of Probation**

23 If Respondent Sullenger violates probation in any respect, the CBA, after giving
24 Respondent Sullenger notice and an opportunity to be heard, may revoke probation and carry out
25 the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed
26 against Respondent Sullenger during probation, the CBA shall have continuing jurisdiction until
27 the matter is final, and the period of probation shall be extended until the matter is final.

28 The CBA's Executive Officer may issue a citation under California Code of Regulations,

1 Title 16, section 95, to a licensee for a violation of a term or condition contained in a decision
2 placing that licensee on probation.

3 10. **Completion of Probation**

4 Upon successful completion of probation, Respondent Sullenger's license will be fully
5 restored.

6 11. **Review of Audit and Review Engagements**

7 During the course of probation, Respondent Sullenger shall annually provide the Board
8 with a listing of all audit and review engagements Respondent Sullenger knows she will
9 undertake in the subsequent twelve month period. Along with the list of audit and review
10 engagements, Respondent Sullenger shall provide the Board with the date on which the final audit
11 and review report for each audit and review engagement is due. During each year of probation,
12 the Board will specify the date on which the list of audit and review engagements is due, allowing
13 at least fifteen (15) days for Respondent Sullenger to provide the list of engagements and their
14 due dates to the Board.

15 From the list of audit and review engagements and their due dates specified each year by
16 Respondent Sullenger, the Board will select twenty-five percent (25%) but no more than fifteen
17 (15) audit and review engagements whose work papers and final reports shall be reviewed by a
18 qualified outside CPA approved by the Board. The Board may select all twenty-five percent
19 (25%) but no more than fifteen (15) audit or review engagements to be reviewed at one time, or
20 may select up to twenty-five percent (25%) but no more than fifteen (15) audit and review
21 engagements to be reviewed throughout the course of each year of probation. Respondent
22 Sullenger shall maintain all work papers and final reports for all audit and review engagements
23 undertaken by Respondent Sullenger during the course of probation, enabling inspection by the
24 Board or qualified outside CPA.

25 Upon completion of the review of the work papers and final reports for each selected audit
26 or review engagement, Respondent Sullenger shall submit a copy of the report with the reviewer's
27 conclusions and findings to the Board. Review by the qualified outside CPA shall be at
28 Respondent Sullenger's expense.

1 **12. Continuing Education Courses**

2 Within the probationary term, Respondent Sullenger shall complete and provide proper
3 documentation of the following courses: eight hours of an audit documentation course, and
4 twenty-four hours of accounting and auditing training.

5 Respondent Sullenger shall also complete four hours of continuing education in the course
6 subject matter pertaining to the following: a review of nationally recognized codes of conduct
7 emphasizing how the codes relate to professional responsibilities; case-based instruction focusing
8 on real-life situational learning; ethical dilemmas facing the accounting profession; or, business
9 ethics, ethical sensitivity, and consumer expectations within 120 days from the effective date of
10 this Order. The courses must be a minimum of one hour as described in California Code of
11 Regulations, title 16, section 88.2.

12 This shall be in addition to continuing education requirements for relicensing.

13 If Respondent Sullenger fails to complete said courses within the time period provided,
14 Respondent Sullenger shall so notify the CBA and shall cease practice until Respondent Sullenger
15 completes said courses, has submitted proof of same to the CBA, and has been notified by the
16 CBA that she may resume practice.

17 Failure to satisfactorily complete the required courses as scheduled shall constitute a
18 violation of probation.

19 **13. Active License Status**

20 Respondent Sullenger shall at all times maintain an active license status with the CBA,
21 including during any period of suspension. If the license is expired at the time the CBA's
22 decision becomes effective, the license must be renewed within 30 days of the effective date of
23 the decision.

24 **14. Samples - Audit, Review or Compilation**

25 During the period of probation, if Respondent Sullenger undertakes an audit, review, or
26 compilation engagement, Respondent Sullenger shall submit to the CBA as an attachment to the
27 required quarterly report a listing of the same. The CBA or its designee may select one or more
28 from each category and the resulting report and financial statement and all related working papers

1 must be submitted to the CBA or its designee upon request.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the
5 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the California Board of Accountancy.

8
9 DATED: 10/15/2014 Inger Alice Sullenger
10 INGER ALICE SULLENGER
11 Respondent

11 ///

12 I have read and fully discussed with Respondent Inger Alice Sullenger the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15 DATED: _____
16 Joshua S. Goodman, Esq.
17 Attorney for Respondent Inger Alice Sullenger

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the California Board of Accountancy.

20
21 Dated: _____ Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 KENT D. HARRIS
25 Supervising Deputy Attorney General

26
27 PHILLIP L. ARTHUR
28 Deputy Attorney General
Attorneys for Complainant

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1 must be submitted to the CBA or its designee upon request.

2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Joshua S. Goodman, Esq. I understand the stipulation and the
5 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the California Board of Accountancy.

8
9 DATED: _____
10 INGER ALICE SULLENGER
11 Respondent

11 ///

12 I have read and fully discussed with Respondent Inger Alice Sullenger the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15 DATED: 10-14-14 _____
16 Joshua S. Goodman, Esq.
17 Attorney for Respondent Inger Alice Sullenger

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the California Board of Accountancy.

20
21 Dated: 10/20/14 Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 KENT D. HARRIS
25 Supervising Deputy Attorney General

26 _____
27 PHILLIP L. ARTHUR
28 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2013-43, AC-2013-44, AC-2013-45, AC-2013-46

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case Nos. AC-2013-43, AC-2013-44, AC-
2013-45, AC-2013-46

12
13 **TCA PARTNERS, LLP**
1111 Herndon Avenue, #211
14 Fresno, CA 93720
15 **Certified Public Accountancy Partnership**
Certificate No. PAR 6980

ACCUSATION

16 **And**
RICHARD EDSON JACKSON, Partner
1111 Herndon Avenue, #211
17 Fresno, CA 93720
18 **Certified Public Accountant Certificate No.**
36244

19 **And**
JERREL LEE TUCKER, Partner
9074 N. Sierra Vista
20 Fresno, CA 93720
21 **Certified Public Accountant Certificate No.**
72045

22 **And**
INGER ALICE SULLENGER, Partner
1111 E. Herndon Avenue, #211
23 Fresno, CA 93720
24 **Certified Public Accountant Certificate No.**
88971

25 Respondents.

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1 Complainant alleges:

2 PARTIES

3 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
4 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

5 2. On or about May 12, 2005, the California Board of Accountancy issued Certified
6 Public Accountancy Partnership Certificate No. 6980 to TCA Partners LLP (Respondent). The
7 Certified Public Accountancy Partnership Certificate was in full force and effect at all times
8 relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

9 3. On or about December 3, 1982, the California Board of Accountancy issued Certified
10 Public Accountant Certificate No. 36244 to Richard Edson Jackson (Respondent). The Certified
11 Public Accountant Certificate was in full force and effect at all times relevant to the charges
12 brought herein and will expire on March 31, 2014, unless renewed.

13 4. On or about September 20, 1996, the California Board of Accountancy issued
14 Certified Public Accountant Certificate No. 72045 to Jerrel Lee Tucker (Respondent). The
15 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
16 charges brought herein and will expire on November 30, 2013, unless renewed.

17 5. On or about April 21, 2004, the California Board of Accountancy issued Certified
18 Public Accountant Certificate No. 88971 to Inger Alice Sullenger (Respondent). The Certified
19 Public Accountant Certificate was in full force and effect at all times relevant to the charges
20 brought herein and will expire on October 31, 2014, unless renewed¹.

21 JURISDICTION

22 6. This Accusation is brought before the California Board of Accountancy (CBA),
23 Department of Consumer Affairs, under the authority of the following laws. All section
24 references are to the Business and Professions Code (Code) unless otherwise indicated.

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27 ¹ Unless otherwise specified, the term "Respondents" refers to Respondents TCA,
28 Jackson, Tucker, and Sullenger collectively.

1 understand the nature, timing, extent, and results of the auditing or other procedures performed,
2 evidence obtained, and conclusions reached, and to determine the identity of the persons who
3 performed and reviewed the work.

4 “(c) Failure of the audit documentation to document the procedures applied, tests
5 performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a
6 presumption that the procedures were not applied, tests were not performed, information was not
7 obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable
8 presumption affecting the burden of proof relative to those portions of the audit that are not
9 documented as required in subdivision (b). The burden may be met by a preponderance of the
10 evidence.

11 “(d) Audit documentation shall be maintained by a licensee for the longer of the following:

12 “(1) The minimum period of retention provided in subdivision (e);

13 “(2) A period sufficient to satisfy professional standards and to comply with applicable
14 laws and regulations.

15 “(e) Audit documentation shall be maintained for a minimum of seven years which shall be
16 extended during the pendency of any board investigation, disciplinary action, or legal action
17 involving the licensee or the licensee's firm. The board may adopt regulations to establish a
18 different retention period for specific categories of audit documentation where the board finds
19 that the nature of the documentation warrants it.

20 “(f) Licensees shall maintain a written documentation retention and destruction policy that
21 shall set forth the licensee's practices and procedures complying with this article.

