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

In the Matter of the Accusation Against:

Case No. 801-A

JAMSHID JAMES KAVIANI P.O. BOX 10243 NEWPORT, CA 92658 OAH No.

Professional Engineer, No. C 67384

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 23, 2007 January 26,2007. It is so ORDERED

Original Signed

FOR THE BOARD FOR PROPESSIONAL ENGINEERS AND LAND SURVEYORS DEPARTMENT OF CONSUMER AFFAIRS

	· · · · · · · · · · · · · · · · · · ·		
1	BILL LOCKYER, Attorney General of the State of California MARGARET A. LAFKO, State Bar No. 105921		
3	Supervising Deputy Attorney General JAMES M. LEDAKIS, State Bar No. 132645		
4	Deputy Attorney General California Department of Justice 110 West "A" Street, Suite 1100 San Diego, CA 92101		
. 7	P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2105 Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
10	BEFORE 7 BOARD FOR PROFESSIONAL ENGIN DEPARTMENT OF CON	EERS AND LAND SURVEYORS	
11	STATE OF CALIFORNIA		
12			
13	In the Matter of the Accusation Against:	Case No. 801-A	
14	JAMSHID JAMES KAVIANI P.O. BOX 10243	OAH No.	
15	NEWPORT, CA 92658	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER	
16	Professional Engineer, No. C 67384	DISCH LIMART ORDER	
	Respondent.		
17			
18	IT IS HEREBY STIPULATED AND	AGREED by and between the parties to the	
19	above-entitled proceedings that the following matters	s are true:	
20	PARTIE	S	
21	1. Cindi Christenson, P.E. (Com	plainant) is the Executive Officer of the	
22	Board for Professional Engineers and Land Surveyor		
23			
24	of California, by James M. Ledakis, Deputy Attorney General.		
25			
26		S KAVIANI (Respondent) is represented in	
27	this proceeding by attorney Bill Marquis, Esq., whose address is Long & Marquis, Executive		
28	Plaza III, 2472 Chambers Road, Suite 150, Tustin, C	A 92780.	
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1 3. On or about July 23, 2004, the Board for Professional Engineers and Land 2 Surveyors issued license number C 67384 to JAMSHID JAMES KAVIANI. The license was in 3 full force and effect at all times relevant to the charges brought in Accusation No. 801-A and will 4 expire on March 31, 2007, unless renewed. 5 JURISDICTION 6 4. Accusation No. 801-A was filed before the Board for Professional 7 Engineers and Land Surveyors (Board), Department of Consumer Affairs, and is currently 8 pending against Respondent. The Accusation and all other statutorily required documents were 9 properly served on Respondent on September 29, 2006. Respondent timely filed his Notice of 10 Defense contesting the Accusation. A copy of Accusation No. 801-A is attached as exhibit A 11 and incorporated herein by reference. 12 ADVISEMENT AND WAIVERS 5. 13 Respondent has carefully read, fully discussed with counsel, and 14 understands the charges and allegations in Accusation No. 801-A. Respondent has also carefully 15 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and 16 Disciplinary Order. 17 6. Respondent is fully aware of his legal rights in this matter, including the 18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; 19 20 the right to present evidence and to testify on his own behalf; the right to the issuance of 21 subpoenas to compel the attendance of witnesses and the production of documents; the right to 22 reconsideration and court review of an adverse decision; and all other rights accorded by the 23 California Administrative Procedure Act and other applicable laws. 24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up 25 each and every right set forth above. 26 27 28

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	<u>CULPABILITY</u>	
2	8. Respondent understands that the charges and allegations in Accusation No.	
3	801-A, if proven at a hearing, constitute cause for imposing discipline upon his professional	
4	engineering's license.	
5	9. For the purpose of resolving the Accusation without the expense and	
6	uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could	
7	establish a factual basis for the charges in the Accusation and that those charges constitute cause	
8	for discipline. Respondent hereby gives up his right to contest that cause for discipline exists	
9	based on those charges.	
10	10. Respondent understands that by signing this stipulation he enables the	•
11	Director to order accepting the surrender of his professional engineer's license without further	
12	process.	
13	RESERVATION	
14	11. The admissions made by Respondent herein are only for the purposes of	
15	this proceeding, or any other proceedings in which the Board for Professional Engineers and	
16	Land Surveyors or other professional licensing agency is involved, and shall not be admissible in	
17	any other criminal or civil proceeding.	
18	CONTINGENCY	
19	12. This stipulation shall be subject to approval by the Board for Professional	
20	Engineers and Land Surveyors. Respondent understands and agrees that counsel for	
21	Complainant and the staff of the Board for Professional Engineers and Land Surveyors may	
.22	communicate directly with the Board regarding this stipulation and settlement, without notice to	
23	or participation by Respondent or his counsel. By signing the stipulation, Respondent	
24	understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation	
25	prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation	
26	as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force	
27	or effect, except for this paragraph, it shall be inadmissible in any legal action between the	
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1 parties, and the Board shall not be disqualified from further action by having considered this 2 matter. 3 13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same 4 5 force and effect as the originals. 6 14. In consideration of the foregoing admissions and stipulations, the parties 7 agree that the Board may, without further notice or formal proceeding, issue and enter the 8 following Disciplinary Order: 9 **DISCIPLINARY ORDER** 10 IT IS HEREBY ORDERED that Professional Engineer No. C 67384 issued to 11 JAMSHID JAMES KAVIANI shall be surrendered as of the effective date of the decision. 12 Respondent agrees never to petition the Board for the reinstatement of his surrendered Civil 13 Engineering Professional Engineer No. C 67384. 14 1. Respondent must surrender to the Board, by the effective date of the 15 decision, the wall certificate and pocket identification cards for his Civil Engineer License No. C 16 67384. 17 2. The surrender of Civil Engineer License No. C 67384 is considered a 18 disciplinary action. As such, it will be part of Respondent's licensing history and will be a matter 19 of public record. 20 3. In consideration of the Respondent's consent to the aforementioned terms, 21 the Board will waive recovery of its investigative and enforcement costs unless Respondent ever 22 applies in the future, then all costs are due and payable. 23 24 25 26 27 28

