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

In the Matter of the Accusation Against:  

BRIAN JOHN SWEET  
10175 N. Archie Ave.  
Fresno, CA 93730  

Certified Public Accountant Certificate No.  
127662  

Respondent.

Case No. AC-2021-25

DECISION AND ORDER

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

This Decision shall become effective on November 1, 2021.

It is so ORDERED October 1, 2021.

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

In the Matter of the Accusation Against:

BRIAN JOHN SWEET
10175 N. Archie Ave.
Fresno, CA 93730

Certified Public Accountant Certificate No.
127662

Respondent.

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

PARTIES

1. Patti Bowers (Complainant) is the Executive Officer of the California Board of Accountancy (CBA). She brought this action solely in her official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, and Shannon M. Brubaker, Deputy Attorney General.

2. Brian John Sweet (Respondent) is representing themself in this proceeding and has chosen not to exercise Respondent’s right to be represented by counsel.

///
3. On or about September 9, 2015, the CBA issued Certified Public Accountant Certificate Number 127662 to Respondent. The Certified Public Accountant Certificate expired on October 31, 2017, and has not been renewed.

JURISDICTION

4. Accusation Number AC-2021-25 was filed before the CBA and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 1, 2021. Respondent timely filed Respondent’s Notice of Defense. A copy of Accusation Number AC-2021-25 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation Number AC-2021-25. Respondent also has carefully read and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of Respondent’s legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at Respondent’s own expense; the right to confront and cross-examine the witnesses against Respondent; the right to present evidence and to testify on Respondent’s own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation Number AC-2021-25, agrees that cause exists for discipline and hereby surrenders Respondent’s Certified Public Accountant Certificate Number 127662 for the CBA's formal acceptance.
9. Respondent understands that by signing this stipulation, Respondent enables the CBA to issue an order accepting the surrender of Respondent’s Certified Public Accountant Certificate without further process.

**CONTINGENCY**

10. This stipulation shall be subject to approval by the CBA. Respondent understands and agrees that counsel for Complainant and the staff of the CBA may communicate directly with the CBA regarding this stipulation and surrender, without notice to or participation by Respondent or Respondent’s counsel. By signing the stipulation, Respondent understands and agrees that Respondent may not withdraw Respondent’s agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the CBA shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

**ORDER**

IT IS HEREBY ORDERED that Certified Public Accountant Certificate Number 127662, issued to Respondent Brian John Sweet, is surrendered and accepted by the CBA.
1. The surrender of Respondent's Certified Public Accountant Certificate and the acceptance of the surrendered license by the CBA shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the CBA.

2. Respondent shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the CBA's Decision and Order.

3. Respondent shall cause to be delivered to the CBA Respondent's pocket license and, if one was issued, Respondent's wall certificate, on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the CBA shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation Number AC-2021-25 shall be deemed to be true, correct and admitted by Respondent when the CBA determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $4,501.57 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 9/8/2021

BRIAN JOHN SWEET
Respondent
ENDORSEMENT

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

DATED: September 14, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

SHANNON M. BRUBAKER
Deputy Attorney General
Attorneys for Complainant
Exhibit A

Accusation No. AC-2021-25
BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BRIAN JOHN SWEET
10175 N. Archie Ave.
Fresno, CA 93730

Certified Public Accountant Certificate No.
CPA 127662

Respondent.

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 September 9, 2015, the CBA issued Certified Public Accountant Certificate Number 127662 to Brian John Sweet (Respondent). The Certified Public Accountant Certificate expired on October 31, 2017, and has not been renewed.
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.

4. Code section 141 states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

5. Code section 490 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. 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.

(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 convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.
6. Code section 493 states:

(a) Notwithstanding any other 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.

(b)(1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

(c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

(d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(e) This section shall become operative on July 1, 2020.

7. Code 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.

(b) Suspension or revocation of the right to practice before any governmental body or agency.

...
(I) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

8. Code section 5100.1 states:

Notwithstanding any other law, in causes for discipline against a licensee under subsections (d), (h), or (l) of Section 5100, the board shall rely on the findings or events stated in a certified or true and correct copy of the disciplinary or other action as conclusive evidence for the purpose of determining discipline.

9. Code section 5100.5, subdivision (a), states:

After notice and hearing the board may, for unprofessional conduct, permanently restrict or limit the practice of a licensee or impose a probationary term or condition on a license, which prohibits the licensee from performing or engaging in any of the acts or services described in Section 5051.

