

BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**HENRY MATOZA CONSTRUCTION,
INC.;**
HENRY MATOZA, JR.,
RMO/CEO/PRESIDENT,
RODNEY J. QUIGLEY, SECRETARY and
CHIEF FINANCIAL OFFICER
(undisclosed principal)
ELIJAH DAVID MATOZA, OFFICER
204 Emerson Avenue
Modesto, CA 95350

Contractor License No. 893804

Respondent.

MATOZA HENRY CONSTRUCTION
HENRY MATOZA, JR., SOLE OWNER
20555 Deerfield Drive
Sonora, CA 95370

Contractor License No. 452355

Affiliated Party.

CASE NO. N2017-327

OAH NO. 2018100242

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter.

IT IS FURTHER ORDERED that pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, respondent **HENRY MATOZA CONSTRUCTION, INC.**, License Number **893804**, shall not apply for reissuance or reinstatement of any license for one year(s) from the effective date of this Decision.

IT IS FURTHER ORDERED that Respondent shall pay the investigative costs in the amount of \$11,587.35, prior to issuance of a new or reinstated license pursuant to Business and Professions Code section 7102.


IT IS FURTHER ORDERED that Respondent shall pay restitution in the amount of \$101,380.00. This amount is to be paid prior to issuance of a new or reinstated license pursuant to Business and Professions Code section 7102.

IT IS FURTHER ORDERED that pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, respondent **MATOZA HENRY CONSTRUCTION**, License Number **452355**, shall not apply for reissuance or reinstatement of any license for one year(s) from the effective date of this Decision.

IT IS THE responsibility of the Respondents, named in this Decision, to read and follow the Order found in the Proposed Decision.

This Decision shall become effective on May 3, 2019.

IT IS SO ORDERED April 2, 2019.



David Fogt
Registrar of Contractors

BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS' STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HENRY MATOZA CONSTRUCTION INC.;
HENRY MATOZA, JR.,
RMO/CEO/PRESIDENT, RODNEY J.
QUIGLEY, SECRETARY AND CHIEF
FINANCIAL OFFICER (undisclosed
principal), ELIJAH DAVID MATOZA,
OFFICER
Modesto, California

General Contractor License No. 893804,

Respondent,

and

HENRY MATOZA CONSTRUCTION,
HENRY MATOZA, JR., SOLE OWNER
Sonora, California

General Contractor License No. 452355,

Affiliated Party.

Case No. N2017-327

OAH No. 2018100242

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on January 14 and 15, and February 14, 2019, in Oakland, California.

Deputy Attorney General Carter Ott represented complainant Wood Robinson, Enforcement Supervisor I, Contractors' State License Board.

construction in 2008. The property owners began a protracted process with the county to reinstate the original permits in order to complete the project as originally planned.

5. A business associate introduced the property owners to Elijah Matoza, who was represented to be an expert in retaining walls. On November 4, 2015, the property owners entered into a contract with HMCI. The contract was signed by Elijah Matoza as "C.O.O." The contract price was \$118,000. The project was described as:

Finish approx 120' of existing wall with shotcrete, build from scratch 40' of wall with shotcrete per Talon design groups plan.
Finish 8' section at front of dwelling that is missing with shotcrete this is not on the plans but needs to be completed.
This estimate is for all labor and material associated with this project only.

The property owners engaged a different contractor, Brian Foster, to perform other work on the property, including work on the dwelling.

6. Between November 2015 and June 2016, R.P. and J.P. made five payments by check. The checks were made out to "Eli Matoza" in the following amounts:

- a. A check dated 11/4/2015, for \$30,000; "retaining" is written in the message line.
- b. A check dated 12/27/2015, for \$9,300; "dirt nails" is written in the message line.
- c. A check dated 4/8/2016, for \$38,000.
- d. A check dated 4/19/2016, for \$17,380.
- e. A check dated 6/17/2016, for \$6,700.

The total paid to Elijah Matoza was \$101,380. There were never any written change orders made to the contract between the property owners and respondent. There was no evidence of any separate contract between the property owners and Elijah Matoza independent of the contract with respondent.