22 13. Section 5101 of the Code states:

23 "After notice and hearing the board shall revoke the registration and permit to practice of a
24 partnership if at any time it does not have all the qualifications prescribed by the section of this
25 chapter under which it qualified for registration. After notice and hearing the board may revoke,
26 suspend or refuse to renew the permit to practice of a partnership or may censure the holder of
27 such permit for any of the causes enumerated in Section 5100 and for the following additional
28 causes:

1 information, to protect the personal information from unauthorized access, destruction, use,
2 modification, or disclosure.

3 "(d) For purposes of this section, the following terms have the following meanings:

4 "(1) "Personal information" means an individual's first name or first initial and his or her
5 last name in combination with any one or more of the following data elements, when either the
6 name or the data elements are not encrypted or redacted:

7 (A) Social security number. . . ."

8 COST RECOVERY

9 16. Section 5107(a) of the Code states:

10 "The executive officer of the board may request the administrative law judge, as part of the
11 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
12 found to have committed a violation or violations of this chapter to pay to the board all reasonable
13 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
14 The board shall not recover costs incurred at the administrative hearing."

15 APPLICABLE PROFESSIONAL STANDARDS

16 17. Standards of practice pertinent to this Accusation and the engagements in issue
17 include, without limitation:

18 a. Generally Accepted Auditing Standards ("GAAS") issued by the American Institute
19 of Certified Public Accountants ("AICPA"). The ten GAAS (AU § 150) are interrelated and
20 discussed in the Statements on Auditing Standards ("SAS"). Among the SAS relevant herein, in
21 addition to AU § 150 which sets forth GAAS, are AU § 230 (Due Professional Care); AU § 311.
22 (Planning and Supervision); AU § 312 (Planning the Audit); AU § 314 (Understanding the Entity
23 and its Environment and Assessing the Risks of Material Misstatement); AU § 316
24 (Consideration of Fraud); AU § 318 (Performing Audit Procedures in Response to Assessed
25 Risks and Evaluating the Audit Evidence Obtained); AU § 326 (Audit Evidence); AU § 329
26 (Analytical Procedures); AU § 331 (Inventories); AU § 339 (Audit Documentation); AU § 350
27 (Audit Sampling) and AU § 560 (Subsequent Events).

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1 GAAS, and Circular A-133. Respondent Sullenger was the engagement partner. Respondent
2 Tucker was the reviewing partner.

3 19. On October 30, 2009, the State Controller's Office (SCO) issued its quality control
4 review of Respondent TCA's audit for Modoc, a governmental unit. The SCO's report disclosed
5 that TCA's audit was not performed in accordance with the standards and requirements set forth
6 in GAGAS, GAAS, and Circular A-133.

7 20. The SCO specifically noted the following deficiencies: the audit was not properly
8 planned, supervised and reviewed; the auditor failed to obtain a sufficient understanding of
9 internal controls, the auditor did not accurately assess audit risk; the auditor failed to obtain
10 sufficient appropriate audit evidence; the auditor failed to exercise due professional care; and the
11 auditor failed to comply with standards.

12 21. Because of the deficiencies, the SCO felt that users could not rely on the auditor's
13 opinions that Modoc's financial statements fairly presented the county's financial position or that
14 Modoc complied with federal program requirements.

15 22. The CBA received the referral from the SCO.

16 23. On November 11, 2009, TCA informed the Modoc County Administrative Officer
17 that TCA withdrew its audit report dated April 17, 2009 for the year ending June 30, 2008.

18 24. The CBA requested and received audit documentation for Modoc from respondents
19 TCA and Sullenger.

20 **2010 North Hawaii Community Hospital, Inc. Audit**

21 25. Respondent Tucker, through Respondent TCA, issued an auditor's report on the
22 financial statements of the North Hawaii Community Hospital, Inc. 401(K) Plan (North Hawaii)
23 for the year ending December 31, 2010. The auditor's report, dated June 29, 2011, stated that the
24 audit was conducted in accordance with GAAS and referenced supplemental information required
25 by the Department of Labor (DOL) and ERISA.

26 26. The CBA received a referral from the DOL. Their quality review of TCA's 2010
27 audit of North Hawaii noted multiple deficiencies in TCA's performance of the audit.

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1 27. The DOL noted that the audit was not properly planned; the auditor failed to obtain
2 sufficient appropriate audit evidence in the areas of internal controls, investments, contributions,
3 benefit payments, participant data, administrative expenses, and subsequent events; and the audit
4 was not conducted in accordance with GAAS.

5 28. Because of the deficiencies, the DOL felt that the auditor's opinion on the plan's
6 financial statements was not supported by the audit procedures performed.

7 29. The CBA requested and received audit documentation for North Hawaii from
8 respondents TCA and Tucker.

9 **2011 San Diego American Indian Health Center Audit**

10 30. Respondent Sullenger, through Respondent TCA, issued the auditor's report under
11 the requirements of OMB Circular A-133, known as a Single Audit, on the financial statements
12 for the San Diego American Indian Health Center (San Diego) for the year ending June 30, 2011.
13 The Single Audit report, dated December 7, 2011, stated that the audit was conducted in
14 accordance with GAAS and GAGAS, and referenced supplemental information required under
15 OMB Circular A-133.

16 31. The CBA requested and received audit documentation for San Diego from
17 respondents TCA, Sullenger, and Tucker.

18 **2012 Ridgecrest Regional Hospital Audits**

19 32. Respondent Jackson, through Respondent TCA, issued the auditor's report on the
20 financial statements for Ridgecrest Regional Hospital (Ridgecrest) for the fiscal year ending
21 January 31, 2012. The auditor's report was dated April 27, 2012, and stated that the audit was
22 conducted in accordance with GAAS.

23 33. Respondent Sullenger, through Respondent TCA, issued the Single Audit report for
24 Ridgecrest for the fiscal year ending January 31, 2012.³ The Single Audit report, dated July 17,
25 2012, stated that the audit was conducted in accordance with GAAS and GAGAS, and contained

26
27 ³ Deficiencies in Sullenger's work as outlined on the San Diego audit are similar to those
28 found on the Ridgecrest Single Audit and are not additionally described in the Ridgecrest section.
Only Jackson's deficiencies are described in the Ridgecrest section.

1 supplemental information required under OMB Circular A-133. Sullenger's audit documentation
2 reflected her reliance on work done by Respondent Jackson during the Ridgecrest financial
3 statement audit.

4 34. The CBA requested and received audit documentation for Ridgecrest from
5 Respondents TCA, Sullenger, and Tucker.

6 Peer Reviews

7 35. Respondent TCA received a system of quality control review (peer review) for the
8 year ended October 31, 2006. The qualified peer review report, dated May 8, 2007, included
9 comments that indicated that reviewed items did not conform to the requirements of professional
10 standards in all material respects. Issues noted in the letter of comments were that reference
11 materials were not consulted on engagements in specialized industries, including government
12 audits, and that firm policies did not require specific audit documentation when accepted auditing
13 procedures were not deemed necessary.

14 36. Respondent TCA received a peer review report that reflected a rating of Pass with
15 Deficiency (rating nomenclature was updated in 2009) for the review year ending October 31,
16 2009. The peer review report included deficiencies in the performance of an employee benefit
17 plan audit which included that required disclosures were omitted and certain tests specific to
18 employee benefit plans were not performed or documented. Deficiencies noted in the
19 performance of an audit performed under GAGAS included that disbursement testing did not
20 identify programs to which they corresponded and that compliance testing of controls was
21 insufficient.

22 37. The CBA reviewed the three additional audits described above that were performed
23 and issued by the Respondents subsequent to the receipt of the 2007 qualified peer review
24 containing comments, the 2009 SCO's notification of deficiencies and the 2010 Pass with
25 Deficiency peer review.

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1 c. Respondent Tucker did not obtain sufficient appropriate evidential matter to support
2 his opinion on the financial statements with regard to material balances presented in the financial
3 statements for investments and other assets, participant loan balances, and employer and
4 employee contributions (AU § 150.02, AU § 312.18, AU § 318.74, AU § 326.04, AU § 339.03,
5 AU § 339.10, AAG-EBP 7.65, AAG-EBP 7.66, AAG-EBP 8.06, AAG-EBP 10.05, and AAG-
6 EBP 10.19).

7 d. Respondent Tucker failed to perform proper cut-off procedures including, but not
8 limited to, contribution amounts, the timing of contribution deposits, and unrecorded liabilities
9 (AU § 150.02, AU § 339.03, AU § 339.10, AU § 560.11, AU § 560.12, AAG-EBP 8.06, and
10 AAG-EBP 10.19).

11 e. Respondent Tucker failed to apply auditing procedures to individual participant
12 accounts, participant loans, and other participant data to comply with ERISA requirements (AU §
13 339.03, AU § 339.10, AAG-EBP 8.02, AAG-EBP 9.02, AAG-EBP 10.02, and AAG-EBP 10.05).

14 f. Respondent Tucker failed to perform analytical review procedures in the review stage
15 of the audit (AU § 329.01, AU § 339.03, and AU § 339.10).

