BILL LOCKYER, Attorney General
of the State of California
JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
California Department of Justice
1515 Clay Street, 21st Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2226
Facsimile: (510) 622-2121

Attorneys for Complainant

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

In the Matter of the Accusation Against: H. RICHARD FIEDELMAN 110 Deer Park San Rafael, CA 94901 Certified Public Accountant Certificate No. CPA 15120 Respondent.	Case No. AC-2004-32 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES AND JURISDICTION

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

2. On or about January 1, 1970, the Board issued Certified Public Accountant Certificate No. CPA 15120 to H. Richard Fiedelman, Respondent. The Certificate expired on May 31, 2003, and has not been renewed. Respondent is represented in this proceeding by attorney David B. Bayless, whose address is Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105.

3. Accusation No. AC-2004-32 and First Amended Accusation No. AC-2004-32 were filed on May 24, 2004, and on June 24, 2004, respectively, before the California Board of Accountancy, Department of Consumer Affairs, and the First Amended Accusation is currently pending against Respondent. Both Accusations and all other statutorily required documents were properly served on Respondent on May 27, 2004, and June 29, 2004, respectively. Respondent timely filed his Notice of Defense contesting the original Accusation on June 7, which is deemed to have controverted all new charges in the First Amended Accusation. A copy of First Amended Accusation No. AC-2004-32 (hereinafter "Accusation") is attached as Exhibit A and incorporated herein by reference.

WAIVERS & CONTINGENCY

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2004-32. Respondent has also carefully read, fully discussed with counsel, and understands the effects of, this Stipulated Surrender of License and Order.

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

6. In signing this stipulation, Respondent is voluntarily consenting to the adoption of this Stipulated Surrender as the Board's Decision in Case No. 2004-32, enabling the Board to issue the following order without further legal process. Respondent represents that no tender, offer, promise, threat or inducement of any kind whatsoever have been made by the Board or any member, officer, agent or representative thereof in consideration of this offer or otherwise to induce him to so consent.

7. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. 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.

8. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Order shall be withdrawn. It shall be of no force or effect, except for this paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action between the parties, and shall not be relied upon or introduced in any disciplinary, or other, action or proceeding by either party hereto. In the event that the Stipulated Surrender is not adopted, nothing recited herein shall be construed as a waiver of Respondent's right to a hearing on the truth of any of the matters charged. Communications pursuant to this paragraph, and consideration of this matter, shall not disqualify the Board or other persons from future participation in this or any other matter affecting Respondent. Respondent agrees that should the Board reject this Stipulated Surrender and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records related hereto.

ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES

9. Respondent stipulates that he has not renewed his Certificate No. CPA 15120 and has allowed it to expire because he has retired from practice and he has no intention of renewing the license, reapplying for licensure, or petitioning for reinstatement in the State of California.

10. Solely for the purpose of resolving the charges and allegations in the Accusation without further proceedings, Respondent understands that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that those charges, if proven, would constitute cause for discipline of his CPA license. Respondent does not admit the charges, but he hereby gives up his right to contest those charges for purposes of resolving these proceedings. However, Respondent understands that, as provided herein in paragraph 2 of the

Order, in the unlikely event that Respondent should apply for licensure, the charges will be deemed admitted.

11. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his CPA Certificate without further process. The Board's acceptance of the license surrender constitutes the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

12. Respondent agrees not to take any action or make any public statement that creates, or tends to create, the impression that any of the matters set forth in the Stipulated Surrender, Order and Decision are without a factual basis. It is not the intent of the board, however, to prevent Respondent from testifying or responding truthfully in civil litigation or regulatory matters, including where he is required to do so by any court of law or regulatory body.

13. The Complainant represents that, pursuant to California Business & Professions Code Section 5107, the Board's reasonable costs of investigation and prosecution in this matter are $5,143.80. The payment of costs is not a penalty imposed upon Respondent.

14. In the event Respondent does not reimburse, within thirty days of the effective date of the Order, the Board's costs as set forth in paragraph 3 of the Order, Respondent agrees that the Board may set aside its Order in the case and take further disciplinary action against Respondent's license without further formal process or formal notice to Respondent.

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

IN CONSIDERATION OF THE FOREGOING stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

///

///

///

ORDER

IT IS HEREBY ORDERED that the surrender of Certified Public Accountant Certificate No. CPA 15120, issued to Respondent H. Richard Fiedelman is accepted by the California Board of Accountancy.

1. Respondent Fiedelman shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the Board's Decision and Order, and his license will be canceled.

