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

12 In the Matter of the Accusation Against:

Case No. N2012-416

13 **SAN DIEGO DOOR & WINDOW,**  
14 **DBA THERMOVIEV OF CALIFORNIA**  
15 **9865 Business Park Avenue**  
**San Diego, CA 92131**

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

16 **ALAN CARL HOLSAPPLE, RMO/CEO/President**  
17 **ANNE MARIE HOLSAPPLE, OFFICER**

18 **Contractor's License No. 798232, B**

19 Respondent.

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21 Complainant alleges:

22 **PARTIES**

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

26 2. On August 9, 2001, the Registrar of Contractors issued Contractor's License  
27 Number 798232, classification B (general building contractor) to San Diego Door & Window,  
28 doing business as Thermoviev of California, with Alan Carl Holsapple as RMO, CEO, and

1 President, and Anne Marie Holsapple as Officer (Respondent). On August 31, 2003, the  
2 Contractor's License expired. On September 9, 2003, due to an unsatisfied judgment in a small  
3 claims civil case entitled *San Diego Door and Window vs. Barry Trent*, in San Diego County  
4 Superior Court, Kearny Mesa Courthouse, Case Number SC139063, Respondent's Contractor's  
5 License was suspended for violation of Code section 7071.17. On September 29, 2003, the  
6 Contractor's License was renewed and reinstated. On January 1, 2004, the Contractor's License  
7 home improvement certification classification was removed. On April 21, 2004, the Contractor's  
8 License was suspended for violation of Code section 7071.11 in relation to bond payment claim  
9 number AC5513. On April 23, 2004, the Contractor's License was reinstated. On August 16,  
10 2009, the Contractor's License was suspended for violation of Code section 7125.2 in that  
11 Respondent's workers' compensation insurance coverage expired. On September 2, 2010, the  
12 Contractor's License was suspended for Respondent's failure to obtain a contractor's bond in  
13 violation of California Code of Civil Procedure (California CCP) Section 996.340, which was  
14 lifted on September 14, 2010. On October 13, 2010, the Contractor's License was reinstated after  
15 Respondent obtained workers' compensation insurance coverage. On December 27, 2010, the  
16 Contractor's License was suspended for failure to pay in Judgment #37-2010-00085277 in  
17 violation of Code section 7071.17. On February 13, 2011, the Contractor's License was  
18 reinstated after payment of the judgment. On December 27, 2011, the Contractor's License was  
19 granted exemption from workers' compensation insurance coverage. On December 27, 2011, the  
20 Contractor's License was suspended for a subsequent failure to pay in Judgment #37-2010-  
21 00085277 in violation of Code section 7071.17. On February 21, 2012, the Contractor's License  
22 was suspended due to an outstanding liability in violation of Code section 7145.5, which was  
23 lifted on June 22, 2012. On July 5, 2012, the Contractor's License was suspended for failure to  
24 satisfy Judgment #37-2012-00001087 in violation of Code section 7071.17. On August 11, 2012,  
25 the Contractor's License was suspended for Respondent's failure to obtain a contractor's bond in  
26 violation of California CCP Section 996.340. On January 7, 2013, the last two suspensions for  
27 violation of Code section 7071.17 were lifted. However, the Contractor's License remains  
28 suspended for failure to obtain a contractor's bond in violation of California CCP Section

1 996.340. The Contractor's License was in full force and effect at all times relevant to the charges  
2 brought herein and will expire on August 31, 2013, unless renewed.

### 3 JURISDICTION

4 3. This Accusation is brought before the Contractors' State License Board,  
5 Department of Consumer Affairs, State of California, under the authority of the following laws.  
6 All section references are to the Business and Professions Code (Code).

7 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
8 surrender, cancellation of a license shall not deprive the Registrar of jurisdiction to proceed with  
9 a disciplinary action during the period within which the license may be renewed, restored,  
10 reissued or reinstated.

11 5. Section 7076.5, subdivision (h) provides that the inactive status of a license shall  
12 not bar any disciplinary action by the board against a licensee for any of the causes stated in this  
13 chapter.

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

17 7. Code section 7095 states that the Registrar in making his order may:

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

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

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

27 8. Code section 7096 states:

28 For the purposes of this chapter, the term "licensee" shall include an  
individual, partnership, corporation, limited liability company, joint venture, or  
any combination or organization licensed under this chapter, and shall also  
include any named responsible managing officer, responsible managing manager,  
responsible managing member, or personnel of that licentiate whose appearance  
has qualified the licentiate under the provisions of Section 7068.

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9. Code section 7097 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.

10. Code section 7098 states:

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

11. Code section 7106.5 provides that the expiration, cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of the Registrar or a court of law, or the 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. Under Code section 7141, a license may be renewed at any time within five years after its expiration.

12. Code section 7115 states:

Failure in any material respect to comply with the provisions of this chapter, or any rule or regulation adopted pursuant to this chapter, or to comply with the provisions of Section 7106 of the Public Contract Code, constitutes a cause for disciplinary action.

13. Code section 7121 states:

Any person who has been denied a license for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, or associate of any partnership, corporation, firm, or association whose application for a license has been denied for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or whose license has been revoked, or whose license is under suspension, or who has

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

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12 14. Code section 7121.5 states:

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

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25 15. Code section 7122.5 states:

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

### STATUTORY PROVISIONS

16. Code section 7109 states:

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

(b) A willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner or his or her duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans or specifications, constitutes a cause for disciplinary action.

17. Code section 7110 states:

Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof, or of Section 8550 or 8556 of this code, or of Sections 1689.5 to 1689.15, inclusive, of the Civil Code, or of the

1 safety laws or labor laws or compensation insurance laws or Unemployment  
2 Insurance Code of the state, or of the Subletting and Subcontracting Fair Practices  
3 Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the  
4 Public Contract Code), or violation by any licensee of any provision of the Health  
5 and Safety Code or Water Code, relating to the digging, boring, or drilling of  
6 water wells, or Article 2 (commencing with Section 4216) of Chapter 3.1 of  
7 Division 5 of Title 1 of the Government Code, constitutes a cause for disciplinary  
8 action.

6 18. Code section 7113 states:

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

10 19. Code section 7117.5 states:

11 . . . .

12 (b) Acting in the capacity of a contractor under any license that has  
13 been suspended for any reason constitutes a cause for disciplinary action.

13 . . . .

14 20. Code section 7118 states:

15 Entering into a contract with a contractor while such contractor is not  
16 licensed as provided in this chapter constitutes a cause for disciplinary action.

