

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

In the Matter of the Accusation Against:

**THAT GUY CONSTRUCTION**  
2606 Via Masada  
Carlsbad, CA. 92010  
Carl Jacob Wagner IV, Sole Owner

License Number: 897674, B

Respondent

CASE NUMBER N 2010 514

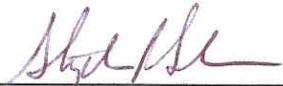
SUPERIOR COURT CASE NUMBER  
CD235894

ORDER OF THE REGISTRAR  
PURSUANT TO BUSINESS &  
PROFESSIONS CODE SECTION 7106

WHEREAS, on December 9, 2011, the Honorable Theodore M. Weathers, Judge of the Superior Court, of the State of California for the County of San Diego County, in proceedings entitled People of the State of California vs. Carl Jacob Wagner, Case Number CD235894, ordered pursuant to Business and Professions Code section 7106, the revocation of the contractor's license issued to, **THAT GUY CONSTRUCTION**, license number 897674.

THEREFORE, in obedience to said order, it is hereby ordered that license number 897674, classification B, issued to **THAT GUY CONSTRUCTION**, is revoked effective December 9, 2011.

IT IS SO ORDERED this December 19, 2011.

  
\_\_\_\_\_  
Stephen P. Sands  
Registrar of Contractors

1 EDMUND G. BROWN JR.  
2 Attorney General of California  
3 LINDA K SCHNEIDER  
4 Supervising Deputy Attorney General  
5 LORETTA A. WEST  
6 Deputy Attorney General  
7 State Bar No. 149294  
8 110 West "A" Street, Suite 1100  
9 San Diego, CA 92101  
10 P.O. Box 85266  
11 San Diego, CA 92186-5266  
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14 *Attorneys for Applicant, Stephen P. Sands,*  
15 *Registrar, Contractors State Licensing Board*

F I L E D  
Clerk of the Superior Court

DEC 09 2011

By: G. Carrillo, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 SAN DIEGO COUNTY  
12 CENTRAL DISTRICT

13 THE PEOPLE OF THE STATE OF  
14 CALIFORNIA,

15 Plaintiff,

16 CARL JACOB WAGNER,

17 dob 11/07/71

18 Contractor License No. 897674

19 Defendant.

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21 STEPHEN P. SANDS, REGISTRAR,  
22 CONTRACTORS STATE LICENSE BOARD  
23 DEPARTMENT OF CONSUMER AFFAIRS  
24 STATE OF CALIFORNIA

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28 Applicant.

Case No. CD235894

STIPULATION RE: REVOCATION OF  
DEFENDANT'S CONTRACTOR  
LICENSE

DATE: December 9, 2011

TIME: 8:15 a.m.

DEPARTMENT: 30

1 IT IS HEREBY STIPULATED THAT the Court may revoke General Building Contractor  
2 License No. 897674-B held by That Guy Construction; sole owner Carl Jacob Wagner, pursuant  
3 to Business and Professions Code section 7106.

4 DATED: Dec 09<sup>th</sup>, 2011

*Carl Wagner*  
CARL JACOB WAGNER  
Defendant and Sole Owner of  
That Guy Construction

5  
6 DATED: December 9, 2011

*Loretta A. West*  
LORETTA A. WEST  
Deputy Attorney General  
Attorneys for Applicant  
Stephen P. Sands, Registrar  
Contractors State License Board  
Department of Consumer Affairs  
State of California

17 IT IS SO ORDERED

19 DATED: DEC 09 2011, 2011

21 THEODORE M. WEATHERS

22 JUDGE OF THE SUPERIOR COURT



24 CLERK'S CERTIFICATE

25 The foregoing document, consisting of  
26  page(s), is a full, true, and correct  
27 copy of the original  copy on file in  
28 this office.

DEC 09 2011  
Clerk of the Superior Court  
by *[Signature]*  
Deputy

1 EDMUND G. BROWN JR.  
2 Attorney General of California  
3 LINDA K SCHNEIDER  
4 Supervising Deputy Attorney General  
5 LORETTA A. WEST  
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14 *Attorneys for Applicant, Stephen P. Sands,  
15 Registrar, Contractors' State Licensing Board*

16  
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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 SAN DIEGO COUNTY  
20 CENTRAL DISTRICT

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22  
23 THE PEOPLE OF THE STATE OF  
24 CALIFORNIA,

25 Plaintiff,

26 v.

27 CARL JACOB WAGNER,

28 Defendant.

29 STEPHEN P. SANDS, REGISTRAR,  
30 CONTRACTORS STATE LICENSE BOARD  
31 DEPARTMENT OF CONSUMER AFFAIRS  
32 STATE OF CALIFORNIA

33 Applicant.

34 Case No. CD235894

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1 from acting in the capacity of a licensed contractor unless duly licensed, as a condition of his own  
2 recognizance release, bail or probation.