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1	ACCEPTANCE		
2	I have carefully read the above Stipulated Settlement and Disciplinary Order and		
3	have fully discussed it with my attorney, Bill Marquis, Esq. I understand the stipulation and the		
4	effect it will have on my Civil Engineer License. I enter into this Stipulated Settlement and		
5	Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the		
6	Decision and Order of the Hoard for Professional Engineers and Land Surveyors.		
7	DATED: 10/24/00		
8			
9 10	Original Signed JAMSHUDJAMES KAVIANI Respondent		
11	Approved:		
12	DATED: 10/26/06		
12	DATED. (9 20/1)		
14	Original Signed		
15	BILL MARQUIS, ESQ. Attorney for Respondent		
16	ENDORSEMENT		
17	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully		
18	submitted for consideration by the Board for Professional Engineers and Land Surveyors of the		
19	Department of Consumer Affairs.		
20	DATED: Deciment, 2006.		
21	BILL LOCKYER, Attorney General of the State of California		
22			
23	Original Signed JAMÉS M. LEDAKIS		
24	Deputy Attorney General		
25	Attomeys for Complainant		
26			
27	DOJ Dockez Mager ID Number: 03551110-\$D2003800223 Snywladow wyd		
28			
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Exhibit A

Accusation No. 801-A

1	BILL LOCKYER, Attorney General of the State of California		
2	MARGARET A. LAFKO, State Bar No. 105921 Supervising Deputy Attorney General		
3	JAMES M. LEDAKIS, State Bar No. 132645 Deputy Attorney General		
4	California Department of Justice 110 West "A" Street, Suite 1100		
5	San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone (619) 645-2105 Facsimile (619) 645-2061		
8	Attorneys for Complainant		
9			
10	BEFORE THE BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS		
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
12			
13))		
14	JAMSHID JAMES KAVIANI) P.O. Box 10243) ACCUSATION		
15	Newport Beach, CA 92658) Professional Engineer, No. C 67384)		
16	Respondent.		
17			
18	Complainant alleges:		
19	PARTIES		
20	1. Cindi Christenson, P.E. (Complainant) brings this Accusation solely in her		
21	official capacity as the Executive Officer for the Board for Professional Engineers and Land		
22	Surveyors, Department of Consumer Affairs.		
23	2. On or about July 12, 1978, the Board for Professional Engineers and Land		
24	Surveyors issued Professional Engineers license no. C 29329 to Jamshid James Kaviani. On or		
25	about July 23, 2004, the effective date of the surrender, License No. C 29329 was surrendered as		
26	a result of Accusation No. 750-A filed by the Board for Professional Engineers and Land		
27	Surveyors. Thereafter, on or about July 23, 2004 reissued a new license, License No. C 67384,		
28	which revoked Kaviani's right to practice land surveying but authorized him to only practice civil		
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1	engineering. License No. 67384 will expire on March 31, 2007 unless renewed.
2	JURISDICTION
3	3. This Accusation is brought before the Board for Professional Engineers
4	and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the
5	following laws. All section references are to the Business and Professions Code unless otherwise
6	indicated.
7	4. Section 6775 of the Code states, in pertinent part:
8 9	By a majority vote, the Board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any professional engineer registered under this chapter:
10	(b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud, in his or her practice.
11 12	(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.
13	
14	(f) Who aids or abets any person in the violation of any provision of this chapter.
15 16	(g) Who in the course of the practice of professional engineering has been found guilty by the board of having violated a rule or regulation of unprofessional conduct adopted by the board.
17	(h) Who violates any provision of this chapter.
18	5. Section 6787 of the Code states, in pertinent part:
19	Every person is guilty of a misdemeanor:
20	(e) Who uses an expired, suspended, or revoked certificate issued by the
21	board.
22	(g) Who, unless appropriately registered, manages, or conducts as manager, proprietor, or agent, any place of business from which civil, electrical,
23	or mechanical engineering work is solicited, performed, or practiced, except as authorized pursuant to subdivision (d) of Section 6738 and Section 8726.1.
24	····
25	(j) Who violates any provision of this chapter.
26	6. Section 6749 of the Code states, in pertinent part:
27	(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The
28	written contract shall be executed by the professional engineer and the client
	-2-

