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**FILED**

OCT 13 2016

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

*filed in open court*

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

12  
13 In the Matter of: ) Case No. 12-O-18163-PEM <sup>RAO</sup> AMENDED  
14 DAVID ALAN SHAFER, )  
No. 86436, ) NOTICE OF DISCIPLINARY CHARGES  
15 )  
16 A Member of the State Bar )

**NOTICE - FAILURE TO RESPOND!**

17  
18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**  
19 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**  
20 **THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**  
22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**  
23 **WILL NOT BE PERMITTED TO PRACTICE LAW;**  
24 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**  
25 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**  
26 **AND THE DEFAULT IS SET ASIDE, AND;**  
27 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**  
28 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**  
**OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**  
**ORDER RECOMMENDING YOUR DISBARMENT WITHOUT**  
**FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,**  
**RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

The State Bar of California alleges:

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JURISDICTION

1. David Alan Shafer ("respondent") was admitted to the practice of law in the State of California on May 31, 1979, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE - AMENDED

Case No. 12-O-18163  
Rules of Professional Conduct, rule 3-310(B)(1)  
[Conflict - Relationship with a Party or Witness]

2. In or about March 22, 2010 and continuing thereafter, respondent accepted and thereafter continued representation of his client Strategic Tax Solutions ("STS") to: (1) assist with incorporation of STS, (2) provide general legal advice, (3) provide advice and counsel regarding the formation of a business venture with Mann, Urrutia and Nelson, CPA's and Associates, LLP ("MUN"), (4) negotiating the modification of an April 22, 2010 business agreement to a more permanent strategic alliance agreement in which among other things, STS and MUN would swap shares as well as changing the compensation and reimbursement obligations between STS and MUN, and (5) dilute the shares of STS in the share swap with MUN, all without providing written disclosure to the client that respondent had an existing legal, business, professional and personal relationship with Christopher Mann, John Urrutia and Mann, Urrutia and Nelson, CPA's and Associates, LLP, a party in STS's same matter, in willful violation of the Rules of Professional Conduct, rule 3-310(B)(1).

COUNT TWO - DISMISSED

Case No. 12-O-18163  
Rules of Professional Conduct, rule 3-310(B)(1)  
[Conflict - Relationship with a Party or Witness]

3. On or about March 22, 2010, respondent accepted representation of his client Strategic Tax Solutions ("STS") regarding the formation of a joint venture with Mann, Urrutia and Nelson, CPA's and Associates, LLP ("MUN"), without providing written disclosure to the client that respondent had an existing legal, business, professional and personal relationship

1 Christopher Mann, John Urrutia and MUN, parties in STS's joint venture with MUN, in  
2 willful violation of the Rules of Professional Conduct, rule 3-310(B)(1).

3 COUNT THREE - DISMISSED

4 Case No. 12-O-18163  
5 Rules of Professional Conduct, rule 3-310(B)(3)  
6 [Conflict - Relationship with an Interested Person or Entity]

7 4. On or about March 22, 2010 and thereafter in or about May 2011, respondent  
8 continued representation of a client, Strategic Tax Solutions ("STS") regarding the formation  
9 of a joint venture with Mann, Urrutia and Nelson, CPA's and Associates, LLP ("MUN") and  
10 subsequently regarding the modification of an April 22, 2010 joint venture agreement to a  
11 more permanent strategic alliance agreement in which among other things, STS and Mann,  
12 Urrutia and Nelson, CPA's and Associates, LLP ("MUN") would swap shares without  
13 providing written disclosure to the client that respondent has and had a legal, professional and  
14 business relationship with persons or entities Christopher Mann, John Urrutia and MUN, which  
15 respondent knew or reasonably should have known would be affected substantially by the  
16 resolution of the matter in that respondent was acting as the attorney for both STS and MUN in  
17 their joint venture negotiations, in willful violation of the Rules of Professional Conduct, rule  
18 3-310(B)(3).

19 COUNT FOUR - DISMISSED

20 Case No. 12-O-18163  
21 Rules of Professional Conduct, rule 3-310(B)(4)  
22 [Conflict - Interest in Subject Matter]

23 5. On or about March 22, 2010, and thereafter in or about May 2011, respondent  
24 continued representation of a client, Strategic Tax Solutions ("STS") in the formation of a joint  
25 venture with Mann, Urrutia and Nelson, CPA's and Associates, LLP ("MUN") and  
26 subsequently regarding the modification of an April 22, 2010 joint venture agreement to a  
27 more permanent strategic alliance agreement in which among other things STS and Mann,  
28 Urrutia and Nelson, CPA's and Associates, LLP ("MUN") would swap shares, without  
providing written disclosure to the client that respondent had a business and financial interest

1 in the subject matter of the representation, specifically respondent was to become an STS  
2 shareholder and thereafter had become a shareholder, in willful violation of the Rules of  
3 Professional Conduct, rule 3-310(B)(4).

