

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

In the Matter of the Accusation Against:

Case No. AC-2020-41

**KPMG LLP
Attn: Managing Partner
550 South Hope St., Suite 1500
Los Angeles, CA 90071**

**Certified Public Accountancy Partnership
Certificate No. 157**

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on _____.

It is so ORDERED _____.

October 2, 2020



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

November 2, 2020

1 XAVIER BECERRA
Attorney General of California
2 CARL W. SONNE
Senior Assistant Attorney General
3 THEODORE S. DRGAR
Supervising Deputy Attorney General
4 State Bar No. 174951
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Attorneys for Complainant

8
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-2020-41

12 **KPMG LLP**
13 **Attn: Managing Partner**
14 **550 South Hope St., Suite 1500**
Los Angeles, CA 90071

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Certified Public Accountancy Partnership**
16 **Certificate No. 157**

17 Respondent.

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

21 **PARTIES**

22 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
23 Accountancy, Department of Consumer Affairs (CBA). She brought this action solely in her
24 official capacity and is represented in this matter by Xavier Becerra, Attorney General of the
25 State of California, by Carl W. Sonne, Senior Assistant Attorney General, and Theodore S. Drcar,
26 Supervising Deputy Attorney General.

27 2. KPMG LLP (Respondent or KPMG) is represented in this proceeding by attorney
28 Jodi E. Lopez, Esq., whose address is: Sidley Austin LLP, 555 West Fifth Street, Suite 4000, Los

1 Angeles, CA 90013. KPMG is acting in this proceeding through Scott Flynn, CPA, Vice Chair of
2 Audit for KPMG, who has been designated and authorized by KPMG to enter into this agreement
3 on behalf of the firm (hereafter, “Authorized Representative”).¹

4 3. On or about February 10, 1949, the CBA issued Certified Public Accountancy
5 Partnership Certificate Number 157 to Peat Marwick Mitchell & Co. Subsequent name changes
6 between 1987 and 1999, and a change in status to a limited liability partnership, resulted in the
7 license being held by KPMG LLP (Respondent or KPMG). The Certified Public Accountancy
8 Partnership Certificate² was in full force and effect at all times relevant to the charges brought
9 herein and will expire on February 28, 2021, unless renewed.

10 **JURISDICTION**

11 4. Accusation No. AC-2020-41 was filed before the CBA, Department of Consumer
12 Affairs, and is currently pending against Respondent. The Accusation and all other statutorily
13 required documents were properly served on Respondent on or about September 15, 2020.
14 Respondent timely filed its Notice of Defense contesting the Accusation.

15 5. A copy of Accusation No. AC-2020-41 is attached as Exhibit A and is incorporated
16 here by this reference.

17 **ADVISEMENT AND WAIVERS**

18 6. Respondent, through its Authorized Representative, has carefully read, fully
19 discussed with counsel, and understands the charges and allegations in Accusation No. AC-2020-
20 41. Respondent’s Authorized Representative has also carefully read, fully discussed with counsel,
21 and understands the effects of this Stipulated Settlement and Disciplinary Order.

22 7. Respondent is fully aware of its legal rights in this matter, including the right to a
23 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
24 the witnesses against it; the right to present evidence and to testify on its own behalf; the right to

25 _____
26 ¹ Scott Flynn is not otherwise involved in these proceedings and was not personally
involved in the circumstances which gave rise to the Accusation filed in this matter.

27 ² The terms “Partnership Certificate” and “license” refer to the authority granted to
28 Respondent by the CBA to practice accountancy as a partnership in California, and the terms are
used interchangeably here.

1 the issuance of subpoenas to compel the attendance of witnesses and the production of
2 documents; the right to reconsideration and court review of an adverse decision; and all other
3 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

6 **CULPABILITY**

7 9. Respondent admits the truth of each and every charge and allegation by the CBA in
8 Accusation No. AC-2020-41.