7. Section 404.1., of Title 16, California Code of Regulations states, in 1 2 pertinent part: 3 Responsible Charge - Professional Engineering 4 (a) As used in the Professional Engineers Act, the term "responsible charge" directly relates to the extent of control a professional engineer is required 5 to maintain while exercising independent control and direction of professional engineering services or creative work and to the engineering decisions which can be made only by a professional engineer. 6 7 (2) Engineering Decisions. 8 9 Engineering decisions which must be made by and are the responsibility of the engineer in responsible charge are those decisions concerning permanent or temporary projects which could create a hazard to life, health, property, or public 10 welfare, and may include, but are not limited to: 11 1. The selection of engineering alternatives to be investigated and comparison of alternatives for the project. The selection or development of 12 design standards or methods, and materials to be used. 13 (b) Responsible Charge Criteria. In order to evaluate whether an engineer is in responsible charge, the following must be considered: The professional 14 engineer who signs engineering documents must be capable of answering questions asked by individuals who are licensed by the Board in the appropriate 15 branch of professional engineering relevant to the project and who are fully competent and proficient by education and experience in the field or fields of 16 professional engineering relevant to the project. 17 Section 411 of Title 16, California Code of Regulations states, in pertinent 8. 18 19 part: (g)(1) All professional engineering plans, specifications, reports, or 20 documents (hereinafter referred to as "documents") shall be signed and sealed in accordance with the requirements of the Professional Engineers Act and any other 21 laws related to the practice of professional engineering, and shall be signed and sealed in a manner such that all work can be clearly attributed to the licensee(s) in 22 responsible charge of the work. 23 24 9. Section 419 of Title 16, California Code of Regulations sets forth the probationary terms "[flor violations of Business and Professions Code sections 6775 and/or 8780 25 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of 26 27 Title 2 of the Government Code against a professional engineering and/or a professional land surveying license." 28

10. 1 Section 118, subdivision (b) of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of 2 3 jurisdiction to proceed with a disciplinary action during the period within which the license may 4 be renewed, restored, reissued or reinstated. 5 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or 6 7 violations of the licensing act to pay a sum not to exceed the reasonable cost of the investigation and enforcement of the case. 8 9 VIOLATION NO. 1: BOARD REFERENCE 2004-08-248; STATEMENT OF FACTS: 10 FIRST CAUSE FOR DISCIPLINE 11 (Professional Negligence and Incompetence) 12 12. On August 6, 2004, Respondent, James Kaviani, submitted a Grading 13 Plan to the City of Newport Beach for a project at 702 Acacia Avenue, Newport Beach, 14 California; the Grading Plan included Respondent's signature on the seal of his previously 15 surrendered license number C 29329 that was surrendered on July 23, 2004. 16 13. Respondent is subject to disciplinary action under section 6775(c) for negligence or incompetence in his practice by using and/or placing his seal on a grading plan 17 without authorization as set forth in paragraph 12 above. 18 19 VIOLATION NO. 2; BOARD REF. 2004-08-248; STATEMENT OF FACTS: 20 14. In a letter to the Board for Professional Engineers and Land Surveyors 21 dated October 15, 2003, Respondent stated: "Ron Winterburn who is not licensed is the manager for the firm. . . . " However, the law mandates that only a registered professional engineer is 22 23 authorized to manage a firm that practices civil engineering. SECOND CAUSE FOR DISCIPLINE 24 25 (Professional Negligence and Incompetence) 26 15. Respondent is subject to disciplinary action under section 6775(c) for 27 negligence or incompetence for associating with and allowing a nonlicensee to practice civil 28 engineering, as set forth in paragraph 14, above.

