

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

In the Matter of the Accusation Against:

Case No. AC-2013-34

JAMES MARSHALL SWORZYN
23603 Park Sorrento #104
Calabasas, CA 91302
California Public Accountant License
No. 18832

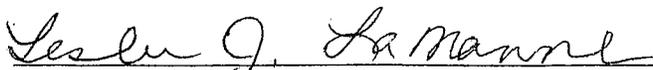
Respondent.

DECISION AND ORDER

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

This Decision shall become effective on December 27, 2013.

It is so ORDERED on November 27, 2013.



For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2013-34

12 **JAMES MARSHALL SWORZYN**
13 **23603 Park Sorrento #104**
14 **Calabasas, CA 91302**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Certified Public Accountant**
16 **Certificate No. 18832**

Respondent.

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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 I. 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.
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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. AC-2013-34.

4 10. Respondent agrees that his Certified Public Accountant Certificate is subject to
5 discipline and he agrees to be bound by the CBA's probationary terms as set forth in the
6 Disciplinary Order below.

7 RESERVATION

8 11. The admissions made by Respondent herein are only for the purposes of this
9 proceeding, or any other proceedings in which the California Board of Accountancy or other
10 professional licensing agency is involved, and shall not be admissible in any other criminal or
11 civil proceeding.

12 CONTINGENCY

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

23 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
25 signatures thereto, shall have the same force and effect as the originals.

26 14. Respondent understands and stipulates that this Stipulated Settlement and
27 Disciplinary Order is based upon, *inter alia*, Respondent's full compliance with paragraph 16 of
28 this Disciplinary Order (Permanent Restricted Practice), set forth below. If Respondent fails to

1 satisfy this condition, he agrees that the CBA can file an accusation against him for
2 unprofessional conduct based on his failure to comply with paragraph 16 as an independent basis
3 for disciplinary action, pursuant to Business and Professions Code section 5100. In addition,
4 Respondent consents and stipulates that the CBA may enforce paragraph 16 in any court of
5 competent jurisdiction (including an administrative court) to enjoin him, temporarily and/or
6 permanently, from violating paragraph 16, and may seek in such proceeding all other remedies as
7 allowed by law.

8 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
9 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
10 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
11 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
12 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
13 writing executed by an authorized representative of each of the parties.

14 In consideration of the foregoing admissions and stipulations, the parties agree that the
15 CBA may, without further notice or formal proceeding, issue and enter the following
16 Disciplinary Order:

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 18832 issued
19 to Respondent James Marshall Sworzyn (Respondent) is revoked. However, the revocation is
20 stayed and Respondent is placed on probation for three (3) years on the following terms and
21 conditions.

22 **1. Obey All Laws**

23 Respondent shall obey all federal, California, other states' and local laws, including those
24 rules relating to the practice of public accountancy in California.

25 **2. Cost Reimbursement**

26 Respondent shall reimburse the CBA \$10,692.46 for its investigation and prosecution costs.
27 The costs shall be made in quarterly payments (due with quarterly written reports), the final
28 payment being due one year before probation is scheduled to terminate, or other payment plan

1 acceptable to the CBA.

2 **3. Submit Written Reports**

3 Respondent shall submit, within 10 days of completion of the quarter, written reports to the
4 CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury,
5 such other written reports, declarations, and verification of actions as are required. These
6 declarations shall contain statements relative to respondent's compliance with all the terms and
7 conditions of probation. Respondent shall immediately execute all release of information forms
8 as may be required by the CBA or its representatives.

9 **4. Personal Appearances**

10 Respondent shall, during the period of probation, appear in person at interviews/meetings as
11 directed by the CBA or its designated representatives, provided such notification is accomplished
12 in a timely manner.

13 **5. Comply With Probation**

14 Respondent shall fully comply with the terms and conditions of the probation imposed by
15 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
16 its monitoring and investigation of the respondent's compliance with probation terms and
17 conditions.

18 **6. Practice Investigation**

19 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
20 professional practice. Such a practice investigation shall be conducted by representatives of the
21 CBA, provided notification of such review is accomplished in a timely manner.

22 **7. Comply With Citations**

23 Respondent shall comply with all final orders resulting from citations issued by the
24 California Board of Accountancy.

25 **8. Tolling of Probation for Out-of-State Residence/Practice**

26 In the event respondent should leave California to reside or practice outside this state,
27 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
28 California residency or practice outside the state shall not apply to reduction of the probationary

1 period, or of any suspension. No obligation imposed herein, including requirements to file
2 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
3 or otherwise affected by such periods of out-of-state residency or practice except at the written
4 direction of the CBA.

