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

In the Matter of the Accusation Against: **KENT PAUL MALONEY** **P.O. Box 126** **Diamond Springs, CA 95619-0126** **Certified Public Accountant Certificate No. 19229** Respondent.	Case No. AC-2015-36 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 11, 2015, Complainant Patti Bowers, in her official capacity as the Executive Officer of the California Board of Accountancy (CBA), Department of Consumer Affairs, filed Accusation No. AC-2015-36 against Kent Paul Maloney (Respondent) before the California Board of Accountancy. A copy of the filed Accusation is attached as Exhibit A and incorporated as though set forth at length.

2. On or about August 3, 1973, CBA issued Certified Public Accountant Certificate No. 19229 to Respondent. The Certified Public Accountant Certificate expired on August 1, 2013, and has not been renewed.

3. On or about June 15, 2015, Complainant attempted to serve Respondent with copies of the Accusation No. AC-2015-36, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to California Code of Regulations, title 16, section 3, is required to be reported and maintained with the CBA. Respondent's address of record was and is:

P.O. Box 126
Diamond Springs, CA 95619-0126.

The envelopes were returned and marked undeliverable. Copies of the envelopes are attached to the Default Decision and Evidence Packet as Exhibit 6. CBA located two (2) new addresses for Respondent and on June 24, 2015 served the same documents by certified and first class mail to:

920 Pacific Street, Apt 7
Placerville, CA 95667

P.O. Box 126
Placerville, CA 95619-0126

The certified mail return receipts were accepted by the addressee and the receipts signed and dated. The Proofs of Service by mail and the signed return receipts are included in Exhibit 1 of the Default Decision and Evidence Packet.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. AC-2015-36.

7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the CBA finds Respondent is in default. The CBA will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the CBA's offices regarding the allegations contained in Accusation No. AC-2015-36, finds

that the charges and allegations in Accusation No. AC-2015-36, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 5107, it is hereby determined that the reasonable costs for Investigation and Enforcement is $2,883.00 as of July 15, 2015.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kent Paul Maloney has subjected his Certified Public Accountant Certificate No. 19229 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Business and Professions Code sections 5100(a) and 490: unprofessional conduct for being convicted of a crime substantially related to the qualifications, functions and duties of a certified public accountant.

b. Business and Professions Code sections 5100(g) and 5063: Respondent failed to report his felony conviction within 30 days.

c. Business and Professions Code sections 5100(k): Embezzlement, theft and misappropriation of money.

d. Business and Professions Code sections 5100(i) and California Code of regulations title 16, section 99(a): Dishonesty and Breach of Fiduciary to a charity.

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ORDER

IT IS ORDERED that Certified Public Accountant Certificate No. 19229, issued to Respondent Kent Paul Maloney, is revoked.

IT IS FURTHER ORDERED THAT upon the submission of a petition for reinstatement Respondent shall pay to CBA its costs of enforcement in the amount of $2,883.00 and an administrative penalty to be determined at the time of reinstatement.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on 8-29-15.

It is so ORDERED 7-30-15

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

11936107.DOCX
SA2014118936

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(KENT PAUL MALONEY)

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
BRIAN S. TURNER
Deputy Attorney General
State Bar No. 108991
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-0603
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Accusation Against: **KENT PAUL MALONEY** **P.O. Box 1068** **Placerville, CA 95667** **Certified Public Accountant Certificate No. 19229** Respondent.	Case No. AC-2015-36 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 3, 1973, the CBA issued Certified Public Accountant Certificate Number 19229 to Kent Paul Maloney. The certified public accountant certificate expired on August 1, 2013 and is currently delinquent.

JURISDICTION

3. This Accusation is brought before the CBA under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY AND REGULATORY PROVISIONS

4. Code section 490 provides in relevant part:

(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.

(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. An 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 Section 1203.4 of the Penal Code.

5. Code section 5100 states, in pertinent part:

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.

(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.

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

6. Code section 5106 provides:

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 under the provisions of Section 1203.4 of the Penal Code allowing such person to 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.

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7. Code section 5109 states:

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

8. Code section 5116 provides in relevant part:

> (a) The board, after appropriate notice and an opportunity for hearing, may order any licensee or applicant for licensure or examination to pay an administrative penalty as provided in this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.
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> (d) Administrative penalties assessed under this article shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including, but not limited to, license revocation, license suspension, denial of the application for licensure, denial of the petition for reinstatement, or denial of admission to the licensing examination. Payment of these administrative penalties may be included as a condition of probation when probation is ordered.

