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

Case No. 962-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 Depterwer 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

. 1	Kamala D. Harris			
2	Attorney General of California FRANK H. PACOE			
3.	Supervising Deputy Attorney General JUSTIN R. SURBER			
4	Deputy Attorney General State Bar No. 226937			
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004			
· 6	Telephone: (415) 355-5437 Facsimile: (415) 703-5480			
7	Attorneys for Complainant			
8	BEFORE THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND			
9	GEOLOGISTS			
	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
10				
11	In the Matter of the Accusation Against: Case No. 962-A			
12	RICHARD ALLAN SEALE P.O. Box 1402 STIPULATED SETTLEMENT AND DISCIPLINARY ORDER			
13	Fort Bragg, CA 95437 Land Surveyor License No. L 4455			
14				
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	Joanne Arnold (Complainant) is the Interim Executive Officer of the Board for			
21	Professional Engineers, Land Surveyors, and Geologists. She brought this action solely in her			
22	official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the			
23	State of California, by Justin R. Surber, Deputy Attorney General.			
24	2. Respondent Richard Allan Seale (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 March 9, 1977, the Board for Professional Engineers, Land Surveyors,			
27	and Geologists issued Land Surveyor License No. L 4455 to Richard Allan Seale (Respondent)			
28	Allen			

The Land Surveyor License was in full force and effect at all times relevant to the charges brought in Accusation No. 962-A and will expire on September 30, 2011, unless renewed.

JURISDICTION

4. Accusation No. 962-A was filed before the Board for Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 1, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 962-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in Accusation No. 962-A. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; 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

- Respondent admits the truth of each and every charge and allegation in Accusation No. 962-A.
- 9. Respondent agrees that his Land Surveyor License is subject to discipline and he agrees to be bound by the Board for Professional Engineers, Land Surveyors, and Geologists (Board)'s probationary terms as set forth in the Disciplinary Order below.

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CONTINGENCY

- 10. 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 and Land Surveyors 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 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.
- 11. 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.
- 12. 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.
- 13. 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 Land Surveyor License No. L 4455 issued to Respondent Richard Allan Seale (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. Within two an one-half (2 ½) years of the effective date of the decision, Seale shall successfully complete and pass one (1) college-level land surveying course specifically related to the areas of violation alleged in the Accusation. Said course shall be approved in advance by the Board or its designee. Seale shall provide the Board with official proof of completion of the requisite course. For purposes of this condition, "college-level course" means a course offered by a community college or a four-year university of three semester units or the equivalent; it does not include seminars.
- Within two and one-half (2 ½) years of the effective date of the decision, Seale must successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.
- 3. Within two and one-half (2 ½) years of the effective date of the decision, Seale shall reimburse the Board for its investigative and enforcement costs in this matter in the amount of \$4,675.00. Said reimbursement may be paid in installments.
- 5. Within sixty (60) days of the effective date of the decision, Seale shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.

[NOTE: This is a 25-question multiple choice examination based on the Professional Land Surveyors' Act and the Board Rules that will be mailed to the respondent on the effective date of the decision. The respondent then completes the examination and mails it back to the Board for scoring.]

6. Within thirty (30) days of the effective date of the decision, Seale 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 land surveying services with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, Seale 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 land surveying services and shall report to the Board the name and address of each person or entity so notified.

- 7. Seale shall obey all federal, state, and local laws and regulations related to the practices of professional engineering and land surveying.
 - 8. Seale shall submit such special reports as the Board may require.
- 9. The period of probation shall be tolled during the time Seale is practicing exclusively outside the state of California. If, during the period of probation, Seale practices exclusively outside the state of California, Seale shall immediately notify the Board in writing.
- 10. If Seale violates the probationary conditions in any respect, the Board, after giving him 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 Seale, 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.
- 11. Upon successful completion of all of the probationary conditions and the expiration of the period of probation, Seale's Land Surveyor License, No. L 4455, shall be unconditionally restored.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Land Surveyor 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: June 27,2011 Original Signed - RICHARD ALLAN SEALE Respondent Allen

