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9	REGISTRAR OF ( CONTRACTORS' STA	
10	DEPARTMENT OF CO STATE OF CA	
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13	In the Matter of the Accusation Against:	Case No. N2017-426
14	AJI CONSTRUCTION INC. 4746 Granada Drive	ACCUSATION
15	Santa Rosa, CA 95404	
16	ANTHONY JOSEPH IRVIN JR. (RMO/CEO/PRES)	
17	Contractor's License No. 869503, B	
18	Respondent;	
19	IRVIN CONSTRUCTION AND DESIGN	
20	4746 Granada Drive Santa Rosa, CA 95404	
21	ANTHONY JOSEPH IRVIN JR. (OWNER)	
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23	Contractor's License No. 1033948, B	
24	Affiliate.	·
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(AJI CONSTRUCTION INC.) ACCUSATION

III

### **PARTIES**

- 1. Wood Robinson (Complainant) brings this Accusation solely in his official capacity as the Enforcement Supervisor I of the Contractors' State License Board, Department of Consumer Affairs.
- 2. On or about December 15, 2005, the Registrar of Contractors issued Contractor's License Number 869503, B, to Anthony Joseph Irvin, Jr., RMO/CEO/PRES. (Respondent). The Contractor's License will expire on February 12, 2019, unless renewed. On or about December 12, 2017, the Registrar of Contractors issued Contractor's License Number 1033948, B, to Respondent Anthony Joseph Irvin, Jr., Owner. The Contractor's License will expire on December 31, 2019, unless renewed.

#### **JURISDICTION**

- 3. This Accusation is brought before the Registrar of Contractors (Registrar) for the Contractors' State License Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 118(b) of the Business and Professions Code (Code) provides, in pertinent part, that the expiration 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. Under Code section 7076.1, the registrar may reinstate a cancelled license if the licensee pays all of the fees and meets all of the qualifications and requirements for obtaining an original license.
- 5. Section 7076.5 of the Code provides, in pertinent part, that the inactive status of a license shall not bar any disciplinary action for violating provisions of the Contractor's State License Law (Bus. & Prof. Code, § 7000, et seq.).

### STATUTORY PROVISIONS

- 6. Section 7107 of the Code provides that "[a]bandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action."
  - 7. Section 7109 of the Code provides that:
- (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.
  - 8. Section 7110 of the Code provides, in pertinent part, that:

Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof constitutes a cause for disciplinary action.

9. Section 7113 of the Code provides that:

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

- 10. Section 7159 of the Code provides, in pertinent part, that:
- (a) (1) This section identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in the contract, or may be provided as an attachment.
- (3) This section does not apply to the sale, installation, and servicing of a fire alarm sold in conjunction with an alarm system, as defined in Section 7590.1, if all costs attributable to

making the fire alarm system operable, including sale and installation costs, do not exceed five hundred dollars (\$500), and the licensee complies with the requirements set forth in Section 7159.9.

. . .

- (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. . . .
  - 11. Section 7161 of the Code provides, in pertinent part, that:

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

. .

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

### **REGULATORY PROVISIONS**

- 12. Santa Rosa Municipal Code section 18-04.015 adopts the California Building Standards Code governing permits.
- 13. California Code of Regulations, title 24, section 105.1, (Building Standards Code), provides: "Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit."

### COST RECOVERY/RESTITUTION

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

15. Section 11519(d) of the Government Code provides, in pertinent part, that the registrar may require restitution of damages suffered as a condition of probation in the event probation is ordered.

### R.C. PROJECT

- 16. On or about July 9, 2016, Respondent entered into a residential improvement contract with R.C. to install a new wrap-around porch at R.C.'s residence for a total contract price of \$52,500.00. That same day, R.C. provided a down payment to Respondent in the amount of \$17,000.
- 17. The project required a concrete slab, which does not comply with building code requirements and does not meet the industry standard. The concrete surface does not appear uniform, and has an uneven color finish. Finished surfaces should appear uniform and be free of discoloration and/or blemishes caused by the means and methods of the contractor. Moreover, two of the concrete landings at exterior doors to the patio are not the correct dimensions. The industry standard requires that a landing shall have a minimum dimension of 36 inches measured in the direction of travel. The two nonconforming landings must be demolished and new landings should be installed which comply with the requirements.
- 18. Two invoices were provided to R.C.: the first invoice was signed and paid by R.C. for the revised contract price of \$59,977.60, which included additional materials for concrete, labor, and equipment rental. The second invoice, for \$12,035.00, was given to R.C. for work which R.C. did not approve. No written contract for the additional work performed at R.C.'s residence was entered. R.C. did not pay the second invoice. R.C. was required to obtain a permit and secure the services of another contractor to repair work done by Respondent at an additional cost of \$6,525.00. The total payments made by R.C. to Respondent were \$59,977.60. When added to the cost to correct Respondent's work, R.C. paid a total of \$66,502.60 to complete the project, which resulted in a financial injury to R.C. of \$6,525.00.

