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

In the Matter of the Accusation and Petition to Revoke Probation Against: **WALLACE MARK BERON** **P.O. Box 2155** **Alpine, CA 91903** **Civil Engineer License No. C 27697** Respondent.	Case No. 931-A OAH No. 2011040350

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 December 30, 2011.

It is so ORDERED November 18, 2011.

Original Signed

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

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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 and Petition to Revoke Probation Against: **WALLACE MARK BERON** **P.O. Box 2155** **Alpine, CA 91903** **Civil Engineer License No. C 27697** Respondent.	Case No. 931-A OAH No. 2011040350 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by David E. Hausfeld, Deputy Attorney General.

2. Respondent Wallace Mark Beron (Respondent) is represented in this proceeding by attorney John C. Goodman, Esq., whose address is: P.O. Box 504066, San Diego, CA 92150-4066.

3. On or about August 10, 1977, the Board for Professional Engineers, Land Surveyors, and Geologists issued Civil Engineer License No. C 27697 to Wallace Mark Beron (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 931-A and will expire on March 31, 2012, unless renewed.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. 931-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 Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on October 27, 2010. Respondent timely filed his Notice of Defense contesting the Accusation and Petition to Revoke Probation. A copy of Accusation and Petition to Revoke Probation No. 931-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 the Accusation and Petition to Revoke Probation No. 931-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 and Petition to Revoke Probation; 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.

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation and Petition to Revoke Probation No. 931-A, if proven at a hearing, constitute cause for imposing discipline upon his Civil Engineering License.

9. For the purpose of resolving the Accusation and Petition to Revoke Probation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that his Civil Engineer License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

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

CONTINGENCY

12. 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.

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13. 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.

14. 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.

15. 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 27697 issued to Respondent Wallace Mark Beron (Respondent) is revoked. However, the revocation is stayed and the previous disciplinary order effective March 23, 2007 will remain in full force and effect. In addition, Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws and regulations related to the practices of professional engineering and professional land surveying.

2. **Tolling of Probation.** The period of probation shall be tolled during the time Respondent is practicing exclusively outside the state of California. If, during the period of probation, Respondent practices exclusively outside the state of California, Respondent shall immediately notify the Board in writing.

3. **Violation of Probation.** If Respondent violates the probationary conditions in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an Accusation or Petition to Revoke Probation is filed against Respondent, or if the matter has

been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

4. **Completion of Probation.** Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the Respondent's Civil Engineer License No. C 27697 shall be unconditionally restored.

5. **Cost Recovery.** Respondent is hereby ordered to reimburse the Board for its investigative and prosecution costs in the amount of $8,365.00 within three and one-half (3 1/2) years from the effective date of the decision. Said reimbursement may be made in installments, subject to a payment plan the Board has agreed to in writing.

6. **Submit Reports.** Respondent shall submit such special reports as the Board may require.

7. **Special Reports.** In addition to the special reports which may be required, Respondent shall submit on a monthly basis a report to the Board listing all the civil engineering and land surveying work engaged in or contracted for. The report shall include all the following information: the name, address, and telephone number of the client; the name and address and telephone number of the property owner, if different than the client; the location of the project site, and the type of civil engineering or land surveying work at any stage of the project. Respondent shall permit the Board of its designee to inspect all documents relating to the civil engineering or land surveying work at any stage of the project. The report shall be delivered to the Board on or before the 10th day of the following month.

8. **Notification.** Within 30 days of the effective date of the decision, Respondent shall provide the Board with evidence that he has provided all persons or entities with whom he has a contractual or employment relationship relating to professional civil engineering and/or professional land surveying services with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, if Respondent fails to fully perform any of the terms under this Disciplinary Order, Respondent may be required to provide the same notification to

each new person or entity with whom he has a contractual or employment relationship professional civil engineering and/or professional land surveying services and shall report to the Board the name and address of each person or entity so notified.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John C. Goodman. 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: 10/26/2011 Original Signed

WALLACE MARK BERON
Respondent

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

DATED: 10/26/11 Original Signed

JOHN C. GOODMAN
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: 10/26/11

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Original Signed

DAVID E. HAUSFELD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation and Petition to Revoke Probation No. 931-A

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

In the Matter of the Accusation Against: **WALLACE MARK BERON** **P.O. Box 2155** **Alpine, CA 91903** **Civil Engineer License No. C 27697** Respondent.	Case No. 931-A **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. David E. Brown (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs.

2. On or about August 10, 1977, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License Number C 27697 to Wallace Mark Beron (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.

