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8 **BEFORE THE**
9 **REGISTRAR OF CONTRACTORS**
10 **CONTRACTORS' STATE LICENSE BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. N2011-300

14 **L W G C INC**
15 **THOMAS LUKE WURZEL, RMO/CEO/PRES**
16 **BEVERLY LOIS WARNER, OFFICER**
17 8460 Olive School Lane
Winters, CA 95694,

A C C U S A T I O N

18 **Contractor's License No. 720524,**

19 **AND**

20 **3 TO 1 ENGINEERING INC**
21 **THOMAS LUKE WURZEL, RMO**
22 **BRIAN WILLIAM WILSON, RMO/CEO/PRES**
23 P. O. Box 580
Byron, CA 94514,

24 **Contractor's License No. 937967,**

25 **AND**

26 **XCAV8 INC**
27 **THOMAS LUKE WURZEL, RMO/CEO/PRES**
28 **BEVERLY LOIS WARNER, OFFICER**
P.O. Box 646
Winters, CA 95694,

Contractor's License No. 901440,

Respondents/Affiliated Licenses.

1 Complainant alleges:

2 **PARTIES**

3 1. Wood Robinson (Complainant) brings this Accusation solely in his official capacity
4 as the Enforcement Supervisor I of the Contractors' State License Board, Department of
5 Consumer Affairs.

6 2. On or about March 27, 1996, the Registrar of Contractors issued Contractor's License
7 Number 720524, B to L W G C Inc, Thomas Luke Wurzel, RMO/CEO/Pres, Beverly Lois
8 Warner, Officer (Respondent). The Contractor's License was in full force and effect at all times
9 relevant to the charges brought herein, but expired on March 31, 2010, and has not been renewed.

10 3. On or about September 21, 2009, the Registrar of Contractors issued Contractor's
11 License Number 937967, A, B, C-9, C-35, to 3 To 1 Engineering, Inc, Thomas Luke Wurzel,
12 RMO, and Brian William Wilson, RMO/CEO/Pres (Affiliated License). The Contractor's
13 License will expire on September 30, 2013, unless renewed.

14 4. On or about August 3, 2007, the Registrar of Contractors issued Contractor's License
15 Number 901440, A, to XCAV8 Inc, Thomas Luke Wurzel, RMO/CEO/Pres, Beverly Lois
16 Warner, Officer (Affiliated License). The Contractor's License expired on August 31, 2009, and
17 has not been renewed.

18 **JURISDICTION**

19 5. This Accusation is brought before the Registrar of Contractors (Registrar) for the
20 Contractors' State License Board, Department of Consumer Affairs, under the authority of the
21 following laws. All section references are to the Business and Professions Code unless otherwise
22 indicated.

23 **STATUTORY PROVISIONS**

24 6. Section 7090 of the Business and Professions Code ("Code") provides, in pertinent
25 part, that the Registrar may suspend or revoke any license or registration if the licensee or
26 registrant is guilty of or commits any one or more of the acts or omissions constituting cause for
27 disciplinary action.

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1 7. Section 7106.5 of the Code provides, in pertinent part, that the expiration,
2 cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of
3 the registrar, or a court of law, or the voluntary surrender of the license shall not deprive the
4 registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding
5 against the license, or to render a decision suspending or revoking the license.

6 8. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Registrar of jurisdiction to proceed with a disciplinary action during the
8 period within which the license may be renewed, restored, reissued or reinstated. Under Code
9 section 7076.1, the Registrar may reinstate a cancelled license if the licensee pays all of the fees
10 and meets all of the qualifications and requirements for obtaining an original license.

11 9. Section 7076.5 of the Code provides, in pertinent part, that the inactive status of a
12 license shall not bar any disciplinary action for violating provisions of the Contractors' State
13 License Law (Bus. & Prof. Code, § 7000, et seq.).

14 10. Section 7108 of the Code states:

15 "Diversions of funds or property received for prosecution or completion of a specific
16 construction project or operation, or for a specified purpose in the prosecution or completion of
17 any construction project or operation, or failure substantially to account for the application or use
18 of such funds or property on the construction project or operation for which such funds or
19 property were received constitutes a cause for disciplinary action."