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1	THIRD CAUSE FOR DISCIPLINE
2	(Aiding and Abetting the Unlicensed Practice of Civil Engineering)
3	16. Respondent is subject to disciplinary action under section 6775(f) for
4	aiding and abetting Ron Winterburn in the unauthorized practice of civil engineering, as set forth
5	in paragraph 14, above.
6	VIOLATION NO. 3; BOARD REF. 2004-08-248; STATEMENT OF FACTS:
7	17. On August 16, 2005, State of California, Division of Investigation, Senior
8	Investigator, Lupe Caceres, conducted an interview with Respondent who answered a series of
9	questions in writing. In that interview, Respondent stated that Valley Consultants President Ron
10	Winterburn (an unlicensed person) signs contracts on behalf of Valley Consultants.
11	FOURTH CAUSE FOR DISCIPLINE
12	(Professional Negligence and Incompetence)
13	18. Respondent is subject to disciplinary action under section 6775(c) for
14	negligence or incompetence by allowing Ron Winterburn to enter into civil engineering contracts
15	for his company, Valley Consultants, as set forth in paragraph 17, above.
16	FIFTH CAUSE FOR DISCIPLINE
17	(Aiding and Abetting the Unlicensed Practice of Civil Engineering)
18	19. Respondent is subject to disciplinary action under section 6775(f) for
19	aiding and abetting by allowing Ron Winterburn to enter into civil engineering contracts for
20	Valley Consultants as set forth in paragraph 17, above.
21	VIOLATION NOS. 4-15; BOARD REF. 2004-08-248; STATEMENT OF FACTS:
22	20. Licensed Land Surveyor, Clarence Butler, LS 4184, is shown on the firm's
23	Organization Record on file with the Board as Vice President of Valley Consultants Inc. On 12
24	occasions, Butler signed a "finished grade certification letter" for projects in the City of Newport
25	Beach. For each project, a Registered Civil Engineer (Butler is not a Registered Civil Engineer)
26	is required to prepare a Grading Plan that determines the floor elevation of the buildings and the
27	elevation of the ground and drainage pipes around the building to insure surface water is carried
28	from the project in an approved and industry standard manner. Certification as to the adequacy
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of the as-constructed condition is a requirement of the project Registered Civil Engineer, not a 2 Licensed Land Surveyor.

SIXTH CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Civil Engineering)

Respondent is subject to disciplinary action under section 6775(f) for 5 21. aiding and abetting Clarence Butler in the unauthorized practice of civil engineering as set forth 6 in paragraph 20, above. 7

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VIOLATION NO. 16; BOARD REF. 2004-08-247; STATEMENT OF FACTS

Respondent submitted a Grading Plan for a project located at 720 22. 9 Marigold Avenue, Newport Beach, to the City of Newport Beach that showed an incorrect 10 location of an existing retaining wall. Instead of correctly showing the wall in the public right-11 of-way where it was located, the wall was incorrectly shown on private property which saved the 12 contractor from having to remove it. Respondent should have noted on the map, that the wall 13 had to be removed; Respondent did not. Later, the owner was forced to remove the wall and 14 construct a new retaining wall in the correct location (on private property). There was significant 15 information that should have led Respondent to correctly identify the location of the existing 16 wall: for example, the existing wall was shown in the correct location on the Topography Map 17 prepared by Clarence Butler of Valley Consultants; the existing wall was shown in the correct 18 location on Tentative Parcel Map No. 2003-206, dated September 17, 2003, as prepared by 19 Clarence Butler; and condition number eight on the Conditions of Approval for the development 20 from the City of Newport Beach stated the existing wall must be removed. 21

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SEVENTH CAUSE FOR DISCIPLINE

(Professional Negligence and Incompetence) 23 Respondent is subject to disciplinary action under section 6775(c) for 23. 24 negligence or incompetence by failing to identify the location of the wall and requiring it to be 25 removed and placed in the correct location as set forth in paragraph 22, above. 26

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1	VIOLATION NO. 17; BOARD REF. 2004-08-248; STATEMENT OF FACTS:	
2	24. On August 16, 2005, State of California, Division of Investigation, Senior	
3	Investigator, Lupe Caceres, held an interview with Respondent who answered a series of	
4	questions in writing. Respondent stated that Ron Winterburn, President of Valley Consultants,	
5	discusses the critical design decisions with clients. According to the governing law, only the	
6	engineer in charge may discuss critical design criteria with the consumer.	
7	EIGHTH CAUSE FOR DISCIPLINE	
8	(Professional Negligence and Incompetence)	
9	25. Respondent is subject to disciplinary action under section 6775(c) for	
10	negligence or incompetence because design decisions must be conducted by the engineer in	
11	responsible charge as set forth in paragraph 24 above.	
12	NINTH CAUSE FOR DISCIPLINE	
13	(Aiding and Abetting the Unlicensed Practice of Civil Engineering)	
14	26. Respondent is subject to disciplinary action under section 6775(f) for	
15	aiding and abetting Ron Winterburn by allowing him to discuss design criteria with consumers as	
16	5 set forth in paragraph 24, above.	
17	VIOLATION NO. 18; BOARD REF. 2004-08-248; STATEMENT OF FACTS:	
18	27. On August 16, 2005, State of California, Division of Investigation, Senior	
19	Investigator, Lupe Caceres, held an interview with Respondent who answered a series of	
20	questions in writing. Questions 9 through 20 were posed by Ms. Caceres in order to determine	
21	Respondent's competency in preparing a typical Grading Plan. The questions were prepared by	
22	the Board's expert and reviewed ahead of time by the Board's Enforcement Analyst. The	
23	Board's licensed expert was present during the question and answer period. Respondent refused	
24	to answer questions 9 through 20. In accordance with the law, a professional engineer must be	
25	capable of answering questions asked by the Board in the appropriate branch of professional	
26	engineering.	
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TENTH CAUSE FOR DISCIPLINE

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(Professional Negligence and Incompetence)

28. Respondent is subject to disciplinary action under section 6775(c) and California Code of Regulations section 404.1, for negligence or incompetence in his practice by refusing to answer questions regarding his competency to practice civil engineering as set forth in paragraph 27, above.