17 21. Code section 7119 states:

18 Wilful failure or refusal without legal excuse on the part of a licensee as a  
19 contractor to prosecute a construction project or operation with reasonable  
20 diligence causing material injury to another constitutes a cause for disciplinary  
21 action.

21 22. Code section 7125.4 states:

22 (a) The filing of the exemption certificate prescribed by this article that is  
23 false, or the employment of a person subject to coverage under the workers'  
24 compensation laws after the filing of an exemption certificate without first filing a  
25 Certificate of Workers' Compensation Insurance or Certification of Self-  
26 Insurance in accordance with the provisions of this article, or the employment of a  
27 person subject to coverage under the workers' compensation laws without  
28 maintaining coverage for that person, constitutes cause for disciplinary action.

(b) Any qualifier for a license who, under Section 7068.1 is responsible  
for assuring that a licensee complies with the provisions of this chapter, is also  
guilty of a misdemeanor for committing or failing to prevent the commission of  
any of the acts that are cause for disciplinary action under this section.

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23. Code section 7154 states:

A home improvement contractor who employs a person to sell home improvement contracts while such person is not registered by the registrar as a home improvement salesman as provided in this article, is subject to disciplinary action by the registrar.

24. Code section 7159 states:

....

(d) A home improvement contract and any changes to the contract shall be in writing and signed by the parties to the contract prior to the commencement of work covered by the contract or an applicable change order and, except as provided in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with all of the following:

....

(8) If a downpayment will be charged, the details of the downpayment shall be expressed in substantially the following form, and shall include the text of the notice as specified in subparagraph (C):

- (A) The heading: "Downpayment."
- (B) A space where the actual downpayment appears.

(C) The following statement in at least 12-point boldface type: "THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS."

(9) If payments, other than the downpayment, are to be made before the project is completed, the details of these payments, known as progress payments, shall be expressed in substantially the following form, and shall include the text of the statement as specified in subparagraph (C):

- (A) A schedule of progress payments shall be preceded by the heading: "Schedule of Progress Payments."
- (B) Each progress payment shall be stated in dollars and cents and specifically reference the amount of work or services to be performed and materials and equipment to be supplied.

(C) The section of the contract reserved for the progress payments shall include the following statement in at least 12-point boldface type:

"The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT."

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1 (10) The contract shall address the commencement of work to be  
2 performed in substantially the following form:

3 (A) A statement that describes what constitutes substantial commencement  
4 of work under the contract.

5 (B) The heading: "Approximate Start Date."

6 (C) The approximate date on which work will be commenced.

7 (11) The estimated completion date of the work shall be referenced in the  
8 contract in substantially the following form:

9 (A) The heading: "Approximate Completion Date."

10 (B) The approximate date of completion.

11 . . . .

12 (13) The heading: "Note About Extra Work and Change Orders," followed  
13 by the following statement:

14 "Extra Work and Change Orders become part of the contract once the  
15 order is prepared in writing and signed by the parties prior to the commencement  
16 of work covered by the new change order. The order must describe the scope of  
17 the extra work or change, the cost to be added or subtracted from the contract, and  
18 the effect the order will have on the schedule of progress payments."

19 (e) Except as provided in paragraph (8) of subdivision (a) of Section  
20 7159.5, all of the following notices shall be provided to the owner as part of the  
21 contract form as specified or, if otherwise authorized under this subdivision, may  
22 be provided as an attachment to the contract:

23 (1) A notice concerning commercial general liability insurance. This  
24 notice may be provided as an attachment to the contract if the contract includes  
25 the following statement: "A notice concerning commercial general liability  
26 insurance is attached to this contract." The notice shall include the heading  
27 "Commercial General Liability Insurance (CGL)," followed by whichever of the  
28 following statements is both relevant and correct:

(A) "(The name on the license or 'This contractor') does not carry  
commercial general liability insurance."

(B) "(The name on the license or 'This contractor') carries commercial  
general liability insurance written by (the insurance company). You may call (the  
insurance company) at \_\_\_\_\_ to check the contractor's insurance  
coverage."

(C) "(The name on the license or 'This contractor') is self-insured."

(2) A notice concerning workers' compensation insurance. This notice  
may be provided as an attachment to the contract if the contract includes the  
statement: "A notice concerning workers' compensation insurance is attached to  
this contract." The notice shall include the heading "Workers' Compensation  
Insurance" followed by whichever of the following statements is correct:

///

1 (A) “(The name on the license or ‘This contractor’) has no employees and  
2 is exempt from workers’ compensation requirements.”

3 (B) “(The name on the license or ‘This contractor’) carries workers’  
4 compensation insurance for all employees.”

5 (3) A notice that provides the buyer with the following information about  
6 the performance of extra or change-order work:

7 (A) A statement that the buyer may not require a contractor to perform  
8 extra or change-order work without providing written authorization prior to the  
9 commencement of work covered by the new change order.

10 (B) A statement informing the buyer that extra work or a change order is  
11 not enforceable against a buyer unless the change order also identifies all of the  
12 following in writing prior to the commencement of work covered by the new  
13 change order:

14 (i) The scope of work encompassed by the order.

15 (ii) The amount to be added or subtracted from the contract.

16 (iii) The effect the order will make in the progress payments or the  
17 completion date.

18 (C) A statement informing the buyer that the contractor’s failure to  
19 comply with the requirements of this paragraph does not preclude the recovery of  
20 compensation for work performed based upon legal or equitable remedies  
21 designed to prevent unjust enrichment.

22 (4) A notice with the heading “Mechanics’ Lien Warning” written as  
23 follows:

24 **MECHANICS’ LIEN WARNING:**

25 Anyone who helps improve your property, but who is not paid, may record  
26 what is called a mechanics’ lien on your property. A mechanics’ lien is a claim,  
27 like a mortgage or home equity loan, made against your property and recorded  
28 with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers,  
and laborers who helped to improve your property may record mechanics’ liens  
and sue you in court to foreclose the lien. If a court finds the lien is valid, you  
could be forced to pay twice or have a court officer sell your home to pay the lien.  
Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material  
supplier must provide you with a document called a “20-day Preliminary Notice.”  
This notice is not a lien. The purpose of the notice is to let you know that the  
person who sends you the notice has the right to record a lien on your property if  
he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the  
subcontractor starts work or the supplier provides material. This can be a big  
problem if you pay your contractor before you have received the Preliminary  
Notices.

