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

13 In the Matter of the Accusation Against:

14 **SEGUE CONSTRUCTION INC.**
7139 Koll Center Parkway, Suite 200
Pleasanton, CA 94566
15 **ERICK DAVID HOCKADAY,**
RMO/CEO/PRES
16 **DAVID MICHAEL DUNLOP, RMO**
(February 7, 2002 to June 29, 2016)
17 **KIRK ALAN WALLIS, RMO/CEO/PRES**
(March 4, 1992 to January 11, 2008)
18

Case No. N2015-483

ACCUSATION

19
20 Contractor's License No. 638854, B

21 Respondent.
22

23
24 Complainant alleges:

25 **PARTIES**

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

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

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

9 9. Section 7097 of the Code states, "Notwithstanding the provisions of Sections 7121
10 and 7122, when any license has been suspended by a decision of the registrar pursuant to an
11 accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any
12 additional license issued under this chapter in the name of the licensee or for which the licensee
13 furnished qualifying experience and appearance under the provisions of Section 7068, may be
14 suspended by the registrar without further notice."

15 10. Section 7098 of the Code states: "Notwithstanding the provisions of Sections 7121
16 and 7122, when any license has been revoked under the provisions of this chapter, any additional
17 license issued under this chapter in the name of the licensee or for which the licensee furnished
18 qualifying experience and appearance under the provisions of Section 7068, may be revoked by
19 the registrar without further notice."

20 11. Section 7121 of the Code states: "A person who has been denied a license for a
21 reason other than failure to document sufficient satisfactory experience for a supplemental
22 classification for an existing license, or who has had his or her license revoked, or whose license
23 is under suspension, or who has failed to renew his or her license while it was under suspension,
24 or who has been a partner, officer, director, manager, or associate of any partnership, corporation,
25 limited liability company, firm, or association whose application for a license has been denied for
26 a reason other than failure to document sufficient satisfactory experience for a supplemental
27 classification for an existing license, or whose license has been revoked, or whose license is under
28 suspension, or who has failed to renew a license while it was under suspension, and while acting

1 as a partner, officer, director, manager, or associate had knowledge of or participated in any of the
2 prohibited acts for which the license was denied, suspended, or revoked, shall be prohibited from
3 serving as an officer, director, associate, partner, manager, qualifying individual, or member of
4 the personnel of record of a licensee, and the employment, election, or association of this type of
5 person by a licensee in any capacity other than as a nonsupervising bona fide employee shall
6 constitute grounds for disciplinary action.”

7 12. Section 7121.5 of the Code states: “A person who was the qualifying individual on a
8 revoked license, or of a license under suspension, or of a license that was not renewed while it
9 was under suspension, shall be prohibited from serving as an officer, director, associate, partner,
10 manager, or qualifying individual of a licensee, whether or not the individual had knowledge of or
11 participated in the prohibited acts or omissions for which the license was revoked, or suspended,
12 and the employment, election, or association of that person by a licensee shall constitute grounds
13 for disciplinary action.”

14 13. Section 7122 of the Code states: “The performance by an individual, partnership,
15 corporation, limited liability company, firm, or association of an act or omission constituting a
16 cause for disciplinary action, likewise constitutes a cause for disciplinary action against a licensee
17 other than the individual qualifying on behalf of the individual or entity, if the licensee was a
18 partner, officer, director, manager, or associate of that individual, partnership, corporation,
19 limited liability company, firm, or association at the time the act or omission occurred, and had
20 knowledge of or participated in the prohibited act or omission.”

21 **STATUTORY PROVISIONS**

22 14. Section 7109 of the Code states:

23 “(a) A willful departure in any material respect from accepted trade standards for good and
24 workmanlike construction constitutes a cause for disciplinary action, unless the departure was in
25 accordance with plans and specifications prepared by or under the direct supervision of an
26 architect.

