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

In the Matter of the Accusation Against**:** **PAUL HENRI DURAND, JR.** **611 North G Street** **Oxnard, CA 9 93030** **Civil Engineer License No. C 58364** **Structural Engineer License No. S 4222** Respondent.	Case No. 1250-A **FIRST AMENDED ACCUSATION**

PARTIES

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

2. On or about October 15, 1971, The Board issued civil Engineer License Number C 20920 to Paul Henri Durand, Jr. (Respondent) and, on or about December 14, 1977, the Board issued Structural Engineer License Number S2136 to Respondent.

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3. On May 11, 1998, in a prior disciplinary action titled *In the Matter of the Accusation Against Paul Henri Durand, Jr.* in Case Number 633-A, the Board issued a Decision and Order in which Respondent's licenses were ordered revoked, and new licenses were then immediately issued to Respondent[1]. The new licenses, Civil Engineer License No. C 58364 and Structural Engineer License No. S. 4222, were also immediately revoked, however the revocations were stayed and Respondent was placed on probation for four years, with certain terms and conditions. Upon completion of the probationary period, his licenses were fully restored. Those licenses were in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2023, unless renewed.

4. On December 24, 2009[2], in a prior disciplinary action titled *In the Matter of the Accusation Against Paul Henri Durand, Jr.* in Case Number 818-A, the Board issued a Decision and Order in which Respondent's civil engineer license number C-58364 and structural engineer license number S-4222 were revoked, revocations were stayed, and licenses were placed on probation for four years, with certain terms and conditions.

JURISDICTION

5. This First Amended Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated. The California Professional Engineers Act is found at Code sections 6700 to 6799.

6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or 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 be renewed, restored, reissued or reinstated.

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[1] Those new licenses do not allow Respondent to practice land surveying.

[2] On December 28, 2012, in a prior disciplinary action titled *In the Matter of the Accusation Against Paul Henri Durand, Jr.* in Case Number 818-A, the Petition for Reduction of Penalty filed by Respondent was denied by the Board.

STATUTORY PROVISIONS

7. Section 6703 of the Code states, in pertinent part, that:

The phrase "responsible charge of work" means the independent control and direction, by the use of initiative, skill, and independent judgment, of the investigation or design of professional engineering work or the direct engineering control of such projects. The phrase does not refer to the concept of financial liability.

8. Section 6735 of the Code states, in pertinent part, that:

(a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, 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 signature sheet.

9. Section 6737.1 of the Code states, in pertinent part, that:

(a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

(1) Single-family dwellings of woodframe construction not more than two stories and basement in height.

. . .

(b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for woodframe construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by, or under the responsible charge of, a licensed engineer, or by, or under the responsible control of, an architect licensed pursuant to Chapter 3 (commencing with Section 5500). The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation.

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10. Section 6749 of the Code states, in pertinent part, that:

(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 the client's 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:

(1) A description of the services to be provided to the client by the professional engineer.

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

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

(4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.

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

(b) This section shall not apply to any of the following:

(1) Professional engineering services rendered by a professional engineer for which the client will not pay compensation.

(2) A professional engineer who has a current or prior contractual relationship with the client to provide engineering services, and that client has paid the professional engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

. . .

(c) "Written contract" as used in this section includes a contract that is in electronic form.

11. Section 6775 of the Code states, in pertinent part, that:

[T]he board may publicly reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer licensed under this chapter on any of the following grounds:

. . .

(b) Any deceit, misrepresentation, or fraud in his or her practice.

(c) Any negligence or incompetence in his or her practice.

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(d) A breach or violation of a contract to provide professional engineering services.

(e) Any fraud, deceit, or misrepresentation in obtaining his or her certificate as a professional engineer.

(f) Aiding or abetting any person in the violation of any provision of this chapter or any regulation adopted by the board pursuant to this chapter.

(g) A violation in the course of the practice of professional engineering of a rule or regulation of unprofessional conduct adopted by the board.

(h) A violation of any provision of this chapter or any other law relating to or involving the practice of professional engineering.

12. Section 6775.2 of the Code states, in pertinent part, that:

The failure of, or refusal by, a licensee or a certificate holder to respond to a written request from a representative of the board in the investigation of a complaint against that licensee or certificate holder constitutes a cause for disciplinary action under Section 6775 or 6775.1.

