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Attorneys for Complainant

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

In the Matter of the Accusation Against: ROBERT HOWARD SCHER 1440 Villa Drive Los Altos, CA 94024-5337 Certified Public Accountant Certificate No. CPA 64585, Respondent.	Case No. AC-2003-4 OAH No. (not assigned) **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES & JURISDICTION

1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of Accountancy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jeanne C. Werner, Deputy Attorney General.

2. ROBERT HOWARD SCHER, Respondent, is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about May 13, 1993, the California Board of Accountancy issued Certified Public Accountant Certificate No. CPA 64585 to ROBERT HOWARD SCHER. The Certificate was expired during several periods relevant to the charges brought in Accusation No.

AC-2003-4, and was expired when the charges were filed. The license was renewed on October 15, 2002, in an active status (with required continuing education), through December 31, 2003.

4. Accusation No. AC-2003-4 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 18, 2002. Respondent filed his Notice of Defense contesting the Accusation by fax on October 17, 2002. A copy of Accusation No. AC-2003-4 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. AC-2003-4. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

ADMISSIONS AND FINDINGS

8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2003-4.

9. The Board stipulates that Respondent's assertion that he completed the requisite continuing education to renew his license in the active category (renewed in October 2002 for the period January 1, 2002 through December 31, 2003) is supported by the Board's review of the evidence submitted by Respondent during this proceeding in support of his claimed

continuing education courses.

10. The Board finds, and Respondent stipulates, that, based upon the admissions and stipulations herein, Respondent's Certified Public Accountant Certificate is subject to discipline. Respondent agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 64585 issued to Respondent ROBERT HOWARD SCHER is revoked. However, the revocation is stayed and Respondent's certificate is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Certified Public Accountant Certificate No. CPA 64585 issued to ROBERT HOWARD SCHER is suspended for six months. During the period

of suspension the Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. **Notification to Clients/Cessation of Practice.** Because this order provides for a suspension of practice, Respondent shall comply with procedures provided by the Board of Accountancy or its designee regarding notification to, and management of, clients.

3. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board 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.

4. **Additional Required Continuing Education Courses.** Respondent shall complete (and provide proper documentation of completion of) 80 hours of professional education courses as directed, either in writing or at the time of Respondent's first probation appearance, by the Board's representatives. This requirement shall be in addition to continuing education requirements for re-licensing. The professional education courses shall be completed within a period of time designated and specified in writing by the Board or its designee, which time-frame shall be incorporated as a condition of this probation. Failure to satisfactorily complete the required courses as scheduled, or failure to complete same no later than 100 days prior to the scheduled termination of probation, shall constitute a violation of probation.

5. **Cost Reimbursement.** Respondent shall reimburse the Board $ 3,437.91 for its investigation and prosecution costs. Unless otherwise provided in writing by the Board's representatives during the probationary period, the Respondent shall reimburse the Board in **ten quarterly payments** (due with quarterly written reports).

6. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice investigation of the Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner. However, representatives of the Board may review Respondent's compliance with probationary terms **without notice** to Respondent.

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

8. **Submit Written Reports.** Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the Board on a form obtained from the Board. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

9. **Personal Appearances.** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

10. **Comply With Citations.** Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

11. **Tolling of Probation For Out-of-State Residence/Practice.** In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board 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 Board costs, or 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 Board.

12. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent 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 during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter

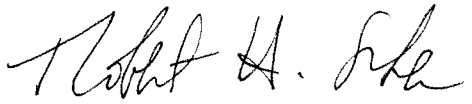
is final.

13. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. 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: February 21, 2003.



ROBERT HOWARD SCHER
Respondent

ENDORSEMENT

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

DATED: February 25, 2003

BILL LOCKYER, Attorney General
of the State of California

JEANNE C. WERNER
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03541110-SF2002AD0954

02/21/03 15:32 DEPT OF JUSTICE OAKLAND → 650 493 8600 NO.087 P001/002

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

In the Matter of the Accusation Against: ROBERT HOWARD SCHER 1440 Villa Drive Los Altos, CA 94024-5337 Certified Public Accountant Certificate No. CPA 64585 Respondent	Case No. AC-2003-4 OAH No. (not assigned)

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 April 25, 2003.

It is so ORDERED on March 26, 2003, by the CALIFORNIA BOARD OF ACCOUNTANCY.

