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

12 In the Matter of the Accusation Against:

Case No. N2017-171

13 **BRYAN ALLEN SIMPSON**
14 **DBA S C SERVICES INC**
P.O. Box 712994
15 **Santee, CA 92072**

A C C U S A T I O N

16 **Contractor's License No. 908625**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about January 2, 2008, the Registrar of Contractors (Registrar) issued
25 Contractor's License Number 908625 to S C Services Inc; Bryan Allen Simpson, RMO
26 (Respondent). The Contractor's License was in full force and effect at all times relevant to the
27 charges brought herein and will expire on January 31, 2020, unless renewed.

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JURISDICTION

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

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

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

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

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

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

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

7. Section 7097 of the Code states:

Notwithstanding the provisions of Sections 7121 and 7122, when any license has been suspended by a decision of the registrar pursuant to an accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter [the Contractors' State License Law] in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be suspended by the registrar without further notice.

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1 8. Section 7098 of the Code states:

2 Notwithstanding the provisions of Sections 7121 and 7122, when any license
3 has been revoked under the provisions of this chapter [the Contractors' State License
4 Law], any additional license issued under this chapter in the name of the licensee or for
5 which the licensee furnished qualifying experience and appearance under the
6 provisions of Section 7068, may be revoked by the registrar without further notice.

7 9. Section 7106.5 of the Code states:

8 The expiration cancellation, forfeiture, or suspension of a license by operation of
9 law or by order or decision of the registrar, or a court of law, or the voluntary
10 surrender of the license shall not deprive the registrar of jurisdiction to proceed with
11 any investigation of or action or disciplinary proceeding against the license, or to
12 render a decision suspending or revoking the license.

13 10. Section 7121 of the Code states:

14 Any person who has been denied a license for a reason other than failure to
15 document sufficient satisfactory experience for a supplemental classification for an
16 existing license, or who has had his or her license revoked, or whose license is under
17 suspension, or who has failed to renew his or her license while it was under
18 suspension, or who has been a member, officer, director, or associate of any
19 partnership, corporation, firm, or association whose application for a license has been
20 denied for a reason other than failure to document sufficient satisfactory experience for
21 a supplemental classification for an existing license, or whose license has been
22 revoked, or whose license is under suspension, or who has failed to renew a license
23 while it was under suspension, and while acting as a member, officer, director, or
24 associate had knowledge of or participated in any of the prohibited acts for which the
25 license was denied, suspended, or revoked, shall be prohibited from serving as an
26 officer, director, associate, partner, or qualifying individual of a licensee, and the
27 employment, election, or association of this type of person by a licensee in any
28 capacity other than as a nonsupervising bona fide employee shall constitute grounds
for disciplinary action.

11. Section 7121.5 of the Code states:

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

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

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13. Section 490 of the Code states:

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

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14. Code section 493 of the Code states:

Notwithstanding any other provisions of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the records of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order

to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "licensee" includes "certificate," "permit," "authority," and "registration."

15. Section 7123 of the Code states:

A conviction of a crime substantially related to the qualifications, functions and duties of a contractor constitutes a cause for disciplinary action. The record of the conviction shall be conclusive evidence thereof.

REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 868 states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act, as defined in Section 480 of the code, shall be considered to be substantially related to the qualifications, functions, or duties of a licensee (under Division 3, Chapter 9 of the code) if it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare. The crime or acts shall include, but not be limited to, the following:

(a) Any violation of the provisions of Chapter 9 of Division 3 of the code.

(b) Failure to comply with the provisions of the California Administrative Code, Chapter 8, Title 16.

(c) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another.

(d) Crimes or acts involving physical violence against persons.

(e) Crimes or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.

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1 17. California Code of Regulations, section 869 states, in pertinent part:

2 (a) When considering the denial, suspension, or revocation of a license pursuant
3 to Division 1.5 (commencing with Section 475) of the code, the Board in evaluating
4 the applicant's licensee's rehabilitation and present eligibility for a license, will
5 consider the following criteria:

6 (1) Subject to the provisions of subsection (a)(2), an applicant or licensee may
7 be determined to be rehabilitated if he or she meets the following criteria:

8 (A) For felony convictions that are substantially related to the qualifications,
9 functions, or duties of a licensee as defined in Section 868, seven (7) years have passed
10 from the time of release from incarceration or completion of probation if no
11 incarceration was imposed, without the occurrence of additional criminal activity or
12 substantially-related acts.

13 (B) For misdemeanor convictions that are substantially related to the
14 qualifications, functions, or duties of a licensee as defined in Section 868, three (3)
15 years have passed from the time of release from incarceration or completion of
16 probation if no incarceration was imposed, without the occurrence of additional
17 criminal activity or substantially-related acts.

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19 (2) The amount of time needed to demonstrate rehabilitation under subsection
20 (a)(1) may be increased or decreased by taking into account the following:

21 (A) The nature and severity of the crime(s) or act(s) that are under
22 consideration as, or that were, the grounds for denial, suspension, or revocation.

23 (B) Evidence of any crime(s) or act(s) committed subsequent to the crime(s) or
24 act(s) that are under consideration as, or that were, the grounds for denial, suspension,
25 or revocation, which also could be considered as grounds for denial, suspension, or
26 revocation.

27 (C) The time that has elapsed since commission of the crime(s) or act(s) that
28 are under consideration as, of that were, the grounds for denial, suspension, or
29 revocation.

