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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**ARTHUR URBANO GAPASIN**<br>**13340 Bubbling Well Road**<br>**Tustin, CA 92680**<br>**Civil Engineer License No. C 27617**<br><br>Respondent. | Case No. 965-A<br><br>OAH No. L-2011050837 |

## DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 13, 2012.

It is so ORDERED November 18, 2011.

original signed

FOR THE BOARD FOR PROFESSIONAL
ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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300 So. Spring Street, Suite 1702
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*Attorneys for Complainant*

**BEFORE THE**
**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**
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IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists. This action was initially bought by his predecessor, Interim Executive Officer Joanne Arnold. They have acted in this matter solely in their official capacities and are represented in it by Kamala D. Harris, Attorney General of the State of California, by Geoffrey Ward, Deputy Attorney General.

2. Respondent Arthur Urbano Gapasin (Respondent) is represented in this proceeding by attorney Jennille Smith, Esq., whose address is: 1300 Clay St., Ste. 600, Oakland, CA 94612.

3. On or about July 13, 1977, the Board for Professional Engineers, Land Surveyors, and Geologists issued Civil Engineer License No. C 27617 to Arthur Urbano Gapasin

(Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Accusation No. 965-A and will expire on March 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 965-A was filed before the Board for Professional Engineers, Land Surveyors, and Geologists (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 18, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 965-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 965-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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 agrees that at a hearing, the Complainant could establish a factual basis for the charges and allegations in Accusation 965-A.

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9. Respondent understands that his Civil Engineer License is subject to discipline and he agrees to be bound by the Board's Disciplinary Order below, including the surrender of Civil Engineer License No. C 27617 for the Board's formal acceptance.

CIRCUMSTANCES IN MITIGATION

10. Respondent has submitted evidence attesting to his competence in the management of construction projects while working as a civil, project, and general engineer for the Federal Aviation Administration since 1988.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board for Professional Engineers, Land Surveyors, and Geologists. Respondent understands and agrees that counsel for Complainant and the staff of the Board for Professional Engineers, Land Surveyors, and Geologists may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement 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 Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary 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 Settlement and Disciplinary 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.

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

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Civil Engineer License No. C 27617 issued to Respondent Arthur Urbano Gapasin (Respondent) is surrendered and accepted by the Board for Professional Engineers, Land Surveyors, and Geologists. The Board hereby issues Respondent a new Civil Engineer License, subject to the conditions listed below. The effect of this surrender of license number C 27617 and of the issuance of a new license will be to withdraw the authority for Respondent to practice land surveying under his civil engineering license: under California Business and Professions Code sections 6731, 8729, and 8731, as a civil engineer who had registered prior to 1982, he had been permitted to practice land surveying without obtaining a separate land surveying license or registration.

1. The surrender of Respondent's Civil Engineer License No. C 27617 and the acceptance of that surrendered license by the Board 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 Board.

2. Respondent shall cause to be delivered to the Board his pocket license and wall certificate for Civil Engineer License No. C 27617 on or before the effective date of the Decision and Order. The Board shall not issue the new license until it receives the pocket identification card and wall certificate for the surrendered license. If one or both of these items is lost, Respondent shall provide an explanation in a statement made under penalty of perjury.

3. Respondent agrees not to petition for reinstatement of the surrendered license. Respondent understands and agrees that should he wish to practice land surveying in California, he must apply for licensure as a Land Surveyor and must comply with all the laws, regulations, and procedures for licensure in effect at the time the application is filed, including but not limited to submitting a completed application and the requisite fee and taking and passing the required examination(s). Furthermore, the licensing agency may consider this disciplinary action when the

licensing agency determines whether to grant or deny such an application.

4. Respondent shall not apply for licensure as a Land Surveyor for a period of three years following the effective date of this Decision and Order.

5. In exchange for Respondent's agreement to surrender Civil Engineer License No. C 27617, the Board will waive reimbursement of its costs of investigation and prosecution in this matter.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jennille Smith, Esq. I understand the stipulation and the effect it will have on my Civil Engineer License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: 9/30/2011

Original Signed

ARTHUR URBANO GAPASIN
Respondent

I have read and fully discussed with Respondent Arthur Urbano Gapasin the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/30/2011

Original Signed

Jennille Smith, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs.

Dated: October 3, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

Original Signed

GEOFFREY WARD
Deputy Attorney General
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 965-A**

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*Attorneys for Complainant*

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Complainant alleges:

## PARTIES

1. Joanne Arnold ("Complainant") brings this Accusation solely in her official capacity as the Acting Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs.

