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8
9 **BEFORE THE**
CALIFORNIA ARCHITECTS BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 16-06-136

13 **MUSTAFA BDAIWI**
14 **1431 Warner Avenue Ste B**
Tustin, CA 92780

A C C U S A T I O N

15 **Architect License No. C-33953**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Douglas R. McCauley (Complainant) brings this Accusation solely in his official
21 capacity as the Executive Officer of the California Architects Board (Board), Department of
22 Consumer Affairs.

23 2. On December 20, 2012, the Board issued Architect License Number C-33953 to
24 Mustafa Bdaiwi (Respondent). Respondent has also been known as Mustafa Mohamed Bdaiwi.
25 The Architect License was in full force and effect at all times relevant to the charges brought
26 herein, and will expire on February 28, 2017, unless renewed.

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JURISDICTION

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

4. Code section 118 states, in pertinent part:

...

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

5. Code section 5560 states:

The board may upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any architect and may temporarily suspend or permanently revoke, the license of any architect who is guilty of, or commits one or more of, the acts or omissions constituting grounds for disciplinary action under this chapter.

STATUTORY PROVISIONS

6. Code section 482 states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

1 7. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
2 license on the ground that the licensee has been convicted of a crime substantially related to the
3 qualifications, functions, or duties of the business or profession for which the license was issued.

4 8. Code section 493 states:

5 Notwithstanding any other provision of law, in a proceeding conducted
6 by a board within the department pursuant to law to deny an application for a
7 license or to suspend or revoke a license or otherwise take disciplinary action
8 against a person who holds a license, upon the ground that the applicant or the
9 licensee has been convicted of a crime substantially related to the qualifications,
10 functions, and duties of the licensee in question, the record of conviction of the
11 crime shall be conclusive evidence of the fact that the conviction occurred, but
12 only of that fact, and the board may inquire into the circumstances surrounding
13 the commission of the crime in order to fix the degree of discipline or to
14 determine if the conviction is substantially related to the qualifications, functions,
15 and duties of the licensee in question.

16 As used in this section, "license" includes "certificate," "permit,"
17 "authority," and "registration."

18 9. Code section 5500 states:

19 As used in this chapter, architect means a person who is licensed to
20 practice architecture in this state under the authority of this chapter.

21 10. Code section 5555 states:

22 Licenses to practice architecture remain in full force until revoked or
23 suspended for cause, or until they expire, as provided in this chapter.

24 11. Code section 5577 states:

25 The conviction of a crime substantially related to the qualifications,
26 functions, and duties of an architect by the holder of a license constitutes a ground
27 for disciplinary action. The record of conviction, or a certified copy thereof
28 certified by the clerk of the court or by the judge in whose court the conviction is
obtained, is conclusive evidence of the conviction.

 A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this section. The
board may order the license suspended or revoked, or may decline to issue a
license, when the time for appeal has elapsed, the judgment of conviction has
been affirmed on appeal, or an order granting probation is made suspending the
imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea
of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

12. Code section 5578 states:

The fact that the holder of a license is practicing in violation of the provisions of this chapter constitutes a ground for disciplinary action.

13. Code section 5583 states:

The fact that, in the practice of architecture, the holder of a license has been guilty of fraud or deceit constitutes a ground for disciplinary action.

14. Code section 5584 states:

The fact that, in the practice of architecture, the holder of a license has been guilty of negligence or willful misconduct constitutes a ground for disciplinary action.

REGULATORY PROVISIONS

15. Title 16 California Code of Regulations section 110 states:

For the purposes of denial, suspension, or revocation of the license of an architect pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions and duties of an architect if to a substantial degree it evidences present or potential unfitness of an architect to perform the functions authorized by his/her license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) Any violation of the provisions of Chapter 3, Division 3 of the Business and Professions Code.

16. Title 16 California Code of Regulations section 110.1 states, in pertinent part:

...