7. There were numerous delays in respondent performing work on the contract, due to weather, issues with the permits, and other matters. The property owners became frustrated with the lack of progress on the project. Elijah Matoza continued to demand large payments in order to purchase supplies, and the property owners continued to pay in the hopes that the project would be completed. R.P. testified that she observed Elijah Matoza physically working on the project on only one day, in April 2016. She observed Elijah Matoza operating a small tractor at the bottom of the hillside, cutting into the hill and moving

Elijah Matoza told Gedney that he worked for more than 100 hours at the property. He stated that he "removed erosion at the bottom of the hill in order to start working on the retaining wall," and that he also "completed other scopes of work . . . without a contract, including grading a pad in front of the house, and grading a driveway along the back of the property." During this call, Elijah Matoza referred Gedney to speak with his father, Henry Matoza, Jr., and provided a phone number. He did not assert that he had performed work at the Alamo property independently of respondent. Elijah Matoza also agreed to send project records to Gedney, but never did.

Gedney attempted to contact Henry Matoza, Jr. He left a voice message at the number provided by Elijah Matoza and sent him a letter at his address of record on December 26, 2017. Henry Matoza did not respond to these communications.

12. Gedney consulted with Brian Melvin, who was a CSLB classification deputy. Melvin is now an Enforcement Supervisor. He testified at the hearing regarding his role in determining that respondent contracted outside of classification.

Melvin's testimony established that a classification A license is required to perform excavation and other projects which require specialized engineering knowledge. A classification B licensee can bid on a project that involves both classification B work and classification A work and subcontract the classification A work to a classification A contractor. However, this applies only when the project has a structural component. Melvin reviewed the contract between respondent and the property owners, and concluded that respondent acted out of class, because there was no structural component to the project. The work described in the contract requires a classification A license. Melvin did not see any evidence in the contract that there was to be a staircase or electrical work performed, or any other structural component. Accordingly, he concluded that respondent acted out of classification by representing that it could perform the work, bidding on the project, entering into the contract, and performing work on the project. Melvin's testimony was persuasive.

13. Gedney contacted the Contra Costa County Building Department. Gedney was advised that a building permit was required for the project, and that no permit was issued until October 2017.

14. Respondent submitted a filing to the Secretary of State on June 24, 2015, which lists Henry Matoza and Elijah Matoza as officers. Respondent submitted a filing to the Secretary of State on January 30, 2018, which lists Henry Matoza and Rodney J. Quigley as officers. The Registrar's records continue to reflect Henry Matoza, Jr. and Elijah Matoza as officers of respondent. The Registrar's records do not reflect that Rodney Quigley is an officer of respondent. Respondent failed to notify the Registrar that Elijah Matoza is no longer an officer and that Rodney J. Quigley became an officer.

that he did not observe evidence of landslide activity at the site, other than a photograph from 2014 that was not conclusive.

19. Henry Matoza, Jr., and Elijah Matoza testified that Elijah Matoza has not been an officer of respondent since March 2017. They believed that the Registrar had been notified. Respondent acknowledged that it did not notify the Registrar when Quigley became an officer in January 2018. Respondent asserted that it does not intend to reinstate its corporate license, and therefore did not believe it needed to inform the Registrar of changes in personnel.

20. Respondent accused the property owners of fraudulent motives. Respondent has sued the property owners and litigation is still pending. Respondent also accused the Registrar of being "out to get us" and complained that other contractors who worked on the Alamo property before the permits were issued have not been subjected to license discipline.

Costs

21. The Registrar has incurred costs of \$639.85 in investigation costs and the Attorney General has billed the Registrar for \$10,947.50 in costs for the prosecution of this matter, for a total of \$11,587.35. The total amount of costs sought is found to be reasonable.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 7090, the Registrar has the burden of proof to establish cause for discipline by clear and convincing evidence.