2. On or about July 13, 1977, the Board for Professional Engineers, Land Surveyors, and Geologists issued Civil Engineer License Number C 27617 to Arthur Urbano Gapasin ("Respondent"). The Civil Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

## JURISDICTION

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

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

5. Section 8731 of the Code subjects civil engineers practicing land surveying to the same duties and responsibilities as a licensed land surveyor:

> "A registered civil engineer and a civil engineer exempt from registration under Chapter 7 (commencing with Section 6700) of Division 3 are exempt from licensing under this chapter and may engage in the practice of land surveying with the same rights and privileges, and the same duties and responsibilities of a licensed land surveyor, provided that for civil engineers who become registered after January 1, 1982, they shall pass the second division examination provided for in Section 8741 and obtain a land surveyor's license, before practicing land surveying as defined in this chapter."

## STATUTES

6. Section 8780 of the Code provides grounds for disciplinary action against land surveyors and civil engineers:

> "The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.
>
> By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter [Chapter 15, Business and Professions Code sections 8700 – 8805] or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:
>
> (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.
>
> (b) Any negligence or incompetence in his or her practice of land surveying.
>
> . . .

(d) Any violation of any provision of this chapter [Chapter 15, Business and Professions Code sections 8700 – 8805] or of any other law relating to or involving the practice of land surveying.

. . .

(f) Aiding or abetting any person in the violation of any provision of this chapter.

(g) A breach or violation of a contract to provide land surveying services.

(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board."

7. Section 8759 of the Code requires the use of a written contract when providing land surveying services:

(a) A licensed land surveyor or registered civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or registered civil engineer and the client, or his or her representative, prior to the licensed land surveyor or registered civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) A description of the services to be provided to the client by the licensed land surveyor or registered civil engineer.

(2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the licensed land surveyor or registered civil engineer, and the name and address of the client.

(4) A description of the procedure that the licensed land surveyor or registered civil engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the contract.

(b) This section shall not apply to any of the following:

(1) Professional land surveying services rendered by a licensed land surveyor or registered civil engineer for which the client will not pay compensation.

(2) A licensed land surveyor or registered civil engineer who has a current or prior contractual relationship with the client to provide professional services pursuant to this chapter, and that client has paid the surveyor or engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not

required.

(4) Professional services rendered by a licensed land surveyor or a registered civil engineer to any of the following:

(A) A professional engineer licensed or registered under Chapter 7 (commencing with Section 6700).

(B) A land surveyor licensed under this chapter.

(C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section 7800).

(F) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates.

(G) A public agency.

(c) 'Written contract' as used in this section includes a contract that is in electronic form."

8. Section 8762 of the Code specifies in relevant part when records of surveys must be filed:

"(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay."

9. Section 8764 of the Code provides the technical requirements for a record of survey:

"The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.

(b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

(c) Name and legal designation of the property in which the survey is located, and the date or time period of the survey.

(d) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.

(e) Memorandum of oaths.

(f) Statements required by Section 8764.5.

(g) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.

The record of survey shall also show, either graphically or by note, the reason or reasons, if any why the mandatory filing provisions of paragraphs (1) to (5), inclusive, of subdivision (b) of Section 8762 apply.

The record of survey need not consist of a survey of an entire property."

10. Section 8771 of the Code provides requirements for monumentation:

"(a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the perpetuation or facile reestablishment of any point or line of the survey.

(b) When monuments exist that control the location of subdivisions, tracts, boundaries, roads, streets, or highways, or provide horizontal or vertical survey control, the monuments shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer prior to the time when any streets, highways, other rights-of-way, or easements are improved, constructed, reconstructed, maintained, resurfaced, or relocated, and a corner record or record of survey of the references shall be filed with the county surveyor. They shall be reset in the surface of the new construction, a suitable monument box placed thereon, or permanent witness monuments set to perpetuate their location if any monument could be destroyed, damaged, covered, or otherwise obliterated, and a corner record or record of survey filed with the county surveyor prior to the recording of a certificate of completion for the project. Sufficient controlling monuments shall be retained or replaced in their original positions to enable property, right-of-way and easement lines, property corners, and subdivision and tract boundaries to be reestablished without devious surveys necessarily originating on monuments differing from those that currently control the area. It shall be the responsibility of the governmental agency or others performing construction work to provide for the monumentation required by this section. It shall be the duty of every land surveyor or civil engineer to cooperate with the governmental agency in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, streets or right-of-way or easement lines shall not be deemed adequate for this purpose unless specifically noted on the corner record or record of survey of the improvement works with direct ties in bearing or azimuth and distance between these and other monuments of record.

