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

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In the Matter of the Accusation against:

FRED FISCHER, JR. 12409 West Marble Drive Sun City West, AZ 85375

Civil Engineer License No. C 14501,

Respondent.

Case No. 950-A

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the aboveentitled matter.

This Decision shall become effective on June 17, 2011

IT IS SO ORDERED May 12,2011

Original Signed

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

1	1 KAMALA D. HARRIS		
2	Attorney General of California LINDA K. SCHNEIDER		
3	Supervising Deputy Attorney General		
4	Deputy Attorney General		
5	110 West "A" Street, Suite 1100	Vi	
6	P.O. Box 85266		
7	Telephone: (619) 645-2095	2	
8	Attorneys for Complainant		
9	BEFORE THE	BEFORE THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND	
10	GEOLOGISTS	- 23	
11	STATE OF CALIFOR		
12		950-A	
13	and the rotation of the recubulton righting.	e No. 2010100193	
14	12409 West Marble Drive	ATED SURRENDER OF	
15	LICENS	E AND ORDER	
16		a	
17	Respondent		
18		ad botwoon the parties in this	
19	IT IS HERED I STH CEATED AND AGREED by a	id between the parties in this	
20			
21		outive Officer of the Deard for	
22		1. Joanne Arnold (Complainant) is the Acting Executive Officer of the Board for	
23		Professional Engineers, Land Surveyors, and Geologists (Board). She brought this action solely	
24		in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of	
25	and state of curiforma, by randometer D. Ciricotta, Deputy 1		
26		2. Fred Fischer, Jr. (Respondent) is representing himself in this proceeding and has	
27	- I shown not to encroise ins right to be represented by counse		
28	and Geologists issued Civil Engineer License No. C 14501 to Fred Fischer, Jr. (Respondent). The		
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Civil Engineer License was in full force and effect at all times relevant to the charges brought in 1 Accusation No. 950-A, and will expire on March 31, 2011, unless renewed. 2 JURISDICTION 3 4. Accusation No. 950-A was filed before the Board, and is currently pending against 4 5 Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 12, 2010. Respondent timely filed his Notice of Defense contesting the 6 Accusation. A copy of Accusation No. 950-A is attached as Exhibit A and incorporated by 7 reference. 8 ADVISEMENT AND WAIVERS 9 5. 10 Respondent has carefully read, and understands the charges and allegations in Accusation No. 950-A. Respondent also has carefully read, and understands the effects of this 11 Stipulated Surrender of License and Order. 12 Respondent is fully aware of his legal rights in this matter, including the right to a 6. 13 14 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 15 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel 16 the attendance of witnesses and the production of documents; the right to reconsideration and 17 18 court review of an adverse decision; and all other rights accorded by the California 19 Administrative Procedure Act and other applicable laws. 7. 20 Respondent voluntarily, knowingly, and intelligently waives and gives up each and 21 every right set forth above. 22 **CULPABILITY** 8. 23 Respondent understands that the charges and allegations in Accusation No. 950-A, if proven at a hearing, constitute cause for imposing discipline upon his Civil Engineer License. 24 25 9. For the purpose of resolving the Accusation without the expense and uncertainty of 26 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. 27 28 2

Stipulated Surrender of License (Case No. 950-A)

Respondent hereby gives up his right to contest that cause for discipline exists based on those
 charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue
an order accepting the surrender of his Civil Engineer License without further process.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

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CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands 10 and agrees that counsel for Complainant and the staff of the Board may communicate directly 11 with the Board regarding this stipulation and surrender, without notice to or participation by 12 Respondent. By signing the stipulation, Respondent understands and agrees that he may not 13 14 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers 15 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this 16 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not 17 be disqualified from further action by having considered this matter. 18

19 13. The parties understand and agree that facsimile copies of this Stipulated Surrender of
20 License and Order, including facsimile signatures thereto, shall have the same force and effect as
21 the originals.

14. This Stipulated Surrender of License and 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 Surrender of License and 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.

