

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

In the Matter of the Petition to Revoke Probation)	
against:)	
)	
RICHARD JOSEPH GODINA)	Case No. 1076-A
9 Via Scenica)	
Lake Elsinore, CA 92532)	
)	
Civil Engineer License, No. C 33038)	
)	
Respondent.)	
_____)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on January 14, 2021.

IT IS SO ORDERED December 10, 2020.

Original Signed

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

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2 LINDA L. SUN
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8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
10 **GEOLOGISTS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Petition to Revoke
14 Probation Against:

15 **RICHARD JOSEPH GODINA**
16 **9 Via Scenica**
Lake Elsinore, CA 92532

17 **Civil Engineer License No. C 33038**

18 Respondent.

Case No. 1076-A

OAH No. 2020070055

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Richard B. Moore, PLS (“Complainant”) is the Executive Officer of the Board for
23 Professional Engineers, Land Surveyors, and Geologists (“Board”). He brought this action solely
24 in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of
25 the State of California, by Stephen D. Svetich, Deputy Attorney General.

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2. Respondent Richard Joseph Godina (“Respondent”) is represented in this proceeding by attorneys D. Creighton Sebra and Laura K. Brunasso, whose address is: D. Creighton Sebra and Laura K. Bruasso, Clark Hill LLP, 1055 W. Seventh Street, Suite 2400, Los Angeles, CA 90017.

3. On or about July 15, 1981, the Board issued Civil Engineer License No. C 33038 to Respondent. The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 1076-A, and will expire on December 31, 2020, unless renewed.

JURISDICTION

4. Petition to Revoke Probation No. 1076-A was filed before the Board, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on June 11, 2020. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation.

5. A copy of Petition to Revoke Probation No. 1076-A is attached as **Exhibit A** and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Petition to Revoke Probation No. 1076-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; 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.

1 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth above.

3 **CULPABILITY**

4 9. Respondent admits the truth of each and every charge and allegation in Petition to
5 Revoke Probation No. 1076-A.

6 10. Respondent agrees that his Civil Engineer License is subject to discipline and he
7 agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order
8 below.

9 **CONTINGENCY**

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

19 12. The parties understand and agree that Portable Document Format ("PDF") and
20 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
21 facsimile signatures thereto, shall have the same force and effect as the originals.

22 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
27 writing executed by an authorized representative of each of the parties.
28

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 33038 issued to Respondent Richard Joseph Godina is revoked.

1. The revocation of Respondent's Civil Engineer License, and the acceptance of the revoked license by the Board, shall constitute the imposition of discipline against the Respondent. This stipulation constitutes a record of the discipline and shall become part of Respondent's license history with the Board of Professional Engineers, Land Surveyors, and Geologists.

2. Respondent shall lose all rights and privileges of a Civil Engineer in California as of the effective date of the Board adopting this stipulation, including the right to use any of the restricted titles associated with his license.

3. Respondent agrees not to file an application for licensure or petition for reinstatement with the Board at any time within one (1) year from the effective date of the Decision and Order. In the event he should file an application for licensure or petition for reinstatement with the Board after the expiration this one (1) year period, Respondent fully understands and agrees that he must comply with all the laws, regulations, and procedures for reinstatement of a revoked certificate in effect at the time any such petition is filed. Respondent further understands and agrees that if he ever applies for any license issued by the Board, Respondent shall 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 and the requisite fee and taking and passing the required examination(s). Respondent further understands and agrees that all of the charges and allegations contained in Petition to Revoke Probation No. 1076-A shall be deemed to be true, correct, and admitted by Respondent when the licensing agency determines whether to grant or deny the application or petition.

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4. Respondent shall cause to be delivered to the Board his license on or before the effective date of the decision of the Board adopting this stipulation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Laura K. Brunasso. 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: 10/20/2020 Original Signed
RICHARD JOSEPH GODINA
Respondent

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

DATED: 10/21/2020 Original Signed
LAURA K. BRUNASSO
D. CREIGHTON SEBRA
CLARK HILL LLP
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: 10/21/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LINDA L. SUN
Supervising Deputy Attorney General

Original Signed

STEPHEN D. SVETICH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Petition to Revoke Probation No. 1076-A

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8 **BEFORE THE**
9 **BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND**
10 **GEOLOGISTS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Petition to Revoke
Probation Against:

Case No. 1076-A

14 **RICHARD JOSEPH GODINA**
15 **9 Via Scenica**
Lake Elsinore, CA 92532
16 **Civil Engineer License No. C 33038**

PETITION TO REVOKE PROBATION

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Richard B. Moore, PLS (Complainant) brings this Petition to Revoke Probation solely
21 in his official capacity as the Executive Officer of the Board for Professional Engineers (Board),
22 Land Surveyors, and Geologists, Department of Consumer Affairs.

23 2. On or about July 15, 1981, the Board issued Civil Engineer License Number C 33038
24 to Richard Joseph Godina (Respondent). The Civil Engineer License was in effect at all times
25 relevant to the charges brought herein and will expire on December 31, 2020, unless renewed.

26 **PRIOR DISCIPLINE**

27 3. In a disciplinary action titled "*In the Matter of Accusation Against Richard Joseph*
28 *Godina*," Case No. 690-A, pursuant to the Stipulated Settlement and Disciplinary Order, the

1 Board issued an order effective April 2, 2002, in which Respondent's Civil Engineer License No.
2 C 33038 was revoked. However, the revocation was stayed and Respondent's Civil Engineer
3 License was placed on probation for three (3) years with certain terms and conditions, including
4 an actual 15 day suspension of his license. Respondent failed to comply with all terms and
5 conditions of that order.

6 4. In a separate disciplinary action titled "*In the Matter of Accusation and First*
7 *Amended Petition to Revoke Probation Against Richard Joseph Godina*," Board Case No. 690-A,
8 OAH No. N2006060084, pursuant to the Decision and Order, the Board issued an order effective
9 Mary 20, 2007, in which Respondent's Civil Engineer License No. C 33038 was revoked.

10 5. In a disciplinary action titled "*In the Matter of the Petition for Reinstatement of*
11 *Revoked License of Richard J. Godina*," Board Case No. 690-A, OAH No. 2010071133, the
12 Board issued a Decision and Order effective October 21, 2010, in which Respondent's Civil
13 Engineer License was reinstated. The reinstated license was immediately revoked, however, the
14 revocation was stayed and Respondent's Civil Engineer License was placed on probation for five
15 (5) years with certain terms and conditions.

16 6. In a disciplinary action titled "*In the Matter of the Accusation and Petition to Revoke*
17 *Probation against: Richard Joseph Godina*," Board Case No. 1076-A, OAH No. 2014050182,
18 the Board issued a decision, effective July 17, 2015, in which Respondent's Civil Engineer
19 License was revoked. However, the revocation was stayed and Respondent's Civil Engineer
20 License was placed on probation for a period of five (5) years with certain terms and conditions.
21 A copy of that decision is attached as Exhibit A and is incorporated by reference.

22 **JURISDICTION**

23 7. This Petition to Revoke Probation is brought before the Board under the authority of
24 the Board's Decision and Order: *In the Matter of the Accusation and Petition to Revoke*
25 *Probation against: Richard Joseph Godina*," Board Case No. 1076-A, OAH No. 2014050182.

26 8. Condition 6 of the Decision and Order, *In the Matter of the Accusation and Petition*
27 *to Revoke Probation against: Richard Joseph Godina*," Board Case No. 1076-A, OAH No.
28 2014050182, states:

1 If respondent violates the probationary conditions in any respect, the board, after
2 giving respondent notice and the opportunity to be heard, may vacate the stay and
3 reinstate the disciplinary order which was stayed. If, during the period of probation,
4 an accusation or petition to vacate stay is filed against respondent, or if the matter has
5 been submitted to the Office of Attorney General for the filing of such, the board
6 shall have continuing jurisdiction until all matters are final, and the period of
7 probation shall be extended until all matters are final.

8 9. Grounds exist to revoke Respondent's probation under the authority of Condition 6 of
9 the Decision and Order, *In the Matter of the Accusation and Petition to Revoke Probation*
10 *against: Richard Joseph Godina,*" Board Case No. 1076-A, OAH No. 2014050182. Respondent
11 did not comply with the terms and conditions of his probation as more particularly set forth
12 below.

13 **CAUSE TO REVOKE PROBATION**

14 **(Failure to Complete College Courses)**

15 10. At all times after the effective date of Respondent's probation, Condition 8 stated:

16 Respondent shall successfully complete and pass, with a grade of "C" or better, a
17 minimum of one and a maximum of three college-level course, approved in advance
18 by the board or its designee. Such courses shall be specifically related to the area of
19 violation. For purposes of this subdivision, "college-level course" shall mean a course
20 offered by a community college or a four-year university of three semester units or
21 the equivalent; "college-level course" does not include seminars. The probationary
22 condition shall include a time period in which the course(s) shall be successfully
23 completed which time period shall be at least 60 days less than the time period
24 ordered for the period of probation.

25 11. Respondent's probation is subject to revocation because he failed to comply with
26 Probation Condition 8, referenced above. Respondent was required to successfully complete and
27 pass, with a grade of "C" or better, three (3) college-level courses, approved in advance by the
28 Board or its designee, at least sixty days prior to the expiration of the probationary period. As of
the filing of this petition, Respondent failed to submit proof of successful completion of the
requisite courses.

24 **PRAYER**

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

28 ///

1 1. Revoking the probation that was granted by the Board for Professional Engineers,
2 Land Surveyors, and Geologists in Case No. 1076-A and imposing the disciplinary order that was
3 stayed thereby revoking Civil Engineer License No. C 33038 issued to Richard Joseph Godina;

4 2. Revoking or suspending Civil Engineer License No. C 33038, issued to Richard
5 Joseph Godina; and

6 3. Taking such other and further action as deemed necessary and proper.
7
8

9 DATED: 6/9/20

Original Signed

RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land
Surveyors, and Geologists
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Board for Professional Engineers, Land Surveyors, and Geologists Case No. 1076-A

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

In the Matter of the Accusation and Petition
to Revoke Probation against:

RICHARD JOSEPH GODINA
17 Ponte Loren
Lake Elsinore, CA 92532

Civil Engineer License No. C 33038,

Respondent.

Case No. 1076-A

OAH No. 2014050182

DECISION

Pursuant to Government Code section 11517, the Board for Professional Engineers, Land Surveyors, and Geologists of the State of California hereby adopts the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

In adopting this Proposed Decision as its Decision, the Board for Professional Engineers, Land Surveyors, and Geologists has made the following technical or other minor changes pursuant to Government Code section 11517(c)(2)(C):

Page 2, Paragraph 3 under "Factual Findings": The reference to Case No. 671-A is corrected to refer to Case No. 690-A.

Furthermore, in adopting this Proposed Decision as its Decision, the Board for Professional Engineers, Land Surveyors, and Geologists has reduced the penalty order pursuant to Government Code section 11517(c)(2)(B) as follows:

Condition 8 of the Order is revised as follows:

(6) Respondent shall successfully complete and pass, with a grade of "C" or better, three (3) college-level courses, approved in advance by the Board or its designee. Such course 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. Said course shall be completed at least sixty (60) days prior to the completion of the probationary period.

This Decision shall become effective on July 17, 2015.

IT IS SO ORDERED June 11, 2015.

Original Signed

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

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

In the Matter of the Accusation and Petition
to Revoke Probation Against:

RICHARD J. GODINA,

Respondent.

Case No. 1076-A

OAH No. 2014050182

PROPOSED DECISION

Administrative Law Judge Adam L. Berg, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 25, 2015.

David E. Hausfeld, Deputy Attorney General, represented complainant, Richard B. Moore, PLS, Executive Officer, Board for Professional Engineers, Land Surveyors, and Geologists for the State of California.

Jeffrey T. Wilson, Attorney at Law, represented respondent, Richard J. Godina.

The matter was submitted on March 25, 2015.

FACTUAL FINDINGS

License History

1. On July 15, 1981, the board issued Civil Engineer License Number C33038 to respondent.
2. Effective April 5, 2002, pursuant to a Stipulated Settlement and Disciplinary Order, the board revoked respondent's civil engineer license but stayed the revocation and placed respondent on probation for three years on specified terms and conditions of probation. An accusation was pending against respondent that alleged that he had breached a contract for professional engineering services with a client, failed to finalized documents for a project, refused to return files to the client, and prevented the client from recording a final

map in time to avoid additional fees. In the stipulation resulting in the disciplinary order, respondent agreed that the allegations, if proven, would constitute a basis for discipline.

3. On November 1, 2005, complainant's predecessor signed an Accusation and First Amended Petition to Revoke Probation in Case No. 671-A. The accusation and petition to revoke probation alleged that respondent's license was subject to discipline for breach of contracts involving two projects and for failing to include his license number on one of the contracts.