(c) The decision to file either the required corner record or a record of survey pursuant to subdivision (b) shall be at the election of the licensed land surveyor or registered civil engineer submitting the document."

## REGULATIONS

11. Section 404 subdivision (n) of Title 16 of the California Code of Regulations

California Code of Regulations defines "incompetence": "'incompetence' as used in Sections

6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor."

12. Section 404 subdivision (w) of Title 16 of the California Code of Regulations defines "negligence": "'negligence' as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing."

13. Section 404.2 of Title 16 of the California Code of Regulations requires the licensee to exercise responsible charge over land surveying work or services performed under his or her license:

> (a) The term "responsible charge" directly relates to the extent of control a licensed land surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as "legally authorized civil engineer") is required to maintain while exercising independent control and direction of land surveying work or services, and the land surveying decisions which can be made only by a licensed land surveyor or legally authorized civil engineer.
>
> (1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the land surveyor or legally authorized civil engineer:
>
> (A) Makes or reviews and approves the land surveying decisions defined and described in subdivision (a)(2) below.
>
> (B) In making or reviewing and approving the land surveying decisions, determines the applicability of survey criteria and technical recommendations provided by others before incorporating such criteria or recommendations.
>
> (2) Land Surveying Decisions. The term "responsible charge" relates to land surveying decisions within the purview of the Professional Land Surveyors' Act.
>
> Land surveying decisions which must be made by and are the responsibility of the land surveyor or legally authorized civil engineer in responsible charge are those decisions concerning permanent or temporary work which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:
>
> (A) Selecting the methods, procedures, and tolerances of field work.
>
> (B) Determining calculation and adjustment methods.
>
> (C) Determining and specifying the information to be shown on maps or documents furnished in connection with land surveying services, including the format of the information and the format of the maps or documents.

(D) The decisions related to the preparation of maps, plats, land surveying reports, descriptions, and other land surveying documents furnished in connection with the land surveying services.

(E) Reviewing the sufficiency and accuracy of the work product.

(3) Reviewing and Approving Land Surveying Decisions. In making or reviewing and approving land surveying decisions, the land surveyor or legally authorized civil engineer shall be physically present or shall review and approve through the use of communication devices the land surveying decisions prior to their implementation.

(b) Responsible Charge Criteria. In order to evaluate whether a person authorized to practice land surveying is in responsible charge, the following must be considered: The land surveyor or legally authorized civil engineer who signs surveying documents must be capable of answering questions asked by licensees of the Board who are fully competent and proficient by education and experience in the field or fields of professional land surveying relevant to the project. These questions would be relevant to the decisions made during the individual's participation in the project, and in sufficient detail to leave little question as to the land surveyor's or legally authorized civil engineer's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversarial situation, but only to demonstrate that the individual in responsible charge made, or reviewed and approved, them and possessed sufficient knowledge of the project to make, or review and approve, them.

Examples of questions to be answered by the land surveyor or legally authorized civil engineer could relate to criteria for measurement, surveying methods, analysis, and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deed descriptions, conflicts between construction drawings and actual conditions, determination of the proper control datum and epoch, application of proportion methods and analysis of evidence related to written and unwritten property rights. The individual shall be able to clearly express the extent of control and how it is exercised and to demonstrate that the land surveyor or legally authorized civil engineer is answerable within said extent of control.

(c) Successor Licensee. In situations when the professional land surveyor or legally authorized civil engineer in responsible charge of a land surveying project is unavailable to complete the project, a professional land surveyor or legally authorized civil engineer (hereinafter referred to as the 'successor licensee') may assume responsible charge of the project as long as the successor licensee exercises the extent of control and assumes responsibility for the surveying decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Land Surveyors' Act and Sections 411 and 415. Except as provided in Section 8761.2 of the Code, the original licensee is not relieved of any responsibility arising from the land surveying services of which he or she was in responsible charge.

(d) Portions of Projects. Nothing in this section prohibits a professional land surveyor or legally authorized civil engineer from providing services for portions of or to add to or to modify a land surveying project performed under the responsible charge of another licensee as long as the professional land surveyor or legally authorized civil engineer exercises the requisite extent of control and assumes responsibility for the land surveying decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Land Surveyors' Act and Sections 411 and 415. The professional land surveyor or

legally authorized civil engineer need only be in responsible charge of the portions, additions, or modifications or the portion of the project affected by the addition or modification and not of the entire project. Except as provided in Section 8761.2 of the Code, the original licensee is not relieved of any responsibility arising from the land surveying services of which he or she was in responsible charge.

