

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

In the Matter of the Accusation against:	)	
	)	
FRANK TZONG-HWAI LEE	)	Case No. 939-A
348 Camphor Avenue	)	
Fremont, CA 94539	)	
	)	
Civil Engineer License No. C 34975,	)	
	)	
Respondent.	)	
_____	)	

**DECISION**

The attached Stipulated Settlement and Disciplinary Order 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 April 29, 2011.

IT IS SO ORDERED March 24, 2011.

*Original Signed*  
\_\_\_\_\_  
BOARD FOR PROFESSIONAL ENGINEERS,  
LAND SURVEYORS, AND GEOLOGISTS  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 NICHOLAS TSUKAMAKI  
Deputy Attorney General  
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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:

Case No. 939-A

12 **FRANK TZONG-HWAI LEE**  
13 **348 Camphor Avenue**  
**Fremont, CA 94539**  
14 **Civil Engineer License No. C 34975**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Respondent.

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  
21 Professional Engineers and Land Surveyors ("Board"). He brought this action solely in his  
22 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the  
23 State of California, and by Nicholas Tsukamaki, Deputy Attorney General.

24 2. Respondent Frank Tzong-Hwai Lee ("Respondent") is representing himself in this  
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 18, 1982, the Board issued Civil Engineer License No. C 34975  
27 to Respondent. The Civil Engineer License was in full force and effect at all times relevant to the  
28

1 charges brought in Accusation No. 939-A and will expire on September 30, 2011, unless  
2 renewed.

3 JURISDICTION

4 4. Accusation No. 939-A was filed before the Board and is currently pending against  
5 Respondent. The Accusation and all other statutorily required documents were properly served  
6 on Respondent on August 12, 2010. Respondent timely filed his Notice of Defense contesting the  
7 Accusation. A copy of Accusation No. 939-A is attached as exhibit A and incorporated herein by  
8 reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read and understands the charges and allegations in  
11 Accusation No. 939-A. Respondent has also carefully read and understands the effects of this  
12 Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
17 the attendance of witnesses and the production of documents; the right to reconsideration and  
18 court review of an adverse decision; and all other rights accorded by the California  
19 Administrative Procedure Act and other applicable laws.

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

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation  
24 No. 939-A.

25 9. Respondent agrees that his Civil Engineer License is subject to discipline and he  
26 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order  
27 below.

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

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

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

14          5.    **Completion of Probation.** Upon successful completion of all of the probationary  
15 conditions and the expiration of the period of probation, Respondent's license shall be  
16 unconditionally restored.

17          6.    **Cost Recovery.** Within four and one-half (4 ½) years of the effective date of the  
18 decision, Respondent shall reimburse the Board for its investigative and enforcement costs in this  
19 matter in the amount of \$4,931.04. Said reimbursement may be paid in installments. Failure to  
20 reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the  
21 probation order.

22          7.    **Ethics Course.** Within four and one-half (4 ½) years of the effective date of the  
23 decision, Respondent shall successfully complete and pass a course in professional ethics  
24 approved in advance by the Board or its designee.

25          8.    **Civil Engineering Courses.** Within four and one-half (4 ½) years of the effective  
26 date of the decision, Respondent shall successfully complete and pass three (3) college-level  
27 courses specifically related to civil engineering.

28          9.    **Notification.** Within thirty (30) days of the effective date of the decision,

1 Respondent shall provide the Board with evidence that he has provided all persons or entities with  
2 whom he has a contractual or employment relationship relating to professional civil engineering  
3 services with a copy of the decision and order of the Board and shall provide the Board with the  
4 name and business address of each person or entity required to be so notified. During the period  
5 of probation, Respondent may be required to provide the same notification to each new person or  
6 entity with whom he has a contractual or employment relationship relating to professional civil  
7 engineering services, and shall report to the Board the name and address of each person or entity  
8 so notified.

9 ACCEPTANCE

10 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
11 stipulation and the effect it will have on my Civil Engineer License. I enter into this Stipulated  
12 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
13 bound by the Decision and Order of the Board for Professional Engineers and Land Surveyors.

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15 DATED: 1/19/11 Original Signed  
16 FRANK TZONG-HWAI LEE  
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: January 21, 2011

Respectfully Submitted,

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

*Original Signed*  
NICHOLAS TSUKAMAKI  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 939-A**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 NICHOLAS TSUKAMAKI  
Deputy Attorney General  
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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:

Case No. 939-A

12 **FRANK TZONG-HWAI LEE**  
13 **348 Camphor Avenue**  
**Fremont, CA 94539**

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

14 **Civil Engineer License No. C 34975**

15 Respondent.

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17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 18, 1982, the Board issued Civil Engineer License Number C  
24 34975 to Frank Tzong-Hwai Lee ("Respondent"). The Civil Engineer License was in full force  
25 and effect at all times relevant to the charges brought herein and will expire on September 30,  
26 2011, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following  
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise  
4 indicated.

