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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 **UST DEVELOPMENT, INC.**
305 N. Sacramento Avenue
15 Ontario, CA 91764
BRANDEN TOMERIC BELL, CEO-Pres.
Contractor's License No. 925163
Respondent.

Case No. N2011-148

ACCUSATION

16 **U S T DRY UTILITIES, INC.**
dba U S T
2001 E. Elm Court
17 Ontario, CA 91761
BRANDEN TOMERIC BELL, CEO-Pres.
18 **CINDY SUE BELL, Officer, and**
DARCY LYNN WOOLMAN, Officer
19 Contractor's License No. 896223

20 Affiliated License.

21 Complainant alleges:

22 **PARTIES**

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

26 UST Development, Inc.

27 2. On or about November 20, 2008, the Registrar issued Contractor's License
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1 No. 925163 to UST Development, Inc. (Respondent) with Branden Tomeric Bell, CEO-President.
2 The Contractor's License was in full force and effect at all times relevant to the charges brought
3 herein, is currently under suspension, and expired on November 30, 2012, and has not been
4 renewed.

5 U S T Dry Utilities, Inc. dba U S T

6 3. On or about May 10, 2007, the Registrar of Contractors (Registrar) issued
7 Contractor's License No. 896223 to U S T Dry Utilities, Inc. dba U S T (Respondent) with
8 Branden Tomeric Bell, CEO-President, Cindy Sue Bell, Officer and Darcy Lynn Woolman,
9 Officer. The Contractor's License expired on May 31, 2009, and has not been renewed.

10 JURISDICTION

11 4. This Accusation is brought before the Registrar under the authority of the following
12 laws. All section references are to the Business and Professions Code unless otherwise indicated.

13 5. Section 7090 provides, in pertinent part, that the Registrar may suspend or revoke any
14 license or registration if the licensee or registrant is guilty of or commits any one or more of the
15 acts or omissions constituting cause for disciplinary action.

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

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

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

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

25 7. Section 7097 states:

26 "Notwithstanding the provisions of Sections 7121 and 7122, when any license has been
27 suspended by a decision of the registrar pursuant to an accusation or pursuant to subdivision (b)
28 of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter

1 [the Contractors' State License Law] in the name of the licensee or for which the licensee
2 furnished qualifying experience and appearance under the provisions of Section 7068, may be
3 suspended by the registrar without further notice."

4 8. Section 7098 states:

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

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

15 10. Section 7121 states:

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

3 11. Section 7121.5 states:

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

10 12. Section 7122 states:

11 "The performance by any individual, partnership, corporation, firm, or association of any
12 act or omission constituting a cause for disciplinary action, likewise constitutes a cause for
13 disciplinary action against any licensee other than the individual qualifying on behalf of the
14 individual or entity, if the licensee was a member, officer, director, or associate of such
15 individual, partnership, corporation, firm or association at the time such act or omission
16 occurred, and had knowledge of or participated in such prohibited act or omission."

17 13. Section 7122.5 states:

18 "The performance by any individual, partnership, corporation, firm, or association of any
19 act or omission constituting a cause for disciplinary action, likewise constitutes a cause for
20 disciplinary action against any licensee who at the time such act or omission occurred was the
21 responsible managing employee, qualifying partner, responsible managing officer, or qualifying
22 member of such individual, partnership, corporation, firm, or association, whether or not he had
23 knowledge of or participated in the prohibited act or omission."

24 **STATUTORY PROVISIONS**

25 14. Section 490 states, in pertinent part:

26 "(a) In addition to any other action that a board is permitted to take against a licensee, a
27 board may suspend or revoke a license on the ground that the licensee has been convicted of a
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1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

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

7 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. An action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under
12 Section 1203.4 of the Penal Code.”

13 15. Section 7068.1 states, in pertinent part:

14 “The person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of
15 subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and
16 control of his or her employer's or principal's construction operations as is necessary to secure full
17 compliance with the provisions of this chapter and the rules and regulations of the board relating
18 to the construction operations. . . .”