REGULATORY PROVISIONS

13. Section 404 of the Title 16, California Code of Regulations states:

For the purpose of the rules and regulations contained in this chapter, the following terms are defined. No definition contained herein authorizes the practice of engineering as defined in the Professional Engineers Act.

. . .

(i) "Board" means the Board for Professional Engineers, Land Surveyors, and Geologists.

. . .

(k) "Civil engineer" refers to a person who holds a valid license in the branch of civil engineering, as defined in Section 6702 of the Code.

(l) "Civil engineering" is that branch of professional engineering as defined in Section 6731 of the Code.

(m) "Code" means the Business and Professions Code.

. . .

(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.

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. . .

(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.

. . .

(ii) "Professional engineer" refers to a person engaged in the practice of professional engineering as defined in Section 6701 of the Code.

(jj) "Professional engineering" within the meaning of this chapter comprises the following branches: agricultural engineering, chemical engineering, civil engineering, control system engineering, corrosion engineering, electrical engineering, fire protection engineering, industrial engineering, manufacturing engineering, mechanical engineering, metallurgical engineering, nuclear engineering, petroleum engineering, quality engineering, safety engineering, and traffic engineering.

. . .

(oo) "structural engineer" refers to a civil engineer who holds a valid authorization to use the title 'structural engineer," as provided in Section 6736 of the Code.

(pp) "structural engineering" for the purposes of structural authority is the application of specialized civil engineering knowledge and experience to the design and analysis of buildings (or other structures) which are constructed or rehabilitated to resist forces induced by vertical and horizontal loads of a static and dynamic nature. This specialized knowledge includes familiarity with scientific and mathematical principles, experimental research data and practical construction methods and processes. The design and analysis shall include consideration of stability, deflection, stiffness and other structural phenomena that affect the behavior of the building (or other structure).

. . .

14. Section 404.2 of title 16, California Code of Regulations states that:

(a) The term "responsible charge" directly relates to the extent of control a licensed land surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as "legally authorized civil engineer") is required to maintain while exercising independent control and direction of land surveying work or services and the land surveying decisions which can be made only by a licensed land surveyor or legally authorized civil engineer.

(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the land surveyor or legally authorized civil engineer:

(A) Makes or review and approves the land surveying decisions defined and described in subdivision (a)(2) below.

(B) In making or reviewing and approving the land surveying decisions, determines the applicability of survey criteria and technical recommendations provided by others before incorporating such criteria or recommendations.

(2) Land Surveying Decisions. The term "responsible charge" relates to land surveying decisions within the purview of the Professional Land Surveyors' Act.

Land surveying decisions which must be made by and are the responsibility of the land surveyor or legally authorized civil engineer in responsible charge are those decisions concerning permanent or temporary work which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:

15. Section 411 of title 16, California Code of Regulations states:

(a) The seal required by Section 6764 of the Code shall be not less than one and one-half (1 1/2) inches in diameter and shall contain the following information:

. . .

(g)(1) All professional engineering plans, specifications, reports, or documents (hereinafter referred to as "documents") shall be signed and sealed in accordance with the requirements of the Professional Engineers Act and any other 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 responsible charge of the work.

. . .

(h) Each licensee shall include the date of signing and sealing immediately below or next to the signature and seal.

16. Section 419 of title 16, California Code of Regulations states that:

For violations of Business and Professions Code sections 6775 and/or 8780 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional engineering and/or a professional land surveying license, the following provisions shall apply to disciplinary orders contained in decisions of the Board:

(a) The minimum disciplinary order shall be reproval. The maximum disciplinary order shall be revocation of the license.

(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the period of probation.

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

(1) The respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

(2) The respondent shall submit such special reports as the Board may require.

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

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

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

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

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

. . .

(e) In addition to the conditions as may be ordered pursuant to subdivisions (c) and/or (d), the following conditions shall be included for the following specific violations:

. . .

(3) Violation and/or breach of contract in the practice of professional engineering and/or professional land surveying:

(A) The respondent shall successfully complete and pass, with a grade of A 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, a college-level course shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; a 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.

. . .

In addition to the disciplinary orders described in this section, all decisions shall address recovery of the Board's investigation and enforcement costs, as described in and authorized by Business and Professions Code section 125.3.

Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser action as the Board deems appropriate, in the interest of protecting the public health, safety, and welfare.