4 COUNT FIVE - AMENDED

5 Case No. 12-O-18163  
6 Rules of Professional Conduct, rule 3-310(C)(1)  
7 [Potential Conflict - Representing Multiple Clients]

8 6. On or about March 22, 2010 and in or about May 2011, respondent accepted  
9 representation of multiple clients, Strategic Tax Solutions (“STS”) and Mann, Urrutia and  
10 Nelson, CPA’s and Associates, LLP (“MUN”) in joint representation regarding the formation  
11 of a joint venture and regarding the modification of an April 22, 2010 joint venture agreement  
12 to a more permanent strategic alliance agreement in which MUN and STS would swap shares.  
13 At that time, the interests of the clients potentially conflicted in that the goals of STS and MUN  
14 both were to optimize their return from the joint venture. Respondent failed to inform the  
15 clients of the relevant circumstances and of the actual and reasonably foreseeable adverse  
16 consequences to the clients and failed to obtain the written consent of each client, in willful  
17 violation of the Rules of Professional Conduct, rule 3-310(C)(1).

18 COUNT SIX - AMENDED

19 Case No. 12-O-18163  
20 Rules of Professional Conduct, rule 3-310(C)(2)  
21 [Actual Conflict - Representing Multiple Clients]

22 7. On or about March 22, 2010, and in or about May 2011, respondent accepted  
23 representation of multiple clients, Strategic Tax Solutions (“STS”) and Mann, Urrutia and  
24 Nelson, CPA’s and Associates, LLP (“MUN”) in joint representation regarding the formation  
25 of a joint venture and subsequently regarding the modification of an April 22, 2010 joint  
26 venture agreement to a more permanent strategic alliance agreement in which MUN and STS  
27 would swap shares. At that time, the interests of the clients actually conflicted in that the goals  
28 of STS and MUN both were to optimize their return from the joint venture. Respondent failed

1 to inform the clients of the relevant circumstances and of the actual and reasonably foreseeable  
2 adverse consequences to the clients and failed to obtain the written consent of each client, in  
3 willful violation of the Rules of Professional Conduct, rule 3-310(C)(2).

4 COUNT SEVEN - AMENDED

5 Case No. 12-O-18163  
6 Rules of Professional Conduct, rule 3-300  
7 [Acquiring Interest Adverse to Client]

8 8. On or about April 26, 2010, respondent acquired an interest adverse to respondent's  
9 client, Strategic Tax Solutions ("STS"), in willful violation of the Rules of Professional  
10 Conduct, rule 3-300 when:

11 April 26, 2010 transaction -

- 12
- 13 • Respondent acquired the adverse interest on terms which were not fair and  
14 reasonable to STS in that respondent accepted compensation of ten percent of  
15 STS's shares in exchange for the legal and marketing work respondent agreed to  
16 provide STS without conducting any evaluation of the value of the shares  
17 respondent accepted and without agreeing on the nature of the services  
18 respondent agreed to provide to STS in exchange for the shares;
- 19 • Respondent did not fully disclose in writing to STS the terms of the acquisition  
20 or the adverse interest in a manner which should reasonably have been  
21 understood by STS;
- 22 • Respondent did not advise STS in writing that STS may seek the advice of an  
23 independent lawyer of the client's choice and did not give the client a reasonable  
24 opportunity to seek that advice;
- 25 • STS did not consent in writing to the terms of the adverse interest.
- 26

27 COUNT EIGHT - DISMISSED

1 Case No. 12-O-18163  
2 Rules of Professional Conduct, rule 3-310(C)(1)  
3 [Potential Conflict - Representing Multiple Clients]

4 9. In or about May 2011, respondent accepted representation of multiple clients,  
5 Strategic Tax Solutions (“STS”) and Mann, Urrutia and Nelson, CPA’s and Associates, LLP  
6 (“MUN”) in joint representation regarding the modification of an April 22, 2010 joint venture  
7 agreement to a more permanent strategic alliance agreement in which MUN and STS would  
8 swap shares. At that time, the interests of the clients potentially conflicted in that the goals of  
9 STS and MUN both were to optimize their return from the strategic alliance agreement.  
10 Respondent failed to inform the clients of the relevant circumstances and of the actual and  
11 reasonably foreseeable adverse consequences to the clients and failed to obtain the written  
12 consent of each client, in willful violation of the Rules of Professional Conduct, rule 3-  
13 310(C)(1).

14 COUNT NINE - DISMISSED

15 Case No. 12-O-18163  
16 Rules of Professional Conduct, rule 3-310(C)(2)  
17 [Actual Conflict - Representing Multiple Clients]

18 10. In or about May 2011, respondent accepted representation of multiple clients,  
19 Strategic Tax Solutions (“STS”) and Mann, Urrutia and Nelson, CPA’s and Associates, LLP  
20 (“MUN”) in joint representation regarding the modification of an April 22, 2010 joint venture  
21 agreement to a more permanent strategic alliance agreement in which MUN and STS would  
22 swap shares. At that time, the interests of the clients actually conflicted in that the goals of STS  
23 and MUN both were to optimize their return from the strategic alliance agreement. At that  
24 time, the interests of the clients actually conflicted in that the goals of STS and MUN both  
25 were to optimize their return from the strategic alliance agreement. Respondent failed to  
26 inform the clients of the relevant circumstances and of the actual and reasonably foreseeable  
27 adverse consequences to the clients and failed to obtain the written consent of each client, in  
28 willful violation of the Rules of Professional Conduct, rule 3-310(C)(2).

