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

In the Matter of the Accusation Against: **RICHARD LAWRENCE DELAP** **1217 Funston Avene** **Pacific Grove, California 93950** **Certified Public Accountant Certificate No. CPA 13291** Respondent.	Case No. AC-2010-9

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 May 5th, 2010.

It is so ORDERED April 5th, 2010.

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against: **RICHARD LAWRENCE DELAP** **1217 Funston Avene** **Pacific Grove, California 93950** **Certified Public Accountant Certificate No. CPA 13291** Respondent.	Case No. AC-2010-9 **STIPULATED SURRENDER OF LICENSE AND ORDER**

Consistent with the public interest and the responsibilities of the California Board of Accountancy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender and Order which will be submitted to the Board for approval and adoption as the final disposition of the Amended Accusation filed herein.

PARTIES

1. Patti Bowers (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 Edmund G. Brown Jr., Attorney General of the State of California, by Diann Sokoloff, Deputy Attorney General.

2. On or about October 20, 1967, the California Board of Accountancy issued Certified Public Accountant Certificate No. 13291 to Richard Lawrence DeLap, Respondent. The Certified

Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and expired on March 1, 2007. Respondent is represented in this proceeding by attorney Stephanie Skaff of Farella Braun and Martel LLP, whose address is 235 Montgomery Street, San Francisco, CA 94104.

3. Amended Accusation No. AC-2010-9 has been filed before the Board and is currently pending against Respondent. The Amended Accusation and all other statutorily required documents were properly served on Respondent and Respondent timely filed his Notice of Defense contesting the Amended Accusation. A copy of the Amended Accusation is attached as Exhibit A and incorporated herein by reference. The parties stipulate that the Board has jurisdiction in this matter.

WAIVERS & CONTINGENCY

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the Amended Accusation. Respondent also has 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. It is understood that in signing this stipulation, Respondent is voluntarily consenting to the adoption of this Stipulated Surrender and Order as the Board's Decision in Case No. 2010-9, 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 does not adopt this stipulation as its Decision and Order, the Stipulated Surrender 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 the Amended Accusation's charges, or a waiver of any other right, including those rights expressly waived in the Stipulated Surrender. 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 the 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 the Stipulated Surrender or of any records related hereto. In the event that the Stipulated Settlement is not adopted, Respondent is not precluded from filing a Special Notice of Defense within fifteen days of his counsel being notified in writing that the Stipulated Settlement was not adopted.

ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES

9. Respondent denies each and every charge and each and every allegation of wrongdoing set forth in the Amended Accusation. Nevertheless, Respondent has not practiced as a Certified Public Accountant since September 2002, no longer wishes to practice as a Certified Public Accountant pursuant to the privileges accorded to him by the California Board of

Accountancy, Department of Consumer Affairs and does not want to incur the expense of contesting the charges in the Amended Accusation. Therefore, solely for the purpose of resolving the charges and allegations in the Amended Accusation without further proceedings, Respondent hereby gives up the right to contest those charges for purposes of resolving these proceedings. However, Respondent agrees that, as provided herein in paragraph 2 of the Order, should Respondent apply for licensure as a CPA in California or elsewhere, the charges will be deemed admitted.

10. 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. Respondent understands that the surrender of the CPA Certificate and the acceptance of the surrendered license by the Board, is considered by the Board to be the imposition of discipline against Respondent. Upon acceptance of Respondent's license surrender by the Board according to the terms of this stipulation, the license will be canceled.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender 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 13291, issued to Respondent Richard Lawrence DeLap, is accepted by the California Board of Accountancy.

12. Respondent DeLap 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.

13. Respondent DeLap understands and agrees 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 Amended Accusation shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Stephanie Skaff. 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: 2/1/10

RICHARD LAWRENCE DELAP
Respondent

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

DATED: _____

Stephanie Skaff
Farella Braun and Martel LLP
235 Montgomery Street
San Francisco, CA 94104
(415) 954-4400

Attorney for Respondent

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licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in the Amended Accusation shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Stephanie Skaff. 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: _____

RICHARD LAWRENCE DELAP
Respondent

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

DATED: 2/1/10

Stephanie Skaff
Farella Braun and Martel LLP
235 Montgomery Street
San Francisco, CA 94104
(415) 954-4400