9 10. Respondent agrees that its Partnership Certificate is subject to discipline, and it agrees
10 to be bound by the CBA's probationary terms as set forth in the Disciplinary Order below.
11 Respondent also agrees that a legal and factual basis exists for the imposition of the
12 administrative penalty imposed in the Disciplinary Order below, and it waives any claim to the
13 contrary.

14 **CIRCUMSTANCES IN MITIGATION**

15 11. Several factors mitigate the conduct of Respondent alleged in the Accusation in this
16 matter, including the following:

17 a. The basis for the Accusation's alleged violations of Business and Professions Code
18 sections 141 and 5100, subdivision (l), by Respondent KPMG is the disciplinary order entered
19 against it by the United States Securities and Exchange Commission (SEC) on June 17, 2019, in
20 the action titled *In the Matter of KPMG LLP* (SEC File No. 3-19203). KPMG has presented
21 evidence that it is in compliance with the SEC's disciplinary order.

22 b. During the CBA's investigation of this matter, KPMG was cooperative by producing
23 documents and other information voluntarily, and met with the CBA and its counsel on multiple
24 occasions to provide information pertinent to the Accusation.

25 c. KPMG is admitting responsibility at an early stage in these proceedings.

26 d. Prior to the issuance of the SEC Order, KPMG developed remedial measures,
27 including those specified in the SEC Order, which reduce the risk of a recurrence of the events
28 outlined in the SEC Order. These include:

- 1 • Enhancing its Code of Conduct to emphasize, among other issues, the importance of
2 raising one's hand as well as the protection of confidential information belonging to
3 third-parties;
- 4 • Revising its partnership agreement to provide for inclusion of independent directors on
5 KPMG's Board of Directors and appointing, to date, two such directors who have
6 been fully integrated into the firm's governance functions;
- 7 • Creating the position of Chief Cultural Officer, who is a Vice Chair within KPMG's
8 organization, charged with, among other responsibilities, supporting a sustainable
9 environment in which living the firm's values is recognized and rewarded; and
- 10 • Implementing additional training focusing on recognizing ethical dilemmas,
11 violations, and their consequences.

12 **RESERVATION**

13 12. The admissions made by Respondent herein are only for the purposes of this
14 proceeding, or any other proceedings in which the CBA or other professional licensing agency is
15 involved, and shall not be admissible in any other criminal or civil proceeding.

16 **CONTINGENCY**

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

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

1 of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order”
2 (*In the Matter of KPMG LLP*, Securities Exchange Act of 1934 Release No. 86118, Accounting
3 and Auditing Enforcement Release No. 4051, Administrative Proceeding No. 3-19203) and report
4 such compliance in its quarterly reports submitted to the CBA.

5 **4. Personal Appearances**

6 Respondent shall, during the period of probation, appear in person through an authorized
7 representative at interviews/meetings as directed by the CBA or its designated representatives,
8 provided such notification is accomplished in a timely manner.

9 **5. Comply With Probation**

10 Respondent shall fully comply with the terms and conditions of the probation imposed by
11 the CBA and shall cooperate fully with representatives of the CBA in its monitoring and
12 investigation of the Respondent’s compliance with probation terms and conditions. Respondent
13 shall identify a contact person or persons, including at a minimum, a CBA licensee with a current,
14 active license in California and whose primary office is in California, who shall act on behalf of
15 Respondent during the period of probation. Failure to complete the probationary requirements
16 shall automatically extend the period of probation and the CBA shall have continuing jurisdiction
17 of this matter until the condition is satisfied.

18 **6. Practice Investigation**

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

23 **7. Comply With Citations**

24 Respondent shall comply with all final orders resulting from citations issued by the CBA.

25 **8. Violation of Probation**

26 If Respondent violates probation in any respect, the CBA, after giving Respondent notice
27 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
28 was stayed. If an accusation or a petition to revoke probation is filed against Respondent during

1 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
2 probation shall be extended until the matter is final.