27 “(b) A willful departure from or disregard of plans or specifications in any material respect,
28 which is prejudicial to another, without the consent of the owner or his or her duly authorized

1 representative and without the consent of the person entitled to have the particular construction
2 project or operation completed in accordance with such plans or specifications, constitutes a
3 cause for disciplinary action."

4 **COST RECOVERY**

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

9 **LIBRARY GARDENS APARTMENTS PROJECT**

10 16. On or about January 20, 2005, Respondent entered into a contract to construct the
11 Library Gardens Apartments, a 176 unit apartment complex in Berkeley, California ("project").
12 Respondent was the general contractor at all times during the construction of the project.
13 Respondent hired various subcontractors to complete work on the project. Work was completed
14 and the owner accepted all work on April 23, 2007.

15 17. The project included cantilever balconies at units 305 and 405.

16 18. Respondent entered into a subcontract with a framing contractor to perform rough
17 carpentry and framing work on the project. The framing contractor performed work to install the
18 floor joists for the balconies for the project in or about September 2005. The framing contractor
19 installed the floor sheathing for the balcony at unit 405 on or about October 3, 2005, and
20 completed floor nailing on or about October 11, 2005.

21 19. Part of the plans and specifications for the project included Sheet S1.6 – Unit B8
22 3rd/4th Flr. Frmg. Plan, which called for a single layer of 3/4 inch plywood with a concrete overlay
23 and notched and cantilever micro-lam joists. General note 8 on this sheet required pressure
24 treated joists at the private deck for the top floor (unit 405).

25 20. Sheet S2.4A – Fourth floor Framing Plan - also included general note 8 which again
26 required pressure treated joists at the private deck for the top floor (unit 405).

27 21. The micro-lam floor joists installed on the cantilever balcony for unit 405 were not
28 pressure treated.

1 22. Project Specification Manual, section 07186 – Waterproof Coating Over Plywood
2 Decks, called for plywood to be used for the floor sheathing on the third (unit 305) and fourth
3 (unit 405) floor balconies and specifically stated that “Oriented Strand Board (OSB) is not an
4 acceptable substrate.”

5 23. Instead of 3/4 inch plywood as called for in the plans and specifications, three (3)
6 layers of OSB floor sheathing were installed (one layer of 3/4 inch OSB and 2 layers of 5/8 inch
7 OSB for a total of +/- 2 inches) for the horizontal balcony at unit 405.

8 24. For the unit 405 balcony, Detail 12/AD33 – Flashing at French Door: Balcony Deck –
9 called for a Sonneborn HML 5000 sacrificial membrane to be applied prior to final waterproofing
10 to protect the sheathing from moisture during construction after it was installed in or before
11 October 2005.

12 25. Respondent entered into a subcontract with a waterproofing contractor to perform
13 waterproofing services on the project. The waterproofing contractor performed work on
14 unknown dates between May 10, 2005 and August 7, 2006. At no point after installation of the
15 sheathing in or before October 2005 did the waterproofing contractor, or any other subcontractor,
16 or Respondent, install the sacrificial membrane called for on Detail 12/AD33 for the fourth floor
17 (unit 405) balcony.

18 26. Between installation of the joists and OSB sheathing in October 2005 and final
19 waterproofing in August 2006, rainfall data for the Berkeley area showed over 38 inches of rain.

20 27. On June 16, 2015, the balcony at unit 405 collapsed when 13 students gathered on the
21 balcony. Six students were fatally injured; seven others suffered non-fatal injuries.

22 28. Design and load analysis of the balcony established that if the balcony had been built
23 as designed, the imposed load of the 13 students was well within the design limits of the balcony
24 structure.

25 29. Forensic examination of the cantilever balcony at unit 405 established the existence
26 of extensive dry rot/decay of the balcony deck joists and the three layers of OSB that were in
27 direct contact with the balcony deck joists. It was the decay of the joists that caused the balcony
28 to collapse on June 16, 2015.