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1           You will not get Preliminary Notices from your prime contractor or from  
2 laborers who work on your project. The law assumes that you already know they  
are improving your property.

3           **PROTECT YOURSELF FROM LIENS.** You can protect yourself from  
4 liens by getting a list from your contractor of all the subcontractors and material  
5 suppliers that work on your project. Find out from your contractor when these  
subcontractors started work and when these suppliers delivered goods or  
6 materials. Then wait 20 days, paying attention to the Preliminary Notices you  
receive.

7           **PAY WITH JOINT CHECKS.** One way to protect yourself is to pay with  
8 a joint check. When your contractor tells you it is time to pay for the work of a  
subcontractor or supplier who has provided you with a Preliminary Notice, write a  
9 joint check payable to both the contractor and the subcontractor or material  
supplier.

10           For other ways to prevent liens, visit CSLB's Internet Web site at  
www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

11           **REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN**  
12 **PLACED ON YOUR HOME.** This can mean that you may have to pay twice, or  
face the forced sale of your home to pay what you owe.

13           (5) The following notice shall be provided in at least 12-point typeface:

14           Information about the Contractors' State License Board (CSLB): CSLB is  
15 the state consumer protection agency that licenses and regulates construction  
contractors.

16           Contact CSLB for information about the licensed contractor you are  
17 considering, including information about disclosable complaints, disciplinary  
actions, and civil judgments that are reported to CSLB.

18           Use only licensed contractors. If you file a complaint against a licensed  
19 contractor within the legal deadline (usually four years), CSLB has authority to  
investigate the complaint. If you use an unlicensed contractor, CSLB may not be  
20 able to help you resolve your complaint. Your only remedy may be in civil court,  
and you may be liable for damages arising out of any injuries to the unlicensed  
21 contractor or the unlicensed contractor's employees.

22           For more information:

23           Visit CSLB's Internet Web site at [www.cslb.ca.gov](http://www.cslb.ca.gov)

24           Call CSLB at 800-321-CSLB (2752)

25           Write CSLB at P.O. Box 26000, Sacramento, CA 95826.

26           (6) (A) The notice set forth in subparagraph (B) and entitled "Three-Day  
27 Right to Cancel," shall be provided to the buyer unless the contract is:

28           (i) Negotiated at the contractor's place of business.

          (ii) Subject to the "Seven-Day Right to Cancel," as set forth in paragraph (7).

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1 (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6  
2 (commencing with Section 7590)), provided the alarm company licensee complies  
3 with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

3 (B) Three-Day Right to Cancel

4 You, the buyer, have the right to cancel this contract within three business  
5 days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice  
6 to the contractor at the contractor's place of business by midnight of the third  
7 business day after you received a signed and dated copy of the contract that  
8 includes this notice. Include your name, your address, and the date you received  
9 the signed copy of the contract and this notice.

10 If you cancel, the contractor must return to you anything you paid within  
11 10 days of receiving the notice of cancellation. For your part, you must make  
12 available to the contractor at your residence, in substantially as good condition as  
13 you received them, goods delivered to you under this contract or sale. Or, you  
14 may, if you wish, comply with the contractor's instructions on how to return the  
15 goods at the contractor's expense and risk. If you do make the goods available to  
16 the contractor and the contractor does not pick them up within 20 days of the date  
17 of your notice of cancellation, you may keep them without any further obligation.  
18 If you fail to make the goods available to the contractor, or if you agree to return  
19 the goods to the contractor and fail to do so, then you remain liable for  
20 performance of all obligations under the contract.

21 (C) The "Three-Day Right to Cancel" notice required by this paragraph  
22 shall comply with all of the following:

23 (i) The text of the notice is at least 12-point boldface type.

24 (ii) The notice is in immediate proximity to a space reserved for the  
25 owner's signature.

26 (iii) The owner acknowledges receipt of the notice by signing and dating  
27 the notice form in the signature space.

28 (iv) The notice is written in the same language, e.g., Spanish, as that  
principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in  
at least 12-point boldface type, a checkbox with the following statement: "The  
law requires that the contractor give you a notice explaining your right to cancel.  
Initial the checkbox if the contractor has given you a 'Notice of the Three-Day  
Right to Cancel.'"

(vi) The notice shall be accompanied by a completed form in duplicate,  
captioned "Notice of Cancellation," which also shall be attached to the agreement  
or offer to purchase and be easily detachable, and which shall contain the  
following statement written in the same language, e.g., Spanish, as used in the  
contract:

"Notice of Cancellation"

/enter date of transaction/  
\_\_\_\_\_

(Date)

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You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to \_\_\_\_\_, /name of seller/ at \_\_\_\_\_, /address of seller's place of business/ not later than midnight of \_\_\_\_\_.

(Date)

I hereby cancel this transaction. \_\_\_\_\_.

(Date)

\_\_\_\_\_  
(Buyer's signature)

25. Code section 7159.5 states:

This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

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

....

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

....

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

4 . . . .

5 26. Code section 7161 states:

6 It is a misdemeanor for any person to engage in any of the following acts,  
7 the commission of which shall be cause for disciplinary action against any  
8 licensee or applicant:

9 . . . .

10 (b) Making any substantial misrepresentation in the procurement of a  
11 contract for a home improvement or other work of improvement or making any  
12 false promise of character likely to influence, persuade or, induce any person to  
13 enter into such a contract.

### 14 COST RECOVERY

15 27. **Cost Recovery:** Code Section 125.3 provides, in pertinent part, that the Board  
16 may request the administrative law judge to direct a licentiate found to have committed a  
17 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
18 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the  
19 license to not being renewed or reinstated. If a case settles, recovery of investigation and  
20 enforcement costs may be included in a stipulated settlement.

