

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

In the Matter of the Accusation Against:

**DECKTECH INC,**  
P.O. Box 325  
Grover Beach, CA 93483  
RONALD JAMES MC KENNA,  
RMO/CEO/PRES

Contractor's License No. 796956,

Respondent.

---

**HUNTER JAMES INC,**  
P.O. Box 325  
Grover Beach, CA 93483  
RONALD JAMES MC KENNA,  
RMO/CEO/PRES,  
HEATHER LYNN MC KENNA, OFFICER

Contractor's License No. 862903

Affiliated Party.

CASE NO. N2014-235

ORDER TO ADOPT STIPULATED  
SETTLEMENT AGREEMENT AND  
RESOLUTION ORDER

ORDER

The attached Stipulated Settlement Agreement and Resolution Order is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter.

This Decision shall become effective on March 4, 2019.

IT IS SO ORDERED February 26, 2019.

  
\_\_\_\_\_  
David Fogt  
Registrar of Contractors

1 XAVIER BECERRA  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 LANGSTON M. EDWARDS  
Deputy Attorney General  
4 State Bar No. 237926  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6274  
6 Fax: (213) 897-2804  
E-mail: Langston.Edwards@doj.ca.gov  
7 *Attorneys for Respondent*  
*Contractors' State License Board*  
8 *Department of Consumer Affairs*

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

12  
13 In the Matter of the Accusation Against:  
14 **DECKTECH INC.,**  
PO Box 325  
Grover Beach, CA 93483  
15 **RONALD JAMES MC KENNA,**  
RMO/CEO/PRES  
16  
Contractor's License No. 796956,  
17  
Respondent.  
18  

---

**HUNTER JAMES INC.,**  
19 PO Box 325  
Grover Beach, CA 93483  
20 **RONALD JAMES MC KENNA,**  
RMO/CEO/PRES,  
21 **HEATHER LYNN MC KENNA, OFFICER**  
22  
Contractor's License No. 862903  
23  
24 Affiliated Party.

Case No. N2014-235  
**STIPULATED SETTLEMENT**  
**AGREEMENT AND RESOLUTION**  
**ORDER**

25  
26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
27 entitled proceedings that the following matters are true:  
28

1 **PARTIES**

2 1. David Fogt (Respondent) is the Registrar of Contractors' State License Board,  
3 Department of Consumer Affairs (Board) and is represented in this matter by Xavier Becerra,  
4 Attorney General of the State of California, by Langston M. Edwards, Deputy Attorney General.

5 2. On or about July 2, 2001, the Board issued License No. 796956, classification B  
6 (General Building Contractor) to Decktech, Inc., (Decktech) with Ronald James McKenna as its  
7 Responsible Managing Officer (RMO), President and Chief Executive Officer (CEO). The  
8 license with McKenna serving as RMO was in full force and effect at all time material to this  
9 matter and is renewed to July 31, 2019.

10 3. On or about August 15, 2005, the Board issued License No. 862903, classification B  
11 to Affiliated Party Hunter James, Inc., with Ronald James McKenna as its RMO, President and  
12 CEO. The license with McKenna serving as RMO was in full force and effect at all time material  
13 to this matter and is renewed to August 31, 2019.

14 4. Decktech, Inc. and Hunter James, Inc. (Petitioners) are represented in this proceeding  
15 by attorney John F. Hodges, whose address is: Barnick Hodges Law Corp., 789 Valley Road,  
16 Arroyo Grande, CA 93420.

17 **JURISDICTION**

18 5. On or around November 9, 2015, the Board filed an Accusation against Petitioners in  
19 Case No. N2014-235. (Attached hereto as Exhibit A)

20 6. Petitioners timely filed their notice of defense to the Accusation and an administrative  
21 hearing was held before Administrative Law Judge Samuel Reyes (ALJ Reyes) in San Luis  
22 Obispo on June 15 – 17 and November 14 – 16, 2016.

23 7. Following the hearing, ALJ Reyes submitted a Proposed Decision to the Registrar for  
24 consideration. Pursuant to Gov't Code sec. 11517, subd. (c)(2)(e), the Registrar considered, but  
25 did not adopt ALJ Reyes' Proposed Decision.

26 //

27 //

28

1 8. On or around June 9, 2017 the Registrar issued a Decision After Non-Adoption of  
2 Proposed Decision. (Attached hereto as Exhibit B).

3 9. On or around July 5, 2017, Petitioners filed a Writ of Administrative Mandamus  
4 (writ) to compel the Board to set aside its decision. The matter was heard by Judge Tana L.  
5 Coates (Judge Coates) in Superior Court San Luis Obispo County, case number 17CV-0352.

6 10. On or around November 2, 2018, Judge Coates issued a Statement of Decision which  
7 granted the Petitioner's writ relating to the First, Second and Seventh Causes for Discipline and  
8 remanded the proceedings to the Board for reconsideration of the penalty.<sup>1</sup> (Attached hereto as  
9 Exhibit C).

10 11. On or about January 22, 2019, Judge Coates issued a Notice of Entry of Judgment  
11 Granting Peremptory Writ ordering the Respondent to reconsider its action in light of the court's  
12 decision and to file a return to this writ on or before March 8, 2019. (Attached hereto as Exhibit  
13 D).

14 **ADVISEMENT AND WAIVERS**

15 12. Petitioners have carefully read, fully discussed with counsel, and understand the  
16 charges and allegations in Case No. N2014-235. Petitioners have also carefully read, fully  
17 discussed with counsel, and understand the effects of this Stipulated Settlement and Resolution  
18 Order.

19 13. Petitioners are fully aware of and have exercised their legal rights in this matter,  
20 including the right to a hearing on the charges and allegations in the Accusation; the right to be  
21 represented by counsel at their own expense; the right to confront and cross-examine the  
22 witnesses against them; the right to present evidence and to testify on their own behalf; the right  
23 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
24 documents; the right to reconsideration and court review of an adverse decision; and all other  
25 rights accorded by the California Administrative Procedure Act and other applicable laws.

26  
27  
28 <sup>1</sup> Judge Coates denied Petitioner's writ as to the Third, Fourth, Fifth and Sixth Causes for  
Discipline. Complainant incorporates the Statement of Decision by reference.





1           4.     **Change in License Status.** The Board further agrees to update the CSLB website to  
2 reflect a change in Petitioner's licensure status from "Currently Under Disciplinary Order" to  
3 "Previous Case" in all pertinent areas where license status may be determined by reviewing the  
4 CSLB website.

5           5.     **Disciplinary Bond Requirement.** The Board further agrees to terminate Decktech's  
6 Disciplinary Bond requirement upon the effective date of executed an agreement. Currently,  
7 Decktech has a two-year Disciplinary Bond with Philadelphia Indemnity Insurance Company  
8 which terminates on or around July 10, 2019. The Board also agrees to update the CSLB website  
9 by removing all references to the "Disciplinary Bond" currently on file, which was ordered  
10 pursuant to the Board's Decision After Non-Adoption in Case No. N2014-235.

11          6.     **Cost of Enforcement.** The Board further agrees to waive costs of enforcement as  
12 provided in the Decision after non-adoption.

13          7.     **Each Party to Bear its Own Costs.** The parties agree that each shall bear its own  
14 expenses incurred up to and including the date of entry of the judgment, including, without  
15 limitation, costs and attorney's fees, if applicable.

16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //



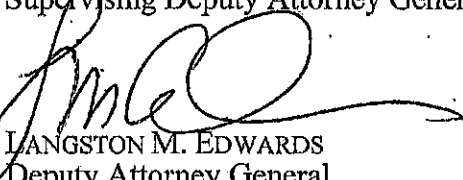


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ENDORSEMENT**

The foregoing Stipulated Settlement and Resolution Order is hereby respectfully submitted for consideration by the Registrar of Contractors.

Dated: February 22, 2019

Respectfully submitted,  
XAVIER BECERRA  
Attorney General of California  
ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
  
LANGSTON M. EDWARDS  
Deputy Attorney General  
*Attorneys for Complainant*

# EXHIBIT A

ACCUSATION CASE NO. N2015-235

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
4 State Bar No. 138213  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2579  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

11 In the Matter of the Accusation Against:

Case No. N2014-235

12 **DECKTECH INC,**  
PO Box 325  
13 Grover Beach, CA 93483  
RONALD JAMES MC KENNA,  
14 RMO/CEO/PRES

**A C C U S A T I O N**

15 Contractor's License No. 796956,

16 Respondent.

17 **HUNTER JAMES INC,**  
PO Box 325  
18 Grover Beach, CA 93483  
RONALD JAMES MC KENNA,  
19 RMO/CEO/PRES,  
HEATHER LYNN MC KENNA, OFFICER

20 Contractor's License No. 862903

21 Affiliated Party.  
22

23  
24 Complainant alleges:

25 **PARTIES**

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



1 contractor during the period fixed by the decision.

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

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

8       9. Sections 7097 and 7098 provide that when any license has been suspended or revoked  
9 following a hearing, the Registrar may suspend or revoke any additional license issued in the name  
10 of the licensee or for which the licensee furnished qualifying experience and appearance under the  
11 provisions of 7068, without further notice.

12       10. Section 7106.5 provides that the expiration, cancellation, forfeiture, or suspension of  
13 a license by operation of law or by order or decision of the registrar, or a court of law, or the  
14 voluntary surrender of the license shall not deprive the registrar of jurisdiction to proceed with any  
15 investigation of or action or disciplinary proceeding against the license, or to render a decision  
16 suspending or revoking the license.

17       11. Section 7121 states:

18       “A person who has been denied a license for a reason other than failure to document  
19 sufficient satisfactory experience for a supplemental classification for an existing license, or who  
20 has had his or her license revoked, or whose license is under suspension, or who has failed to  
21 renew his or her license while it was under suspension, or who has been a partner, officer, director,  
22 manager, or associate of any partnership, corporation, limited liability company, firm, or  
23 association whose application for a license has been denied for a reason other than failure to  
24 document sufficient satisfactory experience for a supplemental classification for an existing license,  
25 or whose license has been revoked, or whose license is under suspension, or who has failed to  
26 renew a license while it was under suspension, and while acting as a partner, officer, director,  
27 manager, or associate had knowledge of or participated in any of the prohibited acts for which the  
28 license was denied, suspended, or revoked, shall be prohibited from serving as an officer, director,

1 associate, partner, manager, qualifying individual, or member of the personnel of record of a  
2 licensee, and the employment, election, or association of this type of person by a licensee in any  
3 capacity other than as a nonsupervising bona fide employee shall constitute grounds for  
4 disciplinary action."

5 12. Section 7121.5 states:

6 "A person who was the qualifying individual on a revoked license, or of a license under  
7 suspension, or of a license that was not renewed while it was under suspension, shall be prohibited  
8 from serving as an officer, director, associate, partner, manager, or qualifying individual of a  
9 licensee, whether or not the individual had knowledge of or participated in the prohibited acts, or  
10 omissions for which the license was revoked, or suspended, and the employment, election, or  
11 association of that person by a licensee shall constitute grounds for disciplinary action."

12 13. Section 7122 states:

13 "The performance by an individual, partnership, corporation, limited liability company, firm,  
14 or association of an act or omission constituting a cause for disciplinary action, likewise constitutes  
15 a cause for disciplinary action against a licensee other than the individual qualifying on behalf of  
16 the individual or entity, if the licensee was a partner, officer, director, manager, or associate of that  
17 individual, partnership, corporation, limited liability company, firm, or association at the time the  
18 act or omission occurred, and had knowledge of or participated in the prohibited act or omission."

19 14. Section 7122.5 states:

20 "The performance by an individual, partnership, corporation, limited liability company, firm,  
21 or association of an act or omission constituting a cause for disciplinary action, likewise constitutes  
22 a cause for disciplinary action against a licensee who at the time that the act or omission occurred  
23 was the qualifying individual of that individual, partnership, corporation, limited liability company,  
24 firm, or association, whether or not he or she had knowledge of or participated in the prohibited  
25 act or omission."

26 **STATUTORY PROVISIONS**

27 15. Section 7109, subdivision (a), states:

28 "A willful departure in any material respect from accepted trade standards for good and

1 workmanlike construction constitutes a cause for disciplinary action, unless the departure was in  
2 accordance with plans and specifications prepared by or under the direct supervision of an  
3 architect."

4 16. Section 7113 states that "[f]ailure in a material respect on the part of a licensee to  
5 complete any construction project or operation for the price stated in the contract for such  
6 construction project or operation or in any modification of such contract constitutes a cause for  
7 disciplinary action."

8 17. Section 7159 states, in pertinent part:

9 "(a)(1) This section identifies the projects for which a home improvement contract is  
10 required, outlines the contract requirements, and lists the items that shall be included in the  
11 contract, or may be provided as an attachment.

12 . . . .

13 "(5) Failure by the licensee, his or her agent or salesperson, or by a person subject to be  
14 licensed under this chapter, to provide the specified information, notices, and disclosure in the  
15 contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

16 . . . .

17 "(c) In addition to the specific requirements listed under this section, every home  
18 improvement contract and any person subject to licensure under this chapter or his or her agent or  
19 salesperson shall comply with all of the following:

20 . . . .

21 "(4) A statement that, upon satisfactory payment being made for any portion of the work  
22 performed, the contractor shall, prior to any further payment being made, furnish to the person  
23 contracting for the home improvement or swimming pool work a full and unconditional release  
24 from any claim or mechanics lien pursuant to Section 3114 of the Civil Code for that portion of the  
25 work for which payment has been made. . . ."

26 18. Section 7159.5 states, in pertinent part:

27 "This section applies to all home improvement contracts, as defined in Section 7151.2,  
28 between an owner or tenant and a contractor, whether a general contractor or a specialty

1 contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the  
2 transaction.

3 "(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his  
4 or her agent or salesperson to comply with the following provisions is cause for discipline:

5 . . . .

6 "(3) If a downpayment will be charged, the downpayment may not exceed one thousand  
7 dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

8 . . . .

9 "(5) Except for a downpayment, the contractor may neither request nor accept payment  
10 that exceeds the value of the work performed or material delivered.

11 "(6) Upon any payment by the person contracting for home improvement, and prior to any  
12 further payment being made, the contractor shall, if requested, obtain and furnish to the person a  
13 full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to  
14 Section 3110 of the Civil Code for any portion of the work for which payment has been made.  
15 The person contracting for home improvement may withhold all further payments until these  
16 releases are furnished. . . ."