Attorney for Respondent

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ENDORSEMENT

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

Dated: 2/2/10

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General

DIANN SOKOLOFF
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Amended Accusation No. AC-2010-9

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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: **RICHARD LAWRENCE DELAP** 1217 Funston Ave. Pacific Grove, CA 93950 **Certified Public Accountant** **Certificate No. CPA 13291**	Case No. AC-2010-9 **AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about October 20, 1967, the California Board of Accountancy issued Certified Public Accountant Number CPA 13291 to Richard Lawrence DeLap (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and expired on March 1, 2007.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of Section 5100 of the Business and Professions Code, 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 willful violations of the Accountancy Act and willful violations of rules and regulations promulgated by the Board.

4. Business and Professions Code[1] 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.

STATUTORY AND REGULATORY PROVISIONS

5. Section 5100 states:

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

. . .

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that

[1] All statutory references are to the Business and Professions Code unless otherwise indicated.

indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052."

. . .

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

. . .

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind."

"(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

"(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses."

6. Licensees are required by Title 16, California Code of Regulations, Article 1, Board Rule 5 to comply with all Board rules, including by Title 16, California Code of Regulations, Article 9, Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards.

7. Business and Professions Code section 125 provides, in pertinent part, that any licensee is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him, who conspires with a non-licensee to violate any provision of this code.

APPLICABLE PROFESSIONAL STANDARDS

8. Professional standards or standards of practice pertinent[2] to this Accusation include, without limitation:

A. Title 31, Part 10 of Internal Revenue Service (IRS) Regulations (31 CFR 10)[3] including:

(1) Section 10.21 (Knowledge of Client's Omission), provides that:

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[2] All references herein to standards and other authoritative literature are to the versions in effect at the time the shelters were being developed, marketed or sold.

[3] 31 CFR 10 is also referred to as "Circular 230" or Section 10 of the IRS Regulations. Among other things, Circular 230 governs practice by CPAs before the IRS.

"[a] practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission."

(2) Section 10.22(a) (Diligence as to Accuracy), provides that, in general, a practitioner must exercise due diligence:

"(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service."

(3) Section 10.30 (Solicitation), provides that a practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form or public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim.

(4) Section 10.34 (Standards for Advising with Respect to Tax Return Positions and for Preparing or Signing Returns), provides that a practitioner may not sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the "realistic possibility standard") unless the position is not frivolous and is adequately disclosed to the Internal Revenue Service.

B. American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct, includes Section I - Principles and Section II - Rules. Both the Principles (Articles III and VI) and the Rules are relevant to the allegations herein.

(1) 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."

(2) Rule 102.2 (Conflicts of Interest), provides that:

"A member shall be considered to have knowingly misrepresented facts in violation of rule 102. . . when he or she knowingly—

a. Makes, or permits or directs another to make, materially false and misleading entries in an entity's financial statements or records; or

b. Fails to correct an entity's financial statements or records that are materially false and misleading when he or she has the authority to record an entry; or

c. Signs, or permits or directs another to sign, a document containing materially false and misleading information."

(3) Rule 102-4 (Subordination of Judgment by a Member), provides that:

"Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts or subordinating his or her judgment when performing professional services. Under this rule, if a member and his or her supervisor have a disagreement or dispute relating to the preparation of financial statements or the recording of transactions, the member should take the following steps to ensure that the situation does not constitute a subordination of judgment:

"1. The member should consider whether (a) the entry or the failure to record a transaction in the records, or (b) the financial statement presentation or the nature or omission of disclosure in the financial statements, as proposed by the supervisor, represents the use of an acceptable alternative and does not materially misrepresent the facts. If, after appropriate research or consultation, the member concludes that the matter has authoritative support and/or does not result in a material misrepresentation, the member need do nothing further.

2. If the member concludes that the financial statements or records could be materially misstated, the member should make his or her concerns known to the appropriate higher level(s) of management within the organization (for example, the supervisor's immediate superior, senior management, the audit committee or equivalent, the board of directors, the

company's owners). The member should consider documenting his or her understanding of the facts, the accounting principles involved, the application of those principles to the facts, and the parties with whom these matters were discussed.