5 **REGULATORY PROVISIONS**

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

7 "The board may reprove, suspend for a period not to exceed two years, or revoke the  
8 certificate of any professional engineer registered under this chapter:

9 ...

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

12 ..."

13 5. California Code of Regulations, title 16, section 404, subdivision (n), provides: "For  
14 the sole purpose of investigating complaints and making findings thereon under Sections 6775  
15 and 8780 of the Code, 'incompetence' as used in Sections 6775 and 8780 of the Code is defined  
16 as the lack of knowledge or ability in discharging professional obligations as a professional  
17 engineer or land surveyor."

18 6. California Code of Regulations, title 16, section 404, subdivision (w), states: "For the  
19 sole purpose of investigating complaints and making findings thereon under Sections 6775 and  
20 8780 of the Code, 'negligence' as used in Sections 6775 and 8780 of the Code is defined as the  
21 failure of a licensee, in the practice of professional engineering or land surveying, to use the care  
22 ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in  
23 good standing."

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

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1 **COSTS**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Negligence)**

8 9. Respondent is subject to disciplinary action under section 6775, subdivision (c), of  
9 the Code, and California Code of Regulations, title 16, section 404, subdivision (w), for  
10 negligence in that Respondent prepared a geotechnical investigation report for a building to be  
11 constructed in San Francisco, California, without consulting or relying on customary publications  
12 and guidelines used in the geotechnical and earthquake engineering communities. As a result of  
13 Respondent’s failure to consult and rely on these publications and guidelines, Respondent (1)  
14 improperly classified the potential for liquefaction in the soil beneath the proposed building; (2)  
15 failed to obtain soil samples from the appropriate soil depth; and (3) did not carry out his  
16 investigation in accordance with generally accepted soil engineering practices.

17 10. The circumstances of Respondent’s negligence are as follows:

18 a. In or about January 2007, John Sullivan (“Sullivan”), the owner of JPS Builders, Inc.,  
19 a developer, hired Respondent to perform a soils and foundation investigation for a proposed  
20 mixed-use building at 870 Harrison Street in San Francisco, California (“the Site”). On or about  
21 February 5, 2007, Respondent submitted a Soil and Foundation Investigation Report of the Site  
22 (“Report”) to Sullivan.

23 In his Report, Respondent stated that his investigation consisted, inter alia, of obtaining soil  
24 samples by “drilling, sampling and logging [ ] two exploratory test borings to a maximum depth  
25 of 25-1/2 feet . . . .” Those samples showed that the “[s]urface soil at the site consi[sts] of brown  
26 silty medium sand” that “was generally moist, dense and extended to the bottom of both borings.”  
27 Based on the soil samples, Respondent found that “[b]ecause of the silty medium sand and not  
28 finding loose fine sand at the site, the potential for liquefaction at the site is thought to be

1 moderate.” Next, under a section entitled “Investigation Limitations,” Respondent concluded that  
2 “[t]his report has been prepared in accordance with generally accepted Soil Engineering  
3 practices.”

4 b. Respondent has admitted that he should have drilled, sampled, and logged the  
5 exploratory test borings to 50 feet rather than 25 and 1/2 feet. Also, in a letter to Sullivan dated  
6 February 14, 2007, Respondent stated that “the project site is within the high Liquefaction  
7 Potential Zone . . . .”

8 c. Respondent has admitted that he has “performed very few liquefaction investigations  
9 over the course of [his] career.” He has also stated that he “will henceforth be very cautious and  
10 more diligent with respect to the possibility that a complete liquefaction investigation may be  
11 needed in the investigation of every site I work on.”

## 12 **SECOND CAUSE FOR DISCIPLINE**

### 13 **(Incompetence)**

14 11. Respondent is subject to disciplinary action under section 6775, subdivision (c), of  
15 the Code, and California Code of Regulations, title 16, section 404, subdivision (n), for  
16 incompetence in that in preparing a geotechnical investigation report for a building to be  
17 constructed in San Francisco, California, Respondent (1) lacked awareness and/or knowledge of  
18 current and customary publications and guidelines used in the geotechnical and earthquake  
19 engineering communities; (2) failed to drill exploratory probes to sufficient soil depths; and (3)  
20 improperly classified the potential for liquefaction in the soil beneath the proposed building. The  
21 circumstances of Respondent’s incompetence are set forth above in Paragraphs 10.a., 10.b., and  
22 10.c.

## 23 **PRAYER**

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

27 1. Revoking or suspending Civil Engineer License Number C 34975 issued to Frank  
28 Tzong-Hwai Lee;

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2. Ordering Frank Tzong-Hwai Lee 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: August 4, 2010

*Original Signed*

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

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