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Attorneys for Complainant

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

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| In the Matter of the Accusation Against:<br><br>Silver Dollar Sack<br>7217 Etter Street<br>Bakersfield, CA 93308<br>Certified Public Accountant Certificate<br>Certificate No. 27047<br><br>and<br><br>MICKEY, CASANOVA & SACK, CPAs<br>1735 - 28th Street<br>Bakersfield, CA 93301-1902<br>CPA Partnership Registration<br>No. PAR 4215, Respondents. | Case No. AC-2004-35<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**<br><br>**[AS TO RESPONDENT SILVER DOLLAR SACK ONLY]** |

In the interest of a prompt settlement of this matter, consistent with the public interest and the responsibility of the California Board of Accountancy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation on file as it relates to licensee Silver Dollar Sack:

## PARTIES AND JURISDICTION

1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of Accountancy (the "Board"). 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. On or about December 1, 1978, the California Board of Accountancy issued Certified Public Accountant Certificate Number 27047 to Respondent herein, Silver Dollar Sack. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and is renewed through February 28, 2007.

3. On or about March 6, 1981, the California Board of Accountancy issued Partnership Certificate Number PAR 4215 to Mickey, Casanova & Co.[1] Respondent Silver Dollar Sack became a partner in the firm Mickey, Casanova & Co. when it was created in 1981. On or about August 11, 1983, Mickey, Casanova & Co. changed its name to its current name, Mickey, Casanova & Sack. The partnership renewal for the period beginning January 1, 1993, listed licensees Casanova and Sack as the firm partners.

The Board was informed, in the renewal application for the renewal period beginning April 1, 2001, that, on June 30, 1999, Kenneth J. Casanova had been disassociated as a partner and that Susan J. Cosper had been added as a partner. Subsequent to the filing of the Accusation in this matter, the Board was informed, in the renewal application for the renewal period beginning April 1, 2005, that Ms. Cosper had been disassociated as a partner and that Kenneth J. Casanova had (again) been added as a partner.[2] The Accountancy Partnership Registration is renewed through March 31, 2007, with partners listed as licensees Casanova and Sack.

4. Accusation No. AC-2004-35 and First Amended Accusation No. AC-2004-35 were filed on June 15, 2004, and on June 3, 2005, respectively, before the California Board of Accountancy, Department of Consumer Affairs, and the First Amended Accusation is currently pending against respondents. Both Accusations and all other statutorily required documents were properly served on Respondent Sack and Respondent Mickey, Casanova & Sack, CPAs. Respondents timely filed Notices of Defense contesting the original Accusation, which are

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1. Prior to 1981, Mickey, Casanova & Co., holder of Partnership Certificate No. 4215 was known as Mickey, Casanova & Vaske, and was the holder of Public Accountancy Partnership Registration No. 3907.

2. Kenneth J. Casanova, who, at the time of the filing of the Accusation, was a retired partner of Respondent, is the holder of CPA Certified Public Accountant Certificate Number 9404, which is currently renewed in an active status through November 30, 2005.

deemed to have controverted any new charges in the First Amended Accusation. A copy of the First Amended Accusation No. AC-2004-35 (hereinafter "Accusation") is attached as Exhibit A and incorporated herein by reference.

## WAIVERS, RESTRICTIONS & CONTINGENCY

5. Respondent Sack has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2004-35.[3] Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order on both licenses.

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

7. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved (excluding the stipulation resolving the disciplinary action pending against the partnership) and shall not be admissible in any other criminal or civil proceeding.

8. 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.

9. 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

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3. The charges pending against the partnership license for Mickey, Casanova & Sack, CPAs are being resolved separately, with Mr. Sack acting for the partnership.

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.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order revoking his CPA Certificate without further process.

**ADMISSIONS, FINDINGS, AND FURTHER STIPULATIONS**

11. For the purpose of resolving the Accusation without further proceedings, the undersigned agrees that, at a hearing, Complainant could establish a factual basis for imposing discipline of his CPA license. Specifically, while disputing certain of the factual assertions in the Accusation, Respondent admits the allegations asserted in paragraphs 14 through 24, 28 through 31, 33 through 35, and 60 through 62 of the Accusation with the following exceptions:

A. Paragraph 18: Respondent asserts that the use of blank checks and mailing of statements to his home was at his client's request;

B. Paragraph 19: Respondent disputes the amount of fees which were understood to be paid;

C. Paragraph 22: Respondent asserts that he returned more, if not all, records to his client than his client acknowledges.

D. Paragraph 62(g) and (h): Respondent denies.

Respondent agrees that these admissions provided the basis for discipline of his license as described in paragraphs 36 through 38 (Code Section 5100(k)); paragraph 45 (Code Section 5100(i)(fiscal dishonesty)); paragraph 46 (Code Section 5100(c)(dishonesty); and paragraph 63 (Code Section 5100(i)). Respondent also agrees that he practiced as an accountancy partnership while he was a sole proprietor.