An Administrative Law Judge (ALJ) issued a proposed decision revoking respondent's license. The ALJ found that respondent breached his contract to provide professional engineering services in two projects, which caused a significant financial injury to one client and the delay of the other client's project by years. The ALJ determined there was cause to revoke respondent's probation for: failing to obey all laws related to the practice of professional engineering; failing to complete and pass a course in professional ethics; and failing to complete a college-level course approved by the board.

The board adopted the proposed decision. The decision became effective on April 20, 2007. On May 10, 2007, the board denied respondent's petition for reconsideration.

4. On July 16, 2010, respondent filed a Petition for Reinstatement of a Revoked License. The petition was heard before a quorum of the board. On September 20, 2010, the board granted respondent's petition. The board reinstated respondent's license but immediately revoked the license, staying the revocation, and placing respondent's license on probation for five years. Respondent's license remains on probation until October 20, 2015.

Jurisdiction

5. Complainant, in his official capacity, filed the Accusation and Petition to Revoke Probation (Accusation) on January 21, 2014. Respondent filed a timely Notice of Defense.

6. The Accusation alleges that respondent, while on probation, committed acts of negligence and incompetence in connection with his professional services for a solar panel installation project in Costa Mesa, California.

The Kopec Project

7. On January 18, 2013, Conrad Kopec entered into a contract with Unleash Solar, a licensed electrical contractor specializing in the installation of solar panel systems, for the installation of solar panels at his townhome in Costa Mesa, California. Respondent was an independent consultant with Unleash Solar. Respondent contracted to act as the engineer of record for the preparation and design of structural aspects of the solar panel installation.

8. As background, there are two types of solar panel systems at issue in this case. The first is referred to as a “flush-mount” design, where the solar panel is installed such that it is parallel to the roof. The other type is a “tilt-mount”¹ design, where the panels are installed at an angle to the roof in order to capture maximum sun exposure. The “tilt-mount” design poses more potential engineering issues; when the panel is installed at an angle to the roof, it is more prone to “catch” wind forces, which could have the potential for damaging the roof or surrounding buildings.

The Kopec roof faces northeast. If panels were installed in the traditional manner, parallel to the roof, they would receive little light. The plans that the respondent stamped and signed were for the “tilt-mount” design. This design placed the panels at an angle to the roof in order to capture more sunlight.

9. On January 29, 2013, respondent signed and stamped plans for the installation of a “tilt-mount” solar panel system at the Kopec residence. The plans were submitted to the City of Costa Mesa, which, on February 7, 2013, issued a permit for the installation.

10. The homeowner, Mr. Kopec, a retired civil engineer, reviewed the plans prior to installation and was concerned that the proposed plan was not structurally sound. His concern was that the proposed “tilt-mount” design could act as a wind-catcher and potentially cause damage to the roof and surrounding homes during high gusts. Mr. Kopec found errors in respondent’s calculations included with the plans. After negotiations with Unleash Solar failed, Mr. Kopec filed a complaint against respondent with the board.

Complainant’s Investigation

11. Board enforcement analyst Tralee Morris investigated Mr. Kopec’s complaint. Ms. Morris gathered documents and obtained an industry expert report. Ms. Morris contacted respondent and requested various documents relating to the Kopec project. Respondent produced these documents as requested. These documents included respondent’s structural calculations, copies of the plans submitted to the city, the site audit, and Unleash Solar’s contract with Mr. Kopec.

12. Ms. Morris contacted Paul Bock, a licensed professional engineer, and requested that he evaluate the case file and prepare an expert report. Ms. Morris provided Mr. Bock with the documents she received from Mr. Kopec and respondent. Mr. Bock prepared two reports dated July 29, 2013. These include a technical expert report and a calculation report.

13. Ms. Morris provided respondent with a paraphrased portion of Mr. Bock’s expert report on August 14, 2014. Respondent emailed a response to Ms. Morris on August 28, 2013. In that response, respondent stated, for the first time, that he had further reviewed

¹ This design is also referred to variously as a “reverse-tilt,” “reverse slope,” “tilt-up,” and “open clam shell.”

his files and found evidence that the original plans that were presented to him, for which he prepared his calculations, were for a different design than the plans he stamped and signed. Specifically, respondent stated that Unleash Solar had asked him to review a "flush-mount" system. Respondent included a copy of the "flush-mount" plans that he represented he reviewed. These plans were dated January 25, 2013. Respondent claimed that he performed his calculations for the installation of the "flush-mount" system. Respondent also represented that a "tilt-mount" design appeared in the final version of the plans submitted for the project, and these were the plans he signed. Respondent contended that, what appears to be negligence, was actually a switch in the product he was originally given to review. Finally, respondent stated that the plans that he approved were "never meant to be construction drawings, but only to be submitted to begin the review process with the understanding that the revised calculations would be inserted with the final permit set." Respondent blamed a break-down in communication with Unleash Solar, which "created confusion."

14. On September 17, 2013, Mr. Bock prepared a report addressing respondent's assertion that there was a plan substitution. Mr. Bock concluded that respondent was aware of the "tilt-mount" design when he performed his calculations. Mr. Bock cited respondent's calculation report, which noted a 10 degree roof slope. Mr. Bock concluded that this 10 degree roof slope was, in fact, the angle of the "tilt-mount" panels from the horizontal. Had respondent performed calculations for a "flush mount" design, the angle would have been 17 degrees, which is the angle of the roof from the horizontal. Mr. Bock also noted that respondent signed the plans containing the "tilt-mount" design, further evidence that he knew of this design when he submitted it to the city for permitting. Finally, Mr. Bock found fault with respondent's representation that the plans were "never meant to be construction drawings, but only to be submitted to begin the review process." Mr. Bock noted that the city issued a permit based on respondent's calculations; it would have been misleading for respondent to have submitted to the city calculations he knew were for a different design.

15. The Accusation alleged that respondent is subject to disciplinary action in that respondent was negligent or incompetent in his practice of engineering regarding the Kopec project as follows: 1) respondent failed to recognize the potential hazards of the installation of the solar panels; 2) respondent failed to reduce the dead load when combined with the wind load to resist uplift; 3) respondent used the incorrect angle, incorrect wind flow type, and incorrect zone to determine the net pressure coefficients; 4) respondent failed to account for the continuity beam action of the supporting rail; 5) respondent failed to address the need for uplift anchors required for the roof rafters.

The Board's Expert

16. Paul Bock was hired by the board to serve as its technical expert in this matter. He has been a licensed professional engineer in California since 1976. His entire engineering career has been related to structural issues. He has testified in board matters twice in the past and has written three reports for the board. Although Mr. Bock has worked on solar installations at large commercial facilities, he has little experience with residential

solar installations. However, based on his extensive structural engineer experience, he is well qualified to render expert opinions relating to the plans respondent approved.

17. Mr. Bock addressed Mr. Kopec's complaints of negligence or incompetence. Of the 11 allegations, Mr. Bock concluded that in five areas respondent was negligent. Mr. Bock defined negligence as the failure to use the care ordinarily exercised in like cases by a licensed professional engineer in good standing. This definition is consistent with that found in California Code of Regulations, title 16, section 404, subdivision (dd). In concluding that respondent was negligent in five areas, Mr. Bock necessarily found that respondent departed from the standard of care.

18. Mr. Bock first found respondent negligent for not recognizing the potential hazard of the solar installation. Mr. Bock made it clear that the "tilt-mount" design does not present a potential design hazard when properly engineered. However, Mr. Bock believed that respondent failed to verify the response of existing structural supports to the actions of the new loads imposed by the panel under the action of the wind. Mr. Bock opined that a reasonable engineer would have determined whether the existing roof rafters were capable of supporting the additional load. Specifically, Mr. Bock found there was a possibility of failure at the point where the rafters were connected to the wall. Mr. Bock's calculations indicated that there was a possibility of failure of the rafters in the event of a code force wind. Mr. Bock concluded that respondent failed to address and investigate these conditions prior to approving the proposal.

19. The second allegation involved whether respondent reduced the dead load when combined with the wind load to resist uplift. In this instance, Mr. Bock concluded that respondent failed to perform this calculation. Mr. Bock noted that the omission probably would not have made any significant difference, but respondent was still required to reduce the dead load in his calculations. Mr. Bock concluded that respondent was negligent for failing to perform this required calculation.

20. The third allegation involved the calculation of the wind load coefficients on the structure. Mr. Bock performed his own calculations and found that respondent made errors in several of his calculations. Mr. Bock concluded that respondent was negligent for using the incorrect angle, the incorrect wind flow type, and incorrect zone to determine the net pressure coefficients.

21. The fourth allegation involved respondent's failure to account for the continuity beam action of the supporting rails. Mr. Bock testified that a professional engineer should have performed these calculations, and respondent failed to perform these calculations completely. Thus, Mr. Bock found respondent was negligent for failing to account for the continuity beam action of the supporting rail. Mr. Bock concluded that this omission constituted negligence. On cross examination, Mr. Bock conceded that there would have been no difference in the resulting engineering had respondent performed these calculations.

22. Finally, it was alleged that respondent failed to address the need for uplift anchors. Mr. Bock believed that respondent needed to at least address the need for additional anchoring to the rafters. Mr. Bock concluded that respondent was negligent for failing to address this issue.

23. Mr. Bock addressed respondent's assertion that he performed the calculations for a "flush-mount" design rather than a "tilt-mount" design. Although respondent claimed that this circumstance vitiated the charges of negligence, Mr. Bock believed that, to the contrary, respondent had a duty to perform the necessary calculations prior to submitting the design for approval. Mr. Bock noted respondent's assertion that he always reviewed "tilted" panel projects "for uplift on existing framing member and many times require retrofitting the existing framing and/or connections to mitigate the net uplift forces." Mr. Bock concluded that respondent failed to do this in this case.

24. Mr. Bock made clear that respondent's deviations from the standard of care were not related to whether the ultimate design was safe -- rather, Mr. Bock considered whether it was a departure from the standard of care for respondent not to have made certain calculations and addressed certain areas prior to approving the plans.

Respondent's Expert

25. Respondent called Lloyd Martin as a witness. Mr. Martin is a licensed civil engineer and a licensed general contractor. He has been licensed since 1998. He has never testified in court before, and this is the first case in which he reviewed a claim of negligence involving an engineer. He has reviewed over 5,000 solar installation projects. Mr. Martin testified that he was not being paid for his testimony; rather, he believed this case had wide-reaching ramifications for the solar panel industry. He believed this disciplinary action was very significant because, if the board were to find respondent was negligent, it would mean that the board would be finding the "tilt-mount" design was structurally unsafe. He believed strongly that respondent was not negligent, and he was testifying in order to offer his expertise in the solar-industry field.

26. Mr. Martin stressed that the "tilt-mount" design is a structurally safe design. He noted that the vast majority of jurisdictions in California approve these designs without review by a structural engineer. Costa Mesa is among a small minority of jurisdictions that require a licensed engineer to approve the plans. He believes that because most jurisdictions do not require engineering review, the design is safe. He noted that there is a specific design flaw associated with the "tilt-mount" design and with the reason a few jurisdictions require an engineer's approval. The concern relates to the installation having two "tilt-legs" instead of one. The plans respondent approved had the appropriate design feature. Mr. Martin believed that the plans respondent approved met the requirements of code, and Mr. Martin would have approved the same plans.

27. Mr. Martin believed that most buildings are capable of transferring the additional load from extreme wind forces to the foundation. He argued that Mr. Bock did not

consider the building as an entire system. Mr. Martin stated that retrofits can be extremely expensive and that most buildings are capable of supporting the additional load. Specifically, plywood sheeting and blocking attached to the rafters would prevent failure. Thus, because the design was safe, Mr. Martin opined that respondent could not be negligent for failing to account for any potential design hazards as claimed in the first allegation.

28. Mr. Martin noted that respondent was required to use the load combinations to prove that the design was correct. He conceded that respondent used the wrong calculations. He viewed this as a mistake, not negligence. Mr. Martin testified that his definition of negligence focused on whether the finished product is unstable or dangerous. Here, even though respondent made the wrong calculations, the finished product was safe and satisfied code. Because Mr. Martin believed that the product was safe, he did not conclude that respondent was negligent.

29. Mr. Martin did not believe that respondent was negligent for failing to account for the continuity beam action. Mr. Martin testified that the code prohibits the modelling of the system as proposed by Mr. Bock. Mr. Martin did not believe that any engineer would have performed these calculations. Nor did Mr. Martin believe that respondent needed to address uplift anchors for the roof's rafters. Mr. Martin believed that other components in the existing structure were sufficient to support the installation.

30. On cross examination, Mr. Martin admitted that he looked at the entire case file for only 30 minutes. He did not perform his own calculations. He believed that Mr. Bock's assessment was hyper-critical. Mr. Martin conceded that respondent should have made new calculations when the plans switched to a "tilt-mount" design. However, because solar installations are repetitive, he believed that a reasonable and prudent engineer can determine by mere inspection whether a proposal meets code. Mr. Martin believed an engineer has the right to stamp a set of plans that he concludes complies with code, even if calculations were not performed.