VIOLATION NOS. 19-53; BOARD REF. 2004-08-248; STATEMENT OF FACTS:

On August 16, 2005, State of California, Division of Investigation, Senior 8 29. Investigator, Lupe Caceres, held an interview with Respondent who answered a series of 9 questions in writing. Questions 24 through 26 were asked to determine whether Respondent ever 10 allowed another individual to sign Respondent's name on his engineering seal on engineering 11 documents or plans. Question 26(d) asked Respondent whether he ever gave his consent to allow 12 Ron Winterburn to sign Respondent's name to an engineering document or plan, and question 13 26(e) asked Respondent whether he ever gave his consent to allow anyone else to sign his name 14 to an engineering document or plan. Respondent answered: "No" to question 26(d) and "No" to 15 16 question 26(e).

An expert document examiner from the Newport Beach Police Department 30. 17 was requested to review documents for this case. The examiner reviewed 19 Parcel Maps signed 18 by Respondent, and various grant deeds and deeds of trust which Respondent signed in the 19 presence of a Notary Public, and various documents signed by Respondent prior to, and after, 20 Respondent's accident in October 2000. The examiner stated the signature of Respondent on the 21 19 Parcel Maps was signed by the same person, however, the signature was not Respondent's 22 signature. Respondent permitted Ron Winterburn to sign his name to the 19 Parcel Maps. 23 ELEVENTH CAUSE FOR DISCIPLINE 24

31. Respondent is subject to disciplinary action under section 6775(c) for
negligence or incompetence in his practice in that he allowed Ron Winterburn to sign his name to
19 Parcel Maps as set forth in paragraphs 29 and 30, above.

(Professional Negligence and Incompetence)

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1	TWELFTH CAUSE FOR DISCIPLINE		
2	(Aiding and Abetting the Unlicensed Practice of Civil Engineering)		
3	32. Respondent is subject to disciplinary action under section 6775(f) for		
4	aiding and abetting in his practice in that he allowed Ron Winterburn to sign his name to Parcel		
5	Maps in paragraphs 29 and 30, above.		
6	THIRTEENTH CAUSE FOR DISCIPLINE		
7	(Deceit, Misrepresentation, and Fraud)		
8	34. Respondent is subject to disciplinary action under section 6775(b) for		
9	deceit, misrepresentation, or fraud in his practice in that he lied to the Board when he represented		
10	that he did not allow his name to be signed by Ron Winterburn to Parcel Maps as set forth in		
11	paragraphs 29 and 30, above.		
12	PRAYER		
13	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
14	alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors		
15	issue a decision:		
16	1. Revoking or suspending Civil Engineer number C 67384, issued to Jamshid		
17	James Kaviani ;		
18	2. Ordering Jamshid James Kaviani to pay the Board for Professional Engineers		
19	and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant		
20	to Business and Professions Code section 125.3;		
21	3. Taking such other and further action as deemed necessary and proper.		
22	DATED: 91906		
23			
24	Original Signed Cindi Christensen, P.E.		
25	Board for Professional Engineers and Land Surveyors Department of Consumer Affairs		
26	State of California Complainant		
27	JML:kc		
28	80089585.wpd		
	-9-		

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

In the Matter of the Accusation Against:

JAMSHID JAMES KAVIANI P.O. BOX 10243 NEWPORT, CA 92658 Case No. 750-A

OAH No. L-2003110091

License No. C 29329

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 123,00 It is so ORDERED NL 25.21

Original Signed

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

1	BILL LOCKYER, Attorney General		
2	of the State of California JAMES M. LEDAKIS, State Bar No. 132645		
3	Deputy Attorney General California Department of Justice		
4	110 West "A" Street, Suite 1100 San Diego, CA 92101		
5	P.O. Box 85266 San Diego, CA 92186-5266		
6	Telephone: (619) 645-2105 Facsimile: (619) 645-2061		
7	Attorneys for Complainant		
8	BEFORE	ГНЕ	
9 10	DEPARTMENT OF CONSUMER AFFAIRS		
11		<i>.</i>	
12	In the Matter of the Accusation Against:	Case No. 750-A	
13	JAMSHID JAMES KAVIANI P.O. BOX 10243	OAH No. L-2003110091	
14	NEWPORT, CA 92658 License No. C 29329	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER	
15	Respondent.		
16	Respondent.		
17	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:		
18			
19			
20	PARTIE	<u>S</u>	
21	1. Cindi Christenson, P.E. (Complainant) is the Executive Officer of the		
22	Board for Professional Engineers and Land Surveyors. She brought this action solely in her		
23	official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by James M. Ledakis, Deputy Attorney General. 2. Respondent JAMSHID JAMES KAVIANI (Respondent) is represented in		
24 25			
26			
27	this proceeding by attorney Hal Block, Esq., whose a	address is Musick, Peeler & Garrett, 650	
28	Town Center Drive, Suite 900, Costa Mesa, CA 926	26.	
12002			