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

6 **9. Completion of Probation**

7 Upon successful completion of probation, Respondent's license will be fully restored.

8 **10. Active License Status**

9 Respondent shall at all times maintain an active license status with the CBA, including
10 during any period of suspension. If the license is expired at the time the CBA's decision becomes
11 effective, the license must be renewed within 30 days of the effective date of the decision.

12 **11. Dissemination of the Stipulated Settlement**

13 Within 15 days of the effective date of this Disciplinary Order, Respondent shall disseminate
14 this Stipulated Settlement and Disciplinary Order to all its professional personnel licensed or
15 officed in California and shall confirm such dissemination in writing to the CBA.

16 **12. Cooperation with the CBA**

17 Respondent voluntarily agrees to fully cooperate with, and upon reasonable notice, make its
18 partners and employees available to the CBA and its designee without the necessity of subpoena,
19 in any investigation by the CBA regarding the actions described in the SEC Order, including, but
20 not limited to, the providing of truthful interviews, statements, affidavits, declarations, and any
21 other documents or other types of information requested, consistent with the requirements of
22 confidentiality and law. If asked to do so, Respondent shall cooperate with the CBA and shall,
23 upon reasonable notice, furnish representatives to testify at any subsequent administrative or civil
24 proceeding at CBA's request.

25 This provision shall not in any way limit the CBA's monitoring of Respondent's compliance
26 with the terms of this Disciplinary Order.

27 ///

28 ///

1 **13. Continuing Education Development and Delivery**

2 Within 12 months of the effective date of this decision and order, Respondent shall develop
3 four hours of continuing education emphasizing the subject area of ethics and make said hours
4 available to all California-licensed CPAs at no costs. The hours must be provided in either self-
5 study or webcast methods. Prior to making the continuing education available to all California-
6 licensed CPAs, Respondent shall obtain approval of the hours from the CBA or its
7 designee. Respondent will provide the CBA with information and an Internet web link to provide
8 to California-licensed CPAs for the CBA to inform licensees about the availability of the
9 continuing education hours, and how licensees can register to obtain the hours free of
10 charge. Respondent shall make the hours available to all California-licensed CPAs for 18 months
11 after the hours are approved by the CBA or its designee. The 18-month period shall commence
12 upon Respondent receiving approval of the hours from the CBA or its designee. Respondent is
13 responsible for all costs associated with the development, approval, delivery, certificates of
14 completion and record retention that is associated with and required for the continuing education
15 hours. The hours, method of study, and issuance of certificates of completion must conform to
16 California Code of Regulations, title 16, sections 88, 88.1, and 88.2.

17 **14. Continuing Education for Respondent's Personnel**

18 Within 12 months of the approval of the continuing education hours described in
19 Probationary Term 13, Respondent shall have all of its California-licensed employees complete
20 the hours. At its option, Respondent may provide the hours to its personnel in a live, in-person
21 format, but if so, Respondent must still provide the hours to other California-licensed CPAs via
22 self-study or webcast, as stated above in Probationary Term 13.

23 Within 13 months of the approval of the continuing education hours described in
24 Probationary Term 13, Respondent shall provide a list of all its personnel who attended the
25 training, and upon request by the CBA or its designee, Respondent shall provide the certificates
26 of completion. If Respondent fails to provide this documentation within the specified length of
27 time, it shall constitute a violation of probation. For those California-licensed individuals among
28 Respondent's personnel who attend the training, the hours of professional education shall not be

1 counted towards the CBA's continuing education requirements (set forth in Business and
2 Professions Code section 5027 and California Code of Regulations, title 16, section 87), but
3 otherwise may be counted towards requirements for federal or non-CBA purposes or programs.

4 **15. Administrative Penalty**

5 Respondent shall pay to the CBA an administrative penalty in the amount of \$1,300,000.00.
6 The administrative penalty shall be paid to the CBA within 60 days of the effective date of this
7 Disciplinary Order.