3 Defendant Wagner is the sole owner of "That Guy Construction." As sole owner of the  
4 company, defendant is responsible for all of its construction operations. On June 4, 2007, the  
5 Contractors' State License Board issued Contractor License No. 897674 to defendant doing  
6 business as That Guy Construction. After numerous suspensions and reinstatements<sup>1</sup>, the  
7 defendant's contractor license expired under suspension on June 30, 2011. Currently, defendant  
8 may reinstate his contractor license and continue to act as a licensed contractor at any time before  
9 June 30 2014, three years after expiration of the license, by simply paying any required fees and  
10 fines.

11 ///

12 ///

14 <sup>1</sup> Defendant's contractor license was suspended on June 2, 2009, pursuant to Code of Civil  
15 Procedure section 996.340 (contractor's bond deficient), and reinstated on June 15, 2009;  
16 defendant's contractor license expired on June 30, 2009, and was renewed on July 14, 2009;  
17 defendant's contractor license was suspended on December 11, 2009, for violation of Welfare and  
18 Institutions Code section 17520 (failure to pay family support), and reinstated on March 24, 2010;  
19 defendant's contractor license was suspended on April 2, 2010, for violation of Business and  
20 Professions Code section 7125.2 (failure to have Worker's Compensation Insurance), and  
21 reinstated on July 20, 2010\*; defendant's contractor license was suspended on June 27, 2010, for  
22 violation of Welfare and Institutions Code section 17520 (failure to pay family support), and  
23 the suspension was lifted on July 13, 2010; defendant's contractor license was suspended on  
24 October 17, 2010, for violation of Welfare and Institutions Code section 17520 (failure to pay  
25 family support), and reinstated on December 7, 2010; defendant's contractor license was suspended on  
March 4, 2011, for violation of Business and Professions Code section 7125.2  
(failure to have Worker's Compensation Insurance), and expired while under said suspension  
which remains in effect; defendant's contractor license was suspended on March 13, 2011, for  
violation of Welfare and Institutions Code section 17520 (failure to pay family support), and  
expired while under said suspension which remains in effect; defendant's contractor license was  
suspended on March 18, 2011, pursuant to Code of Civil Procedure section 996.340 (contractor's  
bond), and expired while under said suspension which remains in effect; defendant's contractor  
license was suspended on June 28, 2011, pursuant to Business and Professions Code section  
7071.11 (bond payments of claim #31176-1 & 31176-02 & 31176-03), and expired while under  
said suspension which remains in effect.

26 \*Note, defendant signed construction contract and demanded excessive down payment, as  
27 alleged in criminal complaint, while his contractor license was suspended, on June 3, 2010.  
Respondent worked on said construction contract while his licensed was suspended from June 3,  
2010, through July 20, 2010 when his license was reinstated.

1                   **II.       CSLB HAS AUTHORITY TO REQUEST RESTRICTION AND**  
2                   **REVOCATION OF DEFENDANT'S CONTRACTOR LICENSE**

3                   The Contractors' State License Board (CSLB) is the agency charged with protecting the  
4                   public from dangerous, incompetent, or dishonest contractors. CSLB is a state agency authorized  
5                   under the Contractors' State License Law (Bus. & Prof. Code, § 7000 et seq.) to license and  
6                   regulate the contracting business in California.

7                   To help fulfill that responsibility, the Legislature has authorized the CSLB to voluntarily  
8                   appear in criminal proceedings, make recommendations regarding specific conditions of  
9                   probation, and otherwise assist the court to protect the public interest.

10                  Penal Code section 23 states, in pertinent part:

11                  In any criminal proceeding against a person who has been issued a license to  
12                  engage in a business or profession by a state agency pursuant to provisions of  
13                  the Business and Professions Code, . . . the state agency which issued the license  
14                  may voluntarily appear to furnish pertinent information, make  
15                  recommendations regarding specific conditions of probation, or provide any  
16                  other assistance necessary to promote the interests of justice and protect the  
17                  interests of the public, or may be ordered by the court to do so, if the crime  
18                  charged is substantially related to the qualifications, functions, or duties of a  
19                  licensee. For purposes of this section, the term "license" shall include a permit  
20                  or a certificate issued by a state agency. For purposes of this section, the term  
21                  "state agency" shall include any state board, commission, bureau, or division  
22                  created pursuant to the provisions of the Business and Professions Code, . . . to  
23                  license and regulate individuals who engage in certain businesses and  
24                  professions. (Emphasis added.)

25                  Penal Code section 23 is a liberally designed statute adopted by the Legislature to promote  
26                  public protection and to assist the court in accomplishing that end. No formal procedures or  
27                  format are mandated when an agency makes an appearance and recommendation. The statute  
28                  recognizes that licensing agencies, such as the Contractors' State License Board, have a  
                        compelling and urgent interest in cases in which licensees are charged with crimes substantially  
                        related to the qualifications, functions, and duties of their profession.

29                  In this elder abuse criminal case, defendant is charged with the following felony  
30                  violations, all arising from his work as a licensed contractor. Defendant Wagner is expected to  
31                  plead guilty to some or all of the following criminal charges at his readiness conference on  
32                  December 9, 2011.