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

### 24 MC PROJECT

25 29. Alan Carl Holsapple, RMO of Thermoview of California, owned by San Diego  
26 Door & Window, contractor's license number 798232, classification B (general building  
27 contractor) (Respondent), contacted MC over the phone to solicit home improvement projects at  
28 her home in 2630 Nida Place, Lemon Grove, California. On September 2, 2009, Respondent sent  
an unlicensed salesperson to enter into a contract with MC to install home vinyl siding and  
replace the roofing at her home for \$31,500.00 (MC project). The unlicensed salesperson signed  
on behalf of the RMO and received from MC the downpayment of \$1,000.00. On September 4,

1 2009, the scope of work was increased by adding a new front door and painting of a security  
2 door. The change orders increased the cost for the MC Project to \$33,500.00. On the same day,  
3 Respondent received \$11,166.66 for the purchase of materials. On September 14, 2009,  
4 Respondent received \$10,166.66 and on October 7, 2009, Respondent received another  
5 \$10,166.66. After receiving the total amount of the contract upfront, on October 10, 2009, work  
6 began on the MC Project. On October 16, 2009, Respondent last performed work on the MC  
7 Project. MC was so sick that she did not have time to inspect the completed project on her  
8 property until sometime April 2011. MC was dissatisfied with the MC Project and started  
9 contacting Respondent by phone and through third party intermediaries. Sometime July 2011,  
10 Respondent sent an unlicensed contractor to fix the problems on the fascia eave above the front  
11 door. The problems were not fixed. On July 8, 2011, MC tried to contact Respondent but  
12 Respondent did not get the problems fixed. In November 2011, MC filed a complaint with CSLB  
13 and a CSLB expert estimated the total cost to correct or complete the project to be \$10,840.00.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Departure In a Material Respect from Accepted Trade Standards)**

16 30. Respondent is subject to disciplinary action pursuant to Code section 7109,  
17 subdivision (a) in that on the MC Project, it willfully departed from accepted trade standards for  
18 good and workmanlike construction in certain material respects, including, but not limited to the  
19 following:

- 20 a. Respondent failed to properly fit vinyl siding, siding joints, fascia trim  
21 corners and joints, and vinyl trim.
- 22 b. Respondent failed to install fascia trim at entry.
- 23 c. Respondent failed to weatherproof vent trim installation.
- 24 d. Respondent failed to avoid cosmetic damage on one window frame.
- 25 e. Respondent failed to properly replace the rain gutters and downspout.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Employment Of a Non-Registered Salesman)**

3 36. Respondent is subject to disciplinary action under Code section 7154 in that in  
4 order to enter into a contract for the Parker Project, it employed a person to sign the home  
5 improvement contract while such person was not registered by the registrar as a home  
6 improvement salesman.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Violation of the Home Improvement Contract Provisions)**

9 37. Respondent is subject to disciplinary action pursuant to Code section 7159, in that  
10 on the MC Project, it failed to comply with provisions of that section, as follows:

11 a. **Subdivision (d)(8)(A)**: Respondent failed to provide the heading:  
12 “Downpayment.”

13 b. **Subdivision (d)(8)(B)**: Respondent failed to provide a space where the  
14 actual downpayment appears.

15 c. **Subdivision (d)(8)(C)**: Respondent failed to provide the following  
16 statement in at least 12-point boldface type: “THE DOWNPAYMENT MAY NOT EXCEED  
17 \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

18 d. **Subdivision (d)(9)(A)**: Respondent failed to provide the required format  
19 as to additional payments known as progress payments as identified below:

20 A heading: “Schedule of Progress Payments.”

21 e. **Subdivision (d)(9)(B)**: Respondent failed to provide the required details  
22 as to progress payments in dollars and cents and specifically reference the amount of work or  
23 services to be performed and materials and equipment to be supplied.

24 f. **Subdivision (d)(9)(C)**: Respondent failed to include on the contract the  
25 following statement in at least 12-point boldface type:

26 The schedule of progress payments must specifically describe each  
27 phase of work, including the type and amount of work or services  
28 scheduled to be supplied in each phase, along with the amount of each  
proposed progress payment. IT IS AGAINST THE LAW FOR A  
CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET

1 COMPLETED, OR FOR MATERIALS NOT YET DELIVERED.  
2 HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.

3 g. **Subdivision (d)(10)(A)**: Respondent failed to include on the contract a  
4 statement describing what constitutes substantial commencement of work under the contract.

5 h. **Subdivision (d)(10)(B)**: Respondent failed to include on the contract the  
6 heading: "Approximate Start Date."

7 i. **Subdivision (d)(10)(C)**: Respondent failed to include on the contract the  
8 approximate date on which work will be commenced.

9 j. **Subdivision (d)(11)(A)**: Respondent failed to include on the contract the  
10 heading: "Approximate Completion Date."

11 k. **Subdivision (d)(11)(B)**: Respondent failed to include on the contract the  
12 approximate date of completion.

13 l. **Subdivision (d)(13)**: Respondent failed to include on the contract the  
14 heading: "Note About Extra Work and Change Orders," followed by the statement required by  
15 law.

16 m. **Subdivision (e)(1)(A)**: Respondent failed to include on the contract the  
17 heading "Commercial General Liability Insurance (CGL)," and the relevant and correct  
18 statements:

19 "The name on the license or 'This contractor' does not carry  
20 commercial general liability insurance."

21 n. **Subdivision (e)(1)(B)**: Respondent failed to include on the contract the  
22 heading "Commercial General Liability Insurance (CGL)," and the relevant and correct  
23 statements:

24 "The name on the license or 'This contractor' carries  
25 commercial general liability insurance written by (the insurance  
26 company). You may call (the insurance company) at  
27 \_\_\_\_\_ to check the contractor's insurance coverage."

28 o. **Subdivision (e)(1)(C)**: Respondent failed to include on the contract the  
29 heading "Commercial General Liability Insurance (CGL)," and the relevant and correct  
30 statements:

31 "The name on the license or 'This contractor' is self-insured."

1 p. **Subdivision (e)(2)(A)**: Respondent failed to include in the contract the  
2 notice concerning workers' compensation insurance that includes the heading "Workers'  
3 Compensation Insurance" followed by "(The name on the license or 'This contractor') has no  
4 employees and is exempt from workers' compensation requirements."

5 q. **Subdivision (e)(2)(B)**: Respondent failed to include in the contract the  
6 notice concerning workers' compensation insurance that includes the heading "Workers'  
7 Compensation Insurance" followed by: "(The name on the license or 'This contractor') carries  
8 workers' compensation insurance for all employees."

9 r. **Subdivision (e)(3)(A)**: Respondent failed to include on the contract the  
10 notice that provides the buyer with information regarding written authorization prior to the  
11 commencement of work covered by the new change order prior to the performance of extra or  
12 change-order work.

13 s. **Subdivision (e)(3)(B)**: Respondent failed to include on the contract the  
14 notice that provides the buyer with information regarding identification of the following in  
15 writing prior to commencement of work covered by the change order:

16 (i) The scope of work encompassed by the order.