16 g. Respondent Tucker failed to exercise due professional care in the performance and
17 reporting on the North Hawaii audit by disclosing approximately 1,000 participant social security
18 numbers, un-redacted, in the audit documentation provided to the CBA during its investigation,
19 and by issuing a limited scope audit when he did not perform audit procedures necessary to allow
20 him to issue a limited scope audit report (AU § 150.02, AAG-EBP 7.66, AAG-EBP 13.26, AAG-
21 EBP 13.27, and California Civil Code section 1798.81.5).

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1 § 314.55, AU § 314.83, AU § 316.13, AU § 316.27, AU § 316.41, AU § 316.42, AU § 316.44,
2 AU § 316.83, AU § 326.35, AU § 339.03, and AU § 339.10).

3 c. Respondent Sullenger did not obtain sufficient appropriate evidential matter to
4 support her opinion on the financial statements with regard to material balances presented in the
5 financial statements, such as accounts receivable, accounts payable, and unearned revenue (AU §
6 150.02, AU §312.18, AU § 316.68, AU § 318.71, AU § 318.74, AU § 326.04, AU § 326.08, AU
7 § 329.05, AU § 339.03, AU § 339.10, and AU §350.26).

8 d. Respondent Sullenger failed to exercise due professional care in the performance and
9 reporting on the San Diego audit and by insufficient documentation regarding the ostensibly
10 corrected prior year "finding" regarding reconciliations (AU § 150.02 and Yellow Book 4.09).

11 **RESPONDENTS TCA AND JACKSON**

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Gross Negligence/Repeated Negligent Acts)**

14 40. Respondents TCA and Jackson are subject to disciplinary action under section 5100,
15 subsection (c) of the Code on the grounds that Respondents TCA and Jackson committed gross
16 negligence and/or repeated negligent acts in Respondent TCA's issuance of the 2012 Ridgecrest
17 audit report and performance by Respondent Jackson of audit procedures that departed extremely
18 from professional standards as follows:

19 a. Respondent Jackson failed to properly plan the audit (AU § 150.02, AU § 311.03, AU
20 § 311.19, AU § 311.20, AU § 311.21, AU § 318.08, AU § 318.09, AU § 326.17, AU § 329.17,
21 AU § 339.03, AU § 339.10, and AU § 339.18).

22 i. The audit planning memorandum referenced that there was little segregation of
23 duties and that compliance testing of controls would not be necessary. Respondent Jackson
24 planned to perform more substantive testing for balance sheet items. However, substantive
25 testing of Accounts Receivable, for example, does not reflect a substantive testing approach.

26 ii. The Audit Program reflected the general checklist of procedures to be
27 performed but without objectives to describe the nature, timing, or extent of planned audit
28 procedures.

1 iii. Audit Strategy Worksheets (ASW) did not describe the nature, timing, or extent
2 of planned audit procedures and did not support the low risk assessments.

3 b. Respondent Jackson failed to obtain a sufficient understanding of the entity and its
4 environment to assess risks and failed to assess the status and effectiveness of internal controls,
5 including those of supervision, override, and review. Jackson's understanding of risks was
6 contradicted by information in the fraud memo (AU § 150.02, AU § 312.11, AU § 314.26, AU §
7 314.40, AU § 314.54, AU § 314.55, AU § 314.83, AU § 316.13, AU § 316.15, AU § 316.27, AU
8 § 316.42, AU § 316.44, AU § 316.83, AU § 318.71, AU § 318.74, AU § 326.35, AU § 339.03,
9 and AU § 339.10).

10 c. Respondent Jackson did not obtain sufficient appropriate evidentiary matter to
11 support his opinion on the financial statements with regard to material balances presented in the
12 financial statements for accounts receivable, accounts payable, and inventories (AU § 150.02, AU
13 § 312.18, AU § 316.68, AU § 318.09, AU § 326.04, AU § 331.01, AU § 331.09, AU § 331.10,
14 AU § 331.11, AU § 331.12, AU § 339.03, and AU § 339.10).

15 d. Respondent Jackson failed to exercise due professional care in the performance and
16 reporting on the Ridgecrest audit (AU § 150.02).

17 RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Violation of Business and Professions Code section 5097)**

20 41. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (e) of the Code on the grounds that Respondents violated section
22 5097 of the Code in conjunction with California Code of Regulations, title 16, section 68.2 by
23 failing to comply with audit documentation requirements as more particularly set forth in
24 paragraphs 38-40 and all of their subparts.

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1 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Report Conforming to Professional Standards)**

4 42. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
5 under section 5062 of the Code on the grounds that Respondents' audit documentation does not
6 support the opinions rendered in the audit reports and, therefore, the audit reports do not conform
7 to professional standards, as more particularly set forth in paragraphs 38-40 and all of their
8 subparts.

9 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Compliance With Standards)**

12 43. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
13 under California Code of Regulations, title 16, section 58 on the grounds that Respondents failed
14 to comply with all applicable professional standards, including but not limited to GAGAS, GAAS
15 and ERISA regarding the audit documentation and performance of the audit, as more particularly
16 set forth in paragraphs 38-40 and all of their subparts.

17 **RESPONDENTS TCA, TUCKER, SULLENGER, AND JACKSON**

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Willful Violation)**

20 44. Respondents TCA, Tucker, Sullenger, and Jackson are subject to disciplinary action
21 under section 5100, subsection (g) of the Code on the grounds that Respondents willfully violated
22 various provisions of the Business and Professions Code and California Code of Regulations, as
23 more particularly set forth in paragraphs 18-43 and all of their subparts.

24 **PRAYER**

25 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the California Board of Accountancy issue a decision:

27 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
28 Accountancy Partnership Certificate No. 6980, issued to TCA Partners LLP;

- 1 2. Revoking or suspending or otherwise imposing discipline upon Certified Public
- 2 Accountant Certificate No. 36244, issued to Richard Edson Jackson;
- 3 3. Revoking or suspending or otherwise imposing discipline upon Certified Public
- 4 Accountant Certificate No. 72045, issued to Jerrel Lee Tucker;
- 5 4. Revoking or suspending or otherwise imposing discipline upon Certified Public
- 6 Accountant Certificate No. 88971, issued to Inger Alice Sullenger;
- 7 5. Ordering TCA Partners LLP, Richard Edson Jackson, Jerrel Lee Tucker, and Inger
- 8 Alice Sullenger to pay the California Board of Accountancy the reasonable costs of the
- 9 investigation and enforcement of this case, pursuant to Business and Professions Code section
- 10 5107; and
- 11 6. Taking such other and further action as deemed necessary and proper.

12 DATED: November 27, 2013 Patti Bowers

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2014-11

MICHAEL S. MITCHELL CPA, INC.;
MICHAEL STEPHEN MITCHELL
P.O. Box 8320, PMB 159
San Luis, AZ 85349
Certified Public Accountancy Corporation
Certificate No. COR 6159,

and

MICHAEL STEPHEN MITCHELL
P.O. Box 8320, PMB 159
San Luis, AZ 85349
Certified Public Accountant Certificate No.
CPA 20146

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on

1-1-15

It is so ORDERED

12-2-14



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2014-11

11 **MICHAEL S. MITCHELL CPA, INC.;**
12 **P.O. Box 8320, PMB 159**
13 **San Luis, AZ 85349**
14 **Certified Public Accountancy Corporation**
Certificate No. COR 6159,

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **and**

16 **MICHAEL STEPHEN MITCHELL**
17 **P.O. Box 8320, PMB 159**
18 **San Luis, AZ 85349**
19 **Certified Public Accountant Certificate No.**
CPA 20146

20 Respondents.

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

24 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
25 Accountancy. She brought this action solely in her official capacity and is represented in this
26 matter by Kamala D. Harris, Attorney General of the State of California, by William D. Gardner,
27 Deputy Attorney General.

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1 court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 CULPABILITY

6 9. Respondent admits the truth of each and every charge and allegation in Accusation
7 No. AC-2014-11. With respect to the Sixth Cause for Discipline, respondent denies that he
8 intentionally provided inaccurate information to the Board.

9 10. Respondent agrees that his Certified Public Accountancy Corporation Certificate and
10 his Certified Public Accountant Certificate are subject to discipline and he agrees to be bound by
11 the CBA's probationary terms as set forth in the Disciplinary Order below.

12 CONTINGENCY

13 11. This stipulation shall be subject to approval by the CBA. Respondent understands
14 and agrees that counsel for Complainant and the staff of the CBA may communicate directly with
15 the CBA regarding this stipulation and settlement, without notice to or participation by
16 Respondent. By signing the stipulation, Respondent understands and agrees that he may not
17 withdraw his agreement or seek to rescind the stipulation prior to the time the CBA considers and
18 acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated
19 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
20 be inadmissible in any legal action between the parties, and the CBA shall not be disqualified
21 from further action by having considered this matter.

22 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
23 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
24 signatures thereto, shall have the same force and effect as the originals.

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 14. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the CBA may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Certified Public Accountancy Corporation Certificate No.
8 COR 6159 issued to Respondent Michael S. Mitchell CPA, Inc. and Certified Public Accountant
9 Certificate Number CPA 20146 issued to Respondent Michael Stephen Mitchell are revoked.
10 However, the revocations are stayed and Respondent is placed on probation for three (3) years on
11 the following terms and conditions.