17 **COST RECOVERY / RESTITUTION**

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

22 20. Government Code section 11519, subdivision (d), provides that the Registrar may  
23 require restitution of damages suffered as a condition of probation in the event probation is  
24 ordered.

25 **WEST AVENUE PROJECT**

26 21. On or about September 9, 2013, Respondent entered into a written contract with  
27 homeowner F.P.S. to repair a roof top deck at his residence located on West Avenue in Morro  
28 Bay, California, for \$65,442.00, which includes a change order (West Avenue Project).



1 Respondent requested and was paid a \$15,500.00 down payment. Work began on or about  
2 September 11, 2013, and ended on or about November 21, 2013. Respondent was paid  
3 \$51,972.00 on the project. The Respondent agreed and the homeowner paid another contractor  
4 \$3,749.61 to complete a portion of the contract. An industry expert inspected the project and  
5 estimated the costs to complete and correct Respondent's work is approximately \$36,220.00.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Departure From Accepted Trade Standards)**

8 22. Respondent is subject to disciplinary action under section 7109, subdivision (a), in that  
9 on the West Avenue Project, Respondent willfully departed in a material respect from accepted  
10 trade standards for good and workmanlike construction, as follows:

11 a. Respondent failed to apply enough waterproof membrane material to the plywood  
12 deck to obtain a consistent 40-45 mils to 125 mils thickness causing the waterproof membrane  
13 thickness to be varied in thickness of 40 mils or less.

14 b. Respondent failed to install concrete tiles at a proper slope for drainage, failed to use a  
15 grout bag and grout tool for consistent grout joints, and failed to have no streaks after grouting.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Failure to Complete Project for Contract Price Stated)**

18 23. Respondent is subject to disciplinary action under section 7113, in that on the West  
19 Avenue Project, Respondent failed in a material respect to complete the project for the contract  
20 price, and the homeowner is required to spend substantial amounts in excess of the contract price  
21 to complete the project in accordance with the contract.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Violations of Home Improvement Contract Form Requirements)**

24 24. Respondent is subject to disciplinary action under section 7159, and 7159, subdivision  
25 (c)(4), in that on the West Avenue Project, Respondent violated home improvement contract  
26 drafting requirements by failing to include a statement regarding unconditional claim/lien release to  
27 be provided for any portion of work for which payment has been made.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Excessive Down Payment)**

3 25. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(3), in  
4 that on the West Avenue Project, Respondent received and / or requested a down payment  
5 exceeding the lesser of one thousand dollars (\$1,000.00) or ten percent (10)% of the contract  
6 amount.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Excessive Payment)**

9 26. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(5), in  
10 that on the West Avenue Project, Respondent received and / or requested payment(s) in excess of  
11 the value of work performed or materials delivered.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Failure to Provide Requested Release)**

14 27. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(6), in  
15 that on the West Avenue Project, Respondent failed to provide a full and unconditional lien release  
16 after having been requested to do so by the person contracting for the home improvement.

17 **OTHER MATTERS**

18 28. Pursuant to sections 7097 and 7098, if license No. 796956 issued to Respondent is  
19 suspended or revoked, the Registrar may suspend or revoke, without notice, any other license  
20 issued in the name of Ronald James Mc Kenna or for which Ronald James Mc Kenna furnished the  
21 qualifying experience and appearance.

22 29. Pursuant to sections 7121, 7121.5, 7122 and / or 7122.5, if discipline is imposed on  
23 license No. 796956 issued to Respondent, Ronald James Mc Kenna shall be prohibited from  
24 serving as an officer, director, associate, partner, manager, or qualifying individual, or member of  
25 the personnel of record of any licensee during the time the discipline is imposed, and any licensee  
26 which employs, elects, or associates Ronald James Mc Kenna shall be subject to disciplinary  
27 action.

28 ///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Registrar issue a decision:

4 As to Decktech Inc

5 1. Revoking or suspending Contractor's License No. 796956 issued to Decktech Inc,  
6 Ronald James Mc Kenna, RMO/CEO/PRES;

7 2. Prohibiting Ronald James Mc Kenna from serving as an officer, director, associate,  
8 partner, or qualifying individual of any licensee during the period that discipline is imposed on  
9 license No. 796956, issued to Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES;

10 3. Revoking or suspending any other license for which Ronald James Mc Kenna is  
11 furnishing the qualifying experience or appearance;

12 4. Ordering restitution of all damages according to proof suffered by homeowner F.P.S.,  
13 as a condition of probation in the event probation is ordered;

14 5. Ordering restitution of all damages suffered by homeowner F.P.S. as a result of  
15 Ronald James Mc Kenna's conduct as a contractor, as a condition of restoration of license No.  
16 796956, issued to Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES;

17 6. Ordering Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES to pay the  
18 Registrar of Contractors her costs in the investigation and enforcement of the case according to  
19 proof at the hearing, pursuant to Business and Professions Code section 125.3;

20 7. Ordering Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES to provide the  
21 Registrar with a listing of all contracting projects in progress and the anticipated completion date  
22 of each;

23 As to Hunter James Inc

24 8. Revoking or suspending Contractor's License No. 862903 issued to Hunter James Inc,  
25 Ronald James Mc Kenna, RMO/CEO/PRES, Heather Lynn Mc Kenna, Officer;

26 9. Prohibiting Ronald James Mc Kenna from serving as an officer, director, associate,  
27 partner, or qualifying individual of any licensee during the period that discipline is imposed on  
28 license No. 862903, issued to Hunter James Inc, Ronald James Mc Kenna, RMO/CEO/PRES,

1 Heather Lynn Mc Kenna, Officer;

2 10. Revoking or suspending any other license for which Ronald James Mc Kenna is  
3 furnishing the qualifying experience or appearance;

4 11. Ordering Hunter James Inc, Ronald James Mc Kenna, RMO/CEO/PRES, Heather  
5 Lynn Mc Kenna, Officer to pay the Registrar of Contractors her costs in the investigation and  
6 enforcement of the case according to proof at the hearing, pursuant to Business and Professions  
7 Code section 125.3;

8 12. Ordering Hunter James Inc, Ronald James Mc Kenna, RMO/CEO/PRES, Heather  
9 Lynn Mc Kenna, Officer to provide the Registrar with a listing of all contracting projects in  
10 progress and the anticipated completion date of each; and

11 As to All

12 13. Taking such other and further action as deemed necessary and proper.

13  
14  
15 DATED: November 9, 2015 for Heather Henderson

16 WOOD ROBINSON  
17 Enforcement Supervisor I  
18 Contractors' State License Board  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant

22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

CSLB DSS

LA2015500413  
51871064.doc

# EXHIBIT B

DECISION AFTER NON-ADOPTION CASE NO. N2015-235

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

In the Matter of the Accusation Against:

DECKTECH INC.,  
Ronald James McKenna, RMO/CEO/PRES  
Contractor's License No. 796956,

Respondent.

HUNTER JAMES INC.,  
Ronald James McKenna, RMO/CEO/PRES  
Heather Lynn McKenna, Officer

Contractor's License No. 862903,

Affiliated Party.

Case No. N2014-235

OAH Case No. 2016010752

DECISION AFTER NONADOPTION OF PROPOSED DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in San Luis Obispo, California, on June 15, 16, and 17, and November 14, 15, and 16, 2016.

Shawn P. Cook, Deputy Attorney General, represented Wood Robinson (Complainant), Enforcement Supervisor, Contractors' State License Board (Board), Department of Consumer Affairs.

John F. Hodges, Attorney at Law, represented Decktech, Inc. (Respondent) and Hunter James, Inc., whose Responsible Managing Officer (RMO), Chief Executive Officer, and President is Ronald James McKenna (McKenna).

The Accusation was amended at the hearing as follows. In Paragraph 22.a of the Accusation, on page 7, line 12, the number "40-" was struck. Paragraph 22.b was struck and replaced with the following: "Respondent failed to install concrete tiles at a proper slope for drainage and failed to maintain consistent grout joints." A Seventh Cause for Discipline was added, which states: "Respondent is subject to disciplinary action under [Business and

Professions Code<sup>1</sup> Section 7159.6 for failure to execute written change orders. The circumstances are that Respondent substituted Carboline for the NCS 6000 UVS coating without executing a written change order."

Complainant seeks to discipline Respondent's license, an order of restitution, and reimbursement of costs of investigation and prosecution, because Respondent allegedly departed from trade standards, failed to complete the project for the contract price, violated home improvement contract requirements, obtained an excessive down payment, obtained a payment in excess of the value of the work performed, failed to provide a full and unconditional lien release when requested, and failed to execute a written change order in connection with a home improvement project at the home of Frank P. Smith (Smith) and Judi Smith, collectively referred to as Homeowners. Respondent disputed most of the facts and presented evidence and argument against discipline and against the order of restitution.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of additional evidence and for the filing of closing argument. No additional evidence was received from Complainant by the December 2, 2016 deadline. Closing argument was received from both parties on December 19, 2016. The parties thereafter submitted a stipulation waiving the filing of scheduled reply argument. The stipulation was approved on January 3, 2017, and the matter was submitted for decision on January 3, 2017.

The proposed decision of the Administrative Law Judge was submitted to the Registrar of Contractors ("Registrar") of the Contractors' State License Board ("Board") on February 3, 2017. After due consideration thereof, the Registrar declined to adopt said proposed decision and thereafter on February 23, 2017 issued an Order of Non-adoption and subsequently on March 1, 2017 issued an Order Fixing Date for Submission of Argument. Written argument having been received from Respondents and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Registrar, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. Complainant filed the Accusation solely in his official capacity.
2. On July 2, 2001, the Board issued License number 796956, classification B (General Building Contractor), to Respondent, with McKenna as its Responsible Managing Officer (RMO)<sup>2</sup>, President and Chief Executive Officer (CEO). The license, with McKenna serving as RMO, was in effect at all times material to this matter and is renewed to July 31, 2017.

---

<sup>1</sup> All further statutory references are to the Business and Professions Code ("Code").

<sup>2</sup> The RMO "qualifies" the license for the corporation pursuant to Section 7065 of the Code.

3. On August 15, 2005, the Board issued License number 862903, classification B (General Building Contractor), to Hunter James, Inc., with McKenna as its RMO, CEO and President. The license, with McKenna serving as RMO, was in effect at all times material to this matter and is renewed to August 31, 2017.

#### *Project Inception*

4. On August 27, 2013, McKenna and Smith met at the Homeowners' home, located at 1125 West Avenue, Morro Bay, California (Property), to discuss the project. Smith wanted to repair and waterproof his deck, which was located over living space with views of the ocean. The perimeter contained tempered glass panes supported by 15 metal posts dug into the concrete below. Approximately 2.5 inches of concrete sat on the home's wood framing. The deck floor was covered with a smooth craft tile that was no longer manufactured in 2013.

5. McKenna and Smith had somewhat different recollections of the discussion about the floor. Smith testified that he wanted to retain the same tile look and feel. McKenna recalled that Smith initially wanted a non-tile deck material because the existing tile was no longer being manufactured. To educate Smith about his options, McKenna left a sample of Nevada Coating Systems (NCS) Crushed Granite, which was one of the waterproof membranes used by Respondent.

6. The membrane in the sample McKenna left was yellow in color, had the "Decktech, Inc." logo, and was set on a small rectangular piece of plywood.

7. a. On August 29, 2013, McKenna provided Smith with a packet of materials he called an "assessment" for the Homeowners to evaluate. The assessment contained photographs documenting the project's existing condition, photographs of other projects to describe work planned or suggested, a proposed scope of work, and a cost breakdown. Included with the assessment were "testimonials" from satisfied customers and a product data sheet<sup>3</sup> for the NCS 6000-UVS (Ultra Violet Stable) Waterproof Membrane (NCS 6000-UVS).

b. McKenna's transmittal email states, in part: "[I] have provided [a] Power Point attachment with photos walking you through the renovation details and what is involved with the proposed Scope of Work. The intent is to educate you with process so it makes sense. I have also included a membrane spec sheet submittal and local client testimonials or letters of endorsement for review as well. ¶ . . . ¶ Upon your review, feel free to contact me if there are any additional questions or concerns. If you elect to move forward then Irene in Contracts will expedite contract reflecting the scope and cost provided along with warranty package for your final review and approval. . . ." (Exh. 5.)

<sup>3</sup> A product data sheet, which contains general and descriptive information about the product, is to be distinguished from a product specification sheet, which contains more technical details about the product and its application requirements.



8. The NCS 6000-UVS product data sheet included in the assessment packet contained the following information:

"NCS 6000-UVS waterproof membrane is a uniquely blended polymer system designed to install quickly with rapid drying, thus allowing soil replacement (backfill) or concrete applications within 30 minutes. NCS 6000-UVS is formulated in 100% solid solution and comprised of specially blended UV-stabilized Polyurea Resins which result in substantial physical properties achieved in as little as 30 minutes from initial application.

"Once NCS 6000-UVS is dry to the touch, soil, concrete, tile and stone can be placed directly over the surface without negatively affecting the integrity of the membrane. NCS 6000-UVS is installed by spray, roller or brushing.

"NCS-6000-UVS is installed in thicknesses of 45 mils [thousandths of an inch] to as much as 125 mils (please contact NCS for design specifications). NCS-6000-UVS can incorporate traditional drainage systems as deemed necessary. ¶ . . . ¶." (Exh. 4, at p. 57.)

9. McKenna testified he sent the NCS 6000-UVS product information because Smith expressed a desire for a non-tile walking surface, and the NCS 6000-UVS is the product he typically uses for exposed membranes because of its ultraviolet protection properties. If the membrane was to be installed under tile, Respondent typically uses the NCS Extra Tough, which does not have the ultraviolet protection properties needed if direct sun exposure is contemplated.

10. Smith agreed to the proposal contained in the assessment, and told McKenna that he wanted to start the project quickly, as he was leaving town. To accommodate Smith's wishes, McKenna started ordering materials based on the scope of work and cost figures contained in the assessment.

#### *The Contract*

11. On August 29, 2013, Respondent presented the Homeowners with a formal contract, a 14-page document entitled "Work Contract" (hereinafter referred to as the "Work Contract" or "the contract"). The document described the work to be performed as follows:

- "1. Remove existing railing and dispose.
- "2. Chip stucco off surrounding resident wall to deck transitions up approx. 10-16 inches.
- "3. Inspect all exposed underlying framing for additional dry-rot fungus and excessive moisture damage. If found provide supplemental estimate to rectify. All supplemental work is estimated at \$48 sqft for removal and replacement.

