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

In the Matter of the Petition to Revoke Probation against: RAFAEL DETABLAN DIVINA 624 North Granada Drive Madera, CA 93637 Civil Engineer License, No. C 30011, Respondent.	)	Case No. 854-A

DECISION

The attached Stipulated Settlement and Disciplinary Order for Public Reproval is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on January 6, 2017.

IT IS SO ORDERED December 8, 2016.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KAREN R. DENVIR
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Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against: **RAFAEL DETABLAN DIVINA** **624 North Granada Drive** **Madera, CA 93637** **Civil Engineer License No. C 30011** Respondent.	Case No. 854-A **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER FOR PUBLIC REPROVAL** **[Bus. & Prof. Code § 495]**

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 (Board). 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 Karen R. Denvir, Deputy Attorney General.

2. Respondent Rafael Detablan Divina (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

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JURISDICTION

3. On or about February 14, 1979, the Board issued Civil Engineer License No. C 30011 to Rafael Detablan Divina (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 854-A and will expire on September 30, 2017, unless renewed.

4. Petition to Revoke Probation No. 854-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 Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on March 7, 2016. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. 854-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Petition to Revoke Probation No. 854-A. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

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 Petition to Revoke Probation; 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 admits the truth of each and every charge and allegation in Petition to Revoke Probation No. 854-A. Respondent agrees that his Civil Engineer License is subject to discipline and he agrees to be bound by the Disciplinary Order below.

CONTINGENCY

9. 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. 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 for Public Reproval 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.

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

11. This Stipulated Settlement and Disciplinary Order for Public Reproval 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 for Public Reproval may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

12. 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:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Civil Engineer License No. C 30011 issued to Respondent Rafael Detablan Divina (Respondent) shall be publicly reproved by the Board for Professional Engineers, Land Surveyors, and Geologists under Business and Professions Code section 495 in resolution of Petition to Revoke Probation No. 854-A, attached as exhibit A.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order for Public Reproval. I understand the stipulation and the effect it will have on my Civil Engineer License. I enter into this Stipulated Settlement and Disciplinary Order for Public Reproval 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: Nov. 15, 2016

Original Signed

RAFAEL DETABLAN DIVINA
Respondent

ENDORSEMENT

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

Dated: Nov. 17, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

Original Signed

KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KAREN R. DENVIR
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Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against, **RAFAEL DETABLAN DIVINA** **624 Granada Drive** **Madera, CA 93637** **Civil Engineer License No. C 30011** Respondent.	Case No. 854-A PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

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

2. On or about February 14, 1979, the Board for Professional Engineers, Land Surveyors, and Geologists issued Civil Engineer License Number 30011 to Rafael Detablan Divina (Respondent). The Civil Engineer License was in effect at all times relevant to the charges brought herein and will expire on September 30, 2017, unless renewed.

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3. In a disciplinary action entitled *In the Matter of Accusation Against Rafael Detalba Divina*, Case No. 854-A, the Board for Professional Engineers, Land Surveyors, and Geologists, issued a *Decision and Order* (the "Order"), effective December 24, 2010, 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 five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation 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.

5. Section 6775 of the Code states, in pertinent part, that the Board may discipline any licensee for any of the reasons set forth in the statute.

6. Section 118, subdivision (b), of the Code provides that the expiration 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.

7. Grounds exist for revoking the probation and reimposing the order of revocation of Respondent's Civil Engineer License No. 30011. Condition 4 of the *Order* in Case No. 854-A states:

> 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 matters are final.

8. Respondent's probation is subject to revocation, in that he violated probation as set forth below:

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Take and Pass Examinations)

9. At all times after the effective date of Respondent's probation, Condition 10 stated:

> Within four and one-half (4 1/2) years of the effective date of the decision, the Respondent shall successfully complete and pass (3) college-level courses, related to the areas of violation. Said courses shall be approved in advance by the Board or its designee. The Respondent shall provide the Board will official proof of completion of the requisite courses. For purposes of this condition, "college-level course" shall mean a course offered by a community college or a four-year university of three (3) semester units or the equivalent; it does not include seminars. The college-level courses may be on-line college courses, as long as the courses meet the other requirements (graded component, three semester units or the equivalent, approved in advance by the Board. The Board or its designee shall not unreasonably withhold approval.