3. If, after discussing his or her concerns with the appropriate person(s) in the organization, the member concludes that appropriate action was not taken, he or she should consider his or her continuing relationship with the employer. The member also should consider any responsibility that may exist to communicate to third parties, such as regulatory authorities or the employer's (former employer's) external accountant. In this connection, the member may wish to consult with his or her legal counsel.

4. The member should at all times be cognizant of his or her obligations under interpretation 102-3 [ET section 102.04]."

(4) Rule 201 (General Standards), provides that:

"A member shall comply with the following standards and with any interpretations thereof by bodies designated by Council.

A. Professional Competence. Undertake only those professional services that the member or the member's firm can reasonably expect to be completed with professional competence.

B. Due Professional Care. Exercise due professional care in the performance of professional services.

C. Planning and Supervision. Adequately plan and supervise the performance of professional services.

D. Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed."

(5) Rule 202 (Compliance With Standards), provides that:

"A member who performs auditing, review, compilation, management consulting, tax, or other professional services shall comply with standards promulgated by bodies designated by Council."

(6) Rule 501 (Acts discreditable), provides that:

"A member shall not commit an act discreditable to the profession."

(7) Rule 501-4 (Negligence in the Preparation of Financial Statements or Records), provides that:

"A member shall be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such member—

a. Makes, or permits or directs another to make, materially false and misleading entries in the financial statements or records of an entity; or

b. Fails to correct an entity's financial statements that are materially false and misleading when the member has the authority to record an entry; or

c. Signs, or permits or directs another to sign, a document containing materially false and misleading information."

(8) Rule 502 (Advertising and Other Forms of Solicitation), provides that: "A member in public practice shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited."

(9) Rule 502-2 (False, Misleading or Deceptive Acts in Advertising or Solicitation), provides that:

"Advertising or other forms of solicitation that are false, misleading, or deceptive are not in the public interest and are prohibited. Such activities include those that—

1. Create false or unjustified expectations of favorable results.

2. Imply the ability to influence any court, tribunal, regulatory agency, or similar body or official.

3. Contain a representation that specific professional services in current or future periods will be performed for a stated fee, estimated fee or fee range when it was likely at the time of the representation that such fees would be substantially increased and the prospective client was not advised of that likelihood.

4. Contain any other representations that would be likely to cause a reasonable person to misunderstand or be deceived."

C. AICPA Statements on Standards for Tax Services[4], including:

(1.) TS Section 100 - Tax Return Positions.

(2.) TS Section 600 - Knowledge of Error: Return Preparation.

(3.) TS Section 800 - Form and Content of Advice to Tax Payers.

D. The Internal Revenue Code, including:

"(1) 26 U.S.C. §6111 (Section 6111), which governs the registration of tax shelters.

(2) 26 U.S.C. §6112 (Section 6112), which imposes certain obligations on the organizer or seller of a "potentially abusive tax shelter."

COST RECOVERY

9. Code Section 5107(a) provides, in pertinent part, that the Executive Officer of the Board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of investigation and prosecution of the case.

PUBLIC PROTECTION

10. 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."

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[4] The AICPA *Statements on Standards for Tax Services*, are codified as "TS" with section numbers, e.g., TS Section 100.

FACTUAL BACKGROUND

11. The subject matter of this Accusation is Respondent's participation in the development, promotion, and implementation of certain tax shelter schemes by himself and other KPMG[5] personnel, including senior partners and members of top management, which assisted high net worth United States citizens to evade Unites States individual income taxes on billions of dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax shelters.[6],[7]

12. Respondent was an employee of KPMG LLP[8] from at least in or about 1966 (when the company used the name Peat, Marwick, Mitchell & Company) through in or about 2002, working in the Los Angeles, San Francisco, New York and San Jose Offices. In 1974, Respondent became a partner and was transferred from the Los Angeles KPMG office to the San Francisco KPMG office. Respondent was transferred to the San Jose office where he became National Partner in charge of Information, Communications, and Entertainment. In 1997, Respondent became Partner in charge of the newly created Department of Professional Practice-

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[5] At all times relevant to this Accusation, KPMG was a limited liability partnership headquartered in New York, New York, with more than 90 offices nationwide, of which several are in California. Among the California KPMG offices during the time period relevant herein were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and Walnut Creek. KPMG was one of the largest auditing firms in the world, providing audit services to many of the largest corporations in the United States and elsewhere. KPMG also provided tax services to corporate and individual clients, some of whom were very wealthy. These tax services included, but were not limited to, preparing federal and state tax returns, providing tax planning and tax advice, and representing clients, for example, in Internal Revenue Service ("IRS") and Franchise Tax Board ("FTB") audits, and in Tax Court litigation with the IRS.