Respondent agrees that those violations constitute cause for discipline of his CPA license. Respondent hereby gives up any right to contest that cause for discipline of his license is established based on those charges. Respondent agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

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. The parties stipulate that, for the purpose of cost recovery under Code Section 5107, the Board's reasonable costs of investigation and prosecution in this matter will not exceed $57,500.00 and a statement of costs actually billed and thus owing by Respondent will be provided to Respondent upon adoption of this Stipulated Settlement and Order. Respondent Silver Dollar Sack and the Respondent partnership, Mickey, Casanova and Sack, CPAs, are jointly and severally liable for the cost reimbursement. The Board will not accept a petition for reinstatement (or any other application for licensure) from Respondent Sack unless cost recovery in this case has been satisfied according to the provisions of Code Section 5107 or pursuant to agreement with the Board and/or its designees.

**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 27047, issued to Respondent Silver Dollar Sack, is revoked.

Respondent Sack 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. Respondent shall cause to be delivered to the Board both his wall and his pocket license certificate on or before the effective date of the Decision and Order.

As provided in this stipulation, the Board shall require payment of its investigation and enforcement charges associated with this proceeding prior to its accepting for its consideration a petition for reinstatement or application for licensure.

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## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Barry L. Goldner. 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: July 14, 2005.

SILVER DOLLAR SACK
Respondent

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

DATED: July 14, 2005.

BARRY L. GOLDNER
Klein, Denatale, Goldner, Cooper, Rosenlieb & Kimball, LLP,
Attorney for 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: July 14, 2005.

BILL LOCKYER, Attorney General
of the State of California

JEANNE C. WERNER
Deputy Attorney General

Attorneys for Complainant

# Exhibit A

## Accusation No. 2004-35

SqpRev SF2004900087SackCPA(only)

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

In the Matter of the Accusation Against:

Silver Dollar Sack
7217 Etter Street
Bakersfield, CA 93308
Certified Public Accountant Certificate
Certificate No. 27047

and

MICKEY, CASANOVA & SACK, CPAs
1735 - 28th Street
Bakersfield, CA 93301-1902
CPA Partnership Registration
No. PAR 4215,

Respondents.

Respondents.

Case No. AC-2004-35

**ORDER ADOPTING STIPULATED REVOCATION OF LICENSE AND ORDER**

**[AS TO RESPONDENT SILVER DOLLAR SACK ONLY]**

## 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 as it affects the Certified Public Accountant License No. 27047, issued to Silver Dollar Sack.

This Decision shall become effective on August 26, 2005.

It is so ORDERED July 27, 2005.

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

StpRev SF2004900087SackCPA(only)

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Attorneys for Complainant

**BEFORE THE**
**CALIFORNIA BOARD OF ACCOUNTANCY**
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| In the Matter of the Accusation Against:<br><br>Silver Dollar Sack<br>7217 Etter Street<br>Bakersfield, CA 93308<br><br>Certified Public Accountant<br>Certificate No. 27047<br><br>and<br><br>MICKEY, CASANOVA & SACK, CPAs<br>1735 - 28th Street<br>Bakersfield, CA 93301-1902<br><br>CPA Partnership Registration<br>No. PAR 4215,<br><br>Respondents. | Case No. AC-2004-35<br><br>**FIRST AMENDED ACCUSATION** |

Carol Sigmann, the Complainant herein, alleges:

**PARTIES AND JURISDICTION**

1. Complainant Carol Sigmann brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs. This First Amended Accusation, hereinafter "Accusation," replaces the Accusation on file herein *nunc pro tunc.*

2. On or about December 1, 1978, the California Board of Accountancy issued

Certified Public Accountant Certificate Number 27047 to Respondent herein, Silver Dollar Sack.[1] The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and is renewed through February 28, 2007.

3. On or about March 6, 1981, the California Board of Accountancy (Board) issued Partnership Certificate Number PAR 4215 to Mickey, Casanova & Co.[2] Respondent Silver Dollar Sack became a partner in the firm Mickey, Casanova & Co. when it was created in 1981. On or about August 11, 1983, Mickey, Casanova & Co. changed its name to its current name, Mickey, Casanova & Sack.

The partnership renewal for the period beginning January 1, 1993, listed licensees Casanova[3] and Sack as the firm partners. The Board was informed, in the renewal for the renewal period beginning April 1, 2001, that, on June 30, 1999, Kenneth J. Casanova was disassociated as a partner[4] and that Susan J. Cosper had been added as a partner.[5] Cosper left the firm in December 2003. The Board was notified that Casanova was again added as a partner[6] in the partnership registration renewal for the period April 1, 2005 through March 31, 2007.

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1. The use of "Respondent" herein refers to Mr. Silver Dollar Sack as the holder of both the individual CPA certificate and the partnership license. He was one of two licensed partners during the time period relevant herein. The other partner left the firm in 2003, in effect terminating that partnership (see below).

2. Prior to 1981, Mickey Casanova & Co., holder of Partnership Certificate No. 4215, was known as Mickey, Casanova & Vaske, and was the holder of Public Accountancy Partnership Registration No. 3907.

3. Kenneth J. Casanova is the holder of CPA Certified Public Accountant Number 9404.

4. After Casanova's dissociation from the partnership in 1999, he retired from the firm. His license had expired on November 30, 2003.