First Cause for Discipline (Failure to Comply with Accepted Trade Standards)

2. Business and Professions Code sections 7090 and 7109, subdivision (a), provide that the Registrar may suspend or revoke the license of a licensee who fails to meet accepted trade standards for good and workmanlike construction. Clear and convincing evidence for disciplinary action pursuant to these sections was established, by reason of the testimony of Steve Adams and property owner R.P., who saw Elijah Matoza cutting into the bottom of the hill. Dykman's testimony did not refute this evidence. Respondent's contention that it had withdrawn from the contract in February or March 2016 was not persuasive. Cause for discipline exists in light of the matters sets forth in Factual Findings 7 and 8.

Second Cause for Discipline (Willful and/or Deliberate Disregard of Building Laws)

3. Business and Professions Code sections 7090 and 7110 provide that the Registrar may suspend or revoke the license of a licensee who willfully or deliberately disregards building laws. Elijah Matoza performed work on the property in April 2016, knowing that a permit was required and that no permit had been issued. Respondent's

The evidence established that the Registrar was not notified when Elijah Matoza ceased being an officer and when Rod Quigley became an officer. Cause for discipline pursuant to section 7083 was established, by reason of the matters sets forth in Factual Findings 14 and 19.

Appropriate Discipline

8. The Board has adopted disciplinary guidelines which are set forth in California Code of Regulations, title 16, section 871. In determining the appropriate disciplinary penalty, the factors to be considered include the nature and severity of the acts, the actual or potential harm to the public, whether the licensee performed work that was potentially hazardous to the health, safety or welfare of the public, the number and variety of current violations, evidence in mitigation, and evidence of rehabilitation.

Respondent has committed numerous violations of the Contractor's State License Law. Respondent denied the violations and provided testimony that was not credible. Respondent's conduct in regard to the project was egregious. Respondent contracted out of classification, began work without a permit, performed work that created property damage and threat of physical harm, and received more than \$100,000 for which it is unable to account. Respondent's actions caused significant harm to the property owners.

The evidence established that the actions were taken on behalf of the corporate licensee primarily by Elijah Matoza and that RMO Henry Matoza, Jr., had significantly less involvement. The evidence established that Henry Matoza, Jr., directed Elijah Matoza to cancel the contract in light of the permitting issues. However, Henry Matoza, Jr., failed to ensure that Elijah Matoza followed through on his directive, and acknowledged that he was aware that Elijah Matoza continued to perform work at the site. Because he had knowledge of the acts underlying the causes for discipline, revocation of respondent's license as well as any other license held by Henry Matoza, Jr., is warranted for the protection of the public.

It would be against the public interest to allow respondent to retain its license, or to permit Henry Matoza, Jr., Elijah Matoza, or Rodney J. Quigley to hold a license or serve as an officer, director, associate, partner, manager or qualifying individual, or member of the personnel of record of any licensee.

Restitution

9. Cause exists, under Government Code section 11519, subdivision (d), to order respondent to pay restitution to the property owners in the amount of \$101,380, by reason of the matters set forth in Factual Findings 6 and 7 and Legal Conclusions 2 and 4.

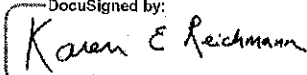
Costs

10. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be required to pay a sum not to exceed the reasonable

ORDER

1. Contractor's License Number 893804, classification B, issued to respondent Henry Matoza Construction, Inc., is revoked.
2. Henry Matoza, Jr., Elijah Matoza, and Rodney J. Quigley shall be prohibited from serving as an officer, director, associate, partner or qualifying individual of any licensee under the Registrar's jurisdiction during the time discipline is imposed on Contractor's License number 893804.
3. Any license other than Contractor's License Number 893804 for which Henry Matoza, Jr., Elijah Matoza, or Rodney J. Quigley furnished the qualifying experience and appearance, shall be revoked.
4. As a condition of restoration of Contractor's License Number 893804, respondent shall pay restitution to the property owners R.P and J.P, in the amount of \$101,380.
5. Respondent shall pay to the Registrar its costs of investigation and enforcement in the amount of \$11,587.35.
6. Respondent shall provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each.