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As used in this section, "license" includes certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles 'structural engineer," "geotechnical engineer," 'soil engineer," 'soils engineer," or "consulting engineer."

17. Section 475 of title 16, California Code of Regulations states that:

To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional engineer, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 6775 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 6775 of the Code.

(a) Compliance with Laws Applicable to a Project:

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

(e) Document Submittal:

(1) A licensee shall not misrepresent the completeness of the professional documents he or she submits to a governmental agency.

(2) A licensee shall not misrepresent the completeness of the professional documents he or she prepared to his or her client or to other involved parties.

COST RECOVERY

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

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FACTUAL ALLEGATIONS- YOLANDA AVENUE PROPERTY

(Complaint Case No. 2019-05-120)

19. In or about April 2019, FG[3] entered into a contract with Respondent to provide professional engineering services for a property located at Yolanda Avenue in Tarzana, California. FG did not receive a written contract for the scope of work.

20. Respondent was paid $1,500.00 by FG.

21. Respondent provided FG a Structural Observation Report Form, dated April 26, 2019. However, Respondent provided incomplete structural observation services and did not provide a record of the one in-person structural observation in a format acceptable to the Los Angeles Department of Building and Safety (LADBS).

22. FG was required to hire another engineer to perform the structural observations for which Respondent was already paid.

23. FG filed a complaint with the Board against Respondent.

24. On May 30, 2019, a Board investigator sent Respondent a letter advising him of the allegations and requesting a response by June 18, 2019 and no response was received. On August 15, 2019, the Board investigator sent another letter to Respondent advising him of the allegations and requesting a response by August 22, 2019. No response was received.

FIRST CAUSE FOR DISCIPLINE

(Failure to Provide A Written Contract)

25. Respondent is subject to disciplinary action under Code section 6749 in that he failed to provide a written contract, signed by a licensed engineer, to FG for the scope of work. Complainant hereby incorporates by reference paragraphs 19 through 24 as though fully set forth herein.

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[3] Initials are being used to protect the individual's identity. Individuals will be identified during the course of discovery.

SECOND CAUSE FOR DISCIPLINE

(Breach of Contract)

26. Respondent is subject to disciplinary action under Code section 6775, subdivision (d), in that he failed to provide the professional engineering services he was contracted to fulfill, including failing to provide structural observation services. Complainant hereby incorporates by reference paragraphs 19 through 24 as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure or Refusal to Respond to Investigation)

27. Respondent is subject to disciplinary action under Code section 6775.2, in conjunction with California Code of Regulations, title 16, section 404.2, in that Respondent failed to respond to the Board's investigation. Complainant hereby incorporates by reference paragraph 24 as though fully set forth herein.

FACTUAL ALLEGATIONS- SUGARMAN DRIVE PROPERTY

(Complaint Case No. 2019-08-215)

28. In or about November of 2018, SC entered into a contract with Respondent who was to provide "engineering documents" and "engineering calculations." The written contract was signed by Jackson Durand, an individual not licensed by the Board, and the terms and conditions of the contract were initialed "JD."

29. Jackson Durand presented himself as a structural engineer and owner of Durand Architectural Engineering (DAE) and identified Respondent as DAE's licensed engineer and "registered" to DAE to SC.

30. Respondent's address of record with the Board is 611 North G. Street, Oxnard California but address used by DAE was 1854 Wedgewood Place, Chula Vista, CA 91913, including in the written contract and invoices provided to SC.

31. SC received drawings prepared by DAE which were presented by DAE as suitable for client review. SC was advised by Jackson Durand that the drawings still have to go through the city for approval. The construction documents did not contain Respondent's stamp, date of stamping and signature. Nothing on the drawing indicates that it is incomplete or in progress.

32. Sheet S-1, Lateral Design coefficients, incorrectly identifies the site location (ZIP Code) as 91411 (Van Nuys, CA) rather than 92037 (La Jolla, CA) and incorrectly identifies a single family residence as a Risk Category IV structure rather than II. The spectral ordinates do not appear to match either site or risk category.

33. According to the Payment Schedule in the contract, the homeowner was to have paid $3,600 for "measurements & designing" and creating the construction documents for permit. The homeowner made the required payments via two checks totaling $3,600. However, the completed and stamped plans were never provided to the homeowner. Respondent failed to provide complete and accurate architectural drawings, engineering plans, structural calculations and energy calculations.