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: 7/1/11

Respectfully submitted,

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

Original Signed

JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

SF2010202210 Stipulation.rtf

Exhibit A

Accusation No. 962-A

1 2 3 4 5 6 7	EDMUND G. BROWN JR. Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JUSTIN R. SURBER Deputy Attorney General State Bar No. 226937 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 355-5437 Facsimile: (415) 703-5480 Attorneys for Complainant				
8	BEFORE THE BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
10	In the Matter of the Accusation Against: Case No. 962-A				
11	RICHARD ALLAN SEALE				
12	P.O. Box 1402 Fort Bragg, CA 95437 Land Surveyor License No. L 4455 A C C U S A T I O N				
14	Respondent.				
15					
16	Complainant alleges:				
17	PARTIES				
18	David E. Brown (Complainant) brings this Accusation solely in his official capacity				
19	as the Executive Officer of the Board for Professional Engineers and Land Surveyors,				
20	Department of Consumer Affairs.				
21	2. On or about March 9, 1977, the Board for Professional Engineers and Land Surveyors				
22	issued Land Surveyor License Number L 4455 to Richard Allan Seale (Respondent). The Land				
23	Surveyor License was in full force and effect at all times relevant to the charges brought herein				
24	and will expire on September 30, 2011, unless renewed.				
25	JURISDICTION				
26	3. This Accusation is brought before the Board for Professional Engineers and Land				
27	Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.				
28	All section references are to the Business and Professions Code unless otherwise indicated.				
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Section 8759(a) of the Code states:

"(a) A licensed land surveyor or registered civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or registered civil engineer and the client, or his or her representative, prior to the licensed land surveyor or registered civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. . ."

5. Section 8761 of the Code stated¹:

"(a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice. All maps, plats, reports, descriptions, or other documents shall be prepared by, or under the responsible charge of a licensed land surveyor or civil engineer authorized to practice land surveying and shall include his or her name and license number. If the document has multiple pages or sheets, the signature, the seal or stamp, date of signing and sealing or stamping, and expiration date of the license shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet. . ."

6. Section 8762 of the Code states:

"...(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

"(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the

¹ The quote here is from the former version of Business and Professions Code section 8761 in effect from January 1, 2006- December 31, 2009. This was the applicable section at the time of the alleged violation. The sub-sections of 8761 have been reorganized; however the name and license requirements are still included in the current version. A new version of this section shall become effective January 1, 2011. This new version also contains the name and license requirements.

office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

- "(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.
- "(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.
- "(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.
- "(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.
- "(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.
- "(d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

"(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

- "(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.
- "(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder."
 - 7. Section 8771(a) of the Code states:
- "(a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the perpetuation or facile reestablishment of any point or line of the survey."
 - 8. Section 8780 of the Code states:

"The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.

"By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

"(b) Any negligence or incompetence in his or her practice of land surveying.

. . .

SECOND CAUSE FOR DISCIPLINE

(Negligence)

15. Respondent is subject to disciplinary action under section 8780(b) of the Code in that Respondent was negligent in the practice of land surveying. Respondent took approximately two years to file the Record of Survey for the Robin Parcel when the survey was due within 90 days. Respondent failed to include his name and license number on the plat he prepared for the Robin Parcel.