31. Finally, Mr. Martin was asked for his definition of negligence. Mr. Martin stated that negligence is doing something that is going to hurt someone, cause a safety danger, or involves a willful disregard of requirements or rules. Mr. Martin was asked whether he would have signed the plans without performing updated calculations. Mr. Martin stated that he would have prepared the calculations prior to submitting the plans.

Testimony of Respondent

32. Respondent testified about his arrangement with Unleash Solar. Respondent was previously an employee of Unleash Solar, but when business slowed, he was released from employment. However, he continued to work with Unleash Solar as an independent contractor. Unleash Solar called respondent once a week and provided him with a list of projects after his employment with Unleash Solar ended and he became an independent contractor.

33. On Friday, January 25, 2013, Unleash Solar called respondent in to review a list of projects. He was about to finish working for the day when he was asked to review the plans for the Kopec project. Respondent was told that the project was a "hot-potato," and Unleash Solar was in a hurry to complete the plans. First, respondent downloaded the plans from Unleash Solar's server to his laptop. Respondent reviewed the plans the next day and performed the calculations. He then uploaded the calculations to Unleash Solar's server. When he went into the office on Monday, January 28, 2013, Unleash Solar had printed out the plans and calculations. There were a dozen different plans relating to different projects that he was required to review and sign. He looked briefly at each plan because he had already performed the calculations for each plan. Respondent testified that when he came to the Kopec plans, he noticed that the plans were for a "tilt-mount" design. This surprised him because the plans he reviewed, for which he performed the calculations, were for a "flush-mount" design. In corroboration, respondent produced a copy of the "flush-mount" plans he downloaded from Unleash Solar's server on January 25, 2013. Respondent assumed that the designer had prepared the "flush-mount" plans prior to a site audit at the location. He assumed that, when the site audit was conducted on January 25, 2013, it was concluded that a "flush-mount" system would not work because of the roof's orientation.

34. Respondent stated that Unleash Solar was very concerned about this client, and they pushed him to approve the plans. He said that Mr. Kopec was calling Unleash Solar daily. Respondent said the decision was made to submit the plans as prepared, with the understanding that respondent would update the calculations for the "tilt-mount" design at a later date. He reviewed the plans and they looked good as far as design, and he saw no major problems. Respondent said if there were issues with the design, he would have caught them when he performed his new calculations. He said he was trying to help out the client and Unleash Solar. He testified that Unleash Solar told him that they would submit the plans to the city and that respondent would switch out the calculations at a later date. Respondent was asked whether he was uncomfortable with submitting plans for which he had not performed calculations. Respondent stated that he had some discomfort, but having reviewed hundreds of these designs in the past, he felt comfortable with having the plans submitted without fear of something going wrong with the project. Respondent did not believe that he violated any laws or regulations relating to engineering.

35. Respondent testified that although his actions were not best-practice, it was permissible to submit plans to the city knowing that the calculations were wrong so long as other calculations would be performed prior to construction.

36. Respondent stated that he was not given the site evaluation, which reflected the necessity for a "tilt-mount" design, when he reviewed the first set of plans. Respondent admitted that he never performed a new set of calculations for the plans he signed. He stated that Unleash Solar never instructed him to perform new calculations because the project stalled, and Unleash Solar was not on friendly terms with Mr. Kopec. Eventually, the contract was cancelled.

37. In support of his claim that he performed calculations for a "flush-mount" design, respondent noted the reference to a "QuickMount PV" and "Antai Solar Railing" in the "flush-mount" plans. "QuickMount PV" was listed as the type of mounting hardware in respondent's calculations. The calculations also listed the rail type as "Antai Solar Railing." Respondent noted that the "tilt-mount" plans that he ultimately approved make no mention of "QuickMount PV" or "Antai Solar Railing." Instead, these plans called for an "Antai Solar Tilt Kit." Respondent claimed that these references corroborated his claim that he performed calculations on a "flush-mount" design.

Testimony of Dana Halladay

38. Respondent called Dana Halladay as a witness. Mr. Halladay is a registered professional engineer and president of Halladay & Mim Mack, Inc. Mr. Halladay had used respondent as a contractor for a number of engineering projects. Mr. Halladay had full faith in respondent's abilities, and he said he would continue to use respondent's services. Even when respondent's license was revoked, Mr. Halladay continued to use respondent for services not requiring a license as a certified engineer.

Letters of Reference

39. Respondent submitted 12 letters of reference or recommendation. All of the letters were from members of the profession. The letters praised respondent and recommend him as an engineer. Respondent's engineering skills were described as superior, and he was described as highly competent.

Costs

40. Complainant submitted a certification of investigation and enforcement costs. That certification stated that complainant incurred a total of \$2,700.00 in enforcement costs. These costs consisted entirely of costs for the technical consultant. An invoice for the technical consultant was attached. The technical consultant billed for 36 hours of work.

A certification of costs was prepared by the deputy attorney general who represented complainant. The legal charges amounted to \$8,177.50. The legal charges in this matter are reasonable.

Total costs of enforcement and prosecution are determined to be \$10,877.50

Respondent did not object to the requested costs as being unreasonable.

LEGAL CONCLUSIONS

Purpose of License Discipline

1. Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Griffiths v. Superior Court* (2001) 96 Cal.App.4th 757, 768.) The main purpose of license discipline is protection of the public through the prevention of future harm and the rehabilitation of the licensee. (*Ibid*, at p. 772.)

Burden and Standard of Proof

2. Complainant bears the burden of establishing the charges by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This standard of proof requires the evidence be “of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth” of the charges (BAJI 2.62), and be “so clear as to leave no substantial doubt.” (*In re Angelia P.* (1981) 28 Cal. 3d 908, 919; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.) If the evidence serves only to raise concern, suspicion, conjecture or speculation, the standard is not met. (*Stonegate Homeowners Ass’n v. Staben* (2006) 144 Cal.App.4th 740, 746.)

Disciplinary Statutes and Regulations

3. Business and Professions Code section 6775, subdivision (c), authorizes the board to impose discipline on the holder of a civil engineering license for any negligence or incompetence in his or her practice.

4. California Code of Regulations, title 16, section 404, provides in part:

(u) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, “incompetence” as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.

[¶]. . . [¶]

(dd) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, “negligence” as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.

[¶]. . . [¶]

Negligence and the Standard of Care

5. Civil engineers must exercise that degree of skill, knowledge, and care ordinarily possessed and exercised by members of their profession under similar circumstances. (*Powell v. Kleinman* (2007) 151 Cal. App.4th 112, 122.) Because the standard of care of a civil engineer is a matter peculiarly within the knowledge of experts, expert testimony is required to prove or disprove that a civil engineer performed in accordance with the standard of care unless the negligence is obvious to a layperson. (*Elcome v. Chin* (2003) 110 Cal.App.4th 310, 317.) The standard of care is often a function of custom and practice. (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 280.) The process of deriving a standard of care requires some evidence of an ascertainable practice. (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.) The expert testimony must be based on such matters as may be reasonably relied on by an expert in forming an opinion on the subject. (Evid. Code, § 801, subd. (b).)

Evaluation

6. Respondent's testimony that he performed the calculations for a "flush-mount" design was credible. Once Unleash Solar reviewed the site audit for the Kopec residence, the contractor changed the design to a "tilt-mount" design. In corroboration, respondent produced a copy of the "flush-mount" plans he downloaded from Unleash Solar's server on January 25, 2013. These were the plans respondent reviewed and for which he performed his calculations the next day. As determined in Factual Finding 38, references to the mounting hardware in these plans were the same as those in his calculations. Thus, it is concluded that respondent prepared calculations for a different design than the one he ultimately stamped and signed.

7. The Accusation did not allege that respondent was negligent for failing to perform calculations on the new design prior to the approval of the design and submission to the city. However, complainant alleged that respondent was negligent or incompetent in the calculations he performed and for his failure to address certain issues. The fact that respondent performed calculations for a different design did not vitiate respondent's responsibility for providing improper calculations for that design. Respondent performed calculations in conjunction with his approval of a "tilt-mount" design. This was the design respondent approved, and he must be held to the standard of a reasonable certified engineer in reviewing the stability of that design.

8. Complainant alleged that respondent was subject to discipline under Business and Professions Code section 6775, subdivision (c), as being negligent and incompetent in his practice of engineering. Complainant's expert did not find respondent was incompetent in relation to any of the allegations. Therefore, the sole issue is whether respondent's actions constituted negligence.

9. It is incumbent upon the trier of fact to determine the standard of professional learning, skill and care from the opinions of the witnesses, including respondent, who have

testified as expert witnesses. The trier of fact must consider each such opinion and should weigh the qualifications of the witness and the reasons given for his or her opinion. The trier of fact must give each opinion the weight to which the trier of fact deems it entitled.

10. In resolving any conflict in the testimony of expert witnesses, the opinion of one expert should be weighed against that of another. Consideration should be given to the qualifications and believability of each witness, the reasons for each opinion, and the matter upon which it is based. (BAJI 2.41.) California courts have repeatedly underscored that an expert's opinion is only as good as the facts and reason upon which it is based. (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 924.)

11. Mr. Bock was qualified to render an expert opinion in this matter. His report and calculations were thorough and specific. He testified in a professional, straightforward, and objective manner, and his testimony and his written reports were well reasoned and persuasive. He clearly identified the evidence that supported his conclusions and articulated the reasons he believed there were deviations from the standard of care. Mr. Bock was also unbiased. Of the 11 violations that the board requested him to evaluate, Mr. Bock found respondent negligent in five areas. Mr. Bock took his role as an industry expert seriously and did not reach conclusions without considering all the evidence in the record, including respondent's contentions. Finally, Mr. Bock had a firm understanding of the standard by which he was evaluating respondent's actions -- that is, he considered whether respondent deviated from the standard of care of a registered professional engineer.

12. Mr. Martin also had the necessary training and experience to render an expert opinion. Mr. Martin had much more experience in the solar panel industry than Mr. Bock had. However, Mr. Martin made clear throughout his testimony that his concern was that a negative decision in this disciplinary case might have a negative impact on the solar industry. He testified that most jurisdictions do not require engineering approval for the exact type of "tilt-mount" design that respondent approved, and this design had been installed throughout the country without any real design issues. He was concerned that a finding of negligence might be understood to equate to a finding that the "tilt-mount" design was dangerous. In his testimony, Mr. Martin implied that he had a vested interest in the outcome of this case, which cast a shadow of doubt on his objectivity. Moreover, Mr. Martin spent only 30 minutes reviewing the entire file before rendering his opinion.

Finally, Mr. Martin's definition of negligence did not identify the appropriate standard of care. Instead, Mr. Martin defined negligence as doing something that posed a danger to health or safety, or a willful failure to follow the rules. Mr. Martin conceded that respondent made errors in his calculations. However, Mr. Martin believed that because no harm came from these errors, and because the design satisfied code, respondent's license should not be disciplined. By Mr. Martin's rationale, because the design was inherently safe and because most jurisdictions do not require an engineer's approval, respondent was free to approve the project without performing the correct calculations. This "no harm-no foul" conclusion is not the basis on which professional negligence is judged.

13. Mr. Bock's reports and testimony were more convincing than the testimony of Mr. Martin. Mr. Bock conducted a thorough and detailed investigation. Mr. Martin reviewed the case for 30 minutes and reached his conclusion based on his belief that the "tilt-mount" design was inherently safe. Moreover, Mr. Martin did not evaluate respondent's conduct vis-à-vis the standard of care of a professional engineer; rather, his conclusion was based on his belief that respondent's action was incapable of resulting in harm. This belief does not absolve respondent for the commission of negligent professional acts. It is irrelevant that other jurisdictions do not require an engineer's approval. Respondent was required to perform his job as a professional engineer and to do so within the standard of care incumbent upon other professional engineers. It is by that standard that respondent's conduct must be evaluated, and it is by that standard that respondent's conduct fell short.

14. The first allegation is that respondent failed to recognize the potential hazards in the installation of the solar panels. Mr. Bock testified that the "tilt-mount" design was safe when properly engineered. He found that respondent deviated from the standard of care by failing to verify the response of the existing structural supports to the actions of new loads imposed by the panels. Thus, he believed that respondent should have addressed certain issues that were not contained in his calculation report. By contrast, Mr. Martin and respondent testified that the design that respondent approved was safe. Clear and convincing evidence did not establish that respondent failed to recognize potential hazards in the design. There is some evidence that respondent recognized potential hazards in the design and determined, based on his experience, that the design was safe. This evidence created a substantial doubt concerning Mr. Bock's testimony on the issue and rendered it less than convincing. It cannot be concluded that respondent was negligent as alleged.