8 **16. Cost Reimbursement**

9 Respondent shall reimburse the CBA a sum not to exceed \$50,000.00 for its investigation
10 and prosecution costs of this matter, as well as the costs of probation monitoring. The CBA will
11 periodically present Respondent with a certified statement of costs to date, including additional
12 costs incurred during probation, and Respondent shall pay those costs to the CBA within 30 days
13 thereafter. If costs are billed after the completion of the probationary period, the obligation to pay
14 the costs shall continue, but that shall not extend the probation.

15 **ACCEPTANCE**

16 I, Scott Flynn, CPA and Vice Chair of Audit for KPMG, have been authorized to act on
17 Respondent's behalf in this matter, and have carefully read the above Stipulated Settlement and
18 Disciplinary Order and have fully discussed it with our attorney, Jodi E. Lopez, Esq. I understand
19 the stipulation and the effect it will have on Respondent's Partnership Certificate. On behalf of
20 Respondent KPMG, as its authorized representative, I enter into this Stipulated Settlement and
21 Disciplinary Order voluntarily, knowingly, and intelligently, and Respondent agrees to be bound
22 by the Decision and Order of the California Board of Accountancy.

23
24 DATED: September 16, 2020




25 For KPMG LLP
26 Name: Scott Flynn, CPA
27 Title: Partner
28 Authorized Representative

///

1 I have read and fully discussed with Scott Flynn, the Authorized Representative of
2 Respondent KPMG, the terms and conditions and other matters contained in the above Stipulated
3 Settlement and Disciplinary Order. I approve its form and content.

4
5 DATED: September 16, 2020



6 Jodi E. Lopez, Esq.
7 SIDLEY AUSTIN LLP
8 Attorney for Respondent

9 **ENDORSEMENT**

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

12 Dated:

Respectfully submitted,

13 XAVIER BECERRA
14 Attorney General of California
15 CARL W. SONNE
16 Senior Assistant Attorney General


17 THEODORE S. DR CAR
18 Supervising Deputy Attorney General
19 *Attorneys for Complainant*

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Exhibit A

Accusation No. AC-2020-41

1 XAVIER BECERRA
Attorney General of California
2 CARL W. SONNE
Senior Assistant Attorney General
3 THEODORE S. DRGAR
Supervising Deputy Attorney General
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Ted.Drcar@doj.ca.gov
8 *Attorneys for Complainant*

9
10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. AC-2020-41

14 **KPMG LLP**
15 **Attn: Managing Partner**
550 South Hope St., Suite 1500
16 **Los Angeles, CA 90071**

ACCUSATION

17 **Certified Public Accountancy Partnership**
18 **Certificate No. 157**

19 Respondent.

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 February 10, 1949, the California Board of Accountancy (CBA) issued
24 Certified Public Accountancy Partnership Certificate Number 157 to Peat Marwick Mitchell &
25 Co. Subsequent name changes between 1987 and 1999, and a change in status to a limited
26 liability partnership, resulted in the license being held by KPMG LLP (Respondent or KPMG).
27 The Certified Public Accountancy Partnership Certificate was in full force and effect at all times
28 relevant to the charges brought herein and will expire on February 28, 2021, unless renewed.

1 **JURISDICTION AND STATUTORY PROVISIONS**

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

5 4. Code section 141 states:

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

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

18 5. Code section 5100 states:

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

24

25 (l) The imposition of any discipline, penalty, or sanction on a registered public
26 accounting firm or any associated person of such firm, or both, or on any other holder
27 of a permit, certificate, license, or other authority to practice in this state, by the
28 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.

. . . .

6. 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.

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28

1 7. Code section 5100.5, subdivision (a), states:

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

5 8. Code section 5109 states:

6 The expiration, cancellation, forfeiture, or suspension of a license, practice
7 privilege, or other authority to practice public accountancy by operation of law or
8 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
9 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
10 suspending or revoking the license.