Wendy S Perez

By WENDY S. PEREZ, CPA
PRESIDENT, CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

Accusation No. AC-2003-4

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of the State of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: ROBERT HOWARD SCHER 1440 Villa Drive Los Altos, CA 94024-5337 Certified Public Account Certificate No. 64585 Respondent.	Case No. AC-2003-4 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Carol Sigmann (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 13, 1993, the California Board of Accountancy issued Certified Public Account Certificate Number 64585 to ROBERT HOWARD SCHER (Respondent).

The certificate expired and was not valid during the period January 1, 1994, through March 30, 1995, for failing to pay the renewal fee and failing to submit the declaration of compliance with continuing education requirements. The certificate was renewed effective March 31, 1995, through December 31, 1995, upon receipt of the renewal fee and

declaration of compliance with continuing education requirements.

The certificate expired and was not valid during the period January 1, 1996, through February 21, 1996, for failing to pay a delinquent fee and failing to submit the declaration of compliance with continuing education requirements. The certificate was renewed effective February 22, 1996, through December 31, 1997, upon receipt of the delinquent fee and declaration of compliance with continuing education requirements.

The certificate expired and was not valid during the period January 1, 1998, through February 2, 1998, for failing to pay the renewal fee and failing to submit the declaration of compliance with continuing education requirements. The certificate was renewed effective February 3, 1998, through December 31, 1999, upon receipt of the renewal fee and the declaration of compliance with the continuing education requirements.

Since December 31, 1999, the certificate has not been renewed, and it is currently expired.

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 5100 of the Code 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 which includes, but is not limited to, one or any combination of the following causes:

" . . .

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

" . . .

5. Section 118, subdivision (b), of the Code states:

" The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

FIRST CAUSE FOR DISCIPLINE

6. Section 5050 of the Code states:

No person shall engage in the practice of public accountancy in this State unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or a public accountant of another state, or any accountant of a foreign country lawfully practicing therein, from temporarily practicing in this State on professional business incident to his regular practice in another state or country.

7. 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.

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

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

8. Respondent is subject to disciplinary action under Code section 5100(f) for having violated Code section 5050 in that he engaged in the practice of public accountancy without a valid certificate. The circumstances are as follows:

Respondent practiced public accountancy with an expired certificate when he

prepared a Form 1120 for Venture International Properties, Inc., which is dated September 11, 2001. In addition, respondent indicated on his incomplete license renewal form dated December 4, 2000, that he was currently practicing public accountancy, but his certificate expired on January 1, 2000, and it was never renewed.

SECOND CAUSE FOR DISCIPLINE

9. Title 16, California Code of Regulations, section 87(a), states, in pertinent part, that as a condition of active status license renewal, a licensee shall complete at least 80 hours of qualifying continuing education in the two-year period immediately preceding license expiration, and also meet reporting requirements. A licensee engaged in the practice of public accountancy as defined in section 5051 of the Code is required to hold a license in active status. No carryover of continuing education is permitted from one two-year license renewal period to another. Title 16, California Code of Regulations, section 87(f), states that, "A licensee's willful failure to comply with the requirement of this section shall constitute cause for disciplinary action pursuant to Section 5100(f) of the Accountancy Act."

10. Respondent is subject to disciplinary action under Code section 5100(f) for having violating Title 16, California Code of Regulations, section 87, in that he wilfully failed to meet the continuing education basic requirements for the renewal of his certificate. The circumstances are as follows:

Respondent's certificate expired on January 1, 2000, and it has not been renewed. On December 6, 2000, respondent submitted a renewal application for the renewal period ending December 31, 2001 with the required renewal fees. However, this renewal application failed to include a current declaration of compliance with continuing education requirements. Instead, respondent submitted a form with continuing education from a prior renewal period (1997). Respondent was advised by the Board of the deficiencies in this renewal application on January 12, 2001, and April 13, 2001, but he has failed to respond or correct the deficiencies in this renewal application.

DISCIPLINE CONSIDERATIONS

11. To determine the degree of discipline, if any, to be imposed on

Respondent, Complainant alleges that on or about June 14, 1996, in a prior action, the California Board of Accountancy issued modified Citation Number CT-96-11 and ordered Respondent to pay a civil fine of $750.00 for having violated Code section 5050 in that he represented himself as a certified public accountant without a valid certificate during the periods of January 1, 1994, through March 31, 1995, and January 1, 1996, through February 16, 1996. That Citation was paid and is now final and is incorporated by reference as if fully set forth.

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 Account Certificate Number 64585, issued to ROBERT HOWARD SCHER; and

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

DATED: September 13, 2002

CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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