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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:

Case No. N-2014-131

14 **CORTES CONSTRUCTION**
15 **JAIME RUBEN GUTIERREZ, Qualifying Partner**
16 **LUIS ALBERTO CORTES-GARCIA, General**
17 **Partner**
18 **P.O. Box 636**
19 **Diamond Springs, CA 95619**
20 **Contractor's License No. 950178, B**

A C C U S A T I O N

21 **JAIME RUBEN GUTIERREZ**
22 **dba OAK CREEK CONSTRUCTION**
23 **P.O. Box 1633**
24 **Shingle Springs, CA 95682**
25 **Contractor's License No. 623148, B**

Respondents.

26 Wood Robinson ("Complainant") alleges:

27 **PARTIES**

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

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1 **Cortes Construction**

2 2. On or about July 20, 2010, the Registrar of Contractors issued Contractor License
3 Number 950178, classification B (General Building Contractor) to Cortes Construction
4 (“Respondent”) with Jaime Ruben Gutierrez (“Respondent Gutierrez”) as the Qualifying Partner
5 and Luis Alberto Cortes-Garcia (“Cortes-Garcia”) as a General Partner. On or about August 31,
6 2013, the license was suspended pursuant to Business and Professions Code (“Code”) section
7 7125.2 (workers’ compensation), and reinstated on November 27, 2013. The license expired on
8 July 31, 2014, and renewed on August 5, 2014. The license was cancelled on August 25, 2014,
9 when the Qualifying Partner disassociated.

10 **Oak Creek Construction**

11 3. On or about July 18, 1991, the Registrar of Contractors issued Contractor License
12 Number 623148, classification B (General Building Contractor) to Jaime Ruben Gutierrez, doing
13 business as Oak Creek Construction. The license will expire on July 31, 2017, unless renewed.

14 **JURISDICTION**

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

18 5. Code section 7095 provides, in pertinent part, that the Registrar in making his
19 order may:

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

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

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

26 6. Code section 7096 states:

27 For the purposes of this chapter, the term “licensee” shall include an
 individual, copartnership, corporation, joint venture, or any combination or
28 organization licensed under this chapter, and shall also include any named responsible
 managing officer or member of the personnel of such licentiate whose appearance has

1 qualified the licentiate under the provisions of Section 7068.

2 7. Code section 7097 states:

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

10 8. Code section 7098 states:

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

16 9. Code section 7106.5 states:

17 The expiration, cancellation, forfeiture, or suspension of a license by
18 operation of law or by order or decision of the registrar or a court of law, or the
19 voluntary surrender of a license by a licensee shall not deprive the registrar of
20 jurisdiction to proceed with any investigation of or action or disciplinary proceeding
21 against the license, or to render a decision suspending or revoking the license. Under
22 Code section 7141, a license may be renewed at any time within five years after its
23 expiration.

24 10. Code section 7076.1, provides, in pertinent part, that the Registrar may reinstate a
25 canceled license if the licensee pays all of the fees and meets all of the qualifications and
26 requirements for obtaining an original license.

27 11. Code section 118(b) provides, in pertinent part, that the suspension, forfeiture, or
28 cancellation of a license shall not deprive the Registrar of jurisdiction to proceed with a
disciplinary action during the period within which the license may be renewed, restored, reissued
or reinstated.

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

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

1 suspension, or who has been a member, officer, director, or associate of any
2 partnership, corporation, firm, or association whose application for a license has been
3 denied for a reason other than failure to document sufficient satisfactory experience
4 for a supplemental classification for an existing license, or whose license has been
5 revoked, or whose license is under suspension, or who has failed to renew a license
6 while it was under suspension, and while acting as a member, officer, director, or
7 associate had knowledge of or participated in any of the prohibited acts for which the
8 license was denied, suspended, or revoked, shall be prohibited from serving as an
9 officer, director, associate, partner, or qualifying individual of a licensee, and the
10 employment, election, or association of this type of person by a licensee in any
11 capacity other than as a non-supervising bona fide employee shall constitute grounds
12 for disciplinary action.

13 14. Code section 7121.5 states:

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

21 15. Code section 7122.5 states:

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

STATUTORY PROVISIONS

16 16. Code section 7109(a) states:

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

21 17. Code section 7115 states:

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

26 18. Code section 7117.6 states:

27 "Acting in the capacity of a contractor in a classification other than that currently held by
28 the licensee constitutes a cause for disciplinary action."

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1 19. Code section 7117(a) states, in pertinent part, that acting in the capacity of a
2 contractor under any license issued except in the name of the licensee as set forth upon the license
3 constitutes a cause for disciplinary action.

