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**BEFORE THE  
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND  
GEOLOGISTS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1015-A

**BRIAN GEROULD ESGATE**  
3351 Pachappa Hill  
Riverside, CA 92560

**DEFAULT DECISION AND ORDER**

**Civil Engineer License No. C 21884**

[Gov. Code, §11520]

Respondent.

**FINDINGS OF FACT**

1. On or about June 19, 2012, Complainant Richard B. Moore, PLS, in his official capacity as the Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, filed Accusation No. 1015-A against Brian Gerould Esgate (Respondent) before the Board for Professional Engineers, Land Surveyors, and Geologists. (Accusation attached as Exhibit A.)

2. On or about June 20, 1972, the Board for Professional Engineers, Land Surveyors, and Geologists (Board) issued Civil Engineer License No. C 21884 to Respondent. The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Accusation No. 1015-A and will expire on September 30, 2013, unless renewed.

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1           3.     On or about June 29, 2012, Respondent was served by Certified and First Class Mail  
2 copies of Accusation No. 1015-A, Statement to Respondent, Notice of Defense, Request for  
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
4 Respondent's address of record which, pursuant to Business and Professions Code section 136  
5 and California Code of Regulations, Title 16, section 412, is required to be reported and  
6 maintained with the Board. Respondent's address of record was and is: 3351 Pachappa Hill,  
7 Riverside, CA 92560.

8           4.     Service of the Accusation was effective as a matter of law under the provisions of  
9 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
10 124.

11           5.     On or about July 19, 2012, the documents served by Certified Mail were returned by  
12 the U.S. Postal Service marked "Unclaimed." The documents served by First Class Mail were not  
13 returned by the U.S. Postal Service.

14           6.     Government Code section 11506 states, in pertinent part:

15                 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
17 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.

18           7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
20 1015-A.

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

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

25           9.     Pursuant to its authority under Government Code section 11520, the Board finds  
26 Respondent is in default. The Board will take action without further hearing and, based on the  
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 1015-A, finds  
2 that the charges and allegations in Accusation No. 1015-A, are separately and severally, found to  
3 be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and  
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
6 and Enforcement is \$5,840.00 as of October 19, 2012.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Brian Gerould Esgate has  
9 subjected his Civil Engineer License No. C 21884 to discipline.

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

11 3. The Board for Professional Engineers, Land Surveyors, and Geologists is authorized  
12 to revoke Respondent's Civil Engineer License based upon the following violations alleged in the  
13 Accusation which are supported by the evidence contained in the Default Decision Evidence  
14 Packet in this case:

15 a. Respondent is subject to disciplinary action under Code section 6775 (c) in that  
16 Respondent was negligent in his practice of engineering regarding the Juniper Flats project,  
17 located in the County of Riverside, California, in that he failed to retain adequate records of the  
18 work for which in was in responsible charge.

19 b. Respondent is subject to disciplinary action under Code section 6775 (c) in that  
20 Respondent was negligent in his practice of engineering regarding the Walnut Estates project,  
21 located in the City of Yucaipa, California, in that he submitted grossly incomplete plans for plan  
22 check purposes to the City of Yucaipa and the Yucaipa Valley Water District. In addition,  
23 respondent, failed to retain adequate records of the work for which in was in responsible charge.

24 c. Respondent is subject to disciplinary action under Code section 6775 (c) in that  
25 Respondent was incompetent in his practice of engineering regarding the Walnut Estates project,  
26 located in the City of Yucaipa, California, in that he submitted plans for plan check purposes to  
27 the City of Yucaipa that contained gross errors and deficiencies.

28 ///

1 d. Respondent is subject to disciplinary action under Code section 6775 (g), for  
2 violation of California Code of Regulations, Title 16, section 404.1, in that Respondent did not  
3 adequately supervise the design work and was not in "responsible charge" of the Walnut Estates  
4 project.

5 e. Respondent is subject to disciplinary action under Code section 6775 (g) in that the  
6 Respondent has violated a rule or regulation of unprofessional conduct adopted by the Board in  
7 the California Code of Regulations, title 16, (CCR) as follows:

8 (1) CCR 475 (a), Respondent provided professional services for the Walnut Estates  
9 project in a manner that was inconsistent with the laws, codes, ordinances, rules, and regulations  
10 enacted by the City of Yucaipa applicable to that project; in that he submitted grading plans that  
11 were not complete and were not in compliance with City of Yucaipa Grading Manual.