11 9. Code section 5116 provides that the CBA may order any licensee or applicant for
12 licensure or examination to pay an administrative penalty as provided in this article as part of any
13 disciplinary proceeding. Administrative penalties assessed under this article shall be in addition
14 to any other penalties or sanctions imposed on the licensee or other person, including, but not
15 limited to, license revocation, license suspension, denial of the application for licensure, denial of
16 the petition for reinstatement, or denial of admission to the licensing examination. Payment of
17 these administrative penalties may be included as a condition of probation when probation is
18 ordered.

19 10. Code section 5116.4, subdivision (a), states:

20 The board's executive officer may request assessment of an administrative
21 penalty in any disciplinary or other proceeding provided in this chapter or in any
notice to an applicant pursuant to Section 5112.

22 **COST RECOVERY**

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

24 (a) The executive officer of the board may request the administrative law
25 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
26 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
27 of the case, including, but not limited to, attorneys' fees. The board shall not recover
costs incurred at the administrative hearing.

28 ///

1 (b) A certified copy of the actual costs, or a good faith estimate of costs where
2 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.

3 **FACTUAL ALLEGATIONS**

4 12. On or about June 17, 2019, in an action titled *In the Matter of KPMG LLP*, No. 3-
5 19203, the United States Securities and Exchange Commission (SEC) imposed sanctions on
6 Respondent by means of its “Order Instituting Public Administrative and Cease-and-Desist
7 Proceedings pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule
8 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial
9 Sanctions and a Cease-and-Desist Order” (SEC Order).

10 13. In advance of the SEC proceeding, Respondent submitted an Offer of Settlement
11 which the SEC accepted. Respondent admitted the findings in the SEC Order, consented to its
12 entry, admitted that its conduct violated Public Company Accounting Oversight Board (PCAOB)
13 Rule 3500T (ethics and independence standards¹), and admitted that the SEC had jurisdiction and
14 authority to impose the remedies set forth in the SEC Order.

15 14. As stated in paragraph 1 of the SEC Order, KPMG’s actions involved “two separate
16 courses of misconduct that resulted in violations of the fundamental requirement that auditors act
17 with integrity.”

18 15. The first course of misconduct concerned improperly obtaining confidential
19 information from PCAOB for the purpose of improving the results in PCAOB’s annual
20 inspections of KPMG’s public company audits. The KPMG partners who orchestrated this
21 misconduct included then-partners David Britt and Brian Sweet, who were licensed by CBA as
22 Certified Public Accountants (CPAs). This scheme was executed by Respondent through PCAOB
23 personnel in California who was licensed by CBA as a CPA. This included Jeffrey Wada, an
24 Inspections Leader at the PCAOB from 2012 to 2017. It also included Brian Sweet, who had been

25 _____
26 ¹ PCAOB Rule 3500T requires a public accounting firm and its personnel to comply with
27 The American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct
28 Rules 101 (Independence) and 102 (Integrity and Objectivity). AICPA Rule 102 provides: “In the
performance of any professional service, a member shall maintain objectivity and integrity, shall
be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or
her judgment to others.”

1 an Associate Director of PCAOB's inspections program and who had worked on the team
2 inspecting KPMG's public company audits. Just before leaving employment with PCAOB to take
3 a position with Respondent as a partner, Mr. Sweet took information about PCAOB's plans for
4 upcoming inspections of Respondent's audits. Subsequently, he shared it with Respondent's
5 National Partner-in-Charge for Quality Measurement.

6 16. The misconduct with respect to PCAOB inspections is summarized at paragraphs 2
7 and 3 of the SEC Order, as follows:

8 2. First, from 2015 to 2017, now-former senior members of KPMG's Audit
9 Quality and Professional Practice group ("AQPP" or "National Office") – which is
10 responsible for the firm's system of quality control – improperly obtained and used
11 confidential information belonging to the Public Company Accounting Oversight
12 Board ("PCAOB" or "Board") in an effort to improve the results of the PCAOB's
13 annual inspections of KPMG audits. The information obtained included lists of the
14 specific audit engagements the PCAOB planned to inspect, the criteria the PCAOB
15 used to select engagements for inspection, and the focus areas of the inspections. The
16 personnel sought the information because the firm had experienced a high rate of
17 audit deficiency findings in prior PCAOB inspections and had made improving its
18 inspection results a priority.