12 1. **Obey All Laws**

13 Respondent shall obey all federal, California, other states' and local laws, including those
14 rules relating to the practice of public accountancy in California.

15 2. **Cost Reimbursement**

16 Respondent shall reimburse the CBA \$4,000.00 for its investigation and prosecution costs.
17 The payment shall be made as follows: \$1,000.00 due within thirty (30) days of the effective date
18 and monthly payments of \$100.00 thereafter for a period of thirty (30) months.

19 3. **Submit Written Reports**

20 Respondent shall submit, within 10 days of completion of the quarter, written reports to the
21 CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury,
22 such other written reports, declarations, and verification of actions as are required. These
23 declarations shall contain statements relative to respondent's compliance with all the terms and
24 conditions of probation. Respondent shall immediately execute all release of information forms
25 as may be required by the CBA or its representatives.

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1 **4. Personal Appearances**

2 Respondent shall, during the period of probation, appear in person at interviews/meetings as
3 directed by the CBA or its designated representatives, provided such notification is accomplished
4 in a timely manner.

5 **5. Comply With Probation**

6 Respondent shall fully comply with the terms and conditions of the probation imposed by
7 the CBA and shall cooperate fully with representatives of the CBA in its monitoring and
8 investigation of the respondent's compliance with probation terms and conditions.

9 **6. Practice Investigation**

10 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
11 professional practice. Such a practice investigation shall be conducted by representatives of the
12 CBA, provided notification of such review is accomplished in a timely manner.

13 **7. Comply With Citations**

14 Respondent shall comply with all final orders resulting from citations issued by the CBA.

15 **8. Tolling of Probation for Out-of-State Residence/Practice**

16 In the event respondent should leave California to reside or practice outside this state,
17 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
18 California residency or practice outside the state shall not apply to reduction of the probationary
19 period, or of any suspension. No obligation imposed herein, including requirements to file
20 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
21 or otherwise affected by such periods of out-of-state residency or practice except at the written
22 direction of the CBA.

23 **9. Violation of Probation**

24 If respondent violates probation in any respect, the CBA, after giving respondent notice and
25 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was
26 stayed. If an accusation or a petition to revoke probation is filed against respondent during
27 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
28 probation shall be extended until the matter is final.

1 The CBA's Executive Officer may issue a citation under California Code of Regulations,
2 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
3 licensee on probation.

4 **10. Active License Status**

5 Respondent shall at all times maintain an active license status with the Board, including
6 during any period of suspension. If the license is expired at the time the Board's decision becomes
7 effective, the license must be renewed within 30 days of the effective date of the decision.

8 **11. Completion of Probation**

9 Upon successful completion of probation, respondent's license will be fully restored with
10 the exception of the ability to perform any audits, reviews, compilations or attest engagements, as
11 ordered in paragraph 13 below.

12 **12. Restricted Practice**

13 During the period of probation, Respondent shall not engage in and shall be prohibited from
14 performing any audits, reviews, compilations or attest engagements.

15 IT IS HEREBY FURTHER ORDERED that:

16 **13. Restricted Practice**

17 After completion of probation, Respondent shall be permanently prohibited from engaging
18 in and performing any audits, reviews, compilations or attest engagements. This condition shall
19 continue until such time, if ever, that Respondent successfully petitions the Board for
20 reinstatement of his ability to perform audits, reviews, compilations or attest engagements.
21 Respondent understands and agrees that the Board is under no obligation to reinstate respondent's
22 ability to perform audits, reviews, compilations or attest engagements, that the Board has made
23 no representations concerning whether any such reinstatement might occur, and that the decision
24 to reinstate is within the sole discretion of the Board.

25 **14. Full Compliance**

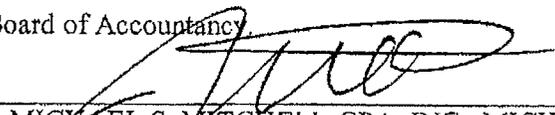
26 Respondent understands and agrees that this Stipulated Settlement and Disciplinary Order
27 as a resolution of Accusation No. AC-2014-11 is based upon, inter alia, Respondent's full
28 compliance with paragraph 13 of this Order (Restricted Practice). If Respondent fails to satisfy

1 this condition, he agrees that the Board can file an accusation against him for unprofessional
2 conduct based on his failure to comply with paragraph 13 as an independent basis for disciplinary
3 action, pursuant to Business and Professions Code section 5100. In addition, Respondent
4 consents that the Board may enforce paragraph 13 in any court of competent jurisdiction
5 (including an administrative court) to enjoin him, temporarily and/or permanently, from violating
6 paragraph 13, and may seek in such proceeding all other remedies as allowed by law.

7 ACCEPTANCE

8 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
9 stipulation and the effect it will have on my Certified Public Accountancy Corporation Certificate
10 and my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and
11 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
12 Decision and Order of the California Board of Accountancy.

13 DATED: 9/17/2014


14 MICHAEL S. MITCHELL CPA, INC.; MICHAEL
15 STEPHEN MITCHELL
16 Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the California Board of Accountancy.

19 Dated:

Respectfully submitted,

20 KAMALA D. HARRIS
21 Attorney General of California
22 GREGORY J. SALUTE
Supervising Deputy Attorney General

23 WILLIAM D. GARDNER
24 Deputy Attorney General
Attorneys for Complainant

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1 this condition, he agrees that the Board can file an accusation against him for unprofessional
2 conduct based on his failure to comply with paragraph 13 as an independent basis for disciplinary
3 action, pursuant to Business and Professions Code section 5100. In addition, Respondent
4 consents that the Board may enforce paragraph 13 in any court of competent jurisdiction
5 (including an administrative court) to enjoin him, temporarily and/or permanently, from violating
6 paragraph 13, and may seek in such proceeding all other remedies as allowed by law.

7 ACCEPTANCE

8 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
9 stipulation and the effect it will have on my Certified Public Accountancy Corporation Certificate
10 and my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and
11 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
12 Decision and Order of the California Board of Accountancy.

13 DATED: _____

14 MICHAEL S. MITCHELL CPA, INC.; MICHAEL
15 STEPHEN MITCHELL
16 Respondent

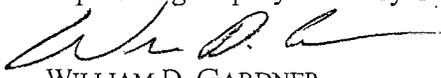
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the California Board of Accountancy.

20 Dated: 9/24/14

21 Respectfully submitted,

22 KAMALA D. HARRIS
23 Attorney General of California
24 GREGORY J. SALUTE
25 Supervising Deputy Attorney General

26 
27 WILLIAM D. GARDNER
28 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2014-11

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:	Case No. AC-2014-11
11 MICHAEL S. MITCHELL CPA, INC.	
12 P.O. Box 8320, PMB 159	
13 San Luis, AZ 85349	A C C U S A T I O N
14 Certified Public Accountancy Corporation	
15 Certificate No. COR 6159,	
16 and	
17 MICHAEL STEPHEN MITCHELL	
18 P.O. Box 8320, PMB 159	
19 San Luis, AZ 85349	
20 Certified Public Accountant Certificate No.	
CPA 20146	
Respondent.	

21 Complainant alleges:

22 **PARTIES**

- 23
- 24 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as the
25 Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
 - 26 2. On or about September 11, 2008, the California Board of Accountancy issued
27 Certified Public Accountancy Corporation Certificate Number COR 6159 to Michael S. Mitchell
28 CPA, Inc. (Respondent). The Certified Public Accountancy Corporation Certificate was in full

1 force and effect at all times relevant to the charges brought herein and will expire on September
2 30, 2014, unless renewed.

3 3. On or about April 26, 1974, the California Board of Accountancy issued Certified
4 Public Accountant Certificate Number CPA 20146 to Michael Stephen Mitchell (Respondent).
5 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
6 charges brought herein and will expire on July 31, 2015, unless renewed.

7 JURISDICTION

8 4. This Accusation is brought before the California Board of Accountancy, Department
9 of Consumer Affairs, under the authority of the following laws. All section references are to the
10 Business and Professions Code unless otherwise indicated.

11 5. Section 5109 states:

12 "The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or
13 other authority to practice public accountancy by operation of law or by order or decision of the
14 board or a court of law, the placement of a license on a retired status, or the voluntary surrender of
15 a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
16 investigation of or action or disciplinary proceeding against the licensee, or to render a decision
17 suspending or revoking the license."

18 6. Section 5156 states:

19 "An accountancy corporation shall not do or fail to do any act the doing of which or the
20 failure to do which would constitute unprofessional conduct under any statute, rule or regulation
21 now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such
22 statutes, rules and regulations to the same extent as a person holding a permit under Section 5070
23 of this code. The board shall have the same powers of suspension, revocation and discipline
24 against an accountancy corporation as are now or hereafter authorized by Section 5100 of this
25 code, or by any other similar statute against individual licensees, provided, however, that
26 proceedings against an accountancy corporation shall be conducted in accordance with Chapter 5
27 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and
28 the board shall have all the powers granted therein."

1 memoranda, letters of confirmation and representation, copies or abstracts of company documents,
2 and schedules or commentaries prepared or obtained by the licensee.