5. Susan Jane Cosper holds CPA Certificate No. 72232. The partnership registration listed only one other partner, Silver Dollar Sack.

6. Casanova's CPA license was renewed in an "active" status on January 20, 2005, and is renewed through November 30, 2005. Prior to Casanova's license renewal in January 2005 (or the partnership's most recent license renewal for the period beginning April 1, 2005, listing Casanova and Sack as partners), Respondent Sack was in fact operating as a "sole proprietor" as he was the only CPA in the practice.

4. This Accusation is brought before the Board under the authority of Code section 5100 of the Business and Professions Code,[7] 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 those in the following subparagraphs:

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| 5100 (c) | Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052. |
| 5100 (g) | Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter. |
| 5100(i) | Fiscal dishonesty or breach of fiduciary responsibility of any kind. |
| 5100(j) | Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information. |
| 5100 (k) | Embezzlement, theft, or misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses. |

5. Code section 5101 provides that an accountancy partnership may be disciplined for the reasons enumerated therein, as well as for unprofessional conduct under Code section 5100, including for any of the above specific causes for discipline.

6. Code section 5037(b) provides in pertinent part that a licensee shall furnish to his former client, upon request and reasonable notice, working papers, to the extent that they include records that would ordinarily constitute part of the client's records and are not otherwise available to the client, as well as any accounting or other records belonging to, or obtained from or on behalf of the client which the licensee removed from the client's premises or received for the

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

client's account.

7. Board Rule 58 (Title 16, Cal. Code Regs., § 58) a regulation of the Board, requires that a licensee comply with all applicable professional standards. The AICPA's *Code of Professional Conduct* includes Section I - Principles and Section II - Rules. Both the Principles (Articles III and VI) and the Rules (Rule 102, rule 501) are relevant to the allegations herein. For example, Rule 102 (Integrity and Objectivity), provides that:

> "In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others."

8. Board Rule 63 (Title 16, Cal. Code Regs., § 63) provides that a licensee shall not advertise or use other forms of solicitation in any manner which is false or misleading. Board Rule 67 (Title 16, Cal. Code Regs., § 67)(Approval of Use of Fictitious Name) provides that no sole proprietor may practice under a name other than the name set forth on his or her permit to practice unless such name has been registered with the Board.

9. Board Rule 68 (Title 16, Cal. Code Regs., § 68) provides that a licensee, after demand by or on behalf of a client, for books, records, or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Further, although in general the accountant's working papers are the property of the licensee, if such working papers include records which would ordinarily constitute part of the licensee's books and records and are not otherwise available to the licensee, then the information on those working papers must be treated the same as if it were part of the client's books and records.

Board Rule 68.1 further defines working papers, and requires that licensees adopt reasonable procedures for the safe custody of working papers and that they retain working papers for purposes and periods specified therein and otherwise required by law.

10. Code section 5107 provides for recovery by the Board of all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. A certified copy of the actual costs, or a good faith estimate of costs signed by the Executive Officer, constitute prima facie evidence of reasonable costs of investigation and prosecution of the case.

11. 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 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.

12. 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."

## FOR CAUSES FOR DISCIPLINE

13. Respondent is subject to disciplinary action for multiple acts of unprofessional conduct under Business and Professions Code section 5100, including under specific subparagraphs thereof. The circumstances follow.

## CIRCUMSTANCES SUPPORTING THE IMPOSITION OF DISCIPLINE

14. Respondent has worked at the partnership firm now known as Mickey, Casanova & Sack (hereinafter the "firm") since 1975, and became a partner in or around 1981. He became the managing partner approximately six years ago, that is, in or around 1999, in or around the time when Mr. Casanova retired and Ms. Cosper became a partner.[8] As relevant herein, Respondent's remaining partner, Susan Cosper, left the firm at the end of 2003.[9]

### *Respondent's Client Ryan Jeffries*

15. Ryan W. Jeffries[10] and his wife, who live in Bakersfield and operate B&R Farms in Shafter, California (in the Bakersfield area), had been Respondent's clients for approximately twenty-eight years, dating to a time prior to Respondent's becoming a partner at the firm.

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8. See paragraph 3 above. According to Respondent, during the period following Casanova's retirement, Mr. Casanova, whose license was expired, was not a partner but performed some professional services for the firm.

9. Following the filing of the original Accusation in this matter in June, 2004, Mr. Casanova, on January 20, 2005, reactivated his license, and the partnership license was renewed effective April 1, 2005, with Messrs. Casanova and Sack listed as the qualifying partners.

10. Mr. Ryan Jeffries is sometimes referred to herein by his last name.

Respondent performed many services (described in greater detail below) for Mr. Jeffries, who considered Respondent to be acting as his accountant, tax preparer and advisor, and controller. Respondent performed many of his services "on the side" for Mr. Jeffries (not "running them through" the partnership accounts), with the acquiescence of his partner(s). However, other services performed for Mr. Jeffries, as well as services for other Jeffries entities[11] were provided through the firm, either by Respondent or other individuals, and were billed through the firm.