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 10, referenced above. Respondent failed to provide proof of completion of the three college-level courses by June 24, 2015, as required by Condition 10 of his probation.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Pay Cost Recovery)

11. At all times after the effective date of Respondent's probation, Condition 6 stated:

> Within four and one-half (4 ½) years of the effective date of the decision, the Respondent shall reimburse the Board for its investigative and enforcement costs in this matter in the amount of $5,000. Such reimbursement may be paid in installments.

12. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6, referenced above, in that he failed to reimburse the Board for its investigative and enforcement costs in a timely manner by failing to pay the cost recovery by June 24, 2015, as required by Condition 6 of his probation.

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 the probation that was granted by the Board for Professional Engineers, Land Surveyors, and Geologists in Case No. 854-A and imposing the disciplinary order that was stayed thereby revoking Civil Engineer License No. 30011 issued to Rafael Detablan Divina;

2. Revoking or suspending Civil Engineer License No. 30011, issued to Rafael Detablan Divina;

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

DATED: 2/26/16

Original Signed

RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and Geologists
Department of Consumer Affairs
State of California
Complainant

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Divina PTR.docx

Exhibit A

Decision and Order

Board for Professional Engineers, Land Surveyors, and Geologists Case No. 854-A

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

In the Matter of the Accusation against:	)	
	)	
RAFAEL DETALBAN DIVINA 624 Granada Drive Madera, CA 93637	)))	Case No. 854-A
	)	
Civil Engineer License No. C 30011,	)	
	)	
Respondents.	)	
	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on December 24, 2010.

IT IS SO ORDERED November 17, 2010.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
Department of Consumer Affairs
State of California

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
State Bar No. 197268
1300 I Street, Suite 125
P.O. Box 944255
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Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Accusation Against: **RAFAEL DETALBAN DIVINA** **624 North Granada Drive** **Madera, CA 93637** **Civil Engineer License No. C 30011** Respondent.	Case No. 854-A OAH No. 2009100577 **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. David E. Brown (Complainant) is the Executive Officer of the Board for Professional Engineers and Land Surveyors. He brought this action solely in his official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Karen R. Denvir, Deputy Attorney General.

2. Respondent Rafael Detalban Divina (Respondent) is represented in this proceeding by attorney Michael C. Johnston, Esq., whose address is P.O. Box 450, San Mateo, CA 94401.

3. On or about February 14, 1979, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License No. C 30011 to Rafael Detalban Divina (Respondent). Respondent's license will expire on September 30, 2011, unless renewed.

JURISDICTION

3. Accusation No. 854-A was filed before the Board for Professional Engineers and Land Surveyors (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 September 22, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 854-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 854-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

5. 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.

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

CULPABILITY

7. For the purpose of resolving the Accusation 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 those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges. Respondent further agrees that in any future proceedings before the Board all of the allegations set forth in Accusation No. 854-A shall be deemed admitted.

8. Respondent agrees that his license is subject to discipline and he agrees to be bound by the Board for Professional Engineers and Land Surveyors (Board)'s imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

9. This stipulation shall be subject to approval by the Board for Professional Engineers and Land Surveyors. Respondent understands and agrees that counsel for Complainant and the staff of the Board for Professional Engineers and Land Surveyors 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.

10. 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.

11. 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.