"4. Install additional blocking at outside perimeter of deck for appropriate backing during new rail installation.

"5. Install new 1 1/8 exterior grade plywood utilizing screw sank nailing and glue. Deck is assumed to have 2% slope to outside for industry standard drainage. If once exposed and slope is inadequate then an additional quote will be provided to retrofit joist for proper slope prior to sheathing installation. The \$48 sqft is not used for slope retrofit, instead a sensible assessment will be made and cost effective quote determined based off additional time and materials needed.

"6. Chip stucco off outside perimeter of deck and retrofit framing here to bring stucco elevation up and terminate properly with new outside deck flashing. Existing detail is substantiated and no flashing is evident.

"7. Install 16oz copper flashing throughout deck to accommodate new waterproof deck coating assembly.

"8. Install new stucco weep screed detail with 2 inch finished reveal above finished deck surface. Install new stucco to all impacted areas through finish.

"9. Install NCS waterproof deck coating membrane ready for tile.

"10. Install tile to same layout, design and size of existing.

"11. Install new glass rail system with 1/2 tempered glass at 6ft spans."  
(Exh. 4, at pp. 108-109.)

12. The contract specifically excluded the following items from the scope of work: permit and drawing of permit, cost for additional repairs exposed from inaccessible areas, painting of stucco, and gutters.

13. The total contract price was \$59,970, and the cost breakdowns were made for demolition (\$6,160), framing (\$8,400), stucco (\$6,156), membrane (\$13,860), copper flashing (\$3,360), tile purchase and installation (\$12,320), and railing (\$9,714).

14. Payments were scheduled as follows: (1) a "deposit and first draw" of \$15,500 was due at signing of the contract "to confirm start date and provide scoped items 1-5 of Work Contract." (Exh 4, at p. 110.); (2) a second payment of \$15,500 was due upon completion of contract work items 6, 7 and 8 through scratch coat and dry-in coat of membrane; (3) a third payment of \$15,500 was due upon completion of membrane, brown coat to stucco and tile delivery to the project; and (4) the balance of \$13,470 was due upon completion of the project.

15. Smith initialed each page of the contract and signed its last page.

16. The contract did not contain the statement regarding an unconditional claim or lien release to be given the homeowner for any portion of the work for which payment has been made, as required by section 7159, subdivision (c)(4) of the Code.

17. Also on August 29, 2013, the parties executed a five-page "Warranty for Waterproof Deck Coatings," which also contained Smith's initials on every page. The warranty contained different terms depending on the type of waterproof membrane used. The warranty code referenced on the signature page is "2A," which provided a 10-year warranty, the longest term provided under the warranty, for "Overlay of Existing Coating with NCS-6000 & Amerilyte." (Exh. 4, at pp. 31 and 34.)

18. a. Both Homeowners testified that the NCS 6000-UVS product sheet was given to them with the contract. Smith testified that it was given to him with an unsigned copy of the contract, but he appeared to refer interchangeably to the assessment, where Respondent agreed the product data sheet was included, and to the actual contract. Judi Smith testified that the product data sheet, accompanied with a signed copy of the contract, was sent to them on August 30, 2013. The Homeowners did not testify about any discussion of the product data sheet at the time the contract was signed, and unlike all pages of the contract or of the warranty, the NCS 6000-UVS product data sheet did not contain the Homeowners' initials or signature, or Respondent's signature. McKenna denied that he attached or otherwise made the NCS 6000-UVS product sheet a part of the home improvement contract. In these circumstances, it was not established that the NCS 6000-UVS product sheet was actually part of the home improvement contract between Respondent and the Homeowners.

b. Nevertheless, even if specific waterproof membrane specifications were not incorporated into the contract, Respondent planned to install an NCS waterproof membrane and Smith reasonably expected the installation of an NCS membrane. Thus, Respondent left an NCS Crushed Granite membrane sample on August 27, 2013, provided a product data sheet for the NCS 6000-UVS on August 29, 2013, and referred to installation of an NCS waterproof membrane in item 9 of the scope of work section of the contract.

19. On September 13, 2013, McKenna submitted a written proposal for removal of additional dry rot fungus and excessive moisture damage uncovered after commencement of the project, as contemplated by item 3 of the scope of work in the contract. On the same date, Smith accepted the proposal, agreeing to pay an additional \$5,472.

20. a. The Homeowners paid Respondent \$15,500 on September 9, 2013 (first draw), \$15,500 on September 27, 2013 (second draw), \$5,472 on September 27, 2013 (supplemental contract), and \$15,500 on October 17, 2013 (third draw), for a total of \$51,972.

b. In late November or early December 2013, Respondent and Smith disagreed about whether installation of the glass panels required a permit, and Smith called another contractor, Central Coast Glass, to perform the work called for under the contract between Respondent and the Homeowners. On December 3, 2013, the Homeowners paid Central Coast Glass \$3,749.61 for the work.

*Choice/Substitution of Waterproofing Membrane*

21. NCS is Respondent's primary source for waterproofing membranes. On August 29, 2013, McKenna called NCS to order the waterproof membrane. His contact at NCS was out of town, and McKenna ordered the waterproof membrane from Carboline; his secondary source. The Carboline Reactamine ET Waterproof Membrane (Carboline) was the one actually used on the project.

22. Respondent deemed the Carboline product comparable to the NCS Extra Tough membrane he planned to use once the Homeowners opted for a tile floor on their deck. The manufacturer specifications called for an installation thickness between 30 to 250 mils.

23. Respondent did not obtain a written change order from the Homeowners in order to use Carboline instead of NCS 6000-UVS or another NCS product. In fact no authorization, written or otherwise, was sought from the Homeowners prior to the substitution.

24. a. As set forth below, the Board contracted with Gary Lasater (Lasater), the principal of Gary Lasater Construction, Inc., to conduct an inspection of the project. Lasater holds contractor licenses in classification A (General Engineering Contractor), classification B (General Building Contractor), subclassification CS (Concrete Contractor), and subclassification C12 (Earthworks and Paving Contractor). Lasater has been involved in many projects involving waterproofing, but has only actually applied a waterproof membrane on three occasions.

b. Lasater opined that all change orders are required to be in writing under the Contractors State License Law. Changing the waterproofing membrane from the NCS 6000-UVS product to the Carboline product would, therefore, require a written change order.

25. a. Respondent called David L. Mazor (Mazor), the founder and owner of NCS, as a witness. Mazor, who holds General Building Contractor licenses in California and Nevada, has spent over 35 years in the construction industry, developing or applying waterproofing coatings, among other things. The NCS 6000-UVS Waterproof Membrane is in a class of polyurea membrane products, which are durable, flexible, water resistant compounds designed to be applied over multiple surfaces. Mazor referred to the Carboline membrane as "identical" to the NCS 6000-UVS, with the same properties and the same manner of application.

b. In Mazor's opinion, if someone could not obtain the NCS 6000-UVS membrane, Carboline would be an acceptable substitute.

26. Given Mazor's extensive knowledge and experience in waterproofing applications and his greater knowledge of the products involved, his testimony regarding waterproofing applications is credited when in conflict with Lasater's. However, expert testimony is not necessary to resolve the question of whether Respondent failed to comply with the law regarding getting authorization from the consumer prior to a change to the Work Contract or compliance with Section 7159.6 of the Code.

27. While Respondent attempted to establish that the substitution of the Carboline membrane for the NCS 6000-UVS is not a "material" change in the contract that would have triggered the need for Respondent to obtain a change order, this is not the standard Respondent must meet. The Contractors' State License Law requires all changes to be in writing<sup>4</sup> and plainly does not permit exemption or deviation from the requirement that a contractor obtain written authorization from the consumer prior to making any change to the contract. There is no exemption for product substitutions or deviations where the change is deemed "not material" in the sole discretion of the contractor. The Work Contract also states, in part, that, "[a]ny deviation" will not be performed "unless a written extra work order is executed by the customer..." (Exh. 4 at p. 110.) McKenna admitted that he neither had discussions with Smith nor provided the Homeowners with a written change order before unilaterally substituting another product. (AR Vol. VI, 208:20-25, 209:1-6.) However, this is contrary to the terms of the Work Contract and the warranty identifying the product as an NCS product (see Factual Findings 11, 17 and 18b); and therefore required written authorization from the Homeowners to be enforceable under Section 7159.6 of the Code.

#### *Commencement of Work on the Project*

28. a. McKenna testified that he performed significant administrative work before the start of construction. In addition to ordering the waterproof membrane on August 30, 2013, he met with project manager Scott Wilson (Wilson) to plan and schedule tasks associated with the project.

b. At the time of the Smith project, McKenna believed that he could charge for administrative work before the start of construction work. He now realizes his understanding was in error, and has made necessary changes in his standard contract language.

29. Work on the site of the project started on September 11, 2013. Glass panels were removed and protective construction paper was placed over areas that could be impacted by debris during demolition, and demolition was commenced.

30. As of September 27, 2013, when the second payment was made by the Homeowners, Respondent had completed demolition (item 1 of the contract), removed stucco (item 2), inspected underlying framing for damage (item 3), and had commenced installation of blocks at the outside perimeter (item 4) and had commenced the installation of new plywood (item 5.) The work required by the supplemental contract was completed.

#### *Tile Installation (Grout Joints)*

31. The Homeowners ultimately selected a 12-inch by 12-inch concrete composite Mexican Saltillo tile manufactured by Coronado Stone Products (Coronado). Mexican Saltillo

---

<sup>4</sup> Section 7159(c)(5) of the Code provides that contractors must comply with the following: "A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract only if it is in writing and signed by the parties prior to the commencement of any work covered by a change order."

tile is named after the town in Mexico where the tile originated. The Saltillo tile tends to have irregular perimeter and height, although manufactured tiles like the Coronado product selected by the Homeowners are more regular.

32. The tile was installed during the week of October 14, 2013, a job that consumed five days. The installation was performed by Quality Tile, whose principal is Rodney Alexander Gibson (Gibson). Mark Lopez (Lopez) was the main tile setter during the installation and supervised other workers. Gibson and Lopez testified that the tile had been properly installed.

33. In its "Installation Specifications" sheet, Coronado suggests a one-half-inch grout joint. (Exh. 17, at p. 6.) According to the manufacturer specifications for the grout used, Polyblend Sanded Grout, the product is recommended to fill joint widths of one-eighth inch to one-half inch.

34. Lasater has worked in over 1,000 jobs involving installation of Saltillo tiles. In testimony not disputed, Lasater opined that accepted industry standards for good and workmanlike construction require a contractor to follow a manufacturer's tile installation recommendations. In Lasater's opinion, Respondent failed to install the tile on the Smith project in accordance with industry standards because the grout joints did not follow the manufacturer's one-half-inch specification and were not uniform, ranging in size from one-half-inch to one-and-one-half inches. Some of the joints measured about three-quarter of an inch and others about one inch. The one-and-one-half inch joints were found along the south edge of the deck. The variability in the size of the grout joints was greater than allowed by industry standards or necessitated because of the nature of the tile. Complainant presented photographs which supported Lasater's observations and testimony about the size and regularity of the grout joints.

35. Respondent called Mark Marsch (Marsch), owner of a consulting firm that bears his name, as an expert in tile installation. Marsch is not licensed as a contractor, but over the past 35 years has installed tile on about 25 projects and overseen tile installation on about 100 others.

36. Marsch opined that the tile installation complied with industry standards. With the exception of the one-and-one-half-inch area along the south edge of the deck, he measured the grout joints to average between one-half and five-eighth inches. In his opinion, such range was acceptable and consistent with the nature and rustic appearance of the Saltillo tile.

37. Lasater's testimony is credited, as it is more persuasive and supplemented by the record evidence. Grout joints greater than one-half inches, including measuring three-fourths of an inch, one inch, and one-and-one-half inches, were observed and documented by Lasater. The lack of uniformity and variation in grout joint size were more significant than would be expected given the nature of the tile used and the scope of work for this contract. The Work Contract specifically stated "Install tile to same layout, design and size of existing." (Exh. 4, p. 109.) Lasater further confirmed that "that's what the owner wanted, three-quarter-inch grout; same layout as before, 12-inch variance by half inch. Half inch was not acceptable." (AR Vol. III, 73:5-8.)

38. a. Installers left a one-and-one-half-inch grout joint along the south edge of the deck.

b. Lopez testified that he spoke to Smith when he realized that there would be one-and-one-half-inch grout joints on the south end of the deck. Lopez testified that he gave Smith the option of using pieces of tile to avoid the large joints, and that Smith just told him "to just go ahead and grout it."

c. Smith testified that when informed by the installers about the potential one-and-one-half-inch joints, he said he did not want such large joints. He suggested that the installers could increase the size of the grout joints in the south end by one-eighth, to a total of five-eighths. According to Smith, the installer simply walked away. Smith denied giving direction for where the tile layout would begin. In light of Smith's credible, detailed contrary testimony, it was not established that he authorized the one-and-one-half-inch grout joint. Also, Smith's testimony is consistent with the scope of work contained in the Work Contract. Smith testified that he "wanted it [tile] replaced in the same layout as what my original tile was," (AR: Vol. I 62:11-12), and the "same layout we could possibly get in three-quarter inch joints" (AR Vol. I, 163:14-15).

39. In Lasater's opinion; leaving a one-and-one-half-inch grout line along the south edge of the deck constitutes a departure from industry standards. The grout line is unsightly and could break off. The contractor should have started laying the tile on the southerly edge and make necessary adjustments in tile size to avoid the one-and-one-half-inch grout line. Lasater's opinion is persuasive and sufficient to establish a deviation from industry standards.

40. Marsch opined that homeowner input must be considered and that a contractor's obligation is to present options for the homeowner to decide. Because he was informed that Smith was given the choice and opted for the course the installers followed, Marsch found no deviation from industry standards. Marsch's opinion is based on the false premise that Smith authorized the one-and-one-half-inch grout joints and is not credited.

#### *The Deck Slope and the Tile Installation*

41. During his inspection of the project, Lasater measured the slope of the deck using a digital level. The deck was not uniformly level. Some areas of the deck had no slope, and one area sloped toward the house. Some of the tiles were lower than adjacent tiles.

