

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

In the Matter of the Accusation Against:

Case No. AC-2012-22

FRANK MATHEW GRUBER
13231 Benton Street
Garden Grove, CA 92843

Certified Public Accountant
License No. 72571

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on September 1, 2012.

It is so ORDERED August 2, 2012.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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Attorney General of California
2 JAMES M. LEDAKIS
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DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

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Case No. AC-2012-22

13 **FRANK MATHEW GRUBER**
14 **13231 Benton Street**
Garden Grove, CA 92843

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Certified Public Accountant**
16 **License No. 72571**

17 Respondent.

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

21 PARTIES

22 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
23 Accountancy. She brought this action solely in her official capacity and is represented in this
24 matter by Kamala D. Harris, Attorney General of the State of California, by Carl W. Sonne,
25 Deputy Attorney General.

26 2. Respondent Frank Mathew Gruber (Respondent) is representing himself in this
27 proceeding and has chosen not to exercise his right to be represented by counsel.
28

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Certified Public Accountant License No. 72571 issued to
3 Respondent Frank Mathew Gruber (Respondent) is revoked. However, the revocation is stayed
4 and Respondent is placed on probation for five (5) years on the following terms and conditions.

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

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

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

17 4. **Comply With Probation.** Respondent shall fully comply with the terms and
18 conditions of the probation imposed by the CBA and shall cooperate fully with representatives of
19 the Board of Accountancy in its monitoring and investigation of the Respondent's compliance
20 with probation terms and conditions.

21 5. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice
22 investigation of the Respondent's professional practice. Such a practice investigation shall be
23 conducted by representatives of the CBA, provided notification of such review is accomplished in
24 a timely manner.

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

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

1 notify the CBA in writing of the dates of departure and return. Periods of non-California
2 residency or practice outside the state shall not apply to reduction of the probationary period, or
3 of any suspension. No obligation imposed herein, including requirements to file written reports,
4 reimburse the CBA costs, or make restitution to consumers, shall be suspended or otherwise
5 affected by such periods of out-of-state residency or practice except at the written direction of the
6 CBA.

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

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

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

18 **11. Cost Reimbursement.** Respondent shall reimburse the CBA \$6,767.98 for its
19 investigation and prosecution costs. The payment shall be made within 90 days of the date the
20 CBA's decision is final, or, payment may be made by a payment plan approved by the CBA and
21 Respondent, with the final payment being due one year before probation is scheduled to
22 terminate.

23 **12. Psychotherapist.** Respondent shall undergo and continue treatment by a licensed
24 psychotherapist of Respondent's choice and approved by the CBA or its designee for the duration
25 of probation or until the treating psychotherapist certifies in writing in a report to the CBA or its
26 designee that treatment is no longer necessary. Respondent shall have the treating
27 psychotherapist submit reports to the CBA at intervals determined by the CBA or its designee.
28 Respondent is responsible for costs of treatment and reports.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant License. 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:

7/12/12



FRANK MATHEW GRUBER
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 16, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



CARL W. SONNE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2012-22

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11 In the Matter of the Accusation Against:

12 **FRANK MATHEW GRUBER**
13 **13231 Benton Street**
Garden Grove, CA 92843

14 **Certified Public Accountant License No. 72571**

15 Respondent.

Case No. AC-2012-22

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about November 15, 1996, the California Board of Accountancy issued
22 Certified Public Accountant License Number 72571 to Frank Mathew Gruber (Respondent). The
23 Certified Public Accountant License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on June 30, 2013, unless renewed.

25 **JURISDICTION**

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

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4. 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:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

....

STATUTORY PROVISIONS

5. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

6. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been

1 convicted of crimes. Therefore, the Legislature finds and declares that this section
2 establishes an independent basis for a board to impose discipline upon a licensee,
3 and that the amendments to this section made by Senate Bill 797 of the 2007 -08
4 Regular Session do not constitute a change to, but rather are declaratory of,
5 existing law.

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7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

8. Section 5063 of the Code states:

(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

(1) The conviction of the licensee of any of the following:

(A) A felony.

(B) Any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy.

As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

9. Section 5106 states:

A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made, suspending the imposition of sentence, irrespective of a subsequent order

1 under the provisions of Section 1203.4 of the Penal Code allowing such person to
2 withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the
verdict of guilty or dismissing the accusation, information or indictment.

3 10. Section 5107(a) of the Code states:

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

8 11. Section 5109 of the Code provides that the expiration, cancellation,
9 forfeiture or suspension of a license shall not deprive the CBA of jurisdiction to proceed
10 with any investigation of or action or disciplinary action against the licensee, or to render
11 a decision suspending or revoking a license.

12 **REGULATORY PROVISIONS**

13 12. Title 16 California Code of Regulations (CCR) section 99 states:

14 For the purposes of denial, suspension, or revocation of a certificate or
15 permit pursuant to Division 1.5 (commencing with Section 475) of the Business
16 and Professions Code, a crime or act shall be considered to be substantially
17 related to the qualifications, functions or duties of a certified public accountant or
18 public accountant if to a substantial degree it evidences present or potential
19 unfitness of a certified public accountant or public accountant to perform the
20 functions authorized by his or her certificate or permit in a manner consistent with
21 the public health, safety, or welfare. Such crimes or acts shall include but not be
22 limited to those involving the following:

23 (a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

24 (b) Fraud or deceit in obtaining a certified public accountant's certificate
25 or a public accountant's permit under Chapter 1, Division III of the Business and
26 Professions Code;

27 (c) Gross negligence in the practice of public accountancy or in the
28 performance of the bookkeeping operations described in Section 5052 of the
code;

(d) Violation of any of the provisions of Chapter 1, Division III of the
Business and Professions Code or willful violation of any rule or regulation of the
board.

