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

13 In the Matter of the Accusation Against:

Case No. N2023-245

14 **GARNER ROOFING INC.**
15 **RICHARD ELMER WALTON III, RMO**
16 **JERRY LEE GARNER JR., OFFICER**
12178 Tributary Point Drive
Rancho Cordova, CA 95670

ACCUSATION

17 **Contractor's License No. 654567, C-39**

18 Respondent.

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20 **PARTIES**

21 1. Brian Melvin (Complainant) brings this Accusation solely in his official capacity as
22 the Supervising Special Investigator I of the Contractors State License Board (Board),
23 Department of Consumer Affairs.

24 2. On or about September 22, 1992, the Registrar of Contractors (Registrar) issued
25 Contractor's License Number 654567, in Classification C-39 (roofing) to Garner Roofing, Jerry
26 Lee Garner, sole owner. On or about January 17, 2018, the license type was reassigned to a

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1 corporate license and the business name was changed to Garner Roofing Inc.¹ (Respondent
2 Garner Roofing) with Jerry Lee Garner as the Responsible Managing Officer (RMO) and Jerry
3 Lee Garner Jr., (Respondent Garner Jr.) an Officer. Effective May 3, 2019, Jerry Lee Garner
4 disassociated as the RMO. Effective August 22, 2019, Richard Elmer Walton III (Respondent
5 Walton), became associated with the license as the RMO. The Contractor's License was in full
6 force and effect at all times relevant to the charges brought herein and will expire on January 31,
7 2026, unless renewed.

8 JURISDICTION

9 3. This Accusation is brought before the Registrar under the authority of the following
10 laws. All section references are to the Business and Professions Code (Code) unless otherwise
11 indicated.

12 4. Code section 118, subdivision (b), states:

13 The suspension, expiration, or forfeiture by operation of law of a license issued
14 by a board in the department, or its suspension, forfeiture, or cancellation by order of
15 the board or by order of a court of law, or its surrender without the written consent of
16 the board, shall not, during any period in which it may be renewed, restored, reissued,
17 or reinstated, deprive the board of its authority to institute or continue a disciplinary
18 proceeding against the licensee upon any ground provided by law or to enter an order
19 suspending or revoking the license or otherwise taking disciplinary action against the
20 licensee on any such ground.

21 5. Code section 7076.5, subdivision (h), states:

22 The inactive status of a license shall not bar any disciplinary action by the
23 board against a licensee for any of the causes stated in this chapter.

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

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¹Articles of Incorporation were filed with the Secretary of State for Garner Roofing Inc.
by Jerry Lee Garner, Jr. as the Incorporator on September 5, 2017. On October 5, 2022,
Respondent Walton III, filed a State of Information Corporation that identified Richard Walton
III, as Chief Executive Officer and Chief Financial Officer, and Jerry L. Garner (Jr.), as Secretary
for Garner Roofing Inc. On or about November 15, 2023, Respondent Walton III, filed a
Statement of Information Corporation that reflected a change in officers which identified Richard
Walton III, as Secretary. On April 4, 2024, the corporate business license was suspended.

1 7. Code section 7106.5 states:

2 The expiration, cancellation, forfeiture, revocation, or suspension of a license
3 by operation of law or by order or decision of the registrar or a court of law, or the
4 voluntary surrender of a license by a licensee, shall not deprive the registrar of
jurisdiction to proceed with any investigation of or action or disciplinary proceeding
against the license, or to render a decision suspending or revoking the license.

5 8. Section 7121 of the Code states:

6 A person who has been denied a license for a reason other than failure to
7 document sufficient satisfactory experience for a supplemental classification for an
8 existing license, or who has had his or her license revoked, or whose license is under
9 suspension, or who has failed to renew his or her license while it was under
10 suspension, or who has been a partner, officer, director, manager, or associate of any
11 partnership, corporation, limited liability company, firm, or association whose
12 application for a license has been denied for a reason other than failure to document
13 sufficient satisfactory experience for a supplemental classification for an existing
14 license, or whose license has been revoked, or whose license is under suspension, or
15 who has failed to renew a license while it was under suspension, and while acting as a
16 partner, officer, director, manager, or associate had knowledge of or participated in
17 any of the prohibited acts for which the license was denied, suspended, or revoked,
18 shall be prohibited from serving as an officer, director, associate, partner, manager,
19 qualifying individual, or member of the personnel of record of a licensee, and the
employment, election, or association of this type of person by a licensee in any
capacity other than as a nonsupervising bona fide employee shall constitute grounds
for disciplinary action.