3 “(b) Audit documentation shall contain sufficient documentation to enable a reviewer with
4 relevant knowledge and experience, having no previous connection with the audit engagement, to
5 understand the nature, timing, extent, and results of the auditing or other procedures performed,
6 evidence obtained, and conclusions reached, and to determine the identity of the persons who
7 performed and reviewed the work.

8 “(c) Failure of the audit documentation to document the procedures applied, tests
9 performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a
10 presumption that the procedures were not applied, tests were not performed, information was not
11 obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable
12 presumption affecting the burden of proof relative to those portions of the audit that are not
13 documented as required in subdivision (b). The burden may be met by a preponderance of the
14 evidence.

15 “(d) Audit documentation shall be maintained by a licensee for the longer of the following:

16 (1) The minimum period of retention provided in subdivision (e).

17 (2) A period sufficient to satisfy professional standards and to comply with applicable
18 laws and regulations.

19 “(e) Audit documentation shall be maintained for a minimum of seven years which shall be
20 extended during the pendency of any board investigation, disciplinary action, or legal action
21 involving the licensee or the licensee's firm. The board may adopt regulations to establish a
22 different retention period for specific categories of audit documentation where the board finds that
23 the nature of the documentation warrants it.

24 “(f) Licensees shall maintain a written documentation retention and destruction policy that
25 shall set forth the licensee's practices and procedures complying with this article.”

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1 11. California Code of Regulations, title 16, section 40, states:

2 “(a) A firm performing services as defined in Section 39(a) shall have a peer review report
3 accepted by a Board-recognized peer review program once every three years in order to renew its
4 license.

5 “(b) A firm performing services as defined in Section 39(a) for the first time shall have a peer
6 review report accepted by a Board-recognized peer review program within 18 months of the date
7 it completes those services.”

8 12. California Code of Regulations, title 16, section 52, subdivision (d), states:

9 “A licensee shall provide true and accurate information and responses to questions,
10 subpoenas, interrogatories or other requests for information or documents and not take any action
11 to obstruct any Board inquiry, investigation, hearing or proceeding.”

12 13. California Code of Regulations, title 16, section 58, provides that licensees engaged
13 in the practice of public accountancy shall comply with all applicable professional standards,
14 including but not limited to generally accepted accounting principles and generally accepted
15 auditing standards.

16 14. California Code of Regulations, title 16, section 68.2, states:

17 “(a) To provide for the identification of audit documentation, audit documentation shall
18 include an index or guide to the audit documentation which identifies the components of the audit
19 documentation.

20 “(b) In addition to the requirements of Business and Professions Code Section 5097(b),
21 audit documentation shall provide the date the document or working paper was completed by the
22 preparer(s) and any reviewer(s), and shall include the identity of the preparer(s) and any
23 reviewer(s).

24 “(c) Audit documentation shall include both the report date and the date of issuance of the
25 report.”

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1 COST RECOVERY

2 15. Section 5107(a) of the Code states:

3 "The executive officer of the board may request the administrative law judge, as part of the
4 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found
5 to have committed a violation or violations of this chapter to pay to the board all reasonable costs
6 of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The
7 board shall not recover costs incurred at the administrative hearing."

8 FACTUAL BACKGROUND

9 16. Respondent Michael Stephen Mitchell ("Respondent Mitchell") is the sole owner of
10 respondent Michael S. Mitchell CPA, Inc. ("Respondent Firm") and is the only licensed certified
11 public accountant employed by Respondent Firm. On behalf of Respondent Firm, Respondent
12 Mitchell conducted an audit of the San Antonio Community Hospital – Health Plan for the year
13 ended December 31, 2009, and prepared a related audit report which was submitted to the U.S.
14 Department of Labor's Employee Benefits Security Administration as required by federal law. On
15 or about August 22, 2011, the California Board of Accountancy ("CBA") received a complaint
16 from the Department of Labor stating that, among other things, the audit of the health plan had not
17 been conducted in accordance with generally accepted auditing standards ("GAAS"). Thereafter,
18 the CBA performed its own investigation and determined that, in conducting the audit of the health
19 plan and issuing the associated audit report, respondents Michael Stephen Mitchell and Michael S.
20 Mitchell CPA, Inc. (collectively, "Respondents") violated provisions of the Accountancy Act and
21 regulations enacted pursuant thereto.

22 FIRST CAUSE FOR DISCIPLINE

23 (Gross Negligence)

24 17. Respondents are subject to disciplinary action under section 5100, subdivision (c), in
25 that Respondents engaged in grossly negligent conduct by departing from accepted professional
26 standards to an extreme degree with respect to their audit of the San Antonio Community Hospital
27 – Health Plan for the year ended December 31, 2009. The circumstances are as follows:

28 ///

1 a. Respondents' audit report disclosed the statement of changes in net assets but failed to
2 include a statement of net assets available for plan benefits as required by the Employee Retirement
3 Income Security Act (ERISA);

4 b. Respondents failed to adequately plan for the audit in that Respondents: failed to
5 establish an audit strategy with regard to consideration of materiality levels and preliminary
6 identification of areas of higher risk; failed to establish an audit plan that reflected a description of
7 the nature, timing and extent of planned risk assessment procedures sufficient to assess the risks of
8 materials misstatement; and failed to apply preliminary analytical review procedures;

9 c. Respondents failed to obtain a sufficient understanding of the entity and its
10 environment to assess risks, including but not limited to an understanding of the health plan's
11 internal control, the information system, the level of control risk, materiality and the risk of
12 material misstatement due to error or fraud;

13 d. Respondents failed to perform appropriate analytical review procedures in the review
14 stage of the audit;

15 e. Respondents failed to apply auditing procedures to the individual participant accounts,
16 resulting in a lack of necessary information with respect to participant data and employer
17 contributions;

18 f. Respondents failed to obtain a signed management representation letter from the
19 client;

20 g. Respondents failed to exercise due professional care with respect to documenting their
21 audit work;

22 Complainant refers to, and by this reference incorporates, the allegations set forth above in
23 paragraph 16, inclusive, as though set forth fully herein.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Repeated Acts of Negligence)**

26 18. Respondents are subject to disciplinary action under section 5100, subdivision (c), in
27 that Respondents engaged in repeated acts of negligence by departing from accepted professional
28 standards with respect to their audit of the San Antonio Community Hospital – Health Plan for the

1 year ended December 31, 2009. Complainant refers to, and by this reference incorporates, the
2 allegations set forth above in paragraph 16 and paragraph 17, subparagraphs a through g,
3 inclusive, as though set forth fully herein.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Nonconforming Audit Report)**

6 19. Respondents are subject to disciplinary action under section 5100, subdivision (g), in
7 conjunction with section 5062 of the Code in that Respondents' audit report following their audit
8 of the San Antonio Community Hospital – Health Plan for the year ended December 31, 2009,
9 failed to conform to professional standards. The circumstances are that Respondents' report with
10 an unqualified opinion did not conform to professional standards due to Respondents' failure to
11 conduct the audit in accordance with GAAS and/or their failure to produce audit documentation
12 supporting the opinion. Complainant refers to, and by this reference incorporates, the allegations
13 set forth above in paragraph 16 and paragraph 17, subparagraphs a through g, inclusive, as though
14 set forth fully herein.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Professional Standards)**

17 20. Respondents are subject to disciplinary action under section 5100, subdivision (g), in
18 conjunction with California Code of Regulations, title 16, section 58, in that Respondents failed to
19 comply with GAAS in the performance of and reporting on their audit of the San Antonio
20 Community Hospital – Health Plan for the year ended December 31, 2009. In addition, said audit
21 was conducted and the report prepared for the specific purpose of complying with ERISA. Said
22 audit and report failed to comply with the requirements of ERISA. Complainant refers to, and by
23 this reference incorporates, the allegations set forth above in paragraph 16 and paragraph 17,
24 subparagraphs a through g, inclusive, as though set forth fully herein.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Violation of Audit Documentation Requirements)**

27 21. Respondents are subject to disciplinary action under section 5100, subdivision (e), in
28 conjunction with section 5097 and California Code of Regulations, title 16, section 68.2, in that,

1 with respect to their audit of the San Antonio Community Hospital – Health Plan for the year
2 ended December 31, 2009, Respondents failed to produce and/or retain audit documentation
3 regarding the procedures applied, tests performed, evidence obtained and relevant conclusions
4 reached sufficient to enable a qualified reviewer with no prior connection with the audit to
5 understand the nature, timing, extent, results of the auditing procedures performed, evidence
6 obtained, and conclusions reached. In addition, Respondents failed to provide an index or guide to
7 the audit documentation materials produced as required by state law. Complainant refers to, and
8 by this reference incorporates, the allegations set forth above in paragraph 16 and paragraph 17,
9 subparagraphs a through g, inclusive, as though set forth fully herein.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(False Response to Board Request for Information)**