15. The second and third allegations relate to respondent's calculations. Mr. Bock concluded that respondent was negligent for failing to reduce the dead load when combined with the wind load to resist uplift. Mr. Martin conceded that respondent did not perform the calculations required by code. Clear and convincing evidence established that respondent was negligent in this regard.

Mr. Bock also concluded that respondent used the incorrect angle, incorrect wind flow type and incorrect zone to determine the net pressure coefficients. Clear and convincing evidence established that respondent failed to perform the correct calculations and that this constituted negligence.

16. The fourth allegation related to the continuity beam action of the supporting rails. Although Mr. Bock found respondent was negligent, Mr. Martin's testimony raised sufficient reasons to explain why respondent or other engineers acting in a reasonable fashion did not need to address this issue -- namely other components in the structure were sufficient to support the solar installation. Clear and convincing evidence did not establish that respondent deviated from the standard of care as alleged.

17. Finally, complainant alleged that respondent failed to address the need for uplift anchors. Mr. Bock was extremely thorough in his assessment on this issue and

concluded that the uplift forces generated by code force winds were larger than the capacity of the existing anchoring. Mr. Martin disputed this, and he faulted Mr. Bock for not considering the building system more holistically. Although Mr. Bock's explanation was more persuasive, Mr. Martin raised sufficient doubt about Mr. Bock's assessment to raise questions about what an ordinary, reasonable engineer might do under similar circumstances. Clear and convincing evidence did not establish that respondent deviated from the standard of care as alleged.

Cause Exists to Impose Discipline on Respondent's License

18. Cause exists to impose discipline on respondent's license pursuant to Business and Professions Code section 6775, subdivision (c), and California Code of Regulations, title 16, section 404, subdivision (dd), because respondent was negligent in his practice of engineering.

19. Cause does not exist to impose discipline on respondent's license pursuant to Business and Professions Code section 6775, subdivision (c), or California Code of Regulations, title 16, section 404(u), based on incompetence.

Cause Exists to Revoke Probation

20. The board's disciplinary order became effective on September 20, 2010. Probation Condition 5 required respondent to "obey all laws and regulations related to the practices of professional engineering and professional land surveying." Cause exists to revoke respondent's probation because respondent failed to comply with Condition 5 by violating the laws and regulations of the practice of professional engineering by committing negligence.

Measure of Discipline

21. California Code of Regulations, title 16, section 419, sets forth the maximum and minimum penalties for violations of Business and Professions Code section 6775. The minimum penalty is a reproof; the maximum penalty is revocation. This case falls between the two extremes.

22. California Code of Regulations, title 16, section 418, subdivision (b), provides the criteria for determining a licensee's rehabilitation since engaging in the acts for which discipline is sought and the licensee's present fitness to hold a license. The criteria that are relevant here include: 1) the nature and severity of the acts for which discipline is sought; 2) evidence of the commission of other acts, either before or after the underlying conduct, which would constitute grounds for discipline; 3) the time that has elapsed since the commission of the underlying acts and any other acts which would constitute grounds for

discipline; and 4) any evidence of rehabilitation presented by the licensee. (Cal Code Regs., tit. 16, § 418, subds. (b)(1)-(b)(3) and (b)(5).)²

FACTORS IN MITIGATION

23. Respondent has been licensed since 1981. Respondent successfully complied with all other terms of probation. He received a number of recommendations from other engineers and contractors who think very highly of his work. All the findings against respondent relate solely to his conduct in connection with one project. No harm was caused to the homeowner. Indeed, even if the project had gone forward, there was no more than marginal evidence that the approved design might have proved to be dangerous. In fact, the "tilt-mount" installation is in such frequent use that most jurisdictions do not require an engineer's approval. This widespread practice reflects a relative degree of safety with the design respondent approved. Although it does not relieve respondent of the responsibility to perform the necessary calculations, it is a strong mitigating factor.

Additionally, the remaining allegations relate to respondent's failure to address certain calculations. Had respondent performed the necessary calculations, it is not entirely clear that a reasonable engineer would have made any alterations to the design.

FACTORS IN AGGRAVATION

24. Respondent has disciplinary history dating back to 2002. Since that time, respondent's license has been on probation, with the exception of the three years from 2007 to 2010 when his license was revoked. Respondent's previous discipline, resulting in revocation, involved allegations of negligence. Respondent is on probation, which is all the more reason respondent should be extra cautious in his practice.

The design respondent approved very well may have been safe. It is accepted that many jurisdictions do not require an engineer's approval for this design. However, Costa Mesa did; and it was incumbent upon respondent to perform his duties in accordance with the standard of a reasonable professional civil engineer. This standard of care required him to go through the steps and perform the necessary calculations. Instead, respondent believed he was doing his contractor a favor by approving the plans without having made the correct calculations. Although respondent's actual negligence as alleged in the Accusation related to a seemingly minor error in his calculations, the measure of discipline is not decided in a vacuum. It is necessary to look at the larger context of respondent's actions.

² The other criteria specified in the regulation apply only when criminal conduct is the basis for discipline. (Cal Code Regs., tit. 16, § 418, subds. (b)(4) [the extent of any compliance with the terms of probation, parole, or restitution], (b)(6) [total criminal record], and (b)(7) [any proceedings to expunge prior criminal convictions].)

Respondent erroneously believed that because the plans were switched, he should be relieved of all culpability. To the contrary, respondent's misconduct was worse than merely providing the wrong calculations. Respondent knew he should have prepared calculations for the "tilt-mount" model before stamping and signing the plans. By his own testimony, he was pressured by his contractor to approve the plans without performing these calculations. Respondent now claims that he intended to perform the required calculations at a later date; however, he never did so. The fact that respondent did not even realize the plans he had reviewed were for a "flush-mount" design until well into the board's investigation is compelling evidence that respondent had no intention of revisiting his calculations. By submitting signed and stamped plans to Costa Mesa, respondent conveyed to the city that he had made the necessary calculations. Based on this representation, the city approved the plans and issued a permit. Respondent's actions border on a willful misrepresentation to the city. Even if respondent believed that the design was safe, his job, as a professional engineer, was to provide these calculations prior to certifying the plans. Finally, respondent expressed no remorse for his actions. His failure to recognize that signing off on a project after having performed the wrong calculations was a breach of the public trust weighs heavily in the disciplinary considerations.

THE APPROPRIATE DISCIPLINE IS PROBATION WITH A SIX MONTH SUSPENSION

Based upon these considerations, it is concluded that the most appropriate disciplinary order is a revocation, stayed, and the placing of respondent's license on probation for five years. Due to respondent's disciplinary history, and the aggravating factors surrounding his negligence, the probationary period shall include an actual suspension of six months. The terms and conditions of probation will include terms specifically tailored to the findings of negligence. Respondent's actions also reflect an ethical lapse. He will be required to complete and pass a course in professional ethics, approved in advance by the board, prior to the completion of his suspension.

Cost Recovery

Complainant seeks recovery of the reasonable costs of prosecution in the amount of \$10,877.50. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his or her position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions

Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

The costs claimed totaling \$10,877.50 are reasonable. However, respondent used the hearing to receive reduction in the discipline imposed, had a subjective good faith belief that he did not commit negligence, and raised a "colorable" challenge to the proposed discipline. No evidence was submitted on respondent's ability to pay.

Based on these considerations, costs are reduced to \$5,500.00

ORDER

1. In regards to the petition to revoke probation, the stay ordered in the board's decision and order effective October 21, 2010, is vacated, and the order revoking Civil Engineer License No. C33038 issued to respondent, Richard Joseph Godina, is imposed.

2. In regards to the accusation, the revocation is stayed and the license is placed on probation for five years upon the following terms and conditions:

(1) Respondent's license shall be suspended for a period of six months beginning on the effective date of the decision.

(2) Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the board or its designee. Respondent shall enroll in this class prior to the completion of his suspension, or as permitted by the board.

(3) Respondent shall obey all laws and regulations related to the practices of professional engineering.

(4) Respondent shall submit such special reports as the board may require.

(5) The period of probation shall be tolled during the time respondent is practicing exclusively outside the state of California. If, during the period of probation, respondent practices exclusively outside the state of California, respondent shall immediately notify the board in writing.

(6) If respondent violates the probationary conditions in any respect, the board, after giving 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 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.

(7) Upon successful completion of all of the probationary conditions and the expiration of the period of probation, respondent's license shall be unconditionally restored.

(8) 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 course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(9) Respondent shall pay to the board the amount of \$5,500 for its costs of investigation and enforcement.

DATED: April 23, 2015.

Original Signed

ADAM L BERG
Administrative Law Judge
Office of Administrative Hearings

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8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
10 **GEOLOGISTS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

13 **RICHARD J. GODINA**
14 **17 Ponte Loren**
Lake Elsinore, CA 92532
15
16 **Civil Engineer License No. C 33038**

17 Respondent.

Case No. 1076-A

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

18
19 Complainant alleges:

20 **PARTIES**

21 1. Richard B. Moore, PLS (Complainant) brings this Accusation and Petition to Revoke
22 Probation solely in his official capacity as the Executive Officer of the Board for Professional
23 Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs.

24 2. On or about July 15, 1981, the Board for Professional Engineers, Land Surveyors,
25 and Geologists issued Civil Engineer License Number C 33038 to Richard J. Godina
26 (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the
27 charges brought herein and will expire on December 31, 2014, unless renewed.

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1 11. Certain aspects of the structural calculations and the plan sheets show that
2 Respondent was negligent in his practice of engineering, as detailed in the Cause for Discipline,
3 below.

4 **CAUSE FOR DISCIPLINE**

5 **(Negligence in the Practice of Engineering)**

6 12. Respondent is subject to disciplinary action under Code section 6775 (c) in that
7 Respondent was negligent and incompetent in his practice of engineering regarding the Conrad
8 and Sandra K. project in Costa Mesa, California, as follows.

9 a. Respondent failed to recognize the potential hazards of the installation of the solar
10 panels.

11 b. Respondent failed to reduce the dead load when combined with the wind load to
12 resist uplift.

13 c. Respondent used the incorrect angle, incorrect wind flow type, and incorrect zone to
14 determine the net pressure coefficients.

15 d. Respondent failed to account for the continuity beam action of the supporting rail.

16 e. Respondent failed to address the need for uplift anchors required for the roof rafters.

17 **CHARGES AND ALLEGATIONS TO REVOKE PROBATION**

18 13. Grounds exist for revoking the probation and reimposing the order of revocation of
19 Civil Engineer License Number C 33038 issued to Richard J. Godina. The Board's disciplinary
20 order effective on September 20, 2010, contained Probation Condition 11, which provides as
21 follows:

22 If Petitioner violates the probationary conditions in any respect, the
23 Board, after giving Petitioner notice and the opportunity to be heard, may vacate
24 the stay and reinstate the disciplinary order which was stayed. If, during the
25 period of probation, an accusation or petition to vacate stay is filed against
26 Petitioner, or if the matter has been submitted to the Office of the Attorney
27 General for the filing of such, the Board shall have continuing jurisdiction until all
28 matters are final, and the period of probation shall be extended until all matter are
final.

14. Respondent has violated the conditions of his probation as set forth below.

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CAUSE TO REVOKE PROBATION

(Failure to Obey all Laws Related to Engineering)

7. The Board's disciplinary order effective on September 20, 2010, contained Probation Condition 5, which required Respondent to do the following:

"Petitioner shall obey all laws and regulations related to the practices of professional engineering and professional land surveying."

8. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. Respondent violated the laws and regulations of the practice of professional engineering as stated in the Cause for Discipline set forth above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation and Petition to Revoke Probation, and that following the hearing, the Board for Professional Engineers, Land Surveyors, and Geologists issue a decision:

1. Revoking or suspending Civil Engineer License No. C 33038, issued to Richard J. Godina;

2. Revoking the probation that was granted by the Board for Professional Engineers, Land Surveyors, and Geologists in Case No. 690-A and imposing the disciplinary order that was stayed thereby revoking Civil Engineer License No. C 33038 issued to Richard J. Godina;

3. Ordering Richard J. Godina to pay the Board for Professional Engineers, Land Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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2 4. Taking such other and further action as deemed necessary and proper.

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6 DATED: _____

1/21/14

Original Signed

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RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and
Geologists
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order

Board for Professional Engineers, Land Surveyors, and Geologists Case No. 690-A

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

In the Matter of the Petition for Reinstatement
of Revoked License of:

RICHARD J. GODINA, SR.,

Petitioner.

Agency No. 690-A

OAH No. 2010071133

DECISION

This matter was heard on August 11, 2010, before a quorum of the Board for Professional Engineers and Land Surveyors (Board), in Los Angeles, California. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

The record was closed and the matter was submitted for decision, following which the Board met in an executive session and decided the matter the same day.

Daniel J. Rafii, Esq., represented Richard J. Godina, Sr. (Petitioner), who was present.