15 9. Code section 7121.5 states:

16 A person who was the qualifying individual on a revoked license, or of a
17 license under suspension, or of a license that was not renewed while it was under
18 suspension, shall be prohibited from serving as an officer, director, associate, partner,
19 manager, 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 that
person by a licensee shall constitute grounds for disciplinary action.

20 **STATUTORY PROVISIONS**

21 10. Code section 7109, subdivision (a) states:

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

25 11. Code section 7110 states:

26 Willful or deliberate disregard and violation of the building laws of the state, or
27 of any political subdivision thereof, or of Section 8550 or 8556 of this code, or of
28 Sections 1689.5 to 1689.15, inclusive, of the Civil Code, or of the safety laws or labor
laws or compensation insurance laws or Unemployment Insurance Code of the state,
or of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing

1 with Section 4100) of Part 1 of Division 2 of the Public Contract Code), or violation
2 by any licensee of any provision of the Health and Safety Code or Water Code,
3 relating to the digging, boring, or drilling of water wells, or Article 2 (commencing
with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code,
constitutes a cause for disciplinary action.

4 12. Code section 7113 states:

5 Failure in a material respect on the part of a licensee to complete any
6 construction project or operation for the price stated in the contract for such
7 construction project or operation or in any modification of such contract constitutes a
cause for disciplinary action.

8 13. Code section 7154, subdivision (c) states:

9 A home improvement contractor who employs a registered home improvement
10 salesperson to sell home improvement contracts, but who fails to report to the
11 registrar pursuant to subdivision (a) or (b), is subject to disciplinary action by the
registrar.

12 **COST RECOVERY, RESTITUTION AND OTHER AUTHORITY**

13 14. Code section 125.3 states, in pertinent part:

14 (a) Except as otherwise provided by law, in any order issued in resolution of a
15 disciplinary proceeding before any board within the department or before the
16 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
17 administrative law judge may direct a licentiate found to have committed a violation
or violations of the licensing act to pay a sum not to exceed the reasonable costs of
the investigation and enforcement of the case.

18 (b) In the case of a disciplined licentiate that is a corporation or a partnership,
the order may be made against the licensed corporate entity or licensed partnership.

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20 15. Government Code section 11519 states:

21 (a) The decision shall become effective 30 days after it is delivered or mailed to
22 respondent unless: a reconsideration is ordered within that time, or the agency itself
orders that the decision shall become effective sooner, or a stay of execution is
23 granted.

24 (b) A stay of execution may be included in the decision or if not included
therein may be granted by the agency at any time before the decision becomes
25 effective. The stay of execution provided herein may be accompanied by an express
condition that respondent comply with specified terms of probation provided;
26 provided, however, that the terms of probation shall be just as reasonable in light of
the findings and decision.

27 (c) If respondent was required to register with any public officer, a notification
28 of any suspension or revocation shall be sent to the officer after the decision has
become effective.

1 (d) As used in subdivision (b), specified terms of probation may include an
2 order of restitution. Where restitution is ordered and paid pursuant to the provisions
3 of this subdivision, the amount paid shall be credited to any subsequent judgment in a
4 civil action.

5 (e) The person to which the agency action is directed may not be required to
6 comply with a decision unless the person has been served with the decision in the
7 manner provided in Section 11505 or has actual knowledge of the decision.

8 (f) A nonparty may not be required to comply with a decision unless the agency
9 has made the decision available for public inspection and copying or the nonparty has
10 actual knowledge of the decision.

11 (g) This section does not preclude an agency from taking immediate action to
12 protect the public interest in accordance with Article 13 (commencing with Section
13 11460.10) of Chapter 4.5.

14 16. Code section 143.5, subdivision (b), states:

15 Any board, bureau, or program within the Department of Consumer Affairs that
16 takes disciplinary action against a licensee or licensees based on a complaint or report
17 that has also been the subject of a civil action and that has been settled for monetary
18 damages providing for full and final satisfaction of the parties may not require its
19 licensee or licensees to pay any additional sums to the benefit of any plaintiff in the
20 civil action.

21 17. Code section 7095 states:

22 The decision may:

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

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

27 (3) Impose upon the licensee compliance with such specific terms and
28 conditions as may be just in connection with the licensee's operations as a contractor
disclosed at the hearing and may further provide that until those terms and conditions
are complied with no application for restoration of the suspended or revoked license
shall be accepted by the registrar.

(4)

(A) Provide for the stay of execution of the decision pending completion of
specified terms and conditions of probation.