16. Among the services for Mr. Jeffries and B&R Farms which Respondent performed "on the side" were opening mail and reviewing bills; bill paying procedures and manual bookkeeping through preparation of the journal entries for computer input ( cash routing, coding, and filing); cash estimates; analysis working papers; maintenance of banking records; preparation of bi-weekly payroll, and monthly payroll checks and bank deposits; depreciation schedules; estate and tax planning; investments; and "extra projects."

17. In carrying out his responsibility for paying Jeffries' bills, Respondent created a cash disbursements journal (entitled "Payment Record", and also referred to as the "write-at-once" check system or the checkbook) in which he entered check payees, date, amounts, check numbers and bank deposits and balances. Payments were recorded in various expense categories, for example, Taxes, Travel and Entertainment, Supplies, Chemicals, "Drawing" - signifying compensation to Mr. Jeffries - and to Respondent or the firm for accounting fees.

18. Respondent kept Mr. Jeffries' financial records, including the cash disbursement journal, the general ledgers, and other pertinent records in Respondent's private office at the firm. Respondent regularly requested that Mr. Jeffries sign a number of checks "in blank" which, Respondent represented, were to be used in the ongoing payment of Mr. Jeffries' financial obligations. Mr. Jeffries' checking account statements and canceled checks were mailed directly to the Respondent at the Respondent's home address.

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11. Respondent performed accounting services for Phil Jeffries Farms (operated by June Jeffries, who is Ryan Jeffries' mother), and provided other services to various Jeffries family members, including income tax preparation. Respondent served as co-trustee, along with June Jeffries, for the William Lachenmaier Trust, whose beneficiaries include Ryan Jeffries and June Jeffries.

19. Respondent did not use engagement letters for the services performed "on the side" for Mr. Jeffries and B&R Farms. Respondent did not generate bills or invoices for these services. Respondent charged a "set amount" for providing the accounting, bookkeeping and controller functions, which was understood by Mr. Jeffries to be $600.00 per month in 2002 and 2003. Respondent did not create or maintain a listing or other record of the services performed for, and fees paid by, B& R Farms, with the exception of the specific services provided through the firm, discussed below.

20. In contrast to the foregoing "on-the-side" arrangement, Respondent provided other professional services to Mr. Jeffries and B & R Farms under the auspices of Mickey, Casanova & Sack, CPAs, namely, financial statements; W-2's and reports; Forms 1099; and Federal and State tax returns. These services were invoiced through the firm, whether provided to Mr. Jeffries or to other Jeffries family members or entities, and regardless of who at the firm performed the work. The Forms 1099 were prepared by, or from information provided by, Respondent. Respondent signed the income tax returns as the preparer. Respondent prepared, or was responsible for the preparation of, the financial statements.

21. Respondent's services were terminated by Mr. Jeffries in or around early 2003. After having his bank statement redirected to himself, Mr. Jeffries discovered, in early February 2003, a check (No. 12545, dated January 9, 2003) in the amount of $2000.00 made payable to, and negotiated by, Respondent. Mr. Jeffries confronted Respondent in his office and obtained the cash disbursements journal (Payment Record) for January 2003, the period during which the check was issued. The cash disbursements journal reflects the check as being made payable to "Cash" rather than Respondent Sack, and it is posted to the draw account for Mr. Jeffries rather than as an accounting fee or payment to Respondent.

22. Following the discovery of the $2000.00 check, Mr. Jeffries undertook an inquiry to determine the amount of funds diverted by Respondent. Mr. Jeffries requested the return of his records from Respondent. Although some records were returned, many of Mr. Jeffries' records, including canceled checks, bank statements, and cash disbursement journals (with the exception of the Payment Record for January 2003, and February 2003, which he had already retrieved from

Respondent) were not returned to him by Respondent.

23. Mr. Jeffries requested duplicate checks and statements from the bank, some of which the bank was able to provide, and reviewed what records were available to him.[12] He confirmed additional irregularities or questionable payments to Respondent, dating back several years, evidenced in part by additional checks being made payable to, and negotiated by, Respondent without Mr. Jeffries' knowledge.

24. During Mr. Jeffries' inquiry, settlement negotiations were initiated, and eventually a Settlement Agreement and General Release was executed on February 19, 2003, which required Respondent to pay $200,000.00[13] in satisfaction of those matters relating to his alleged conversion and mishandling of Jeffries' funds. The agreement further provided that Respondent would complete, at his own expense, the Jeffries' federal and state tax returns; that Respondent would provide free of charge any services in connection with any audits of any tax returns, including prior years, prepared by Respondent; that Respondent would pay all costs incurred by such audits; and that Respondent would pay all costs, including legal fees, associated with his resignation, and replacement, as trustee of the William Lachenmaier Trust. The firm (Mickey, Casanova & Sack, CPA's) was included under the terms of the release in the Settlement.

