

IN THE MATTER OF:)	CASE NO. 2015-49
)	
EUGENE A. BRIAN, P.E.)	
)	
RESPONDENT)	
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)	

The Louisiana Professional Engineering and Land Surveying Board [hereinafter the “Board”], by and through its Executive Director, pursuant to authorization by the Board, and Eugene A. Brian, P.E. [hereinafter “Respondent”], hereby agree to the following:

An investigation was opened based upon the Board's receipt of information and documents which suggested that Respondent may have committed various violations of the Board's laws and/or rules in connection with his practice of engineering in Louisiana. The investigation disclosed that (a) in or about January 2013 Respondent sealed, signed and issued a set of engineering design plans for a new commercial mercantile project for Sandrock Plaza in Chalmette, Louisiana, (b) in or about June 2014 Respondent sealed, signed and issued a set of engineering design plans for a renovation of an existing restaurant and lounge for MeMe's Bar & Grille in Chalmette, Louisiana, (c) in or about April 2015 Respondent sealed, signed and issued a set of engineering design plans for a renovation of a private residence for Joe Tumalty in New Orleans, Louisiana and (d) in 2015 Respondent sealed, signed and issued a set of engineering design plans for a new auto repair shop for Franklin Castro in Marrero, Louisiana.

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material deficiency: failure to design toilet rooms in accordance with the ADA and ABA Accessibility Guidelines [hereinafter “ADA-ABA”].

Additionally, the investigation disclosed that the plans for MeMe’s Bar & Grille, which were submitted to the LSFM for review, included the following material deficiencies:

- a) failure to comply with the accessibility requirements for new construction in accordance with the ADA-ABA;
- b) failure to comply with the accessibility requirements for altering existing elements, spaces or common areas in accordance with the ADA-ABA;
- c) failure to provide an accessible route on the site from parking to building entrance in accordance with the ADA-ABA;
- d) failure to provide accessible parking spaces, including van accessible spaces and accessible parking signage, in accordance with the ADA-ABA;
- e) failure to design ADA-ABA compliant toilet rooms, bathing rooms, water closets and toilet compartments;
- f) failure to design ADA-ABA compliant lavatories in toilet rooms and break room/conference room sinks;
- g) failure to design ADA-ABA compliant sales and service counters;
- h) failure to design level landings outside exterior doors in accordance with the National Fire Protection Association Life Safety Code [hereinafter “NFPA”] and the International Building Code [hereinafter “IBC”];
- i) failure to design steps for changes in elevation of 21” or less in accordance with the NFPA;
- j) failure to provide at least two accessible means of egress in accordance with the NFPA and IBC;
- k) failure to provide emergency lighting in accordance with the NFPA and IBC;
- l) failure to design gas piping in accordance with the NFPA;
- m) failure to provide exterior elevations, as appropriate; and
- n) failure to properly check the plans for conformance to the applicable codes prior to sealing, stamping and signing.

The investigation also disclosed that the plans for Joe Tumalty, which were submitted to the New Orleans Department of Safety and Permits for review, included the following material deficiencies:

- a) failure to follow the International Residential Code [hereinafter “IRC”] for enclosed areas below design flood elevation;
- b) failure to locate piles on foundation plan in accordance with the IBC; and
- c) failure to design IRC complaint floor joists.

Additionally, the investigation disclosed that the plans for Franklin Castro, which were submitted to the LSFM for review, included the following material deficiencies:

- a) failure to identify the repair garage classification as minor or major in accordance with the NFPA;
- b) failure to provide the correct number of remotely located means of egress in accordance with the NFPA and IBC;
- c) failure to design bathroom in accordance with the ADA-ABA;
- d) failure to provide van accessible parking space in accordance with the ADA-ABA; and
- e) failure to provide an accessible route on the site from parking to building entrance in accordance with the ADA-ABA.

Furthermore, the investigation disclosed that (a) the plans for Sandrock Plaza were prepared by an unlicensed person (Lisa Southern) who was not employed by Respondent, (b) the plans for MeMe’s Bar & Grille, Joe Tumalty and Franklin Castro were prepared by an unlicensed person (Larry Trumbaturi) who was not employed by Respondent and (c) Respondent did not exercise responsible charge over the preparation of the plans by Southern and Trumbaturi.

The investigation also disclosed that since at least 2010 Respondent has been designing buildings and/or building systems in Louisiana.