20 11. Section 7114 of the Code states:

21 "(a) Aiding or abetting an unlicensed person to evade the provisions of this chapter [the
22 Contractors' State License Law] or combining or conspiring with an unlicensed person, or
23 allowing one's license to be used by an unlicensed person, or acting as agent or partner or
24 associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this
25 chapter constitutes a cause for disciplinary action.

26 (b) A licensee who is found by the registrar to have violated subdivision (a) shall, in
27 accordance with the provisions of this article, be subject to the registrar's authority pursuant to
28

1 Section 7099 to order payment of a specified sum to an injured party, including, but not limited
2 to, payment for any injury resulting from the acts of the unlicensed person."

3 12. Section 7116 of the Code states that "[t]he doing of any wilful or fraudulent act by the
4 licensee as a contractor in consequence of which another is substantially injured constitutes a
5 cause for disciplinary action."

6 13. Section 7118 of the Code states that "[e]ntering into a contract with a contractor while
7 such contractor is not licensed as provided in this chapter [the Contractors' State License Law]
8 constitutes a cause for disciplinary action."

9 14. Section 7120 of the Code states:

10 "Willful or deliberate failure by any licensee or agent or officer thereof to pay any moneys,
11 when due for any materials or services rendered in connection with his operations as a contractor,
12 when he has the capacity to pay or when he has received sufficient funds therefor as payment for
13 the particular construction work, project, or operation for which the services or materials were
14 rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any
15 such amount due or the validity of the claim thereof with intent to secure for himself, his
16 employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or
17 defraud the person to whom such indebtedness is due."

18 **COST RECOVERY/RESTITUTION**

19 15. Section 125.3 of the Code provides, in pertinent part, that the Registrar may request
20 the administrative law judge to direct a licensee found to have committed a violation or
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
22 and enforcement of the case.

23 16. Section 11519(d) of the Government Code provides, in pertinent part, that the
24 Registrar may require restitution of damages suffered as a condition of probation in the event
25 probation is ordered.

26 **MALAVALLI PROJECT**

27 17. In or about October 2004, Respondent entered into a verbal contract with Kumar and
28 Vijaya Malavalli to demolish an existing house and construct a new house on their property in

1 Los Altos, California (hereinafter "Malavalli project"). The agreement was on a time and
2 material basis. The parties signed a written contract on January 25, 2005. The contract called for
3 construction of a new 16,000 square foot single family house, swimming pool, cabana,
4 landscaping and hardscape. The contract was a "cost plus fixed fee contract." The "cost" was the
5 actual costs of the labor and materials and the "fixed fee" was Respondent's profit and overhead,
6 set at \$1,350,000.00 to be paid in installments of \$270,000.00 annually for five years.

7 The project changed when the Malavallis decided to demolish a second home on the
8 property and build a 22,000 square foot house and the parties entered a verbal agreement for this
9 new scope of the project, again as a time and materials with profit and overhead to Respondent.

10 Construction of the new house began in or about April 2007. From September 24, 2004,
11 through April 10, 2008, Respondent asked for and received payments either verbally or by way of
12 draws totaling \$11,847,220.71. According to the agreement by the parties, the draws were to be
13 accompanied with invoices, receipts and documentation to support the requested draws, but that
14 was not always the case.

15 Beginning in or about July 2007, the Malavallis discovered discrepancies in Respondent's
16 billings and hired an independent third party to evaluate the billings. The Malavallis terminated
17 Respondent on or about October 7, 2008, due to the discrepancies and Respondent's failure to
18 adequately support the discrepancies. Before termination, Respondent, from its own accounting,
19 determined that it owed the Malavallis approximately \$1,348,288.00 due to overpayment.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Diversion of Funds)**

22 18. Respondent's license is subject to discipline under Code section 7108 in that on the
23 Malavalli project Respondent used funds received for other purchases as follows:

24 a. Billed and received \$43,409.00 and purchased an RV for \$43,409.00 that was not
25 authorized by the Malavallis nor was the RV used at the jobsite.