[6] The portion of KPMG's tax practice that specialized in providing tax advice to individuals, including wealthy individuals, was known as Personal Financial Planning, or "PFP." The KPMG group focused on designing, marketing, and implementing tax shelters for individual clients was known at different times as CaTS ("Capital Transaction Strategies"), and IS ("Innovative Strategies").

[7] KPMG personnel also formed alliances, operating agreements, and/or joint ventures with outside persons, including former partners, employees, and others. KPMG also worked with law firms/lawyers and with banks in implementing the FLIP, OPIS and BLIPS tax shelter transactions. Significant activity and coordination regarding the design and implementation of the tax shelters took place by California licensees or on behalf of California taxpayers.

[8] KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating several offices in California. KPMG was engaged in providing tax services to corporate and individual clients and providing audit services to corporate, governmental and other clients. The Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective January 18, 2008. It is further referenced in paragraph 13.

Tax (DPP-Tax). As head of DPP-Tax, Respondent was responsible for overseeing and giving advice on professional practice issues affecting KPMG's tax related practice. Respondent was responsible for ensuring KPMG's compliance with Internal Revenue Service, SEC, and AICPA rules and regulations. Respondent was responsible for ensuring KPMG's compliance with state accountancy board's rules and regulations. Respondent was personally responsible for ensuring the tax shelters, described below, complied with the applicable laws and regulations. The tax shelters required Respondents' approval to be marketed.

13. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of Facts attached to the Deferred Prosecution Agreement ("DPA") which KPMG entered with the federal government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the Board, KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached to the DPA (which was incorporated into Accusation AC-2006-28),

> "through the conduct of certain KPMG tax leaders, partners, and employees, during the period from 1996 through 2002, KPMG assisted high net worth individuals to evade individual income taxes on billions of dollars by developing, promoting, and implementing unregistered and fraudulent tax shelters. A number of KPMG tax partners engaged in conduct that was unlawful and fraudulent...". (Accusation, Paragraph 57, quoting DPA.)[9]

A copy of the DPA agreement and Statement of Facts is attached as Exhibit A and is herein incorporated by reference.

14. Respondent was a tax partner at KPMG between 1974 and 2002, the period relevant herein. He participated in the above-described scheme, consisting of:

A. devising, marketing, and implementing fraudulent tax shelters;

B. causing tax returns to be filed with the IRS that contained the fraudulent tax shelter losses; and

C. fraudulently concealing those shelters from the IRS.

[9] See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11 of Stipulation AC-2006-28 for detail.

FLIP, OPIS, and BLIPS TAX SHELTERS

15. The fraudulent tax shelter transactions which are the subject matter of this Accusation were FLIP ("Foreign Leveraged Investment Program"), OPIS ("Offshore Portfolio Investment Strategy"), and BLIPS ("Bond Linked Issue Premium Structure").[10]

16. Respondent was highly involved in the creation and/or approval of the BLIPS, FLIP,[11] and OPIS[12] transactions.

17. The law in effect from at least in or about August 1997 provided that if a taxpayer claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties, ranging from 20%-40% of the underpayment of tax attributable to the shelter, unless the tax benefit was supported by an independent opinion relied on by the taxpayer in good faith that the tax benefit was "more likely than not" to survive IRS challenge.

FLIP and OPIS SHELTERS

18. In most material respects, FLIP and OPIS were the same. FLIP and OPIS were generally marketed only to people who had capital gains in excess of $10 million for FLIP and $20 million for OPIS.[13]

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[10] During the relevant time period, KPMG personnel, some of its clients, and others involved in these tax shelter transactions prepared, signed and filed tax retuns that falsely and fraudulently claimed over $4.2 billion in bogus tax losses generated by FLIP and OPIS transactions, and $5.1 billion generated by BLIPS transactions. A significant proportion of the tax payers who filed tax returns with KPMG's assistance using FLIP, OPIS and BLIPS tax shelters were California taxpayers. Approximately 29% of the transactions were in California and approximately 38% of KPMG's fees originated in California.