COUNT TEN - DISMISSED

1 Case No. 12-O-18163  
2 Rules of Professional Conduct, rule 3-310(B)(3)  
3 [Conflict - Relationship with an Interested Person or Entity]

4 11. In or about May 2011, respondent continued representation of a client, Strategic  
5 Tax Solutions ("STS") regarding the modification of an April 22, 2010 joint venture agreement  
6 to a more permanent strategic alliance agreement in which STS and Mann, Urrutia and Nelson,  
7 CPA's and Associates, LLP ("MUN") would swap shares, without providing written disclosure  
8 to the client that respondent has and had a legal, professional and business relationship with  
9 persons or entities Christopher Mann, John Urrutia and MUN, which respondent knew or  
10 reasonably should have known would be affected substantially by the resolution of the matter  
11 in that respondent was acting as the attorney for both STS and MUN in their strategic alliance  
12 agreement negotiations, in willful violation of the Rules of Professional Conduct, rule 3-  
13 310(B)(3).

14 COUNT ELEVEN - DISMISSED

15 Case No. 12-O-18163  
16 Rules of Professional Conduct, rule 3-310(B)(4)  
17 [Conflict - Interest in Subject Matter]

18 12. In or about May 2011, respondent continued representation of a client, Strategic  
19 Tax Solutions ("STS") regarding the modification of an April 22, 2010 joint venture agreement  
20 to a more permanent strategic alliance agreement in which STS and Mann, Urrutia and Nelson,  
21 CPA's and Associates, LLP ("MUN") would swap shares without providing written disclosure  
22 to the client that respondent had a business and financial interest in the subject matter of the  
23 representation, specifically respondent was an STS shareholder, in willful violation of the  
24 Rules of Professional Conduct, rule 3-310(B)(4).

25 COUNT TWELVE - DISMISSED

26 Case No. 12-O-18163  
27 Rules of Professional Conduct, rule 3-300  
28 [Acquiring Interest Adverse to Client]



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- Considering Mann, Urrutia and Nelson, CPA's and Associates, LLP ("MUN") his client in the formation of the joint venture agreement between STS and MUN;
- Favoring MUN over STS when the interests of the clients conflicted in the formation of the joint venture agreement;
- Diluting Smith and Yvonne Miller's equity stake in STS from 80 percent to approximately 55 percent in a share swap with MUN, but continuing to maintain his ten percent equity interest;
- Failing to advise STS that respondent likely benefitted from a share swap between STS and MUN;
- Failing to reduce to writing the June 1, 2011 strategic alliance agreement;
- Advocating for MUN over STS after conflict developed;
- Billing STS for legal services respondent claimed he performed on behalf of MUN and STS;
- Submitting to the United States Patent and Trademark Office the trademark MUN favored over the trademark STS preferred;
- Concealing from STS that respondent submitted the trademark MUN preferred;
- Concealing from STS that respondent submitted to the California Secretary of State a Statement of Information identifying respondent, Christopher Mann and John Urrutia as additional directors of STS;
- Failing to obtain the consent of STS's only board members, Smith and Yvonne Miller, to add respondent, Christopher Mann and John Urrutia as additional board members;
- Failing to notify STS's board members Smith and Yvonne Miller that respondent, Christopher Mann and John Urrutia had been identified as additional board members and thereby transforming the Millers into a minority on STS's board;

- 1 • Permitting MUN to unilaterally cease making its monthly draws to STS;  
2 • Waiting until May 2012 to terminate the attorney client relationship with STS;  
3 • Disclosing STS's confidential information to MUN;  
4 • Utilizing STS's confidential and proprietary information to create an entity with  
5 MUN that directly competes with STS;  
6 • Creating the new entity to compete with STS;  
7 • Permitting the new entity to solicit STS's client current clients; and  
8 • Presently continuing to compete with STS through the new entity.

9  
10 **NOTICE - INACTIVE ENROLLMENT!**

11 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**  
12 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**  
13 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**  
14 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**  
15 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**  
16 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**  
17 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**  
18 **RECOMMENDED BY THE COURT.**

19  
20 **NOTICE - COST ASSESSMENT!**

21 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**  
22 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**  
23 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**  
24 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**  
25 **PROFESSIONS CODE SECTION 6086.10.**

26 Respectfully submitted,

27 THE STATE BAR OF CALIFORNIA  
28 OFFICE OF CHIEF TRIAL COUNSEL

29 DATED: October 13, 2016

30 By:   
31 Robert A. Henderson  
32 Supervising Senior Trial Counsel