On or about March 11, 2014, Respondent submitted to the Board his 2014 Louisiana professional engineer license renewal invoice, confirming thereon that **(a)** he had met the Board’s requirements for continuing professional development [hereinafter “CPD”] for active status for the biennial licensure renewal period of April 1, 2012 to March 31, 2014, **(b)** if selected for a

CPD audit by the Board he would be required to submit the appropriate documentation to validate completion of all CPD requirements and **(c)** failure to comply with such CPD requirements or any false statements made by him could be cause for disciplinary action by the Board.

In 2015 the Board audited Respondent's CPD records for the biennial licensure renewal period of April 1, 2012 to March 31, 2014. In responding to this CPD audit, Respondent **(a)** failed to produce the appropriate documentation to prove that, for such biennial licensure renewal period, he had earned the required minimum of thirty (30) professional development hours [hereinafter "PDHs"] in engineering related activities and eight (8) PDHs in Life Safety Code, building codes and/or the Americans with Disabilities Act Accessibility Guidelines and **(b)** falsified some of the documentation which he did submit.

On or about February 23, 2016, Respondent submitted to the Board his 2016 Louisiana professional engineer license renewal invoice, confirming thereon that **(a)** he had met the Board's requirements for CPD for active status for the biennial licensure renewal period of April 1, 2014 to March 31, 2016, **(b)** he does not design buildings and/or building systems, **(c)** if selected for a CPD audit by the Board he would be required to submit the appropriate documentation to validate completion of all CPD requirements and **(d)** failure to comply with such CPD requirements or any false statements made by him could be cause for disciplinary action by the Board.

In 2016 the Board audited Respondent's CPD records for the biennial licensure renewal period of April 1, 2014 to March 31, 2016. In responding to this CPD audit, Respondent failed to produce the appropriate documentation to prove that, for such biennial licensure renewal period, he had earned the required minimum of eight (8) PDHs in Life Safety Code, building codes and/or the Americans with Disabilities Act Accessibility Guidelines.

Additionally, the investigation disclosed that **(a)** since at least April 2016 Respondent has referred to himself as a "Structural Engineer" on his business letterhead in Louisiana, **(b)** since at least 2016 Respondent has referred to himself as a "Structural/Civil Engineer" and a "Structural Engineer" on his *LinkedIn* page and **(c)** at all times material hereto Respondent has maintained an office in New Orleans, Louisiana.

La. R.S. 37:698(A)(1) prohibits licensees from committing any fraud, deceit, material misstatement or perjury, or the giving of any false or forged evidence, in applying for a renewal license with the Board. La. R.S. 37:698(A)(2) prohibits licensees from committing any gross negligence, gross incompetence or gross misconduct in the practice of engineering. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2503(C), require licensees to approve and seal only those design documents which are safe for public health, property and welfare, which are complete and accurate, which are in conformity with accepted engineering standards or practice, and which conform to applicable laws and ordinances. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2503(C) and (D), 2505(C) and 2701(A)(3), prohibit licensees from sealing, signing or issuing engineering documents not prepared by the licensee or under their responsible charge. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2505(A) and (B), require licensees to perform services only in the area of their competence and when qualified by education or experience in the specific technical fields of engineering involved. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2505(C), prohibit licensees from sealing or signing engineering documents dealing with subject matters in which they lack competence. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2509(B)(1), prohibit licensees from falsifying or permitting the misrepresentation of their professional qualifications. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2511, prohibit licensees from making exaggerated, misleading, deceptive or false statements or claims about professional qualifications, experience or performance in brochures, correspondence, listings, or other public communications. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§3105(A), require professional engineer licensees to obtain thirty (30) PDHs in engineering related activities during each biennial licensure renewal period. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§3105(A)(2), require professional engineer licensees who design buildings and/or building systems to earn a minimum of eight (8) PDHs in Life Safety Code, building codes and/or the Americans with Disabilities Act Accessibility Guidelines during each biennial licensure renewal period. La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§3115, 3117 and 3119, require licensees to maintain certain documentation of compliance with the Board's CPD requirements and to provide proof of such compliance to the Board upon request. La. R.S. 37:698(A)(11) prohibits licensees from using any advertising or solicitation which is false or