12 (2) CCR 475 (e) (1), Respondent provided professional services for the Walnut  
13 Estates project in violation of this section in that he submitted incomplete plans for plan check  
14 purposes to the City of Yucaipa and the Yucaipa Valley Water District.

15 (3) CCR 475 (e) (2), Respondent misrepresented to his client the completeness of the  
16 plans he prepared for the Juniper Flats and the Walnut Estates projects.

17 f. Respondent is subject to disciplinary action under Code section 6775 (h) in that he  
18 has violated Code section 6770, as follows:

19 (1) 6770 (a) (3), Respondent failed to report, in a timely manner, the settlement of  
20 the civil suit with Fidelity, for the sum of \$175,000.00.

21 (2) 6770 (b), Respondent failed to sign the report, that he eventually filed, regarding  
22 the settlement of the civil suit with Fidelity.

23 (3) 6770 (c), Respondent failed to timely respond to inquiries from the Board  
24 regarding reportable events.

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28 ///

**ORDER**

1  
2 IT IS SO ORDERED that Civil Engineer License No. C 21884, heretofore issued to  
3 Respondent Brian Gerould Esgate, is revoked.

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

8 This Decision shall become effective on January 11, 2013.

9 It is so ORDERED December 7, 2012

10 *Original Signed*

11 ~~FOR THE BOARD FOR PROFESSIONAL~~  
12 ~~ENGINEERS, LAND SURVEYORS, AND~~  
13 ~~GEOLOGISTS~~  
14 DEPARTMENT OF CONSUMER AFFAIRS

15 70634003.DOC  
16 DOJ Matter ID:SD2012703219

17 Attachment:  
18 Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DAVID E. HAUSFELD  
Deputy Attorney General  
4 State Bar No. 110639  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2025  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

9 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND**  
**GEOLOGISTS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 1015-A

13 **BRIAN GEROULD ESGATE**  
3351 Pachappa Hill  
14 Riverside, CA 92560

**ACCUSATION**

15 Civil Engineer License No. C 21884

16 Respondents.  
17

18 Complainant alleges:

19 **PARTIES**

20 1. Richard B. Moore, PLS (Complainant) brings this Accusation solely in his official  
21 capacity as the Executive Officer of the Board for Professional Engineers, Land Surveyors, and  
22 Geologists, Department of Consumer Affairs.

23 2. On or about June 20, 1972, the Board for Professional Engineers, Land Surveyors,  
24 and Geologists issued Civil Engineer License Number C 21884 to Brian Gerould Esgate  
25 (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on September 30, 2013, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board for Professional Engineers, Land  
3 Surveyors, and Geologists (Board), Department of Consumer Affairs, under the authority of the  
4 following laws. All section references are to the Business and Professions Code unless otherwise  
5 indicated.

6 4. Section 6775 of the Code states, in pertinent part, that "[T]he board may revoke,  
7 suspend for a period not to exceed two years, or revoke the certificate of any professional  
8 engineer registered under this chapter:

9 "....

10 "(c) Who has been found guilty by the board of negligence or incompetence in his or her  
11 practice.

12 "....

13 "(g) Who in the course of the practice of professional engineering has been found guilty by  
14 the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

15 "(h) Who violates any provision of this chapter."

16 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
17 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
18 disciplinary action during the period within which the license may be renewed, restored, reissued  
19 or reinstated.

20 STATUTORY PROVISIONS

21 6. Section 6770 of the Code states, in pertinent part:

22 (a) A licensee shall report to the board in writing the occurrence of any of the  
23 following events that occurred on or after January 1, 2008, within 90 days of the  
date the licensee has knowledge of the event:

24 ....

25 (3) Any civil action judgment, settlement, arbitration award, or  
26 administrative action resulting in a judgment, settlement, or arbitration award  
27 against the licensee in any action alleging fraud, deceit, misrepresentation, breach  
28 or violation of contract, negligence, incompetence, or recklessness by the licensee  
in the practice of professional engineering if the amount or value of the judgment,  
settlement, or arbitration award is fifty thousand dollars (\$50,000) or greater.

1 (b) The report required by subdivision (a) shall be signed by the licensee and  
2 set forth the facts that constitute the reportable event. If the reportable event  
3 involves the action of an administrative agency or court, the report shall set forth  
4 the title of the matter, court or agency name, docket number, and the date the  
5 reportable event occurred.