***Respondent's Former Partner Susan Cosper***

25. Susan Jane Cosper, CPA, had worked at the firm prior to her becoming Respondent's only remaining partner in or about 1999 (as set forth in paragraph 3). Ms. Cosper was unaware of Respondent's settlement with Mr. Jeffries (see paragraph 24) and the underlying misconduct until Mr. Jeffries alerted her to the fact in mid-2003. Respondent had not been candid or forthcoming in responding to her earlier inquiry regarding the $7,000.00 check payable to Mr.

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12. On or about February 13, 2003, Respondent provided Mr. Jeffries with a check for $7,000.00 drawn on Mickey, Casanova & Sack partnership funds (Check No. 5893) for Jeffries' use in defraying bank copying charges for missing canceled checks and bank statements. This payment is further discussed in paragraph 25.

13. By the terms of the agreement, these monies do **not** represent funds which were used as deductions, nor listed or taken as tax return expenses, by Respondent in his preparation of the Jeffries' tax return.

Jeffries (for bank copying charges in connection with the missing records and questionable payments to Respondent - see footnote 12) and drawn on partnership funds.

26. After being alerted by Mr. Jeffries regarding the settlement, Ms. Cosper and Respondent reviewed partnership accounts, resulting in Ms. Cosper claiming reimbursement pursuant to their partnership agreement.

27. In resolution of the dispute regarding partnership accounts, Ms. Cosper reached a compromise with Respondent, resulting in an adjustment of $26,848.48 to allocated partnership net income, and the adjustment of Respondent's draw accounts for personal expenses previously recorded as partnership expenses. Ms. Cosper left the partnership in December 2003.

## FIRST CAUSE FOR DISCIPLINE

### Embezzlement or Misappropriation of Funds, or Obtaining Money by Fraudulent Means or False Pretenses Business and Professions Code Section 5100(k)

### *Ryan Jeffries' Funds*

28. Complainant realleges paragraphs 15 through 24, above, and incorporates them herein by reference as if fully set forth at this point. Additional circumstances follow.

29. Respondent engaged in embezzlement by paying himself unauthorized funds from Ryan Jeffries in an amount known to Respondent but not precisely known by Complainant or Mr. Jeffries.[14] This misconduct occurred over an unknown period of years. Much of the embezzlement could only be estimated, because of Respondent's failure to preserve, and to return to Mr. Jeffries, the complete set of his financial records. However, banking records, partially reconstructed for the years 2001 and 2002, reflect an extensive pattern of self-payments by Respondent, commonly two and three checks a month, in amounts ranging from $200.00 to $600.00, and totaling, with very few exceptions, more than $600.00 per month.[15]

In addition, specific examples of embezzlement follow:

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14. As set forth in paragraph 24, Ryan Jeffries accepted $200,000.00 in settlement of his claims against Respondent.

15. These payments were in addition to those made to the firm for invoiced services.

a. Check No. 12451, dated November 14, 2002, in the amount of $2000.00 payable to "Silver Sack" and deposited to his personal checking account.

b. Check No. 12545, dated January 9, 2003, in the amount of $2000.00 made payable to, and negotiated by, Respondent, but recorded by him in Mr. Jeffries' records as a draw to Jeffries (see paragraphs 21 and 22 above).

c Check No. 12606, dated February 6, 2003, in the amount of $2000.00 payable to Respondent.

30. Respondent also made payments for his personal credit card debt directly through the B&R Farms checking account. Respondent estimated that this occurred six or seven times a year in the past six or seven years, and that these personal credit card payments included payments for his AT&T Universal Card and for a VISA credit card. Respondent was unable to rule out payments on his own behalf to a Chevron credit account (an account which is not recognized by Mr. Jeffries as his own). Respondent testified (at a May 6, 2004, Board Investigative Hearing) that in order to record the payments for his personal credit card debts, he posted the transactions into an expense account used for payment of Jeffries' farm and personal credit card debts, "probably" into Mr. Jeffries' travel and entertainment account category.

31. Among fraudulent credit card payments discovered by Mr. Jeffries in the limited records made available to him were:

a. Check No. 12427, dated October 30, 2002, in the amount of $757.39 made payable to AT&T Universal card for Respondent's personal credit card debt.

b. Check No. 12520, dated December 24, 2002, in the amount of $255.47 made payable to Chevron, but not to Mr. Jeffries' credit card account.

32. Respondent concealed his embezzlement from Mr. Jeffries, by using checks signed in blank for other purposes to pay himself and by having the bank statements and checks sent to his personal residence.

33. Respondent concealed his embezzlement from Mr. Jeffries by creating false entries in the client's original accounting records (the cash disbursements journal).

34. Respondent concealed his embezzlement from Mr. Jeffries when he failed to

include in Mr. Jeffries' accounting fees, as reflected in the compiled financial statements for the year ended December 31, 2002, a $2,000.00 payment to himself from client funds.

35. Respondent misappropriated funds by making payments to himself in excess of the agreed-upon fees for accounting services provided to Jeffries. He created no time records, invoices, etc. to justify or communicate to Jeffries regarding these excess charges.

36. Incorporating by reference the matters alleged in paragraphs 29 through 35 above, causes for discipline of Respondent's licenses are established under Code section 5100(k) for embezzlement.