Rita M. Lane, Deputy Attorney General, was present pursuant to Government Code section 11522.

FACTUAL FINDINGS

1. The Board issued Civil Engineer license number C 33038 to Petitioner on July 15, 1981.

2. Effective April 5, 2002, pursuant to a Stipulated Settlement and Disciplinary Order, the Board revoked Petitioner's license; however, the revocation was stayed, and Petitioner was placed on probation for a period of three years under certain terms and conditions, including an order that he pay the Board its costs in the amount of \$7,500. An accusation was pending against Petitioner containing allegations that he had breached a contract for professional engineering services with a client, including that he failed to finalize documents for a project, refused to return files to the client, and thereby prevented the client from recording a final map in time to avoid additional fees. In this stipulation resulting in the discipline, Petitioner agreed that the allegations, if proven, would constitute a basis for discipline.

3. Effective May 20, 2007, pursuant to a Decision of the Board after a hearing on the merits before an Administrative Law Judge, Petitioner's license was revoked, and he was ordered to pay the Board additional costs of \$2,500. Petitioner's overall costs obligation to the Board from his two prior disciplinary matters is \$10,000.

4. The Decision revoking Petitioner's license was based on various findings, including that he had breached contracts with two different clients, which caused a significant financial injury to one client from the loss of his development project, and the delay of the other client's project by years. In each case, Petitioner repeatedly failed to keep his promises. Petitioner also violated terms and conditions of his Board probation, including failure to complete a Board-approved ethics course and a college-level course related to his prior disciplinary violations, despite having two years to do so and having been given a second chance by the Board.

5. On July 16, 2010, Petitioner filed his Petition for Reinstatement of a Revoked License (petition).

6. No evidence was presented indicating that Petitioner has engaged in any misconduct after the revocation of his license.

7. Petitioner completed a Board-approved ethics course from Texas Tech University College of Engineering (receiving a grade of A) and a Board-approved college-level course on business law (receiving a grade of A).

8. After his license was revoked, Petitioner was employed by Halladay & Mim Mack, Inc., an engineering company in good standing with the Board. Due to the recession, Petitioner was laid off in January of 2009. However, he has periodically worked for the firm as a consultant, under the direction of Dana Halladay, a Board licensee in good standing. Petitioner has also performed pro bono services for clients in financial distress, under the direction of Ken Kaestner, an architect in good standing and legally authorized to practice in this state. Mr. Halladay testified that Petitioner is technically proficient and did well in his client interactions. A married couple for whom Petitioner performed pro bono services submitted a letter praising Petitioner's character and performance in their matter.

9. Petitioner has accepted responsibility for his past misconduct. He has previously apologized to the two former clients who were the subject of his revocation proceeding, and he demonstrated sincere remorse during the hearing of this matter. His past problems related to disarray at home and at work. Those aspects of his life are now stable. Through his employment with Mr. Halladay, and the above-described coursework he has completed, Petitioner has developed a better sense of the ethical and technical demands of the engineering profession. He has pledged to develop and maintain open lines of communication with clients. He is more sensitive to the nuances of contractual agreements. He is now committed to not overextending himself or making promises to clients he cannot keep. He will also stay involved in engineering peer groups, such as A.S.C.E., to make sure these core values remain with him.

LEGAL CONCLUSIONS

1. *Burdens of Proof.* The burden in this petition for reinstatement of a revoked license rests with Petitioner. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084.)

2. *Standard of Review.* Business and Professions Code section 6777 provides the Board authority to reinstate a revoked license for reasons the Board deems sufficient. Pursuant to Business and Professions Code section 6780, subdivision (d), the Board may grant such a petition and/or impose any reasonable terms it deems appropriate.

3. *Rehabilitation.* Pursuant to California Code of Regulations, title 16, section 418, subdivision (c), when considering a petition for reinstatement, the Board shall evaluate various factors considered to indicate the status of one's rehabilitation. In this case, Petitioner meets many of those factors. For example, Petitioner has completed the educational courses required of him as part of his prior probation (subd. (c) (1)). Since the revocation of his license, he has engaged in professional engineering work without incident under the responsible charge of a licensee in good standing or under the direction of a person legally authorized to practice, including on a pro bono basis (subd. (c) (2)). Petitioner has engaged in no misconduct after his revocation (subd. (c) (6)). He has demonstrated recognition of his own actions that led to the revocation of his license (subd. (c) (7)). Petitioner has taken a course of corrective action indicating that similar misconduct in the future is unlikely (subd. (c) (8)).

4. *Disposition.* Petitioner has presented sufficient cause to reinstate his license. The factors discussed above show a sufficient level of rehabilitation has occurred. Petitioner has demonstrated a record of good behavior and a positive attitude about his experience. Nonetheless, in the past Petitioner has harmed at least two clients, and failed to complete a prior probation with the Board. Thus, in order to adequately protect the public, a lengthy probationary period, with terms meant to provide additional supervision, is warranted. Moreover, two terms from Petitioner's prior probation are warranted, i.e. his passing the Board's examination (which he did not do before) and providing appropriate notification of his probation. Finally, Petitioner shall be required to reimburse the Board its costs incurred from the prior two disciplinary matters. (Factual Findings 1-9.)

ORDER

The petition for reinstatement of Petitioner Richard J. Godina, Sr., is granted. Civil Engineer license number C 33038, previously issued to Petitioner, is reinstated. The reinstated license, however, shall be immediately revoked; the revocation is stayed and the license is placed on probation for five years upon the following terms and conditions:

1. During the period of probation, Petitioner 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 Petitioner. 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 Petitioner's stamp or seal.

2. Petitioner shall reimburse the Board for its investigation and enforcement costs, from the prior disciplinary matters, in the amount of \$10,000, pursuant to a payment plan approved by the Board or its designee. The entire sum shall be paid to the Board by no later than six months before the expiration of probation. Failure to reimburse the Board's costs in this manner shall constitute a violation of an order of the Board, unless the Board agrees in writing to payment by a different installment plan because of financial hardship.

3. Within 60 days of the effective date of the decision, Petitioner shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.

4. Within 30 days of the effective date of the decision, Petitioner shall provide the Board with evidence that he or she has provided all persons or entities with whom he or she 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, Petitioner may be required to provide the same notification of each new person or entity with whom he or she 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.

5. Petitioner shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

6. Petitioner shall submit such special reports as the Board may require.

7. The period of probation shall be tolled during the time Petitioner is practicing exclusively outside the state of California. If, during the period of probation, Petitioner practices exclusively outside the state of California, Petitioner shall immediately notify the Board in writing.

8. If Petitioner violates the probationary conditions in any respect, the Board, after giving Petitioner 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 Petitioner, 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.

9. Upon successful completion of all of the probationary conditions and the expiration of the period of probation, Petitioner's license shall be unconditionally restored.

This Decision is effective: October 21, 2010.

DATED: September 20, 2010

Original Signed

Mike S. Modugno, P.E.

President

Board for Professional Engineers and
Land Surveyors

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

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

In the Matter of the Accusation and First
Amended Petition to Revoke Probation
against:

RICHARD JOSEPH GODINA
24044 Plata Court
Wildomar, CA 92595

Civil Engineer License No. C 33038,

Respondent.

Case No. 690-A

OAH No. N2006060084

ORDER GRANTING STAY OF EXECUTION OF DECISION

A Decision in the above matter was issued by the Board for Professional Engineers and Land Surveyors on March 23, 2007, to become effective on April 20, 2007. Respondent, by and through his attorney, has submitted a Request for Stay for Petition for Reconsideration and a Petition for Reconsideration pursuant to Government Code section 11521. Therefore, pursuant to the provisions of Government Code sections 11519 and 11521, a 30-day stay of execution of the decision in this matter is issued to allow the Board for Professional Engineers and Land Surveyors sufficient time to consider the petition.

Execution of the Decision is stayed until May 20, 2007.

DATED: April 19, 2007

Original Signed

JOANNE ARNOLD
Assistant Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California

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

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

In the Matter of the Accusation and First
Amended Petition to Revoke Probation
Against:

RICHARD JOSEPH GODINA
4295 E. Jurupa Street, Suite A101
Ontario, California 91761

Civil Engineer License No. C 33038

Respondent.

Case No. 690-A

OAH No. N2006060084

PROPOSED DECISION

Administrative Law Judge Michael C. Cohn, State of California, Office of
Administrative Hearings, heard this matter in Oakland, California, on January 22, 2007.

Maretta Ward, Deputy Attorney General, represented complainant Cindi Christenson,
P.E., Executive Officer of the Board for Professional Engineers and Land Surveyors.

Respondent Richard Joseph Godina represented himself.

The record was held open to allow complainant to decide whether to present
additional evidence to rebut some of respondent's evidence. On February 1, 2007, counsel
for complainant advised the administrative law judge and respondent that no additional
evidence would be presented.

The matter was deemed submitted for decision on February 1, 2007.

FACTUAL FINDINGS

1. The Board for Professional Engineers and Land Surveyors issued Civil
Engineer License No. C 33038 to respondent Richard Joseph Godina on July 15, 1981.

2. In 2001, complainant filed an accusation against respondent, alleging that he
was subject to disciplinary action under Business and Professions Code section 6775,
subdivision (d), for breach of a contract to provide professional engineering services. It was

alleged that between 1989 and 1994 respondent had entered into a series of contracts to perform engineering work for Lyn Tremain; that work on the projects was suspended by Tremain; that in 1998 Tremain asked respondent to provide him with the project files so he could complete the projects; that respondent refused to do so even though Tremain advised respondent that failure to finalize the documents on one of the projects would subject Tremain to additional fees; that after Tremain filed a complaint with the board respondent told a board enforcement analyst that he would return to files to Tremain; that respondent thereafter refused to provide Tremain with disk copies of the CAD drawing files; and that without those disks Tremain was unable to record a final map in time to avoid additional fees.

In January 2002, respondent and complainant entered into a stipulated settlement, which the board adopted as its decision and order effective April 5, 2002. In that settlement, respondent agreed that the allegations against him, if proven at a hearing, constituted cause for disciplining his license, and that complainant could establish a factual basis for those allegations. Respondent also agreed to be bound by a disciplinary order revoking his license but staying the revocation and placing him on probation for three years on terms and conditions including that respondent obey all laws related to the practice of professional engineering (Condition 2), that within two years of the effective date of the decision he successfully complete and pass a course in professional ethics that had been approved in advance by the board or its designee (Condition 9), and that within two years of the effective date of the decision he successfully complete and pass with a grade of C or better a college-level course, approved in advance by the board or its designee, specifically related to the area of the violation (Condition 11). Condition 5 provided that if respondent violated probation in any respect, the board, after filing a petition to revoke probation and providing respondent a hearing on that petition, could vacate the stay and reinstate the revocation of respondent's license.

3. On November 1, 2005, complainant filed the instant accusation and first amended petition to revoke probation against respondent. It alleges that respondent's license is subject to discipline in a First Cause for Discipline for breach of contracts entered into with Jim Cusato, Jr., in August 2002, and Victoriano Chavez in February 2004, and in a Second Cause for Discipline for failing to include his license number on the Chavez contract. It further alleges four Cause[s] to Revoke Probation: failure to comply with Condition 2, failure to comply with Condition 9, failure to comply with Condition 11, and violating probation by failing to comply with the foregoing three conditions.

Causes for Discipline

Cusato Project

4. James A. Cusato, Jr., and two partners were developing a project in San Jose known as Bascom Executives. On August 30, 2002, Cusato's partners entered into a contract with Paragon IV Consulting and Design, Inc., to perform specified engineering work on the

project for an amount "not to exceed" \$20,000. Paragon IV was a partnership of respondent and land surveyor Rien Groenewoud.

Cusato expected that getting the engineering work done and the required city approvals would take about six months, or a year at the outside. He expected to have respondent's initial work within about three months. There were immediate problems getting timely performance from respondent. On November 13, 2002, Cusato wrote to his partners that "Godina has failed again to perform on time." On or about January 6, 2003, the Bascom Executives partnership was dissolved and Cusato took over sole responsibility for the project. Although respondent had already performed work on the project, problems with the Bascom Executives partnership had delayed payments to him. But after Cusato took over the project he paid respondent \$5,000 on April 3, 2003, \$5,000 on May 4, 2003, and \$1,000 on July 28, 2003. In total, respondent was paid \$16,000 of the contract price of \$20,000.

5. Despite the payments he made, Cusato could not get respondent to complete the project. He sent respondent letters and emails and made telephone calls to him. Respondent repeatedly promised he would get the work done and blamed his failure to do so on problems he was having with his business (Paragon IV). At some point, Cusato drove his RV to Paragon's offices in Turlock and parked there for a couple of days. This resulted in some additional work getting done. In October 2003, Cusato sent respondent an email asking him to finish his work by the end of the week. He got no response to this email or another one sent in late November 2003. Eventually, respondent did provide plans that were submitted to the City of San Jose for approval. The city required that certain corrections be made and Cusato sent this information to respondent. But despite repeated telephone calls and emails to respondent, Cusato did not receive any corrections.