5 **9. Violation of Probation**

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

11 The CBA's Executive Officer may issue a citation under California Code of Regulations,
12 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
13 licensee on probation.

14 **10. Completion of Probation**

15 Upon successful completion of probation, respondent's license will be fully restored.

16 **11. Ethics Continuing Education**

17 Respondent shall complete eight hours of continuing education in course subject matter
18 pertaining to the following: a review of nationally recognized codes of conduct emphasizing how
19 the codes relate to professional responsibilities; case-based instruction focusing on real-life
20 situational learning; ethical dilemmas facing the accounting profession; or business ethics, ethical
21 sensitivity, and consumer expectations (within a given period of time or prior to resumption of
22 practice). Courses must be a minimum of one hour as described in California Code of
23 Regulations Section 88.2, (Courses will be passed prior to resumption of practice where license
24 has been suspended or where otherwise appropriate.)

25 If respondent fails to complete said courses within the time period provided, respondent
26 shall so notify the CBA and shall cease practice until respondent completes said courses, has
27 submitted proof of same to the CBA, and has been notified by the CBA that he or she may
28 resume practice. Failure to complete the required courses no later than 100 days prior to the

1 termination of probation shall constitute a violation of probation. These course hours shall be in
2 addition to continuing education requirements for relicensing.

3 **12. Regulatory Review Course**

4 Respondent shall complete a CBA-approved course on the provisions of the California
5 Accountancy Act and the California Board of Accountancy Regulations specific to the practice of
6 public accountancy in California emphasizing the provisions applicable to current practice
7 situations by December 31, 2014. The course also will include an overview of historic and recent
8 disciplinary actions taken by the CBA, highlighting the misconduct which led to licensees being
9 disciplined. The course shall be a minimum of four (4) hours.

10 If respondent fails to complete said courses within the time period provided, respondent
11 shall so notify the CBA and shall cease practice until respondent completes said courses, has
12 submitted proof of same to the CBA, and has been notified by the CBA that he or she may
13 resume practice. Failure to complete the required courses no later than 100 days prior to the
14 termination of probation shall constitute a violation of probation. These course hours shall be in
15 addition to continuing education requirements for relicensing.

16 **13. Peer Review**

17 During the period of probation, all audit, review, and compilation reports and work papers
18 shall be subject to peer review by a CBA-recognized peer review program provider pursuant to
19 California Business and Professions Code Section 5076 and California Code of Regulations, Title
20 16, Division 1, Article 6, at respondent's expense. The specific engagements to be reviewed
21 shall be at the discretion of the peer reviewer. The peer review shall be completed by December
22 31, 2014, or within a period of time designated and specified in writing by the CBA or its
23 designee, which time frame shall be incorporated as a condition of this probation.

24 Within 45 days of the peer review report being accepted by a Board-recognized peer review
25 program provider, respondent shall submit to the CBA a copy of the peer review report, including
26 any materials documenting the prescription of remedial or corrective actions imposed by the
27 Board-recognized peer review program provider. Respondent shall also submit, if available, any
28 materials documenting completion of any or all of the prescribed remedial or corrective actions.

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14. Continuing Education Courses

Respondent shall complete and provide proper documentation of twenty-four (24) hours of professional education courses by December 31, 2014, in the subject areas of Statements on Standards for Accounting and Review Services (SSARS) and/or Generally Accepted Accounting Principles (GAAP). These course hours shall be in addition to continuing education requirements for relicensing.

15. Restricted Practice. During probation, Respondent shall not engage in and shall be prohibited from performing any attestation services, including audits.

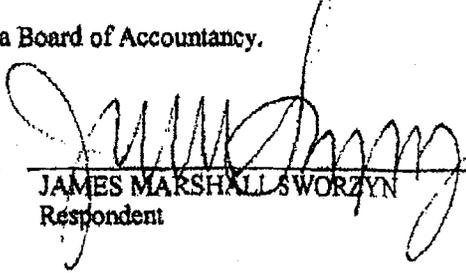
IT IS HEREBY FURTHER ORDERED:

16. Permanent Restricted Practice. After the completion of probation, Respondent shall be permanently prohibited from engaging in and performing any attestation services, including audits. This condition shall continue until such time, if ever, Respondent successfully petitions the CBA for the reinstatement of his ability to perform attestation services. The CBA is under no obligation to reinstate Respondent's ability to perform attestation services and the decision to reinstate is within the sole discretion of the CBA.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Nicole Irma. 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: 10-14-13



JAMES MARSHALL SWORZYN
Respondent

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

DATED: 10/14/13 
NICOLE IRMER
Attorney for Respondent

ENDORSEMENT

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

Dated: 10/15/2013

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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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**
11