37. Incorporating by reference the matters alleged in paragraphs 29 through 35 above, causes for discipline of Respondent's licenses are established under Code section 5100(k) for the misappropriation of his client's funds.

38. Incorporating by reference the matters alleged in paragraphs 29 through 35 above, causes for discipline of Respondent's licenses are established under Code section 5100(k) for obtaining money by fraud or false pretenses.

***CPA Partnership Funds***

39. Complainant realleges paragraphs 3, 14, and 25 through 27, above, and incorporates them herein by reference as if fully set forth at this point. Additional circumstances follow.

40. Respondent made unauthorized use of accountancy partnership funds for the payment of personal expenses as well as payments for liabilities incurred by his misconduct with his client Jeffries.

41. Use of Accountancy Partnership Funds for "Jeffries Liabilities." In addition to the February 2003 payment of $7,000.00 to Jeffries for bank copying charges (see paragraph 25 and footnote 12), additional payments to or for the benefit of Jeffries, but drawn on the partnership account rather than charged to Respondent, were:

a. Check No. 6132, dated April 18, 2003, for $1,167.69, to Jeffries' attorney in connection with drafting the settlement agreement.

b. Check No. 6152, dated April 25, 2003, for $1,495.35, payable to the IRS

for penalties incurred by Jeffries regarding insufficient or late deposits of payroll taxes by Respondent during 2002.

42. Use of Accountancy Partnership Funds for the Payment of Personal Expenses. Respondent frequently paid his personal expenses with partnership funds, and posted the expenses to partnership expense accounts rather than to his draw account. Among the charges were regular payments for Respondent's daughter's cell phone; his swimming pool maintenance; personal life and medical insurance payments; and consumer purchases, e.g., hardware store, refrigerator, etc. Respondent's use of partnership funds for personal expenses and recording of the transactions by use of partnership expense accounts resulted in overstated partnership expense and understated net income.

43. Incorporating by reference the matters alleged in paragraphs 39 through 42 above, cause for discipline of Respondent's licenses are established under Code section 5100(k) for obtaining money in the form of payment of his personal expenses by the firm by fraudulently categorizing said expenses or falsely pretending the expenses were business, not personal, expenses, and by concealing his use of partnership assets to address liabilities he incurred in his dealings with Jeffries.

## SECOND CAUSE FOR DISCIPLINE

**Gross Negligence in the Practice of Public Accountancy Bus. & Prof. Code § 5100(c)**
**and**
**Dishonesty in the Practice of Public Accountancy- Bus. & Prof. Code § 5100(c)**
**and**
**Fiscal Dishonesty - Business & Professions Code § 5100(i)**

44. Complainant realleges paragraphs 14 through 35 and 39 through 42, above, and incorporates them herein by reference as if fully set forth at this point.

45. Incorporating these matters by reference, cause for discipline of Respondent's licenses is established under Code section 5100(i) for fiscal dishonesty in his dealings with his client Ryan Jeffries and his characterization of partnership expenses.

46. Re-incorporating by reference the matters alleged in paragraph 44 above, cause for discipline of Respondent's licenses is established under Code section 5100(c) for dishonesty in the practice of public accountancy in his misconduct with his client Mr. Jeffries.

47. Re-incorporating by reference the matters alleged in paragraph 44 above, cause for discipline of Respondent's licenses is established under Code section 5100(c) for gross negligence in his dealings with his client Ryan Jeffries in that such dealings evidence extreme departures from the standard of practice of public accountancy.

## THIRD CAUSE FOR DISCIPLINE

**Knowing Preparation and Dissemination Of False and Fraudulent Financial Information Including Filing False Income Tax Returns**

**Business and Professions Code § 5100(j) and Fiscal Dishonesty - Business and Professions Code § 5100(i) and Gross Negligence in the Practice of Public Accountancy Bus. & Prof. Code § 5100(c)**

48. Complainant realleges paragraphs 15 through 24 and 29 through 35 above, and incorporates them herein by reference as if fully set forth at this point. Additional circumstances follow.

49. Respondent prepared fraudulent financial reports and information when he mis-classified, in his client Jeffries' original accounting records, payments to himself, including those for his personal credit card debt, to conceal from the client the true nature of the payments.

50. Respondent failed to prepare accurate Forms 1099 for Mr. Jeffries by failing to account for the unauthorized payments to Respondent.

51. Respondent failed to include, in the client's accounting fees as reflected in the compiled financial statements for the year ended December 31, 2002, a $2000.00 payment to himself from client funds. The failure to accurately record the monies paid as accounting fees or otherwise resulted in misstated financial statements.

52. Respondent posted substantial personal expenses in the firm's accounts for business expenses, resulting in false partnership accounting records, financial statements, and income tax returns.

53. Respondent failed to make required tax payments on Jeffries' behalf during 2002, resulting in insufficient or late deposits of payroll taxes (see paragraph 41.b.).

54. Incorporating by reference the matters alleged in paragraphs 48 through 52 above,

multiple causes for discipline of Respondent's licenses are established under Code section 5100(j) for preparing, publishing, and disseminating false and fraudulent financial reports or information, including accounting records and financial statements for both Jeffries and the firm.