1	3. On or about July 12, 1978, the Board for Professional Engineers and Land
2	Surveyors issued license number C 29329 to JAMSHID JAMES KAVIANI (Respondent). The
3	license was in full force and effect at all times relevant to the charges brought in Accusation No.
4 .	750-A and will expire on March 31, 2007, unless renewed.
5	JURISDICTION
6	4. Accusation No. 750-A was filed before the Board for Professional
7	Engineers and Land Surveyors (Board), Department of Consumer Affairs, and is currently
8	pending against Respondent. The Accusation and all other statutorily required documents were
9	properly served on Respondent on October 9, 2003. Respondent timely filed his Notice of
10	Defense contesting the Accusation. A copy of Accusation No. 750-A is attached as exhibit A
11	and incorporated herein by reference.
12	ADVISEMENT AND WAIVERS
13	5. Respondent has carefully read, fully discussed with counsel, and
14	understands the charges and allegations in Accusation No. 750-A. Respondent has also carefully
15	read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16	Disciplinary Order.
17	6. Respondent is fully aware of his legal rights in this matter, including the
18	right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19	counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20	the right to present evidence and to testify on his own behalf; the right to the issuance of
21	subpoenas to compel the attendance of witnesses and the production of documents; the right to
22	reconsideration and court review of an adverse decision; and all other rights accorded by the
23	California Administrative Procedure Act and other applicable laws.
24	7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25	each and every right set forth above.
26	CULPABILITY
27	8. Respondent admits the truth of each and every charge and allegation in
28	Accusation No. 750-A.

1	9. Respondent agrees that his license is subject to discipline and he agrees to
2	be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.
3	RESERVATION
4	10. The admissions made by Respondent herein are only for the purposes of
5	this proceeding, or any other proceedings in which the Board for Professional Engineers and
6	Land Surveyors or other professional licensing agency is involved, and shall not be admissible in
7	any other criminal or civil proceeding.
8	CONTINGENCY
9	11. This stipulation shall be subject to approval by the Board for Professional
10	Engineers and Land Surveyors. Respondent understands and agrees that counsel for
11	Complainant and the staff of the Board for Professional Engineers and Land Surveyors may
12	communicate directly with the Board regarding this stipulation and settlement, without notice to
13	or participation by Respondent or his counsel. By signing the stipulation, Respondent
14	understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
15	prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
16	as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force
17	or effect, except for this paragraph, it shall be inadmissible in any legal action between the
18	parties, and the Board shall not be disqualified from further action by having considered this
19	matter.
20	12. The parties understand and agree that facsimile copies of this Stipulated
21	Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
22	force and effect as the originals.
23	13. In consideration of the foregoing admissions and stipulations, the parties
24	agree that the Board may, without further notice or formal proceeding, issue and enter the
25	following Disciplinary Order:
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DISCIPLINARY ORDER