Count 1: Penal Code section 460 – Burglary on August 4, 2010, of a dwelling, with enhancements pursuant to Penal Code sections 667.9 (a) (victim was over age of 65), and 667.5(c)(21) (dwelling was inhabited at time of burglary);

Count 2: Penal Code section 460 – Burglary on August 12, 2010, of a dwelling, with enhancements pursuant to Penal Code sections 667.9 (a) (victim was over age of 65), and 667.5(c)(21) (dwelling was inhabited at time of burglary);

Count 3: Penal Code section 460 – Burglary on September 7, 2010, of a dwelling, with enhancements pursuant to Penal Code sections 667.9 (a) (victim was over age of 65), and 667.5(c)(21) (dwelling was inhabited at time of burglary);

Count 4: Penal Code section 460 – Burglary on September 21, 2010, of a dwelling, with enhancements pursuant to Penal Code sections 667.9 (a) (victim was over age of 65), and 667.5(c)(21) (dwelling was inhabited at time of burglary);

Count 5: Penal Code section 530.5 – Theft from an elderly person over age of 65, of valuables worth over \$950.00 in violation of Penal Code section 368 (d);

Count 6: Penal Code section 460 – Diversion of Construction Funds over \$2,350 on August 4, 2010, and August 11, 2010;

Count 7: Business and Professions Code section 7159.5 (a) (3) on August 4, 2010, demanded and received an excessive down payment for a home improvement contract;

Count 8: Penal Code section 484 (b) – Diversion of Construction Funds over \$2,350 between June 3, 2010 and August 2, 2010, and failed to pay for services after receiving funds to pay for said services;

Count 9: Penal Code section 476 (a) – Non-Sufficient Fund Check on June 29, 2010, to pay for constructions related goods and services; and,

Count 10: Penal Code section 476 (a) – Non-Sufficient Fund Check on June 30, 2010, to pay for constructions related goods and services.

Defendant's alleged illegal and unprofessional conduct, while working as a licensed contractor, all involve his abuse of the privileges provided by his contractor license. For example, defendant was acting in the capacity of a contractor when he demanded excessive payments from an elderly client including, an excessive down payment, and at least three demands for payments in excess of the value of the construction good or services that he had performed. The elderly client suffered a financial injury in the tens of thousands of dollars. The criminal charges involving insufficient funds checks also arise directly from defendant's duties and functions as a licensed contractor. Defendant wrote the insufficient funds checks in his capacity as a contractor to pay for construction related goods and services. Defendant's illegal

1 and unprofessional conduct clearly demonstrated the risk of harm presented by his performance  
2 of the fundamental functions, qualifications, or duties of a licensed contractor.

3

4 **III. THIS COURT HAS AUTHORITY TO REVOKE DEFENDANT'S  
LICENSURE, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
SECTION 7106**

5

6 Independent of Penal Code section 23, the Legislature has granted the Court further  
7 authority to revoke a contractor's license, in Business and Professions Code section 7106, which  
8 provides:

9

10 The suspension or revocation of license as in this chapter provided may also be  
embraced in any action otherwise proper in any court involving the licensee's  
11 performance of his legal obligation as a contractor.

12 Contractor licenses are one of a very small number of professional licenses issued in the  
13 State of California which the Legislature has granted the criminal and civil courts authority to  
14 directly suspend or revoke. All other professional licenses may only be revoked by the licensing  
15 agency from which they were issued.

16 The criminal charges in this case directly arise from defendant's conduct as a licensed  
17 contractor. Defendant's unlawful conduct is especially egregious because he preyed upon one of  
18 the most vulnerable classification of homeowners, the elderly. As in this case, an elderly  
19 consumer's home is their primary financial asset. The elderly are vulnerable physically and  
20 emotionally to abuse by unscrupulous or dishonest contractors who use their contractor license to  
21 gain access to the elder's home and financial resources. Immediate revocation of defendant's  
22 license is warranted by the egregious nature of defendant's illegal and unprofessional conduct. A  
23 copy of CSLB's Investigation Report regarding the Horton Project, underlying the criminal  
24 charges in this action, is attached hereto as Attachment A and incorporated by reference.

25 As an alternative to seeking a revocation order pursuant to Business and Professions Code  
26 section 7106 and Penal Code section 23, CSLB can take disciplinary action against defendant if  
27 and when there is a conviction in this criminal matter. (See Declaration of Loretta A. West.)  
28 Also, CSLB could seek an interim suspension order before an administrative law judge, or an

1 injunction or temporary restraining order in superior court. (Bus. and Prof. Code sections 494,  
2 125.7.) However, all of these alternatives would add fiscal and administrative burdens that could  
3 interfere with defendant's constitutional rights, increase costs to defendant and delay public  
4 protection.