6. In July 2004, Cusato filed a complaint with the board. He stated that respondent's failure to respond to the comments from the city building department "will totally derail this project." He asked for the board's assistance in getting respondent to finish the project.

7. The complaint was assigned to board enforcement analyst Margie Freeman, who had worked on respondent's earlier disciplinary matter. Freeman advised respondent of the complaint by telephone on July 16, 2004, and by letter on July 17. Respondent sent a response to Freeman on July 22. He said that he had spoken to Cusato "and confirmed what the problem was." He said Cusato had sent him the plan check document and the city's comments by certified mail but there had been no one at the office to receive them, "so the documents are now somewhere within the US Postal Service facilities." He said that they were trying to track down the documents, and that Cusato said he would send new copies if necessary. Respondent stated, "I promised Mr. Cusato, that upon receiving the materials, we would begin the process of responding to the plan-checking agency immediately. We foresee needing about one week's time in order to turn the plan check around, pending the extent of the comments." On July 27, Cusato sent an email to Freeman, advising her he had re-sent the plans and comments to respondent the previous day. On August 11, respondent

told Freeman he was working with Ken Kaestner on the plans and estimated they would be completed by August 13.

When the plans had not been received by September 7, Freeman called respondent again. He said he was in the process of closing out his business and was short-staffed. On September 17, Cusato sent an email to respondent asking that he provide the plans to his architect immediately since they were almost ready to get permits. After numerous contacts between Freeman and Cusato, Freeman and respondent, and Cusato and respondent, on October 20, 2004, Cusato advised Freeman that respondent had promised him the corrected prints would be emailed to his architect the following day. They were not. On October 26, respondent promised Freeman he would call Kaestner and have Kaestner return the plans to him so he could send them to Cusato's architect himself. The plans had still not been received by Cusato or his architect by November 15. On that date, respondent again advised Freeman that he would send the plans to Cusato. On December 21, respondent sent an email to Freeman in which he stated that the plans "have been back checked and should be in tomorrow's mail to Mr. Cusato." They were not sent. On January 26, 2005, respondent sent Freeman an email in which he advised he "would finally be sending the plans and calculations" to Cusato's architect by the end of the week. Despite this, by March 10, 2005, respondent had still not completed work on the project and Freeman referred the matter to the Office of the Attorney General for disciplinary action on March 14, 2005.

8. Nine months later, on December 13, 2005, respondent sent an email to Cusato "inquiring about the status of the project." He said, "I would seriously like to see if we could really put this project back on track. Please let me know what you would like to do and I'll try my best to accommodate you." Cusato replied on the same day: "I don't know what to say at this late notice. You disappeared on me and all your promises of finishing this project were not done. You cost me about an extra 24 months on this project @ about \$5,000 extra per month in land payments alone and I had to hire another engineer with the additional cost of \$10,000. It is too late. I have been severely damaged by your neglect. . . . You tell me. Can you reimburse the extra \$130,000 I had to borrow from my dad for your delays and a new engineer." In response to this email, respondent sent a reply to Cusato on December 16. This email included a partial explanation of why the work had not gotten done:

Paragon IV was already fledgling and about to close its doors because we had a number of accounts that were not paying. As a consequence, I lost all my staff and had to look elsewhere for help. CRG, Inc. approached us, made us a bunch of promises to take over the old Paragon IV accounts, pay the bills and help me get the work done. That didn't happen either. CRG, Inc. collected the old receivables and never completed any of the old Paragon IV work, yours included.

9. At the hearing, respondent explained that he and Groenewoud started Paragon IV in March 2001. They did well for 12 to 18 months, but then had a number of clients who did not pay their bills, causing stress. At the end of 2003, Groenewoud disassociated from

the firm leaving respondent "holding the bag." From that point, it was "a downhill slide." Respondent sought new investors in the firm and in the summer of 2004 found CRG (Construction Resources Group, Inc.), a Southern California company, which agreed to take on Paragon IV's assets and liabilities and to complete its ongoing job. Respondent signed a memorandum of understanding with CRG in August 2004 documenting this agreement. As part of the buyout, respondent became CRG's director of engineering. He oversaw one other engineer and three or four designers.

However, prior to moving to Southern California to work for CRG, respondent had an associate, Ken Kaestner, help him with Casuto's plans. Kaestner continued to work on the plans after respondent moved to Southern California. When it became apparent to respondent that Kaestner could not get the work done, CRG took it over. But according to respondent, CRG was "overwhelmed" by its own work and 21 Paragon IV projects it took on. As a result, some projects, including Casuto's, were slow in completion.

Chavez Project

10. On February 19, 2004, Paragon IV Consulting and Design, Inc. entered into a contract with Victoriano Chavez to provide civil engineering services (preparation of street improvement plans) on a project in Merced County, for between \$4,200 and \$5,000. The contract further provided that Chavez would pay Paragon IV another \$3,000 to \$5,000 for surveying work, if required. Respondent signed the contract as president of Paragon IV. Respondent's license number was not included on the contract, although it was included on a "Sales Receipt" acknowledging receipt from Chavez of an "advance payment" of \$3,000 on February 19. Chavez paid Paragon IV an additional \$1,500 on March 17, 2004.

11. On October 1, 2004, Chavez filed a complaint against respondent with the Contractors' State License Board, which subsequently referred the complaint to the Board for Professional Engineers and Land Surveyors. In his complaint, Chavez said that respondent had originally told him he would complete his work on the project in two to three months, but did not do so and continually told Chavez that the project would be done "next Monday." Chavez further stated in his complaint that the county building official, Alfred Alvarez, had said he would shut Chavez's business down if he did not submit his plans, and that respondent was advised of this but did nothing. Chavez wrote, "I would like to cancel contract with Richard J. Godina, because he is not a responsible person and hire a responsible engineer, someone who doesn't say "next Monday" for 10 months. I would also like all my money back . . . because he did not do anything."

12. This complaint was also assigned to enforcement analyst Margie Freeman. She advised respondent of the complaint on October 21, 2004. On November 18, 2004, respondent sent Freeman an email stating that he had contacted Chavez to let him know that CRG would be completing his work and forwarding the plans to Merced County. On December 15, 2004, CRG prepared an invoice to Chavez for \$3,500 for "topography" and \$2,000 for "completion of street plan & profile." On December 21, respondent sent an email to Freeman stating, "The plans for Mr. Chavez are completed and an invoice from CRG, Inc.

will be transmitted to Mr. Chavez along with the plans.” Despite this, respondent did not submit the plans to Chavez until January 6, 2005. Chavez forwarded those plans to Merced County on January 10. On January 27, Freeman spoke with Merced County’s Alfred Alvarez, who advised her that there were many corrections to be made on the plans and that respondent’s documents were incomplete.

13. It is unclear whether respondent’s plans for the project were ever approved by Merced County. Emails from respondent to Alvarez in March and April 2005 indicate that the plan checking had not yet been completed. Respondent testified that he spoke to Alvarez in January 2007 and was told the plan “is still in plan check.”

14. Respondent maintains that he was “moving along with the [Chavez] project fairly well” in early 2004; he prepared the plan and sent an invoice to Chavez in March but was delayed while waiting to get some information he needed from Merced County. When in the late spring and early summer he began negotiating with CRG to take over Paragon IV’s business, work on the Chavez project “slowed way down.” The plans were finally submitted to Merced County by CRG in January 2005. He contacted Alvarez in April 2005 to find out about the status of the plans. But he made no further contact until recently because he was terminated from CRG in May 2005 due to a lack of work there. He has no access to the Chavez plans, which are in the custody of CRG.

Causes to Revoke Probation

15. Respondent’s probation became effective April 5, 2002. On April 8, 2002, the board’s executive officer sent respondent a letter explaining the various terms of probation and the timelines attached to them. In particular, he was advised that he would be considered to be in violation of probation if he failed to complete by April 5, 2004, both a board-approved ethics course as required by Condition 9 and a board-approved college-level course as required by Condition 11. As to the ethics course, respondent was advised that the board had generally approved a correspondence course in ethics offered through Texas Tech University.

16. Respondent had neither sought approval for nor submitted proof of completion of either an ethics course or a college-level course by the April 5, 2004 deadline. On May 12, 2004, Nancy Eissler, currently the board’s enforcement program manager, sent respondent a letter advising him that he was in violation of his probation for failing to complete the courses, but that the board would give him until June 11, 2004, to submit proof of completion of the courses before pursuing disciplinary action against him. Respondent replied to this letter on May 20, 2004. He requested additional time to complete the requirements stating:

Due to some extenuating circumstances caused by a great deal of personal strife, I have not been able to complete these Conditions within the time period that was originally handed down by the Board.

During the past year alone, I have been going through a divorce from my wife, beginning a new family, moving my new household twice within the past 6 months and trying to run and manage a professional engineering and land surveying firm single handedly. Within that time period, I also lost my administrative assistant due to her personal health problems.

I totally understand that the Conditions of probation are solely my responsibility and I do take full responsibility for not meeting the past deadlines. I am respectfully [sic] requesting some assistance from the Board to help get my professional credentials back in order to better serve my family and the current clientele that we have.

With your approval, I am requesting an additional 2 months to complete Condition 9 and an additional 6 months in order to complete Condition 11.

17. Respondent called Eissler on June 4, 2004. He wanted to confirm that she had received his letter. Eissler told him she had, and that the matter would be referred to the Office of the Attorney General for review and appropriate action. When respondent asked if he should go ahead and take the classes, Eissler told him she could not advise him on what to do, but if he did complete either of the classes before the matter was referred this would be considered mitigating evidence that the board would consider in determining what action to take.

18. Complainant filed the initial petition to revoke probation against respondent on December 30, 2004. In accordance with Condition 5 of respondent's probation, this filing had the effect of continuing respondent's probation until the petition matter was final. The amended petition to revoke probation was filed on November 1, 2005. After his May 2004 letter, respondent did not submit anything further to the board regarding his probation until January 26, 2006, when he wrote a letter to Eissler requesting approval of the "PDH-20" ethics course offered through Texas Tech in satisfaction of Condition 9 and of a college-level ethics course at Mt. San Jacinto College in satisfaction of Condition 11. The board did not approve these courses because the matter had already been referred to the Office of the Attorney General.

19. On March 22, 2006, respondent sent a letter to the deputy attorney general in which he agreed to complete the Texas Tech PDH-40 course instead of the PDH-20 course and a business law course at Riverside Community College instead of the ethics course at Mt. San Jacinto. The board approved these courses on March 22, 2006 as ones that would be appropriate under respondent's disciplinary order.

20. Respondent enrolled in the business law course in August 2006 and completed it in December 2006 with a grade of B. In November 2006 respondent enrolled in the Texas Tech PDH-40 course. He has purchased the materials for the class but has yet to complete it. As of the date of the hearing, he had hoped to complete the course by the end of January 2007.

21. Condition 7 of respondent's probation required that he pay \$7,500 in cost recovery to the board by October 5, 2004. He was permitted to pay this amount in installments. He has not made any payments toward this debt.

Respondent's Evidence

22. As set forth in his May 20, 2004 letter, respondent attributed his failure to comply with the terms of his probation due to both professional problems with Paragon IV and CRG (as set forth above in Findings 9 and 14) and "personal strife." Respondent also cited his personal issues as part of the reason for his failure to timely complete the Casuto and Chavez projects. The primary personal problem was marital. In a timeline submitted at the hearing, respondent indicated that he and his wife were "separated" but living in the same residence from April 2000 until June 2003. In June 2003, respondent moved out of the family residence to live with his girlfriend and their newborn child. Respondent then moved two additional times in the next 18 months. He says these physical moves were the greatest impediment to complying with probation because they made it difficult for him to schedule a college-level course. Other personal problems respondent had included financially assisting his wife and their youngest son who continued to live with her until late 2006, funding his three sons' college expenses, supporting his new five-member family (he and his girlfriend, their child, and his girlfriend's two other children from a prior union), fighting an ongoing problem with the Internal Revenue Service, and dealing with divorce proceedings that are still ongoing. However, respondent concedes that at no time did he contact the board to explain he was having problems meeting the conditions of probation.

23. Respondent is currently employed as a project manager and registered civil engineer at Halladay and Mim Mack, Inc., an engineering and land surveying firm. He worked for the firm through a temporary agency from July 2005 until December 2005 and became a full-time employee in January 2006. In a letter, Dana S. Halladay, president of the firm, stated that respondent "has proven himself to be a vital part of our organization. He has attended to his responsibilities diligently and professionally and has never demonstrated any unprofessional conduct."