12. 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:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Civil Engineer License No. C 30011 issued to Respondent Rafael Detalban Divina (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

The probationary period shall be a minimum of three (3) years. If the Respondent successfully completes his probationary conditions within three (3) years, the probationary period shall be deemed completed, and Respondent's Civil Engineer License shall be unconditionally restored. If the Respondent has not yet successfully completed the probationary conditions within three (3) years, the probationary period shall continue beyond the three (3) year period, but only as long as necessary for the Respondent to complete the probationary conditions, at which time, the probationary period shall be deemed completed, and the Respondent's Civil Engineer License shall be unconditionally restored.

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

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

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

4. **Violation of Probation.** 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 matters are final.

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5. **Completion of Probation.** Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the Respondent's license shall be unconditionally restored. The probationary period shall be a minimum of three (3) years. If the Respondent successfully completes the probationary conditions within three (3) years, the probationary period shall be deemed completed, and the Respondent's Civil Engineer License shall be unconditionally restored. If the Respondent has not yet successfully completed the probationary conditions within three (3) years, the probationary period shall continue beyond the three (3) year period, but only as long as necessary for the Respondent to complete the probationary conditions, at which time, the probationary period shall be deemed completed, and the Respondent's Civil Engineer License unconditionally restored.

6. **Cost Recovery.** Within four and one-half (4 1/2) years from the effective date of the decision, the Respondent shall reimburse the Board for its investigative and enforcement costs in this matter in the amount of $5,000.00. Said reimbursement may be paid in installments.

7. **Examination**. Within sixty (60) days of the effective date of the decision, the Respondent shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.

8. **Ethics Course.** Within four and one-half (4 1/2) years of the effective date of the decision, the Respondent shall successfully complete and pass a course in professionalism and ethics for engineers, approved in advance by the Board or its designee. The Respondent shall provide the Board with official proof of the requisite course. The Board or its designee shall not unreasonably withhold approval.

9. **Notification.** Within thirty (30) days of the effective date of the decision, the 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 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, the Respondent may be required to provide the same notification to each new person or entity with whom he has a contractual or employment relationship relating to professional civil

engineering services and shall report to the Board the name and address of each person or entity so notified.

10. **Take And Pass Examinations.** Within four and one-half (4 1/2) years of the effective date of the decision, the Respondent shall successfully complete and pass three (3) college-level courses, related to the areas of violation. Said courses shall be approved in advance by the Board or its designee. The Respondent shall provide the Board with official proof of completion of the requisite courses. For purposes of this condition, "college-level course" means a course offered by a community college or four-year university of three (3) semester units or the equivalent; it does not include seminars. The college-level courses may be on-line college courses, as long as the courses meet the other requirements (graded component, three semester units or the equivalent, approved in advance by the Board.) The Board or its designee shall not unreasonably withhold approval.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael C. Johnston, 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 and Land Surveyors.

DATED: _____ _____
RAFAEL DETALBAN DIVINA
Respondent

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

DATED: _____ _____
Michael C. Johnston, Esq.
Attorney for Respondent

engineering services and shall report to the Board the name and address of each person or entity so notified.

10. **Take And Pass Examinations.** Within four and one-half (4 1/2) years of the effective date of the decision, the Respondent shall successfully complete and pass three (3) college-level courses, related to the areas of violation. Said courses shall be approved in advance by the Board or its designee. The Respondent shall provide the Board with official proof of completion of the requisite courses. For purposes of this condition, "college-level course" means a course offered by a community college or four-year university of three (3) semester units or the equivalent; it does not include seminars. The college-level courses may be on-line college courses, as long as the courses meet the other requirements (graded component, three semester units or the equivalent, approved in advance by the Board.) The Board or its designee shall not unreasonably withhold approval.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael C. Johnston, 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 and Land Surveyors.

DATED: 7/28/2010 *Original Signed*

RAFAEL DETALBAN DIVINA
Respondent

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

DATED: _____

Michael C. Johnston, Esq.
Attorney for Respondent

engineering services and shall report to the Board the name and address of each person or entity so notified.