(b) When considering the suspension or revocation of the license of an architect on the grounds that the person licensed has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her present eligibility for licensure will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

1 (5) If applicable, evidence of expungement proceedings pursuant
2 to Section 1203.4 of the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.
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5 17. Title 16 California Code of Regulations section 160 states, in pertinent part:
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7 A violation of any rule of professional conduct in the practice of
8 architecture constitutes a ground for disciplinary action.
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11 COSTS

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

18 DEERFIELD ELEMENTARY SCHOOL EXPANSION PROJECT

19 19. On March 9, 2006, the California Secretary of State issued Entity Number
20 C2857728 to Malcon Civils, Inc., with Mustafa Bdaiwi (Respondent) as Chief Executive Officer
21 (CEO) and President. On April 24, 2006, the Registrar of Contractors issued Contractor's License
22 Number 881020 to Malcon Civils, Inc., with Respondent as Responsible Managing Officer
23 (RMO), CEO, and President in the B General Building Contractor classification. As RMO, CEO,
24 and President, Respondent associated on October 30, 2009 in the ASB Asbestos classification,
25 and on February 10, 2010, in the C-8 Concrete classification.

26 20. In December 2010, Respondent submitted a bid and won a \$444,000.00 contract
27 with the Irvine Unified School District for structural concrete and reinforcing to the Deerfield
28 Elementary School Administration Building and Classroom Building. On August 9, 2011, the
Center for Contract Compliance (CCC) provided information to the Orange County District
Attorney's Office regarding at least five workers who were misclassified, not paid prevailing

1 wage, not paid overtime, and deprived of paycheck stubs or fringe benefits. CCC's audit also
2 uncovered underreporting with the State Compensation Insurance Fund and the Employment
3 Development Authority. On September 24, 2012, Respondent disassociated as RMO, CEO, and
4 President in all classifications.

5 21. On December 19, 2013, the Orange County District Attorney's Office filed a
6 complaint against Mustafa Mohamed Bdaiwi in the Superior Court of the State of California for
7 11-count violation of Labor Code (LC) section 1778¹, two-count violation of Penal Code (PC)
8 section 115, subdivision (a)², 11-count violation of Unemployment Insurance Code (UI) section
9 2108³, and four-count violation of Insurance Code (IC) section 11880, subdivision (a)⁴.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(May 11, 2015 Conviction for Receipt of Portion of Wages of Workmen in 2011)**

12 22. Respondent has subjected his Architect License to disciplinary action under Code
13 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
14 Regulations, in that Respondent was convicted of a crime substantially related to the
15 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

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18 ¹ Every person, who individually or as a representative of an awarding or public body or
19 officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who
20 takes, receives, or conspires with another to take or receive, for his own use or the use of any
21 other person any portion of the wages of any workman or working subcontractor, in connection
22 with services rendered upon any public work is guilty of a felony.

23 ² Every person who knowingly procures or offers any false or forged instrument to be filed,
24 registered, or recorded in any public office within this state, which instrument, if genuine, might
25 be filed, registered, or recorded under any law of this state or of the United States, is guilty of a
26 felony.

27 ³ It is a violation of this chapter for any person to willfully fail or refuse to make any
28 contributions which are due under this division.

⁴ It is unlawful to make or cause to be made any knowingly false or fraudulent statement,
whether made orally or in writing, of any fact material to the determination of the premium, rate,
or cost of any policy of workers' compensation insurance issued or administered by the State
Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the
insurance. Any person convicted of violating this subdivision shall be punished by imprisonment
in a county jail for one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code for
two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or double the
value of the fraud, whichever is greater, or by both that imprisonment and fine.

1 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
2 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
3 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of
4 violating LC section 1778, receipt of portion of wages of workmen, a felony. Respondent
5 admitted and the court found true the allegation that at the time of Respondent's violation of LC
6 section 1778, Respondent caused damage amounting to over \$200,000.00, a felony sentencing
7 enhancement under PC section 12022.6, subdivision (a)(2)⁵. Felony charges for additional 10-
8 count violation of LC section 1778, each with a similar sentencing enhancement under PC
9 section 12022.6, subdivision (a)(2), were dismissed under a plea bargain.

10 b. As a result of his conviction, on May 11, 2015, Respondent was sentenced to
11 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
12 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
13 formal probation under certain terms and conditions, including registry in the State DNA
14 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
15 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
16 disposal, under PC section 29810.