12 In the Matter of the Accusation Against:

Case No. AC-201 3-34

13 **JAMES MARSHALL SWORZYN**
14 **23603 Park Sorrento #104**
15 **Calabasas, CA 91302**

ACCUSATION

16 **Certified Public Accountant**
17 **Certificate No. 18832**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
23 2. On or about April 27, 1973, the California Board of Accountancy issued Certified
24 Public Accountant Certificate Number 18832 to James Marshall Sworzyn (Respondent). The
25 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on March 31, 2014, unless renewed.
27
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1 (c) Failure of the audit documentation to document the procedures applied,
2 tests performed, evidence obtained, and relevant conclusions reached in an
3 engagement shall raise a presumption that the procedures were not applied, tests
4 were not performed, information was not obtained, and relevant conclusions were
5 not reached. This presumption shall be a rebuttable presumption affecting the
6 burden of proof relative to those portions of the audit that are not documented as
7 required in subdivision (b). The burden may be met by a preponderance of the
8 evidence. . . .

9 7. Section 5107 states in pertinent part:

10 (a) The executive officer of the board may request the administrative law
11 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
12 holder of a permit or certificate found to have committed a violation or violations
13 of this chapter to pay to the board all reasonable costs of investigation and
14 prosecution of the case, including, but not limited to, attorney's fees. The board
15 shall not recover costs incurred at the administrative hearing.

16 8. Section 5109 states:

17 The expiration, cancellation, forfeiture, or suspension of a license, practice
18 privilege, or other authority to practice public accountancy by operation of law or
19 by order or decision of the board or a court of law, the placement of a license on a
20 retired status, or the voluntary surrender of a license by a licensee shall not deprive
21 the board of jurisdiction to commence or proceed with any investigation of or
22 action or disciplinary proceeding against the licensee, or to render a decision
23 suspending or revoking the license.

24 REGULATIONS

25 9. Title 16, California Code of Regulations, section 58 (Board Rule 58) provides that
26 "licensees engaged in the practice of public accountancy shall comply with all applicable
27 professional standards, including but not limited to generally accepted accounting principles and
28 generally accepted auditing standards."

29 STANDARDS

30 APPLICABLE PROFESSIONAL STANDARDS

31 10. Standards of practice¹ pertinent to this Accusation and the engagements at issue
32 include, without limitation:

33 11. The American Institute of Certified Public Accountants' (AICPA's) Statements on
34 Auditing Standards (SAS) Section AU 150.02 sets forth the following three fieldwork standards:

35 a. "The auditor must adequately plan the work and must properly supervise any
36 assistants."

37 ¹ All references herein to standards and other authoritative literature are to the versions in
38 effect at the time the subject audit was performed.

1 b. "The auditor must obtain a sufficient understanding of the entity and its
2 environment, including its internal control, to assess the risk of material
3 misstatement of the financial statements whether due to error or fraud, and to
design the nature, timing, and extent of further audit procedures."

4 c. "The auditor must obtain sufficient appropriate audit evidence by performing
5 audit procedures to afford a reasonable basis for an opinion regarding the financial
statements under audit."

6 12. AU Section 311.03 states:

7 Obtaining an understanding of the entity and its environment, including its internal
8 control, is an essential part of planning and performing an audit in accordance with
9 generally accepted auditing standards. The auditor must plan the audit so that it is
10 responsive to the assessment of the risk of material misstatement based on the
11 auditor's understanding of the entity and its environment, including its internal
12 control. Planning is not a discrete phase of the audit, but rather an iterative process
that begins with engagement acceptance and continues throughout the audit as the
auditor performs audit procedures and accumulates sufficient appropriate audit
evidence to support the audit opinion. As a result of performing planned audit
procedures, the auditor may obtain disconfirming evidence that might cause the
auditor to revise the overall audit strategy.

13 13. AU Section 319.02 states:

14 In all audits, the auditor should obtain an understanding of internal control
15 sufficient to plan the audit by performing procedures to understand the design of
16 controls relevant to an audit of financial statements and determining whether they
have been placed in operation...

17 14. AU Section 319.61 states:

18 The auditor should document the understanding of the entity's internal control
19 components obtained to plan the audit. The form and extent of this documentation
is influenced by the nature and complexity of the entity's controls...

20 15. AU Section 319.83 states:

21 In addition to the documentation of the understanding of internal control
22 discussed in paragraph .61, the auditor should document his or her conclusions
about the assessed level of control risk...

23 16. AU Section 312.27 states:

24 The auditor should determine a materiality level for the financial statements taken
25 as a whole when establishing the overall audit strategy for the audit. Determining
a materiality level for the financial statements taken as a whole helps guide the
26 auditor's judgments in identifying and assessing the risks of material misstatements
and in planning the nature, timing, and extent of further audit procedures...