30 (D) The extent to which the applicant has complied with any terms of parole,
31 probation, restitution, or any other sanctions lawfully imposed against the applicant or
32 licensee.

33 (E) Consistent work history subsequent to the release from incarceration, or the
34 completion of probation if no incarceration was imposed, or subsequent to the time of
35 commission of the act(s).

36 (F) Documents or testimony from credible individuals who have personal
37 knowledge of the applicant's or licensee's life and activities subsequent to the time of
38 the commission of the crime(s) or act(s) who can attest to the applicant's or licensee's
39 present fitness or unfitness for licensure.

40 (G) If applicable, evidence of expungement proceedings pursuant to Section
41 1203.4 of the Penal Code.

1 (H) Other relevant evidence, if any, or rehabilitation submitted by the applicant
2 or licensee. For example, relevant evidence may include evidence of recovery from
3 drug and/or alcohol addiction or abuse or completion of a drug and/or alcohol
4 aversion program if the crime(s) or act(s) related to or involved drug and/or alcohol
5 use; or evidence of completion of an anger management program if the crime(s) or
6 act(s) demonstrated the applicant's or licensee's inability to control one's temper.

7 (b) When considering a petition for reinstatement of the license of a contractor,
8 the Board shall evaluate evidence of rehabilitation submitted by the petitioner,
9 considering those criteria specified in sections 482 and 7008.

10 **COST RECOVERY**

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

15 **CAUSE FOR DISCIPLINE**

16 **(November 10, 2016 Criminal Conviction for Misrepresentation of Fact 17 to Obtain Workers Compensation Insurance and for Filing a False Return 18 Between May of 2011 and December of 2014)**

19 19. Respondent's license is subject to disciplinary action pursuant to Code sections 490
20 and 7123, in that Respondent was convicted of crimes that are substantially related to the
21 qualifications, functions or duties of a licensed contractor. The circumstances are as follows:

22 20. On or about November 10, 2016, in the Superior Court of California, County of
23 San Diego, Central Division, in the case entitled *People of the State of California v. Bryan Allen
24 Simpson*, in Case No. CD261564, Respondent was convicted on his plea of guilty of violating
25 Insurance Code section 11760(a) (fraudulent statement of fact material to the determination of
26 premium, rate and cost of workers' compensation insurance policy) and Unemployment Insurance
27 Code section 2117.5 (failure to file return and to supply accurate payroll information), both
28 felonies. As a result of a plea agreement, seven counts for violating the Insurance Code and the
Unemployment Insurance Code were dismissed.

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21. The circumstances that led to the conviction are that Respondent knowingly made a false statement of a material fact to obtain workers' compensation insurance in order to alter premium rates, and failed to file a return/report with accurate payroll information to the California Employment Development Department's Unemployment Insurance.

22. On April 24, 2017, the Court sentenced Respondent to one day in the county jail, with one day credit for time served, ordered him to perform 100 hours of volunteer work, and placed Respondent on three (3) years formal probation, to expire on April 23, 2020. Respondent stipulated to pay restitution to the Employment Development Department in the amount of \$66,451, and \$20,054 to a workers' compensation insurance company.

23. On September 6, 2017, Respondent's counsel made an appearance and it was determined that Respondent paid restitution in full. The two felony counts detailed at paragraph 20 were reduced to misdemeanors per Penal Code section 17b.

DISCIPLINARY CONSIDERATIONS

24. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 18, 2015, the Contractors' State License Board issued Citation No. 2 2014 2463 against Respondent for violating Business and Professions Code section 7108.6 (failure to pay transportation charges submitted by dump truck carrier), with an Order of Correction of \$24,417.38 to Brownlow Enterprises Inc, and a civil penalty of \$750. The Citation is now final and is incorporated by reference as if fully set forth.

OTHER MATTERS

25. Pursuant to Code sections 7097 and 7098, if Contractor's License Number 908625 issued to Respondent S C Services Inc; Bryan Allen Simpson, RMO, is suspended or revoked by decision of the Registrar, then the Registrar may suspend or revoke without notice, any other license issued in the name of Bryan Allen Simpson or for which Bryan Allen Simpson has furnished the qualifying experience and appearance.

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26. Pursuant to section 7121 of the Code, if discipline is imposed on license number 908625 issued to Respondent, then Bryan Allen Simpson shall be prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of any licensee during the time the discipline is imposed, and any licensee which employs, elects, or associates Bryan Allen Simpson shall be subject to disciplinary action.

27. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number 908625 issued to Respondent, then Bryan Allen Simpson shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of any licensee during the time the discipline is imposed, whether or not he had knowledge or participated in the acts or omissions constituting grounds for discipline, and any licensee which employs, elects, or associates Bryan Allen Simpson shall be subject to disciplinary action.

PRAAYER

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

1. Revoking or suspending Contractor's License Number 908625 issued to S C Services Inc; Bryan Allen Simpson, RMO;

2. Prohibiting Bryan Allen Simpson from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license Number 908625 issued to S C Services Inc, Bryan Allen Simpson, RMO;

3. Revoking or suspending any other license for which Bryan Allen Simpson is furnishing the qualifying experience or appearance;

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

5. Ordering Bryan Allen Simpson to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each;

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

DATED:

02/06/18

WOOD ROBINSON

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

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FILED

FEB 08 2018

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