2. Respondent Fiedelman understands that if he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in the Accusation in Case No. AC-2004-32 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

3. Respondent shall reimburse the Board its costs of investigation and enforcement in this proceeding, in the amount of $5,143.80, within thirty days of the effective date of this Order.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, David B. Bayless. 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: 2/24/05

H. Richard Fiedelman

H. RICHARD FIEDELMAN
Respondent

I have read and fully discussed with Respondent H. Richard Fiedelman the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 2/24/05

DAVID B. BAYLESS
Attorney for Respondent

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: February 28, 2005

BILL LOCKYER, Attorney General
of the State of California

JEANNE C. WERNER
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against: H. RICHARD FIEDELMAN 110 Deer Park San Rafael, CA 94901 Certified Public Accountant Certificate No. CPA 15120 Respondent.	Case No. AC-2004-32

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 April 22, 2005.

It is so ORDERED March 23, 2005.

Renata M. Sos, President
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

Accusation No. AC-2004-32

BILL LOCKYER, Attorney General
of the State of California
JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
California Department of Justice
1515 Clay Street, 21st Floor~P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2226
Facsimile: (510) 622-2121

Attorneys for Complainant

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

In the Matter of the Accusation Against: H. RICHARD FIEDELMAN 110 Deer Park San Rafael, CA 94901 Certified Public Accountant Certificate No. 15120, Respondent.	Case No. AC-2004-32 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES and JURISDICTION

1. The Complainant herein, Carol Sigmann, brings this action under Business and Professions Code Section 5100 solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs ("Board"), and hereby amends Accusation 2004-32, filed May 24, 2004, replacing it *nunc pro tunc* with this First Amended Accusation (hereinafter "Accusation").

2. On or about January 1, 1970, the California Board of Accountancy issued Certified Public Accountant Certificate Number 15120 to the Respondent herein, H. Richard Fiedelman, to practice public accountancy in the State of California pursuant to the California Accountancy Act (Division 3, Chapter 1, Section 5000 et seq. of the California Business and

Professions Code). The Certified Public Accountant Certificate was in full force and effect during the time period relevant herein. The certificate expired on June 1, 2003, and has not been renewed.[1]

3. This Accusation is brought before the Board under the authority of Section 5100 of the Business and Professions Code,[2] which provides, in relevant part, that, after notice and hearing, the board may revoke, suspend or refuse to renew any permit or certificate granted, for unprofessional conduct which includes, but is not limited to, one or any combination of the causes specified therein, including pertinent provisions of the following subparagraphs:

5100(g) Willful violation of the Accountancy Act or any rule or regulation promulgated by the Board.

5100(h) The suspension or revocation of the right to practice before any governmental body or agency.

5100(*l*) The imposition of any discipline, penalty, or sanction, by the United States Securities and Exchange Commission, on a person associated with a registered firm or on a holder of a certificate to practice in this state.

4. Code section 5063 requires that a licensee report to the Board in writing the occurrence of certain events ("reportable events") occurring after January 1, 2003, within 30 days of the date the licensee has knowledge of these events. Among the events is any notice from the Securities and Exchange Commission to a licensee requesting a Wells Submission (Code section 5063(b)(4).

5. Code Sections 118(b) and 5109 provide in pertinent part that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not, deprive the Board

---

1. According to the U.S. Securities and Exchange Commission's Order (referenced herein at paragraphs 6 and 21), as of May 31, 2003, Respondent, "age 60, was a certified public accountant licensed to practice in California at the time of the events...(and was) recently retired partner of Deloitte and Touche...(who) elected not to pay the public accountancy license renewal fee, thereby terminating his right to practice public accountancy for nonpayment of the renewal fee."

2. All statutory references are to the Business and Professions Code unless otherwise indicated.

of its authority to investigate, or to institute or continue a disciplinary proceeding against, a 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.

6. Code Section 5000.1 provides as follows: "Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

FIRST CAUSE FOR DISCIPLINE

Suspension of Right to Practice Before a Governmental Body or Agency [Business and Professions Code Section 5100(h)]

7. Respondent is subject to disciplinary action under section 5100(h) in that his right to practice as an accountant before a governmental body or agency has been suspended or revoked. An *Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions* ("Order") was entered in a proceeding before the United States Securities and Exchange Commission ("SEC" or "Commission"), entitled *In the Matter of Richard Fiedelman, CPA* (SEC Administrative Proceeding No. 3-11290).[3] The Commission found that Respondent engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) in connection with Deloitte and Touche's audit of The North Face, Inc. for the fiscal year ending December 31, 1997 and in connection with Deloitte's review of The North Face's 10-Q filing for the quarter ended March 31, 1998. The Commission's Findings are summarized below.