17 c. The facts that led to his conviction are that on August 18, 2011, and September
18 20, 2011, five of Respondent's workers confirmed that on various dates in 2011, Respondent
19 intentionally misclassified the Malcon Civils, Inc. payroll, paid his workers an hourly rate that
20 was substantially below the prevailing wage rate, and adjusted hours worked to match the higher
21 wage rate. Respondent underpaid his five workers by \$156,508.32. Respondent also under
22 reported \$80,228.09 to the State Compensation Insurance Fund and \$103,255.09 to the

23 _____
24 ⁵ When any person takes, damages, or destroys any property in the commission or attempted
25 commission of a felony, with the intent to cause that taking, damage, or destruction, the court
shall impose an additional term as follows:

26 (2) If the loss exceeds two hundred thousand dollars (\$200,000), the court, in addition and
27 consecutive to the punishment prescribed for the felony or attempted felony of which the
defendant has been convicted, shall impose an additional term of two years.

1 Employment Development Department. Adding the amount that Respondent should have
2 rightfully paid his five workers, Respondent effectively under reported \$236,736.41 to the State
3 Compensation Insurance Fund and \$259,763.41 to the Employment Development Department.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(May 11, 2015 Conviction for Attempting to File Forged Instruments in 2011)**

6 23. Respondent has subjected his Architect License to disciplinary action under Code
7 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
8 Regulations, in that Respondent was convicted of a crime substantially related to the
9 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

10 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
11 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
12 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of
13 violating PC section 115, subdivision (a), attempting to file forged instruments, a felony. An
14 allegation that at the time of Respondent's violation of PC section 115, subdivision (a),
15 Respondent caused damage amounting to over \$200,000.00, a felony sentencing enhancement
16 under PC section 12022.6, subdivision (a)(2), was stricken under a plea bargain. A felony charge
17 for an additional violation of PC section 115, subdivision (a), with a similar enhancement, was
18 dismissed under a plea bargain.

19 b. As a result of his conviction, on May 11, 2015, Respondent was sentenced
20 to 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
21 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
22 formal probation under certain terms and conditions, including registry in the State DNA
23 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
24 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
25 disposal, under PC section 29810.

26 c. The facts that led to his conviction are that on August 18, 2011, and
27 September 20, 2011, five of Respondent's workers confirmed that on various dates in 2011,
28 Respondent intentionally misclassified the Malcon Civils, Inc. payroll, paid his workers an

1 hourly rate that was substantially below the prevailing wage rate, and adjusted hours worked to
2 match the higher wage rate. Respondent underpaid his five workers by \$156,508.32, thereby
3 failing to include the amount in his report to both the State Compensation Insurance Fund and
4 the Employment Development Department. Moreover, Respondent under reported \$80,228.09 to
5 the State Compensation Insurance Fund and \$103,255.09 to the Employment Development
6 Department. Adding the amount that Respondent should have rightfully paid his five workers,
7 Respondent effectively under reported \$236,736.41 to the State Compensation Insurance Fund
8 and \$259,763.41 to the Employment Development Department.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(May 11, 2015 Convictions for Failure to Make Contributions in 2011)**

11 24. Respondent has subjected his Architect License to disciplinary action under Code
12 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
13 Regulations, in that Respondent was convicted of a crime substantially related to the
14 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

15 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
16 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
17 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of nine-
18 count violation of UI Code section 2108, failure to make contributions, all felonies reduced to
19 misdemeanors under PC section 17, subdivision (b). Felony charges for additional two-count
20 violation of UI Code section 2108, were dismissed under a plea bargain.

21 b. As a result of his convictions, on May 11, 2015, Respondent was sentenced to
22 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
23 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
24 formal probation under certain terms and conditions, including registry in the State DNA
25 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
26 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
27 disposal, under PC section 29810.

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1 c. The facts that led to his conviction are that Malcon Civils, Inc. filed the
2 following DE-9C quarterly record with the Employment Development Department:

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Calendar Year	Payroll Report to EDD – Malcon Civils, Inc.				Totals
	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	
4 2009	300.00	3,999.59	9,518.14	23,652.53	37,470.26
5 2010	200.00	300.00	62,053.68	400.00	62,953.68
6 2011	200.00	300.00			500.00

7

8 For the first two quarters of 2011, Respondent reported for Malcon Civils, Inc. that he was its
9 only employee earning \$200.00 for the first quarter and \$300.00 for the second quarter.
10 However, Respondent's certified payroll record for Malcon Civils, Inc. show that weekly
11 payrolls from February 6, 2011 to June 19, 2011, totaled \$103,755.09. Respondent under
12 reported \$103,255.09 to the Employment Development Department for the first two quarters of
13 2011. On May 11, 2015, Respondent admitted to failing to make the right contributions for the
14 unemployment insurance coverage of workers for the periods ending on April 30, July 30, and
15 October 30, 2009, January 30, April 30, July 30, and October 30, 2010, and January 30 and April
16 30, 2011.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(May 11, 2015 Conviction for Fraudulent Statements for Purposes of Reducing Premiums**
19 **on Various Dates in 2011)**

