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

In the Matter of the Accusation against:	)	
	)	
KEITH FRANCIS DE LAPP 1333 Cromwell Court El Dorado Hills, CA 95762	)))	Case No. 828-A
	)	
Civil Engineer License No. C 48214,	)	
	)	
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.

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

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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: **KEITH FRANCIS DELAPP** **13333 Cromwell Court** **El Dorado Hills, CA 95762** **Civil Engineer License No. C 48214** Respondent.	Case No. 828-A OAH No. 2010031875 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS 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 Brian S. Turner, Deputy Attorney General.

2. Respondent Keith Francis DeLapp (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

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3. On or about December 20, 1991, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License No. C 48214 to Keith Francis DeLapp (Respondent). At all times herein, Respondent's license was in full force and effect. The license will expire on June 30, 2012 unless renewed.

JURISDICTION

4. Accusation No. 828-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 January 13, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 828-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 Accusation No. 828-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

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 828-A.

9. Respondent agrees that his Civil Engineer License is subject to discipline and he agrees to be bound by the Board for Professional Engineers and Land Surveyors (Board)'s probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. 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. 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:

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DISCIPLINARY ORDER

IT IS ORDERED that Civil Engineer License No. C 48214 issued to Respondent Keith Francis DeLapp (Respondent) is **revoked**. The revocation is **stayed** and Respondent is placed on probation for five (5) 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.

6. **Cost Recovery.** The Respondent is hereby ordered to reimburse the Board the amount of $3,487.09 within four and one-half (41/2) yearsfrom 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.

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7. **Examination.** Within 60 days of the effective date of the decision, 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, Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.

9. **Notification.** Within 30 days of the effective date of the decision, Respondent shall provide the Board with evidence that he has provided all persons or entities with whom he has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or professional land surveying in which the violation occurred 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, Respondent may be required to provide the same notification of each new person or entity with whom he has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or land surveying in which the violation occurred 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 Respondent shall successfully complete and pass, with a grade of "C" or better, three college-level courses, approved in advance by the Board or its designee. The courses shall be specifically related to civil engineering. 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.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. 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: 9.24.10

Original Signed

KEITH FRANCIS DELAPP
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: 9/24/10

Respectfully Submitted,

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

Original Signed

BRIAN S. TURNER
Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

Exhibit A

Accusation No. 828-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: **KEITH FRANCIS DELAPP** **1333 Cromwell Court** **El Dorado Hills, CA 95762** **Civil Engineer No. C 48214** Respondent.	Case No. 827-A **A C C U S A T I O N**

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 December 20, 1991, the Board for Professional Engineers and Land Surveyors issued Civil Engineer Number C 48214 to Keith Francis DeLapp (Respondent). Respondent's license will expire on June 30, 2010 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 101.1(b) of the Code states:

"(1) In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.

"(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department."

5. Section 118 of the Code states in relevant part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

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6. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director 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.

7. Business and Professions Code section 6775 (all references to sections shall refer to California Business and Professions Code unless otherwise indicated) provides in pertinent part:

> "The board may receive and investigate complaints against registered professional engineers, and make findings thereon.
>
> By a majority vote, the board may reprove, suspend for a period of 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.
>
> (d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services."

8. Code section 6749 provides in pertinent part:

> "(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. ……. The written contract shall include, but not be limited to, all of the following:
>
> (4.) A description of the procedure that the professional engineer and the client will use to accommodate additional services."

FIRST CAUSE FOR DISCIPLINE

(Negligence and/or Incompetence (Stevenson))

9. Respondent is subject to disciplinary action under section 6775 (c) in that respondent negligently or incompetently failed to design a structure for Albert Stevenson in compliance with county codes. The circumstances are as follows:

10. On or about August 25, 2003, respondent agreed to perform structural engineering services pursuant to an agreement with property owners Kay Lynn and Albert Stevenson. Respondent negligently and/or incompetently designed the residence with a fifteen foot (15') rear yard set back when El Dorado County building codes in effect required a minimum of thirty feet

(30'). Respondent was negligent or incompetent by failing to procure a current General Plan and Zoning Land use Designation for the property. Respondent's acts constitute negligence or incompetence within the meaning of section 6775 (c).

SECOND CAUSE FOR DISCIPLINE

(Breach of Contract (Stevenson))

11. Respondent is subject to disciplinary action under section 6749 and 6775(d) in that respondent failed to have a written agreement with a description of procedures to accommodate additional services. The circumstances are as follows:

12. On or about August 25, 2003 respondent entered an agreement with Kay Lynn and Albert Stevenson for professional engineering services. Respondent failed to perform the services as required by county codes. Respondent corrected the work and charged Lynn and Stevenson for additional work without a prior agreement or provision in the contract for additional services. Respondent's conduct constitutes a breach of contract by failing to perform the engineering services competently and by failing to have a written procedure to accommodate additional services.,

THIRD CAUSE FOR DISCIPLINE

(Negligence and/or incompetence (Dickens))

13. Respondent is subject to disciplinary action under section 6775 (c) in that the respondent was negligent and/or incompetent in performing engineering services for James'Dicken's project. The circumstances are as follows:

14. On or about July 27, 2004, respondent entered an agreement with property owner, James Dickens (hereinafter owner), to provide engineering services in connection with the construction of a residential structure on real property of the owner. In the course of providing the services, respondent failed to provide the necessary care and coordination with the design consultants and public entities, failed to include and perform tasks necessary to properly and competently perform the engineering obligations for the owner, and failed to provide a minimum number of site visits to ensure respondent's plans were followed by the builder. In addition, respondent failed to properly review the design plans and note a soils report existed as of the time

respondent was engaged to perform the services. In doing the things and/or failing to do the things set forth herein, respondent violated section 6775 (c).

FOURTH CAUSE FOR DISCIPLINE

(Breach of Contract (Dickens))

15. Respondent is subject to disciplinary action under section 6775 (d) in that the respondent failed to obtain a written agreement for additional work performed for the owner and the original agreement omitted a procedure performing additional work. The circumstances are as follows:

16. On or about July 27, 2005, respondent tendered a written agreement to the owner setting out the services respondent would provide on the owner's project. The agreement was signed and respondent thereafter embarked on the duties described in the agreement. During the course of the construction, the project required engineering design services for retaining walls. Respondent thereafter performed these services without a written agreement with the owner. In performing these tasks without a written agreement, respondent breached the written agreement all in violation of sections 6775 (d) and 6749. As the result of respondent's failure to obtain a written agreement with the owner for additional services, respondent performed work and billed for services not authorized nor agreed upon by the owner.

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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 48214, issued to Keith Francis DeLapp.

2. Ordering Keith DeLapp 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: 8/28/09

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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accusation.rtf