17. AU Section 312.69 states:

The auditor should document:

- a. The levels of materiality, as discussed in paragraph .27, and tolerable misstatement, including any changes thereto, used in the audit and the basis on which those levels were determined...

18. AU Section 316.83 states:

The auditor should document the following:

The discussion among engagement personnel in planning the audit regarding the susceptibility of the entity's financial statements to material misstatement due to fraud, including how and when the discussion occurred, the audit team members who participated, and the subject matter discussed.

The procedures performed to obtain information necessary to identify and assess the risks of material misstatement due to fraud.

Specific risks of material misstatement due to fraud that were identified, and a description of the auditor's response to those risks.

If the auditor has not identified in a particular circumstance, improper revenue recognition as a risk of material misstatement due to fraud, the reasons supporting the auditor's conclusion.

The results of the procedures performed to further address the risk of management override of controls.

Other conditions and analytical relationships that caused the auditor to believe that additional auditing procedures or other responses were required and any further responses the auditor concluded were appropriate, to address such risks or other conditions.

The nature of the communications about fraud made to management, those charged with governance, and others.

19. AU Section 339.03 states:

The auditor must prepare audit documentation in connection with each engagement in sufficient detail to provide a clear understanding of the work performed (including the nature, timing, extent, and results of audit procedures performed), the audit evidence obtained and its source, and the conclusions reached. Audit documentation:

- a. Provides the principal support for the representation in the auditor's report that the auditor performed the audit in accordance with generally accepted auditing standards.
- b. Provides the principal support for the opinion expressed regarding the financial information or the assertion to the effect that an opinion cannot be expressed."

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5 20. AU Section 339.06 states:

Audit documentation includes, for example, audit programs, analyses, issues memoranda, summaries of significant findings or issues, letters of confirmation and representation, checklists, abstracts or copies of important documents, correspondence (including e-mail) concerning significant findings or issues, and schedules of the work the auditor performed...

6 21. AU Section 339.10 states that "[t]he auditor should prepare audit documentation that enables an experienced auditor, having no previous connection to the audit, to understand:

- 7 a. The nature, timing, and extent of auditing procedures performed to comply
8 with SAS's and applicable legal and regulatory requirements;
9 b. The results of the audit procedures performed and the audit evidence
10 obtained;
11 c. The conclusions reached on significant matters; and
12 d. That the accounting records agree or reconcile with the audited financial
statements or other audited information."

13 22. Auditing and reporting standards for Employee Benefit Plans, which are overseen
14 by the United States Department of Labor, are contained in the AICPA's Audit and Accounting
15 Guide for Employee Benefit Plans (AAG-EBP). AAG-EBP Section 7.15 states:

16 The objectives of auditing procedures applied to investments and related
transactions are to provide the auditor with a reasonable basis for concluding:

- 17 a. Whether all investments are recorded and exist.
18 b. Whether investments are owned by the plan and are free of liens, pledges,
19 and other security interests or, if not, whether the security interests are
identified.
20 c. Whether investment principal and income transactions are recorded and
21 investments are properly valued in conformity with GAAP.
22 d. Whether information about investments is properly presented and
disclosed.
23 e. Whether investment transactions are initiated in accordance with the
24 established investment policies.

25 23. AAG-EBP Section 8.03 states:

26 Examples of substantive procedures for employer and employee contributions:

- 27 a. Obtaining a list of participating employers (in a multiemployer plan) and
28 testing its completeness by examining appropriate plan documents (for
example, a record of contributing employers and delinquency records could be
obtained from the plan administrator).

1 b. Obtaining a schedule of contributions received or receivable and relating
2 the contributions to the listing of participating employers obtained in procedure
(a) of this list and of other plans under reciprocal arrangements.

3 c. Testing contribution reports to see that the reports are arithmetically
4 correct and that the contribution rate specified in the plan instrument, including
collective bargaining agreements, if applicable, was used.

5 d. Reconciling contributions received from the schedule obtained in
6 procedure (b) to the plan's cash receipts records and bank statements or trustee
7 reports. Sometimes a central bank account is used for the deposit of employer
8 contributions to several related employee benefit plans. In those circumstances
it may be necessary to test the amounts transferred to the bank account of the
individual employee benefit plan.

9 e. Testing postings from the employer contribution reports to the participant
10 employee or employer records and from participant records to contribution
11 reports.

12 f. Confirming directly with contributors amounts received and receivable.

13 g. Reviewing criteria used by the plan in accruing employer and employee
14 contributions receivable and determining that the accruals have been recorded
15 in accordance with generally accepted accounting principles.

