BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**S M P CONSTRUCTION & MAINTENANCE INC.**
**dba FOUNDATION REPAIR OF CA**
**1813 Rutan Drive, Suite A**
**Livermore, CA 94551**
**MATHEW PHELPS, RMO**
**MARK ANTHONY PHELPS, CEO/PRES**

**Contractor's License No. 973851, B, C-61/D-30**

Respondent.

**S M P CONSTRUCTION AND MAINTENANCE INC**
**dba FOUNDATION SUPPORT OF CA**
**1813 Rutan Drive, Suite A**
**Livermore, CA 94551**
**MATHEW PHELPS, RMO**
**MARK ANTHONY PHELPS, CEO/PRES**

**Contractor's License No. 1004284, B, C-61/D30**

Affiliated License.

CASE NO. N2015-490

ORDER TO ADOPT
STIPULATED SETTLEMENT

The attached Stipulated Settlement is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter. The failure to comply with any of the terms and conditions as set forth in the provisions of probation will be deemed a violation of probation.

IT IS FURTHER ORDERED that **S M P CONSTRUCTION & MAINTENANCE INC.,** License Number **973851**, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of $45,000.00, for a period of not less than three years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a disciplinary bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.

IT IS FURTHER ORDERED that **S M P CONSTRUCTION AND MAINTENANCE INC dba FOUNDATION SUPPORT OF CA**, License Number **1004284**, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of $45,000.00, for a period of not less than three years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a disciplinary bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.

IT IS FURTHER ORDERED that Respondents shall pay the investigative costs in the amount of $15,644.12. Monthly payments are to be made in the amount of $521.47, until completed. Payments are to be made at the end of each month, commencing the first full month after the effective date of this decision.

IT IS THE responsibility of the Respondents, named in this Order, to read and follow the Order. The deadlines for meeting the terms and conditions are based upon the EFFECTIVE DATE of this Decision. No notices or reminders will be sent as to compliance with the terms and conditions. Proof of payments of restitution and payments for the Cost of Investigation and Enforcement if ordered, are to be sent to CSLB, Sacramento Case Management, Post Office Box 26888, Sacramento, CA 95826.

This Decision shall become effective on March 8, 2018.

IT IS SO ORDERED February 7, 2018.

Tonya Corcoran
Chief Deputy Registrar

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KRISTINA T. JARVIS
Deputy Attorney General
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*Attorneys for Complainant*

**BEFORE THE**
**REGISTRAR OF CONTRACTORS**
**CONTRACTORS' STATE LICENSE BOARD**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

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| In the Matter of the Accusation Against:<br><br>**SM P CONSTRUCTION & MAINTENANCE INC.**<br>**dba FOUNDATION REPAIR OF CA**<br>**1813 Rutan Drive, Suite A**<br>**Livermore, CA 94551.**<br>**MATHEW PHELPS, RMO**<br>**MARK ANTHONY PHELPS, CEO/PRES**<br><br>**Contractor's License No. 973851, B, C-61/D-30**<br><br>Respondent. | Case No. N2015-490<br><br>**STIPULATED SETTLEMENT AND DISCIPINARY ORDER** |
| **S M P CONSTRUCTION AND MAINTENANCE INC**<br>**dba FOUNDATION SUPPORT OF CA**<br>**1813 Rutan Drive, Suite A**<br>**Livermore, CA 94551**<br>**MATHEW PHELPS, RMO**<br>**MARK ANTHONY PHELPS, CEO/PRES**<br><br>**Contractor's License No. 1004284, B, C-61/D30**<br><br>Affiliated License. | |

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

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## PARTIES

1. Wood Robinson (Complainant) is the Enforcement Supervisor I of the Contractors' State License Board (Registrar). He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Kristina T. Jarvis, Deputy Attorney General.

2. On or about June 8, 2012, the Registrar of Contractors ("Registrar") issued Contractor's License Number 973851, classification B (general building contractor) to S M P Construction & Maintenance, Inc. dba Foundation Repair of CA ("Respondent"), with Mathew Phelps as the Responsible Managing Officer ("RMO"), and Mark Anthony Phelps as the CEO/President. On or about December 23, 2015, the Registrar issued classification C-61 (limited specialty), D-30 (pile driving/pressure foundation jacking) to Respondent. The Contractor's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

3. On or about June 30, 2015, the Registrar issued Contractor's License Number 1004284 classification B (general building contractor) to S M P Construction and Maintenance, Inc. dba Foundation Support of CA with Mathew Phelps as the RMO, and Mark Anthony Phelps as the CEO/President. On or about October 29, 2015, the Registrar issued classification C-61 (limited specialty), D-30 (pile driving/pressure foundation jacking) to S M P Construction and Maintenance, Inc. dba Foundation Support of CA, with Mathew Phelps as the RMO, and Mark Anthony Phelps as an officer. This Contractor's License is an affiliated license to Respondent. This Contractor's License will expire on June 30, 2019, unless renewed.