6 (c) A licensee shall promptly respond to oral or written inquiries from the  
7 board concerning the reportable events, including inquiries made by the board in  
8 conjunction with license renewal.

9 .....

10 (e) Failure of a licensee to report to the board in the time and manner  
11 required by this section shall be grounds for disciplinary action.

12 .....

### 13 REGULATORY PROVISIONS

14 7. California Code of Regulations, Title 16, section 404.1 states, in pertinent part:

15 (a) As used in the Professional Engineers Act, the term "responsible charge"  
16 directly relates to the extent of control a professional engineer is required to  
17 maintain while exercising independent control and direction of professional  
18 engineering services or creative work and to the engineering decisions which can be  
19 made only by a professional engineer.

20 (1) Extent of Control. The extent of control necessary to be in  
21 responsible charge shall be such that the engineer:

22 (A) Makes or reviews and approves the engineering decisions  
23 defined and described in subdivision (a) (2) below.

24 (B) In making or reviewing and approving the engineering  
25 decisions, determines the applicability of design criteria and technical  
26 recommendations provided by others before incorporating such criteria or  
27 recommendations.

28 (2) Engineering Decisions. The term "responsible charge" relates to  
engineering decisions within the purview of the Professional Engineers Act.

Engineering decisions which must be made by and are the responsibility  
of the engineer in responsible charge are those decisions concerning permanent or  
temporary projects which could create a hazard to life, health, property, or public  
welfare, and may include, but are not limited to:

(A) The selection of engineering alternatives to be investigated  
and the comparison of alternatives for the project.

(B) The selection or development of design standards or methods,  
and materials to be used.

(C) The decisions related to the preparation of engineering plans,  
specifications, calculations, reports, and other documents for the engineered  
works.

1 (D) The selection or development of techniques or methods of  
testing to be used in evaluating materials or completed projects, either new or  
2 existing.

3 (E) The review and evaluation of manufacturing, fabrication, or  
construction methods or controls to be used and the evaluation of test results,  
4 materials, and workmanship insofar as they affect the character and integrity of the  
completed project.

5 (F) The development and control of operating and maintenance  
6 procedures.

7 (3) Reviewing and Approving Engineering Decisions. In making or  
reviewing and approving engineering decisions, the engineer shall be physically  
8 present or shall review and approve through the use of communication devices the  
engineering decisions prior to their implementation.

9 .....

10 8. California Code of Regulations. Title 16, section 475 states, in pertinent part:

11 To protect and safeguard the health, safety, welfare, and property of the  
public, every person who is licensed by the Board as a professional engineer,  
12 including licensees employed in any manner by a governmental entity or in private  
practice, shall comply with this Code of Professional Conduct. A violation of this  
13 Code of Professional Conduct in the practice of professional engineering constitutes  
unprofessional conduct and is grounds for disciplinary action pursuant to Section  
14 6775 of the Code. This Code of Professional Conduct shall be used for the sole  
purpose of investigating complaints and making findings thereon under Section  
15 6775 of the Code.

16 (a) Compliance with Laws Applicable to a Project:

17 A licensee shall provide professional services for a project in a manner that  
is consistent with the laws, codes, ordinances, rules, and regulations applicable to  
18 that project. A licensee may obtain and rely upon the advice of other professionals  
(e.g., architects, attorneys, professional engineers, professional land surveyors, and  
19 other qualified persons) as to the intent and meaning of such laws, codes, and  
regulations.

20 .....

21 (e) Document Submittal:

22 (1) A licensee shall not misrepresent the completeness of the professional  
23 documents he or she submits to a governmental agency.

24 (2) A licensee shall not misrepresent the completeness of the professional  
25 documents he or she prepared to his or her client or to other involved parties.

26 **COST RECOVERY**

27 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

### 3 JUNIPER FLATS PROJECT

4 10. In or about April of 2005, SDH & Associates (SDH) entered into a contract with  
5 Fidelity Homes, Inc. (Fidelity) to provide civil engineering and land surveying services related to  
6 the proposed construction of a residential sub-division in an unincorporated area of Riverside  
7 County, California, known as Juniper Flats. SDH was to prepare a tentative tract map; provide  
8 preliminary earth work, street, sewer and water quantity estimates; represent the client at planning  
9 department and other meetings; perform a boundary survey of the property; and set controls for  
10 an aerial topographic map. The tentative map for this project was never submitted to the County  
11 of Riverside.