42. As established by the credible testimony of Lasater, industry standards require that structures built over living spaces, such as the Smith deck, drain away from living spaces at a two percent slope. This testimony was partially supported by McKenna's testimony that he assumed in preparing the contract that the slope was two percent as required by codes, and by McKenna's inclusion of the language in the contract, i.e., item 5 of the scope of work indicating that "the deck is assumed to have a 2% slope to outside edge for industry standard drainage." Marsch's contrary testimony that all that was required was "positive drainage" is unsupported and unpersuasive.

43. The evidence established that the deck did not have a two percent slope before commencement of work by Respondent, a fact that was not known to Respondent. Lasater testified without contradiction that the industry standard required Respondent to bring up the matter of the substandard slope to Smith for the homeowner to decide if he wanted to fix the problem. Lasater opined that the fact that Respondents uncovered a less than 2% slope to install the concrete tiles meant that Respondents should have placed written notice of the slope issue in writing to the homeowner, either in a change order or a letter. (AR Vol. V 29:18-25). In addition, the contract at Item No. 5 specifically required Respondent to provide an additional quote if the "slope is inadequate" prior to sheathing installation (Ex. 4, p. 16). Lasater opined that this statement meant it was assumed that "the deck was going to have two-percent fall. If there was not two-percent fall, once it was exposed, then there would be additional quote to retrofit" (AR Vol. V 45:18-21).

44. a. There is conflicting testimony regarding whether Respondent brought the matter up to Smith regarding fixing the deficient slope. McKenna and Wilson testified, with corroborating photographic evidence that once the tile had been removed and the substrate had been exposed, McKenna, Wilson and another employee of Respondent, confirmed that the slope of the deck was below two percent. McKenna recalled that it was one percent or 1.2 percent in the four to six locations where the slope was measured with the digital level.

b. Wilson testified that McKenna had reported his findings to Smith, but did not provide any further detail about the Homeowner's response. On cross-examination, Wilson admitted that he was not present for the alleged conversation with Smith regarding the deficiency in the slope (AR Vol IV 163:14-19). His testimony that the issue was "brought up to Smith" was based only on the fact that McKenna told him that the conversation with the Homeowner had happened (AR Vol. IV 163:20-22).

c. McKenna testified that Smith was at the top of the stairs when they were taking the measurements. McKenna spoke to Smith and informed him the slope was one percent. Smith then asked what it would take to fix it. McKenna told him that he would have to retrofit the framing and that it would probably cost about \$19,000. McKenna said he had to consult with an engineer before making a formal bid. According to McKenna, Smith said "no way, this deck is costing me too much, will it drain?" When McKenna said that there was positive drainage in the deck, Smith told him to just prepare an estimate to fix the dry rot. As set forth above at Factual Finding number 19, the supplemental proposal was submitted on September 13, 2013.

d. Smith testified Respondent never reported the slope was less than two percent or provided the opportunity to enter into a supplemental contract to correct any deviations.

e. McKenna's testimony is not corroborated by Wilson's testimony, since Wilson was not present when the alleged conversation with Smith supposedly occurred. There is also no corroborating documentary evidence that Smith was notified. In fact, other than McKenna's bald assertion that the conversation happened, there is no evidence that Respondent provided any sort of written notice or quote for a change order to the Homeowners about the inadequate slope as required by the Work Contract and consistent with the standards described by Lasater. Any conclusion that the Homeowners were notified is considered speculative.



f. Accordingly, it is not established that McKenna met industry standards by bringing up the matter of the substandard slope to Smith for the homeowner to decide whether he wanted to fix the problem. Regardless, the Accusation charges Respondent with deviating from accepted trade standards by failing to install concrete tiles at a proper slope for drainage.

45. In Lasater's opinion, in addition to the absence of the two percent slope, Respondent's work deviated from industry standards in that the tile installation failed to direct the water away from the residence, and some areas of the deck sloped toward the house ("reverse slope"). Drainage, as well as aesthetics, was further diminished by the fact that some tiles were set lower than adjacent ones. This testimony, which is also supported by photographic evidence, is credited and establishes a deviation from the standard of care.

46. Because of the poor workmanship in the tile installation, Lasater concluded that the only way to correct the problem was to "redo the deck" (AR Vol. V 35:14-25, 36:6-22). This would include: replacing the tile deck and the glass panels, adding necessary sleepers on the sheeting to obtain a 2% minimum slope, installing new plywood sheeting, installing a new waterproof membrane, re-installing the tile per manufacturer's instructions and re-installing the glass panels (Exh. 19).

#### *Installation of Deck Perimeter Wall*

47. The homeowners wanted to use the existing glass for the deck walls. Smith testified that City of Morro Bay (Morro Bay) staff had advised him that a new permit would not be required if no changes were made to the perimeter layout or the size of the glass panes. Respondent agreed to comply with the Homeowners' wishes, but concluded, based on his own subsequent discussions with Morro Bay representatives that a permit would be required because oversize glass was being used.

48. Respondent declined to perform the work unless Smith agreed to Morro Bay inspection and Smith did not accede. As a result of the disagreement over the permit issue, the Homeowners contracted with Central Coast Glass to install the glass panes.

49. SE Technologies, whose principal is John Ebrahimi (Ebrahimi), a subcontractor hired by Respondent, fabricated the required 15 metal posts and delivered them to the project. On November 26, 2013, Ebrahimi met League, an employee of Central Coast Glass, to show him where the posts should be placed. Ebrahimi and League verified there was sufficient material to which the posts could be attached. A dispute thereafter ensued about who was responsible for paying for Ebrahimi's work. Respondent eventually paid Ebrahimi.

50. On December 2, 2013, Central Coast Glass installed the glass posts and glass panes.

#### *Homeowners' Complaints and Investigation*

51. a. On November 29, 2013, Smith sent Respondent an email detailing his perceived problems with the project, including the application of the waterproof membrane, the

tile installation, and the deck perimeter wall installation. Smith calculated he had overpaid Respondent \$22,424 in light of the poor workmanship and work not performed. Smith asked Respondent not to visit the Property unless invited and supervised. Smith requested all lien releases and an accounting of money paid by respondent to subcontractors and for materials used on the project. At the hearing, Smith explained that he sought the information because he did not want any subcontractor to file a lien on his property.

b. Respondent did not provide the requested lien releases because no liens had been filed by any of the subcontractors.

52. On December 9, 2013, Smith filed a complaint with the Board. The matter was assigned to Enforcement Representative Maria Gonzalez (Gonzalez). As part of her investigation, Gonzalez requested industry expert Lasater to inspect the property.

53. On April 10, 2014, Lasater inspected the property. Gonzalez and Smith were present. Another contractor hired by Smith, Bill Leys (Leys) joined them after Lasater and Gonzalez started a discussion about the complaint with Smith.

54. a. Smith requested Lasater to perform destructive testing to examine the thickness of the membrane. Smith asked Lasater to inspect an area in the northeast section of the deck where there was a broken tile. Using a saw, Leys removed the grout and tile, and cut out a one-half-deep four-inch by four-inch piece of the underlying plywood. The waterproof membrane was visible on top of the sample. Lasater examined the sample, and using a caliper provided by Leys, measured the membrane to be approximately 35 mils thick.

b. Lasater then selected a different location, on the southeast section of the deck, to obtain another sample. Leys followed the same procedure to remove another four-by-four piece of the plywood sheeting. Using the same caliper, Lasater determined the membrane measured 40 mils in thickness.

55. Lasater submitted his report to Gonzalez on June 16, 2014.

#### *Expert Opinion and Findings Regarding the Waterproofing Membrane*

56. Lasater opined that accepted industry standards for good and workmanlike construction require a contractor to use the membrane thickness recommended by the manufacturer. In this case, the required thickness was the 45 to 125 mils specification contained in the NCS 6000-UVS product data sheet Respondent attached to the contract with Smith. Lasater concluded that the product data sheet had been attached to the contract based on his review of contract materials and his discussions with Smith. Because the two samples obtained on April 10, 2014 were below the 45 to 125 mils range, Lasater concluded the membrane had not been installed in accordance with the manufacturer's requirements and, therefore, Respondent's installation was below industry standards.

57. Lasater testified that his opinion would not change even if a Carboline waterproof membrane had been installed because the homeowners were promised a membrane thickness of 45 to 125 mils.

58. a. Mazor questioned the reliability and validity of Lasater's testing of the membrane thickness. In testimony that was not directly challenged, Mazor testified that the testing the thickness of polyurea membranes is governed by standards developed by the American Society for Testing and Materials (ASTM). ASTM has protocols for noninvasive as well as for invasive testing. If invasive testing is to be undertaken, as was done in the Smith project, then ASTM requires examination of multiple samples obtained on a specified grid to ensure a valid measure. In the Smith deck, ASTM standards require 45 separate measurements clustered in three separate circles of six inches in diameter each.

b. Inasmuch as the testing of the Smith deck was not conducted in accordance with ASTM testing standards, the results obtained from the two samples measured by Lasater are insufficient to establish the thickness of the membrane.

59. Mazor further testified that even if the results obtained by Lasater were accepted, the thickness of the Carboline waterproof membrane was within acceptable limits. In Mazor's opinion, post-installation measurements must take into account absorption into the substrate. For instance, steel would absorb more of the membrane than wood. In the Smith deck, a 30 mils thickness on a one-and-one-eighth plywood surface would be more than adequate to waterproof the deck.

60. Mazor explained that the 45 to 125 Mil reference in the NCS 6000-UVS refers to the average thickness of the application, but that the product is designed to be effective at thicknesses of 20 to 215 Mil, as set forth in its product specification.

61. In light of Mazor's credible testimony, it was not established that Respondent deviated from industry standards in his installation of the Carboline waterproof membrane in the Smith project.

#### *Cost to Complete Project*

62. Lasater calculated the cost to complete the project in accordance with industry standards. His calculations included replacement of the membrane and the tile. The total cost to repair all complaint items was \$36,220. Of this amount, \$13,120 was for the installation of tile, grout and sealer. Installation of a new waterproof membrane was \$13,860. Other items, such as removal and reinstallation of the glass panels (\$2,200), demolition of the floor tile and thin set (\$5,640), and removal of debris (\$1,400.), pertained to both jobs. Respondent did not present any contrary calculations, and Lasater's estimates establish the cost to complete the project. At hearing, Lasater added \$6,000 to his estimate for materials and labor to create a slope in the deck that was at least equal to what the deck had before Respondent's work.

### *Completion of the Project in Accordance with Trade Standards*

63. Respondent willfully departed from accepted trade standards for good and workmanlike construction in the tile installation on the Smith project, as set forth in factual finding numbers 31 through 46.

64. In failing to complete the Smith project in accordance with accepted trade standards, Respondent failed in a material respect to complete the project for the price stated in the contract, by reason of factual finding numbers 31 through 46.

65. a. Respondent's failure to complete the Smith project in accordance with accepted trade standards caused substantial injury to the Homeowners.

b. The cost to repair the tile installation deficiencies and to complete the project in accordance with trade standards is \$28,360, which is the total of the cost to remove the existing tile (\$5,640), the cost to replace the tile (\$13,120), the cost to return the slope lost during tile installation (\$6,000), the cost to remove and reinstall the glass panels (\$2,200), and the cost to remove debris (\$1,400).

c. The damage suffered by the Homeowners is \$28,360. At hearing, Respondent's counsel argued that Smith had received a settlement check from Respondent's insurance company to resolve the financial injury claim. Therefore, to the extent that the Homeowners' claims have been the subject of a civil action that has been settled for monetary damages providing for full and final satisfaction of the civil case, the Board may not require Respondent to pay any additional sums to the benefit of the Homeowners.<sup>5</sup>

### *Costs of Investigation and Enforcement*

66. The Board has incurred \$960.34 in investigative costs, \$875 in industry expert costs, and \$5,395 in charges from the Attorney General's office, for a total of \$7,230.34. In light of the violations established, the Administrative Law Judge found that the reasonable costs are 50 percent of the total costs, or \$3,615.18. Pursuant to Section 125.3(d), this finding is not reviewable by the Board to increase the cost award.

## LEGAL CONCLUSIONS

### *The Purpose of the Contractors' State License Law*

1. The purpose of the Contractors' State License Law is to protect the public from incompetence and dishonesty by those who provide building and construction services. The licensing requirements provide minimal assurance that all persons offering these services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. (*Hydrotech Systems, Ltd. v. Oasis*

---

<sup>5</sup> See Section 143.5(b) of the Code.

*Waterpark* (1991) 52 Cal.3d 988, 995; *Smith v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 117, 126.)

2. The public policy behind Section 7159 of the Code is to encourage written contracts for home improvements in order to protect unsophisticated consumers. (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 292).

*Expert Testimony*

3. Expert testimony is required to establish the standard of care with respect to a profession. (See, *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001; *Williams v. Prida* (1999) 75 Cal.App.4th 1417, 1424.)

4. The California Court of Appeal in *Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 277, quoting from a list of authorities, stated as follows: "Ordinarily, where a professional person is accused of negligence in failing to adhere to accepted standards within his profession the accepted standards must be established only by qualified expert testimony [citations] unless the standard is a matter of common knowledge. [Citation.] However, when the matter in issue is within the knowledge of experts only and not within common knowledge, expert evidence is conclusive and cannot be disregarded."

*Applicable Statutory Provisions*

5. Business and Professions Code section 7090 provides, in pertinent part, that the Registrar may "temporarily suspend, or permanently revoke any license or registration if the applicant, licensee, or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action."

6. The standard of proof in an administrative disciplinary proceeding seeking the suspension or revocation of a contractor's license is clear and convincing evidence. (Bus. & Prof. Code, § 7090.)

7. A willful departure "in any material respect from accepted trade standards for good and workmanlike construction" is grounds for disciplinary action, unless the departure was in accordance with an architect's plans and specifications. (Bus. & Prof. Code, § 7109, subd. (a).)<sup>6</sup>

8. Failing, in a material respect, to complete a construction project for the price stated in the contract is cause for disciplinary action. (Bus. & Prof. Code, § 7113.)