(e) The term 'responsible charge' does not refer to any of the following:

(1) the concept of financial liability;

(2) management control in a hierarchy of land surveyors or legally authorized civil engineers except as each of the individuals in the hierarchy exercises independent land surveying judgment and thus responsible charge;

(3) such administrative and management functions as accounting, labor relations, personnel performance standards, marketing of services, or goal setting. While a land surveyor or legally authorized civil engineer may also have such duties in this position, it should not enhance or decrease one's status of being in responsible charge of the work.

14. Section 464 of Title 16 of the California Code of Regulations regulates corner records:

"(a) The corner record required by Section 8773 of the Code for the perpetuation of monuments shall contain the following information for each corner identified therein:

(1) The county and, if applicable, city in which the corner is located.

(2) An identification of the township, range, base, and meridian in which the corner is located, if applicable.

(3) Identification of the corner type (example: government corner, control corner, property corner, etc.).

(4) Description of the physical condition of

(A) the monument as found and

(B) any monuments set or reset.

(5) The date of the visit to the monument when the information for the corner record was obtained.

(6) For Public Land Corners for which a corner record is required by Section 8773(a) of the Code, a sketch shall be made showing site recovery information that was used for the corner. For other kinds of corners, a drawing shall be made which shows measurements that relate the corner to other identifiable monuments.

(7) A reference to the California Coordinate System is optional at the discretion of the preparer of the record.

(8) The date of preparation of the corner record and, as prescribed by Section 8773.4 of the Code, the signature and title of the chief of the survey party if the corner record is prepared by a United States Government or California State

agency or the signature and seal of the land surveyor or civil engineer, as defined in Section 8731 of the Code, preparing the corner record.

(9) The date the corner record was filed and the signature of the county surveyor.

(10) A document or filing number.

(b) A corner record shall be filed for each public land survey corner which is found, reset, or used as control in any survey by a land surveyor or a civil engineer. Exceptions to this rule are identified in Section 8773.4 of the Code.

(c) The corner record shall be filed within 90 days from the date a corner was found, set, reset, or used as control in any survey. The provisions for extending the time limit shall be the same as provided for a record of survey in Section 8762 of the Code.

(d) A corner record may be filed for any property corner, property controlling corner, reference monument, or accessory to a property corner, together with reference to record information. Such corner record may show one or more property corners, property controlling corners, reference monuments, or accessories to property corners on a single corner record document so long as it is legible, clear, and understandable.

(e) When conducting a survey which is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with these records are found and where sufficient monumentation is found to establish the precise location of property corners thereon, a corner record may be filed in lieu of a record of survey for any property corners which are set or reset or found to be of a different character than indicated by prior records. Such corner records may show one or more property corners, property controlling corners, reference monuments or accessories to property corners on a single corner record document so long as it is legible, clear, and understandable.

(f) The standard markings and standard abbreviations used by the Bureau of Land Management (formerly the General Land Office) of the United States Department of the Interior shall be used in the corner record.

(g) The corner record shall be filed on a form prescribed by the Board. The approved form is BORPELS-1297."

## COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## STATEMENT OF FACTS

### *FACTS COMMON TO ALL THREE PROJECTS*

16. At all times relevant herein, Respondent was the engineer of record, Vice President, and responsible managing officer for A&A Surveying Company, Inc.

17. At all times relevant herein, Abel Diaz, who was neither a licensed civil engineer nor a licensed land surveyor, was A&A Surveying Company, Inc.'s President and Managing Partner.

18. From sometime prior to 2007 until the end of 2008, Alfredo De Nieva, who was neither a licensed civil engineer nor a licensed land surveyor, was an employee of A&A Surveying Company, Inc.

***FIRST SURVEY - WHITWELL DRIVE SURVEY***

19. On or about May 23, 2006, architect Robert Ridgley sent a letter to A&A Surveying, Co., Inc. requesting an estimate for a survey of the property at 9828 W. Whitwell Drive in the City of Beverly Hills ("Whitwell Road Survey").

20. Sometime between May 23, 2006 and June 12, 2006, Respondent's company, A&A Surveying entered into a verbal agreement with Mr. Ridgley to perform the Whitwell Road Survey.

21. On or about June 12, 2006, Alfredo De Nieva, Respondent's employee, surveyed the property at 9828 W. Whitwell Drive.

22. On or about June 27, 2006 and July 6, 2006, Robert Ridgley, the architect for the Whitwell Road Survey, sent emails to Respondent's partner Abel Diaz requesting revisions to the survey plans to correct errors in elevations and in the dimensions of the home's side yard.