10. **Take And Pass Examinations.** Within four and one-half (4 1/2) years of the effective date of the decision, the Respondent shall successfully complete and pass three (3) college-level courses, related to the areas of violation. Said courses shall be approved in advance by the Board or its designee. The Respondent shall provide the Board with official proof of completion of the requisite courses. For purposes of this condition, "college-level course" means a course offered by a community college or four-year university of three (3) semester units or the equivalent; it does not include seminars. The college-level courses may be on-line college courses, as long as the courses meet the other requirements (graded component, three semester units or the equivalent, approved in advance by the Board.) The Board or its designee shall not unreasonably withhold approval.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael C. Johnston, 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 and Land Surveyors.

DATED: _____

RAFAEL DETALBAN DIVINA
Respondent

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

DATED: 7-27-2010

Original Signed

Michael C. Johnston, Esq.
Attorney for Respondent

ENDORSEMENT

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

Dated: July 29, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

Original Signed

KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 854-A

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against, **RAFAEL DETALBAN DIVINA** **624 North Granada Drive** **Madera, CA 93637** **Civil Engineer License No. C 30011** Respondent.	Case No.: 854-A **ACCUSATION**

Complainant alleges:

PARTIES

1. David E. Brown (Complainant) brings this Accusation 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 February 14, 1979, the Board for Professional Engineers and Land Surveyors issued Civil Engineer Number C 30011 to Rafael Detalban Divina (Respondent). Respondent's civil engineer license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

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JURISDICTION

3. 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.

4. Section 6775 of the Code states, in pertinent part, that "[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.

. . .

(f) Who aids or abets any person in the violation of any provision of this chapter.

(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.

(h) Who violates any provision of this chapter.

5. Section 6730 of the Code states, in pertinent part that, "[i]n order to safeguard life, health, property and public welfare, any person, either in a public or private capacity, except as in this chapter specifically excepted, who practices, or offers to practice, civil engineering, electrical engineering or mechanical engineering, in any of its branches in this state . . . shall submit evidence that he or she is qualified to practice, and shall be licensed accordingly as a civil engineer, electrical engineer or mechanical engineer by the board."

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6. Section 6731 of the Code states:

> Civil engineering embraces the following studies or activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges:
>
> (a) The economics of, the use and design of, materials of construction and the determination of their physical qualities.
>
> (b) The supervision of the construction of engineering structures.
>
> (c) The investigation of the laws, phenomena and forces of nature.
>
> (d) Appraisals or valuations.
>
> (e) The preparation or submission of designs, plans and specifications and engineering reports.
>
> (f) Coordination of the work of professional, technical, or special consultants.
>
> (g) Creation, preparation, or modification of electronic or computerized data in the performance of the activities described in subdivisions (a) through (f).
>
> Civil engineering also includes city and regional planning insofar as any of the above features are concerned therein. Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3.

7. Section 6732 of the Code states, in pertinent part that, "[i]t is unlawful for anyone other than a professional engineer licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional engineer, or in any manner, use the title "professional engineer," "licensed engineer," "registered engineer," or "consulting engineer," or any of the following branch titles: . . . "electrical engineer," . . . "mechanical engineer," . . . or any combination of these words and phrases or abbreviations thereof unless licensed under this chapter."

8. Section 6737.2 of the Code states, "[n]othing in this chapter shall prohibit a civil engineer, registered under the provisions of this chapter, from practicing or offering to practice any engineering in connection with or supplementary to civil engineering studies or activities as defined in Section 6731."

9. Section 118, subdivision (b), of the Code provides that the expiration 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.

10. 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.

GENERAL BACKGROUND

North Maple Project

11. On or about October 12, 2004, the Enforcement Unit of the Board received a complaint from Raul Gonzalez, Structural Plans Examiner for the City of Fresno, against Respondent. Gonzalez alleged that Respondent was negligent and/or incompetent in his civil engineering practice for a project located at 7190 North Maple Avenue in Fresno, California (North Maple Project). Gonzalez claimed that, through numerous submittals of plans that failed to address problems on the project, Divina demonstrated a lack of engineering knowledge.