16 h. Evaluating the reasonableness of the plan's allowance for estimated
17 uncollectible amounts based on testing of collections subsequent to the date of
18 the financial statements and reviewing the status of unpaid amounts.

19 24. AAG-EBP Section 8.06 states, "Besides the auditing procedures discussed in
20 paragraph 8.03, examples of additional substantive procedures for contributions to defined
21 contribution plans include:

22 a. Reviewing the contribution provisions of the plan instrument and testing
23 compliance with the plan instrument. (The plan instrument of a defined
24 contribution plan often specifies the criteria that must be met for the employer and
25 employee to make a contribution, the formula to determine upper and lower
26 contribution limits, or the rates for determining the contribution.)

27 b. Comparing the amount of employer contributions recorded in the plan's
28 records to the amount approved by the board of directors of the plan sponsor, if the
plan instrument requires that the board of directors determine or approve the
employer contribution.

c. Considering, whether forfeited nonvested participant accounts, if any, have
been properly applied to reduce contributions, if appropriate, under provisions of
the plan.

d. Considering, if applicable, the results of the auditing procedures described
in chapter 10 for participants' data (including any contributions for salary
reduction plans, and employees, retirees and cobra participants for health and
welfare plans).

1 e. Inquiring as to the timeliness of employee contribution remittances to the
2 plan and, if necessary, applying additional audit procedures. Failure of the plan
3 sponsor to remit employee contributions to the plan in accordance with
4 Department of Labor regulations may constitute a prohibited transaction.
5 Additional information on remittance rules can be found in paragraph A.14.”

6 25. AAG-EBP Section 8.07 states:

7 Many plans allow participants to transfer contributions into the plan from another
8 qualified plan or from an individual retirement account. Such transfers are known
9 as rollover contributions. The auditing procedures applied to rollover contributions
10 may include:

- 11 a. Review plan document to determine that the rollover was made in
12 accordance with plan provisions.
- 13 b. Test asset transfer from the former trustee (custodian) to the current trustee
14 (custodian), including verification of the participant-directed investments, if
15 applicable.
- 16 c. Review participant recordkeeping account to determine that the rollover
17 amount is properly reflected.

18 26. AAG-EBP Section 9.03 states:

19 Examples of substantive procedures for benefit payments include:

20 a. For selected participants receiving benefit payments:

21 1) Examining the participant's file for type and amount of claim and propriety
22 of required approvals including tracing approval of benefit payments to board of trustees
23 or administrative committee minutes, if applicable...

24 2) Evaluating the participant's or beneficiary's eligibility (that is, whether the
25 payee meets the plan's eligibility requirements) by examining evidence of age and
26 employment history data; comparing employment dates, credited service, earnings, and
27 any employee contributions to payroll or other appropriate records; and examining the
28 benefit election form and dependent designation to determine appropriateness of payment,
including the form of distribution (for example, lump sum, installments, or annuity
contract).

3) For plan benefits, such as death and disability benefits, examining a copy
of the death certificate and beneficiary form, physician's statement, and other appropriate
documents.

4) Recomputing benefits based on the plan instrument and related documents,
option elected, and pertinent service or salary history. For complex benefit calculations,
such as lump sum benefit payments or conversion of an account balance to an annuity,
consider using the assistance of an actuary in evaluating the method and assumptions used

1 in the benefit calculation. Verifying that all contributions, income and expenses have been
2 properly posted to participant's account prior to making the distribution.

3 5) Recomputing forfeited participant balances based on the vesting provisions
4 of the plan and pertinent service history.

5 6) Comparing the benefit payment amount to cash disbursement records or
6 trustee reports. Reviewing trade reports to determine that correct investments were
7 liquidated at distribution...

8
9 8) For benefit payments received directly by participants, testing receipt of the
10 benefit payment. This can be accomplished by a number of methods, such as comparing
11 canceled checks with the plan's cash disbursement records, comparing the payee name or
12 account name on electronic funds transfers to the participant or beneficiary name, or
13 confirming payment of benefits by corresponding directly with selected participants,
14 service providers, and beneficiaries and comparing signatures with the application for plan
15 benefits, service provider statements, or other appropriate documents. In addition, the
16 auditor may want to consider inquiring as to the existence and frequency of participant
17 complaints.

18 b. Evaluating whether procedures exist for determining the continued eligibility
19 of participants or beneficiaries to receive benefits to assure that individuals are
20 removed from the benefit rolls upon death and that payments made to individuals
21 over an unusually long number of years are still appropriate.

22 c. Evaluating whether procedures exist for investigating long-outstanding
23 benefit checks.