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15. In consideration of the foregoing admissions and stipulations, the parties agree that 1 2 the Board may, without further notice or formal proceeding, issue and enter the following Order: ORDER 3 IT IS HEREBY ORDERED that Civil Engineer License No. C 14501, issued to 4 5 Respondent Fred Fischer, Jr., is surrendered and accepted by the Board for Professional Engineers, Land Surveyors, and Geologists. 6 16. The surrender of Respondent's Civil Engineer License and the acceptance of the 7 surrendered license by the Board shall constitute the imposition of discipline against Respondent. 8 9 This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board. 10 17. Respondent shall lose all rights and privileges as a civil engineer in California as of 11 12 the effective date of the Board's Decision and Order. 13 18. Respondent shall cause to be delivered to the Board his wall license certificate, if one 14 was issued, and his pocket license on or before the effective date of the Decision and Order. 15 19. Respondent agrees not to petition for reinstatement of the surrendered license. Respondent agrees not to apply for any license issued by the Board for three years from the 16 effective date of this surrender. Respondent understands and agrees that if he ever applies for any 17 18 license issued by the Board, the Board shall treat it as a new application for licensure. 19 Respondent must comply with all the laws, regulations, and procedures for licensure in effect at the time the application is filed, including but not limited to submitting a completed application 20 and the requisite fee and taking and passing the required examination(s), and all of the charges 21 and allegations contained in the Accusation shall be deemed to be true, correct, and admitted by 22 Respondent when the licensing agency determines whether to grant or deny the application. 23 ACCEPTANCE 24 25 I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Civil Engineer License. I enter into this Stipulated 26 27 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound 111 28

1	by the Decision and Order of the Board for Professional Engineers I and a	
2	by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.	
3		
4	FRED FISCHER, JR.	
5	Respondent	
6	ENDORSEMENT	
7	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted	
	for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the	
8	Department of Consumer Affairs.	
9	31720	
10	Dated: Respectfully submitted,	
11	KAMALA D. HARRIS Attorney General of California	
12	LINDA K. SCHNEIDER Supervising Deputy Attorney General	
13	4	
14	Original Signed	
15	ANTOINETTE B. CINCOTTA Deputy Attorney General Attorneys for Complainant	
16	Autorneys for Complainant	
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18	SD2010701047	
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	Stipulated Surrender of License (Case No. 950-A)	

Exhibit A

Accusation No. 950-A

1	Edmund G. Brown Jr.	
2	Attorney General of California LINDA K. SCHNEIDER	
3	Supervising Deputy Attorney General ANTOINETTE B. CINCOTTA	
4	Deputy Attorney General State Bar No. 120482	
5	110 West "A" Street, Suite 1100 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2095 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9	BEFORE THE BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS	
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11	Case No. 950-A	
12	In the Matter of the Accusation Against:	
13	FRED FISCHER, JR.12409 West Marble DriveA C C U S A T I O N	
14	Sun City West, AZ 85375	
15	Civil Engineer License No. C 14501	
16	Respondent.	
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 (Board),	
21	Department of Consumer Affairs.	
22	2. On or about January 23, 1964, the Board issued Civil Engineer License Number C	
23	14501 to Fred Fischer, Jr. (Respondent). The Civil Engineer License was in full force and effect	
24	at all times relevant to the charges brought herein and will expire on March 31, 2011, unless	
25	renewed.	
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	Accusation	

l	JURISDICTION AND STATUTORY AUTHORITIES	
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	4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove,	
6	suspend for a period not to exceed two years, or revoke the certificate of any professional	
7	engineer registered under this chapter:	
8	л 	
9	"(c) Who has been found guilty by the board of negligence or incompetence in his or her	
10	practice.	
11	n 55 1	
12	5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,	
13	surrender and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed	
14	with a disciplinary action during the period within which the license may be renewed, restored.	
15	reissued or reinstated.	
16	REGULATORY AUTHORITY	
17	6. Section 419 of the Title 16, California Code of Regulations states that "[f]or	
18	violations of Business and Professions Code sections 6775 and/or 8780 which result in an order	
19	issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government	
20	Code against a professional engineering and/or a professional land surveying license, the	
21	following provisions shall apply to disciplinary orders contained in decisions of the Board:	
22	"(a) The minimum disciplinary order shall be reproval. The maximum disciplinary order	
23	shall be revocation of the license.	
24	"(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary	
25	order may be stayed by an express condition that the respondent comply with probationary	
26	conditions. The minimum time period in which the respondent shall have to comply with the	
27	conditions shall be two years. For purposes of this section, this time period shall be known as the	
28	"period of probation."	
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	Accusation	