North Highway 1 Survey

- 16. In or about April 1998, Respondent performed a boundary survey ("1998 Survey") of a parcel of land known as APN 69-101-14 or 27760 North Highway 1, Fort Bragg, CA (Highway 1 Parcel). In performing the 1998 Survey Respondent relied on a 1998 legal description of the property. This 1998 legal description was discrepant from the previously filed legal descriptions of the Highway 1 Parcel and adjoining properties. There was a nine degree difference in the bearings between the 1998 legal description and all of the previous legal descriptions of the Highway 1 parcel and adjoining parcels. The 1998 legal description contained a typographical error.
- descriptions of the Highway 1 Parcel and adjoining properties. Respondent failed to identify the typographical error in the 1998 legal description. Respondent found three of the four monuments that were called out in the 1998 legal description. If the 1998 legal description was correct (which it was not), then the southwest monument that Respondent found was 9.1' out of position relative to the other monuments. This was a substantial difference between the found monuments and the 1998 legal description. Despite this, Respondent resolved the western boundary of the Highway 1 Parcel using the southwest monument and the incorrect bearing contained in the 1998 legal description. Accordingly, Respondent's western boundary was in the wrong location. Respondent set lathe along this incorrect western boundary and marked the northerly corner (occupied by a eucalyptus tree) with flagging tape.
 - 18. In or about September 2004, Respondent resurveyed ("2004 Survey") the Highway 1

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Parcel following a boundary dispute between the owners of the Highway 1 Parcel and the owners of an adjoining parcel of land. Again, Respondent relied on the erroneous 1998 legal description of the property to retrace his earlier survey. Respondent set a nail and tag in the eucalyptus tree to mark the northerly corner of the Highway 1 Parcel. This nail was approximately 50 feet west from the correct northerly corner. Respondent then submitted a corner record to the county surveyor. Respondent then billed the owners of the Highway 1 Parcel for his work.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Land Surveyors Act)

- 19. Respondent is subject to disciplinary action under section 8780(d) of the Code in that Respondent violated the Land Surveys Act as follows:
- 20. Respondent was required but failed to file a Record of Survey within 90 days of completing the 1998 Survey in violation of section 8762 of the Code.
- 21. Respondent violated section 8771 of the Code by failing to set durable monuments during the 1998 survey.
- 22. Respondent failed to enter a written contract with the owners of the Highway 1 Parcel before performing the 2004 Survey in violation of section 8759 of the Code.

FOURTH CAUSE FOR DISCIPLINE

(Negligence)

- 23. Respondent is subject to disciplinary action under section 8780(b) of the Code in that Respondent was negligent in the practice of land surveying as follows:
- Respondent failed to adequately research the recorded maps and deeds for the
 Highway 1 Parcel during the 1998 and 2004 Surveys.
- 25. Respondent failed to adequately review and analyze the field data that was discrepant from the 1998 legal description during the 1998 and 2004 Surveys.
- 26. Respondent incorrectly resolved the western boundary of the Highway 1 Parcel based on all of the information available, including the existing monuments on the land and the historical maps and deeds.

1	27.	Respondent violated the Land Surveyors Act as described in paragraphs 20-22,			
2	above.				
3		DISCIPLINARY CONSIDERATIONS			
4	28.	To determine the degree of discipline, if any, to be imposed on Respondent,			
5	Complainant alleges that on or about February 28, 2008, in a prior action, the Board for				
6	Professional Engineers and Land Surveyors issued Citation Number 5243-L and ordered				
7	Respondent to cease and desist violating sections 8762(b)(2), 8762(b)(3), 8762(b)(4), and 8780(b)				
8	of the Code and pay an \$800 fine. That Citation is now final and is incorporated by reference as				
9	if fully set forth.				
10		PRAYER			
11	WHI	EREFORE, Complainant requests that a hearing be held on the matters herein alleged,			
12	and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a				
13	decision:				
14	1.	Revoking or suspending Land Surveyor License Number L 4455, issued to Richard			
15	Allan Seal	e;			
16	2.	Ordering Richard Allan Seale to pay the Board for Professional Engineers and Land			
17	Surveyors	the reasonable costs of the investigation and enforcement of this case, pursuant to			
18	Business a	and Professions Code section 125.3;			
19	3.	Taking such other and further action as deemed necessary and proper.			
20	DATED: _	Uzylo original signed			
21	DATED	DAVID E. BROWN Executive Officer			
22		Board for Professional Engineers and Land Surveyors Department of Consumer Affairs			
23		State of California Complainant			
24		Complanian			
25	SF20102022 20366231.d				
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28					