24. Respondent asserts that his employment with Halladay and Mim Mack has "finally" afforded him financial stability. In 2004, his adjusted gross income was \$30,322. In 2005, it was \$87,254. His 2006 income was approximately the same. Because of this income, respondent believes he is now in a position to start making payments of perhaps \$500 per month towards the \$7,500 cost recovery that was included as a condition of probation. Effective January 2007, respondent is under court order to pay temporary spousal support of \$1,001 per month.

25. Concerning his failure to timely complete the Cusato and Chavez projects, respondent states that, "in hindsight," he should have handled things much differently. He apologizes to Cusato and Chavez for the "grief and strife" they have had to endure.

Costs

26. Complainant has incurred legal fees in the enforcement of this case in the amount of \$5,122.00, which consists of 32.5 hours of attorney time and one hour of legal assistant time. These costs are found to be reasonable.

LEGAL CONCLUSIONS

First Cause for Discipline

1. Business and Professions Code section 6775, subdivision (d), provides the board may discipline the license of a registered engineer who has breached a contract to provide professional engineering services. Business and Professions Code section 8780, subdivision (g), provides the board may discipline the license of a registered engineer who has breached a contract to provide land surveying services.

2. The matters set forth in Findings 4 through 6 establish that respondent breached the contract to provide professional engineering services for Cusato. The matters set forth in Findings 10 through 12 establish that respondent breached the contract to provide both professional engineering and land surveying services for Chavez. Cause for disciplinary action thereby exists pursuant to Business and Professions Code sections 6775, subdivision (d), and 8780, subdivision (g).

Second Cause for Discipline

3. Business and Professions Code sections 6775, subdivision (h), and 8780, subdivision (d), respectively provide that the board may discipline the license of a registered engineer who has violated any provision of the laws relating to professional engineering and any provision of the laws relating to land surveying. Business and Professions Code sections 6749, subdivision (a)(3), and 8759, subdivision (a)(3), provide that a professional engineer's written contracts to provide professional engineering and land surveying services must include the engineer's license number.

4. As set forth in Finding 10, respondent's contract with Chavez failed to include his license number. He therefore violated Business and Professions Code sections 6749, subdivision (a)(3), and 8759, subdivision (a)(3), and cause for disciplinary action thereby exists pursuant to Business and Professions Code sections 6775, subdivision (h), and 8780, subdivision (d).

5. Respondent's failure to include his license number on the contract is mitigated by the fact that he did include that number on a sales receipt provided at the same time as the contract.

First Cause to Revoke Probation

6. Condition 5 of respondent's probation provides that if respondent violates probation in any respect, the board, after filing a petition to revoke probation and providing respondent a hearing on that petition, may vacate the stay and reinstate the revocation of respondent's license.

7. Condition 2 of respondent's probation required that he obey all laws related to the practice of professional engineering. As set forth in Legal Conclusions 2 and 4, respondent's breaches of contracts and failure to include his license number on the Chavez contract constituted failures to obey all laws related to the practice of professional engineering. Respondent thereby violated the terms of his probation and cause for revocation of probation exists pursuant to Condition 5 of his probation.

Second Cause to Revoke Probation

8. Condition 9 of respondent's probation required that by April 5, 2004, he successfully complete and pass a course in professional ethics that had been approved in advance by the board or its designee. As set forth in Findings 16 through 20, respondent failed to comply with this condition. Respondent thereby violated the terms of his probation and cause for revocation of probation exists pursuant to Condition 5 of his probation.

Third Cause to Revoke Probation

10. Condition 11 of respondent's probation required that by April 5, 2004, he successfully complete and pass with a grade of C or better a college-level course, approved in advance by the board or its designee, specifically related to the area of the violation. As set forth in Findings 16 through 20, respondent failed to comply with this condition. Respondent thereby violated the terms of his probation and cause for revocation of probation exists pursuant to Condition 5 of his probation.

Fourth Cause to Revoke Probation

11. It was alleged as a separate cause to revoke probation that respondent had failed to comply with Conditions 2, 9, and 11 of his probation. As set forth above, failure to comply with each of those conditions established independent violations of probation and causes to revoke probation. But considering them collectively, as alleged here, does not establish an additional cause to revoke probation.

Penalty Determination

Accusation

12. Respondent breached two contracts to provide professional engineering services. These breaches caused financial and emotional hardship to his clients. The harm to Cusato was particularly great, resulting in a significant financial loss. Although financial loss to Chavez was not established, his project was delayed for years as a result of respondent's actions. As set forth in Findings 5, 7, and 11, during the course of his relationships with both Cusato and Chavez respondent made repeated promises to them that he did not keep. Similarly, as set forth in Findings 7 and 12, once the board became involved in these two matters respondent made promises to its enforcement analyst that he did not keep. This conduct is strikingly similar to that which had led to discipline of his license in 2002, as set forth in Finding 2.

13. While it is recognized that respondent underwent some professional and personal difficulties during the time he was trying to prosecute these two contracts, those difficulties do not mitigate respondent's conduct in any significant way. Considering the repeated nature of respondent's conduct and the harm it caused his clients, it is determined that protection of the public interest demands revocation of his license.

Petition to Revoke Probation

14. In the probation that went into effect on April 5, 2002, respondent was given two years in which to complete an ethics course and a college-level course related to his violation. Although respondent asserts that his professional and personal problems prevented him from complying with his probationary terms, there is no evidence that respondent made any effort whatsoever to comply during the specified two-year period, and he conceded he never contacted the board to explain that he was having difficulty complying. Despite his claims of personal and professional difficulties, it appears that respondent's failure to comply was due to the fact that he simply ignored the requirements of probation.

After the two-year period ended, the board gave respondent a second chance to comply. And although he subsequently requested more time to take the necessary courses (by December 2004 at the latest), respondent again did nothing. It was not until after the accusation and first amended petition to revoke probation were filed in November 2005 that respondent finally sought approval of courses that would satisfy his probationary conditions. While the board did approve those courses, and while respondent has completed one and may be nearing completion of the other, compliance with probation more than two years later than required, and only after the filing of a proceeding to strip him of his license, can hardly be seen as curing the probation violations.

Although it was not charged as a cause to revoke probation, respondent also violated Condition 7 of his probation by not paying the required cost recovery within the specified 30-month period. Again, there is no evidence respondent made any effort to

contact the board to set up a payment plan or to explain why he was having difficulty making payments. To date, no payments have been made toward respondent's debt to the board. This fact is considered in aggravation of the probationary violations that were found.

15. Considering the matters set forth in Legal Conclusion 14, it is determined that the only appropriate penalty would be to set aside the stay and reimpose the revocation of respondent's license that was previously stayed.

Cost Recovery

16. Business and Professions Code section 125.3 provides that a licensee found to have violated the licensing law may be ordered to make reimbursement of the reasonable costs of investigation and enforcement of the case. As set forth in Legal Conclusions 2 and 4, respondent was found to have violated the licensing law. Therefore, cause exists to order reimbursement of costs.

17. In accordance with the holding in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, a respondent's ability to pay must be considered in assessing costs. Here, respondent's ability to pay full costs of \$5,122 is limited in a number of respects. First, he is already under an obligation to pay the board costs of \$7,500 from his earlier disciplinary action. Second, he is under a court-imposed obligation to pay temporary spousal support of \$1,001 per month. Third, he is supporting his new family and is providing support to his three sons in college. Finally, the order revoking his license to act as a professional engineer will likely have a significant negative impact on his financial status. Considering all that, it is determined that it would be appropriate to reduce the amount of cost recovery due in this proceeding to \$2,500, which will bring his total obligation to the board to \$10,000.

ORDER

1. In regard to the accusation, Civil Engineer License No. C 33038 issued to respondent Richard Joseph Godina is revoked.

2. In regard to the accusation, respondent shall reimburse the board enforcement costs of \$2,500.

3. In regard to the petition to revoke probation, the stay ordered in the board's decision and order effective April 5, 2002, is set aside and the order revoking respondent's license is reimposed.

DATED: February 16, 2007

Original Signed

MICHAEL C. COHN

Administrative Law Judge

Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 GILLIAN E. FRIEDMAN, State Bar No. 169207
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2564
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation and First
Amended Petition to Revoke Probation Against:

11 RICHARD JOSEPH GODINA
12 4295 E. Jurupa Street, Suite A101
Ontario, CA 91761

13 Civil Engineer License No. C 33038

14 Respondent.

Case No. 690-A

**ACCUSATION AND FIRST
AMENDED PETITION TO REVOKE
PROBATION**

15
16 Complainant alleges:

17 **PARTIES**

18 1. Cindi Christenson, P.E. (Complainant) brings this Accusation and First
19 Amended Petition to Revoke Probation solely in her official capacity as the Executive Officer of
20 the Board for Professional Engineers and Land Surveyors.

21 **Civil Engineer License**

22 2. On or about July 15, 1981, the Board for Professional Engineers and Land
23 Surveyors issued Civil Engineer License No. C 33038 to Richard Joseph Godina (Respondent).
24 On March 7, 2002, the Board adopted a Stipulated Settlement and Disciplinary Order in
25 settlement of Accusation Number 690-A. Said Decision and Order became effective on April 5,
26 2002. Respondent's Civil Engineer License Number C 33038 was revoked with the revocation
27 stayed, and Respondent was placed on probation for a period of three (3) years with terms and
28 conditions. The license will expire on June 30, 2006, unless renewed.

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JURISDICTION

3. This Accusation and First Amended Petition to Revoke Probation 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.

STATUTORY PROVISIONS

4. Section 6775 of the Business and Professions Code ("Code") states:

"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 not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

....

"(d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.

....

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

5. Section 6749 of the Code states:

"(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 be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

....

"(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client."

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1 6. Section 8780 of the Code states:

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

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

8

9 "(d) Any violation of any provision of this chapter or of any other law relating to
10 or involving the practice of land surveying.

11

12 "(g) A breach or violation of a contract to provide land surveying services."

13 7. Section 8759 of the Code states:

14 "(a) A licensed land surveyor or registered civil engineer authorized to practice
15 land surveying shall use a written contract when contracting to provide professional services to a
16 client pursuant to this chapter. The written contract shall be executed by the licensed land
17 surveyor or registered civil engineer and the client, or his or her representative, prior to the
18 licensed land surveyor or registered civil engineer commencing work, unless the client
19 knowingly states in writing that work may be commenced before the contract is executed. The
20 written contract shall include, but not be limited to, all of the following:

21

22 "(3) The name, address, and license or certificate number of the licensed land
23 surveyor or registered civil engineer, and the name and address of the client."

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

27 9. Section 125.3 of the Code provides, in pertinent part, that the board may
28 request the administrative law judge to direct a licensee found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **ACCUSATION**

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Breach of Contract)**

6 10. Respondent is subject to disciplinary action under section 6775,
7 subdivision (d) and section 8780, subdivision (g) for breach of contract, in that Respondent failed
8 to provide professional engineering and land surveying services, as follows:

9 A. On or about August 30, 2002, Respondent as President of Paragon IV
10 Consulting & Design, Inc. entered into a contract with Jim Cusato, Jr., CEO/RMO J.A. Cusato,
11 Inc., ("Cusato Project") to provide structural, mechanical and electrical engineering services at
12 the property identified as Proposed Planned Development, 10 Townhouse Units, San Jose,
13 California. Respondent's work began on or about August 30, 2002 and ended in or about July,
14 2004. Respondent was paid a total of \$16,000. Respondent failed to complete the work and
15 abandoned the project without cause.

16 B. On or about February 20, 2004, Respondent as President of Paragon IV
17 Consulting & Design, Inc., entered into a contract with Victoriano Chavez ("Chavez Project") to
18 provide consulting services for the preparation of street improvement plans for the proposed
19 Social Hall project, including civil engineering and surveying, at the property located at 9837
20 Stephens Street, Delhi, California. Respondent represented that the project would be completed
21 in 2-3 months from the contract date. Respondent was paid a total of \$4,500 in advance fees.
22 Respondent failed to complete the work as agreed.

23 **SECOND FIRST CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with the Board's Requirements)**

25 11. Respondent is subject to disciplinary action under section 6775,
26 subdivision (h) and section 8780, subdivision (d), for violating section 6749, subdivision (a)(3)
27 and section 8759, subdivision (a)(3), in that on the Chavez Project, Respondent failed to comply
28 with the Board's requirements by failing to include his license number on his contract.

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1 with official proof of completion.

2 16. Respondent's probation is subject to revocation because he failed to
3 comply with Condition No. 9, referenced above. The facts and circumstances regarding this
4 violation are that Respondent failed to complete a course in professional ethics within two (2)
5 years of the effective date of the Decision and Order.