misleading. La. R.S. 37:698(A)(18) prohibits licensees from practicing or offering to practice engineering when not qualified. La. R.S. 37:698(H) permits the Board to take disciplinary action against persons who violate La. R.S. 37:698(A)(1), La. R.S. 37:698(A)(2), La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2503(C) and (D), 2505(A), (B) and (C), 2509(B)(1), 2511, 2701(A)(3), 3105(A), 3105(A)(2), 3115, 3117, 3119, La. R.S. 37:698(A)(11), and La. R.S. 37:698(A)(18), upon a finding of guilt following the preferral of charges, notice and hearing and a majority vote of its entire membership authorized to participate in the proceeding. La. R.S. 37:698(A)(1), (2), (6), (11) and (18), La. R.S. 37:698(H) and LAC Title 46:LXI§2503(C) and (D), 2505(A), (B) and (C), 2509(B)(1), 2511, 2701(A)(3), 3105(A), 3105(A)(2), 3115, 3117 and 3119 were in effect at all times material hereto.

It is undisputed that **(a)** between January 2013 and 2015 Respondent sealed, signed and issued sets of engineering design plans for four (4) projects in Louisiana, each of which contained a number of material deficiencies, **(b)** the plans were prepared by unlicensed individuals who were not employed by Respondent, **(c)** Respondent did not exercise responsible charge over the preparation of the plans by the unlicensed individuals, **(d)** since at least 2010 Respondent has been designing buildings and/or building systems in Louisiana, **(e)** on or about March 11, 2014 Respondent submitted to the Board his 2014 Louisiana professional engineer license renewal invoice, which confirmed that he had met the Board's CPD requirements for active status for the biennial licensure renewal period of April 1, 2012 to March 30, 2014, **(f)** Respondent failed to earn (and falsely stated that he had earned) the required minimum of thirty (30) PDHs in engineering related activities and eight (8) PDHs in Life Safety Code, building codes and/or the Americans with Disabilities Act Accessibility Guidelines for the biennial licensure renewal period of April 1, 2012 to March 30, 2014, **(g)** Respondent falsified some of the documentation which he submitted in responding to the audit of his CPD records for the biennial licensure renewal period of April 1, 2012 to March 31, 2014. **(h)** on or about February 23, 2016 Respondent submitted to the Board his 2016 Louisiana professional engineer license renewal invoice, which confirmed that he had met the Board's CPD requirements for active status for the biennial licensure renewal period of April 1, 2014 to March 30, 2016 and that he did not design buildings and/or building systems, **(i)** Respondent failed to earn (and falsely stated

that he had earned) the required minimum of eight (8) PDHs in Life Safety Code, building codes and/or the Americans with Disabilities Act Accessibility Guidelines for the biennial licensure renewal period of April 1, 2014 to March 30, 2016 and that he did not design buildings and/or building systems, **(j)** since at least April 2016 Respondent has referred to himself as a “Structural Engineer” on his business letterhead in Louisiana, **(k)** since at least 2016 Respondent has referred to himself as a “Structural/Civil Engineer” and a “Structural Engineer” on his *LinkedIn* page, **(l)** at all times material hereto, Respondent was not listed by the Board in the discipline of structural engineering and **(m)** at all times material hereto Respondent has maintained an office in New Orleans, Louisiana.

By letter dated October 27, 2016, the Board gave notice to Respondent that it was considering the preferral of charges against Respondent on the grounds that he may have violated **(a)** La. R.S. 37:698(A)(1), relative to fraud, deceit, material misstatement or perjury, or the giving of any false or forged evidence, in applying for a renewal license with the Board, **(b)** La. R.S. 37:698(A)(2), relative to gross negligence, gross incompetence and gross misconduct in the practice of engineering, **(c)** La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2503(C), relative to approving and sealing only those design documents which are safe for public health, property and welfare, which are complete and accurate, which are in conformity with accepted engineering standards or practice, and which conform to applicable laws and ordinance, **(d)** La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2503(C) and (D), 2505(C) and 2701(A)(3), relative to sealing, signing or issuing engineering documents not prepared by the licensee or under their responsible charge, **(e)** La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2505(A) and (B), relative to performing services only in the area of the licensee’s competence and when qualified by education or experience in the specific technical fields of engineering involved, **(f)** La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2505(C), relative to sealing or signing engineering documents dealing with subject matters in which the licensee lacks competence, **(g)** La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2509(B)(1), relative to falsifying or permitting the misrepresentation of the licensee’s professional qualifications, **(h)** La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§2511, relative to making exaggerated, misleading, deceptive or false statements or claims about professional qualifications, experience or performance in brochures,

correspondence, listings, or other public communications, **(i)** La. R.S. 37:698(A)(6), *to wit* LAC Title 46:LXI§3105(A), 3105(A)(2), 3115, 3117 and 3119, relative to the Board's CPD requirements, **(j)** La. R.S. 37:698(A)(11), relative to using any advertising or solicitation which is false or misleading, and **(k)** La. R.S. 37:698(A)(18), relative to practicing or offering to practice engineering when not qualified.