North Wilson Project

12. On or about June 10, 2005, the Enforcement Unit of the Board received another complaint from Raul Gonzalez, Structural Plans Examiner for the City of Fresno, against Respondent. Gonzalez alleged that Respondent was negligent and/or incompetent in his civil engineering practice for a project located at 1460 North Wilson in Fresno, California (North Wilson Project). Gonzalez claimed that in the six months following his original complaint on the North Maple Project, Respondent had continued to submit deficient work to the City for review.

Howard Mini-Storage Project

13. On or about September 6, 2005, the Enforcement Unit of the Board received a complaint from Dale Waun against Respondent. Waun alleged that Respondent was negligent and/or incompetent, and in breach of contract regarding civil engineering services he was hired to perform for a mini-storage facility located at 3391 and 3461 Howard Road in Madera, California (Howard Mini-Storage Project).

FIRST CAUSE FOR DISCIPLINE

(Negligence/Incompetence - North Maple Project)

14. Paragraphs 1 through 13 are incorporated herein by reference.

15. Respondent is subject to disciplinary action under section 6775, subdivision (c), in that he was guilty of negligence or incompetence in his practice for the North Maple Project from approximately December 2004 through June 2004, as follows:

a. Respondent failed to provide appropriate information within the structural calculations that a licensed architect would use to assemble project drawings and specifications of "sufficient clarity" and "to show in detail that it (the project being permitted) will conform to the provisions of this code" required in Section 106.3.3 of the Uniform Building Code (UBC).

b. Respondent failed to engineer provisions for conventional light-frame construction that met the limitations for conventional framing, even though they are clearly identified in Section 2320 of the UBC, and were identified for him by the building department.

c. In the third submittal calculations Respondent reduced the applied wind loading from Exposure C to Exposure B, despite the lack of evidence suggesting that the building department allowed this reduction in force.

d. Respondent's calculations from the first submittal reported an uplift (and consequent compressive) force of 10,660 lbs. at the end of shear walls located along Line A but Respondent did not justify the adequacy of the foundation system to resist such large forces.

e. Respondent failed to take into account a gap in his drawings – a 1/2" gap along lines 2, 3 and 4, which means that the shear walls along lines A, B and B2 cannot be considered continuous across this gap for the determination of hold-down forces.

f. Respondent improperly included "anchor bolts" in the first and second submittal calculations for the second level shear wall fastening to the first level.

g. An upper level shear wall occurs atop a beam spanning across the garage, but Respondent failed to describe in the first and second submittal calculations how the lateral forces are to be transferred to the nearest offset shear wall on the lower level.

h. Respondent's second submittal calculations show the redundancy factor to be "DIV/0!", which is incorrect output.

i. In his first and second submittals Respondent incorrectly added the overturning effects of the stacked shear walls throughout the building.

SECOND CAUSE FOR DISCIPLINE

(Negligence/Incompetence - North Wilson Project)

16. Paragraphs 1 through 15 are incorporated herein by reference.

17. Respondent is subject to disciplinary action under section 6775, subdivision (c), in that he was guilty of negligence or incompetence in his practice for the North Wilson Project from approximately March 2005 through May 2005, as follows:

a. Respondent failed to include the required grade for the redwood stringers called out for in his plans.

b. Respondent failed to include clear bolt spacing for the anchorage of the handrail and guardrail posts.

c. Detail F/A2 does not make sense and does not appear to apply anywhere on the project.

d. In Plan B on Drawing A2, Respondent improperly called for lag screws to be embedded 6 inches into an existing 2x4 wall stud which is impossible as the greatest depth of wood available is 3.5", the depth of the stud.

e. In the stair stringer calculations, Respondent incorrectly used the entire section for load resistance, not taking into account that the stringers have notches built into them to receive the tread.