6 **THIRD CAUSE TO REVOKE PROBATION**

7 **(Failure to Take and Pass Examinations)**

8 17. The terms and conditions of probation contained in the Decision and
9 Order, in Case No. 690-A, provide at Condition No. 11 that within two (2) years of the effective
10 date of the decision, Respondent shall successfully complete and pass, with a grade of "C" or
11 better, one college-level course, approved in advance by the Board or its designee, specifically
12 related to the area of the violation. For purposes of this subdivision, "college-level course" shall
13 mean a course offered by a community college or a four-year university of three semester units or
14 the equivalent; "college-level course" does not include seminar. Respondent must provide the
15 Board with an official transcript as proof of successful completion of the requisite courses.

16 18. Respondent's probation is subject to revocation because he failed to
17 comply with Condition No. 11, referenced above. The facts and circumstances regarding this
18 violation are that Respondent failed to successfully complete and pass, with a grade "C" or better,
19 one college-level course, approved in advance by the Board within two (2) years of the effective
20 date of the Decision and Order.

21 **FOURTH CAUSE TO REVOKE PROBATION**

22 **(Violation of Probation)**

23 19. Respondent's probation is subject to revocation because he failed to
24 comply with Conditions No. 2, 9, and 11, referenced herein.

25 **PRAYER**

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

1. Revoking the probation that was granted by the Board for Professional Engineers and Land Surveyors in Case No. 690-A and imposing the disciplinary order that was stayed thereby revoking Civil Engineer License No. C 33038, issued to Richard Joseph Godina;
2. Revoking or suspending Civil Engineer License No. C 33038, issued to Richard Joseph Godina;
3. Ordering Richard Joseph Godina 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;
4. Taking such other and further action as deemed necessary and proper.

DATED: 11/1/05

Original Signed

CINDI CHRISTENSON, P.E.
Executive Officer
Board for Professional Engineers and Land Surveyors
State of California
Complainant

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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:

RICHARD JOSEPH GODINA
321 South Thor Street, Suite B
Turlock, CA 95380

Civil Engineer License No. C 33038,

Respondent.

Case No. 690-A

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision and Order in the above-entitled matter.

This Decision shall become effective on April 5, 2002.

IT IS SO ORDERED March 7, 2002.

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

Original Signed,
By [Signature]

1 BILL LOCKYER, Attorney General
of the State of California
2 PATRICK M. KENADY, State Bar No. 50882
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
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5 Telephone: (916) 324-5377
Facsimile: (916) 324-5567

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 690-A

11 RICHARD JOSEPH GODINA
12 321 South Thor Street, Suite B
13 Turlock, CA 95380

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Civil Engineer License No. C 33038

15 Respondent.

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled action that the following matters are true:

18 PARTIES

19 1. Cindi Christenson, P.E. (Complainant) is the Executive Officer of the
20 Board for Professional Engineers and Land Surveyors. She brought this action solely in her
21 official capacity and is represented in this matter by Bill Lockyer, Attorney General of the
22 State of California, by Patrick M. Kenady, Deputy Attorney General.

23 2. Respondent Richard Joseph Godina (Respondent) is represented in
24 this proceeding by attorney Brett L. Dickerson, of the law firm of Gianelli & Fores, whose
25 address is 1014-16th Street, Modesto, Calif. 95353.

26 3. On or about July 15, 1981, the Board for Professional Engineers and
27 Land Surveyors issued Civil Engineer License No. C 33038 to Richard Joseph Godina

28 ///

1 (Respondent). The License was in full force and effect at all times relevant to the charges
2 brought in Accusation No. 690-A and will expire on June 30, 2002, unless renewed.

3 JURISDICTION

4 4. Accusation No. 690-A was filed before the Board for Professional
5 Engineers and Land Surveyors (Board), Department of Consumer Affairs,, and is currently
6 pending against Respondent. The Accusation, together with all other statutorily required
7 documents were properly served on Respondent on September 25, 2001. Respondent
8 timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No.
9 690-A is attached as exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 690-A. Respondent has also
13 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
14 Settlement and Disciplinary Order.

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

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

25 CULPABILITY

26 8. Respondent understands and agrees that the charges and allegations
27 in Accusation No. 690-A, if proven at a hearing, constitute cause for imposing discipline
28 upon his 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 his right to contest those charges.

10. Respondent agrees that his Civil Engineer License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Board for Professional Engineers and Land Surveyors. 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 or his counsel. 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.

13. 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.

///

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Civil Engineer License No. C 33038 issued to
6 Respondent Richard Joseph Godina is revoked. However, the revocation is stayed and
7 Respondent is placed on probation for three (3) years on the following terms and
8 conditions.

9 1. **Actual Suspension.** Civil Engineer License No. C 33038 issued to
10 Respondent Richard Joseph Godina is suspended for fifteen (15) days beginning on the
11 effective date of the decision.

12 2. **Obey All Laws.** Respondent shall obey all laws and regulations
13 related to the practices of professional engineering.

14 3. **Submit Reports.** The Respondent shall submit such special reports as
15 the Board may require.

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

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

27 ///

28 ///

1 6. **Completion of Probation.** Upon successful completion of all of the
2 probationary conditions and the expiration of the period of probation, the Respondent's
3 license shall be unconditionally restored.

4 7. **Cost Recovery.** Within thirty (30) months of the effective date of the
5 decision, the Respondent is to reimburse the Board the amount of \$7,500.00. Said
6 reimbursement may be paid in installments. Failure to reimburse the Board's cost of its
7 investigation and prosecution shall constitute a violation of the probation order, unless the
8 Board agrees in writing to payment by an installment plan because of financial hardship.

9 8. **Examination.** Within 60 days of the effective date of the decision, the
10 Respondent shall successfully complete and pass the California Laws and Board Rules
11 examination, as administered by the Board.

12 9. **Ethics Course.** Within two (2) years of the effective date of the
13 decision, the Respondent shall successfully complete and pass a course in professional
14 ethics, approved in advance by the Board or its designee. Respondent shall provide the
15 Board with official proof of completion of the requisite decision.

16 10. **Notification.** Within 30 days of the effective date of the decision, the
17 Respondent shall provide the Board with evidence that he has provided all persons or
18 entities with whom he has a contractual or employment relationship relating to
19 professional civil engineering services with a copy of the decision and order of the Board
20 and shall provide the Board with the name and business address of each person or entity
21 required to be so notified.

22 11. **Take And Pass Examinations.** Within two (2) years of the effective
23 date of the decision, Respondent shall successfully complete and pass, with a grade of "C"
24 or better, one college-level course, approved in advance by the Board or its designee,
25 specifically related to the area of violation. For purposes of this subdivision, "college-level
26 course" shall mean a course offered by a community college or a four-year university of
27 three semester units or the equivalent; "college-level course" does not include seminars.
28

1 Respondent must provide the Board with an official transcript as proof of successful
2 completion of the requisite courses.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order
5 and have fully discussed it with my attorney, Brett L. Dickerson. I understand the
6 stipulation and the effect it will have on my Civil Engineer License. I enter into this
7 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
8 agree to be bound by the Decision and Order of the Board for Professional Engineers and
9 Land Surveyors.

10 DATED: 1-10-02

Original Signed

RICHARD JOSEPH GODINA
Respondent

13 I have read and fully discussed with Respondent Richard Joseph Godina the
14 terms and conditions and other matters contained in the above Stipulated Settlement and
15 Disciplinary Order. I approve its form and content.

16 DATED: 1/15/02

Original Signed

BRETT L. DICKERSON
Attorney for Respondent

19 ENDORSEMENT

20 The foregoing Stipulated Settlement and Disciplinary Order is hereby
21 respectfully submitted for consideration by the Board for Professional Engineers and Land
22 Surveyors of the Department of Consumer Affairs.

23 DATED: 1/25/2002

BILL LOCKYER, Attorney General
of the State of California

Original Signed

PATRICK M. KENADY
Deputy Attorney General

Attorneys for Complainant

28 I:\ALL\KENADY\Kenady\Godina\godinastip2.wpd

Exhibit A

Accusation No. 690-A

BILL LOCKYER, Attorney General
of the State of California
PATRICK M. KENADY, SBN 50882
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

RICHARD JOSEPH GODINA
321 South Thor Street, Suite B
Turlock, California 95380
Civil Engineer License No. C33038

Respondent.

Case No. 690-A

ACCUSATION

Cindi Christenson, P.E., as cause for disciplinary action, alleges as follows:

1. Complainant Cindi Christenson, makes and files this accusation in her official capacity as Executive Officer, Board for Professional Engineers and Land Surveyors ("Board"), Department of Consumer Affairs.

2. On July 15, 1981, the Board for Professional Engineers and Land Surveyors (formerly known as Board of Registration for the Professional Engineers and Land Surveyors) issued Civil Engineer License No. C 33038. to Richard Joseph Godina. Said license expires on June 30, 2002, unless renewed.

3. On or about June 6, 1985, respondent formed an engineering firm partnership with Randy Combs, doing business as C & G Engineering. On or about August 11, 1998, the partnership was dissolved and respondent filed a notice of disassociation with the Board on October 2, 1998.

///

1 4. Under Business and Professions Code section 6775, the Board for
2 Professional Engineers and Land Surveyors may reprove, suspend or revoke the certificate
3 of any professional engineer under this chapter:

4 (d) Who has been found guilty by the board of any breach or
5 violation of contract, to provide professional engineering services.

6 5. Respondent is subject to disciplinary action because he engaged in
7 unprofessional conduct in violation of Business and Professions Code section 6775(d) for
8 violation of contract by unreasonably delaying and denying providing copies of project file
9 documents to his client Lyn Tremain as is more specifically set forth below:

10 (a) On or about the dates specified below respondent's firm
11 entered into contracts with clients Lyn Tremain and Lonnie Ashlock, doing business as
12 Valley Development, for engineering work in connection with Tosta Estates (Newman,
13 California)(November 30,1989), Machado Estates (Gustine, California) (February 10, 1990),
14 Emig Estates (Waterford, California)(July 15, 1992 and August 10, 1993) and Avey Estates
15 (Riverbank, California)(February, 1993 and February,1994). Respondent billed and
16 accepted payment of \$18,252.83 for a portion of the contracted work. At the direction of
17 the client, work had been suspended on the projects for some time.

18 (b) On or about August, 1998, Lyn Tremain requested respondent
19 to provide him with the project files so he could complete the projects. Respondent
20 refused to provide Tremain with the project files. Tremain advised respondent that the
21 failure to finalize the documents on the Emig Estates development would subject the
22 developers to pay additional fees as a condition of renewing or extending the tentative
23 subdivision map.

24 (c) On or about September 11, 1998, Lyn Tremain filed with the
25 Board For Professional Engineers and Surveyors a written complaint against respondent.
26 On or about September 22, 1998, Tremain informed Margie Freeman, a Board
27 enforcement analyst, that respondent had agreed to return his documents but had not done
28 so. On or about October 2, 1998, Respondent advised Freeman that he might not give

1 Tremain the files because the files are his property. On or about October 5, 1998,
2 Freeman received a voice message from respondent promising to return the files to
3 Tremain. Tremain subsequently called to advise Freeman that respondent once again was
4 refusing to give the files. On or about October 14, 1998, Freeman received a facsimile
5 transmission of a letter dated October 13, 1998, from respondent's attorney claiming that
6 project files were the property of C&G Engineering under the provisions of the contract but
7 that respondent, notwithstanding the contractual provisions, was willing to voluntarily
8 make copies of pertinent documents as requested by Tremain.

9 (d) On or about November 5, 1998, Tremain sent to respondent's
10 attorney by facsimile transmission a letter and a specific list of the project file documents
11 he was requesting. Tremain advised respondent's attorney that the subdivision map on the
12 Emig Estates development would expire on December 21, 1998, and that the failure to
13 finalize the documents would subject Tremain to an additional expense of approximately
14 \$160,952 for county impact fees. On or about November 17, 1998, Tremain met with
15 respondent's attorney. Respondent's attorney refused to provide Tremain with disk copies
16 of the CAD (computer assisted drawing) drawing files. Without the disks, Tremain and his
17 partner Lonnie Ashlock were unable to record a final map by December 21, 1998, thereby
18 becoming subject to the payment of county impact fees and other conditions by reason of
19 the granting of an extension to the vesting tentative map.

20 6. Under Business and Professions Code section 125.3, the Board may
21 request the administrative law judge to direct a licentiate found to have committed a
22 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs
23 of the investigation and enforcement of the case.

24 WHEREFORE, complainant requests that a hearing be held and that a decision be
25 issued:

26 1. Revoking or suspending Civil Engineer License No. C 33038 issued
27 to Richard Joseph Godina;

28 ///

1 2. Ordering respondent to pay to the Board its costs and charges in
2 investigating and enforcing the case according to proof at the hearing pursuant to Business
3 and Professions Code section 125.3.

4 3. Taking such other and further action as may be deemed proper and
5 appropriate.

6 DATED: 4/12/01

Original Signed

CINDI CHRISTENSON, Executive Officer
Board for Professional Engineers
and Land Surveyors

Complainant

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