(B) Failure to fully comply with the terms and conditions of probation set
pursuant to subparagraph (A) may result in automatic termination of the stay of
execution without further notice. If a stay of execution is terminated pursuant to this
subparagraph, the decision shall be considered a disciplinary action within the
meaning of this chapter.

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1 (b) The specific terms and conditions imposed pursuant to paragraph (3) or (4)
2 of subdivision (a) may include, but are not limited to, any of the following:

3 (1) Payment of restitution to persons injured as a result of the violation.

4 (2) Payment of the costs of investigation and enforcement pursuant to Section
5 125.3.

6 (3) Enrollment in, and completion of, specified administrative or trade-specific
7 coursework.

8 (4) Successful completion of the board's law and business examination or trade
9 examination, as appropriate.

10 (5) Any further terms and conditions as are set forth for specified violations in
11 the board's disciplinary guidelines in Section 871 of Title 16 of the California Code of
12 Regulations.

13 18. Code section 7097 states:

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

21 19. Code section 7098 states:

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

27 20. Code section 7102 states:

28 After suspension of a license upon any of the grounds set forth in this chapter
[the Contractors' State License Law], the registrar may reinstate the license upon
proof of compliance by the contractor with all provisions of the decision as to
reinstatement or, in the absence of a decision or any provisions of reinstatement, in
the sound discretion of the registrar.

After revocation of a license upon any of the grounds set forth in this chapter,
the license shall not be reinstated or reissued and a license shall not be issued to any
member of the personnel of the revoked licensee found to have had knowledge of or
participated in the acts or omissions constituting grounds for revocation, within a
minimum period of one year and a maximum period of five years after the final
decision of revocation and then only on proper showing that all loss caused by the act
or omission for which the license was revoked has been fully satisfied and that all
conditions imposed by the decision of revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered
when extending the minimum one-year period. The criteria shall give due

1 consideration to the appropriateness of the extension of time with respect to the
2 following factors:

- 3 (a) The gravity of the violation.
- 4 (b) The history of previous violations.
- 5 (c) Criminal convictions.

6 When any loss has been reduced to a monetary obligation or debt, however, the
7 satisfaction of the monetary obligation or debt as a prerequisite for the issuance,
8 reissuance, or reinstatement of a license shall not be required to the extent the
9 monetary obligation or debt was discharged in a bankruptcy proceeding. However,
any nonmonetary condition not discharged in a bankruptcy proceeding shall be
10 complied with prior to the issuance, the reissuance, or reinstatement of the license.

11 L.S. PROJECT

12 21. On or about July 28, 2020, homeowner L.S. entered into a written home improvement
13 contract with Robert Proffitt on behalf of Respondent Garner Roofing Inc. to replace L.S.'s roof
14 at her property located in Diamond Springs, California for \$8,500.00 (L.S. project). On or about
15 September 29, 2020, L.S. signed a change order that increased the contract price to \$9,400.00.
16 L.S. paid Respondent in full for the L.S. project.

17 22. On or about December 23, 2021, L.S.'s roof began to leak, and L.S. reported the leak
18 to Respondent Garner Roofing. Respondent Garner Roofing came to L.S.'s property several
19 times to repair the leak. L.S. later discovered that Respondent Garner Roofing and/or Respondent
20 Garner Jr. had only placed plastic placed over the roof and did not repair the leak. As a result,
21 L.S. filed a complaint with the Board.

22 23. On or about October 10, 2023, an industry expert retained by the Board inspected the
23 L.S. project and determined that the work performed by Respondent Garner Roofing did not meet
24 industry standards. The industry expert estimated the cost to correct the project to be \$25,630.00.

25 24. On or about November 7, 2023, a Board representative contacted the Housing and
26 Community Development (HCD) Department regarding the permit for the L.S. project. HCD
27 stated that the permit for the L.S. project was never finalized and that it had expired within six
28 months after issuance without any requests for inspection by Respondent Garner Roofing.