Wishing to dispense with the need for further disciplinary action and to conclude the instant proceeding without further delay and expense, for the purpose of this proceeding only, Respondent and the Board do hereby enter into this Consent Order, in which Respondent of his own free will consents to the issuance of a Consent Order by the Board, wherein Respondent agrees to **(a)** the permanent surrender of his Louisiana professional engineer license on the effective date of this Consent Order, **(b)** the permanent surrender of his Louisiana professional land surveyor license on the effective date of this Consent Order, **(c)** return his Louisiana certificate of professional engineering licensure and all professional engineering seals to the Board, **(d)** return his Louisiana certificate of professional land surveying licensure and all professional land surveying seals to the Board and **(e)** the publication of this Consent Order on the Board's website and a summary of this matter in the Board's official journal, the *Louisiana Engineer and Surveyor Journal*, and the reporting of this matter to the National Council of Examiners for Engineering and Surveying (NCEES), identifying Respondent by name.

Respondent admits that his conduct as set forth above constitutes violations of the above referenced laws and/or rules as stated herein. Respondent acknowledges awareness of said laws and/or rules and states that he will comply with all applicable laws and rules henceforth. Respondent has been advised of his right to be represented by counsel before the Board and/or to appear at any hearing personally or by counsel and present witnesses and evidence in his own behalf, he hereby waives this right and his right to appeal, and he states affirmatively that he has been afforded all administrative remedies due him under the law. Respondent further acknowledges awareness of the fact that the signed original of this Consent Order will remain in the custody of the Board as a public record and will be made available for public inspection and copying upon request.

Therefore, in consideration of the foregoing and by signing this Consent Order, Respondent does hereby waive his right to a hearing before the Board, to the presenting of evidence and witnesses in his behalf, to Findings of Fact and Conclusions of Law in this case, and to judicial review of this Consent Order.

Respondent hereby represents that **(a)** he fully understands the meaning and intent of this Consent Order, including but not limited to its final and binding effect, **(b)** he has voluntarily entered into this Consent Order and that no other promise or agreement of any kind has been made to or with him by any person whatsoever to cause the execution of this instrument and **(c)** the sanctions set forth in this Consent Order do not prevent the Board from taking further disciplinary or enforcement action against Respondent on matters not specifically addressed in this Consent Order.

WHEREFORE, the Louisiana Professional Engineering and Land Surveying Board and Respondent agree that:

1. Respondent's Louisiana professional engineer license, number PE-11960, shall be permanently surrendered to the Board on the effective date of this Consent Order; and
2. Respondent's Louisiana professional land surveyor license, number PLS-743, shall be permanently surrendered to the Board on the effective date of this Consent Order; and
3. Respondent shall no longer be permitted to practice or offer to practice engineering or land surveying in the State of Louisiana on and after the effective date of this Consent Order; and
4. Respondent shall return his Louisiana certificate of professional engineering licensure and all professional engineering seals to the Board within ten (10) business days of the effective date of this Consent Order; and
5. Respondent shall return his Louisiana certificate of professional land surveying licensure and all professional land surveying seals to the Board within ten (10) business days of the effective date of this Consent Order; and
- 6.. This Consent Order shall be published on the Board's website and a summary of this matter shall be printed in the official journal of the Board, the *Louisiana Engineer and*

Surveyor Journal, and reported to the National Council of Examiners for Engineering and Surveying (NCEES), identifying Respondent by name; and

7. This Consent Order shall not become effective unless and until it is accepted and signed by and on behalf of the Board. Should the Board not accept and sign this Consent Order, it is agreed that presentation of this matter to the Board shall not prejudice the Board or any of its members, staff, attorneys or representatives from further participation, consideration, or resolution of any further proceedings herein.

LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD

DATE: 5/15/17

BY: Donna D. Sentell
DONNA D. SENTELL, Executive Director

DATE: 4/8/17

Eugene A. Brian
EUGENE A. BRIAN, P.E., Respondent

Witnesses to the signature of
Eugene A. Brian, P.E.

Nancy G. Hernandez
Print Name: Nancy P. Hernandez

Carlos A. Hernandez
Print Name: CARLOS A. HERNANDEZ