## JURISDICTION

4. Accusation No. N2015-490 was filed before the Registrar, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 23, 2016. Respondent timely filed its Notice of Defense contesting the Accusation. First Amended Accusation No. N2015-490 was filed before the Registrar, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on May 31, 2017.

5. A copy of First Amended Accusation No. N2015-490 is attached as exhibit A and incorporated herein by reference.

**ADVISEMENT AND WAIVERS**

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. N2015-490. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

**CULPABILITY**

9. The Third Cause for Discipline in the First Amended Accusation is hereby withdrawn.

10. Respondent understands and agrees that the charges and allegations in First Amended Accusation No. N2015-490, if proven at a hearing, constitute cause for imposing discipline upon its Contractor's License.

11. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the First Amended Accusation, and Respondent hereby gives up its right to contest all charges.

12. Respondent agrees that its Contractor's License is subject to discipline and it agrees to be bound by the Registrar's probationary terms as set forth in the Disciplinary Order below.

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## RESERVATION

13. The admissions made by Respondents herein are only for the purposes of this proceeding, or any other proceedings in which the Registrar of Contractors, Contractors' State License Board, or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

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

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

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

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Registrar may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Contractor's License No. 973851 issued to Respondent S M P Construction & Maintenance, Inc. dba Foundation Repair of CA; Mathew Phelps, RMO (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

IT IS FURTHER ORDERED that should Respondent or Respondent's officers named in First Amended Accusation No. N2015-490 be issued another license, any such license will be issued, revoked, with the revocation stayed and Respondent placed on probation for the remaining term of this probation subject to the same terms and conditions of probation set forth herein.

1. **Obey All Laws.** Respondent shall comply with all federal, state and local laws, including all building laws and uniform codes, governing the activities of a licensed contractor in California.

2. **Interviews With Enforcement Representative.** Respondent and any of Respondent's personnel of record shall appear in person for interview with the Registrar or designee upon request and reasonable notice during the probationary period.

3. **Quarterly Reports.** Upon demand, Respondents shall submit written quarterly reports to the Board no later than ten (10) days after the request has been made. Respondents shall state in each report under penalty of perjury whether Respondents have complied with all the terms and conditions of probation. Failure to submit timely reports shall be considered a violation of probation. Respondents shall include with each quarterly report one (1) complete construction contract entered into within the most recent quarter-year demonstrating compliance with term and condition of probation number 4, below, or a statement under penalty of perjury that no such construction contract was entered into during the quarter.

4. **Requirements for Any Underpinning or Foundation Repair Contract.** Respondents must include the following items in any underpinning or foundation repair contract it enters into during the term of probation:

   a. A letter from a Registered Civil Engineer in the State of California with education and experience in Geotechnical Engineering, Push Piers, and Helical

Piers shall identify whether or not there are underlying soil conditions responsible for the building distress, and affirm that the repair method proposed in the construction contract is appropriate. If said Civil Engineer determines the soil conditions merit obtaining a report or written findings or instructions from a soils engineer, Respondents shall obtain such report or written findings or instructions from a soils engineer and shall comply with all findings.

b. A letter from a Registered Civil Engineer in the State of California with education and experience in Structural Engineer, Push Piers, and Helical Piers affirming that the repair method proposed is appropriate.

c. A manometer or ZIP Level survey done and documented and certified as accurate by the contractor or authorized employee under penalty of perjury prior to any foundation work being performed.

d. A manometer or ZIP Level survey done and documented and certified as accurate by the contractor or authorized employee under penalty of perjury at the completion of the construction contract.

e. If helical piers or pin piles are used, a field installation log and load test log shall be provided showing the Piers' or Piles' location, OD, wall thickness, segment length, and psi installation pressure, as well as the design loads as may be necessary as determined by the Engineer(s) producing the letter(s) as required by section 4(a) and 4(b). If a boring is necessary, it shall be certified accurate by the Registered Civil Engineer who produces the boring log.

5. **Completion Of Probation.** Upon successful completion of probation, the Contractor's License will be fully restored.