[11] FLIP was essentially similar to OPIS. The shelters were designed to generate bogus capital losses in excess of $20 million through the use of an entity created in the Cayman Islands. The client purportedly entered into an "investment" transaction with the Cayman Islands entity by purchasing a purported warrant or entering into a purported swap. The Cayman Islands entity purportedly made a pre-arranged series of investments, including the purchase, from a bank, of bank stock using money purportedly loaned by the bank, followed by a repurchase of that stock by the pertinent bank at a prearranged price. The tax shelter transactions were devised to last for only approximately 16 to approximately 60 days, and the duration of the shelter was pre-determined.

[12] OPIS was essentially similar to FLIP, described in the footnote above. KPMG's gross fees from OPIS transactions were at least $28 million.

[13] In return for fees totaling approximately 5-7% of the desired tax loss, including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, KPMG, its KPMG tax personnel and their associates implemented and caused to be implemented FLIP and OPIS transactions and generated and caused to be generated false and fraudulent documentation to support the transactions, including but not limited to KPMG opinion letters claiming that the purported tax losses generated by the shelters were "more likely than not" to withstand challenge by the IRS.

(continued...)

19. Respondent was highly involved in FLIP and OPIS transactions. As Head of DPP-Tax, Respondent was responsible for reviewing both the FLIP and OPIS transactions for compliance with the applicable professional and tax standards. Respondent gave the approvals for KPMG's tax professionals to market or continue to market the FLIP and OPIS transactions. Respondent also decided when KPMG tax professionals could no longer market these products. Respondent reviewed, edited and approved generic drafts of engagement letters, client factual representations letters, and tax opinions for the FLIP and OPIS transactions. The generic drafts approved by Respondent were then used by other KPMG tax professionals as templates for real engagement letters, client factual representations, and tax opinions. The FLIP and OPIS opinion letters falsely asserted that tax positions taken were "more likely than not" to prevail against an IRS challenge if the true facts regarding those transactions were known to the IRS. The opinion letters and other documents used to implement FLIP and OPIS were false and fraudulent in a number of ways, including that:

a. Money was paid by the FLIP and OPIS clients for an "investment" component of the transactions (a warrant or a swap), whereas in fact that money constituted fees paid to KPMG and other participants, as well as money that was temporarily "parked" in the deal but ultimately returned to the client.

b. There was no evidence of a "firm and fixed" plan to complete the steps making up the shelter in a particular manner when, in fact, there was such a plan, and the transactions in fact were designed to be completed, and were completed, in the particular manner designed to generate the tax loss.

c. The clients were not "more likely than not" to survive an IRS challenge (based on the "step transaction doctrine").[14]

(...continued)
As agreed to, and arranged by, KPMG tax personnel, outside lawyers also issued "more likely than not' opinion letters in return for fees typically of approximately $50,000 per opinion, which opinions tracked, sometimes verbatim, the KPMG opinion letter.

[14] The "step transaction doctrine" is a legal doctrine permitting the IRS to disregard certain transactions having no economic substance or business purpose and the purported tax effects of those disregarded transactions.

BLIPS SHELTER

20. KPMG and its tax personnel and associates marketed and caused to be marketed, and implemented and caused to be implemented the transactions, and generated and caused to be generated false and fraudulent documentation to support the BLIPS transactions. This activity included, but was not limited to, generating KPMG opinion letters (and opinion letters by law firm(s)) that claimed that the purported tax losses generated by the shelters were more likely than not to withstand challenge by the IRS. All of these opinion letters were almost identical.

21. Respondent was highly involved in the BLIPS[15] transactions. As head of DPP Tax, Respondent was responsible for reviewing the BLIPS transactions and supporting documents for compliance with professional and tax standards. Respondent was involved in reviewing and editing the generic draft BLIPS engagement letters, tax opinions, and client factual representations. These documents were used as templates for actual BLIPS engagement letters, tax opinions, and client factual representations. All of these opinion letters were almost identical. Respondent approved BLIPS for marketing and implementation by KPMG tax professionals. Respondent also decided when KPMG professionals were no longer allowed to market and implement BLIPS. The documents reviewed, edited, and approved by Respondent falsely and fraudulently claimed that the purported tax losses generated by the BLIPS transactions were "more likely than not' to withstand challenge by the IRS.