### **B.V. PROJECT**

19. In or about January 2017, B.V. hired Respondent to replace the front door of her residence at a cost of \$730.00. Respondent paid \$200 cash toward the door replacement. No

written contract was drafted for the door replacement. B.V. then asked Respondent to remodel the bathroom, and Respondent agreed. Respondent did not pull permits for the work, and did not provide a written contract for the work. Respondent removed drywall in the bathroom, ordered a vanity, moved electrical, and did plumbing work. On or about March 23, 2017, Respondent produced an invoice for the bathroom work totaling \$6,853.00. B.V. paid the invoice the day she received it.

- 20. On or about April 9, 2017, B.V. fired Respondent. B.V. hired another contractor to complete and correct the work performed by Respondent at an additional cost of \$212.02 for the permit, and \$3,440.00 for the additional work. Respondent's work failed to meet industry standards in that he performed improper electrical wiring, and failed to ground the electrical work, the toilet flange was not sealed properly to the floor, and plumbing in the bathroom had slip-on fittings which were loose.
- 21. B.V. suffered financial injury of \$3,652.02 to complete the project. Total payments made to Respondent by B.V. were \$7,053.00, the cost to correct was \$3,440.00, and the permit cost was \$212.02, for a sub-total of \$10,705.02 of funds paid by B.V. This sub-total is \$3,652.02 more than the total paid price of \$7,053.00.

### A.D. PROJECT

- 22. On or about June 26, 2016, A.D. contracted with Respondent for a near full remodel of a residence. Remodeling included a kitchen remodel, bathroom remodel, new wood floors throughout the home, interior paint throughout the home, enclosure of front entry, exterior wheelchair ramps, exterior concrete pathways and rear deck. The contract amount totaled \$180,672.06. Respondent collected a \$30,000.00 down payment.
- 23. The contract states it is inclusive of "materials and labor." But, the contract also describes some tasks to be performed as "schedule" and/or "install." A.D. believed the contract included all materials and labor, but in fact, Respondent required A.D. to pay vendors directly for items such as cabinets, wood flooring, and painting. The additional materials and/or labor amounted to \$51,568.85 above the contract price.

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- 24. Work began on the remodel on or about June 27, 2016, and terminated in or about March 2017. Respondent left much of the work incomplete. Incomplete work included expired permits and outstanding correction notices for plumbing, heating, and electrical work; incomplete demolition of all areas including exterior walkways and garage slab; exterior finishes; electrical; exterior plumbing; exterior gas; insulation; drywall; prime and paint; construction of concrete; deck; handrails; clean jobsite of debris; installation of new electrical and plumbing as specified in plans; installation of sheet rock, mud, tape, and texture; and demo and construction of all concrete work.
- 25. Some of the work Respondent did complete failed to conform to industry standards. The flooring was improperly installed resulting in cupping of approximately 15-20% of the floor. The cost to correct was assessed at \$8,544.00. Several areas of interior painting are either unfinished or irregular, requiring \$1,094.00 to correct. Light switches were installed with inadequate wiring, resulting in a cost to correct of \$306.00.
- 26. A.D. suffered a financial injury of \$183,372.20. In total, A.D. paid \$278,122.26 to Respondent and vendors for additional materials and labor. An industry expert estimates the cost to complete and/or correct work on the remodel project at \$85,922.00. Since the contract price was \$180,672.06, A.D.'s financial injury totals \$183,372.20.
- 27. Respondent failed to present written change orders for two projects. Respondent billed A.D. for the additional projects after the work was completed, although no change order is in writing. Additionally, the initial contract states that the total contract price was \$180,672.06, although later Respondent informed A.D. that numerous items, including materials and labor, were "extra" and were therefore charged above the initial contract price.

#### FIRST CAUSE FOR DISCIPLINE

### (Failure to Complete Project for Contract Price)

28. Respondent's license is subject to discipline under Code section 7113 in that Respondent failed to complete the A.D., R.C., or B.V. projects described above for the contract price, as described above in paragraphs 18, 21, and 26 and incorporated herein.

