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

In the Matter of the Accusation against: J. B. NEWTON 19697 Day Lane Redding, CA 96002 Civil Engineer License No. C 55936, Respondent.	))))))))))	Case No. 951-A

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 September 2, 2011.

IT IS SO ORDERED July 28, 2011.

Original Signed

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

KAMALA D. HARRIS
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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 Against: **J.B. NEWTON** **19697 Day Street** **Redding, California 96002** **Civil Engineer License No. C 55936** Respondent.	Case No. 951-A OAH Case No. 2010030525 **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. Joanne Arnold (Complainant) is the Acting Executive Officer of the Board for Professional Engineers, Land Surveyors and Geologists. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney General.

2. Respondent J.B. Newton (Respondent) is represented in this proceeding by attorney Tyler M. Lalaguna, whose address is: Tyler M. Lalaguna, Wells, Small, Fleharty & Weil, 292 Hemsted Drive, 2nd Floor, P.O. Box 991828, Redding, California 96099-1828.

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3. On or about July 26, 1996, the Board for Professional Engineers, Land Surveyors and Geologists (Board) issued Civil Engineer License No. C 55936 to Respondent. The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Accusation No. 951-A and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 951-A was filed before the 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 August 12, 2010. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 951-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 951-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 her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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 No. 951-A, if proven at a hearing, constitute cause for imposing discipline upon her Civil Engineer License.

9. 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 Respondent hereby gives up her right to contest those charges.

10. Respondent agrees that her Civil Engineer License is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Civil Engineer License No. C 55936 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** The Respondent shall obey all laws and regulations related to the practices of professional engineering and professional 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.

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.

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6. **Cost Recovery.** The Respondent is hereby ordered to reimburse the Board the amount of $4,717.50 thirty (30) months from the effective date of this decision for its investigative 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.

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 two (2) years of the effective date of the decision, the Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.

9. **Take And Pass Examination.** Within two (2) years of the effective date of the decision, Respondent shall successfully complete and pass, with a grade of "C" or better, one college-level course, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation and all costs associated with the course shall be paid by Respondent. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. Respondent shall provide the Board with official proof of completion of the required course.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Tyler M. Lalaguna. 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: 5/12/11 Original Signed

J.B. NEWTON
Respondent

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

Wells, Small, Fleharty & Weil

DATED: May 13, 2011

Original Signed

Tyler M. Lalaguna
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: May 31, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

Original Signed

STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 951-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: **J. B. NEWTON** **19697 Day Lane** **Redding, CA 96002** **Civil Engineer License No. C 55936** Respondent.	Case No. 951-A **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. David E. Brown ("Complainant") brings this First Amended 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 July 26, 1996, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License Number C 55936 to J. B. Newton ("Respondent"). The Civil Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs ("Board"), 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:

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

. . .

(h) Who violates any provision of this chapter."

5. 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.

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

BACKGROUND

7. In or about September 2007, consumers C.G.and J.G. purchased a single family residence located at 4041 Rainbow Drive, Weed, California constructed by River Valley Construction. As part of said construction, River Valley Construction built a four foot high, concrete retaining wall at the rear of the residence without engineering or necessary permits from the Siskiyou County Building Department.

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8. In or about December 2007, River Valley Construction hired Respondent J.B. Newton to determine and evaluate the as-built construction of the aforesaid retaining wall to obtain approval of the retaining wall by the Siskiyou County Building Department.

9. Based upon her discussions with and review of photographs provided to her by River Valley Construction, Respondent prepared "Structural Calculations for As-Built Retaining Wall for River Valley Construction" dated January 4, 2008, setting forth structural calculations and details for the as-built construction of the retaining wall, and submitted them to the Siskiyou County Building Department for approval. Thereafter, the Siskiyou County Building Department approved Respondent's submittal, subject to a required "special inspection" of the retaining wall by a California licensed engineer or architect.