24 d. For defined contribution plans, comparing disbursements to participants with
25 individual participant's account records that have been examined in accordance
26 with the auditing procedures in paragraphs 10.14-16.

27 e. For defined contribution pension plans, reviewing the criteria used by the
28 plan to record benefit payments and determining that the benefit payments have
been recorded in accordance with generally accepted accounting principles. Refer
to paragraph 3.52m for guidance in reporting benefit payments on the statement of
net assets available for benefits....

29 27. AAG-EBP Section 9.04 states:

30 In some circumstances, benefit disbursements are determined or made by a third
31 party such as a bank, an insurance company, or other service provider (that is, third-
32 party administrator). In these circumstances, the auditor may need to obtain an
33 understanding of the internal control procedures of the third party. This can be
34 satisfied either through obtaining a service auditor's report in accordance with SAS
35 No. 70, *Service Organizations* (AICPA, *Professional Standards*, vol. 1, AU sec.
36 324), as amended, or through applying appropriate auditing procedures to the third-
37 party administrator. These procedures are performed irrespective of whether the
38 plan avails itself of the limited-scope audit exemption relating to certain assets held
by a bank or similar institution or insurance carrier regulated and supervised and
subject to periodic examination by a state or federal agency. The use of such a third
party's independent auditor or internal auditors to perform certain of the foregoing
procedures may be appropriate in those circumstances. Although a type 2 SAS No.

1 70 report may be used to reduce substantive procedures, neither a type 1 nor a type
2 2 SAS No. 70 report is designed to provide a basis for assessing control risk
3 sufficiently low to eliminate the need for performing any substantive tests.

4 28. AAG-EBP Section 9.05 states:

5 For plan's that allow transfers to another qualified plan or to an individual
6 retirement account, otherwise known as rollover distributions, review the plan
7 document to determine that the rollover was made in accordance with plan
8 provisions and the rollover account is in the name of the participant or beneficiary.

9 29. AAG-EBP Section 10.04 states:

10 The types of participant data that are tested in an audit of a plan's financial
11 statements will vary from plan to plan, depending on the factors on which
12 contributions and benefits are determined. In general, the data tested may include:

- 13 a. Demographic data, such as sex, marital status, birth date, period of service
14 with the employer, and other service history.
- 15 b. Payroll data, such as wage rate, hours worked, earnings, and contributions
16 to the plan, if any.
- 17 c. Benefit data for participants receiving benefits, such as benefit levels and
18 benefit options selected.

19 30. AAG-EBP Section 10.05 states:

20 Examples of substantive procedures for testing the employer's participant records
21 include:

- 22 a. Reviewing pertinent sections of the plan instrument and collective
23 bargaining agreement, if applicable, as a basis for considering what participant
24 data to test in the audit of the plan's financial statements.
- 25 b. Testing the summarization of the payroll journal and schedules of
26 participant data, if applicable, and tracing postings of gross pay to general or
27 subsidiary ledger accounts.
- 28 c. Testing payroll data for one or more pay periods and for a number of
participants by:
- Tracing the individual payrolls from the payroll journal to the participants' earnings records.
 - For participants paid on an hourly or piecework basis, testing payroll hours, production tickets, or other supporting evidence and testing the computation of hours.
 - Testing rates of pay to authorizations or union contracts.
 - Testing calculations of earnings.

1 • Reviewing personnel files for hiring notice and employment data,
2 pay rates and rate changes, termination notice, sex, birth date, and so
3 forth.

4 d. If participant files are maintained in the custody of the plan administrator
5 or recordkeeper, testing whether the data maintained in those files correspond to
6 the data maintained in employer payroll and personnel files.

7 31. AAG-EBP Section 11.09 states:

8 The existence of certain party in interest relationships, such as plan-sponsor, may
9 be clearly evident. Determining the existence of other parties in interest requires
10 the application of specific audit procedures, which may include the following:

11 a. Evaluate the plan administrator's procedures for identifying and
12 properly accounting and reporting for party in interest transactions.

13 b. Request from appropriate personnel the names of all parties in interest
14 and inquire whether there were any transactions with these parties during
15 the period.

16 c. Review filings (for example, Forms 5500 and LM-2) by the reporting
17 entity with the DOL and other regulatory agencies for the names of parties
18 in interest.

19 d. Review prior years' working papers for the names of known parties in
20 interest.

21 e. Inquire of the predecessor plan auditor, if applicable, concerning his or
22 her knowledge of existing relationships and the extent of management
23 involvement with parties in interest.

24 f. Inquire of the plan administrator whether any prohibited transactions
25 have been identified as a result of past DOL, IRS, or other governmental
26 examinations.