"(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall
 include the following probationary conditions:

- 3 "(1) The respondent shall obey all laws and regulations related to the practices of
 4 professional engineering and professional land surveying.
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"(2) The respondent shall submit such special reports as the Board may require.

"(3) 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) 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) 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.

"(d) All decisions containing stayed disciplinary orders as described in subdivision (b) may
 include one or more of the following probationary conditions:

"(1) The respondent's license shall be suspended for a period not to exceed two years. If a
suspension of the license is ordered, it shall begin on the effective date of the decision.

"(2) Within 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.

"(3) The respondent shall successfully complete and pass a course in professional ethics,
approved in advance by the Board or its designee. The probationary condition shall include a time
period in which this course shall be successfully completed which time period shall be at least 60
days less than the time period ordered for the period of probation.

1	"(4) Within 30 days of the effective date of the decision, the respondent shall provide the
2	Board with evidence that he or she has provided all persons or entities with whom he or she has a
3	contractual or employment relationship such that the relationship is in the area of practice of
4	professional engineering and/or professional land surveying in which the violation occurred with
5	a copy of the decision and order of the Board and shall provide the Board with the name and
6	business address of each person or entity required to be so notified. During the period of
7	probation, the respondent may be required to provide the same notification of each new person or
8	entity with whom he or she has a contractual or employment relationship such that the
9	relationship is in the area of practice of professional engineering and/or land surveying in which
10	the violation occurred and shall report to the Board the name and address of each person or entity
11	so notified.
12	"(5) The respondent shall provide verifiable proof to the Board that restitution has been paid
13	as ordered. The probationary condition shall include a time period in which the verifiable proof
14	shall be provided to the Board which time period shall be at least 60 days less than the time
15	period ordered for the period of probation.
16	"(e) In addition to the conditions as may be ordered pursuant to subdivisions (c) and/or (d),
17	the following conditions shall be included for the following specific violations:
18	"(1) Incompetency in the practice of professional engineering and/or professional land
19	surveying:
20	"(A) The respondent shall successfully complete and pass, with a grade of "C" or better, a
21	minimum of one and a maximum of three college-level courses, approved in advance by the
22	Board or its designee. Such courses shall be specifically related to the area of violation. For
23	purposes of this subdivision, "college-level course" shall mean a course offered by a community
24	college or a four-year university of three semester units or the equivalent; "college-level course"
25	does not include seminars. The probationary condition shall include a time period in which the
26	course(s) shall be successfully completed which time period shall be at least 60 days less than the
27	time period ordered for the period of probation.
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"(B) The respondent shall take and achieve the passing score as set by the Board for the 1 2 second division examination (including the seismic principles and engineering surveying examinations for civil engineers), provided that in the event the respondent holds multiple 3 4 licenses, the Board shall select the examination in the area of practice of professional engineering and/or professional land surveying in which the violation occurred and in the area of professional 5 engineering and/or professional land surveying in which the respondent is licensed. The Board or 6 its designee may select the specific examination questions such that the questions relate to the 7 specific area of violation and comprise an examination of the same duration as that required of an 8 9 applicant for licensure. The respondent shall be required to pay the application fee as described in Section 407 and shall be afforded all examination appeal rights as described in Sections 407, 443, 10 and 444. The probationary condition shall include a time period in which the examination(s) shall 11 be successfully completed which time period shall be at least 60 days less than the time period 12 ordered for the period of probation. 13

"(C) During the period of probation, the respondent may practice professional engineering
and/or professional land surveying only under the supervision of a professional engineer and/or
professional land surveyor licensed in the same branch as the respondent. This person or persons
shall be approved in advance by the Board or its designee. Such supervising professional engineer
and/or professional land surveyor shall initial every stamped or sealed document in close
proximity to the respondent's stamp or seal.