9. Business and Professions Code section 7159 is an extensive provision in the Contractors' State License Law that identifies information and specific language that must be

---

<sup>6</sup> A "willful" violation does not require proof of Respondent's intention to violate the trade standard, which it is assumed to know. Rather, "willful" means that respondent intended to perform work in the manner that it did and, if trade standards were not met, the failure to build according to the trade standards is deemed "willful" within the meaning of section 7109. (*Mickelson Concrete Construction v. Contractors' State License Board* (1979) 95 Cal.App.3d 631, 634-5.)

included in every home improvement contract where the labor, services, or material to be furnished exceeds \$500. The broad requirements in section 7159 range from headings and topics that must be included in every home improvement contract, to specific language regarding a consumer's three day right to cancel, a limitation on the amount of any down payment, insurance, workers compensation, liens, and other categories of information that must be included.

10. Business and Professions Code section 7159(c) provides, in pertinent part:

In addition to the specific requirements listed under this section, every home improvement contract and any person subject to licensure under this chapter or his or her agent or salesperson shall comply with all of the following:

(4) The contract shall include a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor; prior to any further payment being made, shall furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for that portion of the work for which payment has been made.

11. Business and Professions Code section 7159.5, subdivision (a)(3), codifies the required language in section 7159 about down payments. Under section 7159.5, subdivision (a)(3), if the contractor charges a down payment, it may not exceed \$1,000 or 10 percent of the contract amount, whichever is less. Except for that down payment, "the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered." (Bus. & Prof. Code, § 7159.5, subd. (a)(5).)

12. Business and Professions Code Section 7159.5, subdivision (a)(6), in pertinent part provides: "upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for any portion of the work for which payment has been made."

13. Business and Professions Code section 7159.6 provides, in pertinent part:

(a) An extra work or change order is not enforceable against a buyer unless the change order sets forth all of the following:

- (1) The scope of work encompassed by the order.
- (2) The amount to be added or subtracted from the contract.
- (3) The effect the order will make in the progress payments or the

completion date. ...

14. Business and Professions Code section 7122 provides, in part, that:

The performance by an individual, . . . [or] corporation, . . . of an act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against a licensee other than the individual qualifying on behalf of the individual or entity, if the licensee was a partner, officer, director, manager, or associate of that individual, . . . [or] corporation, . . . at the time the act or omission occurred, and had knowledge of or participated in the prohibited act or omission.

15. Business and Professions Code section 7122.5 provides, in part, that:

The performance by an individual, . . . [or] corporation, . . . of an act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against a licensee who at the time that the act or omission occurred was the qualifying individual of that individual, . . . [or] corporation, . . . whether or not he or she had knowledge of or participated in the prohibited act or omission.

*First Cause for Discipline*

16. Cause exists to discipline Respondent's license pursuant to section 7109, subdivision (a), in that Respondent willfully departed from accepted trade standards for good and workmanlike construction in material respects in the Smith project, by reason of factual finding numbers 31 through 46 and 63 and legal conclusions 1, and 3-7.

17. Except as set forth in legal conclusion number 1 with respect to the tile installation and the failure to maintain consistent grout joints, cause does not exist to discipline Respondent's license pursuant to section 7109, subdivision (a), for willful departure from accepted trade standards for good and workmanlike construction, by reason of factual finding numbers 56 through 61 and Legal conclusions 3-6.

*Second Cause for Discipline*

18. Cause exists to discipline Respondent's license pursuant to section 7113 in that Respondent failed to complete the Smith project for the price stated in the contract, which resulted in substantial injury to the Homeowners, by reason of factual finding numbers 31 through 46, 63, and 64 and legal conclusions 1, 3-6, 8 and 16.

*Third Cause for Discipline*

19. Cause exists to discipline Respondent's license pursuant to sections 7159 and 7159, subdivision (c)(4), in that he failed to include required terms in the home improvement contract tendered to the Homeowners, by reason of factual finding numbers 11 through 16 and legal conclusions 1, 2, 5, 6, 9 and 10.

#### *Fourth Cause for Discipline*

20. Cause exists to discipline Respondent's license pursuant to section 7159.5, subdivision (a)(3), in that Respondent requested and received a down payment in excess of \$1,000 or one percent of the contract price, by reason of factual finding numbers 1 through 16, 20, and 29, and legal conclusions 1, 5, 6 and 11.

#### *Fifth Cause for Discipline*

21. Cause exists to discipline Respondent's license pursuant to section 7159.5, subdivision (a)(5), in that Respondent requested and received a payment in excess of the work performed as of September 27, 2013, by reason of factual finding numbers 11 through 16, 20, and 30 and legal conclusions 1, 5, 6, and 11.

#### *Sixth Cause for Discipline*

22. Cause exists to discipline Respondent's license pursuant to section 7159.5, subdivision (a)(6), in that Respondent failed to provide Smith with lien releases after Smith's request for the releases, by reason of factual finding number 51 and legal conclusions 1, 5, 6 and 12.

#### *Seventh Cause for Discipline*

23. Cause exists to discipline Respondent's license pursuant to section 7159.6, in that it was established that Respondent failed to execute written change orders in the Smith project, by reason of factual finding numbers 21 through 27 and legal conclusions 1-6, 9 and 13.

#### *Cost Recovery*

24. Cause exists pursuant to section 125.3 to order Respondent to pay the Board's costs of investigation and prosecution, in the sum of \$3,615.18, by reason of legal conclusions 16 and 18-23, and factual finding number 66.

#### *Penalty Determination*

25. The Board has issued Disciplinary Guidelines that set forth factors to be considered in determining whether revocation, suspension or probation is to be imposed in a given case (Title 16, California Code of Regulations section 871). Those factors include: the nature and severity of the acts under consideration, actual or potential harm to the public, whether the contractor performed work that was potentially hazardous to the health, safety or general welfare of the public, prior disciplinary record, number and/or variety of current violations, mitigation evidence and rehabilitation evidence.

26. The Board's recommended penalty for discipline involving Sections 7109(a) (departure from accepted trade standards for workmanship) and 7113 (failure to complete project for contract price) of the Code is a minimum revocation stayed with two years' probation and the



maximum penalty is revocation. The Board's recommended minimum penalty for violation of Section 7159 (home improvement contract requirements) is a 60-day suspension, stayed, and a one-year probation, and the maximum penalty is revocation.

27. Turning to the factors the Registrar considers in assessing a penalty, the first is the nature and severity of the acts under consideration. The laws that Respondent violated in this case are in place to help ensure that contractors meet minimum trade standards for good and workmanlike construction, perform the work contracted for and abide by their agreements with the consumer. In addition, the laws help ensure that contractors document the scope of work authorized by the consumer, provide adequate disclosures to the consumer, and refrain from charging the consumer excessively and for work or materials that have not been provided to the consumer. Seven different causes for discipline have been sustained involving violations of multiple laws. The violations committed by Respondent were serious in that such conduct shows a pattern of disregard for the Board's laws, with substantial financial harm to the consumers. In mitigation, Respondent has no prior record of discipline and McKenna testified that Respondent has since adjusted its home improvement contracts to address the legal prohibitions against receipt of payments in advance of work performed or materials delivered. No rehabilitation evidence was submitted.

28. 16.19. Under the Contractors' State License Law, protection of the public is the highest priority. Bus. & Prof. Code § 7000.6. The purpose of licensing statutes and administrative proceedings enforcing licensing requirements is not penal but public protection. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476).

29. Based upon these considerations, outright revocation or suspension is not warranted in this case. Public protection would be served by a three-year period of probation on standard terms and conditions to allow the Board to monitor Respondent and Mr. McKenna to help ensure that Respondent and the affiliated licensee pay close attention to compliance with the Board's laws and regulations. Additional terms will also include the requirement that Respondent post a Disciplinary Bond or post a cash deposit in the amount of \$15,000.00 to help ensure fiscal responsibility. Restitution will be ordered but Respondent will be deemed compliant with that term if it submits proof satisfactory to the Registrar that the Homeowners' claims have been settled for monetary damages and they obtained a release providing for full and final satisfaction of any civil case (see factual finding number 65). It is believed that the inclusion of these conditions of probation will assist in addressing issues that led to the present proceeding and provide for the protection of the public. This finding is supported by all Factual Findings and Legal Conclusions.

30. Cause to discipline McKenna's affiliated license, Hunter James, Inc., was established pursuant to Business and Professions Code sections 7122 and 7122.5. Mr. McKenna was the RMO, CEO and President for both licensees at the time the underlying acts or omissions by Respondent DeckTeck, Inc. occurred. (See Factual Findings 2 and 3.) In addition, Mr. McKenna was directly involved in all aspects of this case at the time the alleged acts or omissions occurred (see factual findings). Regardless, according to Section 7122.5, cause for discipline exists whether or not Mr. McKenna had knowledge of or participated in the prohibited act.

## ORDER

Based upon the foregoing, the following order shall issue:

### DeckTech, Inc.

General Building Contractor License number 796956 issued to Decktech, Inc., Ronald James McKenna, RMO, shall be immediately REVOKED, the revocation shall be STAYED, and Respondent's license shall be placed on PROBATION for a period of three (3) years under the following terms and conditions:

1. Respondent shall comply with all federal, state and local laws, including all building laws and uniform codes, governing the activities of a licensed contractor in California.
2. Respondent and any of respondent's personnel of record shall appear in person for interviews with the Registrar or his designee upon request and reasonable notice.
3. If respondent violates probation or any condition of probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed.
4. IT IS FURTHER ORDERED that respondent, as a condition of licensure, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of \$15,000.00, for a period of not less than two years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a Disciplinary Bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.
5. Respondent shall reimburse the Board for its costs of investigation in the amount of \$3,615.18 within 30 days of the effective date of this decision.
6. Respondent shall submit copies of documents directly related to the person's construction operations to the Registrar or his designee upon demand during the probation period.
7. It is also ordered that Respondent make restitution to the Homeowners in this matter in the amount of \$28,360. Respondent may satisfy this requirement by providing proof satisfactory to the Registrar of either: (a) payment to the Homeowners; or, (b) proof that the Homeowners' claims have been settled in a civil case for monetary damages and Respondent or its agents obtained a release providing for the full and final satisfaction of the Homeowners' claims. Failure to make the payment or provide satisfactory proof of payment or, in the alternative, proof of civil settlement within 90 days of the effective date of the Registrar's decision in this matter shall constitute a violation of probation.

8. Upon successful completion of probation, the contractor's license will be fully restored.

Hunter James, Inc.

General Building Contractor License number 862903, issued to Hunter James, Inc., Ronald James McKenna, RMO, shall be immediately REVOKED, the revocation shall be STAYED, and Respondent's license shall be placed on PROBATION for a period of three (3) years under the following terms and conditions:

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

2. Respondent and any of respondent's personnel of record shall appear in person for interviews with the Registrar or his designee upon request and reasonable notice.

3. If respondent violates probation or any condition of probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed.

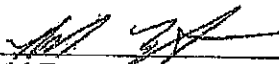
4. IT IS FURTHER ORDERED that respondent, as a condition of licensure, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of \$15,000.00, for a period of not less than two years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a Disciplinary Bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.

5. Respondent shall submit copies of documents directly related to the person's construction operations to the Registrar or his designee upon demand during the probation period.

6. Upon successful completion of probation, the contractor's license will be fully restored.

The Decision shall become effective on July 10, 2017.

IT IS SO ORDERED: June 9, 2017.

  
\_\_\_\_\_  
David Fogt  
Registrar of Contractors

# EXHIBIT C

STATEMENT OF DECISION CASE NO. 17CV-0352

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**

**NOV 02 2018**

**SAN LUIS OBISPO SUPERIOR COURT**

BY: Jennifer Novick  
Jennifer Novick, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN LUIS OBISPO**

**DECKTECH, INC.;**  
**HUNTER JAMES, INC.;**

**Petitioners,**

**v.**

**REGISTRAR OF CONTRACTORS**  
**CONTRACTORS STATE LICENSE**  
**BOARD DEPARTMENT OF**  
**CONSUMER AFFAIRS,**

**Respondent.**

**Case No: 17CV-0352**

**STATEMENT OF DECISION**

Petitioners DeckTech Inc., Ronald James McKenna ("McKenna") (Responsible Managing Officer/CEO/President) and affiliated party, Hunter James Inc., Ronald James McKenna (Responsible Managing Officer/CEO/President) (collectively "DeckTech") bring this petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5, to challenge the administrative hearing decision ("Decision") of the Registrar, Contractors' State License Board ("CSLB" or "Board"); imposing discipline on Licenses numbered 796956 and 862903, issued to DeckTech and affiliated party, Hunter James, respectively.

1           The Board found that DeckTech engaged in practices that violated the Contractors'  
2 State License Law (Bus. & Prof. Code, § 7000, et seq.) in the performance of a written home  
3 improvement contract with homeowners Frank Smith ("Smith") and Judi Smith, husband and  
4 wife (collectively "Homeowners"), for just under \$60,000, to replace a rooftop deck over the  
5 living quarters of their residence in Morro Bay (the "Project"). Homeowners hired  
6 DeckTech in mid-2013 to replace the tile deck to correct leaking and dry rot problems. Smith  
7 constructed the original deck in the late 1980s. By November 2013, the relationship between  
8 DeckTech and the homeowners had deteriorated, and eventually Smith filed a complaint with  
9 the Board.

10           On November 9, 2015, the Board filed Accusation No. N2014-235 against DeckTech  
11 ("Accusation"). The Accusation alleged six causes for discipline against DeckTech's  
12 licenses:

- 13           1.   Section 7109(a): [Departure from Accepted Trade Standards for Good and  
14           Workmanlike Construction] for (a) failure to apply enough waterproof  
15           membrane material to the plywood deck to obtain a consistent A0-45 mils to  
16           125 mils thickness, resulting in a variable waterproof membrane thickness of  
17           40 mils or less; and, (b) failure to install concrete tiles at a proper slope for  
18           drainage, failure to use a grout bag and grout tool for consistent grout joints,  
19           and failure to have no streaks after grouting;
- 20           2.   Section 7113: [Failure to Complete Project for Contract Price Stated] for  
21           failure in a material respect to complete the project for the contract price,  
22           thereby requiring the Homeowner to spend substantial amounts in excess of  
23           the contract price to complete the Project in accordance with the Contract;
- 24           3.   Sections 7159, and 7159(c)(4): [Violation of Home Improvement Contract  
25           Form Requirements] for failure to include a statement regarding unconditional  
26           claim/lien release to be provided for any portion of work for which payment  
27           has been made;

28           ///

- 1           4.     Section 7159.5(a)(3): [Excessive Down Payment] for receiving and/or
- 2                 requesting a down payment exceeding the lesser of one thousand dollars
- 3                 (\$1,000.00) or ten percent (10%) of the contract amount;
- 4           5.     Section 7159.5(a)(5): [Excessive Payment] for receiving and/or requesting a
- 5                 payment in excess of the value of work performed or materials delivered; and
- 6           6.     Section 7159.5(a)(6): [Failure to Provide Requested Release] for failure to
- 7                 provide a full and unconditional lien release after requested to do so by the
- 8                 person contracting for the home improvement. (AR0043 – 52.)