5 Penal Code section 23 and Business and Professions Code section 7106 authorize this  
6 Court to issue an Order revoking defendant Wagner's contractor licensee. Issuing a revocation  
7 order under Penal Code section 23 and Business and Professions Code section 7106 early in the  
8 criminal proceedings protects the public, prevents duplicity of litigation, protects the defendant's  
9 due process rights, saves costs for the defendant and the state, and avoids inconsistent outcomes,  
10 all without potentially precluding or prejudicing the prosecution of the criminal matter.

11

12 **IV. DEFENDANT HAS RECEIVED NOTICE OF APPLICANT'S**  
**APPEARANCE IN THIS PROCEEDING**

13 On December 1, 2011, counsel for CSLB contacted defendant's attorney Dawnella  
14 Gilzean, and gave notice of the Board's intent to appear at defendant's December 9, 2011,  
15 readiness conference pursuant to Penal Code section 23 and request immediate revocation of  
16 defendant's contractor license pursuant to Business and Professions Code section 7106. Ms.  
17 Gilzean stated that she would accept service by e-mail of any papers Applicant may file in this  
18 matter. On December 8, 2011, Ms. Gilzean was served by e-mail with the following documents:  
19 Notice of Appearance and Recommendation by State Licensing Agency for Revocation of  
20 Defendant's Contractor License and Prohibition of Contracting Unless Duly Licensed;  
21 Memorandum of Points and Authorities in Support of Applicant's Recommendation, Pursuant to  
22 Penal Code Section 23, for Revocation of Defendant's Contractor License; Declaration of Deputy  
23 Attorney General Loretta A. West In Support of Recommendation of State Licensing Agency;  
24 Stipulation Re: Revocation of Defendant's Contractor License; (Proposed) Order Re: Revocation  
25 of Defendant's Contractor License; and an alternative (Proposed) Order Re: Revocation of  
26 Defendant's Contractor License. (See Declaration of Deputy Attorney General Loretta A. West.)  
27  
28

V. THIS COURT HAS AUTHORITY TO IMPOSE, AS A CONDITION OF O.R. RELEASE, BAIL OR PROBATION, AN ORDER PROHIBITING A DEFENDANT FROM ACTING AS A CONTRACTOR UNLESS DULY LICENSED, TO PROTECT THE PUBLIC

The Court has broad discretion to issue, as a condition of own recognizance release (O.R.), bail or probation, an order prohibiting a defendant from engaging in any vocational or professional occupation, or forbid conduct related to possible future criminality, if the occupation relates to the crimes charged, thereby serving to protect the public. (See, *In Re York* (1995) 9 Cal.4th 1133, 1141-1145 [O.R. condition of pretrial release that defendants submit to random drug screening and warrantless search and seizures held valid for public safety where defendants charged with crimes related to controlled substances]; See also, *People v. Keefer* (1973) 35 Cal.App.3d 156, 168-169 [probation condition that defendant not engage in the furnace or heating business, either directly or indirectly, during period of probation, held valid to deter further criminality, foster rehabilitation and to protect the public where defendant had been charged and convicted of two counts of grand theft and one count of attempted grand theft based on false pretenses and fraudulent statements related to sales of furnaces and heaters to consumers]; *People v. Frank* (1949) 94 Cal.App.2d 740, 741-742 [probation condition that defendant licensed pediatrician not practice medicine for duration of entire five year probation period held valid where defendant charged and found guilty of committing a lewd and lascivious act upon a 10 year old girl while treating her as a patient].)

Several statutes allow the Court to consider, and reconsider, the terms of a defendant's bail, or release on his own recognizance (O.R.) during the pendency of a criminal case. (Pen. Code § 1275: imposition of bail; Pen. Code § 1313: own recognizance; Pen. Code § 1289: increase or decrease bail for good cause after a defendant has been admitted to bail upon an indictment or information; Pen. Code § 1273 and 1277: bail set when the defendant is held to answer after the preliminary examination.)

The Court may place restrictions upon a defendant as a condition of bail to insure public safety. Specifically, Penal Code § 1275 (a) was amended in 1985 to state, in pertinent part, "In  
///

1 setting, reducing, or denying bail, the judge or magistrate shall take into consideration the  
2 **protection of the public**, the seriousness of the offense charged, the previous criminal record of  
3 the defendant, and the probability of his or her appearing at trial or hearing of this case. The  
4 **public safety shall be the primary consideration.”** (Emphasis added.)

5 Similarly, Penal Code § 1318 expressly provides that a defendant released on his or her  
6 own recognizance must promise to obey “all reasonable conditions” imposed by the court as a  
7 condition of release pending trial. In *In Re York* (1995) 9 Cal.4th 1133, the Supreme Court stated  
8 that the “reasonable conditions” contemplated by the statute went beyond merely assuring a  
9 defendant’s future appearances in court, but instead empowered a court to impose appropriate  
10 conditions “that relate to the prevention and detection of further crime and thus to the safety of  
11 the public.” (*Id.* at 1145.) The only limitation on this power is that the court must make a  
12 specific individualized determination that the condition is appropriate with respect to the  
13 defendant and that the condition is necessary for public protection.