22. Respondent reviewed, edited, and approved the BLIPS opinion letters and related documents although he knew or should have known that (i) the tax positions taken were not "more likely than not" to prevail against an IRS challenge if the true facts regarding those transactions were known to the IRS, and (ii) the opinion letters and other documents used to implement BLIPS were false and fraudulent in a number of ways, including but not limited to the following:

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[15] BLIPS generated at least $5.1 billion in bogus tax losses. KPMG's gross fees from BLIPS transactions were at least $53 million. Associated law firms and boutique practices had gross fees of at least $147 million. The fees totaled approximately 5-7% of the desired tax loss, including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, a fee to a "boutique practice" equal to approximately 2.75% of the desired tax loss, and a fee to a law firm generally equal to $50,000 per transaction.

a. BLIPS was falsely described as a three-stage, seven-year investment program, when in truth and in fact, all participants were expected to withdraw at the earliest opportunity and within the same tax year in order to obtain their tax losses. BLIPS was falsely described as a "leveraged" investment program, whereas, in fact, the purported loan transactions that were part of BLIPS (and that were the aspect of BLIPS that purported to generate the tax loss) were shams -- no money ever left the bank and none of the banks assigned any capital cost to these purported BLIPS loans.

b. The BLIPS opinion letters falsely stated that the client (based on the client's purported "independent review," as well as that of outside "reviewers") "believed there was a reasonable opportunity to earn a reasonable pre-tax profit from the [BLIPS] transactions," when in truth and in fact, there was no "reasonable likelihood of earning a reasonable pre-tax profit" from BLIPS, and instead the "investment" component of BLIPS was negligible, unrelated to the large sham "loans" that were the key elements of the purported tax benefits of BLIPS, and was simply window dressing for the BLIPS tax shelter fraud.

c. The opinion letters and other documents were misleading in that they were drafted to create the false impression that KPMG, its tax personnel, and others associated with the tax shelter scheme were all independent service providers and advisors, when in truth and in fact KPMG personnel and associates jointly developed and marketed the BLIPS shelter.

23. At various points during the development of BLIPS, KPMG tax personnel identified various significant defects of BLIPS, including that the description of BLIPS and the factual representations contained in the BLIPS opinion letter and in other documents were false. Nevertheless, in or about 1999, the marketing of BLIPS by the firm was approved by Respondent. Likewise, the risks of proceeding with implementation of BLIPS in 2000 were discussed. Despite the obviously fraudulent nature of BLIPS and the warnings conveyed, KPMG tax personnel, including Respondent, decided not to refund BLIPS fees and to proceed with the issuance of "more likely than not" opinion letters on all of the 1999 transactions with the intent that BLIPS clients would claim the bogus BLIPS losses on 1999 tax returns. KPMG tax personnel and

others, including Respondent, continued to be involved in the implementation of more BLIPS tax shelter transactions in 2000 and, in 2001.

FRAUDULENT CONCEALMENT OF TAX SHELTERS

24. In addition to preparing, causing to be prepared, and approving the false and fraudulent documentation relating to and implementing the shelter transactions, Respondent participated in steps taken to fraudulently conceal from the IRS the fraudulent tax shelters, and/or knew or should have known that the steps would have the effect of concealing the shelters from the IRS. The steps taken included, but were not limited to, the following:

(1) Not registering the tax shelters with the IRS as required by law. Respondent personally concluded that FLIP, OPIS, and BLIPS transactions should have been registered yet nevertheless agreed with and approved the decision not to register FLIP, OPIS, and BLIPS.

(2) Respondent knowingly allowed tax professionals at KPMG to prepare tax returns that fraudulently concealed the bogus losses from the IRS. Specifically Respondent knew KPMG tax professionals were using a device called "grantor trust netting" to conceal the tax shelters from the IRS. Respondent was informed that the use of grantor trust netting on tax returns could be viewed as filing a false or misleading return. Despite being head of DPP-tax Respondent did not analyze the appropriateness of using grantor trust netting.