\\\

---

3. The Commission also filed and resolved several other cases in re: the 1997 and 1998 North Face audits, including those against The North Face's Chief financial officer, Christopher Crawford, and sales vice president, Todd Katz, who were accused of engaging in a series of schemes to artificially inflate The North Face's financial results. (Crawford, who resided in California and had been licensed as a CPA in Oregon, was suspended from practice before the SEC.) The SEC also instituted and settled proceedings against a North Face Sales Vice President (Tyrer) and two distributors (Marcus and Adler).

Securities and Exchange Commission's Findings

Factual Findings

8. At the time of the underlying events (1997 and 1998), Respondent Fiedelman was a partner in the firm of Deloitte & Touch LLP ("Deloitte"). During the period 1997 through March 1999, Respondent was Deloitte's "advisory partner" for The North Face Inc. Respondent was also in charge of Deloitte's Northern California consumer retail group.

9. In late December 1997, The North Face[4] entered into a barter transaction in which it sold $5.15 million of product for $3.51 million in cash and $1.64 million in trade credits. The 1997 Deloitte audit partner on the engagement concluded that The North Face could recognize income only from the cash portion of the transaction, and, when The North Face recognized its full normal profit margin on both the cash and trade credit portions, the 1997 audit partner proposed an adjustment to reverse the income from the trade credit portion. The North Face declined to make the adjustment, and the 1997 audit partner passed on the proposed adjustment, concluding that the amount was immaterial.

10. Prior to the completion of Deloitte's review of The North Face's financial statements for the quarter ended March 31, 1998 ("first quarter 1998 review"), the 1997 audit partner was reassigned (in April). As a result, Respondent, in addition to his role as the advisory partner and the head of Northern California's consumer retail group, also functioned as the audit partner for the engagement until the new (1998) audit partner took over that responsibility, after being selected in May of 1998.

11. Prior to the completion of Deloitte's first quarter review, Respondent - acting as both audit partner and advisory partner - learned that, in January 1998, The North Face had entered a second barter transaction with the same company (see paragraph 9. above describing first barter transaction in December 1997). The January barter transaction was for $2.65 million, all of which was paid in trade credits. The North Face once again recognized its full profit margin on the sale, despite Deloitte's conclusion during the 1997 audit that this was improper.

---

4. The North Face had a December 31 fiscal year-end.

The income recognized from this transaction was material to The North Face's March 31, 1998 financial statements.

12. Respondent did not question The North Face's recognition of income on the 1998 barter transaction in its financial statements included in its March 31, 1998 Form 10-Q.

13. In the fall of 1998, the newly appointed audit partner reviewed the 1997 working papers as part of his planning the 1998 audit. The 1998 audit partner saw the 1997 audit conclusion and proposed adjustment as documented, in the working papers, in a summary memorandum and a proposed adjustments schedule. The 1998 audit partner raised the issue with Respondent. Respondent told the 1998 audit partner that he (Respondent) believed that the conclusion in the 1997 working papers was wrong, and that he believed the 1997 audit team had concluded that it was not improper for The North Face to recognize income on the trade credit portion of the barter transaction (the "revised conclusion").

14. Respondent then began the process of documenting this revised conclusion in the 1997 working papers. The audit staff, acting upon their understanding of Respondent's directions, and after performing additional audit research, prepared a new summary memorandum and adjustments schedule to be included in the 1997 working papers, reflecting the revised conclusion about profit recognition. The audit staff replaced the original 1997 working papers with these newly created working papers. This was done without any documentation or indication that the original working papers were being modified. Because of the revisions, the 1997 working papers no longer documented that the 1997 audit team had originally reached a different conclusion concerning the company's accounting for the 1997 barter transaction.

15. The 1998 audit partner accepted the revised conclusion and continued the 1998 audit under the assumption that income from the trade credit portion of the 1998 barter transaction could properly be recognized.

16. In early 1999, the concurring review partner for the 1998 audit (who had also performed that role for the 1997 audit) questioned the revised conclusion. Based upon the concurring review partner's questions prior to the issuance of its 1998 audit report, Deloitte sought more information from The North Face. This request ultimately resulted in the

restatement of various North Face financial statements, including the March 31, 1998 quarterly financial statements.

Findings Re: 102(e) Violations (Improper Professional Conduct)

17. The Commission found that Respondent knew, or was reckless in not knowing, of the 1997 audit conclusion regarding the 1997 barter transaction. Although Respondent did not give explicit instructions to the audit staff regarding documenting the revised conclusion, the Commission found that Respondent knew, or was reckless in not knowing, that the audit staff had modified, rather than supplemented, the 1997 working papers.