20 25. Respondent has subjected his Architect License to disciplinary action under Code
21 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
22 Regulations, in that Respondent was convicted of a crime substantially related to the
23 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

24 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
25 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
26 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of
27 violating IC section 11880, subdivision (a), fraudulent statements for purposes of reducing
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1 premiums, a felony. Felony charges for additional three-count violation of IC section 11880,
2 subdivision (a), were dismissed under a plea bargain.

3 b. As a result of his conviction, on May 11, 2015, Respondent was sentenced to
4 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
5 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
6 formal probation under certain terms and conditions, including registry in the State DNA
7 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
8 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
9 disposal, under PC section 29810.

10 c. The facts that led to his conviction are that Malcon Civils, Inc. workers
11 compensation insurance with the State Compensation Insurance Fund reflect the following:

Payroll Period	Payroll Report to State Compensation Insurance Fund – Malcon Civils, Inc.			
	Policy No.	Class Code	Description	Payroll of Employees
12 12/1/10 to	1960115	5205-2	Concrete/Cement >=\$24	19,027.00
13 6/1/11	1960115	8742-1	Salesperson Outside	4,500.00

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15 For the first two quarters of 2011, Respondent reported for Malcon Civils, Inc. that employee
16 payroll totaled \$23,527.00. However, Respondent's certified payroll record for Malcon Civils,
17 Inc. show that weekly payrolls from February 6, 2011 to June 19, 2011, totaled \$103,755.09.
18 Respondent under reported \$80,228.09 to the State Compensation Insurance Fund for the first
19 two quarters of 2011. On May 11, 2015, Respondent admitted to knowingly making a written
20 fraudulent statement to the State Compensation Insurance Fund for the purpose of reducing the
21 premium, rate, or cost of the insurance.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Commission of an Act Involving Fraud or Deceit)**

24 26. Respondent has subjected his Architect License to disciplinary action under Code
25 section 5583, for committing acts involving fraud or deceit, defined as unprofessional conduct
26 for a licensed architect under title 16, California Code of Regulations section 160. Respondent
27 was fraudulent and deceitful when he received a portion of wages of his workmen, intentionally
28 misclassified the Malcon Civils, Inc. payroll, paid his workers an hourly rate that was

1 substantially below the prevailing wage rate, adjusted hours worked to match the higher wage
2 rate, and under-reported payroll to the State Compensation Insurance Fund and the Employment
3 Development Department, as set forth in paragraphs 19 through 25, which are incorporated
4 herein by reference.

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Commission of an Act Involving Willful Misconduct)**

7 27. Respondent has subjected his Architect License to disciplinary action under Code
8 section 5584, for committing acts involving willful misconduct, defined as unprofessional
9 conduct for a licensed architect under title 16, California Code of Regulations section 160,
10 subdivision (b)(1). Respondent committed willful misconduct when he knew the laws as
11 provided in the Labor Code, Penal Code, Unemployment Insurance Code, and Insurance Code,
12 as they apply to the Deerfield Elementary School Expansion Project and deliberately violated
13 them, as set forth in paragraphs 19 through 25, which are incorporated herein by reference.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Violation of the Architects Practice Act)**

16 28. Respondent has subjected his Architect License to disciplinary action under Code
17 section 5578, in conjunction with section 110, subdivision (c) of title 16 of the California Code
18 of Regulations, in that Respondent committed acts substantially related to the qualifications,
19 functions, and duties of a licensed architect, as set forth in paragraphs 19 through 25, above,
20 which are incorporated herein by reference.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the California Architects Board issue a decision:

- 24 1. Revoking or suspending Architect License Number C-33953, issued to Mustafa
25 Bdaiwi;
- 26 2. Ordering Mustafa Bdaiwi to pay the California Architects Board the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 125.3; and,

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

DATED: 12/14/2016



DOUGLAS R. MCCAULEY
Executive Officer
California Architects Board
Department of Consumer Affairs
State of California
Complainant

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