27 d. Review agreements with service providers.

28 32. AU Section 333.05 states:

Written representations from management should be obtained for all financial statements
and periods covered by the auditor's report. For example, if comparative financial
statements are reported on, the written representations obtained at the completion of the
most recent audit should address all periods being reported on. The specific written
representations obtained by the auditor will depend on the circumstances of the
engagement and the nature and basis of presentation of the financial statements.

33. AU Section 333.06 states:

In connection with an audit of financial statements presented in accordance with
generally accepted accounting principles, specific representations should relate to
the following matters:

Financial Statements

1 a. Management's acknowledgment of its responsibility for the fair
2 presentation in the financial statements of financial position, results of
operations, and cash flows in conformity with generally accepted
accounting principles.

3 b. Management's belief that the financial statements are fairly presented
4 in conformity with generally accepted accounting principles.

5 *Completeness of Information*

6 c. Availability of all financial records and related data.

7 d. Completeness and availability of all minutes of meetings of
stockholders, directors, and committees of directors.

8 e. Communications from regulatory agencies concerning
9 noncompliance with or deficiencies in financial reporting practices.

10 f. Absence of unrecorded transactions.

11 *Recognition, Measurement, and Disclosure*

12 g. Management's belief that the effects of any uncorrected financial
13 statement misstatements aggregated by the auditor during the current
engagement and pertaining to the latest period presented are immaterial, both
14 individually and in the aggregate, to the financial statements taken as a whole.
(A summary of such items should be included in or attached to the letter.)

15 h. Management's acknowledgment of its responsibility for the design and
implementation of programs and controls to prevent and detect fraud.

16 i. Knowledge of fraud or suspected fraud affecting the entity involving (1)
17 management, (2) employees who have significant roles in internal control, or
(3) others where the fraud could have a material effect on the financial
18 statements.

19 j. Knowledge of any allegations of fraud or suspected fraud affecting the
entity received in communications from employees, former employees,
20 analysts, regulators, short sellers, or others.

21 k. Plans or intentions that may affect the carrying value or classification of
assets or liabilities.

22 l. Information concerning related-party transactions and amounts receivable
23 from or payable to related parties.

24 m. Guarantees, whether written or oral, under which the entity is
contingently liable.

25 n. Significant estimates and material concentrations known to management
26 that are required to be disclosed in accordance with the AICPA's Statement of
Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*.

27 o. Violations or possible violations of laws or regulations whose effects
28 should be considered for disclosure in the financial statements or as a basis for
recording a loss contingency.

1 p. Unasserted claims or assessments that the entity's lawyer has advised are
2 probable of assertion and must be disclosed in accordance with Financial
3 Accounting Standards Board (FASB) Statement No. 5, *Accounting for*
4 *Contingencies* [AC section C59].

5 q. Other liabilities and gain or loss contingencies that are required to be
6 accrued or disclosed by FASB Statement No. 5 [AC section C59].

7 r. Satisfactory title to assets, liens or encumbrances on assets, and assets
8 pledged as collateral.

9 s. Compliance with aspects of contractual agreements that may affect the
10 financial statements.

11 *Subsequent Events*

12 t. Information concerning subsequent events.

13 34. AU Section 333.07 states:

14 The representation letter ordinarily should be tailored to include additional
15 appropriate representations from management relating to matters specific to the
16 entity's business or industry....

17 35. AU Section 333.13 states:

18 Management's refusal to furnish written representations constitutes a limitation on
19 the scope of the audit sufficient to preclude an unqualified opinion and is
20 ordinarily sufficient to cause an auditor to disclaim an opinion or withdraw from
21 the engagement. However, based on the nature of the representations not obtained
22 or the circumstances of the refusal, the auditor may conclude that a qualified
23 opinion is appropriate. Further, the auditor should consider the effects of the
24 refusal on his or her ability to rely on other management representations.

25 36. AU Section 333.14 states:

26 If the auditor is precluded from performing procedures he or she considers
27 necessary in the circumstances with respect to a matter that is material to the
28 financial statements, even though management has given representations
concerning the matter, there is a limitation on the scope of the audit, and the
auditor should qualify his or her opinion or disclaim an opinion.

FACTS

37. The United States Department of Labor referred a complaint to the California
Board of Accountancy (CBA), alleging its review of Respondent's report, financial statements
and audit work papers for the 401(k) Plan of a company (with the initials of RDI), as of and for
the year ended March 31, 2008, revealed that Respondent's audit was deficient and failed to
conform to GAAS as required by ERISA. After investigation, the CBA also found that
Respondent failed to conform to applicable standards, as set forth below.