17 (ii) The amount to be added or subtracted from the contract.

18 (iii) The effect the order will make in the progress payments or the  
19 completion date.

20 t. **Subdivision (e)(3)(C)**: Respondent failed to include on the contract the  
21 notice that provides the buyer with information regarding failure to comply with the  
22 requirements of this paragraph does not preclude the recovery of compensation for work  
23 performed based upon legal or equitable remedies designed to prevent unjust enrichment.

24 u. **Subdivision (e)(4)**: Respondent failed to include on the contract the  
25 heading: "Mechanics' Lien Warning" and the language required by law.

### **EIGHTH CAUSE FOR DISCIPLINE**

#### **(Excessive Down Payment)**

26  
27 38. Respondent is subject to disciplinary action pursuant to Code section 7159.5,  
28 subdivision (a), with respect to the MC Project:



1 d. Respondent failed to properly re-block the door after cutting the bottom  
2 portion.

3 e. Respondent failed to properly re-flash the newly installed door.

4 f. Respondent caused cosmetic damage on one window frame.

5 g. Respondent failed to properly replace the rain gutters and downspout.

6 **ELEVENTH CAUSE FOR DISCIPLINE**

7 **(Failure to Complete Project for Contract Price)**

8 42. Respondent is subject to disciplinary action pursuant to Code section 7113 in that  
9 it failed in a material respect to complete the JRW I Project for the contract price, as set forth in  
10 paragraph 40, above, in that JRW was compelled to expend \$5,651.60, over and above the  
11 contract price due to incomplete, non-performed, or improper work on the project.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

13 **(Acting As Contractor Under Suspended License)**

14 43. Respondent is subject to disciplinary action under Code section 7117.5  
15 subdivision (b) in that Respondent performed work on the JRW I Project while its contractor's  
16 license was under suspension from December 27, 2011 until January 7, 2013. Hence, between  
17 January 25, 2012, and February 3, 2012, Respondent worked on the JRW I Project during the  
18 time its license was suspended.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Exercise Reasonable Diligence)**

21 44. Respondent is subject to disciplinary action pursuant to Code section 7119, in that  
22 on the JRW I Project, it willfully failed without legal excuse to perform the construction work  
23 with reasonable diligence causing material injury to JRW.

24 **FIFTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Workers' Compensation Insurance)**

26 45. Respondent is subject to disciplinary action under section 7125.4 in that it  
27 employed persons subject to coverage of Workers' Compensation Insurance under the workers'

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1 compensation laws without maintaining coverage for such persons. The circumstances are as  
2 follows:

3 46. On December 27, 2011, Respondent's Contractor's License was issued an  
4 exemption from workers' compensation insurance coverage. However, Respondent hired  
5 workers to perform work on the JRW I Project from January 25, 2012, to February 3, 2012.

6 **SIXTEENTH CAUSE FOR DISCIPLINE**

7 **(Violation of the Home Improvement Contract Provisions)**

8 47. Respondent is subject to disciplinary action pursuant to Code section 7159, in that  
9 on the JM Project, it failed to comply with provisions of that section, as follows:

10 a. **Subdivision (d)(8)(A)**: Respondent failed to provide the heading:  
11 "Downpayment."

12 b. **Subdivision (d)(8)(B)**: Respondent failed to provide a space where the  
13 actual downpayment appears.

14 c. **Subdivision (d)(8)(C)**: Respondent failed to provide the following  
15 statement in at least 12-point boldface type: "THE DOWNPAYMENT MAY NOT EXCEED  
16 \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS."

17 d. **Subdivision (d)(9)(A)**: Respondent failed to provide the required format  
18 as to additional payments known as progress payments as identified below:

19 A heading: "Schedule of Progress Payments."

20 e. **Subdivision (d)(9)(B)**: Respondent failed to provide the required details  
21 as to progress payments in dollars and cents and specifically reference the amount of work or  
22 services to be performed and materials and equipment to be supplied.

23 f. **Subdivision (d)(9)(C)**: Respondent failed to include on the contract the  
24 following statement in at least 12-point boldface type:

25 The schedule of progress payments must specifically describe each  
26 phase of work, including the type and amount of work or services  
27 scheduled to be supplied in each phase, along with the amount of each  
28 proposed progress payment. IT IS AGAINST THE LAW FOR A  
CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET

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1 COMPLETED, OR FOR MATERIALS NOT YET DELIVERED.  
2 HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.

3 g. **Subdivision (d)(10)(A)**: Respondent failed to include on the contract a  
4 statement describing what constitutes substantial commencement of work under the contract.

5 h. **Subdivision (d)(10)(B)**: Respondent failed to include on the contract the  
6 heading: "Approximate Start Date."

7 i. **Subdivision (d)(10)(C)**: Respondent failed to include on the contract the  
8 approximate date on which work will be commenced.

9 j. **Subdivision (d)(11)(A)**: Respondent failed to include on the contract the  
10 heading: "Approximate Completion Date."

11 k. **Subdivision (d)(11)(B)**: Respondent failed to include on the contract the  
12 approximate date of completion.

13 l. **Subdivision (d)(13)**: Respondent failed to include on the contract the  
14 heading: "Note About Extra Work and Change Orders," followed by the statement required by  
15 law.

16 m. **Subdivision (e)(1)**: Respondent failed to include on the contract a notice  
17 concerning commercial general liability insurance..

18 n. **Subdivision (e)(2)**: Respondent failed to include in the contract the notice  
19 concerning workers' compensation insurance.

20 o. **Subdivision (e)(3)(A)**: Respondent failed to include on the contract the  
21 notice that provides the buyer with information regarding written authorization prior to the  
22 commencement of work covered by the new change order prior to the performance of extra or  
23 change-order work.

24 p. **Subdivision (e)(3)(B)**: Respondent failed to include on the contract the  
25 notice that provides the buyer with information regarding identification of the following in  
26 writing prior to commencement of work covered by the change order:

27 (i) The scope of work encompassed by the order.

28 (ii) The amount to be added or subtracted from the contract.

1 (iii) The effect the order will make in the progress payments or the  
2 completion date.

3 q. **Subdivision (e)(3)(C)**: Respondent failed to include on the contract the  
4 notice that provides the buyer with information regarding failure to comply with the  
5 requirements of this paragraph does not preclude the recovery of compensation for work  
6 performed based upon legal or equitable remedies designed to prevent unjust enrichment.