9           This matter came on for hearing before Samuel D. Reyes, Administrative Law Judge  
10 (“ALJ”), Office of Administrative Hearings, in San Luis Obispo, California, on June 15, 16,  
11 and 17, and November 14, 15, and 16, 2016.

12           During the six-day hearing, the Board amended the Accusation to conform to proof  
13 pursuant to Government Code section 11507. Specifically, at paragraph 22, subpart (a) of  
14 the Accusation, at page 7:12, the word “40-” was stricken. (AR0002.) Paragraph 22, subpart  
15 (b) was stricken and replaced with the following words: “[Petitioner] failed to install concrete  
16 tiles at a proper slope for drainage and failed to maintain consistent grout joints.”

17           Finally, on the last day of the hearing, a seventh cause for discipline was added that  
18 alleges: “[Petitioner] is subject to disciplinary action under Business and Professions Code  
19 section 7159.6 for failure to execute written change orders. The circumstances are that  
20 [Petitioner] substituted Carboline for the NCS (Nevada Coating Systems) 6000 UVS coating  
21 without executing a written change order.” (AR0002-3.)

22           Following the administrative hearing, the ALJ submitted his proposed decision to the  
23 Board on or about January 30, 2017 (“Proposed Decision”). The Proposed Decision found  
24 cause to discipline DeckTech’s licenses under the first through sixth causes for discipline;  
25 however, regarding the first cause for discipline, the ALJ did not find cause for discipline for  
26 the alleged inadequate thickness of the waterproof membrane material. (1 AR2143-AR2144.)  
27 The ALJ’s proposed decision also did not find cause for discipline under the seventh cause,  
28 for the alleged failure of DeckTech to execute a written change order.





1 discretion is established if the court determines that the findings are not supported by the  
2 weight of the evidence.” (Code Civ. Proc., § 1094.5 (c); *Paratransit, Inc. v. Unemployment*  
3 *Ins. Appeals Bd.* (2014) 59 Cal.4th 551, 562.)

4 Moreover, “in exercising its independent judgment, a trial court must afford a strong  
5 presumption of correctness concerning the administrative findings, and the party challenging  
6 the administrative decision bears the burden of convincing the court that the administrative  
7 findings are contrary to the weight of the evidence.” (*Fukuda v. City of Angels* (1999) 20  
8 Cal.4th 805, 817.) This is a rebuttable presumption, and the Court may substitute its own  
9 judgment to reject the findings of the agency once it has examined those findings under the  
10 appropriate standard. (*Id.* at p. 818.)

11 Disciplinary proceedings for violations of the Contractors’ State License Law are  
12 subject to the Administrative Procedure Act (Gov. Code, § 11340, et seq.; *Tellis v.*  
13 *Contractors’ State License Bd.* (2000) 79 Cal.App.4th 153, 158.) In such cases, the standard  
14 for judging credibility of witnesses is codified in Government Code section 11425.50(b): “If  
15 the factual basis for the decision includes a determination based substantially on the  
16 credibility of a witness, the statement shall identify any specific evidence of the observed  
17 demeanor, manner, or attitude of the witness that supports the determination, and on judicial  
18 review the court shall give great weight to the determination to the extent the determination  
19 identifies the observed demeanor, manner, or attitude of the witness that supports it.” Here,  
20 however, while both the CSLB Decision and the ALJ’s proposed decision make specific  
21 findings as to credibility based on the content of the testimony of the witnesses, neither set  
22 forth any specific evidence of the observed demeanor, manner, or attitude of each witness. It  
23 is noted that the CSLB could not make such observational findings as the Decision is based  
24 on a review of the record.

#### 25 Causes for Discipline

26 The CSLB found seven causes for disciplining DeckTech’s license. The question  
27 presented to this Court is whether the Board’s findings are supported by the weight of the  
28 evidence.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

First Cause for Discipline

2 The Board found that cause exists to discipline DeckTech's license pursuant to  
3 Business and Professions Code section 7109(a), in that Petitioner willfully departed from  
4 accepted trade standards for good and workmanlike construction in material respects. (1  
5 AR0019.)

6 Section 7109(a) provides that "[a] willful departure in any material respect from  
7 accepted trade standards for good and workmanlike construction constitutes a cause for  
8 disciplinary action." Expert testimony is required to establish the standard of care with  
9 respect to a profession. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8  
10 Cal.4th 992, 1001.)

11 The CSLB called one expert who provided extensive testimony during the hearings,  
12 Gary Lasater ("Lasater"). Lasater is a general building contractor, general engineering  
13 contractor, excavation paving contractor, and concrete contractor. Lasater testified that he  
14 had supervised thousands of jobs, and hundreds of tile jobs, but had a difficult time recalling  
15 specific jobs with tile decks similar to Smith's. DeckTech called multiple experts. David  
16 Mazor ("Mazor") is a general contractor in both California and Nevada, holds special  
17 licenses for synthetic coatings, is a member of the national Ceramic Tile Institute and a  
18 member of the Roofing Institute, and testified on issues relating to the waterproof membrane.  
19 Mark Marsh ("Marsh") testified predominantly on the tile and slope issues. Marsh is not a  
20 licensed contractor, but has been in the construction industry for 35 years, spending the last  
21 approximately 15 years of his career in synthetic coatings and tile setting. He is a certified  
22 tile consultant through the Ceramic Tile Institute of America, provides expert consulting  
23 services, is a licensed building inspector, and testified that he has inspected thousands of  
24 decks, approximately one-third involving tile.

25  
26  
27  
28

*Width of Grout Joints*

26 The Board found that the variation in the size of the grout joints in the Project is  
27 greater than allowed by industry standards or necessitated by the nature of the tile. (1  
28 AR0010.) The Board asserts that it makes no claims now based on aesthetics. Therefore, the

1 remaining ground for a finding of departure from industry standards is that the grout joints at  
2 issue in the project failed to conform to manufacturer recommendations.

3 Tile work for the Project was done by a subcontractor, Rodney Gibson ("Gibson"), at  
4 Quality Tile. (1 AR1775:3-25.) Gibson testified that the Smith deck originally was laid with  
5 a Kraft tile that was very hard, with stable dimensions. (1 AR1777:21-25.) Smith selected  
6 the new tile for the Project, a concrete Coronado Saltillo tile, and believed the new tiles were  
7 the same size as the old tiles. (1 AR0711:20-AR0712:4; 1 AR777:5-6; 1 AR1687:20-24; 1  
8 AR1778:11-17.) However, the Saltillo tiles are a different style than the Kraft tiles originally  
9 installed on the deck. (1 AR1687:25-AR1688:7.) While the product information sheet for  
10 the Coronado Mexican tile shows the tiles to be approximately twelve inches, Gibson  
11 testified that when measured, the Saltillo tiles used were approximately eleven inches,  
12 slightly smaller than the size of the Kraft tile. (1 AR0711:13-14; 1 AR1793:18-20; 1  
13 AR1807:24-1808:17.) Unlike the Kraft tile, the Saltillo tile is rustic and not precisely a  
14 square shape. (1 AR607-AR613; 1 AR1788:1-10.) The size of the Coronado Saltillo tile  
15 varies. (1 AR0394, 1 AR1432:14-15.) Gibson testified that because the tile is not perfectly  
16 square, the tile layer may need to adjust the tiles in the grid. (1AR1794:5-17.)

17 DeckTech's expert, Marsh, testified that there are no industry standards governing  
18 grout joint widths for Mexican tile applied over waterproof membrane, and that the grout  
19 joint width information provided by the manufacturer is intended to help the contractor gauge  
20 the layout of the deck, but is not a manufacturer requirement for any particular width. (1  
21 AR1643:12-AR1646:4, 1 AR1650:22-AR1652:13.) Lasater opined that there are no  
22 minimum or maximum grout joints for Mexican tile, and there could be an inch, to three-  
23 quarters of an inch joints between tiles. (1 AR1149:23-AR1150:9.) Lasater also testified  
24 that the standard in the industry for installation of Saltillo tiles on an outside deck is to follow  
25 the manufacturer's recommendation. (1 AR1173:22-AR1176:18.)

26 Lasater explained that the grout joints in the Smith Project were variable and non-  
27 uniform. (1 AR1142:19-AR1143:7.) Photographs taken by Lasater show some variation in  
28 the joints, but in the Court's review, the variation shown in the photographs, looking both at

1 the specific grouts and the deck as a whole, is not material. (1 AR280; 1 AR403-AR409; 1  
2 AR413-AR417; 1 AR429-AR433 .) Smith testified that he wanted the tile replaced in the  
3 same layout as his original tile, and as close as possible to three-quarter inch joints. (1  
4 AR0711:8-12; 1 AR0812:9-17.) Lasater testified that the tile box in which the tiles were  
5 shipped recommended layouts based on three-quarter inch joints, and that was also the joint  
6 width requested by Smith. (1 AR1150:15-19.) However, while the manufacturer's tile box  
7 gave information based on a three-quarter inch joint, the manufacturer's installation  
8 specifications provide information for Saltillo tile with one-half inch grout joints. (1  
9 AR0394; 1 AR0499; 1 AR0455; 1 AR1427:16-AR1428:21.) Additionally, the Coronado  
10 Mexican tile installation specifications sheet states that "Coronado gives the customer control  
11 over how the stone should be installed." (1 AR0455.)

12         Reviewing the full record, the Court finds that the weight of the evidence does not  
13 support a finding that consistent manufacturer recommendations command a particular width  
14 for grout joints for Saltillo tile, nor does it support a finding that the width or variability of  
15 the grout joints here failed to conform to industry standards for workmanlike construction for  
16 this type of tile in any material respect.

17                     *One and a Half Inch Grout Strip at Edge of Deck*

18         The Board further found that a nine-foot long, one and a half inch strip of grout at the  
19 edge of the southern side of the deck constituted a departure from industry standards.

20         Because of the fact that the Saltillo tiles are not perfectly square and are smaller than  
21 the Kraft tile previously installed on the deck (as set forth above), the layout for the new tile  
22 could not be exactly the same as it was pre-demolition. Mark Lopez, an employee of Quality  
23 Tile, testified that Smith told him that he wanted the same layout as he had previously on his  
24 deck, but there were no tiles on the deck at the time Lopez arrived. (1 AR1851:4-7.) Lopez  
25 testified that he was given directions from Smith as to where he wanted the full tiles to be  
26 placed and that is where he started the layout. (1 AR1851:13-16; 1 AR1853:3-11.) Smith  
27 initially denied that he instructed Lopez where to start, but on cross-examination, admitted  
28

1 that Lopez started laying the tile where Smith told him to start. (1 AR0975:12-14; 1  
2 AR0991:19-22.)

3 Lopez testified that he did not realize there would be the gap at the edge until after the  
4 tile was set, at which time he discussed the issue with Smith. (1 AR1854:16-AR1855:9.)  
5 Lopez explained that he gave Smith more than one choice for the gap, including laying more  
6 tile to form the edge of the deck, but Smith instructed him to grout it. (1 AR1855:12-  
7 AR1856:13.)

8 Both Smith and Lopez testified that Smith proposed increasing the grout joint widths  
9 between the tiles to avoid the gap at the edge. (1 AR0973:20-24; 1 AR0975:14-15; 1  
10 AR0978:3-11; 1 AR1865:3-10.) Smith testified that he raised that potential solution after the  
11 initial tile layout, but before the tile was set. (1 AR0978:3-11.) However, Lopez testified  
12 that Smith did not raise that potential solution until after the tile was already set, when it was  
13 too late to make the adjustment. (1 AR1865:3-10.) Smith did not further discuss the issue of  
14 the grout edge with Quality Tile or raise it as an issue during the installation, and did not  
15 complain when installation was complete. (1 AR0978:23-AR0979:4.)

16 Lasater testified that the one and a half inch strip of grout at the edge of the deck is a  
17 departure from trade standards for good and workmanlike construction, and that grout should  
18 never be placed at the edge, because it could break off or become brittle. (1 AR1112:15-  
19 AR1113:4.) Marsh opined that homeowner input must be considered and that if Smith was  
20 given the choice and opted for grout at the edge of the deck, that the grout would not depart  
21 from industry standards. (1 AR1654:9-AR1655:5.) Marsh further testified that the grout  
22 used is very strong, and that using a small tile instead of the wider grout could ultimately  
23 cause the sliver of tile to fall out. (1 AR1655:6-22.) He opined that the grout edge that was  
24 laid is on the very outside of the deck, and is neatly done. (1 AR0429.)

25 The evidence does not show that in this low-traffic area, a one and one half inch grout  
26 edge is a departure from industry standards. The evidence reveals that this solution is one of  
27 many reasonable possibilities when a full tile will not reach an edge. The Board found  
28 Smiths' testimony credible that he did not want the grout edge. However, the Court finds

1 Lopez's testimony to be more credible, and is corroborated by the layout. Moreover, Smith  
2 never raised the issue of the grouted edge after the initial conversation with Lopez, nor did he  
3 ask Quality Tile to redo the edge. There is no evidence that Smith raised concerns to  
4 DeckTech at the time the work was in progress or at its completion, so that DeckTech could  
5 direct Quality Tile to change the edge.

6 Reviewing the full record, including the testimony and photographs of the grout edge,  
7 the Court finds that the weight of the evidence does not support a finding that the one and a  
8 half inch strip of grout at the very edge of the southern side of the deck constituted a willful  
9 departure from trade standards by DeckTech.

#### 10 *Slope of the Deck*

11 The Board found that DeckTech failed to meet industry standards when it did not  
12 alert Smith that the slope of the deck was not at 2%, so that Smith could decide to repair it to  
13 comply with industry standards. (1 AR0013). The Board was not persuaded by McKenna's  
14 "bald assertion" that he told Smith about the problem with the slope, and what it would take  
15 to repair it. (1 AR0012.) The ALJ found to the contrary—that McKenna did raise the issue of  
16 the substandard slope to Smith. (1 AR2139.)