1 30. Forensic examination of the cantilever balconies at units 305 and 405 established that
2 the following factors contributed to water intrusion in the areas of extensive dry rot/decay in the
3 balcony deck joists and the three layers of OSB in direct contact with the balcony deck joists:

4 a. The paper and the Fast Flash 40 sheets flashing for the balcony deck to wall flashing
5 at the wall plane and outside face of the balcony decks at both 305 and 405 were not properly
6 integrated. The balcony deck to wall prefabricated sheet metal flashing was not lapped over any
7 membrane or lath paper at the building wall plane.

8 b. The bal-form edge metal of the balcony at unit 305 was not adequately supported
9 along the outside edge in that it was constructed cantilevered out approximately one (1) inch
10 unsupported and only slightly overlapped the exterior plaster and the two (2) layers of lath paper
11 along the bottom edge.

12 c. The framing and sheathing for the balconies at units 305 and 405 were not adequately
13 protected from the rainy weather between construction in October 2005 and waterproofing in
14 August 2006.

15 d. The perimeter extruded aluminum bal-form edge metal of the balcony at unit 305 was
16 not set over WR Grace "Ice & Water Shield" waterproof membrane as required in detail 2/AD81,
17 to which the "Bituthene 3000" could seal. Instead, Fortifiber "Fastflash 40" was lapped over the
18 horizontal leg of the bal-form edge metal in the area below the guardrail stanchion and provided a
19 possible incompatibility issue between products from different manufacturers.

20 e. The guardrail stanchion metal base plate of the balcony at unit 305 was not set over
21 WR Grace "Ice & Water Shield" waterproof membrane as required in detail 2/AD81, to which
22 the "Bituthene 3000" could seal. Instead, Fortifiber "Fastflash 40" was set under the guardrail
23 stanchion metal base plate and provided a possible incompatibility issue between products from
24 different manufacturers. Also, no "Bituthene Primer" was found through laboratory analysis
25 between the metal base plate and the "Bituthene 3000" membrane which resulted in poor
26 membrane adhesion. At one location during destructive testing, moisture was still present
27 between the metal base plate and the waterproof membrane.

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1 f. The guardrail stanchion base plate lag screws of the balcony at unit 305 were 3 inches
2 in length, and not the 4 inches called for in the approved shop drawings. This resulted in poor
3 embedment into the deck framing and in a number of locations the lag screws completely missed
4 the framing members below the OSB sheathing.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Departure From Plans and Specifications)**

7 31. Respondent's license is subject to discipline under Code section 7109(b), in that on
8 the project, Respondent willfully departed from or disregarded the plans or specifications, which
9 was prejudicial to another, without the consent of the owner or his or her duly authorized
10 representative and without consent of the person entitled to have the particular construction
11 project or operation completed in accordance with plans or specifications, in the following
12 respects:

13 a. Failed to install pressure treated micro-lam joists for the unit 405 balcony as called
14 for in General note 8 of the plan sheets for the project and instead installed non-pressure treated
15 joists.

16 b. Failed to install the 3/4 inch plywood called for in the plans and specifications, and
17 instead installed three (3) layers of OSB floor sheathing [one layer of 3/4 inch OSB and 2 layers
18 of 5/8 inch OSB for a total of +/- 2 inches] for the unit 405 balcony.

19 c. Failed to install the Sonneborn HML 5000 sacrificial membrane called for in
20 Detail 12/AD33 – Flashing at French Door: Balcony Deck - for the protection of the sheathing
21 from moisture on the unit 405 balcony.

22 **SECOND CAUSE FOR DISCIPLINE**

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

24 32. Respondent's license is subject to discipline under Code section 7109, subdivision
25 (a), in that on the project, Respondent willfully departed from accepted trade standards for good
26 and workmanlike construction in the following respects:

27 a. Failed to install pressure treated micro-lam joists for the unit 405 balcony as called
28 for in the plans for the project and instead installed non-pressure treated joists, and failed to

1 secure authorization to make this change from the engineer of record and/or the architect of
2 record.