"(2) Negligence in the practice of professional engineering and/or professional land
 surveying:

"(A) The respondent shall successfully complete and pass, with a grade of "C" or better. a
minimum of one and a maximum of three college-level courses, approved in advance by the
Board or its designee. Such courses shall be specifically related to the area of violation. 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. The probationary condition shall include a time period in which the

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course(s) shall be successfully completed which time period shall be at least 60 days less than the 1 time period ordered for the period of probation. 2 ". . . . 3 "In addition to the disciplinary orders described in this section, all decisions shall address 4 recovery of the Board's investigation and enforcement costs, as described in and authorized by 5 Business and Professions Code section 125.3. 6 "Notwithstanding this section, non-conforming terms and conditions may be included as 7 part of the disciplinary order, including such other further or lesser action as the Board deems 8 9 appropriate, in the interest of protecting the public health, safety, and welfare. "As used in this section, 'license' includes certificate of registration or license as a 10 professional engineer, licensure as a professional land surveyor, and certificates of authority to 11 use the titles 'structural engineer,' 'geotechnical engineer,' 'soil engineer,' 'soils engineer,' or 12 'consulting engineer.'" 13 14 COST RECOVERY 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the 15 administrative law judge to direct a licentiate found to have committed a violation or violations of 16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 17 enforcement of the case. 18 19 CAUSE FOR DISCIPLINE 20 (Negligence) 8. Respondent is subject to disciplinary action under Code section 6775, subdivision (c), 21 in that Respondent was negligent in performing various aspects of his structural design, 22 calculations and forensic investigation for a roofing project. The circumstances are as follows: 23 9. 24 In or about August 2000, Mr. and Mrs. W.B. contracted with C.O.R. to replace the 25 wood shake roof on their residence located at 33522 Via de Agua in San Juan Capistrano, California with a new concrete tile system. C.O.R. subcontracted with Respondent to perform 26 structural engineering for the project; E.Y. to perform field inspections, and D.D.S. to prepare the 27 project drawings. According to D.D.S., the existing roof sat on "convential [wood] framing and 28 6

[timber] truss framing" and was to be replaced by new "tile over existing 1/2" CDX plywood
 sheathing." Respondent performed various engineering calculations and prepared certain
 sketches for the project, and determined that "the existing roof framing [was] adequate to support
 [the] new roof load except for minor bracing." His calculations and sketches were subsquently
 submitted to the City of San Juan Capistrano ("the City"), which reviewed and approved them,
 and thereby issued a building permit to the homeowners. The new roofing system was installed
 shortly thereafter.

8 10. Two years later, in August 2002, the homeowners began to experience difficulty 9 when opening certain doors in the house. Around this same time, cracks appeared in stucco 10 walls, drywall seams became increasingly visible, and certain interior walls began to bulge. This 11 was noteworthy as Mr. W.B. had lived in the house since 1978 and had not encountered 12 difficulties like this before.

13 11. In December 2004, Mr. W.B. hired another engineer to inspect the property and
14 assess the cause of these recent problems. The new engineer observed and confirmed that:

- a. Sliding glass doors along the rear wall and at both the first and second story were
 difficult to operate;
- b. Vertical cracking was visible at mid-span of the first-floor sliding door, directly below
 certain structural framing elements;
 - c. Significant bowing of a first-floor interior wall had occurred;

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d. Certain floor joists at the second floor were out of level; and

e. There was no significant foundation distress at either the building interior or
 perimeter.

The new engineer also reviewed the structural calculations and sketches prepared by Respondent,
and opined that certain aspects of Respondent's work had been "inadequately analyzed." The
new engineer recommended that Respondent's structural calculations be re-performed.