1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence)

3 38. Respondent is subject to disciplinary action under section 5100(c) of the Code in
4 that Respondent was grossly negligent by preparing audited financial statements for RDI's 401(k)
5 Plan for the year ending March 31, 2008 that contained extreme departures from professional
6 standards that indicate a lack of competency in the practice of public accountancy. Those acts
7 constituting gross negligence, individually, in combination thereof, and cumulatively, include the
8 following acts:

9 a. Respondent failed to adequately plan RDI's 401 (k) Plan audit, in that
10 there was no documentation that the Respondent obtained an understanding of the
11 entity and its environment. This failure constituted a violation of the standards set
12 forth in Section AU 150.02 and AU Section 311.03.

13 b. Respondent failed to document in the audit that he had obtained an
14 understanding of RDI's 401(k) Plan's internal control structure and that he had
15 assessed the level of risk in that Respondent failed to document his understanding
16 and consideration of the five elements of internal control. Specifically, Respondent
17 failed to document in his work papers evidence of his understanding of the flow of
18 documents through RDI's 401(k) Plan's accounting system or that Respondent had
19 come to a conclusion regarding control risk. These acts constituted violations of
20 standards set forth in AU Section 319.02, AU Section 319.61, and AU Section
21 319.83.

22 c. Respondent failed to determine and document the materiality levels for
23 RDI's 401(k) Plan's financial statements taken as a whole while planning the audit.
24 In addition, the materiality levels were not documented in Respondent's audit work
25 papers. These acts constituted violations of standards set forth in AU Section 312.27
26 and AU Section 312.69.

27 d. Respondent failed to document his consideration of fraud in RDI's
28 401(k) Plan audit. Respondent did not document his inquiries, if any, of

1 management and others about fraud risks. These acts constituted violations of
2 standards set forth in AU Section 316.83.

3 e. Respondent failed to document the tests performed in his audit work
4 papers in RDI's 401(k) Plan audit. Respondent's work papers did not enable an
5 experienced auditor to understand the tests performed. Furthermore, Respondent's
6 audit program did not ensure that audit tests were in fact performed and performed in
7 accordance with the AAG-EBP. These acts constituted violations of standards set
8 forth in AU Section 339.03, AU Section 339.06 and AU Section 339.10.

9 f. Respondent failed to test investments or investment income in RDI's
10 401(k) Plan audit. Specifically, Respondent obtained a certification of investments
11 held by John Hancock USA in lieu of testing investments or investment income.
12 These acts constituted violations of standards set forth in AAG-EBP Section 7.15.

13 g. Respondent did not test contributions in the RDI's 401(k) Plan audit.
14 Respondent verified contributions received and recorded in the client's general ledger
15 agreed to John Hancock USA's report. However, individual records were not tested
16 for accuracy or tested to ensure they agreed to John Hancock USA's records. These
17 acts constituted violations of standards set forth in AAG-EBP Section 8.03, and
18 AAG-EBP Section 8.06, AAG-EBP Section 8.07.

19 h. Respondent did not test benefit payments in RDI's 401(k) Plan audit.
20 Specifically, Respondent traced benefit payments from benefit letters and checks
21 written to the bank statements; however, no other audit tests were documented as
22 having been performed. These acts constituted violations of standards set forth in
23 AAG-EBP Section 9.03, AAG-EBP Section 9.04, and AAG-EBP Section 9.05.

24 i. Respondent did not test participant data in RDI's 401(k) Plan audit.
25 Respondent's work papers do not provide documentation that Respondent tested
26 participant data (such as wage rates, contribution rates, etc.) to ensure compliance
27 with the terms of the plan. These acts constituted violations of standards set forth in
28 AAG-EBP Section 10.04 and AAG-EBP Section 10.05.

1 by violating the requirements set forth in Code section 5097 that Respondent create and maintain
2 adequate documentation relating to audit planning, audit testing, and audit conclusions.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 (Failure of Audit Report to Conform to Professional Standards)

5 42. Respondent is subject to disciplinary action under section 5100(g) of the Code in that
6 Respondent committed acts of unprofessional conduct, described in paragraph 38 and 39 above,
7 by violating the requirements set forth in Code section 5062 that a licensee create or maintain
8 adequate documentation relating to audit planning, audit testing, or how these culminated in
9 Respondent's opinion. Therefore, the audit report was not support by the documentation
10 contained in the audit file.

11 **PRAYER**

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

- 14 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
15 Accountant Certificate Number 18832, issued to James Marshall Sworzyn;
- 16 2. Ordering James Marshall Sworzyn to pay the California Board of Accountancy the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 5107; and
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: August 15, 2013


23 PATTI BOWERS
24 Executive Officer
25 California Board of Accountancy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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