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7

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

11 In the Matter of the Accusation Against:

Case No. 1115-A

12 **SAVIOR P. MICALLEF**
13 **P.O. Box 452**
Atascadero, CA 93423

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Land Surveyor License No. L 8289**

15 Respondent.
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18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

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

25 2. Respondent Savior P. Micallef (Respondent) is represented in this proceeding by
26 attorney William Hake , whose address is: 525 Market Street, 17th Floor, San Francisco, CA
27 94105, 415.629.9249.

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DISCIPLINARY ORDER

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2 **IT IS HEREBY ORDERED** that Land Surveyor License No. L 8289 issued to
3 Respondent Savior P. Micallef is revoked. However, the revocation is stayed and Respondent is
4 placed on probation for three (3) years on the following terms and conditions.

5 1. **Obey All Laws.** The Respondent shall obey all federal, state and local laws and
6 regulations related to the practices of professional engineering and professional land surveying.

7 2. **Submit Reports.** The Respondent shall submit such special reports as the Board may
8 require.

9 3. **Tolling of Probation.** The period of probation shall be tolled during the time the
10 Respondent is practicing exclusively outside the state of California. If, during the period of
11 probation, the Respondent practices exclusively outside the state of California, the Respondent
12 shall immediately notify the Board in writing.

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

20 5. **Completion of Probation.** Upon successful completion of all of the probationary
21 conditions and the expiration of the period of probation, the Respondent's Land Surveyor License
22 No. L 8289 shall be unconditionally restored.

23 6. **Cost Recovery.** Within two and one-half (2 ½) years from the effective date of the
24 decision, the respondent shall reimburse the Board \$10,200.00 for its investigative and
25 enforcement costs in this matter in the amount incurred through the date of this settlement offer.
26 Said reimbursement may be paid in installments

27 7. **Examination.** Within 60 days of the effective date of the decision, the Respondent
28 shall successfully complete and pass the California Laws and Board Rules examination, as

1 administered by the Board.

2 8. **Ethics Course.** Within two and one-half (2 ½) years from the effective date of the
3 decision, the respondent must successfully complete and pass a course in professional ethics,
4 approved in advance by the Board or its designee.

5 9. **Notification.** Within 30 days of the effective date of the decision, the Respondent
6 shall provide the Board with evidence that he has provided all persons or entities with whom he
7 has a contractual or employment relationship such that the relationship is in the area of practice of
8 professional land surveying in which the violation occurred with a copy of the decision and order
9 of the Board and shall provide the Board with the name and business address of each person or
10 entity required to be so notified. During the period of probation, the Respondent may be required
11 to provide the same notification of each new person or entity with whom he has a contractual or
12 employment relationship such that the relationship is in the area of practice of professional
13 engineering and/or land surveying in which the violation occurred and shall report to the Board
14 the name and address of each person or entity so notified.

15 10. **Take And Pass College Level Courses.** Within two and one-half (2 ½) years from
16 the effective date of the decision, the respondent shall successfully complete and pass three (3)
17 college-level land surveying courses, which must be related to the areas of violation alleged in the
18 Accusation. Said courses shall be approved in advance by the Board or its designee. The
19 respondent shall provide the Board with official proof of completion of the requisite courses. For
20 purposes of this condition, "college-level course" means a course offered by a community college
21 or a four-year university of three semester units or the equivalent; it does not include seminars.

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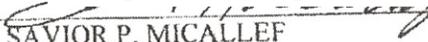
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William M. Hake. I understand the stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: 6-21-17

Original Signed


SAVIOR P. MICALLEF
Respondent

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

DATED: 6/22/17

Original Signed


WILLIAM M. HAKE
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: 6.28.17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General

(Original Signed)


MARETTA WARD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1115-A

1 KAMALA D. HARRIS
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2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 ROSAILDA PEREZ
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **SAVIOR P. MICALLEF**
13 **P.O. Box 452**
Atascadero, CA 93423
14 **Land Surveyor License No. L 8289**
15 Respondent.

Case No. 1115-A
A C C U S A T I O N

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about July 27, 2007, the Board issued Land Surveyor License Number L 8289
23 to Savior P. Micallef (Respondent). The Land Surveyor License was in full force and effect at all
24 times relevant to the charges brought herein and will expire on December 31, 2017, unless
25 renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender,
6 or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
7 action during the period within which the license may be renewed, restored, reissued or reinstated.

8 **STATUTORY AND REGULATORY PROVISIONS**

9 5. Code section 8759 states, in pertinent part:

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

17 (1) A description of the services to be provided to the client by the licensed land surveyor or
18 licensed civil engineer.

19 (2) A description of any basis of compensation applicable to the contract, and the method of
20 payment agreed upon by the parties.

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

23 (4) A description of the procedure that the licensed land surveyor or licensed civil engineer
24 and the client will use to accommodate additional services.

25 (5) A description of the procedure to be used by both parties to terminate the contract.

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28 6. Code section 8761 states, in pertinent part:

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“... ”

“(d) All final maps, plats, reports, descriptions, or other land surveying documents issued by a licensed land surveyor or civil engineer authorized to practice land surveying shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If the land surveying document has multiple pages or sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet, unless otherwise required by law.

“... ”

7. Code section 8780 states, in pertinent part:

“The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any land surveyor licensed under this chapter or any civil engineer licensed under the provisions of Chapter 7 (commencing with Section 6700) who is legally authorized to practice land surveying and make findings thereon.