FAILING TO REGISTER TAX SHELTERS

25. Under the law in effect at all times relevant to this Accusation, an organizer of a tax shelter was required to "register" the shelter by filing a form with the IRS describing the transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities claiming a benefit from the shelter were required to include with their income tax returns a form disclosing that they had participated in a registered tax shelter, and disclosing the assigned registration number. Notwithstanding these legal requirements, KPMG's tax personnel decided not to register the tax shelters based on a "business decision" that to register the shelters would hamper KPMG's ability to sell them. Respondent knew or should have known of the requirement to register the shelters. In fact, Respondent personally concluded that FLIP, OPIS, and BLIPS

transactions should have been registered yet nevertheless agreed with and approved the decision not to register the FLIP, OPIS, and BLIPS transactions.

FIRST CAUSE FOR DISCIPLINE
Fraud in the Practice of Public Accountancy
[Business and Professions Code § 5100(c)]

26. The matters alleged in paragraphs 11 through 25 are re-alleged as though fully set forth.

27. Respondent's license is therefore subject to disciplinary action based on his direct involvement and acquiescence in:

A. The decision of KPMG not to register the tax shelters as required;

B. The preparation and approval of false or fraudulent documentation supporting the implementation of the tax shelters; and/or

C. Respondent's explicit and required approval of KPMG's marketing and implementation of the tax shelters including, but not limited to, Respondent's approval of allowing KPMG's personnel to sign the tax opinions and tax returns containing the fraudulent tax shelters.

28. Incorporating by reference the matters alleged in paragraphs 11-25, cause for discipline of Respondent's license for fraud in the practice of public accountancy is established under Code Section 5100(c).

SECOND CAUSE FOR DISCIPLINE
Dishonesty in the Practice of Public Accountancy
[Business and Professions Code § 5100(c)]

29. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters by reference, cause for discipline of Respondent's license for dishonesty in the practice of public accountancy is established under Code Section 5100(c) based upon his dishonest acts, and omissions in the course of his participation, as described above, in the FLIP, BLIP, and OPIS tax shelters.

THIRD CAUSE FOR DISCIPLINE
Gross Negligence in the Performance of Public Accountancy
[Business and Professions Code § 5100(c)]

30. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters

by reference, cause for discipline of Respondent's license for gross negligence in the practice of public accountancy is established under Code Section 5100(c) based upon his conduct, which constituted extreme departures from applicable professional standards.

FOURTH CAUSE FOR DISCIPLINE
Failure to Observe Professional Standards in Performance of Public Accountancy
[Board Rule 58/ Business and Professions Code § 5100(g)]

31. Complainant realleges paragraphs 11 through 25. Incorporating those matters by reference, cause for discipline of Respondent's license is established in that his failure to comply with professional standards applicable to public accountancy constitutes the willful violation of Board Rule 58, providing cause for discipline of his license under Code Section 5100(g).

FIFTH CAUSE FOR DISCIPLINE
Repeated Negligent Acts in the Performance of Public Accountancy
[Business and Professions Code § 5100(c)]

32. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters by reference, cause for discipline of Respondent's license for repeated negligent acts in the performance of public accountancy is established under Code Section 5100(c) based upon his conduct, which constituted repeated departures from applicable professional standards.

SIXTH CAUSE FOR DISCIPLINE
Violation of Professional Standards
[Board Rule 58/ Business and Professions Code § 5100(g)]

33. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters by reference, cause for discipline of Respondent's license for violation of professional standards is established under Board Rule 58 and Code Section 5100(g) based upon his conduct, including approving and causing to be signed, engagement and opinion letters for clients without independently, diligently or accurately evaluating the specific needs and concerns of the clients, which constitutes willful violation of Board Rule 58, providing cause for discipline of his license under Code section 5100(g).

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PRAYER

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

1. Revoking, suspending or otherwise imposing discipline upon Certified Public Accountant Number 13291, issued to Richard Lawrence DeLap.

2. Ordering Richard Lawrence DeLap to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

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

Dated: January 28, 2010

PATTI BOWERS
Executive Officer
California Board of Accountancy

Complainant

SF2006401547