19 3. After obtaining the confidential list of the PCAOB's planned inspections
20 in 2016, the now-former KPMG personnel oversaw a program to review and revise
21 certain audit workpapers after the audit reports had been issued to reduce the
22 likelihood that the PCAOB would find deficiencies in those audits. This effort
23 resulted in a substantial improvement to KPMG's 2016 inspection results. In 2017,
24 the now-former KPMG personnel again obtained the list of audit engagements that
25 the PCAOB planned to inspect, but the misconduct was discovered by others within
26 the firm and reported to KPMG leadership before relevant workpapers could be
27 changed. In addition, a now-former KPMG partner attempted to use improperly-
28 obtained confidential information relating to the PCAOB's inspection of another audit
firm to win new business for KPMG.

17. The second course of misconduct involved certain of Respondent's audit
professionals improperly sharing internally administered training exam answers and/or
manipulating the scoring of training exams, which is summarized at paragraphs 4 to 7 of the
SEC Order, as follows:

4. Second, before, during, and after the senior National Office professionals
used confidential PCAOB information, KPMG audit professionals – at all levels of
seniority – engaged in misconduct in connection with examinations on internally-
administered training courses that were intended to test whether they understood a
variety of accounting principles and other topics of importance.

5. This misconduct took a variety of forms. KPMG audit professionals
shared exam answers with one another. A number of audit partners gave exam
answers to other partners, and a number also sent answers to and solicited answers

1 from their subordinates. In addition, for a period of time up to November 2015,
2 certain audit professionals made unauthorized changes to KPMG’s server instructions
3 that allowed them to manually select the scores necessary to pass the tests, which they
4 often lowered to the point of passing exams with less than 25 percent of the questions
5 answered correctly. The exams related to a variety of subjects that were relevant to
the test-takers’ audit practices, and included additional training required by a 2017
Commission Order after the Commission found that KPMG engaged in improper
professional conduct and had caused a client’s reporting violations. [Footnote
omitted.]

6 6. After discovering the training-related misconduct, KPMG reported the
7 matter to Commission staff and appointed a Special Committee of its Board of
8 Directors to oversee an internal investigation. During that investigation, two now-
9 former partners who had shared exam answers deleted relevant documents. One of
those partners and certain other audit professionals made misrepresentations to the
firm’s investigators.

10 7. KPMG is required, both by PCAOB rules and by the Code of Conduct of
11 the American Institute of Certified Public Accountants (“AICPA”), to act with
12 integrity in connection with the professional services it provides its clients.⁵ Certified
13 public accountants are required to “be, among other things, honest and candid within
the constraints of client confidentiality.”⁶ By the misconduct described herein, these
professionals caused KPMG’s failure to act with the integrity required of a public
company auditor.⁷

14 18. The SEC Order outlined two examples of the misconduct that involved sharing
15 internally administered training exam answers. One example, at paragraph 56 of the SEC
16 Order, details the misconduct of “Former Partner 2,” who was a California licensee:

17 56. In another example, a lead audit engagement partner who is no longer
18 with the firm (“Former Partner 2”) also answered “no” to the December 2018
19 questionnaire that asked whether he had sent or received answers to KPMG training
20 programs. In fact, Former Partner 2 had received answers to training exams on seven
occasions and sent answers to training exams on three occasions - all within eight
months of completing the survey, and all with junior members of his engagement
team.

21 ⁵ PCAOB Rule 3500T requires KPMG to maintain integrity when performing any
22 professional service in connection with the preparation or issuance of any audit report. As an
23 AICPA member, KPMG was required to comply with the AICPA’s Code of Professional
24 Conduct, which requires the firm to maintain integrity in connection with all professional
services. The AICPA also prohibits members from committing acts “discreditable to the
profession.” See AICPA Code of Conduct 1.400.001 (“Acts Discreditable Rule”). [Footnote in
original.]