“By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any land surveyor licensed under this chapter or civil engineer licensed under the provisions of Chapter 7 (commencing with Section 6700) who is legally authorized to practice land surveying on any of the following grounds:

“(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

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

“... ”

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

“... ”

8. California Code of Regulations, title 16, section 404 provides:

“... ”

“(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

1 Code is defined as the lack of knowledge or ability in discharging professional obligations as a
2 professional engineer or land surveyor.

3 “... ”

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

9 “... ”

10 9. California Code of Regulations, title 16, section 411 provides, in pertinent part:

11 “... ”

12 “(g)(1) All professional engineering plans, specifications, reports, or documents (hereinafter
13 referred to as “documents”) shall be signed and sealed in accordance with the requirements of the
14 Professional Engineers Act and any other laws related to the practice of professional engineering
15 and shall be signed and sealed in a manner such that all work can be clearly attributed to the
16 licensee(s) in responsible charge of the work.

17 “(2) All maps, plats, reports, descriptions, or other professional land surveying documents
18 (hereinafter referred to as “documents”) shall be signed and sealed in accordance with the
19 requirements of the Professional Land Surveyors' Act and any other laws related to the practice of
20 professional land surveying and shall be signed and sealed in a manner such that all work can be
21 clearly attributed to the licensee(s) in responsible charge of the work.

22 “... ”

23 10. California Code of Regulations, title 16, section 476 provides, in pertinent part:

24 To protect and safeguard the health, safety, welfare, and property of the public, every person
25 who is licensed by the Board as a professional land surveyor or professional civil engineer legally
26 authorized to practice land surveying, including licensees employed in any manner by a
27 governmental entity or in private practice, shall comply with this Code of Professional Conduct. A
28 violation of this Code of Professional Conduct in the practice of professional land surveying

1 constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780
2 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating
3 complaints and making findings thereon under Section 8780 of the Code.

4 “(a) Compliance with Laws Applicable to a Project:

5 “A licensee shall provide professional services for a project in a manner that is consistent
6 with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may
7 obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional
8 engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of
9 such laws, codes, and regulations

10 “ ...

11 “(c) Representations

12 “ ...

13 “(2) A licensee shall not misrepresent to a prospective or existing client the licensee's scope
14 of responsibility in connection with projects or services for which the licensee is receiving or will
15 receive compensation from that client.

16 “ ...

17 “(7) A licensee shall only express professional opinions that have a basis in fact or experience
18 or accepted land surveying principles.

19 “ ... ”

20 COST RECOVERY

21 11. Code section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

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1 **FACTS**

2 12. In or about February 8, 2013, while working as a Land Surveyor, Respondent
3 prepared a topographic survey of 130 Olympian Way, Pacifica, CA, a vacant lot in a residential
4 area. During the course of the project, Respondent failed to prepare a written contract, failed to
5 sign and seal land surveying documents, failed to inform his clients that a topographical survey was
6 insufficient for their project, and failed to perform a required boundary survey. Had Respondent
7 performed the required boundary survey he would have discovered that property lines had
8 previously been set. Respondent's omission resulted in encroachment on the neighboring lot and a
9 monetary loss to his clients.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Incompetence and/or Negligence)

12 13. Respondent is subject to disciplinary action under section Code sections 8759, 8780,
13 subdivisions (b) and (d), and California Code of Regulations, title 16, section 404, subdivision(s)
14 (u) and/or (dd), in that he acted with incompetence and/or negligence when he failed to prepare a
15 written contract, failed to sign and seal land surveying documents, and failed to perform a
16 boundary survey, as described in paragraph 12, above.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Failed to Execute Written Contract)

19 14. Respondent is subject to disciplinary action under Code section 8780, subdivision (d),
20 in conjunction with section 8759, subdivision (a), in that Respondent failed to execute a written
21 contract prior to commencing work, as described in paragraph 12, above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 (Failed to Sign and Seal Documents)

24 15. Respondent is subject to disciplinary action under Code sections 8780, subdivision (d),
25 8761, subdivision (d), and California Code of Regulations, title 16, section 411, subdivision (g)(2),
26 in that Respondent failed to sign and seal land surveying documents, as described in paragraph 12,
27 above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Misrepresented Scope of Responsibility)

3 16. Respondent is subject to disciplinary action under Code section 8780, subdivision (d),
4 and California Code of Regulations, title 16, section 476, subdivision (c)(2), in that Respondent
5 misrepresented the scope of his responsibility to his clients by failing to inform his clients that a
6 topographical survey was insufficient for their project, as described in paragraph 12, above.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 (Expressed Opinion Not Based in Fact)

9 17. Respondent is subject to disciplinary action under Code section 8780, subdivision (d),
10 and California Code of Regulations, title 16, section 476, subdivision (c)(7), in that he expressed a
11 professional opinion without having performed the required boundary survey, as described in
12 paragraph 12, above.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 18. Respondent is subject to disciplinary action under Code section 8780, subdivision (d)
16 and California Code of Regulations, title 16, section 476, subdivision (a), for unprofessional
17 conduct in that he failed to provide professional services in a manner consistent with the applicable
18 laws, codes, ordinances, rules and/or regulations, as described in paragraph 12-17, above.

19 **PRAYER**

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

23 1. Revoking or suspending Land Surveyor License Number L 8289, issued to Savior P.
24 Micallef;

25 2. Ordering Savior P. Micallef to pay the Board for Professional Engineers, Land
26 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
27 pursuant to Business and Professions Code section 125.3;

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

DATED: 6/14/14


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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