9. Code section 5063 requires a licensee to report in writing to the CBA within 30 days all felony convictions and convictions of any crime: related to the qualifications, functions or duties of a licensee or committed in the course and scope of practice of public accountancy; or involving theft, embezzlement, misappropriation of funds or property; or breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports or information.

10. California Code of Regulations, title 16, section 99 states, in pertinent part:

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

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COST RECOVERY

11. Code section 5107(a), states:

> 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 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.

FACTUAL ALLEGATIONS

12. In or about 1993 Respondent became the secretary/treasurer of a local charity. The charity engaged in various fund raising activities and received grants from various sources. All of the proceeds were then distributed to various charitable organizations. No members of the fund raising charity received any form of monetary compensation for their time, duties or activities and all funds raised by the charity were intended to benefit and be donated to other charities.

13. Among his duties as secretary/treasurer, Respondent established and managed the charity's bank accounts including the charity's checking accounts. Respondent established one checking account and all of the charity's Board members provided signature cards to Respondent to enable the Board members to sign checks. Respondent only submitted his signature card to the bank so that Respondent was the only person authorized to sign checks on behalf of the charity.

14. In or about 2002 or 2003, Respondent began diverting, taking, converting and embezzling the charity's funds. Respondent diverted, stole, took and converted the charity's funds by writing checks with his name as the payee, depositing the charity's cash or using a debit card. Respondent then deposited the checks and/or cash in various bank accounts under his sole control and used the proceeds for Respondent's sole benefit. Respondent's embezzling continued through 2011. Respondent embezzled approximately $275,000.00 from the charity.

FIRST CAUSE FOR DISCIPLINE

(Violations of the Chapter)

15. Paragraphs 12 through 14 are incorporated herein as though set forth at length. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code sections 490 and 5100(a), on the grounds of unprofessional conduct based on a criminal conviction. On or

about January 29, 2014, in El Dorado County Superior Court case captioned *People v. Kent Paul Maloney*, Case No. P13CRF0140, Respondent pled no contest to violating to California Penal Code section 503, embezzlement, a felony, with the enhancement of Penal Code section 12022.6(a)(2) for embezzling an amount in excess of $200,000.00. The court convicted Respondent on the basis of the plea and found there was a factual basis for Respondent's plea of no contest. Pursuant to California Code of Regulations, title 16, section 99(a) these are crimes substantially related to the qualifications, functions and duties of a certified public accountant.

SECOND CAUSE FOR DISCIPLINE

(Violations of the Chapter)

16. Paragraphs 12 through 14 are incorporated herein as though set forth at length. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 5100(g), in that Respondent willfully violated Code section 5063 by failing to report his felony conviction to the CBA within 30 days of the conviction.

THIRD CAUSE FOR DISCIPLINE

(Embezzlement, Theft, and Misappropriation of Funds or Property)

17. Paragraphs 12 through 14 are incorporated herein as though set forth at length. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 5100(k), in that Respondent converted, stole, diverted, misappropriated, or embezzled money, property, or other valuable consideration by illegal conduct, fraudulent means or false pretenses.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty and Breach of Fiduciary Duty)

18. Paragraphs 12 though 14 are incorporated herein as though set forth at length. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 5100(i) and California Code of Regulations, title 16, section 99(a) because Respondent's actions and conduct were dishonest and a breach of Respondent's fiduciary obligation to the charity. As secretary/treasurer for the charity, Respondent assumed a fiduciary position and responsibility to act in the best interests of the charity at all times in handling the charity's finances and funds entrusted to Respondent. In doing the things specified herein, Respondent breached his fiduciary

duty to the charity and committed actions that were dishonest all to the harm and detriment of the charity and the intended beneficiaries of the charity.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, a decision be issued:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 19229, issued to Kent Paul Maloney;

2. Ordering Kent Paul Maloney, 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. Ordering Kent Paul Maloney to pay the California Board of Accountancy an administrative penalty pursuant to Business and Professions Code section 5116; and

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

DATED: 6/11/2015

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

SA2014118936