26 b. Billed and received \$20,000.00 for a project vehicle that was used by Respondent's
27 employee. The project vehicle was not authorized by the Malavallis nor did the Malavallis have
28 title or ownership of the vehicle.

1 c. Billed and received \$4,269.30 and \$2,149.16, respectively, and used these funds for
2 its legal services.

3 d. Billed and received \$9,234.47 and \$20,472.63, respectively, and used these funds to
4 purchase laptops and a computer server for its own business use.

5 e. Respondent diverted approximately \$1,441,728.24 in that Respondent had received a
6 total of \$11,847,220.71 up to draw #7 by June 30, 2008, but the draws up to #7 only totaled
7 \$10,405,492.47.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Failure to Account)**

10 19. Respondent's license is subject to discipline under Code section 7108 in that on the
11 Malavilli project Respondent failed to account for funds as follows:

12 a. Billed and received \$16,875.00 for Davey Tree Services, when Davey Tree Services
13 invoices only totaled \$15,325.00. Respondent failed to account for \$1,155.00.

14 b. Billed and received \$509,072.50 for Nature's Reflections, when Nature's Reflections
15 billed Respondent only \$393,100.00 and Respondent only paid Nature's Reflections \$385,600.00.
16 Respondent failed to account for \$123,472.50.

17 c. In draw #1, Respondent billed and received \$66,675.00 for Valley Crest Landscaping,
18 when Valley Crest Landscaping invoices only totaled \$36,340.00. Respondent failed to account
19 for \$30,335.00.

20 d. In draw #2, Respondent billed and received \$16,050.00 for Valley Crest Landscaping,
21 when Valley Crest Landscaping invoices only totaled \$15,380.00. Respondent failed to account
22 for \$670.00.

23 e. Billed and received \$20,000.00 for the vehicle described above in paragraph 18, and
24 failed to account for the money.

25 f. Respondent received a total of \$11,847,220.71, when the invoices only totaled
26 \$7,513,161.48. Respondent failed to account for \$4,334,059.23.

27 g. Respondent failed to account for salary hours of the following staff:

28 1. \$50,000.00 for Kathy Rosano;

2. \$300,000.00 for Joe Grupalo;
3. \$70,000.00 for Laurie Davenport;
4. \$17,000.00 for Cindy Gross;
5. \$380,000.00 for Thomas Luke Wurzel;
6. \$98,000.00 for Beverly Warner.

SECOND CAUSE FOR DISCIPLINE

(Willful Conduct Causing Injury)

20. Respondent's license is subject to discipline under Code section 7116 in that on the Malavilli project Respondent engaged in the following conduct:

a. Respondent requested funds in excess of the value of work performed or materials provided as follows:

1. Asked for and received \$80,053.00 for new scaffolding and failed to provide new scaffolding and instead provided old and used scaffolding.

2. Respondent received a total of \$11,847,220.71, out of which a total of \$10,405.492.47 was by way of draws, leaving a total of \$1,441,728.24 in overpayment.

b. Respondent requested and received monies for work not performed and used the funds for personal/business expenses as follows:

1. Billed and received \$43,409.00 and purchased an RV for \$44,409.00 that was not authorized by the Malavallis nor was the RV used at the jobsite.

2. Billed and received \$2,942.54 and \$9,234.47, respectively, and used these funds to purchase laptops and a computer server for its own business use.

3. Billed and received \$20,000.00 for a project vehicle that was used by Respondent's employee. The project vehicle was not authorized by the Malavallis nor did the Malavallis have title or ownership of the vehicle.

4. Billed and received \$4,269.30 and \$2,149.16, respectively, and used these funds for its legal services.

THIRD CAUSE FOR DISCIPLINE

(Aided and Abetted Unlicensed Contractor/Entered Contract with Unlicensed Contractor)

21. Respondent's license is subject to discipline under Code section 7114 and/or 7118, in that on the Malavalli project Respondent hired and paid XCAV8, Inc, to work as a subcontractor during the time that XCAV8, Inc, was not a licensed contractor.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Pay Subcontractors and/or Material Providers)

22. Respondent's license is subject to discipline under Code section 7108 and/or 7120 for failing to pay the following subcontractors and/or materials providers for work performed on or materials provided to the Malavalli project after receiving sufficient funds from the Malavallis:

- a. Don Davis, \$82,000.00.
- b. Santa Clara Steel, \$197,830.00.
- c. Pine Cone Lumber, \$66,938.38.
- d. PG&E, \$724.18.
- e. Various subcontractors, \$852,188.21.