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1 25. During the Board’s investigation, the investigator found that Robert Proffit was not
2 on record with the Board as a Home Improvement Salesperson at the time he negotiated the
3 contract for the L.S. project.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Departure from Accepted Trade Standards)**

6 26. Respondent Garner Roofing has subjected its license to disciplinary action under Code
7 section 7109, subdivision (a), in that on the L.S. project, it willfully departed from accepted trade
8 standards for good and workmanlike construction in the following material respects:

9 a. Respondent failed to install a low slope roofing system, which is required when
10 a roof has a pitch below 9.5 degrees or 2”/12” pitch. When measured, the actual pitch of the roof
11 varies from 6 degrees to a negative slope of -4 degrees. This condition allows rain water to flow
12 backwards and run under the shingles and sheet metal step flashing of the skylight, ultimately
13 leaking into the kitchen ceiling;

14 b. Respondent failed to repair damage caused to the kitchen ceiling that resulted
15 from water leaking from the roof. Specifically, the kitchen interior ceiling has a large brown stain
16 near the skylight, the sheetrock tape has lifted, and the paint has released from the ceiling in the
17 vicinity of the stain; and,

18 c. Respondent failed to inspect, assess, or repair damage that was caused when it
19 covered the roof top vent of the gas fired heater and prevented the heater from properly venting.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Violation of Building Laws)**

22 27. Respondent Garner Roofing has subjected its license to disciplinary action under
23 Code section 7110, in that it deliberately or willfully violated California building laws by failing
24 to obtain a proper permit on the L.S. project in that the permit was not finalized and it expired six
25 months after issuance.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Complete for Contract Price)

28. Respondent Garner Roofing has subjected its license to disciplinary action under Code section 7113, in that it failed in a material respect to complete L.S. project for the contract price and the homeowner will be required to spend a sum in excess of the contract price to complete the project in accordance with the contract.

FOURTH CAUSE FOR DISCIPLINE

(Unregistered Home Improvement Salesperson)

29. Respondent Garner Roofing has subjected its license to disciplinary action under Code section 7154, subdivision (c), in that it employed Robert Proffitt, an unregistered home improvement salesperson, to sell a home improvement contract on the L.S. project.

CAUSES FOR OTHER ACTION

FIRST CAUSE FOR OTHER ACTION

(Restrictions on Qualifier – Respondent Walton)

30. Pursuant to Code section 7121.5, if Contractor’s License Number 654567, issued to Respondent Garner Roofing is revoked or suspended, Respondent Walton shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee during the time the discipline is imposed, whether or not he had knowledge of or participated in the acts or omissions constituting grounds for discipline as alleged in the causes for discipline, above, and any licensee which employs, elects, or associates Respondent Richard Elmer Walton III other than as a bona fide nonsupervising employee shall be subject to disciplinary action.

SECOND CAUSE FOR OTHER ACTION

(Restrictions on Officer- Respondent Garner, Jr.)

31. Pursuant to Code section 7121, if Contractor’s License Number 654567, issued to Respondent Garner Roofing is revoked or suspended, Respondent Garner Jr. shall be prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a licensee in that, while serving as an officer of Respondent Garner

1 Roofing, he had knowledge of or participated in the acts or omissions constituting grounds for
2 discipline as alleged in the causes for discipline, above.

3 **PRAYER**

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

6 1. Ordering the revocation or suspension of Contractor's License Number 654567 issued
7 to Garner Roofing Inc., pursuant to Code section 7090;

8 2. Ordering restitution of all damages according to proof suffered by L.S., as a condition
9 of probation in the event probation is ordered for Respondent Garner Roofing Inc., and/or
10 Respondent Richard Elmer Walton III, pursuant to Government Code section 11519, subdivision
11 (d);

12 3. If revocation of Contractor's License Number 654567, issued to Garner Roofing Inc.,
13 is ordered, an order for restitution of all damages suffered by L.S. as a result of Garner Roofing
14 Inc.'s conduct as a contractor, as a condition precedent to any future restoration of Contractor's
15 License Number 654567, or before any new license is issued;

16 4. Ordering Respondent Garner Roofing Inc. and Respondent Richard Elmer Walton III
17 to pay the Registrar costs for the investigation and enforcement of the case according to proof at
18 the hearing, pursuant to Code section 125.3;

19 5. Ordering Respondent Garner Roofing Inc. and Respondent Richard Elmer Walton III
20 to provide the Registrar with a listing of all contracting projects in progress and the anticipated
21 completion date of each, pursuant to Code section 7095;

22 6. Ordering that Respondent Richard Elmer Walton III, is prohibited from serving as an
23 officer, director, associate, partner, manager or qualifying individual of a licensee, pursuant to
24 Code section 7121.5;

25 7. Ordering that Respondent Jerry Lee Garner Jr. is prohibited from serving as an
26 officer, director, associate, partner, manager, qualifying individual or member of the personnel of
27 record of a licensee pursuant to Code section 7121; and,

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8. Taking such other and further action deemed proper.

DATED: 5/2/2024

Brian Melvin

BRIAN MELVIN
Supervising Special Investigator I
Contractors State License Board
Department of Consumer Affairs
State of California
Complainant

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