7 r. **Subdivision (e)(4)**: Respondent failed to include on the contract the  
8 heading: "Mechanics' Lien Warning" and the language required by law.

9 **SEVENTEENTH CAUSE FOR DISCIPLINE**

10 **(Excessive Down Payment)**

11 48. Respondent is subject to disciplinary action pursuant to Code section 7159.5,  
12 subdivision (a), with respect to the JRW I Project:

13 a. Subdivision (a)(3): On November 28, 2011, it obtained \$3,500.00 from  
14 the homeowner as a down payment on the contract, an amount which exceeds \$1,000.

15 b. Subdivision (a)(5): It obtained a total of \$3,500.00 from the homeowner  
16 before commencing any work on the project.

17 **JRW II PROJECT**

18 49. On December 29, 2011, Respondent entered into a contract with JRW for the  
19 installation of new kitchen cabinets at his home in 11310 Wills Creek Road, San Diego,  
20 California for \$18,630.00 (JRW II Project). On the same day, JRW paid an initial payment of  
21 \$9,315.00. On January 16, 2012, a subcontractor began work on the JRW II Project. On January  
22 19, 2012, JRW paid respondent an additional \$4,657.00 expecting the project to be completed by  
23 January 30, 2012. On January 27, 2012, JRW communicated his concerns to Respondent  
24 regarding substandard workmanship. On February 11, 2012, JRW was dissatisfied with the  
25 progress on the JRW II Project, and he told Respondent to stop working. Later, an industry  
26 expert inspected the JRW II Project and determined the cost to correct and complete the project  
27 to be \$18,010.00.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 **(Departure In a Material Respect from Accepted Trade Standards)**

3 50. Respondent is subject to disciplinary action pursuant to Code section 7109,  
4 subdivision (a) in that on the JRW II Project, it willfully departed from accepted trade standards  
5 for good and workmanlike construction in certain material respects, including, but not limited to  
6 the following:

- 7 a. Respondent failed to install custom made cabinets.  
8 b. Respondent failed to install cabinets of appropriate sizes to fit the entire  
9 space allocated for cabinets.  
10 c. Respondent failed to install core cabinet shelving materials that did not  
11 warp.  
12 d. Respondent failed to install cabinets that allow existing appliances to fit  
13 properly.  
14 e. Respondent failed to install uniform wall housing.  
15 h. Respondent failed to build cabinets from the same wood color.  
16 i. Respondent failed to properly replace the rain gutters and downspout.  
17 j. Respondent failed to install cabinets with wood grain that ran in a  
18 consistent manner.

19 **NINETEENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Complete Project for Contract Price)**

21 51. Respondent is subject to disciplinary action pursuant to Code section 7113 in that  
22 it failed in a material respect to complete the JRW II Project for the contract price, as set forth in  
23 paragraph 49, above, in that JRW was compelled to expend \$13,352.00, over and above the  
24 contract price due to incomplete, non-performed, or improper work on the project.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Acting As Contractor Under Suspended License)**

3 52. Respondent is subject to disciplinary action under Code section 7117.5  
4 subdivision (b) in that Respondent performed work on the JRW II Project while its contractor's  
5 license was under suspension from December 27, 2011 to January 7, 2013.

6 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

7 **(Entering Into a Contract with an Unlicensed Contractor)**

8 53. Respondent is subject to disciplinary action pursuant to Code section 7118, in that  
9 on the JRW II Project, it hired an unlicensed contractor to install the cabinets.

10 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Exercise Reasonable Diligence)**

12 54. Respondent is subject to disciplinary action pursuant to Code section 7119, in that  
13 on the JRW II Project, it willfully failed without legal excuse to perform the construction work  
14 with reasonable diligence causing material injury to JRW.

15 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Workers' Compensation Insurance)**

17 55. Respondent is subject to disciplinary action under section 7125.4 in that it  
18 employed persons subject to coverage of Workers' Compensation Insurance under the workers'  
19 compensation laws without maintaining coverage for such persons. The circumstances are as  
20 follows:

21 56. On December 27, 2011, Respondent's Contractor's License was issued an  
22 exemption from workers' compensation insurance coverage. However, Respondent hired  
23 workers to perform work on the JRW II Project from January 16, 2012, to February 11, 2012.

24 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

25 **(Violation of the Home Improvement Contract Provisions)**

26 57. Respondent is subject to disciplinary action pursuant to Code section 7159, in that  
27 on the MC Project, he failed to comply with provisions of that section, as follows:

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1 a. **Subdivision (d)(8)(A)**: Respondent failed to provide the heading:  
2 “Downpayment.”

3 b. **Subdivision (d)(8)(B)**: Respondent failed to provide a space where the  
4 actual downpayment appears.

5 c. **Subdivision (d)(8)(C)**: Respondent failed to provide the following  
6 statement in at least 12-point boldface type: “THE DOWNPAYMENT MAY NOT EXCEED  
7 \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

8 d. **Subdivision (d)(9)(A)**: Respondent failed to provide the required format  
9 as to additional payments known as progress payments as identified below:

A heading: “Schedule of Progress Payments.”

11 e. **Subdivision (d)(9)(B)**: Respondent failed to provide the required details  
12 as to progress payments in dollars and cents and specifically reference the amount of work or  
13 services to be performed and materials and equipment to be supplied.

14 f. **Subdivision (d)(9)(C)**: Respondent failed to include on the contract the  
15 following statement in at least 12-point boldface type:

The schedule of progress payments must specifically describe each  
17 phase of work, including the type and amount of work or services  
18 scheduled to be supplied in each phase, along with the amount of each  
19 proposed progress payment. IT IS AGAINST THE LAW FOR A  
20 CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET  
COMPLETED, OR FOR MATERIALS NOT YET DELIVERED.  
HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.

21 g. **Subdivision (d)(10)(A)**: Respondent failed to include on the contract a  
22 statement describing what constitutes substantial commencement of work under the contract.

23 h. **Subdivision (d)(10)(B)**: Respondent failed to include on the contract the  
24 heading: “Approximate Start Date.”

25 i. **Subdivision (d)(10)(C)**: Respondent failed to include on the contract the  
26 approximate date on which work will be commenced.

27 j. **Subdivision (d)(11)(A)**: Respondent failed to include on the contract the  
28 heading: “Approximate Completion Date.”

1 k. **Subdivision (d)(11)(B)**: Respondent failed to include on the contract the  
2 approximate date of completion.