OTHER MATTERS

23. Pursuant to sections 7097 and 7098 of the Code, if license number 720524, B issued to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any other license issued in the name of Thomas Luke Wurzel or for which Thomas Luke Wurzel furnished the qualifying experience and appearance.

24. Pursuant to section 7121 of the Code, if discipline is imposed on license number 720524, B issued to Respondent, Thomas Luke Wurzel shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of a licensee of any licensee during the time the discipline is imposed, and any licensee which employs, elects, or associates Thomas Luke Wurzel shall be subject to disciplinary action.

25. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number 720524, B issued to respondent, Thomas Luke Wurzel shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of any licensee during the time the discipline is imposed, whether or not he had knowledge or participated in the acts or

1 omissions constituting grounds for discipline, and any licensee which employs, elects, or
2 associates Thomas Luke Wurzel shall be subject to disciplinary action.

3 26. Beverly Lois Warner, while serving as officer of Respondent L W G C Inc, had
4 knowledge of or participated in the acts or omissions which constitute cause for discipline against
5 said Respondent.

6 27. Section 7095 of the Code provides, in pertinent part, that the Registrar in making his
7 order may:

8 (a) Provide for the immediate complete suspension by the licensee of all operations as a
9 contractor during the period fixed by the decision.

10 (b) Permit the licensee to complete any or all contracts shown by competent evidence taken
11 at the hearing to be then uncompleted.

12 (c) Impose upon the licensee compliance with such specific conditions as may be just in
13 connection with its operations as a contractor disclosed at the hearing, and may further provide
14 that until such conditions are complied with, no application for restoration of the suspended or
15 revoked licensee shall be accepted by the Registrar.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Registrar of Contractors issue a decision:

19 1. Revoking or suspending Contractor's License Number 720524, B issued to L W G C
20 Inc, Thomas Luke Wurzel, RMO/CEO/Pres, Beverly Lois Warner, Officer;

21 2. Prohibiting Thomas Luke Wurzel from serving as an officer, director, associate,
22 partner, or qualifying individual of any licensee during the period that discipline is imposed on
23 license Number 720524, B, issued to L W G C Inc, Thomas Luke Wurzel, RMO/CEO/Pres,
24 Beverly Lois Warner, Officer;

25 3. Revoking or suspending any other license for which Thomas Luke Wurzel is
26 furnishing the qualifying experience or appearance;

27 4. Prohibiting Beverly Lois Warner from serving as an officer, director, associate,
28 partner, or qualifying individual of any licensee during the period that discipline is imposed on

license Number 720524, B, issued to L W G C Inc, Thomas Luke Wurzel, RMO/CEO/Pres,
Beverly Lois Warner, Officer;

5. Ordering restitution of all damages according to proof suffered by Kumar and Vijaya
Malavalli, as a condition of probation in the event probation is ordered;

6. Ordering restitution of all damages suffered by Kumar and Vijaya Malavalli as a
result of Respondent's conduct as a contractor, as a condition of restoration of license Number
720524, B, issued to L W G C Inc, Thomas Luke Wurzel, RMO/CEO/Pres, Beverly Lois Warner,
Officer;

7. Ordering Respondent to pay the Registrar of Contractors his costs in the investigation
and enforcement of the case according to proof at the hearing, pursuant to Business and
Professions Code section 125.3;

8. Ordering Respondent to provide the Registrar with a listing of all contracting projects
in progress and the anticipated completion date of each;

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

DATED: April 9, 2012


WOOD ROBINSON
Enforcement Supervisor I
Contractors' State License Board
Department of Consumer Affairs
State of California
Complainant

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