34. Further, despite numerous attempts by SC to get Respondent, through Jackson Durand, to visit the site to review existing conditions and obtain proper measurements, Respondent failed to do so.

35. On October 30, 2019, in response to Board investigator inquiries regarding the project, Respondent advised that "All final work is reviewed by [him] prior to. . . allowing [his] electronic seal to be applied" and listed "his son" Jackson Durand as the point of contact for further inquiries. When attempts were made by the Board investigator to obtain further details, in early November of 2019, Respondent advised the investigator to "stop harassing" him. In December of 2019, Jackson Durand advised the Board investigator that he was the principal owner and representative of DAE and that the licensed engineer was Respondent, his father.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Exercise Responsible Charge)

36. Respondent is subject to disciplinary action under Code section 6703, in conjunction with California Code of Regulations, title 16, section 404.2, in that he did not exercise responsible charge for the structural engineering work reflected on the drawings. Respondent did not visit the site, did not communicate with SC and the construction documents (drawings) are unstamped, incomplete, and inaccurate, despite being purportedly ready for submission for plan check.

Complainant hereby incorporates by reference paragraphs 28 through 35 as though fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Aid and Abetting Unlicensed Activity)

37. Respondent is subject to disciplinary action under Code section 6749, subdivision (a), in conjunction with California Code of Regulations, title 16, section 404.2, in that Respondent aided and abetted Jackson Durand, an unlicensed individual, in the practice of civil engineering and allowed Jackson Durand to sign a contract offering engineering services. Complainant hereby incorporates by reference paragraphs 28 through 36 as though fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Breach of Contract)

38. Respondent is subject to disciplinary action under Code section 6775, subdivision (d), in that he failed to provide the services he was contracted to fulfill, including providing complete and accurate architectural drawings, engineering plans, structural calculations and energy calculations. Further, despite numerous attempts to get Respondent to visit the site to review existing conditions, he failed to do so. Complainant hereby incorporates by reference paragraphs 28 through 35 as though fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Provide Required Stamp and Identification)

39. Respondent is subject to disciplinary action under Code section 6735 and Board Rule 411, subdivision (g)(1) in that Respondent failed to stamp the engineering plans submitted to the homeowner such that the engineer in responsible charge of the project was not clearly identified as required. Complainant hereby incorporates by reference paragraphs 28 through 35 as though fully set forth herein.

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FACTUAL ALLEGATIONS- EVANGELINE PLACE PROPERTY

(Complaint Case No. 2021-06-180)

40. In or about April 2020, LO moved to Oxnard and hired a construction company to construct an accessory dwelling unit (ADU) in the garage on the property located at Evangeline Place in Oxnard, California. Her contractor advised that they would need to hire an architectural engineer and recommended Respondent to her. Accordingly, LO hired Respondent to prepare the required plans. However, she did not receive a signed, written contract from Respondent for the scope of work.

41. Jackson Durand came to her home to take measurements.

42. Respondent provided an invoice, dated April 21, 2020, for $3,000 to LO. LO sent three $500.00 Zelle payments to Respondent in April 2020 and a check for $1,500.00 to Respondent in June 2020.

43. Plans were submitted to the City of Oxnard for the ADU. Dynamic Designs is identified as the provider on the initial drawings, dated May 25, 2020[4]. The set consists of three architectural sheets and five structural sheets, although two of the structural sheets (S-4 and S-5) relate to County of Los Angeles requirements (the project is in the City of Oxnard and the Country of Ventura) and energy calculations. Also, the drawings are not stamped by a licensed engineer or architect.

44. Approximately 10 months elapsed between the initial submission of the ADU plans by Respondent to the City of Oxnard and the last submission of plan check responses on approximately February 24, 2021.

45. From April 2020 until February 2021, LO was advised that the delay was due to Covid and the courthouse being closed. In February 2021, LO contacted the Mayor of Oxnard and the supervisor of the permitting department. Within a few hours, LO was advised that Respondent had submitted incomplete, sloppy and unreadable drawings. They also provided copies of three written requests for additional information that the city sent to Respondent to which he had not

[4] The plans provided to the Board, dated May 25, 2020, are labeled "Plans #1,"

responded. LO was also advised that Respondent's son, Jackson Durand, an unlicensed individual, was Respondent's spokesperson.