14 The Court of Appeal has confirmed that the court can impose conditions on bail or own  
15 recognizance release; including suspension from the practice of medicine, if the condition is  
16 reasonable to protect the public. (*Gray v. Superior Court of Napa County (Medical Board)*  
17 (2005) 125 Cal.App.4th 629.)

18 In this case, revoking defendant’s contractor license and prohibiting defendant from  
19 practicing as a contractor unless duly licensed, should be included as a term of defendant’s own  
20 recognizance release, bail, or probation in order to further protect the public and provide more  
21 incentive for defendant to comply with the laws governing licensed contractors. It is important to  
22 note that defendant’s prior unlawful conduct as a contractor has caused his contractor license to  
23 be suspended and has caused financial harm to consumers on several occasions. Suspension of  
24 defendant’s contractor license apparently may not be an effective deterrent to prevent defendant  
25 from engaging in illegal and harmful conduct as a contractor. The additional incentive of  
26 complying with his criminal probation may provide defendant with some necessary motivation to  
27 comply with the laws that govern contractors and to maintain his contractor license in good  
28 standing.

VI. THE "PRESUMPTION OF INNOCENCE" DOCTRINE APPLIES ONLY AT THE TIME OF TRIAL AND MAY NOT BE CONSIDERED IN A PRETRIAL DETERMINATION OF CONDITIONS FOR O.R. RELEASE OR BAIL

“The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials . . . but it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.” (*In re York, supra*, 9 Cal.4th 1133, 1148, quoting *Bell v. Wolfish* (1979) 441 U.S. 520, 533.) The *York* court noted that the rule set forth in *Bell* mirrored well-established California law, which holds that no presumption of innocence attaches to a pretrial determination of the amount of bail to be set.

Consequently, in determining whether this court should impose a pretrial ban from practice or operation as a condition of O.R. release or bail upon defendant, it should not consider the presumption of innocence, which is applicable only at trial. Instead, this court should consider only the issue of whether such condition relates to the prevention or deterrence of further criminal activity and thus, the protection of public welfare and safety. (*In re York, supra*, 9 Cal.4th 1133, 1145, 1147-1148.)

## BOARD RECOMMENDATION

Consideration of the above points and authorities, in light of the circumstances of the acts charged in the Complaint, demonstrate that defendant Wagner is a serious threat to the public health and safety if he is allowed to continue working as a licensed contractor.

For the foregoing reasons, and in order to protect the public safety, Stephen P. Sands, Registrar of Contractors of the Contractors' State License Board, respectfully requests that this

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1 also issue an Order prohibiting defendant from acting as a contractor unless duly licensed, as a  
2 condition of his own recognizance release, bail or probation.

3 DATED: December 8, 2011

4 EDMUND G. BROWN JR.  
5 Attorney General of the State of California

6 Loretta A. West

7 LORETTA W. WEST  
8 Deputy Attorney General  
9 Attorneys for Applicant  
10 Stephen P. Sands, Registrar  
11 Contractors State License Board  
12 Department of Consumer Affairs  
13 State of California

**DECLARATION OF SERVICE BY U.S. MAIL AND ELECTRONIC MAIL**

Case Name: **People v. Carl Jacob Wagner**  
No.: **CD 235894**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

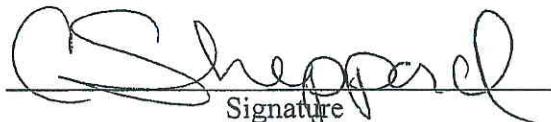
On December 8, 2011, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF BY STATE LICENSING AGENCY'S RECOMMENDATION FOR REVOCATION OF DEFENDANT'S CONTRACTOR LICENSE** by transmitting a true copy via electronic mail and placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Email address:**  
dawnella.gilzean@sdcounty.ca.gov

Dawnella Gilzean  
San Diego Public Defender  
450 B Street Ste 900  
San Diego, CA 92101  
**Attorney for: Carl Jacob Wagner**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 8, 2011, at San Diego, California.

Charlette Sheppard  
Declarant

  
Signature

1 EDMUND G. BROWN JR.  
2 Attorney General of California  
3 LINDA K SCHNEIDER  
4 Supervising Deputy Attorney General  
5 LORETTA A. WEST  
6 Deputy Attorney General  
7 State Bar No. 149294  
8 110 West "A" Street, Suite 1100  
9 San Diego, CA 92101  
10 P.O. Box 85266  
11 San Diego, CA 92186-5266  
12 Telephone: (619) 645-2107  
13 Facsimile: (619) 645-2061  
14 *Attorneys for Applicant, Stephen P. Sands,  
15 Registrar, Contractors State Licensing Board*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
SAN DIEGO COUNTY  
CENTRAL DISTRICT**