f. Respondent improperly used two different live loads for design of the stair stringers.

g. Respondent used the incorrect formula to determine the bending moment in his stringer design for 40 psf.

h. Respondent indicated in Detail P/A2 that a triple 2x14 stringer (width = 4.5") is to be supported by a Simpson LUS 28 hanger (width 1.5"), which renders it un-buildable.

i. Respondent's design shows that the stringer is sloped and the hanger is shown straight, resulting in a "knife-edge" support of the wood members, which is prohibited by the hanger manufacturer.

j. Respondent designed the handrail with a height of 3'- 0, whereas the actual height must be determined considering the effect of placement of the bolts.

THIRD CAUSE FOR DISCIPLINE

(Negligence/Incompetence - Howard Mini-Storage Project)

18. Paragraphs 1 through 17 are incorporated herein by reference.

19. Respondent is subject to disciplinary action under section 6775, subdivision (c), in that he was guilty of negligence or incompetence in his practice for the Howard Mini-Storage Project from approximately May 2004 through February 2005, as follows:

a. In Drawing 4 Respondent failed to include a well-defined gutter system along the south driveway of the property to direct surface water around the southerly buildings in such a way as to be consistent with the direction and placement of arrows indicating the desired drainage pattern, there is not enough slope defined by the given grades, and they do not match the typical 1% specified on the plans.

b. Respondent's resubmittal plans are unclear as to the extent of work required along Howard Road, and the delineation and extent of new versus existing paving is not defined on the plan.

c. An un-numbered plan in Respondent's resubmittal plans shows a paving cross-section through Howard Road but is not clear on the placement and relationship of the asphalt thickness, 8" aggregate base and 95% compacted sub-base.

d. Respondent was unable to complete the project for his client, despite having presented himself as able to do so.

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FOURTH CAUSE FOR DISCIPLINE

(Misrepresentation)

20. Paragraphs 1 through 19 are incorporated herein by reference.

21. Respondent is subject to disciplinary action under section 6775, subdivision (b), in that he was guilty of misrepresentation in a tenant improvement project located at 40034 Highway 49, #A-1, in Oakhurst, California (Highway 49 Project) in the period from approximately May 2004 through February 2005, as follows:

22. Respondent had a written agreement with the owner of the property to prepare drawings related to the electrical, mechanical, and plumbing portions of the project, however, on or about July 23, 2008, Respondent admitted to the Board's Senior Investigator Michael Poore that he did not prepare the plans.

FIFTH CAUSE FOR DISCIPLINE

(Unlicensed Practice of Engineering)

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. Respondent is subject to disciplinary action under section 6775, subdivision (h), in that Respondent violated Code section 6730 when he practiced mechanical and electrical engineering with out a license on the Highway 49 Project in 2006. The circumstances are as follows:

25. On or about March 8, 2006, Respondent contracted with the owner of the property for mechanical and electrical engineering services, yet he was not licensed in California as a mechanical engineer nor as an electrical engineer.

26. Respondent does not fall within the exemption contained in Code section 6737.2, as he did not provide civil or structural engineering services, and therefore the mechanical and electrical engineering were not supplemental to civil engineering being performed by Respondent on the same project.

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SIXTH CAUSE FOR DISCIPLINE

(Violation of Contract)

27. Paragraphs 1 through 26 are incorporated herein by reference.

28. Respondent is subject to disciplinary action under section 6775, subdivision (b), in that Respondent was in violation of contract in his practice on or about February 3, 2005. The circumstances are as follows:

29. On or about May 6, 2004, Respondent entered into a contract with Wood & Waun to complete the Howard Mini-Storage Project. On or about February 3, 2005, Respondent delivered his unfinished plans to Dale Waun with a message indicating that he could not complete the project.

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 Number C 30011, issued to Rafael Detalban Divina Rafael Detalban Divina.

2. Ordering Rafael Detalban Divina 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;

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

DATED: 9/10/09

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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