19 16. Section 7111.1 states:

20 “The failure of, or refusal by, a licensee to respond to a written request of the registrar to
21 cooperate in the investigation of a complaint against that licensee constitutes a cause for
22 disciplinary action.”

23 17. Section 7112 states:

24 “Omission or misrepresentation of a material fact by an applicant or a licensee in obtaining,
25 or renewing a license, or in adding a classification to an existing license constitutes a cause
26 for disciplinary action.”

27 18. Section 7114 states in pertinent part:
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1 shall be considered to be substantially related to the qualifications, functions, or duties of a
2 licensee (under Division 3, Chapter 9 of the code) if it evidences present or potential unfitness of
3 an applicant or licensee to perform the functions authorized by the license in a manner consistent
4 with the public health, safety, and welfare.”

5 COST RECOVERY/RESTITUTION

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

10 25. **Restitution:** Government Code section 11519, subdivision (d), provides, in pertinent
11 part, that the Registrar may require restitution of damages suffered as a condition of probation in
12 the event probation is ordered.

13 FACTUAL SUMMARY

14 26. In or about November 2010, Rick Rispalje (Rispalje) met with David Bell (Bell), the
15 brother of Respondent, Branden Tomeric Bell, Chief Executive Officer/President of UST
16 Development, Inc. located at 305 N. Sacramento, Ontario, CA 91764 for an interview. Bell gave
17 Rispalje a tour of the office and indicated to him that he was the President of UST Development
18 and his brother was the owner. Bell also indicated to Rispalje that he took care of all the
19 administrative work and his brother took care of all the field work. Rispalje never met
20 Respondent, Branden Tomeric Bell.

21 27. During the interview with Bell, it was discussed that Rispalje would be the
22 Responsible Managing Employee or the Responsible Managing Officer if he was hired. A
23 possible salary to start in the amount of \$90,000.00 a year was also discussed. Bell asked
24 Rispalje to sign a form called, “Application for Replacing the Qualifying Individual.” Bell
25 indicated to Rispalje that he would only submit the form to the Contractor’s State License Board
26 if he was hired. Rispalje indicated to Bell that he did not want to be on the license. Bell indicated
27 to Rispalje that it was not necessary for him to fill out the form, as it was part of the background
28 he would perform on him before he decided to hire him and that good credit was required.

1 Administrative Functions of the corporation, and that his brother, Branden Tomeric Bell was
2 actually the owner of UST Development Inc., and responsible for the Field Operations of the
3 corporation

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Convictions of Substantially Related Crimes)**

6 35. Respondents are subject to disciplinary action pursuant to sections 7123 and 490, in
7 conjunction with California Code of Regulations, title 16, section 868, in that David Bell was
8 actually, and had represented himself as being, the President of Respondent, responsible for the
9 Administrative Functions of the corporation, and that his brother, Branden Tomeric Bell was
10 actually the owner of UST Development Inc., and responsible for the Field Operations of the
11 corporation. Pursuant to his representations that he was an officer of the corporation, Respondent
12 is therefore responsible for the actions of its officers, agents, employees, etc. Consequently,
13 David William Bell was convicted of crimes substantially related to the qualifications, functions
14 or duties of a licensed contractor, as follows:

15 a. On or about July 21, 2004, David William Bell was convicted of one felony count of
16 violating Penal Code section 487, subdivision (a) [grand theft: money/labor/prop] in the criminal
17 proceeding entitled *The People of the State of California v. David William Bell* (Super. Ct. Los
18 Angeles County, 2004, No. BA261144). The Court sentenced him to serve 2 years in State
19 Prison and denied probation. The circumstances surrounding the conviction are that on or about
20 March 2, 2004, David William Bell took money, labor, or real property of a value exceeding nine
21 hundred dollars.

22 b. On or about October 3, 2002, David William Bell was convicted of one felony count
23 of violating Penal Code section 532, subdivision (a) [obtaining money by false pretenses] in the
24 criminal proceeding entitled *The People of the State of California v. David William Bell* (Super.
25 Ct. Alameda County, 2002, No. 143310). The Court sentenced him to serve 2 days in Alameda
26 County Jail and placed him on 5 years probation, with terms and conditions. The circumstances
27 surrounding the conviction are that on or about July 3, 2002, David William Bell obtained money
28 by false pretenses.