13 THE PEOPLE OF THE STATE OF CALIFORNIA.

Case No. CD235894

14 Plaintiff,  
15 v.  
16 CARL JACOB WAGNER,

DECLARATION OF  
DEPUTY ATTORNEY GENERAL  
LORETTA A. WEST IN SUPPORT OF  
RECOMMENDATION OF STATE  
LICENSING AGENCY

18  
19 STEPHEN P. SANDS, REGISTRAR,  
20 CONTRACTORS STATE LICENSE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
21 STATE OF CALIFORNIA

**DATE:** December 9, 2011  
**TIME:** 8:15 a.m.  
**DEPARTMENT:** 30

24 I, Loretta A. West, declare:

25        1. I am an attorney licensed to practice in the State of California, and am employed  
26 with the California Department of Justice as a Deputy Attorney General in the Licensing  
27 Litigation Section in San Diego. I have personal knowledge of the following facts, and if called  
28 as a witness, I could and would competently testify thereto.

1           2. In my capacity as a Deputy Attorney General, I am the attorney of record assigned  
2 to make an appearance in this case on behalf of Stephen P. Sands, Registrar of Contractors,  
3 Contractors' State License Board (CSLB), Department of Consumer Affairs, State of California  
4 to request the following: that under the authority of Business and Professions Code section 7106,  
5 the Court issue an Order to revoke General Building Contractor License No. 897674-B held by  
6 Carl Jacob Wagner, as sole owner doing business as That Guy Construction; and, that the Court  
7 issue an Order to prohibit defendant from acting as contractor unless duly licensed, as a condition  
8 of his own recognizance release, bail or probation.

9           3. CSLB records state that defendant was issued General Building Contractor  
10 License No. 897674-B, on June 4, 2007, as sole owner and doing business as That Guy  
11 Construction. The license expired under suspension on June 30, 2011. A licensee may renew an  
12 expired license within three (3) years after its expiration (Bus & Prof. Code sec. 7153.3(b)).  
13 Unless defendant's license is restricted by court or administrative action, defendant can renew his  
14 license and continue to act as a licensed contractor as long as he pays required fees and/or fines.

15           4. As a member of the Licensing Litigation Section for the Attorney General's  
16 Office, I am personally familiar with the procedures that are available to obtain discipline against  
17 defendant's contractor license through the administrative process.

18           5. The alleged criminal conduct constitutes violations of the Contractors' State  
19 License Law, and will subject defendant's contractor's license to discipline through the  
20 administrative process.

21           6. Proceeding administratively prior to completion of this criminal action constitutes  
22 a duplication of scarce State resources. It jeopardizes defendant's right against self-incrimination,  
23 as he can be called as a witness by the CSLB at an administrative hearing, and if he fails to  
24 present a defense, that may be construed against him, unlike in the current criminal proceeding.

25           7. It is the position of the Registrar of Contractors that based on these charges, and  
26 CSLB's investigation thereof, defendant Wagner is unsafe to operate as a licensed contractor, and  
27 his contractor license should be revoked, and he should be prohibited from acting as a licensed  
28 contractor unless duly licensed, as a condition of his own recognizance release, bail or probation.

8. Public protection is of utmost concern at this juncture.

2       9.       On December 1, 2011, I telephoned and spoke to defendant's attorney Dawnella  
3       Gilzean at (619) 338-4701. I told her that I represent the CSLB and I gave her notice of the  
4       CSLB's intent to make an appearance pursuant to Penal Code section 23 at her client's  
5       December 9, 2011, criminal readiness conference and to request that the Court issue an Order to  
6       revoke defendant's contractor license pursuant to Business and Professions Code section 7106,  
7       and to further request that the Court issue an Order to prohibit defendant from acting as contractor  
8       unless duly licensed, as a condition of his own recognizance release, bail or probation. Attorney  
9       Gilzean agreed to accept service by e-mail of any papers CSLB may file in this action.

10. On December 8, 2011, my office served Ms. Gilzean by e-mail with the following  
documents: Notice of Appearance and Recommendation by State Licensing Agency for  
Revocation of Defendant's Contractor License and Prohibition of Contracting Unless Duly  
Licensed; Memorandum of Points and Authorities in Support of Applicant's Recommendation,  
Pursuant to Penal Code Section 23, for Revocation of Defendant's Contractor License;  
Declaration of Deputy Attorney General Loretta A. West In Support of Recommendation of State  
Licensing Agency; Stipulation Re: Revocation of Defendant's Contractor License; (Proposed)  
Order Re: Revocation of Defendant's Contractor License; and, an alternative (Proposed) Order  
Re: Revocation of Defendant's Contractor License.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed this 8th day of December 2011, in San Diego, California.