46. On February 16, 2021, a conference call was scheduled by the city wherein city personnel, the contactor, LO and LO's son were present. Respondent's son, Jackson Durand advised them that Respondent was unable to be on the call. However, Respondent appeared on the call, not realizing he was on camera, and made an obscene gesture. Following the call, Respondent and his son agreed to refund $3,000 to LO and complete the drawings.

47. Several days later, on approximately February 24, 2021, Jackson Durand submitted additional incomplete plans to the city. The resubmission did not resolve the plan check comments and generated plan check comments #5, which indicated multiple unaddressed or unresolved items.

48. In April 9, 2021, LO contacted Respondent and requested a reimbursement of the $3,000 she had paid as he had promised on the aforementioned conference call. On April 10, 2021, Respondent responded to LO, via email, by stating "none is due to you."

49. On April 19, 2021, the California Architects Board received a consumer complaint from LO, the California Architects Board then forwarded the complaint to the Board.

50. On July 1, 2021, a Board investigator requested documents from Respondent by July 21, 2021, which was extended to August 5, 2021. On August 2, 2021, a letter, dated July 27, 2021, was received from Respondent by the Board investigator, with documents related to the project. Respondent alleged that he had "made every effort to address his [plan checker's] concerns."

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Provide A Written Contract)

51. Respondent is subject to disciplinary action under Code section 6749 in that he failed to provide a written contract signed by a licensed engineer to LO prior to commencing work. Complainant hereby incorporates by reference paragraphs 40 through 50 as though fully set forth herein.

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NINTH CAUSE FOR DISCIPLINE

(Failure to Meet the Standard of Care)

52. Respondent is subject to disciplinary action under Code section 6775, subdivision (c), as defined by title 16, Code of Regulations, sections 404, subdivisions (u) and (dd) and 475, in that he committed negligence by failing to use the care, experience and knowledge ordinarily exercised in like cases by duly licensed professional engineers in good standing, during the course of providing engineering services to LO. Specifically, the initial plans submitted by Respondent for the purpose of obtaining a building permit generated a long list of plan check comments. The plans contained irrelevant information in lieu of required information appropriate for a project in the City of Oxnard, the plans were incomplete, were inaccurate, and were illegible. The city provided several plan check comments and the comments indicate that Respondent did not address all outstanding plan check comments. There is a lack of progress reflected in resolving issues identified at the beginning of and throughout the plan check. The time taken by Respondent to resolve the plan check comments did not reflect diligent efforts by Respondent as required to exercise his professional responsibilities. Moreover, this was a simple project and, as such, this plan check should have been brought to a successful conclusion in significantly less time, regardless of the pandemic. Complainant hereby incorporates by reference paragraphs 40 through 50 as though fully set forth herein.

TENTH CAUSE FOR DISCIPLINE

(Misrepresentation)

53. Respondent is subject to disciplinary action under Code section 6775, subdivision (b), as defined by title 16, Code of Regulations section 475, subdivision (e)(1), in that he misrepresented the completeness of initial and subsequent plan submissions. Complainant hereby incorporates by reference paragraphs 40 through 50 and 52 as though fully set forth herein.

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FACTUAL ALLEGATIONS- WEST STEELE LANE PROPERTY

(Complaint Case No. 2021-05-141)

54. MO was experiencing possible water drainage and foundational issues with her property located at West Steele Lane in Santa Rosa, California so she obtained bids from four foundation contractors to correct the issue.

55. Intending on contacting a licensed engineer, on April 10, 2021, MO contacted Marc Durand, who was not licensed by the Board, to review the bids because of differences in price, measurements, and scope and method of repair. She advised Marc Durand that "none [of the bids] are comparable in scope or type of repair so I need your expertise to determine what needs to be done and how to do it." MO sought an evaluation of the bids, an engineering assessment of foundation sinkage, water drainage, and soil consistency in order to determine the appropriate steps to protect her home from sinkage.

56. In or about April 13, 2021, MO received an unsigned proposal from Marc Durand titled "Foundation Inspection Report," on the letter head of Paul Durand Engineering, which included a visual inspection and review of foundation repair proposals as part of the scope of work, and indicated that a payment of $750.00 was due at the time of site inspection. Marc Durand is listed as the "project manager," with an email address that contained the words "speedy engineer." MO signed the proposal on the same date. Respondent, a licensed engineer, did not sign the proposal. MO was not provided a contract that was signed by a licensed engineer prior to commencement of the work.