10. Code 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 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.

11. 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.
REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 99, states:

   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:

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

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

   (c) Gross negligence in the practice of public accountancy or in the 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.

13. California Code of Regulations, title 16, section 99.1, states:

   When considering the denial of a certificate or permit under Section 480 of the
   Business and Professions Code, the suspension or revocation of a certificate 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:

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

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

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

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

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

   (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.
COSTS AND ADMINISTRATIVE PENALTIES

14. Code section 5107, subdivisions (a) and (b), state:

(a) 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.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

15. Code section 5116, subdivision (a), states:

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.

FACTUAL ALLEGATIONS

Public Company Accounting Oversight Board (PCAOB) Inspection Program

16. The PCAOB is a nonprofit corporation overseen by the United States Securities and Exchange Commission (SEC), created by the Sarbanes-Oxley Act of 2002 (SOX) and modeled after self-regulatory organizations in the securities industry. The PCAOB conducts a continuing program of inspections of registered public accounting firms (Auditors) to ensure that such firms comply with SOX, SEC, and PCAOB rules and professional standards. PCAOB’s inspections examine the work done by Auditors on audits of publicly traded companies (Issuers). Issuers must disclose annual audited financial statements to register securities with the SEC. The PCAOB inspects the largest United States accounting firms on an annual basis. As part of the inspection process, the PCAOB chooses a subset of audits performed by the Auditors for closer review, commonly referred to as an inspection. Until shortly before an inspection, the PCAOB does not disclose which audits will be inspected, or the focus areas for those inspections, because it wants to ensure that an Auditor does not perform additional work or modify its work papers in anticipation of an inspection. Following an inspection, the PCAOB issues an Inspection Report containing any negative findings or “comments” with respect to both the specific audits reviewed and the Auditor more generally.
KPMG

17. KPMG, LLP (KPMG) is a professional service company and an accounting firm providing audit, tax, and advisory services and is headquartered in New York City. In its audit practice, KPMG serves as the auditor for more than 600 Issuers each year. Because KPMG is among the largest auditors in the United States, it is inspected on an annual basis.

SEC Discipline


19. The SEC Order included the following findings:

a. From approximately 2014 to April 2015, Respondent was employed as an Associate Director in the PCAOB's inspections group. From May 2015 to March 2017, Respondent worked at KPMG as a Partner in the Department of Professional Practice (DPP).

b. In April 2015, on Respondent's last day at PCAOB, Respondent transferred PCAOB files, including confidential inspection-related materials Respondent believed might help at KPMG, to Respondent's personal hard drive. Respondent also retained hard copies of confidential PCAOB documents that Respondent had previously brought home. The materials included the confidential list of KPMG audit engagements the PCAOB intended to inspect in 2015, the focus areas for each inspection, and a list of all the quantitative and qualitative criteria the PCAOB used in deciding which KPMG audit engagements to inspect. Upon joining KPMG in May 2015, Respondent transferred the PCAOB documents from Respondent's personal hard drive to Respondent's KPMG computer.

c. In April 2015, KPMG engaged an outside consultant to help it predict which audit engagements the PCAOB would inspect in 2016. Respondent was directed by Respondent's superiors to share everything Respondent knew with the outside consultant, and Respondent

(BRIAN JOHN SWEET) ACCUSATION
provided information Respondent had taken from the PCAOB regarding its selection criteria to a KPMG colleague and the outside consultant.

d. In May and June 2015, Respondent shared the confidential inspection-related information Respondent had taken from the PCAOB with Respondent’s colleagues at KPMG, including emailing the complete list of KPMG’s clients the PCAOB planned to inspect in 2015.

e. In May and June 2015, Respondent obtained additional confidential inspection-related information from a former colleague at the PCAOB, C.H., which Respondent shared with colleagues at KPMG. C.H. left the PCAOB and joined KPMG as an Executive Director in DPP in August 2015.

f. In March 2016, C.H. learned from a former colleague at the PCAOB which KPMG clients the PCAOB planned to inspect in 2016. C.H. passed the confidential information on to Respondent, and Respondent shared the list with Respondent’s KPMG colleagues. In or around April 2016, Respondent and other partners and managing directors in the DPP reviewed the audit workpapers for seven of the engagements identified on the PCAOB’s confidential list of 2016 inspections and suggested edits and proposed changes to the workpapers.