1	SECOND CAUSE FOR DISCIPLINE
2	(Failure to Meet Industry Standards)
3	29. Respondent is subject to discipline under Code section 7109, in that on the A.D.,
4	R.C., and B.V. projects, Respondent failed to meet industry standards as described above in
5	paragraphs 17, 20, and 25 and incorporated herein.
6	THIRD CAUSE FOR DISCIPLINE
7	(Excessive Down Payment)
8	30. Respondent is subject to discipline under Code section 7159.5(a)(3), in that on the
9	A.D. and R.C. projects, Respondent collected down payments in excess of 10% of the contract
10	price as described above in paragraphs 16 and 22 and incorporated herein.
11	FOURTH CAUSE FOR DISCIPLINE
12	(No Written Change Order)
13	31. Respondent is subject to discipline under Code section 7159(d), in that on the A.D.
14	and R.C. projects, Respondent did not provide written change orders when the scope of work
15	changed during the project as described above in paragraphs 18 and 27 and incorporated herein.
16	
17	FIFTH CAUSE FOR DISCIPLINE
18	(Misrepresentation of Facts to Procure a Contract)
19	32. Respondent is subject to discipline under Code section 7159(b), in that on the A.D.
20	project, Respondent misrepresented which materials and/or labor was included in the contract
21	price, and later told A.D. that several items were not included in the original contract price, as
22	described above in paragraphs 23 and 26-27 and incorporated herein.
23	SIXTH CAUSE FOR DISCIPLINE
24	(Abandonment)
25	33. Respondent is subject to discipline under Code section 7107, in that on the A.D.
26	project, Respondent abandoned the work and failed to complete it as described above in
27	paragraph 24 and incorporated herein.
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### **SEVENTH CAUSE FOR DISCIPLINE**

### (Failure to Pull Permit)

34. Respondent is subject to discipline under Code section 7110, in that on the B.V. project, Respondent failed to obtain a permit for the work as required by building code, as described above in paragraphs 19-21 and incorporated herein.

### **EIGHTH CAUSE FOR DISCIPLINE**

### (No Written Contract)

35. Respondent is subject to discipline under Code section 7159(a)(1), in that on the B.V. project, Respondent did not provide a written contract as described above in paragraph 19 and incorporated herein.

### **OTHER MATTERS**

- 36. Pursuant to sections 7097 and 7098 of the Code, if license number 869503, B issued to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any other license issued in the name of Anthony Joseph Irvin Jr. or for which Anthony Joseph Irvin Jr. furnished the qualifying experience and appearance.
- 37. Pursuant to section 7121 of the Code, if discipline is imposed on license number 869503, B issued to Respondent, Anthony Joseph Irvin Jr. shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of a licensee of any licensee during the time the discipline is imposed, and any licensee which employs, elects, or associates Anthony Joseph Irvin Jr. shall be subject to disciplinary action.
- 38. Pursuant to section 7121.5 of the Code, if discipline is imposed on license number 869503, B issued to Respondent, Anthony Joseph Irvin Jr. shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of any licensee during the time the discipline is imposed, whether or not he had knowledge or participated in the acts or omissions constituting grounds for discipline, and any licensee which employs, elects, or associates Anthony Joseph Irvin Jr. shall be subject to disciplinary action.

- 39. Section 7095 of the Code provides, in pertinent part, that the registrar in making his order may:
- (a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.
- (b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.
- (c) Impose upon the licensee compliance with such specific conditions as may be just in connection with its operations as a contractor disclosed at the hearing, and may further provide that until such conditions are complied with, no application for restoration of the suspended or revoked license shall be accepted by the registrar.

### **PRAYER**

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

- 1. Revoking or suspending Contractor's License Number 869503, B issued to Respondent;
- 2. Prohibiting Anthony Joseph Irvin Jr. from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license number 869503, B issued to Respondent;
- 3. Revoking or suspending any other license for which Anthony Joseph Irvin Jr. is furnishing the qualifying experience or appearance;
- 4. Ordering restitution of all damages according to proof suffered by R.C., B.V., and A.D. as a condition of probation in the event probation is ordered;
- 5. Ordering restitution of all damages suffered by R.C., B.V., and A.D. as a result of Respondent's conduct as a contractor, as a condition of restoration of license number 869503, B issued to Respondent;
- 6. Ordering Respondent to pay the Registrar of Contractors costs in the investigation and enforcement of the case according to proof at the hearing, pursuant to Business and Professions Code section 125.3;

1	7. Ordering Respondent to provide the Registrar with a listing of all contracting projects	
2	in progress and the anticipated completion date of each; and	
3	8. Taking such other and further action as deemed necessary and proper.	
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