1 c. On or about September 18, 2002, David William Bell was convicted of one felony
2 count of violating Penal Code section 476 [insufficient funds: checks] in the criminal proceeding
3 entitled *The People of the State of California v. David William Bell* (Super. Ct. Los Angeles
4 County, 2002, No. BA232497). The Court placed him on 60 months probation, with terms and
5 conditions. On or about July 19, 2004, the Court revoked probation and sentenced Respondent to
6 serve 2 years in State Prison. The circumstances surrounding the conviction are that on or about
7 July 15, 2002, David William Bell wrote a check with insufficient funds.

8 d. On or about July 19, 1999, after pleading guilty, David William Bell was convicted of
9 one misdemeanor count of violating Penal Code section 488/490.5 [petty theft] in the criminal
10 proceeding entitled *The People of the State of California v. David William Bell* (Super. Ct. San
11 Bernardino County, 1999, No. MSB038037). The Court sentenced him to serve 15 days in San
12 Bernardino County Jail, ordered pronouncement of judgment withheld and conditional and
13 revocable release granted for a period of 24 months, with terms and conditions. The
14 circumstances surrounding the conviction are that on or about October 2, 1998, David William
15 Bell stole, took, and carried away the personal property of another.

16 e. On or about July 13, 1994, David William Bell was convicted of one misdemeanor
17 count of violating Penal Code section 476 [insufficient funds: checks] in the criminal proceeding
18 entitled *The People of the State of California v. David William Bell* (Super. Ct. Orange County,
19 1994, No. NM9304392). The Court placed him on 36 months probation, with terms and
20 conditions. The circumstances surrounding the conviction are that on or about March 24, 1993,
21 David William Bell wrote a check without having sufficient funds.

22 f. On or about August 31, 1993, David William Bell was convicted of one felony count
23 of violating Penal Code section 476 [insufficient funds: checks] in the criminal proceeding
24 entitled *The People of the State of California v. David William Bell* (Super. Ct. Los Angeles
25 County, 1994, No. GA015125). The Court placed him on 36 months probation, with terms and
26 conditions. The circumstances surrounding the conviction are that on or about April 21, 1993,
27 David William Bell wrote a check without having sufficient funds.
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1 g. On or about June 8, 1981, David William Bell was convicted of one felony count of
2 violating Penal Code section 459 [burglary] in the criminal proceeding entitled *The People of the*
3 *State of California v. David William Bell* (Super. Ct. Los Angeles County, 1981, No. M79341).
4 The Court sentenced Respondent to serve 180 days in Los Angeles County Jail and placed him on
5 2 years probation, with terms and conditions. The circumstances surrounding the conviction are
6 that on or about January 25, 1981, Respondent entered the dwelling house of another with the
7 intent to commit grand or petit larceny or any felony therein.

8 **DISCIPLINARY CONSIDERATIONS**

9 36. In order to determine the degree of discipline, if any, to be imposed on Respondent,
10 Complainant alleges that on or about March 14, 2011, the Registrar issued Citation No. 2-2010-
11 2065 against Respondent for the Barion project in the City of Highland, CA, for violations on or
12 about October 26, 2009 and November 9, 2009 of section 7120 [failed to pay for materials or
13 services after having received sufficient funds]. An order of correction included \$1,207.50 in
14 restitution, and a civil penalty of \$350.00 was assessed. Respondent has failed to comply with the
15 citation.

16 **OTHER MATTERS**

17 37. Pursuant to sections 7097 and 7098, if license Nos. 925163 and 896223 issued to
18 Respondents are suspended or revoked, the Registrar may suspend or revoke, without notice, any
19 other license issued in the name of Branden Tomeric Bell, Cindy Sue Bell and Darcy Lynn
20 Woolman or for which Branden Tomeric Bell, Cindy Sue Bell and Darcy Lynn Woolman
21 furnished the qualifying experience and appearance.