18. The Commission found that Respondent engaged in intentional or reckless conduct in violation of Rule 102(e), including violations of generally accepted accounting principles ("GAAP") and generally accepted auditing standards ("GAAS"). The North Face's recognition of profit margin on the second barter transaction violated GAAP and, as a result, The North Face's March 31, 1998 financial statements were materially misstated. The GAAS violations by Respondent included the general GAAS standard concerning due professional care (AU Sections 150 and 230); the standard of field work relating to sufficient competent evidential matter (AU Sections 150 and 326); and the standard of field work relating to working papers (AU Section 339).[5]

19. The Commission found that, based upon AU Section 338.01 and AU Section 338.02, any addition, deletion, or modification to the (1997) working papers after they had been finalized in connection with the completion of the audit could be made only with appropriate supplemental documentation, including an explanation of the justification for the addition, deletion or modification. The modifications were not properly documented because there was no indication in the 1997 working papers that the original conclusion had been changed after the completion of the audit. The original memorandum and adjustments schedule were not preserved in the working papers, and the new memorandum and adjustments schedule did not

---

5. Former AU Section 339 was amended in January 2002, by Statement on Auditing Standards No. 96, Audit Documentation. For purposes of the SEC's action, there is no material difference between former AU Section 339 and the current section.

indicate when they were prepared and did not clearly indicate that they superseded original working papers.

20. The Commission found that Respondent, as the partner in charge of the process of documenting the changed 1997 audit conclusion, was responsible for ensuring that the process was carried out in accordance with GAAS. The Commission further found that Respondent failed to exercise due professional care in discharging this responsibility.

21. The Commission found that Respondent failed to exercise due professional care in connection with the review of The North Face's March 31, 1998 quarterly financial statements. The North Face recorded the 1998 barter transaction directly contrary to the conclusion reached by Deloitte in its 1997 year-end audit and yet Respondent failed to take steps to reconcile the 1997 conclusion with the company's treatment of the 1998 transaction.

Commission's Order

22. Effective on or about October 1, 2003, pursuant to the Commission's Order resolving the administrative proceeding, Respondent was suspended from appearing or practicing before the SEC as an accountant.[6]

23. Incorporating by reference the matters alleged in paragraphs 7 through 22 above, the Commission's suspension of Respondent Fiedelman's right to practice before the Commission constitutes the suspension of the right to practice before a governmental agency within the meaning of Code section 5100(g), establishing cause for discipline of Respondent's Certified Public Accountant Certificate under Code Section 5100.

SECOND CAUSE FOR DISCIPLINE

The Imposition of Discipline, Penalty or Sanction by the U. S. Securities and Exchange Commission [Business and Professions Code Section 5100(*l*)]

24. Complainant realleges paragraphs 7 through 22, above, and incorporates them herein by reference as if fully set forth at this point.

---

6. The Commission's Order further provides that Respondent may request that the Commission consider Respondent's reinstatement after three years from the effective date of the Commission's Order, if certain conditions are met, including current state CPA licensure.

25. The Commission's Order as set forth in paragraph 22 above, denying Respondent the privilege of appearing or practicing before the Commission as an accountant, constitutes the imposition of a penalty, sanction, or discipline on Respondent within the meaning of Code section 5100(*l*), establishing cause for discipline of Respondent's Certified Public Accountant Certificate under Code Section 5100.

THIRD CAUSE FOR DISCIPLINE

Reportable Event Violation
[Business and Professions Code Section 5100(*g*)/5063(b)(4)]

26. In or about January or February 2003, Respondent received a notice from the Securities and Exchange Commission, informing him of his opportunity to make a "Wells submission" pursuant to Rule 5(c) of the SEC's Rules on Informal and Other Procedures, 17 C.F.R. §202.5(c) related to the conduct alleged in paragraphs 7 through 21 above, which are incorporated herein by reference as though fully set forth at this point. Pursuant to said notice, Respondent provided a Wells Submission to the SEC.

27. Incorporating herein the allegations in paragraph 26, Respondent's failure to report the Wells submission notice from the SEC constitutes the violation of the reportable events requirement within the meaning of Code section 5063(b)(4), establishing cause for discipline of Respondent's Certified Public Accountant Certificate under Code Section 5100(g).

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 Accountant Certificate Number 15120 issued to H. Richard Fiedelman;

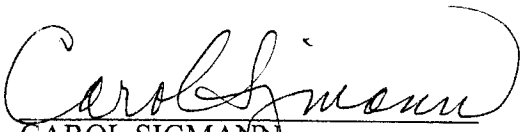
\\\

\\\

\\\

2. Taking such other further action as may be deemed proper.

DATED: June 24, 2004.



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