10. In or about March 2008, River Valley Construction again hired Respondent to perform the required "special inspection" of the subject retaining wall. On or about March 3, 2008, Respondent visually inspected the subject retaining wall and prepared a "Special Inspector's Report" dated March 6, 2008, stating that "all work done on this job to date has been satisfactorily completed and conforms to the approved plans and requirements of the Siskiyou County Code." Said "Special Inspector's Report" was submitted to the Siskiyou County Building Department.

11. On or about March 13, 2008, Respondent received photographs of excavations of footings and other components of the subject retaining wall. Respondent acknowledged that according to the photographs, the retaining wall was not built as described in her "Structural Calculations for As-Built Retaining Wall for River Valley Construction" dated January 4, 2008. Respondent notified River Valley Construction that she would request testing to reveal the as-built construction of the retaining wall, including the rebar, concrete thickness and rebar spacing of the retaining wall.

12. Some time after June 1, 2008, at the request of River Valley Construction, Respondent performed another visual inspection of the subject retaining wall to assess the structural suitability of certain footings along the patio. Based upon a visual inspection, and without any testing to reveal the as-built construction of the retaining wall, including the rebar,

concrete thickness and rebar spacing, and notwithstanding the photographs of excavations of footings and other components of the subject retaining wall described in Paragraph 11, Respondent determined that the footings were "more than adequate, assuming that the pads were poured according to the plans".

FIRST CAUSE FOR DISCIPLINE

(Negligence)

13. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject to disciplinary action under section 6775(c) in that she committed acts or omissions that are negligent and below the minimum standard of practice for civil engineers in the State of California in the respects described below.

(a) Respondent prepared "Structural Calculations for As-Built Retaining Wall for River Valley Construction" based upon her discussions with, and review of photographs provided by, River Valley Construction. Respondent prepared said report without excavation or testing procedures that if performed, could have provided pertinent information regarding the actual as-built components of the retaining wall, including rebar size, wall thickness, rebar spacing, footing size and whether or not its footings provided adequate support for the retaining wall.

(b) Respondent prepared the "Special Inspector's Report" based upon a visual inspection of the retaining wall without excavation or testing procedures that if performed, would have provided pertinent information regarding the as-built components of the retaining wall, including rebar size, wall thickness, footing size, rebar spacing and whether or not its footings complied with applicable codes, approved plans or design, and/or provided adequate support for the retaining wall.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

14. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject to disciplinary action under section 6775(c) in that she committed acts or omissions manifesting incompetence in the practice of civil engineering in the respects described below.

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(a) Respondent prepared the "Structural Calculations for As-Built Retaining Wall for River Valley Construction" based upon her discussions with, and photographs provided by, River Valley Construction. Respondent purported to ascertain and evaluate the as-built construction of the retaining wall without excavation or testing procedures that if performed, could have provided pertinent information regarding the as-built components of the retaining wall, including rebar size, wall thickness, footing size, rebar spacing and whether or not its footings provided adequate support for the retaining wall.

(b) Respondent prepared the "Special Inspector's Report" based upon her visual inspection of the retaining wall without excavation or testing procedures that if performed, would have provided pertinent information regarding the as-built components of the retaining wall, including rebar size, wall thickness, footing size, rebar spacing and whether or not its footings complied with applicable codes, approved plans or design, and/or provided adequate support for the retaining wall.

(c) Respondent failed to notify the Siskiyou County Building Department that after submission of "Structural Calculations for As-Built Retaining Wall for River Valley Construction" and "Special Inspector's Report" to the Siskiyou County Building Department, she received photographs showing that the as-built condition of the subject retaining wall was not built as she had represented therein, and that its footings may be inadequate to support the retaining wall.

THIRD CAUSE FOR DISCIPLINE

(Violation of Provisions of Chapter)

15. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject to disciplinary action under section 6775(h). Respondent submitted her "Special Inspector's Report" without including her engineering stamp or seal thereon in violation of section 6735(a).

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 55936, issued to J.B. Newton;

2. Ordering J.B. Newton 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; and

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

DATED: 10/13/00

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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