3 b. Failed to install the 3/4 inch plywood called for in the plans and specifications, and
4 instead installed three (3) layers of OSB floor sheathing (one layer of 3/4 inch OSB and 2 layers
5 of 5/8 inch OSB for a total of +/- 2 inches) for the unit 405 balcony, and failed to secure
6 authorization to make this change from the engineer of record and/or the architect of record.

7 c. Failed to install the sacrificial membrane called for on the plans for the protection of
8 the sheathing from moisture on the unit 405 balcony and failed to secure authorization to make
9 this change from the engineer of record and/or the architect of record to entirely omit the
10 sacrificial membrane.

11 OTHER MATTERS

12 33. Pursuant to sections 7097 and 7098 of the Code, if license number 638854, B, issued
13 to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any
14 other license issued in the name of David Michael Dunlop or for which David Michael Dunlop
15 furnished the qualifying experience and appearance.

16 34. Pursuant to section 7121 of the Code, if discipline is imposed on license number
17 638854, B, issued to Respondent, David Michael Dunlop shall be prohibited from serving as an
18 officer, director, associate, partner, manager, or qualifying individual, or member of the personnel
19 of record of any licensee during the time the discipline is imposed, and any licensee which
20 employs, elects, or associates David Michael Dunlop shall be subject to disciplinary action.

21 35. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number
22 638854, B, issued to Respondent, David Michael Dunlop shall be prohibited from serving as an
23 officer, director, associate, partner, manager, or qualifying individual of any licensee during the
24 time the discipline is imposed, whether or not he had knowledge or participated in the acts or
25 omissions constituting grounds for discipline, and any licensee which employs, elects, or
26 associates David Michael Dunlop shall be subject to disciplinary action.

27 36. Pursuant to sections 7097 and 7098 of the Code, if license number 638854, B, issued
28 to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any

1 other license issued in the name of Kirk Alan Wallis or for which Kirk Alan Wallis furnished the
2 qualifying experience and appearance.

3 37. Pursuant to section 7121 of the Code, if discipline is imposed on license number
4 638854, B, issued to Respondent, Kirk Alan Wallis shall be prohibited from serving as an officer,
5 director, associate, partner, manager, or qualifying individual, or member of the personnel of
6 record of a licensee during the time the discipline is imposed, and any licensee which employs,
7 elects, or associates Kirk Alan Wallis shall be subject to disciplinary action.

8 38. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number
9 638854, B, issued to Respondent, Kirk Alan Wallis shall be prohibited from serving as an officer,
10 director, associate, partner, manager, or qualifying individual of any licensee during the time the
11 discipline is imposed, whether or not he had knowledge or participated in the acts or omissions
12 constituting grounds for discipline, and any licensee which employs, elects, or associates Kirk
13 Alan Wallis shall be subject to disciplinary action.

14 **PRAYER**

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

17 1. Revoking or suspending Contractor's License Number 638854, B, issued to
18 Respondent;

19 2. Prohibiting David Michael Dunlop from serving as an officer, director, associate,
20 partner, or qualifying individual of any licensee during the period that discipline is imposed on
21 license Number 638854, B, issued to Respondent;

22 3. Revoking or suspending any other license for which David Michael Dunlop is
23 furnishing the qualifying experience or appearance;

24 4. Prohibiting Kirk Alan Wallis from serving as an officer, director, associate, partner,
25 or qualifying individual of any licensee during the period that discipline is imposed on license
26 Number 638854, B, issued to Respondent;

27 5. Revoking or suspending any other license for which Kirk Alan Wallis is furnishing
28 the qualifying experience or appearance;

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

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

8. Taking such other and further action as is deemed necessary and proper.

DATED: 11/29/2016



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

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