12 22. Respondents are subject to disciplinary action under section 5100, subdivision (g), in
13 conjunction with California Code of Regulations, title 16, section 52, subdivision (d), in that
14 Respondents failed to provide true and accurate information in response to a request for
15 information from the CBA. The circumstances are that in 2012 the CBA submitted a Peer Review
16 Reporting Form to Respondent Firm seeking information regarding the firm's auditing work and
17 related peer review requirements. On or about October 31, 2012, the Board received the
18 completed form, signed under penalty of perjury by Respondent Mitchell on behalf of Respondent
19 Firm, which falsely stated that the firm had not engaged in any auditing services that would require
20 peer review, when in fact the firm had issued its audit report on the San Antonio Community
21 Hospital – Health Plan for the year ended December 31, 2009, on or about July 29, 2011.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Peer Review Enrollment & Participation)**

24 23. Respondent Firm is subject to disciplinary action under section 5100, subdivision (g),
25 in conjunction with section 5076 and California Code of Regulations, title 16, section 40,
26 subdivision (b), in that respondent failed to obtain a peer review report accepted by a Board-

27 ///

1 recognized peer review program within eighteen (18) months of completing its audit for the San
2 Antonio Community Hospital – Health Plan for the year ended December 31, 2009. Respondent
3 Firm issued an audit report following its audit of the health plan on or about July 29, 2011. To
4 date, a peer review report has yet to be obtained.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the California Board of Accountancy issue a decision:

8 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
9 Accountancy Corporation Certificate Number COR 6159, issued to Michael S. Mitchell CPA, Inc.;

10 2. Revoking or suspending or otherwise imposing discipline upon Certified Public
11 Accountant Certificate Number CPA 20146, issued to Michael Stephen Mitchell;

12 3. Ordering Michael Stephen Mitchell and Michael S. Mitchell CPA, Inc. to pay the
13 California Board of Accountancy the reasonable costs of the investigation and enforcement of this
14 case, pursuant to Business and Professions Code section 5107;

15 4. Ordering Michael Stephen Mitchell and Michael S. Mitchell CPA, Inc. to pay the
16 California Board of Accountancy an administrative penalty pursuant to Business and Professions
17 Code section 5116;

18 5. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: April 2, 2014

Patti Bowers
PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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In the Matter of the Accusation Against:

Case No. AC-2014-27

DENNIS LAWRENCE DUBAN
4250 Wilshire Blvd
Los Angeles, CA 90010

Certified Public Accountant Certificate No.
22749

DUBAN ACCOUNTANCY CORPORATION
4250 Wilshire Blvd
Los Angeles, CA 90010

Certified Public Accountancy Corporation
Certificate No. 1115

DUBAN ACCOUNTANCY, LLP
4250 Wilshire Blvd
Los Angeles, CA 90010

Certified Public Accountancy Partnership
Certificate No. 6850

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 1-1-15.

It is so ORDERED 12-2-14.


FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 ELYSE M. DAVIDSON
Deputy Attorney General
4 State Bar No. 285842
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2533
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2014-27

12 **DENNIS LAWRENCE DUBAN**
13 **4250 Wilshire Blvd**
14 **Los Angeles, CA 90010**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Certified Public Accountant Certificate No.**
22749

16 **DUBAN ACCOUNTANCY CORPORATION**
17 **4250 Wilshire Blvd**
Los Angeles, CA 90010

18 **Certified Public Accountancy Corporation**
19 **Certificate No. 1115**

20 **DUBAN ACCOUNTANCY, LLP**
21 **4250 Wilshire Blvd**
Los Angeles, CA 90010

22 **Certified Public Accountancy Partnership**
Certificate No. 6850

23 Respondent.
24

25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
26 entitled proceedings that the following matters are true:

27 ///

28 ///

1 **PARTIES**

2 1. Patti Bowers (“Complainant”) is the Executive Officer of the California Board of
3 Accountancy. She brought this action solely in her official capacity and is represented in this
4 matter by Kamala D. Harris, Attorney General of the State of California, by Elyse M. Davidson,
5 Deputy Attorney General.

6 2. Respondents Dennis Lawrence Duban, Duban Accountancy Corporation, and Duban
7 Accountancy, LLP (“Respondents”) are represented in this proceeding by attorney Mark J. Seelig
8 of the law firm Meister Seelig & Fein, LLP, whose address is 125 Park Avenue, 7th Floor, New
9 York, NY 10017.

10 3. On or about March 19, 1976, the California Board of Accountancy issued Certified
11 Public Accountant Certificate No. CPA 22749 to Dennis Lawrence Duban (“Respondent”). The
12 Certified Public Accountant Certificate will expire on April 15, 2015, unless renewed.

13 4. On or about September 13, 1979, the CBA issued Corporation Certificate No. 1115 to
14 Duban Accountancy Corporation (“Respondent”). The license was canceled on or about
15 September 30, 2003, and has not been renewed. The California Board of Accountancy has
16 jurisdiction over the Certificate under Business and Professions Code section 5109.

17 5. On or about March 16, 2001, the CBA issued Partnership Certificate No. 6850 to
18 Duban Accountancy, LLP (“Respondent”). The partnership license was in full force and effect at
19 all times relevant to the charges brought herein and will expire on March 31, 2015, unless
20 renewed.

21 **JURISDICTION**

22 6. Accusation No. AC-2014-27 was filed before the California Board of Accountancy
23 (CBA), Department of Consumer Affairs, and is currently pending against Respondents. The
24 Accusation and all other statutorily required documents were properly served on Respondents on
25 October 22, 2014. Respondents timely filed their Notice of Defense contesting the Accusation.
26 A copy of Accusation No. AC-2014-27 is attached as Exhibit A and incorporated by reference.

27 ///

28 ///

1 **ADVISEMENT AND WAIVERS**

2 7. Respondents have carefully read, fully discussed with counsel, and understands the
3 charges and allegations in Accusation No. AC-2014-27.

4 8. Respondents have carefully read, fully discussed with counsel, and understand the
5 effects of this Stipulated Surrender of License and Order.

6 9. Respondents are fully aware of their legal rights in this matter, including the right to a
7 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
8 their own expense; the right to confront and cross-examine the witnesses against the them; the
9 right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas
10 to compel the attendance of witnesses and the production of documents; the right to
11 reconsideration and court review of an adverse decision; and all other rights accorded by the
12 California Administrative Procedure Act and other applicable laws.

13 10. Respondents voluntarily, knowingly, and intelligently waives and gives up each and
14 every right set forth above.

15 **CULPABILITY**

16 11. Respondents admit the truth of each and every charge and allegation in Accusation
17 No. AC-2014-27, agrees that cause exists for discipline and hereby surrenders the following
18 certificates for the CBA's formal acceptance:

19 (a) Certified Public Accountant Certificate No. CPA 22749;

20 (b) Corporation Certificate No. 1115 issued to Duban Accountancy Corporation;

21 (c) Partnership Certificate No. 6850 issued to Duban Accountancy, LLP.

22 12. Respondents understand that by signing this stipulation, they enable the CBA to issue
23 an order accepting the surrender of his Certified Public Accountant Certificate, Corporation
24 Certificate, and Partnership Certificate without further process.

25 ///

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ORDER

1
2 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 22749
3 issued to Respondent Dennis Lawrence Duban is surrendered; Accountancy Corporation
4 Certificate No. 1115 issued to Duban Accountancy Corporation is surrendered; and Accountancy
5 Partnership Certificate No. 6850 issued to Duban Accountancy, LLP, is surrendered. These three
6 certificates are surrendered and accepted by the California Board of Accountancy.

7 1. The surrender of Respondents' Certified Public Accountant Certificate, Accountancy
8 Corporation Certificate, and Accountancy Partnership Certificate, and the acceptance of the
9 surrendered license by the CBA shall constitute the imposition of discipline against Respondents.
10 This stipulation constitutes a record of the discipline and shall become a part of Respondents'
11 license history with the California Board of Accountancy.

12 2. Respondents shall lose all rights and privileges as a certified public accountant in
13 California as of the effective date of the CBA's Decision and Order.

14 3. Respondents shall cause to be delivered to the CBA all pocket licenses and, if one
15 was issued, all wall certificates on or before the effective date of the Decision and Order.

16 4. If Respondents ever file an application for licensure or a petition for reinstatement in
17 the State of California, the CBA shall treat it as a petition for reinstatement. Respondents must
18 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
19 effect at the time the petition is filed, and all of the charges and allegations contained in
20 Accusation No. AC-2014-27 shall be deemed to be true, correct and admitted by Respondents
21 when the CBA determines whether to grant or deny the petition.

22 5. Respondents shall pay the agency its costs of investigation and enforcement in the
23 amount of \$9,590.73 prior to issuance of a new or reinstated license.

24 6. Respondents shall not apply for licensure or petition for reinstatement for three (3)
25 years from the effective date of the California Board of Accountancy's Decision and Order.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order and have fully discussed it with my attorney, Mark J. Seelig. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 11-13-14 Helene Duban as POA for Dennis L. Duban
DENNIS LAWRENCE DUBAN
Respondent

I have carefully read the Stipulated Surrender of License and Order and have fully discussed it with my attorney, Mark J. Seelig. I understand the stipulation and the effect it will have on my Corporation Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 11-13-14 Helene Duban as POA for Dennis L. Duban
DENNIS LAWRENCE DUBAN on behalf of
DUBAN ACCOUNTANCY CORPORATION
Respondent

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1 ACCEPTANCE CONTINUED

2 I have carefully read the Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, Mark J. Seelig. I understand the stipulation and the effect it will
4 have on my Partnership Certificate. I enter into this Stipulated Surrender of License and Order
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
6 California Board of Accountancy.