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2	IT IS HEREBY ORDERED that license no. C 29329 issued to Respondent		
3	JAMSHID JAMES KAVIANI shall be surrendered as of the effective date of the decision. The		
4	Board will then issue to JAMSHID JAMES KAVIANI a new civil engineering license with a		
5	new license number which will not include the legal authorization to practice land surveying.		
6	Respondent agrees never to petition the Board for the reinstatement of his surrendered Civil		
7	Engineering License No. C 29329.		
8	1. Respondent must surrender to the Board, by the effective date of the		
9	decision, the wall certificate and pocket identification cards for his old Civil Engineer License,		
10	No. C 29239. If Respondent fails to surrender the wall certificate and pocket identification cards		
11	to the Board by the effective date of the decision, the Board will not issue the new Civil Engineer		
12	License to him.		
13	2. The surrender of the old Civil Engineer License No. C 29239 is considered		
14	a disciplinary action. As such, it will be part of Respondent's licensing history and will be a		
15	matter of public record.		
16	3. If Respondent wishes to practice land surveying in the future, he is		
17	required to meet all requirements for licensure as a land surveyor in effect at that time, including		
18	but not limited to filing an application, meeting all pertinent requirements, and taking and		
19	passing the pertinent examinations for licensure as a Professional Land Surveyor.		
20	4. In consideration of the Respondent's consent to the aforementioned terms,		
21	the Board will waive recovery of its investigative and enforcement costs.		
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ACCEPTANCE I have carefully read the above Stipulated Settlement and Disciplinary Order and have failed discussed it with my summery. Hal Block, Beq. 1 understand the stipulation and the effect it will have on my Civil Ragineer Litense. I enter into this Subjusted Settlement and Disciplinary Order wolumedly, knowingly, and intelligently, and agrees to be bound by the Disciplinary Order wolumedly, knowingly, and intelligently, and agrees to be bound by the Decision and Order of the Board for Professional Engineers and Lami Surveyors. DATED: <u>41/20/04</u> Marginal Signed Marginal	APR-18-0411:11		
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9 Respondent 10 Approved 11 DATED: <u>4/20/04</u> 12 Original Signed 13 Original Signed 14 Anterney for Respondent 15 If 16 ENDORSEMENT 17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully 18 Interforegoing Stipulated Settlement and Disciplinary Order is hereby respectfully 18 Interforegoing Stipulated Settlement and Disciplinary Order is hereby respectfully 18 Interforegoing Stipulated Settlement and Disciplinary Order is hereby respectfully 18 Interforegoing Stipulated Settlement and Disciplinary Order is hereby respectfully 19 Department of Consumer Affairs. 20 DATED: Appl 22 ACM. 21 BILL LOCKYER, Attorney General of the State of California 22 Original Signed 23 Original Signed			OPLALMAL SLAMEA
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13 Original Signed 14 HAL BLUCK, ESU. 15 Anomey for Respondent 16 ENDORSEMENT 17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully 18 Submitted for consideration by the Board for Professional Engineers and Land Surveyors of the 19 Department of Consumer Affairs. 20 DATED: Appl 22 Devi. 21 BILL LOCKYER, Attempy Graneral of the State of California 22 Original Signed 23 Original Signed		31	
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17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully 18 submitted for consideration by the Board for Professional Engineers and Land Surveyors of the 19 Department of Consumer Affairs. 20 DATED; <u>Apul 22, 2004</u> . 21 BILL LOCKYER, Attorney General 22 Original State of California 23 Original Signed		15	
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TAMES M. LEDAKIS		22	of the State of California
14MES M. LEDARIE		23	Original signed
		24	JAMES M. LEDARIS Deputy Attorney General
25 Attorneys for Complainent		25	, , , , , , , , , , , , , , , , , , , ,
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Exhibit A

Accusation No. 750-A

·»)					
	1	BILL LOCKYER, Attorney General of the State of California					
	2	JAMES M. LEDAKIS, State Bar No. 132645 Deputy Attorney General					
	3	California Department of Justice 110 West "A" Street, Suite 1100					
	4	San Diego, CA 92101					
	5	P.O. Box 85266					
	6	San Diego, CA 92186-5266 Telephone: (619) 645-2105					
	7						
	8	Attorneys for Complainant					
	9	BEFORE THE					
	10	BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS DEPARTMENT OF CONSUMER AFFAIRS					
	11	STATE OF CALIFORNIA					
	12	In the Matter of the Accusation Against: Case No. 750-A					
	13	JAMSHID JAMES KAVIANI					
	14	P.O. BOX 10243 A C C U S A T I O N NEWPORT BEACH, CA 92658					
	15	License No. C 29329					
	16	Respondent.					
	17	Complainant alleges:					
	18	PARTIES					
	19	1. Cindi Christenson, P.E. (Complainant) brings this Accusation solely in her					
	20	official capacity as the Executive Officer of the Board for Professional Engineers and Land					
	21	Surveyors, Department of Consumer Affairs.					
	22	2. On or about July 12, 1978, the Board for Professional Engineers and Land					
	23	Surveyors issued license number C 29329 to JAMSHID JAMES KAVIANI (Respondent). Said					
	24	license will expire on March 31, 2007, unless renewed.					
	25	JURISDICTION					
	26	3. This Accusation is brought before the Board for Professional Engineers					
	27	and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the					
	28	following laws. All section references are to the Business and Professions Code.					
		1					

1 4. Section 8780 of the Code states in part as follows: 2 The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon. By a majority vote, the board may reprove, suspend for a period not to 3 exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the 4 provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of: 5 (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying. 6 (b) Any negligence or incompetence in his or her practice of land surveying. 7 (d) Any violation of any provision of this chapter or of any other law 8 relating to or involving the practice of land surveying. 9 (g) A breach or violation of a contract to provide land surveying services. 10 5. Section 125.3 of the Code provides, in pertinent part, that the board may request the administrative law judge to direct a licentiate found to have committed a violation or 11 12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation 13 and enforcement of the case 14 6 Section 118, subdivision (b), of the Code provides that the 15 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may 16 17 be renewed, restored, reissued or reinstated. Factual Allegations re: 2400 Ocean Front, Newport Beach, California 18 19 7. On April 24, 2000, Respondent, Jamshid James Kaviani, a registered civil engineer, certified to the City of Newport Beach Building Department that the boundary line 20 setbacks for the property located at 2400 Ocean Front, Newport Beach, CA were in compliance 21 with the approved set of plans and that the structure was located properly on the site plan. 22 23 Respondent certified the location of the foundation forms for the City when there were only a few footings in place at the time of his certification. 24 25 8. In response to the Board's request to Respondent to explain his certification of the correct placement of the subject property foundations, Respondent told the 26 investigator, "All form boards were in place when our field crew surveyed the property on 4-24-27 00." However, on April 25, 2000, the Newport Beach Building Department took photographs 28

1 depicting that many of the forms were not yet placed.