  
LORETTA A. WEST  
Deputy Attorney General  
Declarant

**DECLARATION OF SERVICE BY U.S. MAIL AND ELECTRONIC MAIL**

Case Name: **People v. Carl Jacob Wagner**  
No.: **CD 235894**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

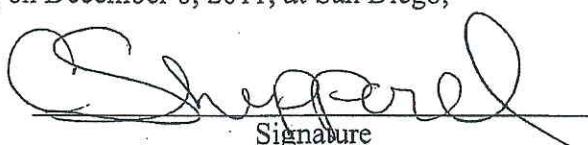
On December 8, 2011, I served the attached **DECLARATION OF DEPUTY ATTORNEY GENERAL LORETTA A. WEST IN SUPPORT OF RECOMMENDATION OF STATE LICENSING AGENCY** by transmitting a true copy via electronic mail and placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Email address:**  
dawnella.gilzean@sdcounty.ca.gov

Dawnella Gilzean  
San Diego Public Defender  
450 B Street Ste 900  
San Diego, CA 92101  
**Attorney for: Carl Jacob Wagner**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 8, 2011, at San Diego, California.

Charlette Sheppard  
Declarant

  
Signature

1 EDMUND G. BROWN JR.  
2 Attorney General of California  
3 LINDA K SCHNEIDER  
4 Supervising Deputy Attorney General  
5 LORETTA A. WEST  
6 Deputy Attorney General  
7 State Bar No. 149294  
8 110 West "A" Street, Suite 1100  
9 San Diego, CA 92101  
10 P.O. Box 85266  
11 San Diego, CA 92186-5266  
12 Telephone: (619) 645-2107  
13 Facsimile: (619) 645-2061  
14 *Attorneys for Applicant, Stephen P. Sands,  
15 Registrar, Contractors' State Licensing Board*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
SAN DIEGO COUNTY  
CENTRAL DISTRICT**

13 THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

16 | CARL JACOB WAGNER

Defendant.

19 STEPHEN P. SANDS, REGISTRAR,  
20 CONTRACTORS STATE LICENSE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

Applicant.

Case No. CD235894

**NOTICE OF APPEARANCE AND  
RECOMMENDATION BY STATE  
LICENSING AGENCY FOR  
REVOCATION OF DEFENDANT'S  
CONTRACTOR'S LICENSES, AND  
PROHIBITION OF CONTRACTING  
UNLESS DULY LICENSED**

[Penal Code Section 23; Business and Professions Code Section 7106]

DATE: December 9, 2011

TIME: 8:15 a.m.

DEPARTMENT: 30

23 TO THE CLERK OF THE ABOVE COURT:

24 PLEASE TAKE NOTICE that on December 9, 2011, at 8:15 am, or as soon thereafter as  
25 the matter may be heard, in Department 30 of the above-entitled court, applicant Stephen P.  
26 Sands, in his official capacity as the Registrar for the Contractor's State License Board,  
27 Department of Consumer Affairs, State of California ("Applicant"), by and through its attorneys,  
28 Kamala D. Harris, Attorney General of the State of California, by Loretta A. West, Deputy

1 Attorney General, requests an opportunity to appear before this Court pursuant to Penal Code  
2 section 23 to recommend that this Court issue an order revoking defendant Carl Jacob Wagner's  
3 contractor license on the grounds that defendant, if allowed to continue acting as licensed  
4 contractor, poses a danger to the public health, safety and welfare. Applicant further recommends  
5 and requests that this Court issue an order prohibiting defendant Carl Jacob Wagner from directly  
6 or indirectly working as a contractor unless duly licensed, as a condition of defendant's own  
7 recognizance release, bail, probation, or sentence.

8 These orders are requested in the interest of justice on the grounds that defendant, who is  
9 expected on December 9, 2011, to plead guilty to pending criminal charges alleging, among other  
10 things, burglary and theft in connection with his contractor's business, poses a danger to the  
11 public health, safety, and welfare, if allowed to continue to possess a contractor's license. This  
12 request is being made pursuant to the Court's authority under Penal Code section 23, authorizing  
13 the court to consider the Board's recommendations to promote the interests of justice and protect  
14 the public when the crimes are substantially related to the qualifications, functions, or duties of  
15 the licensee, as well as Business and Professions Code section 7106, authorizing the court to  
16 revoke a contractor's license in any action otherwise proper in any court involving the licensee's  
17 performance of his legal obligation as a contractor. This request is also being made pursuant to  
18 this court's authority to "take into consideration the protection of the public" when imposing  
19 conditions for release on bail (Penal Code section 1275) or own recognizance release (Penal Code  
20 section 1318), or as a condition of probation.

21 This request is based upon this Notice and the attached Memorandum of Points and  
22 Authorities, the Proposed Order, Declaration of Deputy Attorney General Loretta A. West, the  
23 Criminal Complaint, documents submitted in support of the Complaint, any reports and  
24 documents submitted in this case which can be considered in any application for any order  
25 changing bail (Penal Code sections 1204.5 and 1275), any pre-plea report, all papers, files, other  
26 / / /  
27 / / /  
28 / / /

1 memoranda, and exhibits on file herein, and such oral and other documentary evidence as may be  
2 presented at the hearing on this request.