23. On or about July 7, 2006, Robert Ridgley also sent a letter to Respondent at Respondent's home address requesting revised survey plans to these errors. The letter also asked whether Respondent was the engineer of record for this Whitwell Road Survey.

24. On or about July 9, 2006, Respondent emailed Mr. Ridgley regarding his company's topographical survey work on the Whitwell Road Survey. In his email, Respondent stated, "A&A Surveying Co., a California company providing land surveying services was incorporated on May 1988. Abel Diaz is the President and Manager [*sic.*] Partner and I am the Vice-President and the engineer of record for all surveying work performed by A&A Surveying Co. Abel Diaz is also the Party Chief for all contract survey work." Respondent also stated they would release the "final topo drawings as soon as we received the payment for our services and is duly cleared by the banking institution."

25. On or about September 13, 2006, Mr. Ridgley alerted Respondent that during construction on 9828 W. Whitwell Drive he had discovered grading errors on Respondent's surveys: it showed a 2-3 foot rise on a portion of the property, when, in fact, the rise in that area was actually 7-8 feet. This error stalled the grading. Mr. Ridgley requested Respondent to come to an immediate on-site meeting to correct the surveying error. Respondent's response was to email Abel Diaz, his unlicensed partner, directing Mr. Diaz to "[p]lease check and verify the grade ASAP."

26. On or about October 6, 2006, Mr. Ridgley again requested that Respondent, the surveyor of record, come to the Whitwell Road Survey site to correct elevation errors on the survey.

27. On or about October 9, 2006, Respondent finally came to the Whitwell Road Survey site to address the survey errors.

28. The errors in Respondent's survey plans delayed the Whitwell Road Survey, increasing its costs.

29. On or about January 31, 2007, Respondent's company A&A Surveying Company, Inc., sent a letter to Mr. Ridgley discussing the Whitwell Road Survey. In the letter, Respondent's company maintained that the erroneous contour lines and wrong elevations on the surveying were caused by a computer and were "very obvious and noticeable and could not possibly be mislead, misguide, or overlook by anyone since the difference in elevation is too big to aroused concern in alarm."

## FIRST CAUSE FOR DISCIPLINE

### (Negligence – Whitwell Road Survey)

30. By committing the acts set forth in particularity in paragraphs 16 through 29, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780 of the Code and Title 16 section 404(w) of the California Code of Regulations for negligence for (1) producing a survey with obvious errors in the height and elevation of a hillside on the Whitwell Road Survey and (2) for failing to timely visit the Whitwell Road Survey site to check his subordinate's survey data or to correct his survey's errors. As a result of

Respondent's negligence, the Whitwell Road Survey had to be redesigned and new permits obtained, delaying the project and increasing its costs.

**SECOND CAUSE FOR DISCIPLINE**

**(Failure to Exercise Responsible Charge – Whitwell Road Survey)**

31. By committing the acts set forth in particularity in paragraphs 16 through 29, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating section 404.2 of Title 16 of the California Code of Regulations by failing to exercise responsible charge of the land surveying work performed on the Whitwell Road Survey as follows:

a. Respondent produced, signed, and stamped his erroneous survey for the Whitwell Road Survey site without having been there. Instead, Mr. De Pietra, an unlicensed surveyor, surveyed the Survey site on his own on or about June 12, 2006. As a result, Respondent failed to exercise independent control over the field survey, including allowing Mr. De Pietra to make and approve survey decisions (a violation of Title 16 section 404.2(a)(1)(A)); allowing Mr. De Pietra to select the methods, procedures and tolerances of field work (a violation of Title 16 section 404.2(a)(2)(A)); allowing Mr. De Pietra or Mr. Diaz to determine and specify the information to be shown on maps or documents furnished in connection with land surveying services (a violation of Title 16 section 404.2(a)(2)(C); and failing to be physically present or be in direct communication when Mr. De Pietra performed the survey (a violation of Title 16 section 404.2(a)(3)).

b. Respondent then approved, signed, and stamped an erroneous survey map based upon Mr. De Pietra's survey of the Whitwell Road project. He improperly relied on his office staff and office computer software to make decisions related to the preparation of maps, plats, land surveying reports, descriptions, and other land surveying documents furnished in connection

with his land surveying services in violation of Title 16 section 404.2(a)(2)(D). He also failed to review the sufficiency and accuracy of the survey map in violation of Title 16 section 404.2(a)(2)(E). As Respondent admitted, the errors on his survey map were "very obvious and noticeable."