7
8
9 DATED: 11-13-14 Helene Duban as POA for Dennis L. Duban
10 DENNIS LAWRENCE DUBAN on behalf of
11 DUBAN ACCOUNTANCY, LLP
12 Respondent
13

14 I have read and fully discussed with Respondent Dennis Lawrence Duban the terms and
15 conditions and other matters contained in the above Stipulated Surrender of License and Order. I
16 approve its form and content.
17

18
19 DATED: 11-13-14 Mark J. Seelig
20 Mark J. Seelig
21 Attorney for Respondents

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General



ELYSE M. DAVIDSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. AC-2014-27

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 ELYSE M. DAVIDSON
Deputy Attorney General
4 State Bar No. 285842
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2533
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2014-27

12 **DENNIS LAWRENCE DUBAN**
13 **4250 Wilshire Blvd**
14 **Los Angeles, CA 90010**

A C C U S A T I O N

15 **Certified Public Accountant Certificate No.**
16 **22749**

17 **DUBAN ACCOUNTANCY CORPORATION**
18 **4250 Wilshire Blvd**
19 **Los Angeles, CA 90010**

20 **Certified Public Accountancy Corporation**
21 **Certificate No. 1115**

22 **DUBAN ACCOUNTANCY, LLP**
23 **4250 Wilshire Blvd**
24 **Los Angeles, CA 90010**

25 **Certified Public Accountancy Partnership**
26 **Certificate No. 6850**

27 Respondent.

28 Complainant alleges:

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1 **PARTIES**

2 1. Patti Bowers ("Complainant") brings this Accusation solely in her official capacity as
3 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs
4 ("CBA").

5 2. On or about March 19, 1976, the CBA issued Certified Public Accountant Certificate
6 No. 22749 to Dennis Lawrence Duban ("Respondent"). The Certified Public Accountant
7 Certificate was in full force and effect at all times relevant to the charges brought herein and will
8 expire on April 30, 2015, unless renewed.

9 3. On or about September 13, 1979, the CBA issued Corporation Certificate No. 1115 to
10 Duban Accountancy Corporation. The license was canceled on or about September 30, 2003, and
11 has not been renewed.

12 4. On or about March 16, 2001, the CBA issued Partnership Certificate No. 6850 to
13 Duban Accountancy, LLP. The partnership license was in full force and effect at all times
14 relevant to the charges brought herein and will expire on March 31, 2015, unless renewed.

15 **JURISDICTION**

16 5. This Accusation is brought before the Board under the authority of the following
17 laws. All section references are to the Business and Professions Code unless otherwise indicated.

18 6. Section 5109 states:

19 The expiration, cancellation, forfeiture, or suspension of a license, practice,
20 privilege, or other authority to practice public accountancy by operation of law or by
21 order or decision of the board or a court of law, or the voluntary surrender of a license
22 by a licensee shall not deprive the board of jurisdiction to commence or proceed with
any investigation of or action or disciplinary proceeding against the licensee, or to
render a decision suspending or revoking the license.

23 **STATUTORY PROVISIONS**

24 7. Section 490 provides that a Board may suspend or revoke a license on the ground that
25 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
26 duties of the business or profession for which the license was issued.

27 8. Section 5070.7, subdivision (a), states:

28 A permit that is not renewed within five years following its expiration may not

1 be renewed, restored, or reinstated thereafter, and the certificate of the holder of the
2 permit shall be canceled immediately upon expiration of the five-year period, except
as provided in subdivision (e).

3 9. Section 5100 provides grounds for disciplining certified public accountants:

4 After notice and hearing the board may revoke, suspend, or refuse to renew any
5 permit or certificate granted under Article 4 (commencing with Section 5070) and
6 Article 5 (commencing with Section 5080), or may censure the holder of that permit
or certificate for unprofessional conduct that includes, but is not limited to, one or any
7 combination of the following causes:

8 (a) Conviction of any crime substantially related to the qualifications,
functions and duties of a certified public accountant or a public accountant.

9 (c) Dishonesty, fraud, gross negligence, or repeated negligent acts
10 committed in the same or different engagements, for the same or different clients, or
11 any combination of engagements or clients, each resulting in a violation of applicable
professional standards that indicate a lack of competency in the practice of public
12 accountancy or in the performance of the bookkeeping operations described in Section
13 5052.

14 (g) Willful violation of this chapter or any rule or regulation promulgated
15 by the board under the authority granted under this chapter.

16 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

17 (j) Knowing preparation, publication, or dissemination of false,
18 fraudulent, or materially misleading financial statements, reports, or information.

19 10. Section 5106 states:

20 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
21 deemed to be a conviction within the meaning of this article. The record of the
22 conviction shall be conclusive evidence thereof. The board may order the certificate or
23 permit suspended or revoked, or may decline to issue a certificate or permit, when the
24 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
or when an order granting probation is made, suspending the imposition of sentence,
25 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
Code allowing such person to withdraw his plea of guilty and to enter a plea of not
26 guilty, or setting aside the verdict of guilty or dismissing the accusation, information or
27 indictment.

28 REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 99 states:

For the purposes of denial, suspension, or revocation of a certificate or permit
pursuant to Division 1.5 (commencing with Section 475) of the Business and
Professions Code, a crime or act shall be considered to be substantially related to the
qualifications, functions or duties of a certified public accountant or public accountant

1 if to a substantial degree it evidences present or potential unfitness of a certified public
2 accountant or public accountant to perform the functions authorized by his or her
3 certificate or permit in a manner consistent with the public health, safety, or welfare.
4 Such crimes or acts shall include but not be limited to those involving the following:

5 (a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;....

6 ...

7 (d) Violation of any of the provisions of Chapter 1, Division III of the
8 Business and Professions Code or willful violation of any rule or regulation of the
9 board.

10 COST RECOVERY

11 12. Section 5107, subdivision (a), states:

12 The executive officer of the board may request the administrative law judge, as
13 part of the proposed decision in a disciplinary proceeding, to direct any holder of a
14 permit or certificate found to have committed a violation or violations of this chapter
15 to pay to the board all reasonable costs of investigation and prosecution of the case,
16 including, but not limited to, attorneys' fees. The board shall not recover costs
17 incurred at the administrative hearing.

18 BACKGROUND FACTS

19 13. Beginning on or around 2003 and continuing until around 2009, Respondent
20 knowingly prepared tax returns containing false information. In tax returns prepared on behalf of
21 J. H. Pflueger ("J.H.P.") and C. A. Pflueger ("C.A.P."), Respondent falsely reported income and
22 conspired to defraud the Internal Revenue Service by knowingly preparing tax returns containing
23 false information.

24 14. On or about August 2007, Respondent assisted J.H.P. with creating a nominee Cook
25 Islands trust named "Vista Pacifica Trust." On or about October 2007, Respondent assisted J.H.P.
26 with opening a bank account in Zurich, Switzerland and held in the name of "Southpac Trustee
27 International, Inc., as Trustee of the Vista Pacifica Trust."

28 15. On or about November 2007, after the sale of a Hacienda investment property,
Respondent and J.H.P. sent the proceeds of over \$14 million to the bank account in Zurich,
Switzerland. Neither Respondent or J.H.P. reported J.H.P.'s beneficial interest in the bank
account on schedule B of JHP's 1040 or by filing a report of Foreign Bank Account until after the
start of the criminal investigation.

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1 by the Board under the authority of the Act. Complainant incorporates by reference paragraphs 13
2 - 19, and all subparagraphs, inclusive, as if fully set forth herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the CBA issue a decision:

- 6 1. Revoking, suspending or otherwise imposing discipline upon Certified Public
7 Accountant Certificate No. 22749, issued to Dennis Lawrence Duban;
- 8 2. Revoking, suspending or otherwise imposing discipline upon Corporation Certificate
9 No. 1115, issued to Duban Accountancy Corporation;
- 10 3. Revoking, suspending or otherwise imposing discipline upon Partnership Certificate
11 No. 6850, issued to Duban Accountancy, LLP;
- 12 4. Ordering Dennis Lawrence Duban, Duban Accountancy Corporation, and Duban
13 Accountancy, LLP to pay the CBA the reasonable costs of the investigation and enforcement of
14 this case, pursuant to section 5107;
- 15 5. Ordering Dennis Lawrence Duban, Duban Accountancy Corporation, and Duban
16 Accountancy, LLP to pay the California Board Accountancy an administrative penalty pursuant to
17 Business and Professions Code section 5116; and,
- 18 6. Taking such other and further action as may be required.

19
20 DATED: 10/13/2014

Patti Bowers
PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ROBBIE TERUEL
3967 Ambler Court
San Jose, CA 95111

Certified Public Accountant Certificate No.
CPA 104234

Respondent.