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1 13. Title 16 California Code of Regulations (CCR) section 99.1 states:

2 When considering the denial of a certificate or permit under Section 480
3 of the Business and Professions Code; the suspension or revocation of a certificate
4 or permit or restoration of a revoked certificate under Section 11522 of the
Government Code, the board, in evaluating the rehabilitation of the applicant and
his present eligibility for a certificate or permit, will consider the following
criteria:

5 (1) Nature and severity of the act(s) or offense(s).

6 (2) Criminal record and evidence of any act(s) committed subsequent to
7 the act(s) or offense(s) under consideration which also could be considered as
grounds for denial, suspension or revocation.

8 (3) The time that has elapsed since commission of the act(s) or offense(s)
referred to in subdivision (1) or (2).

9 (4) The extent to which the applicant or licensee has complied with any
10 terms of parole, probation, restitution, or any other sanctions lawfully imposed
against the applicant or licensee.

11 (5) If applicable, evidence of expungement proceedings pursuant to
Section 1203.4 of the Penal Code.

12 (6) Evidence, if any, of rehabilitation submitted by the applicant or
13 licensee.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Mar 16, 2007 Criminal Convictions for Evading Police and Reckless Driving**
16 **on Dec 13, 2006 and for Arson of a Structure or Forest on December 18, 2006)**

17 14. Respondent is subject to disciplinary action under sections 490 and 5100
18 subsection (a), in that he was convicted of a crime that is substantially related to his
19 qualifications, functions and duties as an accountant. The circumstances are as follows:

20 a. On or about March 16, 2007, in a criminal proceeding entitled *The People*
21 *of the State of California vs. Frank Mathew Gruber*, in the Superior Court of San Diego, North
22 County Division, Case Number SCN222341, Respondent was convicted by his plea of guilty of
23 violating Vehicle Code (VC) section 2800.2 subsection (a), driving in willful or wanton
24 disregard for the safety of persons or property while fleeing from pursuing police officer
25 (Evasion of Police), a misdemeanor, and Penal Code (PC) section 451 subsection (c), arson of
26 structure, forest land, or property (Arson), a felony.

27 b. As a result of the conviction, on or about April 16, 2007, the Court
28 suspended sentence, imposed three years formal probation, and ordered Respondent to serve 182

1 days in jail, with credit for time served, and pay fees of \$610.00, fines of \$3,800.00, and
2 restitution of \$3,534.21.

3 c. The facts that led to his conviction for evasion of police are that on
4 December 13, 2006, a San Diego Sheriff's Deputy investigated a suspicious person at an
5 apartment complex in San Marcos, California. As the Deputy approached the complex, he
6 observed the suspect vehicle with a missing front license plate. When the Deputy attempted to
7 conduct a traffic stop, the driver of the vehicle, who was later identified as Respondent, failed to
8 yield. A police pursuit ensued, in which Respondent ran four stop lights, ran a stop sign, drove
9 into oncoming traffic three times, and travelled at speeds of 90 plus miles per hour on surface
10 streets. Respondent then drove westbound on Highway 78 at speeds of 115 miles per hour.
11 Respondent slowed to 65 miles per hour at the northbound entry to Interstate 5 from Highway 78.
12 California Highway Patrol (CHP) officers took over the pursuit. CHP officers attempted to use
13 lawful intervention (pit maneuvers) on Respondent several times, without success. Eventually,
14 Respondent came to a stop on Oceanside Boulevard, several hundred yards east of Canyon Drive.
15 Two CHP vehicles and Respondent's vehicle were damaged.

16 d. The facts that led to the arson conviction are that on or about
17 December 18, 2006, San Diego Sheriff's Deputies and the Vista Fire Department responded to a
18 fire in the City of Vista, California. Upon arrival, fire fighters located a three foot high pile of
19 oak branches on fire. The fire investigator determined that a person deliberately set the fire.
20 According to witnesses, Respondent was observed leaving the scene carrying a red gas can.
21 Subsequently, Respondent was arrested for arson and transported to the Vista Sheriff's Station
22 for processing.

23 15. On or about October 15, 2009, in a criminal proceeding entitled *The People of the*
24 *State of California vs. Frank Mathew Gruber* in the Superior Court of San Diego, North County
25 Division, Case Number SCN222341, Respondent's earlier 2007 probation, for Evasion and
26 Arson, was formally revoked for multiple violations of his probation terms.

27 a. As a result of the revocation of probation, Respondent was ordered
28 committed to the State of California Department of Corrections and Rehabilitation for a middle

1 term of four years for violating PC section 451 subsection (c), arson of structure, forest land, or
2 property, a felony and two years for violating VC section 2800.2 subsection (a), driving in
3 willful or wanton disregard for safety of persons or property while fleeing from pursuing police.
4 Both sentences were ordered to be served concurrently. Respondent was further ordered to pay
5 restitution of \$3,534.21 and to be placed in a mental health facility capable of administering
6 mental health treatment.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Report Conviction)**

9 16. Respondent is subject to disciplinary action under section 5063 subsection
10 (a)(1)(A-B), in that he failed to timely report his March 16, 2007 convictions, for Arson and
11 Evasion of Police as detailed above, within the 30-day required period.

12 **PRAYER**

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

15 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
16 Accountant License Number CPA 72571, issued to Frank Mathew Gruber;

17 2. Ordering Frank Mathew Gruber to pay the California Board of Accountancy the
18 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 5107; and

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

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23 DATED: 3/2/2012



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

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