***SECOND PROJECT – GOLDWYN TERRACE SURVEY***

32. Paragraphs 16 through 31, above, are incorporated and realleged herein by this reference.

33. On or about April 17, 2008, Respondent's company surveyed the boundary line between 3827 Goldwyn Terrace ("Goldwyn Terrace Survey") and its neighboring property in Culver City, California. At the time, the boundary line was the subject of litigation between the two property owners.

34. Respondent did not perform the April 17, 2008 field survey; his employee, Alfredo De Nieva did. Mr. De Nieva left survey tags with Respondent's license number and set boundary markers at the survey site during his field survey.

35. At no time did Respondent or his company A&A Surveying Co., Inc. enter into a proper written contract with its client to perform the surveying work on the boundary of 3827 Goldwyn Terrace. There was only a verbal contract for this surveying work.

36. On or about November 10, 2008, the property owner of 3823 Goldwyn Terrace (the property adjacent to 3827 Goldwyn Terrace whose boundary was in dispute) filed a complaint with the Board alleging Respondent had failed to file with the County Recorder a record of the survey Respondent's company had performed on April 17, 2008.

37. On or about November 15, 2008, Respondent finally visited 3823 and 3827 Goldwyn Terrace to conduct his own field survey of the property boundary.

38. On or about, December 28, 2008, Respondent filed a corner record with the Los Angeles County Surveyor. Respondent did not file a record of survey at this time.

39. On or about, January 12, 2009, in response to a Board inquiry, Respondent blamed the failure to timely file a record of the survey for the Goldwyn Terrace Survey on the death of

his employee Mr. De Nieva in May 2008. In the letter, Respondent admitted that he had not supervised Mr. De Nieva or evaluated Mr. De Nieva's field data. He also admitted that he did not have any of Mr. De Nieva's records from the April 2008 survey.

40. On or about February 5, 2009, at the prompting of the Los Angeles County Recorder's office and the Board, Respondent belatedly filed a record of survey for the Goldwyn Terrace Survey.

41. On or about July 31, 2009, an expert hired by the Board identified numerous deficiencies in Respondent's December 2008 corner record and February 2009 record of survey for the Goldwyn Terrace Survey.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Execute a Written Contract - Goldwyn Terrace Survey)**

42. By committing the acts set forth in particularity in paragraphs 16 through 41, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating section 8759 of the Code by failing to enter into a proper written contract with his client for the Goldwyn Terrace Survey survey.

**FOURTH CAUSE FOR DISCIPLINE**

**(Failure to Exercise Responsible Charge – Goldwyn Terrace Survey)**

43. By committing the acts set forth in particularity in paragraphs 16 through 42, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating section 404.2 of Title 16 of the California Code of Regulations by failing to exercise responsible charge in the land surveying work or services performed on the Goldwyn Terrace Survey as follows:

a. Respondent failed to supervise Mr. De Nieva during Mr. De Nieva's field survey in April 2008. Respondent allowed Mr. De Nieva to survey the Goldwyn Terrace property boundaries on his own, including setting durable tags with Respondent's license number and setting boundary markers at the

survey site during his field survey. As a result, Respondent failed to exercise independent control over the field survey.

b. Respondent failed to collect Mr. De Nieva's field data or survey notes. When Mr. De Nieva died, Respondent could not locate this information.

**FIFTH CAUSE FOR DISCIPLINE**

**(Failure to File a Record of Survey After Setting Boundary Monuments or Discovering a Material Discrepancy)**

44. By committing the acts set forth in particularity in paragraphs 16 through 41, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating sections 8762(b)(2) and 8762(c) of the Code by failing to file a record of survey within 90 days after completion of a field survey that (i) set boundary monuments and (ii) discovered material discrepancies with any existing tract map filed in the Los Angeles County Recorder's office. The circumstances are as follows:

45. On or about April 17, 2008, Respondent's employee Mr. De Nieva left survey tags and set boundary markers during his field survey of the Goldwyn Terrace Survey.

46. By 90 days after the April 17, 2008 field survey, Respondent had failed to file a record of the survey.

47. Respondent admitted in letters to the County Recorder and the Board that Mr. De Nieva's field survey had discovered that the 1921 tract map of the Goldwyn Terrace Survey site on file with the Los Angeles County Recorder's office allegedly had incorrect "direction 'bearings.'" The field survey's discovery of these allegedly incorrect direction bearings constituted a material discrepancy with the existing tract map.

48. Rather than filing a record of survey within 90 days of the April 17, 2008 field survey, as required by section 8762(b)(2) and 8762(c), Respondent instead requested the County Surveyor to correct the 1921 tract map. The obligation to file a record of survey to correct previous errors lay with Respondent, not the County Surveyor.