4 20. Code section 7027.1 states, in pertinent part:

5 It is a misdemeanor for any person to advertise for construction or work of
6 improvement covered by this chapter unless that person holds a valid license under
7 this chapter in the classification so advertised, except that a licensed building or
8 engineering contractor may advertise as a general contractor.

9 21. Code section 7068.1 states, in pertinent part:

10 (a) The person qualifying on behalf of an individual or firm under paragraph
11 (1), (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for
12 exercising that direct supervision and control of his or her employer's or principal's
13 construction operations to secure compliance with this chapter and the rules and
14 regulations of the board.

15 (e) Violation of this section shall constitute a cause for disciplinary action
16 and shall be punishable as a misdemeanor by imprisonment in a county jail not to
17 exceed six months, by a fine of not less than three thousand dollars (\$3,000), but not
18 to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment.

19 22. Code section 7159 states, in pertinent part:

20 (a)(1) This section identifies the projects for which a home improvement
21 contract is required, outlines the contract requirements and lists the items that shall be
22 included in the contract, or may be provided as an attachment.

23 (5) Failure by the licensee, his or her agent or salesperson, or by a person
24 subject to be licensed under this chapter, to provide the specified information, notices,
25 and disclosures in the contract, or to otherwise fail to comply with any provision of
26 this section, is cause for discipline.

27 (c) In addition to the specific requirements listed under this section, every
28 home improvement contract and any person subject to licensure under this chapter or
his or her agent or salesperson shall comply with all of the following:

(4) A statement that, upon satisfactory payment being made for any portion
of the work performed, the contractor, prior to any further payment being made, shall
furnish to the person contracting for the home improvement or swimming pool work
a full and unconditional release from any claim or mechanic's lien pursuant to Section
3114 of the Civil Code for that portion of the work for which payment has been
made.

(6) The contract shall contain, in close proximity to the signatures of the
owner and contractor, a notice stating that the owner or tenant has the right to require
the contractor to have a performance and payment bond.

(d) A home improvement contract and any changes to the contract shall be in

1 writing and signed by the parties to the contract prior to the commencement of work
2 covered by the contract or an applicable change order and, except as provided in
3 paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with all of
4 the following:

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

8 (A) The heading: "Downpayment."

9 (B) A space where the actual downpayment appears.

10 (C) The following statement in at least 12-point boldface type:

11 "THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT
12 OF THE CONTRACT PRICE, WHICHEVER IS LESS."

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

17 (A) A schedule of progress payments shall be preceded by the heading:
18 "Schedule of Progress Payments."

19 (B) Each progress payment shall be stated in dollars and cents and
20 specifically reference the amount of work or services to be performed and materials
21 and equipment to be supplied.

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

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

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

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

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

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

(B) The approximate date of completion.

(e) All of the following notices shall be provided to the owner as part of the
contract form as specified or, if otherwise authorized under this subdivision, may be
provided as an attachment to the contract:

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

6 (A) "(The name on the license or 'This contractor') has no employees and is
7 exempt from workers' compensation requirements.

8 (4) A notice with the heading "Mechanics' Lien Warning" written as follows:

9 "MECHANICS LIEN WARNING:

10 Anyone who helps improve your property, but who is not paid, may record
11 what is called a mechanics' lien on your property. A mechanics' lien is a claim, like a
12 mortgage or home equity loan, made against your property and recorded with the
13 county recorder.

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

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

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

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

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

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with 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
joint check payable to both the contractor and the subcontractor or material supplier.

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

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN
PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face

1 the forced sale of your home to pay what you owe."

2 (5) The following notice shall be provided in at least 12-point typeface:
3 "Information about the Contractors' State License Board (CSLB): CSLB is the state
4 consumer protection agency that licenses and regulates construction contractors.
5 Contact CSLB for information about the licensed contractor you are considering,
6 including information about disclosable complaints, disciplinary actions and civil
7 judgments that are reported to CSLB.

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

14 For more information:

15 Visit CSLB's Web site at www.cslb.ca.gov

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

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

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

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

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

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

25 (B) "Three-Day Right to Cancel:

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

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

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1 **COST RECOVERY/RESTITUTION**

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

6 24. Government Code section 11519(d), provides, in pertinent part, that the Registrar
7 may require restitution of damages suffered as a condition of probation in the event probation is
8 ordered.

9 **LATIGO STREET PROJECT**

10 25. On or about March 15, 2013, Respondent, by and through its General Partner,
11 Cortes-Garcia, entered into a verbal agreement with homeowner B.W. for masonry work,
12 including rock walls and pillars, at his residence located on Latigo Street in Angels Camp,
13 California ("Latigo Street project"). Respondent was paid cash on an hourly basis for labor only
14 and received \$23,900. Work began on or about March 23, 2013, and was last performed on or
15 about May 18, 2013.