57. Marc Durand performed a site inspection at MO's property. At the inspection, Marc Durand identified himself as Respondent's brother, advised MO that he resided in Sebastopol, and wore a shirt with the company name of "Speedy Engineering." At the inspection, Marc Durand used a regular "spirit" level[5] and placed it outside of the house, and inside the home on the floor and walls. MO had provided copies of the contractor bids to Marc Durand prior to the site inspection. MO also gave Marc Durand a check payable to Respondent on that same day.

[5] A spirit level is a tool used to indicate how level (horizontal) a surface is relative to the earth. It is a tool used in construction.

58. On or about April 19, 2021, MO sent an email to Marc Durand terminating the contract. She requested the fee be adjusted to delete the cost associated with preparing the report because the "pending written report discussed by phone today does not meet my understanding and expectations." On April 21, 2021, MO cancelled the check she issued to Respondent.

59. After she terminated the contract, MO received an Inspection Report, dated April 20, 2021, from Marc Durand prepared on letterhead for Paul Durand Engineering. In the report, Marc Durand was listed as the project manager and his email contained the words "speedy engineer." The report noted the lack of observed damage to the building exterior, evidence of runoff from the adjacent property that collects "far" from the house or drains to the street, the presence of some damage to an interior wall, that the kitchen was "slightly out of level," and that interior doors operate correctly. There are no numerical results presented in the report. The report concludes that roof drainage falls near the foundations due to the lack of gutters and recommends installing gutters and regrading soil away from the house. It also recommends that "structural supports underneath the home should be reinforced and/or repaired to correct any defects," after the drainage issues are addressed. No recommendations were made as to which supports should be addressed or the manner in which this work should be done. The report recommends against jacking up the foundation. The report does not discuss the four foundation repair proposals.

60. On April 23, 2021, the Board received a complaint from MO against Respondent.

61. On September 20, 2021, documents were received by a Board investigator from Marc Durand, including a response letter from Paul Durand. In his response letter, Paul Durand explained that Marc Durand operated under his supervision, that Marc Durand performed the site inspection and that MO was provided verbal recommendations and was advised that the information would be reviewed by Respondent. Copies of communications were also provided, including an email, dated April 20, 2021 at 8:38 a.m., from Marc Durand to Respondent transmitting the Inspection Report which stated "Please review," and an email sent to MO a few minutes later, on April 20, 2021, at 9:17 a.m., transmitting the Inspection Report to her.

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ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Provide A Written Contract)

62. Respondent is subject to disciplinary action under Code section 6749 in that he failed to provide a written contract to LO that was signed by an engineer prior to commencing work. Complainant hereby incorporates by reference paragraphs 54 through 61 as though fully set forth herein.

TWELFTH CAUSE FOR DISCIPLINE

(Breach of Contract)

63. Respondent is subject to disciplinary action under Code section 6775, subdivision (d), in that he failed to provide the professional services he was contracted to fulfill for MO. MO specifically requested an assessment of the contractor proposals, which were provided to Respondent prior to commencing work. The proposal and contract by Respondent promised to provide a "report detailing the [foundation] issues and how to fix them." The report provided to MO did not contain a discussion of mitigation options. No recommendations were made as to which supports should be addressed or the manner in which this work should be done. Even if Respondent ultimately did not recommend modifications to the foundations, and in the absence of a warning that doing so would be unsafe, which the report did not contain, the choice remained with MO. A discussion of potential foundation mitigation work and an assessment of the proposals should have been provided in the report. The report does not discuss the four foundation repair proposals. Complainant hereby incorporates by reference paragraphs 54 through 61 as though fully set forth herein.

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Meet the Standard of Care)

64. Respondent is subject to disciplinary action under Code section 6775, subdivision (c), as defined by title 16, Code of Regulations sections 404, subdivision (dd) and 475, in that he committed negligence during the course of providing engineering services to MO, including as follows:

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(a) Respondent received copies of the leveling survey reports MO received from contractors which contained differential elevations. Typical differential elevations over a distance of 30 feet are expected to be in the range of .25 inches to .5 inches. The differential elevations in MO's residence, adjusting for the shorter distance over which the elevations were obtained, are from five to six times the expected amount. This represents a significant finding. Even allowing for construction tolerances that might account for some of the variation, these differential elevations indicate an unusual condition that warranted review by Respondent and a thorough discussion in Respondent's report. Instead, the report merely describes the kitchen floor as "slightly out of level" and notes that the floor "does not feel weak under foot (sic)." Respondent did not inspect the residence. Marc Durand, who inspected the property, used a regular spirit level at the inspection. A manometer survey, and not a spirit level, is a more accurate method and meets the standard of care. There is no evidence that Respondent ordered an independent survey to address the difference in opinion between the contractors' numerical results and Marc Durand's subjective, unlicensed, assessment following his inspection of the property. As an unlicensed individual, Marc Durand does not possess the professional qualifications to determine the significance of the reported elevation variations or to determine the appropriate methods to qualitatively determine the elevation variations for the purpose of providing professional engineering advice to a client.

(b) Respondent was supposed to provide an assessment of the contractors' proposals and detail the foundation issues and advise the homeowner how to fix them but the report did not contain a discussion of mitigation options.

Complainant hereby incorporates by reference paragraphs 54 through 61 as though fully set forth herein.

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DISCIPLINE CONSIDERATIONS

65. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that effective May 11, 1998, in a prior disciplinary action *titled In the Matter of the Accusation Against Paul Henri Durand, Jr.* before the Board for Professional Engineers, Land Surveyors, and Geologists, in Case Number 633-A, Respondent's licenses were ordered revoked, and new licenses were then immediately issued to Respondent. Those new licenses, Civil Engineer License No. C 58364 and Structural Engineer License No. S. 4222, were immediately revoked, however the revocations were stayed and Respondent was placed on probation for four years, with certain terms and conditions. Upon completion of the probationary period, his licenses were fully restored. That decision is now final, and in that decision, Respondent admitted the following:

(a) Respondent admitted to being disciplined by the State Board of Arizona for acts substantially related to the practice of civil engineering, including an administrative penalty of $1,000. The Arizona Board found that Respondent misrepresented himself by certifying on an American Land Title Association (ALTA) survey that he was an Arizona registered land surveyor when he was not so registered, that he accepted engagement to perform ALTA surveys which were outside his category of registration as a civil engineer in Arizona, and that he prepared drawings which contained conflicting information.

(b) Respondent also admitted, regarding the Sonora Plaza Project, that he was guilty of negligence in the practice of land surveying in that he performed land surveying services and located only two monuments when additional monuments were easily located, and failed to locate and show evidence of another easement, a drainage or water ditch.

(c) Respondent further admitted, regarding the Pine Street Property, that he was guilty of negligence in the practice of land surveying in that he failed to correctly record and describe the monuments found or set on the property, failed to file a record of survey, failed to accept the positions of monuments set by the original survey, and that in lieu of filing a record of survey setting forth any material discrepancies, he failed to file a corner record even though all but one

of the monuments shown on Respondent's plat were different monuments from those shown on the original plat.

(d) Respondent further admitted to being disciplined by the Colorado Board of Registration for Professional Engineers and Professional Land Surveyors for acts substantially related to the practice of civil engineering based on the discipline imposed by the State of Arizona.

66. Complainant further alleges that on or about December 24, 2009, in a prior disciplinary action titled *In the Matter of the Accusation Against Paul Henri Durand, Jr.* before the Board for Professional Engineers, Land Surveyors, and Geologists, in Case Number 818-A, Respondent's civil engineer license number C-58364 and structural engineer license number S-4222 were revoked, revocations were stayed, and licenses were placed on probation for four years, with certain terms and conditions. That decision is now final. The underlying Accusation alleged that Respondent committed negligence in the practice of civil and structural engineering for the Fitzpatrick Lane project, including in that he failed to provide documentation requested by the County and that during an investigation into unlicensed practice, Respondent admitted that, in 2005, he signed and stamped a geotechnical engineering report for a project located in Riverside County that had been prepared by an unlicensed individual and that he had signed it without personally performing or verifying the tests, analysis, or calculations found in the report.. Respondent also admitted to committing fraud and deceit and aiding and abetting unlicensed practice.

PRAYER

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

1. Revoking or suspending Civil Engineer License Number C 58364 issued to Paul Henri Durand, Jr.;

2. Revoking or suspending Structural Engineer License Number S 4222, issued to Paul Henri Durand, Jr.;

3. Ordering Paul Henri Durand, Jr. 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; and,

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

DATED: 3/29/2022

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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