49. After prompting from the County Recorder and the Board, Respondent finally filed a record of survey on or about February 5, 2009, more than 8 months after his company's survey discovered alleged material discrepancies with the recorded tract map.

**SIXTH CAUSE FOR DISCIPLINE**

**(Failure to Show All Monuments Found, Set, Reset, Replaced, or Removed)**

50. By committing the acts set forth in particularity in paragraphs 16 through 49, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating 8764(a) of the Code by failing to include all relevant monuments in the record of survey he prepared on or about February 5, 2009. The circumstances are as follows:

51. Respondent's record of survey filed on or about February 5, 2009 omitted monuments that Respondent had found during his own November 2008 field survey of the property. It also incorrectly described monuments that were destroyed in September 2004 and replaced with monuments of a different character.

**SEVENTH CAUSE FOR DISCIPLINE**

**(Failure to Show the Relationship of the Survey to Portions of Adjacent Tracts, Streets, or Senior Conveyances with Common Lines)**

52. By committing the acts set forth in particularity in paragraphs 16 through 51, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating section 8764(d) of the Code by failing to properly show in his February 5, 2009 record of survey the relationships between the tract he surveyed and adjacent tracts, streets, or senior conveyances. The survey failed to show:

a. Existing monuments for the tract he surveyed;

b. Boundary lines of senior conveyances; and

c. Existing improvements inconsistent with the tract's monuments.

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## EIGHTH CAUSE FOR DISCIPLINE

**(Negligence and Incompetence - Goldwyn Terrace Survey)**

53. By committing the acts set forth in particularity in paragraphs 16 through 52, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(b) of the Code and Title 16 sections 404(n)(incompetence) and 404(w)(negligence) of the California Code of Regulations for negligence and incompetence.

54. Respondent committed negligence in the practice of land surveying when he failed to exercise the care ordinarily exercised by professional engineers or land surveyors in good standing by (1) failing to properly supervise the field survey of the Goldwyn Terrace Survey; (2) failing to timely record a record of survey for 3823 and 3827 Goldwyn Terrace; (3) failing to discover existing monuments for the tract he surveyed; (4) failing to properly identify relevant boundary lines of senior conveyances; and (5) miscalculating and mismeasuring distances and boundary lines for the tract he surveyed and nearby tracts.

55. Respondent's negligence muddled an already contentious boundary dispute between neighbors. His negligence also affected the marketability of title of all of the properties whose boundaries he misidentified or misrepresented.

56. Respondent showed incompetence by demonstrating his lack of knowledge and lack of ability to discharge his professional obligations as a professional engineer or land surveyor when he (1) failed to understand that it was his responsibility and obligation to file a record of survey after a field survey showed material discrepancies with existing tract maps; (2) failed to understand the distinction between a corner record and a record of survey; (3) failed to locate and identify numerous existing monuments during a field survey of the Goldwyn Terrace Boundary; (4) failed to properly research all applicable deeds, maps, and legal conveyances relevant to the tract he surveyed and adjacent tracts; and (5) failed to render a proper record of survey of the Goldwyn Terrace Boundary even knowing he was under scrutiny by the Board and the County Surveyor.

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**NINTH CAUSE FOR DISCIPLINE**

**(Fraud, Deceit or Misrepresentation in the Practice of Land Surveying - Goldwyn Terrace Survey)**

57. By committing the acts set forth in particularity in paragraphs 16 through 56, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(a) of the Code because he falsified survey evidence by (i) showing monuments that were not in existence at the time he purportedly conducted his field survey in December 2008; (ii) showing monuments that were not recovered and field verified; (iii) by not showing existing monuments; and (iv) by not showing all the monuments set by himself or Mr. De Nieva.

***THIRD PROJECT – PORTOLA DRIVE SURVEY***

58. Paragraphs 16 through 57, above, are incorporated and realleged herein by this reference.

59. On or about September 3, 2008, Respondent's company performed a survey of the property at 9819 Portola Drive in Beverly Hills, California ("Portola Drive Survey").

60. Respondent's company's survey was not conducted pursuant to a written agreement. In a letter to the Board, Respondent stated that he had a "verbal" contract with architect William King, to perform the survey. Mr. King says there was no such contract and that Respondent should have contracted with the property owner for the surveying services performed.

61. On or about, June 4, 2009, Respondent submitted a corner record to the County of Los Angeles for the Portola Drive Survey, more than 9 months after the survey was done.

**TENTH CAUSE FOR DISCIPLINE**

**(Failure to Execute a Written Contract – Portola Drive Survey)**

62. By committing the acts set forth in particularity in paragraphs 16 through 61, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of

land surveying) for violating section 8759 of the Code by failing to enter into a proper written contract with the property owner for the Portola Drive Survey.