55. Incorporating by reference the matters alleged in paragraphs 48 through 53 above, multiple causes for discipline of Respondent's licenses are established under Code section 5100(c) for gross negligence in the practice of public accountancy in that his preparation and treatment of financial records and information constitute extreme departures from the standard of practice of public accountancy.

56. Respondent failed to report all of the "fees" (client funds paid to him or on his behalf to his creditors) he collected by means of his embezzlement or conversion of Mr. Jeffries' assets on Respondent's own federal and state income tax returns.

57. Incorporating by reference the matters alleged in paragraphs 48 through 51 and 56 above, cause for discipline of Respondent's licenses is established under Code section 5100(j) for filing (his own) false or fraudulent tax returns in that he did not report the substantial unauthorized payments by Jeffries on his tax returns.

58. Incorporating by reference the matters alleged in paragraphs 40 through 42, 48 through 52, and 56 above, cause for discipline of Respondent's licenses is established under Code section 5100(i)(fiscal dishonesty) in that he filed, or caused to be filed, income tax returns for himself which understated his tax liability, which were thus to his financial benefit and reflected fiscal dishonesty.

## FOURTH CAUSE FOR DISCIPLINE

### Breach of Fiduciary Duty of Any Kind - Bus. & Prof. Code § 5100(i)

### *Respondent's Fiduciary Duty to Mr. Jeffries*

59. Complainant realleges paragraphs 14 through 24 and 29 through 35 above, and incorporates them herein by reference as if fully set forth at this point. Additional circumstances follow.

60. Respondent had a confidential and fiduciary relationship with Mr. Jeffries, occupied a position of trust, and owed him duties as his fiduciary. Respondent's close

relationship with Mr. Jeffries, dating back 28-odd years, was characterized by Mr. Jeffries' placing complete confidence in Respondent to handle Jeffries' financial affairs. This is reflected, in part, in Respondent's maintenance of all banking and other records, his receiving at home Jeffries' statements and canceled checks, his control over, and use of signed blank checks entrusted to him by Jeffries, and his complete control over, and management of, Jeffries' original books of entry. The trusting quality of the relationship is also demonstrated by Respondent's serving generations of the Jeffries family, including as a co-trustee of the trust holding the land farmed. Some of his duties are described in paragraph 15 through 20 above. He performed other duties such as financial advisor and personal representative or agent in a variety of circumstances. Mr. Jeffries reposed a special trust and confidence in Respondent. Mr. Jeffries was justified in believing that Respondent would act in Mr. Jeffries' interest.

61. Respondent used his position and influence with Mr. Jeffries to his own financial advantage and to Mr. Jeffries' detriment. Respondent's dealings with Mr. Jeffries lacked the indicia of care, candor, and loyalty which Respondent owed Mr. Jeffries as his fiduciary. He placed his self-interest above Mr. Jeffries' interests. Moreover, Respondent took advantage of his position and of Mr. Jeffries' trust in him, resulting in Mr. Jeffries' not being fully informed about the amounts and purposes of the fees Respondent collected. For example, Respondent's failure to bill Jeffries, to keep time records, to provide accountings, and to clearly indicate*in any way* the amount of fees, fee "increases" and nature and amount of work performed, constitutes the repeated breach of his fiduciary duty to Mr. Jeffries, in light of their confidential and fiduciary relationship and the significant trust Mr. Jeffries reposed in Respondent.

62. Among further examples of Respondent's multiple breaches of fiduciary duty to Mr. Jeffries are:

a. Respondent breached his fiduciary duty to Mr. Jeffries by using his access to Mr. Jeffries' accounts to obtain "fees" for himself far in excess of agreed-upon fees, which violated his duty of loyalty to Mr. Jeffries and placed Respondent's interests above his client's.

b. Respondent breached his fiduciary duty to Mr. Jeffries by using his access to Mr. Jeffries' accounts to obtain "fees" for himself far in excess of the agreed costs.

c. Respondent repeatedly violated his duty of candor as Mr. Jeffries' fiduciary when he presented Mr. Jeffries with incomplete or selective information and summaries regarding B & R Farm accounts.

d. Respondent repeatedly violated his duty of candor as Mr. Jeffries' fiduciary when he failed to present Mr. Jeffries with complete information regarding his finances and financial transactions, particularly those by which he personally benefitted.

e. Respondent repeatedly violated his fiduciary duty and his duty of candor as Mr. Jeffries' fiduciary in taking advantage of Respondent's reliance on him and their extensive and longstanding confidential and trusting relationship.

f. Respondent repeatedly violated his fiduciary duty and his duty of candor as Mr. Jeffries' fiduciary when he obtained Mr. Jeffries' signature on blank checks which were subsequently made payable to Respondent without Mr. Jeffries' knowledge or consent, e.g., the $2000.00 check (in January 2003) referenced above.

g. Respondent violated his fiduciary duty as a co-trustee of the William Lachenmaier trust.[16] Respondent testified at the Investigative Hearing that he was the trustee responsible for handling funds, collecting rents, collecting royalties, paying taxes, etc. By his own admission, "about four years ago," the "receipts - mainly the sales" of several Jeffries entities became commingled. Respondent's lack of due diligence regarding his co-trustee responsibilities had unknown financial and legal consequences for the beneficiaries, to whom he owed a duty, including his client Mr. Jeffries.

h. Respondent violated his fiduciary duty to Mr. Jeffries when he made insufficient or late deposits of payroll taxed during 2002, resulting in penalties to Mr. Jeffries.