6. **Violation Of Probation.** If Respondent violates probation or any condition of probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that is stayed. If an accusation or petition to revoke probation is filed against Respondent during the probationary period, then the Registrar shall have continuing jurisdiction of this matter until the subsequent matter is final, and the period

of probation and all the conditions of probation in this matter shall be extended until the subsequent matter is final. If there is an order to make restitution or pay cost recovery and Respondent fails to comply with the restitution or cost recovery order and make a payment, the Registrar may immediately lift the stay and re-impose the disciplinary order without giving Respondent an opportunity to be heard.

7. **Disciplinary Bond.** Not later than the effective date of the decision, Respondent shall file or have on file a disciplinary contractor's bond in a sum to be fixed by the registrar based upon the seriousness of the violation, but which sum shall not be less than fifteen thousand dollars ($15,000) nor more than 10 times that amount required by Business and Professions Code section 7071.6. The disciplinary bond is in addition to, may not be combined with, and does not replace any other type of contractor's bond. The disciplinary bond shall remain on file with the registrar for a period of at least two years and for such additional time as the registrar may determine, as required by Business and Professions Code section 7071.8.

8. **Production of Documents.** Respondent shall submit copies of documents directly related to construction operations to the Registrar or designee upon demand during the probationary period.

9. **Construction Contracts.** Respondent shall submit copies of all construction contracts to the Registrar or designee for approval upon demand during the probationary period.

10. **Law and Business Examination.** Respondent shall take and pass within one-hundred and eighty (180) days of the effective date of the Decision and Order the Contractors' State License Board's law and business examination. Respondent has the burden of applying for, scheduling, and making arrangements to take the exam.

11. **Cost Recovery.** Respondent shall pay to the Registrar pursuant to Business and Professions Code section 125.3 the costs of investigation and enforcement in this matter in the amount of $15,644.12 within one year of the effective date of the Decision and Order. Payments may be made in equal monthly installments beginning thirty (30) days from the effective date of the Decision and Order.

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12. **Building Permits.** Respondent shall submit copies of all applications for building permits to be pulled by Respondent to the Registrar or designee upon demand for all construction projects undertaken during the probationary period.

**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Scott J. Harris. I understand the stipulation and the effect it will have on my Contractor's 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 Registrar of Contractors, Contractors' State License Board.

DATED: 1-11-18

S M P CONSTRUCTION & MAINTENANCE, INC.
DBA FOUNDATION REPAIR OF CA
*Respondent*
By: Mathew Phelps, RMO

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Scott J. Harris. I understand the stipulation and the effect it will have on my Contractor's 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 Registrar of Contractors, Contractors' State License Board.

DATED: _____

S M P CONSTRUCTION & MAINTENANCE, INC.
DBA FOUNDATION REPAIR OF CA
*Respondent*
By: Mark Anthony Phelps, CEO/Pres.

I have read and fully discussed with Respondent S M P Construction & Maintenance, Inc. dba Foundation Repair of CA; Mathew Phelps, RMO, and Mark Anthony Phelps, CEO/Pres., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1.22.18

SCOTT J. HARRIS
*Attorney for Respondent*

12. **Building Permits.** Respondent shall submit copies of all applications for building permits to be pulled by Respondent to the Registrar or designee upon demand for all construction projects undertaken during the probationary period.

**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Scott J. Harris. I understand the stipulation and the effect it will have on my Contractor's 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 Registrar of Contractors, Contractors' State License Board.

DATED: _____

S M P CONSTRUCTION & MAINTENANCE, INC.
DBA FOUNDATION REPAIR OF CA
*Respondent*
By: Mathew Phelps, RMO

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Scott J. Harris. I understand the stipulation and the effect it will have on my Contractor's 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 Registrar of Contractors, Contractors' State License Board.

DATED: 1/13/17

S MP CONSTRUCTION & MAINTENANCE, INC.
DBA FOUNDATION REPAIR OF CA
*Respondent*
By: Mark Anthony Phelps, CEO/Pres.

I have read and fully discussed with Respondent S M P Construction & Maintenance, Inc. dba Foundation Repair of CA; Mathew Phelps, RMO, and Mark Anthony Phelps, CEO/Pres., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

SCOTT J. HARRIS
*Attorney for Respondent*

## ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Registrar of Contractors, Contractors' State License Board.

Dated: January 23, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

KRISTINA T. JARVIS
Deputy Attorney General
*Attorneys for Complainant*

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