

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 ) Case No. 854-A  
624 Granada Drive )  
Madera, CA 93637 )  
)  
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

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 KAREN R. DENVIR  
Deputy Attorney General  
4 State Bar No. 197268  
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5 P.O. Box 944255  
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6 Telephone: (916) 324-5333  
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 **RAFAEL DETALBAN DIVINA**  
13 **624 North Granada Drive**  
**Madera, CA 93637**  
14 **Civil Engineer License No. C 30011**

15 Respondent.

Case No. 854-A

OAH No. 2009100577

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional  
21 Engineers and Land Surveyors. He brought this action solely in his official capacity and is  
22 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,  
23 by Karen R. Denvir, Deputy Attorney General.

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

26 3. On or about February 14, 1979, the Board for Professional Engineers and Land  
27 Surveyors issued Civil Engineer License No. C 30011 to Rafael Detalban Divina (Respondent).

28 Respondent's license will expire on September 30, 2011, unless renewed.





1 **DISCIPLINARY ORDER**

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

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

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

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

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

21 4. **Violation of Probation.** If the Respondent violates the probationary conditions in  
22 any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may  
23 vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of  
24 probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter  
25 has been submitted to the Office of the Attorney General for the filing of such, the Board shall  
26 have continuing jurisdiction until all matters are final, and the period of probation shall be  
27 extended until all matters are final.

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

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

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

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

22           9.     **Notification.** Within thirty (30) days of the effective date of the decision, the  
23 Respondent shall provide the Board with evidence that he has provided all persons or entities with  
24 whom he has a contractual or employment relationship relating to professional civil engineering  
25 services with a copy of the decision and order of the Board and shall provide the Board with the  
26 name and business address of each person or entity required to be so notified. During the period  
27 of probation, the Respondent may be required to provide the same notification to each new person  
28 or entity with whom he has a contractual or employment relationship relating to professional civil



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

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

13 ACCEPTANCE

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

19  
20 DATED: 7/28/2016 Original Signed  
21 RAFAEL DETALBAN DIVINA  
22 Respondent

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

26  
27 DATED: \_\_\_\_\_  
28 Michael C. Johnston, Esq.  
Attorney for Respondent

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

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

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

19  
20 DATED: \_\_\_\_\_  
21 RAFAEL DETALBAN DIVINA  
22 Respondent

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

26  
27 DATED: 7-27-2010 Original Signed  
28 Michael C. Johnston, Esq.  
Attorney for Respondent

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

11 In the Matter of the Accusation Against,

Case No.: 854-A

12 **RAFAEL DETALBAN DIVINA**  
13 **624 North Granada Drive**  
14 **Madera, CA 93637**  
15 **Civil Engineer License No. C 30011**

**A C C U S A T I O N**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about February 14, 1979, the Board for Professional Engineers and Land  
23 Surveyors issued Civil Engineer Number C 30011 to Rafael Detalban Divina (Respondent).  
24 Respondent's civil engineer license was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on September 30, 2011, unless renewed.

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**JURISDICTION**

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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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1           6.     Section 6731 of the Code states:

2                     Civil engineering embraces the following studies or activities in  
3                     connection with fixed works for irrigation, drainage, waterpower, water  
4                     supply, flood control, inland waterways, harbors, municipal  
5                     improvements, railroads, highways, tunnels, airports and airways,  
6                     purification of water, sewerage, refuse disposal, foundations, grading,  
7                     framed and homogeneous structures, buildings, or bridges:

8                     (a) The economics of, the use and design of, materials of construction and  
9                     the determination of their physical qualities.

10                    (b) The supervision of the construction of engineering structures.

11                    (c) The investigation of the laws, phenomena and forces of nature.

12                    (d) Appraisals or valuations.

13                    (e) The preparation or submission of designs, plans and specifications and  
14                    engineering reports.

15                    (f) Coordination of the work of professional, technical, or special  
16                    consultants.

17                    (g) Creation, preparation, or modification of electronic or computerized  
18                    data in the performance of the activities described in subdivisions (a)  
19                    through (f).

20                    Civil engineering also includes city and regional planning insofar as any  
21                    of the above features are concerned therein. Civil engineers registered  
22                    prior to January 1, 1982, shall be authorized to practice all land surveying  
23                    as defined in Chapter 15 (commencing with Section 8700) of Division 3.

24           7.     Section 6732 of the Code states, in pertinent part that, “[i]t is unlawful for anyone  
25           other than a professional engineer licensed under this chapter to stamp or seal any plans,  
26           specifications, plats, reports, or other documents with the seal or stamp of a professional engineer,  
27           or in any manner, use the title "professional engineer," "licensed engineer," "registered engineer,"  
28           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.”



1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Negligence/Incompetence - North Maple Project)**

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

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

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

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

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

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

20 e. Respondent failed to take into account a gap in his drawings – a 1/2” gap along lines  
21 2, 3 and 4, which means that the shear walls along lines A, B and B2 cannot be considered  
22 continuous across this gap for the determination of hold-down forces.

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

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

28

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

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

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Negligence/Incompetence - North Wilson Project)**

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

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

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

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

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

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

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

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

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

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

28

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

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

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Negligence/Incompetence - Howard Mini-Storage Project)**

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

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

12 a. In Drawing 4 Respondent failed to include a well-defined gutter system along the  
13 south driveway of the property to direct surface water around the southerly buildings in such a  
14 way as to be consistent with the direction and placement of arrows indicating the desired drainage  
15 pattern, there is not enough slope defined by the given grades, and they do not match the typical  
16 1% specified on the plans.

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

20 c. An un-numbered plan in Respondent's resubmittal plans shows a paving cross-section  
21 through Howard Road but is not clear on the placement and relationship of the asphalt thickness,  
22 8" aggregate base and 95% compacted sub-base.

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

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Misrepresentation)**

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

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

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

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Unlicensed Practice of Engineering)**

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

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

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

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

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violation of Contract)**

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

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

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

11 **PRAYER**

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

15 1. Revoking or suspending Civil Engineer Number C 30011, issued to Rafael Detalban  
16 Divina Rafael Detalban Divina.

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

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

21  
22 DATED: 9/10/09

*Original Signed*

23 DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

*Complainant*

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