63. Incorporating by reference the matters set forth in paragraphs 59 through 62, Respondent's conduct constitutes multiple breaches of fiduciary duty to Mr. Jeffries, and thus constitutes multiple causes for discipline of his licenses for unprofessional conduct within the

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16. The land which Mr. Jeffries farmed was in the Lachenmaier trust, and Jeffries was one of the trust beneficiaries.

meaning of Code section 5100(i)(breach of fiduciary duty of any kind).

## FIFTH CAUSE FOR DISCIPLINE

### Record Retention Violations

### Business And Professions Code Sections 5037(b) and 5100(g)/Board Rule 68

64. Complainant realleges paragraphs 16 through 18 and 21 through 23 above, and incorporates them herein by reference as if fully set forth at this point.

65. As previously set forth, Respondent was responsible for creating and maintaining Mr. Jeffries' records. After he was alerted that Mr. Jeffries was becoming aware of his misappropriations of Jeffries' funds, he failed to respond to Mr. Jeffries' prompt request for the return of his records, including at least the original (or copies of ) cash disbursement journals, some 6000 canceled checks, and bank statements, which were the most incriminating of the records regarding Respondent's embezzlement. The records he did provide were incomplete.

66. Respondent testified at the Investigative Hearing that he had no definite records destruction policy. Records were moved to an off-site storage site periodically, and undiscriminatingly, and when the storage became "full" the records were shredded.

67. Incorporating by reference the matters alleged in paragraphs 64 through 66 above, cause for discipline of Respondent's licenses is established under Code section 5037(b) and Board Rules 68 and 68.1 (in conjunction with Code section 5100(g)).

## SIXTH CAUSE FOR DISCIPLINE

### False Advertising as a Sole Proprietor

### Business And Professions Code Section 5100(g)/Board Rules 63 & 67

68. Complainant realleges paragraphs 3 and 14 above, incorporating them herein by reference as if fully set forth at this point. Complainant further alleges that Respondent has continued to practice under the auspices of Mickey, Casanova & Sack, showing the full names of former partners Mickey and Casanova at the bottom of his letterhead directly above the legend "Members - American Institute of CPA's California Society of CPA's" and the firm's address, as if they were still involved in the firm, and that he has represented himself as a partnership while he is in fact operating as a sole proprietor.

69. Incorporating by reference the matters alleged in paragraph 68 above, cause for discipline of Respondent's licenses is established under Board Rules 63 and 67.1, in conjunction with Code section 5100(g), in that Respondent Sack's continued "holding out" as a partnership and his continued practice under the auspices of Mickey, Casanova & Sack, when Mr. Mickey is deceased, Mr. Casanova was retired, and Respondent had no remaining partners, is misleading, in the absence of obtaining approval from the Board.

## SEVENTH CAUSE FOR DISCIPLINE

### Unprofessional Conduct

### Business & Professions Code Section 5100

70. Complainant realleges paragraphs 14 through 27, 29 through 35, 40 through 42, 49 through 53, 56, and 60 through 62, above, incorporating them herein by reference as if fully set forth at this point. Rule 102 of the AICPA *Code of Professional Conduct* requires that, in the performance of any professional service, a CPA shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his judgment to others.

71. Incorporating by reference the matters set forth in paragraph 70, Respondent's conduct regarding his client Mr. Jeffries constitutes unprofessional conduct within the meaning of Code section 5100.

## DISCIPLINE OF PARTNERSHIP REGISTRATION

### Unprofessional Conduct - Bus. & Prof. Code Section 5101

72. Incorporating by reference all causes for discipline pled herein, Respondent's partnership registration is subject to discipline, under Code section 5101 in conjunction with Code section 5100, for each and for all of the causes alleged.

## OTHER MATTERS

73. Pursuant to Code section 5107, it is requested that the administrative law judge, as part of the proposed decision in this proceeding, direct Respondent to pay to the Board all reasonable costs of investigation and prosecution in this case, including, but not limited to, attorneys' fees.

74. It is charged, in aggravation of penalty, that at all times material to Respondent's misconduct described above, he systematically embezzled from a long-time client to whom he owed a fiduciary duty, and that, when confronted with the client's suspicions, Respondent failed to produce the records which would have fully documented the client's losses and Respondent's misconduct.

75. Code section 5000.1 is relevant to the penalty determination in this matter.

## 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 27047, issued to Silver Dollar Sack;

2. Revoking, suspending, or otherwise imposing discipline upon Accountancy Partnership Registration Number 4215, issued to Mickey, Casanova & Sack;

4. Ordering Silver Dollar Sack 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;

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

DATED: June 6, 2005

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