- In February 2005, Mr. W.B. notified Respondent of the new engineer's findings and
 that "the roof placed on [the] residence is too heavy for the structure and needs to be replaced."
- 28 At that time, Respondent was asked to help correct the condition. Respondent replied that "there

1	must be other factors causing the problems." Respondent offered to review any plans or	
2	construction documents pertaining to the house that Mr. W.B. could make available. Respondent	
3	then re-examined his prior structural analysis and determined that "the loads of the concrete tile	
4	roof, floors and walls do not exceed the design loads for which the house would have been	
5	constructed." Since, in Respondent's opinion, "other factors would have [had] to be the cause of	
6	the [homeowners'] problems," Respondent and E.Y. decided to inspect the property on March 6.	
7	2005. Respondent observed that the homeowners' house was located "on a hill that has been	
8	subjected to some sliding" and that was in the process of being mechanically stablized.	
9	Respondent believed that soil sliding had caused "separation and displacement of up to 3/4 of an	
10	inch between the exterior patio slab and the house foundation" and that the homeowners'	
11	problems were entirely related to unstable soils.	
12	13. By April 2005, conditions at the house had worsened: new wall cracks appeared,	
13	more doors became increasingly difficult to operate, and another wall had started to bulge. The	
14	homeowners sought counsel from other professionals to help resolve these problems, including	
15	discussions with:	
16	a. Field engineer E.Y. who admitted that he did verify the header-size prior to the re-roof;	
17	b. Geologist M.C. who observed that the structural separation and displacement cited by	
18	Respondent was a sign of common building settlement and did not necessarily indicate	
19	large-scale soil movement; and	
20	c. Six building contractors who collectively believed that standard weight tile is too heavy	
21	for the residence and recommended that the current roof be removed before irreversible	
22	damage is done to the structure.	
23	14. In late April 2005, field engineer, E.Y. offered to pay the homeowners to help fix the	
24	problems. At that same time, the homeowners notified Respondent that he had been provided	
25	ample opportunity to correct the errors in his original engineering analysis. Respondent notified	
26	the homeowners that:	
27	"there is no error in the calculations for the reroofing on your house. You gave your	
28	investigative engineer the wrong calculations dates 08/11/00. I have enclosed the copy for you to	
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	Accusation	

1	share with him. As I have noted to you before, your problem is from the soil settlement [due to] a
2	hill that is prone to slides. Your house is in no danger of collapse. The roof is not too heavy.
3	Your investigative engineer should of [sic] set 'tale-tells' to monitor settlement."
4	15. Respondent's work product for the homeowners' roofing project featured three sets of
5	structural calculations:
6	a. The first contained Respondent's seal and signature on each of the five pages, which
7	was received and approved by the City on August 9, 2000. It addressed roof loads as
8	well as selected beam design and truss design.
9	b. The second set contained certain design load revisions dated August 11, 2000, and
10	included Respondent's seal and signature on the first page only. It did not appear that
11	said revisions were submitted to the City for additional review.
12	c. The third set was performed several years later, in conjunction with the homeowners'
13	complaint (February to May 2005). It contained five pages of updated calculations for
14	header framing at interior and perimeter walls as well as a cursory seismic analysis of
15	the roof. None of these sheets were sealed or signed.
16	16. Respondent failed to perform a complete framing analysis of the homeowners'
17	structural system and omitted various truss elements, secondary framing members and a seismic
18	analysis. His calculations in 2000 did not consider the impact of the heavier tile roof system.
19	17. Respondent failed to conduct his forensic investigation in 2005 in a manner that was
20	consistent with industry practice. Respondent developed an alternative and speculative theory of
21	building damage that was self-serving and unsubstantiated, and that did not correspond with
22	observed conditions in the field.
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 14501, issued to Fred
28	Fischer, Jr.;
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	Accusation

Ordering Fred Fischer, Jr. to pay the Board for Professional Engineers and Land 2. Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and Making such other and further action as deemed necessary and proper. 3. Original Signed DATED: DAVID E. BROWN Executive Officer Board for Professional Engineers and Land Surveyors Department of Consumer Affairs State of California Complainant SD2010701047 Accusation