25 ⁶ See “Principles of Professional Conduct,” ET Section 54 (available at
<https://www.aicpa.org/Research/Standards/CodeofConduct/DownloadableDocuments/2011June1CodeOfProfessionalConduct.pdf>). Codified as AICPA Code 0.300.040. [Footnote in original.]

26 ⁷ KPMG’s conduct also failed to conform to the requirements of PCAOB Quality Control
27 Standards (“QC”) requiring registered firms to “have a system of quality control for its
28 accounting and auditing practice” that provides “reasonable assurance that (a) personnel . . .
perform all professional responsibilities with integrity.” QC 20.01 and 20.09. [Footnote in
original.]

1 19. As stated in paragraphs 59 to 61 of the SEC Order, the SEC found that
2 “KPMG willfully violated PCAOB Rule 3500T, which requires KPMG and associated
3 persons to comply with ethics standards,” (¶59) “KPMG failed to comply with AICPA
4 Code of Conduct 1.400.001” (¶60) and “KPMG failed to comply with [PCAOB Quality
5 Control Standard] QC 20.” (¶61)

6 20. Based on the admitted misconduct, paragraphs 65 through 82 of the SEC
7 Order imposed “undertakings” to address the misconduct, including, but not limited to, the
8 following:

9 (a) “KPMG shall evaluate the sufficient and adequacy of its quality controls
10 relevant to ethics and integrity ... to determine whether they are designed and
11 implemented in a manner that provides reasonable assurance of compliance with all
12 professional standards relating to ethics and integrity.” (SEC Order, ¶65) Respondent
13 agreed to submit a report to the SEC summarizing its review and any changes made
14 to its policies and procedures, with written evidence about how they are designed and
15 implemented to assure compliance with professional ethics standards (SEC Order,
16 ¶66);

17 (b) A special committee composed of independent directors and non-audit
18 partners will identify and report on the extent to which Respondent’s audit
19 professionals violated ethics and integrity requirements with respect to training
20 examinations in the preceding three years, and will recommend employment actions
21 or other remedial steps (SEC Order, ¶¶67-68);

22 (c) An independent consultant will review the reports described above, to
23 determine if Respondent’s policies and procedures for ethics are sufficient, to assess
24 the extent to which the special committee identified the audit professionals who
25 engaged in exam sharing, and to assess the extent to which Respondent followed the
26 special committee’s recommendations. The independent consultant will issue its own
27 report with recommendations about: changes to Respondent’s policies and procedures
28 relating to ethics and integrity; Respondent’s ethics and integrity training; additional

1 steps Respondent should take to identify the professionals responsible for training
2 exam misconduct, and the extent of their involvement; and employment actions or
3 other remedial steps to be taken in response to the special committee’s findings.
4 Respondent shall then adopt and implement the independent consultant’s
5 recommendations and certify its compliance with them, or otherwise respond in the
6 manner provided in the SEC Order (SEC Order, ¶¶69-71 and 73); and

7 (d) For a three-year period, all of Respondent’s audit professionals will
8 “complete a minimum of 12 hours of ethics and integrity training each year, with a
9 minimum of 3 hours of such training occurring every three months” (SEC Order,
10 ¶72).

11 21. In addition to the undertakings, the SEC ordered the following:

12 (a) Respondent was ordered to cease and desist from committing violations of
13 PCAOB Rule 3500T;

14 (b) Respondent was censured; and

15 (c) Respondent was ordered to pay a civil penalty of \$50,000,000 to the SEC.

16 **CAUSES FOR DISCIPLINE**

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Disciplinary Action by a Federal Agency)**

19 22. Respondent is subject to disciplinary action under Code section 141, in that
20 Respondent was disciplined, penalized and/or sanctioned by the Securities and Exchange
21 Commission for an act substantially related to the practice regulated by the CBA, as described
22 above.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Discipline by the Securities and Exchange Commission)**

25 23. Respondent is subject to disciplinary action under Code section 5100, subdivision (l),
26 in that Respondent was disciplined, penalized and/or sanctioned by the Securities and Exchange
27 Commission, as described above.