17 The contract for the Project provides: "Deck is assumed to have 2% slope to outside  
18 edge for industry standard drainage. If once exposed and slope is inadequate then an  
19 additional quote will be provided to retrofit joist for proper slope prior to sheathing  
20 installation...a sensible assessment will be made and cost effective quote determined based  
21 off additional time and materials needed." (1 AR0205.)

22 Lasater testified that a 2% slope is the industry standard. (1 AR1127:8-10.) Lasater  
23 further testified that industry standards are to give the Homeowner the information and  
24 options. (1 AR1519:18-AR1520:7.)

25 It is uncontested that the deck does not currently have a 2% slope, and the Board  
26 found that the deck did not have a 2% slope prior to demolition. (1 AR0012.) DeckTech  
27 presented credible evidence that the minimum standard here for a repair, rather than new  
28 construction, is positive drainage or drainage within 48 hours or precipitation, rather than 2%

1 slope. (1 AR1324:19-AR1335:25; 1 AR 1339:15-21; 1 AR1658:9-21; AR1659:2-9.)  
2 However, because the contract specifically indicated that a quote would be provided to the  
3 homeowner to bring the slope to 2%, should the slope be less than that amount, failure to  
4 raise the issue with Smith would be a failure to meet industry standards.

5 The Court agrees with the ALJ's determination and finds that the weight of the  
6 evidence establishes that McKenna raised the issue of the substandard slope to Smith. The  
7 evidence that DeckTech measured the slope after demolition is corroborated by photographic  
8 evidence. (1 AR300.) With the size and configuration of the deck, it would have been very  
9 expensive to increase the slope, and Lasater testified that it would have been difficult or  
10 impossible to get the slope to 2%. (1 AR1448:13-23; 1 AR1879:17-AR1881:4.) McKenna  
11 testified that he informed Smith of the lack of slope and a rough estimate of cost, stating  
12 Smith would need an engineering assessment, but Smith did not want the work done and did  
13 not want an estimate. (1 AR1879:17-AR1881:4.) In contrast, Smith testified that he was not  
14 told about the issue with the slope. (1 AR0858:18-21.) The Court agrees with the ALJ that  
15 McKenna had a financial incentive to inform Smith of the substandard slope, and with the  
16 high cost of the slope retrofit, it is credible that Smith rejected any further work to correct it.

17 Reviewing the full record, the Court finds that the weight of the evidence does not  
18 support a finding that DeckTech did not meet industry standards by failing to alert Smith that  
19 the slope of the deck failed to meet a 2% industry standard; in fact, it appears that DeckTech  
20 did advise Smith of the problem with the slope and provided him with an estimate of the cost  
21 to bring the deck into compliance.

22 *Tile Installation Failing to Direct Water Away from Residence*

23 The Board found that DeckTech failed to meet industry standards by not installing  
24 concrete tiles at a proper slope for drainage. (1 AR0013).

25 The Board credited Lasater's testimony that the tile installation failed to direct water  
26 away from the residence, some areas of the deck sloped toward the house, and that some tiles  
27 were set lower than adjacent ones, affecting drainage. (1 AR0013.) However, both common  
28 sense and the evidence establish that slope is determined by the underlying structure of the

1 deck, not installation of the tiles. (1 AR401.) Further, DeckTech's warranty explicitly  
2 excluded puddling at coatings, unless standing water persisted over a 48-hour period, as well  
3 as puddling on tile pattern coating installations, due to the tendency of grout lines to hold  
4 water. (1 AR0222.)

5 Reviewing the full record, the Court finds that the weight of the evidence does not  
6 support a finding that installation of the concrete tiles caused an improper slope for drainage  
7 on the deck. The Court finds that the weight of the evidence fails to support a finding that  
8 Petitioner willfully departed from accepted trade standards for good and workmanlike  
9 construction in material respects on the Project.

#### 10 Second Cause for Discipline

11 The Board found that cause exists to discipline DeckTech's license pursuant to  
12 section 7113 in that DeckTech failed to complete the Project for the price stated in the  
13 contract, which resulted in substantial injury to the homeowners. (1 AR0019.) This  
14 determination is based on the Board's findings that DeckTech willfully departed from  
15 accepted trade standards for good and workmanlike construction in material respects as set  
16 forth in the first cause for discipline, therefore necessitating replacement of the deck.  
17 Because the second cause is dependent on the first, the Court finds that the weight of the  
18 evidence fails to support a finding that DeckTech failed to complete the Project for the price  
19 stated in the contract, which resulted in substantial injury to the homeowners.

#### 20 Third Cause for Discipline

21 The Board found that cause exists to discipline DeckTech's license pursuant to  
22 sections 7159 and 7159(c)(4), in that DeckTech failed to include required terms in the home  
23 improvement contract tendered to the Homeowners. (1 AR0019.) The Board found that the  
24 contract did not contain a required statement regarding an unconditional claim or lien release.  
25 (1 AR0006.)

26 Section 7159(c)(4) provides that "[t]he contract shall include a statement that, upon  
27 satisfactory payment being made for any portion of the work performed, the contractor, prior  
28 to any further payment being made, shall furnish to the person contracting for the home



1 improvement or swimming pool work a full and unconditional release from any potential lien  
2 claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil  
3 Code for that portion of the work for which payment has been made." Section 7159(a)(5)  
4 provides that failure by the licensee to provide the specified information, notices, and  
5 disclosures in the contract, or to otherwise fail to comply with any provision of this section,  
6 is cause for discipline. (Bus. & Prof. Code, § 7159(a)(5).) The contract signed by  
7 Homeowners and DeckTech, admitted as an exhibit at the hearing, fails to include the  
8 statement set forth in section 7159(c)(4). (1 AR00205-217.)

9 In mitigation, DeckTech argues that it has corrected this oversight, that the omission  
10 had no impact on Smith or his Project, and that even the Board's expert failed to include the  
11 lien release language in his own contracts. But, statutory language is clear that omitting the  
12 specified information, notices and disclosures is cause for discipline.

13 The Court concludes that the weight of the evidence supports the Board's finding that  
14 DeckTech failed to include required terms in the home improvement contract tendered to the  
15 Homeowners and is subject to discipline pursuant to sections 7159 and 7159(c)(4).

#### 16 Fourth Cause for Discipline

17 The Board found cause exists to discipline DeckTech's license pursuant to section  
18 7159.5(a)(3), in that DeckTech requested and received a down payment in excess of \$1,000,  
19 or one percent of the contract price. (1 AR0020.)

20 Section 7159.5(a)(3) provides that "[i]f a downpayment will be charged, the  
21 downpayment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract  
22 amount, whichever is less." Section 7159.5(a) provides that such a failure to comply is cause  
23 for discipline.

24 Here, the contract provided that the customer was to "pay a deposit and first draw  
25 payment in the amount of \$15,500.00 due to confirm start date and provide scoped items 1-5  
26 of the Work Contract." (1 AR0207.) The contract provided for two further payments of an  
27 identical amount and a fourth payment of the balance of the contract. (1 AR0207.) The  
28 contract was signed on August 29, 2013. (1 AR0217.) The first draw was paid by the

1 Homeowners on September 9, 2013. (1 AR740:1-6.) Work on the Project did not begin until  
2 two days later, on September 11, 2013. (1 AR740:7-14.)

3 Smith testified that he was required to pay a down payment of \$15,500, that  
4 DeckTech did not present the first draw to him as anything other than a down payment, and  
5 that he was not provided invoices for materials ordered prior to payment of the first draw. (1  
6 AR720:2-13.) McKenna admitted that DeckTech collected the \$15,500 requested as a  
7 deposit for the contract and did not complete items one through five of the work contract  
8 before seeking that first draw. (1 AR1893:15-20; 1 AR1963:7-15.) McKenna testified that  
9 the investigator told him that he was not allowed to take up front money for a deposit or  
10 draw, and that the improvement had to be made to the property to justify the deposit and  
11 draw for which DeckTech had billed Smith. (1 AR1891:8-19.) McKenna further testified  
12 that DeckTech then adjusted its contracts in response to the conversation with the  
13 investigator. (1 AR1891:12-19.)

14 DeckTech contends that work consisting of project administration, project  
15 mobilization, and material procurement began on August 30, 2013. (1 AR1866:17-  
16 AR1872:3.) DeckTech claims that the value of the work performed and materials delivered  
17 to DeckTech (but not to the jobsite) was \$18,222. (1 AR1941:4-AR1944:8.) DeckTech  
18 further argues that the first draw was not an excessive down payment, but a payment for the  
19 value of work performed or material delivered under section 7159.5(a)(5). DeckTech  
20 reasons that section 7159.5(a)(5) does not define the phrase "work performed" or state where  
21 the material must be delivered, and that the materials delivered could include both materials  
22 delivered to the contractor, and to the warehouse. DeckTech concludes that billing for the  
23 mobilization was fair and equitable and in accordance with the statute.

24 The evidence shows that the first draw was paid before any work had been  
25 commenced on the jobsite or any materials delivered to Smith; the contract partly  
26 characterizes the first draw payment as a deposit "to confirm start date"; and McKenna  
27 testified that the money was collected as a deposit. DeckTech accepted a payment in excess  
28

1 of \$1,000 or 10% of the contract price before any work had been performed on the project  
2 itself.

3 The Court concludes that the weight of the evidence supports the Board's finding that  
4 DeckTech requested and received a down payment in excess of \$1,000 or one percent of the  
5 contract price, and is subject to discipline pursuant to section 7159.5(a)(3).

6 Fifth Cause for Discipline

7 The Board found cause exists to discipline DeckTech's license pursuant to section  
8 7195.5(a)(5), in that DeckTech requested and received a payment in excess of the work  
9 performed as of September 27, 2013. (1 AR0020.) The Board found that as of September  
10 27, 2013, when the second payment and supplemental payment for dry rot work were made,  
11 DeckTech had only completed the first five scoped items in the contract, as well as work  
12 required by the supplemental contract. (1 AR0009.)

13 Section 7195.5(a)(5) provides that "[e]xcept for a downpayment, the contractor may  
14 neither request nor accept payment that exceeds the value of the work performed or material  
15 delivered." As set forth above, the contract provided for three draws each in the amount of  
16 \$15,500, plus a fourth payment upon completion of the project in the amount of \$13,470. (1  
17 AR0207). The total contract price was \$59,970, and the cost breakdowns are for demo  
18 (\$6,160), framing (\$8,400), stucco (\$6,156), membrane (\$13,860), copper flashing (\$3,360),  
19 tile purchase and install (\$12,320), and railing (\$9,714). The contract provides that the  
20 second draw would be due "upon completion of scoped items 6, 7 and 8 through scratch coat  
21 and dry-in coat of membrane." (1 AR0207.) The second draw in the amount of \$15,500 was  
22 paid on September 27, 2013. (1 AR1011:10-20; 1 AR 128-130.) The contract provides 11  
23 scoped items; generally item 6 in the contract is chipping stucco off the outside perimeter  
24 deck and retrofit framing; item 7 is installing 16 oz. copper flashing throughout deck; and,  
25 item 8 is installing new stucco weep screed detail and new stucco to all impacted areas  
26 through finish.

27 Judi Smith testified that framing was almost complete on September 25th, and that  
28 DeckTech was working on the flashing and the dry-in/primer coat on September 26th, but

1 that the primer coat was not finished on that date. (1 AR1009:21-AR1011:5.) Mrs. Smith  
2 testified that as of September 27th, items 4, 5, 6, 7, and 8 were close to completion. (1  
3 AR1023:9-AR1025:5.) McKenna testified that all work required for the September 27, 2013  
4 draw had been completed. (1 AR1893:9-14.)

5 DeckTech argues that the work required for items one through eight was complete at  
6 the time the second draw payment was made on September 27, 2013. DeckTech maintains  
7 that item 8 was only required to be partially completed for the second draw, and the CSLB  
8 offered no evidence that item 8 was incomplete to the extent required to forego the draw.  
9 DeckTech argues that the only conceivable concern was whether the stucco scratch coat had  
10 been applied. There appears to be no testimony directly on that issue.

11 The question for the Court, and upon which DeckTech has the burden, is whether the  
12 weight of the evidence shows that DeckTech had performed work and delivered materials  
13 valued at \$31,000 (the total amount of the first two payments) as of September 27, 2013.  
14 The ALJ and the Board credited Mrs. Smith's testimony that the items required under the  
15 contract for that payment to become due were not complete as of that date. Mrs. Smith's  
16 testimony is detailed as to dates of completion. Moreover, the first three draw payments  
17 were all required to be in identical amounts. While it appears that the timing of payment for  
18 the draws was tied to the work performed, there is no evidence that the amount of the draws  
19 was tied to work performed and materials delivered, or the cost breakdowns provided in the  
20 contract.

21 The Court concludes that the weight of the evidence supports the Board's finding that  
22 DeckTech requested and received a payment in excess of the work performed as of  
23 September 27, 2013, and is subject to discipline pursuant to section 7195:5(a)(5).

#### 24 Sixth Cause for Discipline

25 The Board found cause exists to discipline DeckTech's license pursuant to section  
26 7159.5(a)(6) in that DeckTech failed to provide Smith with lien releases after Smith's request  
27 for the releases. (1 AR0020.)

28 ///

1 Section 7159.5(a)(6) provides that "Upon any payment by the person contracting for  
2 home improvement, and prior to any further payment being made, the contractor shall, if  
3 requested, obtain and furnish to the person a full and unconditional release from any potential  
4 lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the  
5 Civil Code for any portion of the work for which payment has been made. The person  
6 contracting for home improvement may withhold all further payments until these releases are  
7 furnished." As set forth above, section 7159.5(a) provides that failure to comply is cause for  
8 discipline.

9 Smith made a request for lien releases in an email to DeckTech on November 29,  
10 2013. (1 AR0158-59.) As of June 16, 2016, the Homeowners had not received the requested  
11 releases. (1 AR0965:10-25.)

12 DeckTech does not dispute that it did not provide releases. Instead, DeckTech argues  
13 that it did not provide lien releases because no subcontractor served a 20-day preliminary lien  
14 notice. Smith confirmed that he had not received any 20-day preliminary lien notices. (1  
15 AR0967:14-AR0968:11.) DeckTech maintains that service of a 20-day preliminary notice is  
16 a prerequisite to enforcement of both mechanics lien and stop payment rights, and therefore  
17 there were no potential lien claimants, and no basis for finding a violation. "A claimant may  
18 enforce a lien only if the claimant has given preliminary notice...and made proof of notice."  
19 (Civ. Code, § 8410.)