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PRIOR DISCIPLINE

3. In a disciplinary action entitled "In the Matter of the Accusation Against Wallace Mark Beron", Case No. 800-A, the Board for Professional Engineers and Land Surveyors, issued a decision effective March 23, 2007, in which Respondent's Civil Engineer License was revoked. However, the revocation was stayed and Respondent's Civil Engineer License was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated herein by reference. Respondent failed to comply with all terms and conditions. On or about February 16, 2010, Respondent was notified by the Board that pursuant to Condition 11 of the probationary order, the probationary period would be extended until all matters are final.

JURISDICTION

4. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (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.

5. Section 6775 of the Code states, in pertinent part:

> [T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:
>
> . . . .
>
> (b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in his or her practice.
>
> (c) Who has been found guilty by the board of negligence or incompetence in his or her practice.
>
> (d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.
>
> . . . .
>
> (g) Who in the course of the practice of professional engineering has been found guilty by the board of having violated a rule or regulation of unprofessional conduct adopted by the board.
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> . . . .

6. 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.

REGULATORY PROVISIONS

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

> 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, 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 Code of Professional Conduct in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 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 6775 of the Code.
>
> (a) Compliance with Laws Applicable to a Project:
>
> 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 that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.
>
> . . . .
>
> (c) Representations:
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> . . . .
>
> (7) A licensee shall only express professional opinions that have a basis in fact or experience or accepted engineering principles.
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> . . . .

COST RECOVERY

8. 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.

PETERS PROJECT

9. In or about November of 2005, Respondent was hired, on an oral contract, by Phil Milana of Phil Milana Construction Co. (Milana) to perform soils engineering work for the construction of a single family residence for the homeowner, J. Peters, on Christopher Lane in

Jamul, California. His duties consisted of observing, testing and approving the grading and soils work performed on the site. Development and Design Consultants drew the grading plans and was the engineer of record for the project until they were replaced by Respondent on or about October 15, 2006.

10. During the construction of the project, the owner and the contractor made a number of deviations from the approved plans while grading the site. Following these deviations and changes, Respondent filed reports with the County of San Diego confirming and certifying that the project had been built in substantial conformance with the plans, when in fact it had not been.

11. Following Respondent's assumption of duties as the engineer of record in October, 2006 until the current date, Respondent has never submitted the required paperwork to the County of San Diego to obtain a final grading release from the County. Respondent's client, Milana, has repeatedly requested Respondent submit these documents, but has been ignored. Both Milana and Peters have been forced to pay substantial fines and additional costs, due to respondent's failure to perform his duties.

FIRST CAUSE FOR DISCIPLINE

(Deceit and Misrepresentation in the Practice of Engineering)

12. Respondent is subject to disciplinary action under Code section 6775 (b) in that Respondent misrepresented to the County of San Diego in his approval reports that the grading work had been performed in substantial compliance with the plans, when in fact it had not.

SECOND CAUSE FOR DISCIPLINE

(Negligence in the Practice of Engineering)

13. Respondent is subject to disciplinary action under Code section 6775 (c) in that Respondent was negligent in his practice of engineering regarding the Peters Project on Christopher Lane in Jamul, California, as follows.

14. The supervision of the grading by Respondent did not meet the standard of care for a professional civil engineer in that he allowed the site to be graded in a manner not in conformance with the approved plans and did not notify the County that the grading was not in compliance. By

allowing the construction to continue, the contractor could not obtain final approval from the County, which led to cost overruns and additional expenses.

THIRD CAUSE FOR DISCIPLINE

(Breach of Contract in the Practice of Engineering)

15. Respondent is subject to disciplinary action under Code section 6775 (d) in that Respondent's failure to submit the record drawings to the County of San Diego in a timely manner and not explaining to his client why the County would not issue a final grading release was a breach of his professional services contract with Milana.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violation of a Regulation in the Practice of Engineering)

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

a) CCR 475 (a), Respondent provided professional services for the Peters Project in a manner that was inconsistent with the laws, codes, ordinances, rules, and regulations enacted by the County of San Diego applicable to that project, in that he verified the work was performed in conformance with the approved plans when in fact it was not.

b) CCR 475 (c) (7), Respondent expressed professional opinions that did not have a basis in fact, in that he verified the work was performed in conformance with the approved plans when in fact it was not.

CHARGES AND ALLEGATIONS TO REVOKE PROBATION

17. Grounds exist for revoking the probation and reimposing the order of revocation of Civil Engineer License Number C 27697 to Wallace Mark Beron (Respondent). The Board's disciplinary order effective on March 23, 2007, contained Probation Condition 11, Violation of probation, which provides as follows:

> If the Respondent violates the probationary conditions in any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during

the period of probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matter are final.

