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BOBBI W. Y. LUM-MEW 6299
Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
Leiopapa A Kamehameha Building
235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
Telephone: 586-2660

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PROF & VOCATIONAL
LICENSING DIVISION

2009 FEB -1 P 12: 28

DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

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Attorney for Department of Commerce
and Consumer Affairs

CONTRACTORS LICENSE BOARD
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS
2009 FEB -5 A 9:09
HEARINGS OFFICE

In the Matter of the Contractors License of) CLB 2004-238-L
)
GALE F. BERENGUE,)
) SETTLEMENT AGREEMENT PRIOR TO
) FILING OF PETITION FOR DISCIPLINARY
Respondent.) ACTION AND BOARD'S FINAL ORDER
)
)

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SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'
REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),
through its undersigned attorneys, and Respondent GALE F. BERENGUE (hereinafter
"Respondent"), enter into this Settlement Agreement on the terms and conditions set forth
below.

A. UNCONTESTED FACTS

1. At all relevant times herein, Respondent was licensed by the Contractors License
Board (hereinafter the "Board") as a general contractor under license number CT 10660. The

license was issued on or about September 20, 1996. The license expired on or about September 30, 2008.

2. Respondent's mailing address for purposes of this action is [REDACTED]

3. RICO received a complaint alleging that Respondent failed to provide a written contract and failed to complete a project as contracted.

4. RICO alleges that Respondent failed to provide a written contract and failed to provide required disclosures.

5. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") § 444-25.5 (disclosures required), and Hawaii Administrative Rules § 16-77-80 (homeowner contracts) and § 16-77-79 (disclosures required).

6. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is fully aware that Respondent has the right to be represented by an attorney and voluntarily waives that right.

2. Respondent enters into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondent is aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondent freely, knowingly, and voluntarily waives the right

to a hearing and agrees to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent being at all times relevant herein licensed as a general contractor by the Board acknowledges that Respondent is subject to penalties including but not limited to, revocation, suspension or limitation of the license and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondent does not admit to violating any law or rule, but acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondent's license.

6. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO No. CLB 2004-238-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondent agrees to pay a fine in the amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: BOBBI LUM-MEW, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due at the time this fully executed Settlement Agreement is returned to RICO.

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2. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph(s) C.1 above, Respondent's license shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of the license to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondent understands Respondent cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become licensed again, Respondent must apply to the Board for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

3. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent violates any provision of the statutes or rules governing the conduct of contractors in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees

that neither Respondent nor any attorney that Respondent may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondent on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.


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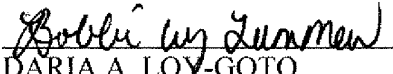
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IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Honolulu, Hawaii, NOV 19 2008
(CITY) (STATE)


GALE F. BERENGUE
Respondent

DATED: Honolulu, Hawaii, NOV 26 2008


DARIA A. LOY-GOTO
BOBBI W.Y. LUM-MEW
Attorneys for Department of Commerce and
Consumer Affairs

IN THE MATTER OF THE CONTRACTORS LICENSE OF GALE F. BERENGUE;
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY
ACTION AND BOARD'S FINAL ORDER; CASE NO. CLB 2004-238-L

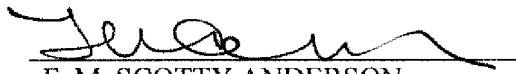
APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII



TAOY T. ARISUMI
Chairperson

JAN 30 2009

DATE



F. M. SCOTTY ANDERSON
Vice Chairperson



GUY M. AKASAKI



NEAL ARITA



WILLIAM R. BROWN



ERIC CARSON



JOSEPH S. KINDRICH, II



RANDALL B. C. LAU



AUDREY E. J. NG, ESQ.

RONALD K. OSHIRO



DENNY R. SADOWSKI



DARYL SUEHIRO

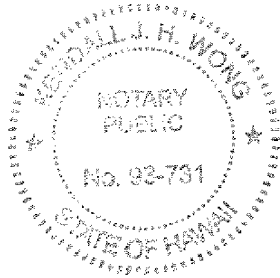
GERALD YAMADA


PVL 07/03/08

STATE OF Hawaii)
) SS.
COUNTY OF Honolulu)


NOV 19 2008

On this ____ day of _____, 200__, before me personally appeared
GALE F. BERENQUE, to me known to be the person described and who executed the
foregoing instrument and acknowledged the same as his/her free act and deed.




Name: KENDALL J.H. WONG
Notary Public - State of Hawaii

My commission expires: _____
My Commission Expires: 08-12-2009

Date: <u>NOV 19 2008</u>	#Pages: <u>8</u>
Name: <u>KENDALL J.H. WONG</u>	<u>1st</u> Circuit
Doc. Description: <u>Contractors Lic.</u>	
<u>Board DCCA</u>	
 Notary Signature	
NOTARY CERTIFICATION	