20 The Court has no authority before it showing that the inability to enforce a lien for  
21 failure to serve a preliminary notice means that a subcontractor is not a potential lien  
22 claimant for purposes of section 7159.5. It is uncontroverted that releases were requested  
23 and none were provided, as is required by the statute.

24 The Court concludes that the weight of the evidence supports the Board's finding that  
25 DeckTech failed to provide Smith with lien releases after Smith's request for the releases and  
26 is subject to discipline pursuant to section 7159.5(a)(6).

27 ///

28 ///

1 Seventh Cause for Discipline

2 The Board found cause to discipline DeckTech's license pursuant to section 7159.6,  
3 for DeckTech's failure to execute written change orders on the Smith project. (1 AR0020.)  
4 The Board found that DeckTech's substitution of a Carboline membrane in place of a NCS  
5 6000-UVS membrane required notice to, and written authorization from, the homeowner. (1  
6 AR0009.)

7 Section 7159.6 provides that an extra work or change order is not enforceable against  
8 a buyer unless the change order sets forth certain provisions. The buyer may not require a  
9 contractor to perform extra or change-order work without providing written authorization and  
10 failure to comply with this section does not preclude the recovery of compensation for work  
11 performed based upon legal or equitable remedies designed to prevent unjust enrichment.  
12 Section 7195.6 relates to the enforceability of a change order, but does not address  
13 disciplinary action. In its initial tentative ruling, the Court found that failure to execute a  
14 written change order when the terms of a contract have changed, may subject a licensee to  
15 discipline under section 7159(c)(5) and 7159(d).

16 Section 7159(c)(5) provides that "a change-order form for changes or extra work shall  
17 be incorporated into the contract and shall become part of the contract only if it is in writing  
18 and signed by the parties prior to the commencement of any work covered by a change  
19 order." Subsection (d) provides that "[a] home improvement contract and any changes to the  
20 contract shall be in writing and signed by the parties to the contract prior to the  
21 commencement of work covered by the contract or an applicable change order." Section  
22 7159(a)(5) provides that "failure by the licensee...to provide the specified information,  
23 notices, and disclosures in the contract, or to otherwise fail to comply with any provision of  
24 this section, is cause for discipline." (See also Bus. & Prof. Code, § 7115.)

25 Here, the contract stated that item 9 in the scope of work was "install NCS waterproof  
26 deck coating membrane." (1 AR0206.) Simultaneously with the contract, Smith executed a  
27 "Warranty for Waterproof Deck Coating" which provided that DeckTech would warranty an  
28 overlay coating with "NCS-6000." (1 AR0220-224.) Smith wanted to move quickly on the

1 project, and when McKenna was unable to obtain NCS material for the project, he ordered a  
2 substitute membrane from Carboline. (1 AR1868:24-AR1869:4; 1 AR1963:16-22.) The  
3 Board credited the testimony of DeckTech's expert Mazor, who testified that the Carboline  
4 member is identical to the NCS 6000-UVS, and that it would be an acceptable substitute. (1  
5 AR1577:11-22.)

6 McKenna testified that he did not inform Smith of the switch or provide a written  
7 change order. (1 AR1963:23-AR1964:6.) Lasater, the Board's expert, testified that if there  
8 were changes from one product to another, that DeckTech should have had a change order or  
9 some other notification with Smith's signature on it. (1 AR1533:14-20.)

10 The ALJ found that no change order was necessary because the substitution was not a  
11 material change requiring a change order. The Board found that any change, not just a  
12 material change, needs to be in writing.

13 A change to the terms of the contract was required to be in writing. (Bus. & Prof.  
14 Code, § 7159(d).) While the substituted membrane was an equivalent product to the one  
15 promised, the contract states that DeckTech will apply NCS product, and the concurrently  
16 executed warranty agreement explicitly warrants the NCS-6000 product. The Court finds  
17 that the weight of the evidence here, particularly because of the warranty agreement related  
18 to the particular NCS product, supports a finding that the substitution required notice and  
19 written approval from Smith.

20 The Court originally concluded that the weight of the evidence supports the Board's  
21 finding that DeckTech failed to execute written change orders for a change in the contract  
22 and is subject to discipline pursuant to section 7159(c)(5) and (d).

23 The Court has now considered the parties' supplemental briefing regarding the  
24 seventh cause for discipline. After review, the Court agrees with DeckTech that finding a  
25 violation pursuant to section 7159(c)(5) and (d) would improperly constitute a new ground  
26 for violation. The Court may not find the petitioner guilty of charges that the Board itself did  
27 not consider. (*Lorenz v. Board of Medical Examiners* (1956) Cal.2d 684.) The accusation  
28 was amended to add the seventh cause as follows: "[Petitioner] is subject to disciplinary

1 action under Business and Professions Code section 7159.6 for failure to execute written  
2 change orders.” The statute DeckTech was alleged to have violated was specified as  
3 Business and Professions Code section 7159.6.

4 A plain reading of section 7159.6 shows that section deals with enforceability  
5 conditions of an extra work or change order. None of the evidence presented deals with  
6 enforcement of an extra work or change order. Moreover, the evidence shows that the  
7 membranes are functionally identical, and DeckTech is specifically allowed to recover  
8 compensation for work performed based on legal or equitable remedies designed to prevent  
9 unjust enrichment. (Bus. & Prof. Code, § 7159.6(c).)

10 The Court finds that the weight of the evidence does not support the Board’s finding  
11 that DeckTech’s failure to execute a written change order for the substitution of the  
12 membrane violates section 7159.6.

#### 13 Penalty

14 Petitioner argues that the penalty is too severe. The Court is not free to substitute its  
15 own judgment for that of the agency, and the Court must uphold the agency’s penalty  
16 determination unless there was a manifest abuse of discretion. (*Landau v. Superior Court*  
17 (1998) 81 Cal.App.4th 191, 218; *Cadilla v. Bd. of Med. Examiners* (1972) 26 Cal.App.3d  
18 961, 968.)

19 It is unclear to what extent the penalty imposed on the Board was based on the first,  
20 second, and seventh causes for discipline. Therefore, the Court remands the issue of an  
21 appropriate penalty for further consideration by the Board in light of the Court’s decision  
22 regarding those causes.

#### 23 Conclusion

24 DeckTech’s challenge to the Board’s Decision pursuant to Code of Civil Procedure  
25 section 1094.5 shall be granted as to the Board’s first, second, and seventh causes for  
26 discipline, as set forth above.


27 The Court shall issue a writ of peremptory mandamus, setting aside the Board’s  
28 decision of June 9, 2017, in the administrative proceedings entitled “In the Matter of the



1 Accusation Against DeckTech, Inc. and Hunter James, Inc.” The Court remands the  
2 proceedings to the CSLB for further consideration of the proper penalty based upon the  
3 Court’s decision in relation to the first, second, and seventh causes for discipline.<sup>1</sup>

4 Nothing in the writ shall limit or control in any way the discretion legally vested in  
5 the CSLB.

6  
7  
8 Dated: November 2, 2018



9 TANA L. COATES  
10 Judge of the Superior Court  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

28  
1 Both parties agreed that the matter would be remanded only for consideration of the penalty in light of this Court’s findings.

**STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO  
CERTIFICATE OF MAILING**

Decktech Inc. vs. Registrar of Contractors

17CV-0352

John F Hodges, Esq.  
Barnick Hodges Law Corp.  
P O Box 549  
Arroyo Grande CA 93421

---

Shawn P Cook, Esq.  
Deputy Attorney General  
300 S Spring St #1702  
Los Angeles CA 90013

I, Jennifer Novick, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on 11/02/2018 I deposited in the United States mail at San Luis Obispo, California, first class postage prepaid, in a sealed envelope, a copy of the attached Statement of Decision. The foregoing document was addressed to each of the above parties.


OR

If counsel has a pickup box in the Courthouse a copy was placed in said pickup box this date.

Dated: 11/2/2018

Michael Powell, Clerk of the Court

By: \_\_\_\_\_



Jennifer Novick

Deputy Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Proof of Service**

State of California, County of San Luis Obispo

I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 and am not a party to the within action, my business address is 789 Valley Road, Arroyo Grande, CA 93420

*Jan 2, 2019*  
On ~~December 31, 2018~~, I served the foregoing document(s) described as:

[PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT

on the interested parties in this action:

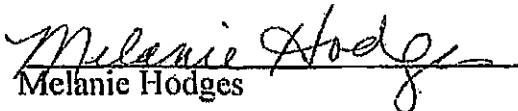
       By Mail. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. Following ordinary business practice, I served the above-described document(s) on all interested parties named below, by placing at my place of business, the sealed envelope(s) for collection and mailing with the United States Postal Service that same day in the ordinary course of business, addressed as follows:

Langston M. Edwards, Deputy Attorney General  
Stephen D. Svetich, Deputy Attorney General  
Office of the Attorney General  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Phone: (213) 269-6274  
Email: [Langston.Edwards@doj.ca.gov](mailto:Langston.Edwards@doj.ca.gov)

By email. By sending a copy of said document electronically for instantaneous transmittal via internet to the offices at the email addresses listed above.

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

*Jan 2, 2019*  
Executed on ~~December 31, 2018~~, at Arroyo Grande, California.

  
Melanie Hodges

# EXHIBIT D

NOTICE OF ENTRY OF JUDGMENT CASE NO. 17CV-0352

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>John F. Hodges, SBN 136035</b>  <b>Whitney Northington Barnick, SBN 313599</b>  <b>P.O. Box 549 - 789 Valley Road</b>  <b>Arroyo Grande, CA 93421</b></p> <p>TELEPHONE NO.: <b>805-779-4005</b> FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional): <b>john@barnickhodgeslaw.com</b></p> <p>ATTORNEY FOR (Name): <b>DeckTech, Inc. and Hunter James, Inc.</b></p>	<p>FOR COURT USE ONLY</p> <p><b>ELECTRONICALLY FILED</b></p> <p><b>1/24/2019 3:05 PM</b></p> <p>SAN LUIS OBISPO SUPERIOR COURT          BY <i>Carol L. McGuirk</i>          Carol L. McGuirk, Deputy Clerk</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Luis Obispo</b></p> <p>STREET ADDRESS: <b>1050 Monterey Street</b></p> <p>MAILING ADDRESS: <b>Room 220</b></p> <p>CITY AND ZIP CODE: <b>San Luis Obispo 93408</b></p> <p>BRANCH NAME: <b>San Luis Obispo</b></p>	<p>CASE NUMBER:  <b>17CV-0352</b></p>
<p>PLAINTIFF/PETITIONER: <b>DeckTech, Inc. and Hunter James, Inc.</b></p> <p>DEFENDANT/RESPONDENT: <b>Registrar of Contractors</b></p>	
<p style="text-align: center;"><b>NOTICE OF ENTRY OF JUDGMENT OR ORDER</b></p> <p>(Check one):    <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b>    <input type="checkbox"/> <b>LIMITED CASE</b>          (Amount demanded exceeded \$25,000)    (Amount demanded was \$25,000 or less)</p>	

**TO ALL PARTIES :**

1. A judgment, decree, or order was entered in this action on (date): **January 22, 2019**
2. A copy of the judgment, decree, or order is attached to this notice.

Date: **January 23, 2019**

**John F. Hodges**

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

*John F. Hodges*  
 (SIGNATURE)

1/14/2019 8:00 AM

1 John F. Hodges, SBN 136035  
Whitney Northington Barnick, SBN 313599  
2 Barnick | Hodges Law Corp.  
789 Valley Road  
3 Arroyo Grande, CA 93420  
P.O. Box 549  
4 Arroyo Grande, CA 93421  
(805) 779-4005  
5 [john@barnickhodgeslaw.com](mailto:john@barnickhodgeslaw.com)  
[whitney@barnickhodgeslaw.com](mailto:whitney@barnickhodgeslaw.com)

Electronically  
**FILED: 01/22/19**  
San Luis Obispo Superior Court  
by: Landrum, Marlys

6 Attorney for Attorney for Petitioners,  
7 DeckTech, Inc. and Hunter James, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN LUIS OBISPO**

10  
11 **DECKTECH, INC.;**  
**HUNTER JAMES, INC.,**

12 Petitioners,

13 vs.

14 **REGISTRAR OF CONTRACTORS**  
15 **CONTRACTORS STATE LICENSE**  
16 **BOARD DEPARTMENT OF**  
**CONSUMER AFFAIRS,**

17 Respondent.

Case No. 17CV-0352

~~PROPOSED~~  
JUDGMENT GRANTING PEREMPTORY  
WRIT

HEARING DATE: October 3, 2018  
TIME: 10:00 A.M.  
DEPT: 9

Hon. Tana L. Coates, Judge

18  
19 This matter came on regularly before the Court on October 3, 2018 in Department 9,  
20 Hon. Tana L. Coates presiding. John F. Hodges appeared for Petitioners, DeckTech, Inc. and  
21 Hunter James, Inc. Stephen D. Svetich, Deputy Attorney General appeared for Respondent,  
22 Registrar of Contractors, Contractors State License Board Department of Consumer Affairs.

23 The Court having considered the administrative record, which was admitted into  
24 evidence, the papers of the parties, and the arguments of counsel,

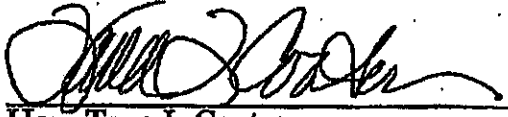
25 IT IS ORDERED, ADJUDGED, AND DECREED that:

- 26 1. A peremptory writ of administrative mandamus shall issue under seal of this Court,  
27 remanding the matter to Respondent and commanding Respondent to set aside its  
28 decision of June 9, 2017 in the Matter of the Accusation against DeckTech, Inc., et al.

1 2. The peremptory writ shall further command Respondent to reconsider its action in  
2 light of the Decision of this Court, attached. Nothing in this judgment or the writ shall  
3 limit or control in any way the discretion legally vested in Respondent.


4 3 Petitioner shall recover its costs in this proceedings in the amount of \$ \_\_\_\_\_  
5

6 Dated: January 22, 2019

7   
8 By: Hon. Tana L Coates  
9 Judge of the Superior Court

10  
11 Judgment entered on January 22, 2019.

12  
13 Michael Powell, San Luis Obispo County Clerk

14   
15 By: Deputy Clerk

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28