16 26. On or about May 28, 2013, the homeowner B.W. entered into a second verbal
17 contract with Respondent for the installation of a concrete patio/pool deck (stamped and colored
18 concrete), flagstone stairs, drainage and irrigation, and grading dirt at his residence. Respondent
19 was paid in cash on an hourly basis for labor only and received \$24,100. Work began on or about
20 May 28, 2013, and was last performed on or about September 2, 2013.

21 **FIRST CAUSE FOR DISCIPLINE**

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

23 27. Respondent is subject to discipline pursuant to Code section 7109(a), in that on the
24 Latigo Street project, it willfully departed from accepted trade standards for good and
25 workmanlike construction in the following material respects:

- 26 a. Respondent failed to stamp the concrete surfaces in a consistent pattern design.
27 b. Respondent failed to install foam or felt (expansion joint material) at the base of
28 the rock pillars/columns and concrete patio, between the rocks at the pools edge and the concrete

1 pool decking, house foundation and concrete patio.

2 c. Respondent failed to trowel the concrete surfaces smooth and even throughout,
3 including the concrete steps edges, and around the decorative rockwork.

4 d. Respondent failed to adequately slope the concrete decking away from the
5 swimming pool edge.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Working Out of Classification)**

8 28. Respondent is subject to discipline under Code section 7117.6, in that on or about
9 March 15, 2013, it entered into a verbal home improvement contract on the Latigo Street project
10 to perform work within the scope of a C-29 (Masonry Contractor), when it had not been issued a
11 license for that classification. Furthermore, on or about May 28, 2013, it entered into a second
12 verbal home improvement contract to perform work within the scope of a C-8 (Concrete
13 Contractor), and C-27 (Landscaping Contractor), when it had not been issued a license for those
14 classifications.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Advertising in Unlicensed Classification)**

17 29. Respondent is subject to discipline under Code section 7115, in that in or about
18 March 2013, Respondent advertised in the Buy and Sell Paper for masonry and concrete services
19 without holding a C-8 classification (Concrete Contractor) and C-29 classification (Masonry
20 Contractor), a violation of Code section 7027.1(a).

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Exercise Direct Supervision)**

23 30. Respondent is subject to discipline under Code section 7068.1, in that on the Latigo
24 Street project, Jaime Gutierrez, who served as the Qualifying Partner, failed to exercise direct
25 supervision and control of construction operations.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Namestyle Variance)**

3 31. Respondent is subject to discipline under Code section 7117(a), in that it advertised in
4 the Buy and Sell Paper using the namestyle Cortez Stonework & Landscape Construction, a
5 different namestyle from that in which the license was issued.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Failed to Comply with Provisions of the Home Improvement Contract Form)**

8 32. Respondent is subject to discipline under Code section 7159(a)(5), in that on the
9 Latigo Street project, it failed to prepare and provide the consumer with a written home
10 improvement contract containing the specific information, notices, and disclosures required.

11 **OTHER MATTERS**

12 33. Pursuant to Code sections 7097 and 7098, if Contractor's License Number 750178,
13 issued to Cortes Construction is suspended or revoked, then the Registrar may suspend or revoke,
14 without notice, any other license issued in the name of Jaime Ruben Gutierrez or for which he
15 furnished the qualifying experience and appearance.

16 34. Pursuant to Code section 7121, if discipline is imposed on Contractor's License
17 Number 750178, issued to Cortes Construction, then Luis Alberto Cortes-Garcia shall be
18 prohibited from serving as an officer, director, associate, partner, or qualifying individual of any
19 licensee during the time the discipline is imposed, and any licensee which employs, elects, or
20 associates him in any capacity other than as a non-supervising bona fide employee shall constitute
21 grounds for disciplinary action.

22 35. Pursuant to Code section 7121.5, if discipline is imposed on Contractor's License
23 Number 750178, issued to Cortes Construction, then Jaime Ruben Gutierrez shall be prohibited
24 from serving as an officer, director, associate, partner, or qualifying individual of any licensee
25 during the time the discipline is imposed, whether or not he had knowledge or participated in the
26 acts or omissions constituting grounds for discipline, and any licensee which employs, elects, or
27 associates them shall be subject to disciplinary action.

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1 9. Ordering Cortes Construction to provide the Registrar with a listing of all contracting
2 projects in progress and the anticipated completion date of each; and,

3 10. Taking such other and further action as deemed necessary and proper.

4 DATED: 8/22/15

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

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FILED
AUG 27 2015
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