12 11. During the time of the projects alleged in this Accusation, Respondent, Brian Gerould  
13 Esgate, was the vice-president and the person in responsible charge of the engineering work at  
14 SDH. At this same time Mr. Steve Sommers was the president of SDH. Sommers is not and  
15 never has been licensed, in any capacity, by the Board for Professional Engineers, Land  
16 Surveyors, and Geologists.

### 17 WALNUT ESTATES PROJECT

18 12. In or about April of 2005, SDH entered into another contract with Fidelity to provide  
19 civil engineering and land surveying services related to the proposed construction of a residential  
20 sub-division in the City of Yucaipa, California, known as Walnut Estates. SDH was to prepare a  
21 tentative tract map; provide preliminary earth work, street, sewer and water quantity estimates;  
22 represent the client at planning department and other meetings; perform a boundary survey of the  
23 property; and set controls for an aerial topographic map. The tentative map for this project was  
24 approved by the City of Yucaipa in or about December of 2005.

25 13. In or about December of 2005, SDH entered into another contract with Fidelity to  
26 provide civil engineering and land surveying services to prepare a final map and construction  
27 drawings for the Walnut Estates project. SDH was to prepare a rough grading and drainage  
28 improvement plan; a precise grading plan; on-site sewer and water improvement plans; on-site

1 and off-site street improvement plans, a final tract map; a Storm Water Pollution Prevention Plan  
2 (SWPPP); a Water Quality Management Plan (WQMP); and lot line adjustments. In September  
3 of 2006, Fidelity requested that SDH cease work on the project and turn over all plans and  
4 documents.

5 14. In or about April of 2008 a civil suit was filed by Fidelity, for various  
6 misrepresentations pertaining to the work of SDH on both projects. Fidelity named as defendants  
7 to the lawsuit SDH, Sommers and Respondent.

8 15. In or about June of 2009, the civil suit was settled. The total amount of the settlement  
9 was for \$175,000.00. This amount was contributed on behalf of SDH, Sommers and Respondent  
10 by their liability insurance carrier, ACE USA.

11 16. Plaintiffs alleged a number of claims against SDH for negligent engineering services.  
12 The agreement to settle the civil case specifically excluded any acknowledgement of fault by the  
13 settling parties

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Negligence in the Practice of Engineering)**

16 17. Respondent is subject to disciplinary action under Code section 6775 (c) in that  
17 Respondent was negligent in his practice of engineering regarding the Juniper Flats project,  
18 located in the County of Riverside, California, in that he failed to retain adequate records of the  
19 work for which in was in responsible charge.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Negligence in the Practice of Engineering)**

22 18. Respondent is subject to disciplinary action under Code section 6775 (c) in that  
23 Respondent was negligent in his practice of engineering regarding the Walnut Estates project,  
24 located in the City of Yucaipa, California, in that he submitted grossly incomplete plans for plan  
25 check purposes to the City of Yucaipa and the Yucaipa Valley Water District. In addition,  
26 respondent, failed to retain adequate records of the work for which in was in responsible charge.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Code Section 6770)**

3 22. Respondent is subject to disciplinary action under Code section 6775 (h) in that he  
4 has violated Code section 6770, as follows:

5 a) 6770 (a) (3), Respondent failed to report, in a timely manner, the settlement of the  
6 civil suit with Fidelity, for the sum of \$175,000.00.

7 b) 6770 (b), Respondent failed to sign the report, that he eventually filed, regarding  
8 the settlement of the civil suit with Fidelity.

9 c) 6770 (c), Respondent failed to timely respond to inquiries from the Board  
10 regarding reportable events.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Board for Professional Engineers, Land Surveyors, and  
14 Geologists issue a decision:

15 1. Revoking or suspending Civil Engineer License Number C 21884, issued to Brian  
16 Gerould Esgate;

17 2. Ordering Brian Gerould Esgate to pay the Board for Professional Engineers, Land  
18 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,  
19 pursuant to Business and Professions Code section 125.3;

20 3. Taking such other and further action as deemed necessary and proper.

21 *Original Signed*

22 DATED: 6/19/12

23 RICHARD B. MOORE, PLS  
24 Executive Officer  
25 Board for Professional Engineers, Land Surveyors, and  
26 Geologists  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

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