2 On April 24, 2000, Respondent provided the City of Newport Beach 9. 3 Building Department with a foundation form certification for the subject house showing a four foot side yard set back on one side of the house and no set back on the other side of the house. 4 5 Following the Board's complaint investigation, Respondent provided the Board with a foundation form certification also dated April 24, 2000, showing a 3'1" side yard set back on 6 each side of the house. Respondent was asked by the Board to explain the discrepancy. 7 8 Respondent did not provide an explanation for the discrepancy in side yard set back certifications 9 to the City and to the Board.

10 10. The Board requested that Respondent produce all his original survey notes,
record maps, calculations, center line tie notes, or any other documents that show he made a field
survey of the subject house. No documentation was provided by the Respondent to establish the
correct property lines. Respondent continues to refuse to produce documentation related to his
boundary survey. After being notified in May 2000 of a Board complaint related to a April 24,
2000, boundary survey completed by Respondent, he told the Board that he lost all his records
and failed to explain how his original boundary survey was performed.

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FIRST CAUSE FOR DISCIPLINE

(Negligence and/or Incompetence)

19 11. Respondent is subject to disciplinary action under section 8780(b) in that
20 Respondent was negligent and/or incompetent in the practice of land surveying as follows:
21 a) Representing to the Newport Beach Building Department that all the

22 forms were correctly placed on April 24, 2000.

b) Representing to the Newport Beach Building Department that thecontractor moved the foundation form boards after his certification.

c) Representing to the Newport Beach Building Department that the
subject house was rectangular when it had multiple inward and outward jogs and extensions of
the foundation perimeter.

d) Representing to the Newport Beach Building Department with a

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1	foundation form certification dated April 24, 2000, showing a four foot side yard set back on one
2	side of the house and no set back on the other side of the house. Thereafter, Respondent
3	submitted to the Board a foundation form certification dated, April 24, 2000, showing a 3'1" side
4	yard set back on each side of the building.
5	e) Respondent failed to follow standard procedure with submission of
6	proper documentation for his work. He had no survey notes, record maps, calculations on center
7	line tie notes.
8	12. Complainant incorporates by reference paragraphs 7 through 10.
9	SECOND CAUSE FOR DISCIPLINE
10	(Fraud, Deceit and/or Misrepresentation)
11	13. Respondent is subject to disciplinary action under section 8780(c) in that
12	Respondent committed fraud, deceit, and/or misrepresentation in the practice of land surveying.
13	14. Complainant incorporates by reference paragraphs 7 through 10.
14	Factual Allegations re: 6102 West Ocean Front, Newport Beach, California
15	15. Respondent provided a topography map and land survey for the subject
16	property located at 6102 West Ocean Front, Newport Beach, CA. Respondent provided a
17	setback and top of slab/floor elevation certificate. Respondent certified that the structure was
18	located 3'2" away from the adjacent property line when in fact the house was mis-located 8
19	inches to within 2'6" of the adjacent house. The misplacement of the structure violated the
20	Uniform Building Code and fire safety codes.
21	16. On November 8, 1999, Respondent filed a setback and top of slab
22	certification with the City of Newport Beach Building Department certifying that all setbacks
23	were in compliance with the plans to insure that the structure was located properly on the site per
24	the approved set of drawings.
25	17. On July 28, 2000, Respondent replied to the Board's inquiries concerning
26	the aforementioned misplacement of the subject house. Respondent accepted responsibility for
27	the error when he stated, "I am responsible for that error, since the work was supervised by me."
28	Nevertheless, the error was discovered at approximately 90% of completion of construction of
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1	the house. The error will result in a significant financial injury to the homeowners.
2	THIRD CAUSE FOR DISCIPLINE
3	(Negligence and/or Incompetence)
4	18. Respondent is subject to disciplinary action under section 8780(b) in that
5	Respondent was negligent and/or incompetent in the practice of land surveying.
6	19. Complainant incorporates by reference paragraphs 15 through 17.
7	
8	PRAYER
9	WHEREFORE, Complainant requests that a hearing be held on the matters herein
10	alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors
11	issue a decision:
12	1. Revoking or suspending license number C 29329 issued to JAMSHID
13	JAMES KAVIANI;
14	2. Ordering JAMSHID JAMES KAVIANI to pay the Board for Professional
15	Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this
16	case, pursuant to Business and Professions Code section 125.3;
17	3. Taking such other and further action as deemed necessary and proper.
18	DATED: 9/10 03
19	
20	Original signed
21	CINDI CHRISTENSON, P.E. Executive Officer
22	Board for Professional Engineers and Land Surveyors Department of Consumer Affairs
23	State of California Complainant
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