3 Dated: December 8, 2011

EDMUND G. BROWN JR.  
Attorney General of California

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6

7 LORETTA A. WEST  
8 Deputy Attorney General  
9 Attorneys for Applicant  
10 Stephen P. Sands, Registrar  
11 Contractors State License Board  
12 California Department of Consumer Affairs

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**DECLARATION OF SERVICE BY U.S. MAIL AND ELECTRONIC MAIL**

Case Name: **People v. Carl Jacob Wagner**  
No.: **CD 235894**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

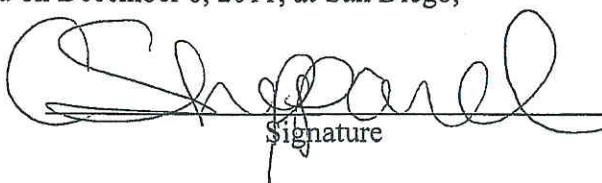
On December 8, 2011, I served the attached **NOTICE OF APPEARANCE AND RECOMMENDATION BY STATE LICENSING AGENCY FOR REVOCATION OF DEFENDANT'S CONTRACTOR'S LICENSES, AND PROHIBITION OF CONTRACTING UNLESS DULY LICENSED** by transmitting a true copy via electronic mail and placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Email address:**  
dawnella.gilzean@sdcounty.ca.gov

Dawnella Gilzean  
San Diego Public Defender  
450 B Street Ste 900  
San Diego, CA 92101  
**Attorney for: Carl Jacob Wagner**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 8, 2011, at San Diego, California.

Charlette Sheppard  
Declarant



Charlette Sheppard  
Signature

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
SAN DIEGO COUNTY  
CENTRAL DISTRICT**

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

5

CARL JACOB WAGNER,

dob 11/07/71

Contractor License No. 897674

Defendant.

STEPHEN P. SANDS, REGISTRAR,  
CONTRACTORS STATE LICENSE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

Applicant.

THE COURT HEREBY ORDERS that, under the authority of Business and Professions Code section 7106, General Building Contractor License No. 897674-B issued to That Guy Construction; sole owner Carl Jacob Wagner, shall be and hereby is revoked.

## IT IS SO ORDERED

**JUDGE OF THE SUPERIOR COURT**

**DECLARATION OF SERVICE BY U.S. MAIL AND ELECTRONIC MAIL**

Case Name: **People v. Carl Jacob Wagner**  
No.: **CD 235894**

I declare:

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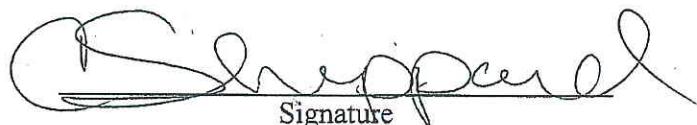
On December 8, 2011, I served the attached **ORDER RE: REVOCATION OF DEFENDANT'S CONTRACTORS LICENSE** by transmitting a true copy via electronic mail and placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Email address:**  
dawnella.gilzean@sdcounty.ca.gov

Dawnella Gilzean  
San Diego Public Defender  
450 B Street Ste 900  
San Diego, CA 92101  
**Attorney for: Carl Jacob Wagner**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 8, 2011, at San Diego, California.

Charlette Sheppard  
Declarant

  
Signature



1 IT IS HEREBY STIPULATED THAT the Court may revoke General Building Contractor  
2 License No. 897674-B held by That Guy Construction; sole owner Carl Jacob Wagner, pursuant  
3 to Business and Professions Code section 7106.

4 DATED: \_\_\_\_\_, 2011  
5

6 CARL JACOB WAGNER  
7 Defendant and Sole Owner of  
That Guy Construction

8  
9 DATED: \_\_\_\_\_, 2011  
10

11 LORETTA A. WEST  
12 Deputy Attorney General  
13 Attorneys for Applicant  
Stephen P. Sands, Registrar  
Contractors State License Board  
Department of Consumer Affairs  
State of California  
14  
15  
16

17 **IT IS SO ORDERED**  
18  
19

20 DATED: \_\_\_\_\_, 2011  
21  
22

23 JUDGE OF THE SUPERIOR COURT  
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28

**DECLARATION OF SERVICE BY U.S. MAIL AND ELECTRONIC MAIL**

Case Name: **People v. Carl Jacob Wagner**  
No.: **CD 235894**

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On December 8, 2011, I served the attached **STIPULATION RE: REVOCATION OF DEFENDANT'S CONTRACTOR LICENSE** by transmitting a true copy via electronic mail and placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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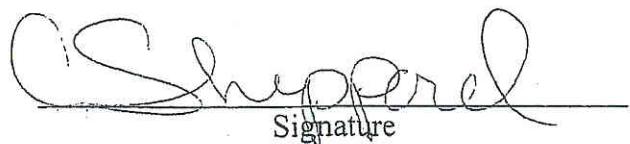
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Dawnella Gilzean  
San Diego Public Defender  
450 B Street Ste 900  
San Diego, CA 92101  
**Attorney for: Carl Jacob Wagner**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 8, 2011, at San Diego, California.

---

Charlette Sheppard  
Declarant

  
Signature