g. In early 2017, C.H. learned from a former colleague at the PCAOB which KPMG clients the PCAOB planned to inspect in 2017, as well as inspection focus areas and a list of KPMG engagement partners with poor performance evaluations. C.H. relayed the information to Respondent, who then shared it with Respondent’s KPMG colleagues. Respondent was directed to warn certain engagement partners about the impending inspections, which Respondent did. One of those engagement partners suspected the firm may have received confidential PCAOB information, which resulted in an internal investigation being initiated. During the initial stages of KPMG’s internal investigation, Respondent and C.H. attempted to conceal how they learned of the PCAOB’s inspection list for 2017. As part of the plan, Respondent created a false document and provided it to KPMG attorneys during the investigation.

1 Abbreviations are used instead of names to protect the identity of the individuals.
h. Based on the above, the SEC found Respondent willfully violated PCAOB Ethics Code sections EC3, EC9, and PCAOB Rule 3500T, and willfully aided and abetted and caused C.H.'s violations of PCAOB Ethics Code section EC3 and EC9.

i. The SEC further found that Respondent lacks integrity and engaged in improper professional conduct, pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the SEC’s Rules of Practice.

20. Based on its findings, the SEC deemed it appropriate to impose the sanctions agreed to in Respondent’s offer of settlement and ordered as follows:

a. Respondent shall cease and desist from committing or causing any violations and any future violations of PCAOB Ethics Code sections EC3 and EC9 and PCAOB Rule 3500T.

b. Respondent is denied the privilege of appearing or practicing before the SEC as an accountant.

Criminal Conviction

21. Based upon the incidents described above, on or about January 19, 2018, in a criminal proceeding titled United States of America v. Brian Sweet, in United States District Court, Southern District of New York, case number 1:18-cr-000008-JPO, Respondent was convicted on Respondent’s plea of guilty of violating Title 18 of the United States Code section 371, conspiracy to defraud the United States and Title 18 of the United States Code section 1349, attempt and conspiracy to commit wire fraud, both felonies.

22. As a result of the convictions, on or about November 23, 2020, Respondent was sentenced to time served and upon release from imprisonment will serve 3 years of supervised release, along with other terms and conditions.

---

2 PCAOB Ethics Code section EC3 prohibits PCAOB staff from acting in a manner which might reasonably result in or create the appearance that the employee is using confidential information obtained through service for the PCAOB for the private gain of any person.

3 PCAOB Ethics Code section EC9 prohibits PCAOB staff from disseminating or otherwise disclosing any information obtained in the course and scope of their employment, and which has not been released, announced, or otherwise made publicly available.

4 PCAOB Rule 3500T requires members to maintain integrity when performing any professional services in connection with the preparation or issuance of any audit report.
FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by a Federal Agency)

23. Respondent is subject to disciplinary action under Code section 141 in that, on
January 22, 2018, Respondent was disciplined by the SEC, as is more specifically described
above.

SECOND CAUSE FOR DISCIPLINE

(Denial of Right to Practice Before the U.S. Securities and Exchange Commission)

24. Respondent is subject to disciplinary action under Code section 5100, subdivision (h),
in that, on January 22, 2018, Respondent was denied the privilege of appearing or practicing
before the SEC as an accountant. The circumstances are described above.

THIRD CAUSE FOR DISCIPLINE

(Sanction by the U.S. Securities and Exchange Commission)

25. Respondent is subject to disciplinary action under Code section 5100, subdivision (I),
in that, on January 22, 2018, Respondent was disciplined by the SEC. The circumstances are
described above.

FOURTH CAUSE FOR DISCIPLINE

(Criminal Conviction for Conspiracy to Defraud the United States and Attempt and
Conspiracy to Commit Wire Fraud)

26. Respondent is subject to disciplinary action under Code sections 5100, subdivision (a)
and 490, in conjunction with California Code of Regulations, title 16, section 99, in that
Respondent was convicted of a crime that is substantially related to the qualifications, functions,
and duties of a Certified Public Accountant. The circumstances are described above.

PRAYER

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

1. Revoking or suspending, restricting, limiting or otherwise imposing discipline upon
Certified Public Accountant Certificate Number 127662, issued to Brian John Sweet;
2. Ordering Brian John Sweet to pay the CBA the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 5107;

3. Ordering Brian John Sweet to pay the CBA an administrative penalty pursuant to Code section 5116; and,

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

DATED: June 30, 2021

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