**ELEVENTH CAUSE FOR DISCIPLINE**

**(Failure to File a Corner Record within 90 Days of Completion of a Field Survey – Portola Drive Survey)**

63. By committing the acts set forth in particularity in paragraphs 16 through 61, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating section 8765(d) of the Code and Section 464(c) of Title 16 of the California Code of Regulations by failing to file a corner record within 90 days after the completion of a field survey that discovered and used as control property corners found to be of a different character than indicated by prior records. The circumstances are as follows:

64. During the Portola Drive Survey conducted on or about September 3, 2008, Respondent found nails in the centerline of the street in front of the property. Respondent used these nails as the basis of the front line and corner of the property in the corner record filed with the County on June 4, 2009. These nails were not used to mark the property boundaries on prior surveys; they were of different character than indicated by prior records.

65. Section 464(c) of Title 16 of the California Code of Regulations provides, "[t]he corner record shall be filed within 90 days from the date a corner was found, set, reset, or used as control in any survey. The provisions for extending the time limit shall be the same as provided for a record of survey in Section 8762 of the Code." Because Respondent found these nails and used them as a control for the property's corner, Respondent was obliged under to file his corner record within 90 days of September 3, 2008. He did not.

**TWELFTH CAUSE FOR DISCIPLINE**

**(Failure to Set Durable Monuments – Portola Drive Survey)**

66. By committing the acts set forth in particularity in paragraphs 16 through 65, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of

land surveying) for violating section 8771 of the Code by failing to set durable monuments used in the corner record he filed with the County for the Portola Drive Survey.

67. Respondent used the nails he found in the center of the street in front of the Portola Drive property to mark the property boundary. However, he failed to permanently and visibly mark or tag the nails with his certificate number. As a result, they did not comply with section 8771 of the Code because they were not durably and efficient placed.

**THIRTEENTH CAUSE FOR DISCIPLINE**

**(Failure to Tag Monuments with License Number)**

68. By committing the acts set forth in particularity in paragraphs 16 through 67, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(d) of the Code (violation of any law relating to or involving the practice of land surveying) for violating section 8772 of the Code by failing to permanently and visibly mark or tag the nails used in the corner record he filed with the County for the Portola Drive Survey.

**FOURTEENTH CAUSE FOR DISCIPLINE**

**(Negligence and Incompetence – Portola Drive Survey)**

69. By committing the acts set forth in particularity in paragraphs 16 through 68, above, incorporated and realleged herein by this reference, Respondent is subject to disciplinary action under section 8780(b) of the Code and Title 16 sections 404(n)(incompetence) and 404(w)(negligence) of the California Code of Regulations for negligence and incompetence. The circumstances are as follows:

70. In preparing and recording the corner record for the Portola Drive Survey, Respondent failed to conduct the appropriate research. Had he done so, he would have discovered a survey encompassing the same property that had been done by another civil engineer in 1999. That survey set corners for the property in question using a different method than Respondent. Respondent was negligent in failing to research previous surveys.

71. In conducting the field survey for the Portola Drive Survey, Respondent failed to locate and identify several monument ties of record. Had Respondent properly surveyed these

monument ties, his survey may have been altered. Respondent was negligent for failing to locate and identify these monument ties.

72. Respondent mistakenly asserted to the Board that he was not required to file a corner record because he did not set his own corners for the property. He admitted, however, that he used existing nails in the street to mark the property's corner. This shows that Respondent was incompetent in the practice of surveying, because the criteria for filing a corner record, contained in Section 464(c) of Title 16 of the California Code of Regulations, require filing when a marker is "found, set, reset, or used."

**DISCIPLINE CONSIDERATIONS**

73. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about October 7, 2003, in a prior action, the Board of Professional Engineers and Land Surveyors issued Citation Number Citation 5144-L to Respondent for failing to timely file a corner record, a violation of sections 8765(d) and 8773(a) of the Code, for failing to set permanent and durable monuments in violation of section 8771(a) of the Code, and for failing to tag markers he did set with his license number in violation of section 8772 of the Code. The citation also ordered Respondent to pay an administrative fine of $500. Respondent paid the fine. That Citation is now final and is incorporated by reference as if fully set forth.

**PRAYER**

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

1. Revoking or suspending Civil Engineer License Number C 27617, issued to Arthur Urbano Gapasin;

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2. Ordering Arthur Urbano Gapasin to pay the Board for Professional Engineers, Land Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/14/11

Original Signed

JOANNE ARNOLD
Acting Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
*Complainant*

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