Case No. AC-2014-58

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 5, 2014, Complainant Patti Bowers, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. AC-2014-58 against Robbie Teruel (Respondent) before the California Board of Accountancy. (Accusation attached as Exhibit A.)
2. On or about February 24, 2009, the California Board of Accountancy (CBA) issued Certified Public Accountant Certificate No. CPA 104234 to Respondent. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2014-58 and expired on September 30, 2014, and has not been renewed. The

1 CBA maintains jurisdiction over this matter pursuant to Business and Professions Code section
2 5109.

3 3. On or about August 12, 2014, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. AC-2014-58, Statement to Respondent, Notice of Defense,
5 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
6 and 11507.7) at Respondent's address of record which, pursuant to California Code of
7 Regulations, title 16, section 3, is required to be reported and maintained with the CBA.
8 Respondent's address of record was and is:

9 3967 Amber Court
10 San Jose, CA 95111.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 may nevertheless grant a hearing.

20 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 AC-2014-58.

23 7. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 8. Pursuant to its authority under Government Code section 11520, the CBA finds
Respondent is in default. The CBA will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the CBA's offices regarding the allegations contained in Accusation No. AC-2014-58, finds
2 that the charges and allegations in Accusation No. AC-2014-58, are separately and severally,
3 found to be true and correct by clear and convincing evidence.

4 9. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 5107, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$3184.13 as of September 8, 2014.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Robbie Teruel has subjected his
9 Certified Public Accountant Certificate No. CPA 104234 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The California Board of Accountancy is authorized to revoke Respondent's Certified
12 Public Accountant Certificate based upon the following violations alleged in the Accusation
13 which are supported by the evidence contained in the Default Decision Evidence Packet in this
14 case:

15 a. Respondent is subject to disciplinary action under section 490 and 5100(a) of the
16 code in that Respondent was convicted of crimes that are substantially related to the duties,
17 functions, or qualifications of a Certified Public Accountant. On or about October 29, 2012, in
18 the case of *People v. Teruel*, Santa Clara Superior Court case No. C1224839, Respondent was
19 convicted of violating Vehicle Code sections 23103/23103.5, reckless driving involving the
20 consumption of alcohol. On or about May 9, 2013, in the case of *People v. Teruel*, Santa Clara
21 Superior Court case No. F1346157, Respondent was convicted of violating Vehicle Code section
22 23152(b), driving with a blood alcohol level of .08% or higher.

23 b. Respondent is subject to disciplinary action under section 5100(g) of the code in that
24 Respondent willfully violated California Code of Regulations Title 16, section 52, a regulation of
25 the CBA. Respondent willfully failed to respond to a written inquiry from the CBA.

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ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. CPA 104234, heretofore issued to Respondent Robbie Teruel, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on 1-1-15

It is so ORDERED 12-2-14



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11 **ROBBIE TERUEL**
12 **3967 Ambler Court**
13 **San Jose, CA 95111**
14 **Certified Public Accountant Certificate No.**
CPA 104234
15 Respondent.

Case No. AC-2014-58

A C C U S A T I O N

16
17 Complainant alleges:

18 PARTIES

- 19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the California Board of Accountancy ("CBA"), Department of Consumer
21 Affairs.
22 2. On or about February 24, 2009, the CBA issued Certified Public Accountant
23 Certificate Number CPA 104234 to Robbie Teruel (Respondent). The Certified Public
24 Accountant Certificate will expire on September 30, 2014, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the CBA, Department of Consumer Affairs, under
27 the authority of the following laws. All section references are to the Business and Professions
28 Code unless otherwise indicated.

1 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions, or duties of the business or profession for which the license was
4 issued.

5 8. California Code of Regulations Title 16, section 52 states:

6 “(a) A licensee shall respond to any inquiry by the Board or its appointed representatives
7 within 30 days. The response shall include making available all files, working papers and other
8 documents requested.

9 (b) A licensee shall respond to any subpoena issued by the Board or its executive officer or
10 the assistant executive officer in the absence of the executive officer within 30 days and in
11 accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

12 (c) A licensee shall appear in person upon written notice or subpoena issued by the Board or
13 its executive officer or the assistant executive officer in the absence of the executive officer.

14 (d) A licensee shall provide true and accurate information and responses to questions,
15 subpoenas, interrogatories or other requests for information or documents and not take any action
16 to obstruct any Board inquiry, investigation, hearing or proceeding.”

17 9. California Code of Regulations Title 16, section 99 states:

18 “For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to
19 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act
20 shall be considered to be substantially related to the qualifications, functions or duties of a
21 certified public accountant or public accountant if to a substantial degree it evidences present or
22 potential unfitness of a certified public accountant or public accountant to perform the functions
23 authorized by his or her certificate or permit in a manner consistent with the public health, safety,
24 or welfare. Such crimes or acts shall include but not be limited to those involving the following:

25 (a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

26 (b) Fraud or deceit in obtaining a certified public accountant's certificate or a public
27 accountant's permit under Chapter 1, Division III of the Business and Professions Code;

28

1 (c) Gross negligence in the practice of public accountancy or in the performance of the
2 bookkeeping operations described in Section 5052 of the code;

3 (d) Violation of any of the provisions of Chapter 1, Division III of the Business and
4 Professions Code or willful violation of any rule or regulation of the board.”

5 ADMINISTRATIVE PENALTY

6 10. Section 5116 of the Code states:

7 “(a) The board, after appropriate notice and an opportunity for hearing, may order any
8 licensee or applicant for licensure or examination to pay an administrative penalty as provided in
9 this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

10 (b) The board may assess administrative penalties under one or more provisions of this
11 article. However, the total administrative penalty to be paid by the licensee shall not exceed the
12 amount of the highest administrative penalty authorized by this article.

13 (c) The board shall adopt regulations to establish criteria for assessing administrative
14 penalties based upon factors, including, but not limited to, actual and potential consumer harm,
15 nature and severity of the violation, the role of the person in the violation, the person's ability to
16 pay the administrative penalty, and the level of administrative penalty necessary to deter future
17 violations of this chapter.

18 (d) Administrative penalties assessed under this article shall be in addition to any other
19 penalties or sanctions imposed on the licensee or other person, including, but not limited to,
20 license revocation, license suspension, denial of the application for licensure, denial of the
21 petition for reinstatement, or denial of admission to the licensing examination. Payment of these
22 administrative penalties may be included as a condition of probation when probation is ordered.

23 (e) All administrative penalties collected under this article shall be deposited in the
24 Accountancy Fund.”

25 COSTS

26 11. Section 5107(a) of the Code states:

27 "The executive officer of the board may request the administrative law judge, as part of the
28 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate

1 found to have committed a violation or violations of this chapter to pay to the board all reasonable
2 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.

3 The board shall not recover costs incurred at the administrative hearing."

4 FIRST CAUSE FOR DISCIPLINE

5 (Convictions)

6 12. Respondent is subject to disciplinary action under section 490 and 5100(a) of the code
7 in that Respondent was convicted of crimes that are substantially related to the duties, functions,
8 or qualifications of a Certified Public Accountant. The circumstances are as follows:

9 a. On or about October 29, 2012, in the case of *People v. Teruel*, Santa Clara Superior
10 Court case No. C1224839, Respondent was convicted of violating Vehicle Code sections
11 23103/23103.5, reckless driving involving the consumption of alcohol. On or about December
12 30, 2011, Respondent drove a motor vehicle after consuming alcohol. Respondent was arrested
13 and was charged with driving under the influence of alcohol and driving with a blood alcohol
14 level of .08% or higher in violation of Vehicle Code section 23152, subsections (a) and (b).
15 Respondent plead nolo contendere to reckless driving involving the consumption alcohol.

16 b. On or about May 9, 2013, in the case of *People v. Teruel*, Santa Clara Superior Court
17 case No. F1346157, Respondent was convicted of violating Vehicle Code section 23152(b),
18 driving with a blood alcohol level of .08% or higher. On or about January 25, 2013, Respondent
19 drove a motor vehicle with a blood alcohol level of .08% or higher.

20 SECOND CAUSE FOR DISCIPLINE

21 (Failure To Comply With Board Inquiry)

22 13. Respondent is subject to disciplinary action under section 5100(g) of the code in that
23 Respondent willfully violated California Code of Regulations Title 16, section 52, a regulation of
24 the CBA. The circumstances are as follows:

25 a. On or about June 29, 2013, an appointed representative of the CBA sent Respondent a
26 letter to Respondent's address of record via regular and certified mail.

27 b. The letter requested several items from Respondent including, but not limited to: 1)
28 "a written explanation of the facts underlying [Respondent's] conviction and any previous

1 convictions;” 2) “all court documents and any information you feel would support your position;”
2 and 3) a “detailed description of [Respondent’s] current employment and practice of public
3 accountancy.”

4 c. The letter informed Respondent of his obligation to comply with CBA inquiries
5 pursuant to California Code of Regulations Title 16, section 52.

6 d. Respondent failed to respond to the letter within 30 days in willful violation of
7 California Code of Regulations Title 16, section 52.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the California Board of Accountancy issue a decision:

- 11 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
12 Accountant Certificate Number CPA 104234, issued to Robbie Teruel;
- 13 2. Ordering Robbie Teruel to pay the California Board of Accountancy the reasonable
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 5107;
- 16 3. Ordering Robbie Teruel to pay the California Board of Accountancy an administrative
17 penalty pursuant to Business and Professions Code section 5116;
- 18 4. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: August 5, 2014

Patti Bowers
PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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