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1 **DISCIPLINE CONSIDERATIONS**

2 24. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on January 9, 2008, in a prior disciplinary action titled *In the Matter of*
4 *the Accusation Against KPMG LLP* before the CBA, Case Number AC-2006-28, Respondent
5 entered a Stipulated Settlement in which it admitted the truth of the allegations set forth in the
6 Statement of Facts attached to Accusation No. AC-2006-28. The Statement of Facts came from a
7 Deferred Prosecution Agreement (DPA) that Respondent entered with the United States
8 Attorney's Office for the Southern District of New York on or about August 26, 2005. With the
9 DPA, Respondent consented to the filing of an Information in the Southern District of New York
10 that charged it with conspiracy to defraud the United States and Internal Revenue Service, tax
11 evasion, making and subscribing false and fraudulent tax returns, and aiding and assisting in the
12 preparation and filing of said tax returns.

13 25. KPMG entered a plea of not guilty to the Information, but admitted and accepted the
14 DPA Statement of Facts. In part, KPMG admitted that:

15 From 1996 through 2002, KPMG, through its tax partners, assisted high net worth
16 United States Citizens to evade United States individual income taxes on billions of
17 dollars in capital gain and ordinary income by developing, promoting, and
18 implementing unregistered and fraudulent tax shelters. A number of KPMG tax
19 partners engaged in conduct that was unlawful and fraudulent, including: (i) preparing
20 false and fraudulent tax returns for shelter clients; (ii) drafting false and fraudulent tax
21 recitations and representations as part of the documentation underlying the shelters;
22 (iii) issuing opinions that contained those false and fraudulent statements and that
23 purported to rely upon those representations, although the KPMG tax partners and the
24 high net worth individual clients knew they were not true; (iv) actively taking steps to
25 conceal from the IRS these shelters and the true facts regarding them; and (v)
26 impeding the IRS by knowingly failing to locate and produce all documents called for
27 by IRS summonses and misrepresenting to the IRS the nature and extent of KPMG's
28 role with respect to certain tax shelters."

23 26. In the DPA, KPMG agreed to pay a total of \$456,000,000 to the United States,
24 including disgorgement of \$128,000,000 of fees, restitution of \$228,000,000 to the IRS for actual
25 losses, and an IRS penalty of \$100,000,000. Respondent agreed to "permanent restrictions and
26 elevated standards" for its tax practice; it agreed to comply with the PCAOB's rules concerning
27 independence, tax services and contingent fees; and it agreed to implement and maintain an
28 effective compliance and ethics program, including a permanent compliance office and

1 permanent training program relating to the laws and ethics governing the Respondent's work.
2 Based upon KPMG's compliance with the terms of the DPA, the Information was dismissed on
3 January 3, 2007.

4 27. Respondent's Stipulated Settlement of CBA Case Number AC-2006-28 also admitted
5 that its partnership certificate was subject to discipline under Code sections 125, 5100 and 5101
6 as set forth in the Accusation. Respondent admitted that former KPMG tax partners and
7 employees licensed in California were among those who developed, promoted and implemented
8 its illegal tax shelter schemes. Respondent's license was suspended for one year, with the
9 suspension stayed while the license was on probation for three years on specified terms and
10 conditions, and Respondent was ordered to pay an administrative sanction of \$1,000,000 plus
11 CBA's costs of investigation and enforcement. CBA adopted the Stipulated Settlement with a
12 Decision and Order effective January 18, 2008.

13 **PRAYER**

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

16 1. Revoking or suspending, restricting, limiting or otherwise imposing discipline upon
17 Certified Public Accountancy Partnership Certificate Number 157, issued to KPMG LLP;

18 2. Ordering KPMG LLP to pay the California Board of Accountancy the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 5107;

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3. Ordering KPMG LLP 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: _____ *Patt. Bowers*

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

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