3 l. **Subdivision (d)(13)**: Respondent failed to include on the contract the  
4 heading: "Note About Extra Work and Change Orders," followed by the statement required by  
5 law.

6 m. **Subdivision (e)(1)**: Respondent failed to include on the contract a notice  
7 concerning commercial general liability insurance..

8 n. **Subdivision (e)(2)**: Respondent failed to include in the contract the notice  
9 concerning workers' compensation insurance.

10 o. **Subdivision (e)(3)(A)**: Respondent failed to include on the contract the  
11 notice that provides the buyer with information regarding written authorization prior to the  
12 commencement of work covered by the new change order prior to the performance of extra or  
13 change-order work.

14 p. **Subdivision (e)(3)(B)**: Respondent failed to include on the contract the  
15 notice that provides the buyer with information regarding identification of the following in  
16 writing prior to commencement of work covered by the change order:

- 17 (i) The scope of work encompassed by the order.
- 18 (ii) The amount to be added or subtracted from the contract.
- 19 (iii) The effect the order will make in the progress payments or the  
20 completion date.

21 q. **Subdivision (e)(3)(C)**: Respondent failed to include on the contract the  
22 notice that provides the buyer with information regarding failure to comply with the  
23 requirements of this paragraph does not preclude the recovery of compensation for work  
24 performed based upon legal or equitable remedies designed to prevent unjust enrichment.

25 r. **Subdivision (e)(4)**: Respondent failed to include on the contract the  
26 heading: "Mechanics' Lien Warning" and the language required by law.

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**TWENTY-FIFTH CAUSE FOR DISCIPLINE**

**(Excessive Down Payment)**

58. Respondent is subject to disciplinary action pursuant to Code section 7159.5, subdivision (a), with respect to the JRW II Project:

a. Subdivision (a)(3): On December 29, 2011, it obtained \$9,315.00 from the homeowner as a down payment on the contract, an amount which exceeds \$1,000.

b. Subdivision (a)(5): It obtained a total of \$9,315.00 from the homeowner before commencing any work on the project.

**JM PROJECT**

59. On August 8, 2011, Respondent entered into a contract with JM for the removal of a window and the installation of a new sliding door at her home in 32777 Brampton Court, Menifee, California for \$3,852.00 (JM project). On the same day, JM paid Respondent \$385.00. On September 28, 2011, Respondent began work on the JM Project. On September 30, 2011, JM paid Respondent the remaining \$3,467.00. Respondent completed the project the following day. On February 20, 2013, a social services inspector told JM that a building permit should have been secured prior to commencing work on the project as a portion of the wall was removed. JM requested Respondent’s RMO to secure a permit but he refused. JM was compelled to purchase a permit for \$105.50, an amount over and above the original contracted price.

**TWENTY-SIXTH CAUSE FOR DISCIPLINE**

**(Building Code Violation – No Permit)**

60. Respondent is subject to disciplinary action pursuant to Code section 7110 in that on the JM Project, it willfully and deliberately violated the building laws of the state and the county of Riverside when it began work on the project without a permit from the Building Department of the County of Riverside for the removal of a part of a wall and the installation of a new sliding door.

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1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Complete Project for Contract Price)**

3 61. Respondent is subject to disciplinary action pursuant to Code section 7113 in that  
4 it failed in a material respect to complete the JM Project for the contract price, as set forth in  
5 paragraph 59, above, in that JM was compelled to expend \$105.50 over and above the contract  
6 price due to Respondent's failure to secure a building permit.

7 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

8 **(Violation of the Home Improvement Contract Provisions)**

9 62. Respondent is subject to disciplinary action pursuant to Code section 7159, in that  
10 on the JM Project, it failed to comply with provisions of that section, as follows:

11 a. **Subdivision (d)(8)(A)**: Respondent failed to provide the heading:  
12 "Downpayment."

13 b. **Subdivision (d)(8)(B)**: Respondent failed to provide a space where the  
14 actual downpayment appears.

15 c. **Subdivision (d)(8)(C)**: Respondent failed to provide the following  
16 statement in at least 12-point boldface type: "THE DOWNPAYMENT MAY NOT EXCEED  
17 \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS."

18 d. **Subdivision (d)(9)(A)**: Respondent failed to provide the required format  
19 as to additional payments known as progress payments as identified below:

20 A heading: "Schedule of Progress Payments."

21 e. **Subdivision (d)(9)(B)**: Respondent failed to provide the required details  
22 as to progress payments in dollars and cents and specifically reference the amount of work or  
23 services to be performed and materials and equipment to be supplied.

24 f. **Subdivision (d)(9)(C)**: Respondent failed to include on the contract the  
25 following statement in at least 12-point boldface type:

26 The schedule of progress payments must specifically describe each  
27 phase of work, including the type and amount of work or services  
28 scheduled to be supplied in each phase, along with the amount of each  
proposed progress payment. IT IS AGAINST THE LAW FOR A

1 CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET  
2 COMPLETED, OR FOR MATERIALS NOT YET DELIVERED.  
3 HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.

4 g. **Subdivision (d)(10)(A)**: Respondent failed to include on the contract a  
5 statement describing what constitutes substantial commencement of work under the contract.

6 h. **Subdivision (d)(10)(B)**: Respondent failed to include on the contract the  
7 heading: "Approximate Start Date."

8 i. **Subdivision (d)(10)(C)**: Respondent failed to include on the contract the  
9 approximate date on which work will be commenced.

10 j. **Subdivision (d)(11)(A)**: Respondent failed to include on the contract the  
11 heading: "Approximate Completion Date."

12 k. **Subdivision (d)(11)(B)**: Respondent failed to include on the contract the  
13 approximate date of completion.

14 l. **Subdivision (d)(13)**: Respondent failed to include on the contract the  
15 heading: "Note About Extra Work and Change Orders," followed by the statement required by  
16 law.

17 m. **Subdivision (e)(1)(A)**: Respondent failed to include on the contract the  
18 heading "Commercial General Liability Insurance (CGL)," and the relevant and correct  
19 statements:

20 "(The name on the license or 'This contractor') does not carry  
21 commercial general liability insurance."

22 n. **Subdivision (e)(2)(A)**: Respondent failed to include in the contract the  
23 notice concerning workers' compensation insurance that includes the heading "Workers'  
24 Compensation Insurance" followed by "(The name on the license or 'This contractor') has no  
25 employees and is exempt from workers' compensation requirements."