18. Respondent has violated the conditions of his probation as set forth below.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey all Laws Related to Engineering)

19. The Board's disciplinary order effective on March 23, 2007, contained Probation Condition 1, Violation of Probation, which required Respondent to do the following:

"The Respondent shall obey all laws and regulations related to the practice of professional engineering and professional land surveying."

20. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1, referenced above. Respondent violated the laws and regulations of the practice of professional engineering as stated in the Causes for Discipline set forth above.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Reimburse the Board)

21. The Board's disciplinary order effective on March 23, 2007, contained Probation Condition 5, Cost Recovery, which required Respondent to do the following:

> The Respondent is hereby ordered to reimburse the Board the amount of $3,083 within two and one half years from the effective date of this decision for its investigation and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.

22. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. Respondent made a single payment of $500.00 to the Board in January of 2010. Respondent paid the remaining balance of $2,583 on or about February 25, 2010, almost six months after the time for compliance required by the disciplinary order.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Take and Pass Ethics Course)

23. The Board's disciplinary order effective on March 23, 2007, contained Probation Condition 6, Ethics Course, which required Respondent to do the following:

> Within one and one half (1 1/2) years of the effective date of the decision, Beron shall successfully complete and pass the course "Engineering Ethics by Correspondence-Advanced Studies in Engineering Ethics" (ENGR ETHICS PDH-60) as offered through correspondence by the Murdough Center for Engineering Professionalism, Texas Tech University. Beron shall provide the Board with official proof of completion of the requisite course. Beron may select an equivalent professional ethics course; however, the equivalent course must be approved in advance by the Board or its designee.

24. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6, referenced above. Respondent finally provided proof to the Board that he had completed a course meeting the requirements of Probation Condition 6 on or about March 16, 2010, eighteen months after the time for compliance required by the disciplinary order, which was due to the Board on or before September 22, 2008.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Take and Pass Education Course)

25. The Board's disciplinary order effective on March 23, 2007, contained Probation Condition 7, Education Course, which required Respondent to do the following:

> Within two and one half (2 1/2) years of the effective date of the decision, Beron shall successfully complete and pass, two college level courses; one course shall be in civil engineering and one course shall be in the area of land surveying. Said courses shall be approved in advance by the Board or its designee. Beron shall provide the Board with official proof of completion of the requisite courses. For purposes of this condition, "college level courses" means a course offered by a community college or a four year university of three semester units or the equivalent; it does not include seminars.

26. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. Respondent failed to provide any proof to the Board

that he had completed courses meeting the requirements of Probation Condition 7, which was due to the Board on or before September 22, 2009.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Provide Quarterly Reports)

27. The Board's disciplinary order effective on March 23, 2007, contained Probation Condition 9, Special Reports, which required Respondent to do the following:

> In addition to the aforementioned reports which may be required, Beron shall submit on a quarterly basis a report to the Board listing all the civil engineering and land surveying work engaged in or contracted for. The report shall include all the following information: the name, address and telephone number of the client; the location of the project site, and the type of civil engineering or land surveying work provided. Beron shall permit the Board of (sic) its designee to inspect all documents relating to civil engineering or land surveying work at any stage of the project.

28. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, referenced above. Respondent failed to submit the quarterly reports for January, April, July, and October of 2009 and January, April, and July of 2010, as required.

DISCIPLINARY CONSIDERATIONS

29. To determine the degree of discipline, if any, to be imposed on respondent's license, Complainant alleges that effective May 24, 2002, pursuant to the Decision and Order of the Board for Professional Engineers and Land Surveyors "In the Matter of the Accusation Against Wallace Mark Beron", Case No. 718-A, the Board issued a decision in which Respondent's Civil Engineer License was revoked. However, the revocation was stayed and Respondent's Civil Engineer License was placed on probation for a period of two (2) years with certain terms and conditions. Respondent complied with the terms and conditions and his license was fully restored on May 24, 2004.

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PRAYER

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

1. Revoking or suspending Civil Engineer License Number C 27697, issued to Wallace Mark Beron.

2. Revoking the probation that was granted by the Board for Professional Engineers and Land Surveyors in Case Number 800-A, and imposing the disciplinary order that was stayed, thereby revoking Civil Engineer License Number C 27697, issued to Wallace Mark Beron.

3. Ordering Wallace Mark Beron to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/19/10

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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