22 38. Pursuant to sections 7121, 7121.5, 7122 and 7122.5, if discipline is imposed on
23 license Nos. 925163 and 896223 and issued to Respondent, Branden Tomeric Bell, Cindy Sue
24 Bell and Darcy Lynn Woolman shall be prohibited from serving as an officer, director, associate,
25 partner, or qualifying individual of any licensee during the time the discipline is imposed, and any
26 licensee which employs, elects, or associates Branden Tomeric Bell, Cindy Sue Bell and/or Darcy
27 Lynn Woolman shall be subject to disciplinary action.

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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 UST Development, Inc.

- 5 1. Revoking or suspending Contractor's License No. 925163 issued to UST
6 Development, Inc.; Branden Tomeric Bell, CEO-President;
- 7 2. Prohibiting Branden Tomeric Bell 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. 925163, issued to UST Development, Inc.; Branden Tomeric Bell, CEO-President.
- 10 3. Revoking or suspending any other license for which Branden Tomeric Bell is
11 furnishing the qualifying experience or appearance;
- 12 4. Ordering restitution of all damages according to proof suffered by Rick Rispalje, as a
13 condition of probation in the event probation is ordered;
- 14 5. Ordering restitution of all damages suffered by Rick Rispalje as a result of Branden
15 Tomeric Bell's conduct as a contractor, as a condition of restoration of license No. 925163, issued
16 to UST Development, Inc.; Branden Tomeric Bell, CEO-President;
- 17 6. Ordering UST Development, Inc.; Branden Tomeric Bell, CEO-President, to pay the
18 Registrar of Contractors his costs in the investigation and enforcement of the case according to
19 proof at the hearing, pursuant to section 125.3;
- 20 7. Ordering UST Development, Inc.; Branden Tomeric Bell, CEO-President to provide
21 the Registrar with a listing of all contracting projects in progress and the anticipated completion
22 date of each;

23 As to U S T Dry Utilities, Inc. dba U S T

- 24 8. Revoking or suspending Contractor's License No. 896223 issued to U S T Dry
25 Utilities, Inc. dba U S T; Branden Tomeric Bell, CEO-President, Cindy Sue Bell, Officer, and
26 Darcy Lynn Woolman, Officer;
- 27 9. Prohibiting Branden Tomeric Bell, Cindy Sue Bell and / or Darcy Lynn Woolman
28 from serving as an officer, director, associate, partner, or qualifying individual of any licensee

1 during the period that discipline is imposed on license No. 896223, issued to U S T Dry Utilities,
2 Inc. dba U S T; Branden Tomeric Bell, CEO-President, Cindy Sue Bell, Officer, and Darcy Lynn
3 Woolman, Officer;

4 10. Revoking or suspending any other license for which Branden Tomeric Bell, Cindy
5 Sue Bell and Darcy Lynn Woolman are furnishing the qualifying experience or appearance;

6 11. Ordering restitution of all damages according to proof suffered by Rick Rispalje as a
7 condition of probation in the event probation is ordered;

8 12. Ordering restitution of all damages suffered by Rick Rispalje as a result of Branden
9 Tomeric Bell, Cindy Sue Bell and Darcy Lynn Woolman's conduct as a contractor, as a condition
10 of restoration of license No. 896223, issued to U S T Dry Utilities, Inc. dba U S T; Branden
11 Tomeric Bell, CEO-President, Cindy Sue Bell, Officer and Darcy Lynn Woolman, Officer;

12 13. Ordering U S T Dry Utilities, Inc. dba U S T; Branden Tomeric Bell, CEO-President,
13 Cindy Sue Bell, Officer and Darcy Lynn Woolman, Officer to pay the Registrar of Contractors
14 his costs in the investigation and enforcement of the case according to proof at the hearing,
15 pursuant to section 125.3;

16 14. Ordering U S T Dry Utilities, Inc. dba U S T; Branden Tomeric Bell, CEO-President,
17 Cindy Sue Bell, Officer, and Darcy Lynn Woolman, Officer, to provide the Registrar with a
18 listing of all contracting projects in progress and the anticipated completion date of each;

19 As to All

20 15. Taking such other and further action as deemed necessary and proper.

21 DATED: *December 18, 2012*

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

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