26 o. **Subdivision (e)(3)(A)**: Respondent failed to include on the contract the  
27 notice that provides the buyer with information regarding written authorization prior to the  
28 commencement of work covered by the new change order prior to the performance of extra or  
change-order work.

1 p. **Subdivision (e)(3)(B)**: Respondent failed to include on the contract the  
2 notice that provides the buyer with information regarding identification of the following in  
3 writing prior to commencement of work covered by the change order:

4 (i) The scope of work encompassed by the order.

5 (ii) The amount to be added or subtracted from the contract.

6 (iii) The effect the order will make in the progress payments or the  
7 completion date.

8 q. **Subdivision (e)(3)(C)**: Respondent failed to include on the contract the  
9 notice that provides the buyer with information regarding failure to comply with the  
10 requirements of this paragraph does not preclude the recovery of compensation for work  
11 performed based upon legal or equitable remedies designed to prevent unjust enrichment.

#### 12 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

##### 13 **(Substantial Misrepresentation in the Procurement of a Contract for Home Improvement)**

14 63. Respondent is subject to disciplinary action under Code section 7161, subdivision  
15 (b) in that Respondent deliberately misrepresented in a note on a written contract addendum and  
16 change order that it was insured when it did not have workers' compensation insurance coverage.

#### 17 **DISCIPLINARY CONSIDERATION**

18 64. To determine the degree of discipline, if any, to be imposed on Respondent,  
19 Complainant alleges that on July 21, 2011, the Board issued Citation No. 2 2008 2172 to  
20 Respondent, for violation of Code section 7154, employment of an unregistered home  
21 improvement sales person and was assessed a civil penalty of \$500.00. On February 13, 2009,  
22 the Registrar of Contractors issued a Final Order in a matter entitled, *In the Matter of the*  
23 *Citation Against Contractor's License No. 798232 Issued to San Diego Door & Window, d.b.a.:*  
24 *Thermoview of California, 9865 Business park Avenue, San Diego, CA 92131, Southern Region*  
25 *Citation No. 2 2008 2172, making Respondent's total civil penalty assessment of \$500.00 due*  
26 *and Respondent's license and any other licenses associated with him subject to further*  
27 *disciplinary action in case of failure to respond. The citation has been completed.*

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**OTHER MATTERS**

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2           65. Pursuant to Code sections 7097 and 7098, if Contractor’s License Number 798232,  
3 issued to San Diego Door & Window doing business as Thermoview of California, with Alan  
4 Carl Holsapple as RMO, CEO, and President, and Anne Marie Holsapple as Officer, is suspended  
5 or revoked, the Registrar may suspend or revoke, without notice, any other license for which Alan  
6 Carl Holsapple furnishes the qualifying experience or appearance.

7           66. Pursuant to Code section 7121, if discipline is imposed on Contractor’s License  
8 Number 798232, issued to San Diego Door & Window doing business as Thermoview of  
9 California, with Alan Carl Holsapple as RMO, CEO, and President, and Anne Marie Holsapple as  
10 Officer, then Alan Carl Holsapple and Anne Marie Holsapple shall be prohibited from serving as  
11 officers, directors, associates, partners, managers, members, or qualifying individuals for any  
12 licensee during the time the discipline is imposed, if they had knowledge of and participated in  
13 the acts or omissions alleged above constituting grounds for discipline against them and any  
14 licensee which employs, elects or associates Alan Carl Holsapple and Anne Marie Holsapple in  
15 any capacity other than as nonsupervising bona fide employees shall be subject to disciplinary  
16 action.

17           67. Pursuant to Code section 7121.5, if discipline is imposed on San Diego Door &  
18 Window doing business as Thermoview of California, with Alan Carl Holsapple as RMO, CEO,  
19 and President, and Anne Marie Holsapple as Officer, then Alan Carl Holsapple shall be  
20 prohibited from serving as an officer, director, associate, partner, or qualifying individual for any  
21 licensee during the time the discipline is imposed, whether or not he had knowledge of or  
22 participated in the acts or omissions constituting grounds for discipline, and any licensee which  
23 employs, elects or associates Alan Carl Holsapple shall be subject to disciplinary action.

24           68. Pursuant to Code section 7122.5, the causes for discipline established as to  
25 Contractor’s License Number 798232, issued to San Diego Door & Window doing business as  
26 Thermoview of California, with Alan Carl Holsapple as RMO, CEO, and President, and Anne  
27 Marie Holsapple as Officer, constitute causes for discipline against any other license issued to

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1 Alan Carl Holsapple and Anne Marie Holsapple regardless of whether they had knowledge of or  
2 participated in the acts or omissions alleged above.

3 **PRAYER**

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

6 1. Revoking or suspending Contractor's License Number 798232, issued to San  
7 Diego Door & Window doing business as Thermoview of California, with Alan Carl Holsapple  
8 as RMO, CEO, and President, and Anne Marie Holsapple as Officer;

9 2. Prohibiting Alan Carl Holsapple and Anne Marie Holsapple from serving as an  
10 officer, director, associate, partner, or qualifying individual of any licensee during the period that  
11 discipline is imposed on license Number 798232, issued to San Diego Door & Window doing  
12 business as Thermoview of California, with Alan Carl Holsapple as RMO, CEO, and President,  
13 and Anne Marie Holsapple as Officer;

14 3. Revoking or suspending any other license for which Alan Carl Holsapple is  
15 furnishing the qualifying experience or appearance;

16 4. Ordering restitution of all damages according to proof suffered by MC, JRW, and  
17 JM, as a condition of probation in the event probation is ordered;

18 5. Ordering restitution of all damages suffered by MC, JRW, and JM as a result of  
19 San Diego Door & Window's conduct as a contractor, as a condition of restoration of license  
20 Number 798232, issued to San Diego Door & Window doing business as Thermoview of  
21 California, with Alan Carl Holsapple as RMO, CEO, and President, and Anne Marie Holsapple  
22 as Officer;

23 6. Ordering San Diego Door & Window doing business as Thermoview of  
24 California, with Alan Carl Holsapple as RMO, CEO, and President, and Anne Marie Holsapple  
25 as Officer to pay the Registrar of Contractors his costs in the investigation and enforcement of  
26 the case according to proof at the hearing, pursuant to Business and Professions Code section  
27 125.3;

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7. Ordering San Diego Door & Window doing business as Thermoview of California, with Alan Carl Holsapple as RMO, CEO, and President, and Anne Marie Holsapple as Officer 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 deemed necessary and proper.

DATED: August 28, 2013

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

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