DATED: March 12, 2019

DocuSigned by:

KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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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. N2017-327

14 **HENRY MATOZA CONSTRUCTION,**
15 **INC.;**
16 **HENRY MATOZA, JR.,**
17 **RMO/CEO/PRESIDENT,**
18 **RODNEY J. QUIGLEY, SECRETARY and**
19 **CHIEF FINANCIAL OFFICER**
20 **(undisclosed principal)**
21 **ELIJAH DAVID MATOZA, OFFICER**
22 **204 Emerson Avenue**
23 **Modesto, CA 95350**

OAH No. 2018100242

SECOND AMENDED ACCUSATION

24 **Contractor License No. 893804**

Respondent.

25 **MATOZA HENRY CONSTRUCTION**
26 **HENRY MATOZA, JR., SOLE OWNER**
27 **20555 Deerfield Drive**
28 **Sonora, CA 95370**

Contractor License No. 452355

Affiliated Party.

1 Complainant alleges:

2 **PARTIES**

3 1. Wood Robinson ("Complainant") brings this Second Amended Accusation solely in
4 his official capacity as the Enforcement Supervisor I of the Contractors' State License Board,
5 Department of Consumer Affairs.

6 2. On or about April 4, 2007, the Registrar of Contractors issued Contractor License
7 Number 893804 to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/PRES,
8 Elijah David Matoza, Officer ("Respondent"). The Contractor License was in full force and
9 effect at all times relevant to the charges brought in this Second Amended Accusation and will
10 expire on April 30, 2019, unless renewed.

11 3. On or about February 14, 1984, the Registrar of Contractors issued Contractor
12 License Number 452355 to Matoza Henry Construction, Henry Matoza, Jr., Sole Owner. The
13 Contractor License was in full force and effect at all times relevant to the charges brought in this
14 Second Amended Accusation and will expire on February 29, 2020, unless renewed.

15 **JURISDICTION**

16 4. This Second Amended Accusation is brought before the Registrar of Contractors
17 ("Registrar") for the Contractors' State License Board, Department of Consumer Affairs, under
18 the authority of the following laws. All section references are to the Business and Professions
19 Code unless otherwise indicated.

20 5. **Section 118, subdivision (b)** states:

21 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
22 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
23 order of a court of law, or its surrender without the written consent of the board, shall not, during
24 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
25 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
26 provided by law or to enter an order suspending or revoking the license or otherwise taking
27 disciplinary action against the licensee on any such ground."

1 6. Section 7090 provides, in part, that the Registrar may suspend or revoke any license
2 or registration if the licensee or registrant is guilty of or commits any one or more of the acts or
3 omissions constituting cause for disciplinary action.

4 7. Section 7098 states:

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

9 8. Section 7106.5 states:

10 “The expiration, cancellation, forfeiture, revocation, or suspension of a license by operation
11 of law or by order or decision of the registrar or a court of law, or the voluntary surrender of a
12 license by a licensee, shall not deprive the registrar of jurisdiction to proceed with any
13 investigation of or action or disciplinary proceeding against the license, or to render a decision
14 suspending or revoking the license.”

15 **STATUTORY PROVISIONS**

16 9. Section 7026 states:

17 “‘Contractor,’ for the purposes of this chapter, is synonymous with “builder” and, within
18 the meaning of this chapter, a contractor is any person who undertakes to or offers to undertake
19 to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself
20 or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or
21 demolish any building, highway, road, parking facility, railroad, excavation or other structure,
22 project, development or improvement, or to do any part thereof, including the erection of
23 scaffolding or other structures or works in connection therewith, or the cleaning of grounds or
24 structures in connection therewith, or the preparation and removal of roadway construction zones,
25 lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration
26 of monitoring equipment for underground storage tanks, and whether or not the performance of
27 work herein described involves the addition to, or fabrication into, any structure, project,
28 development or improvement herein described of any material or article of merchandise.

1 'Contractor' includes subcontractor and specialty contractor. 'Roadway' includes, but is not
2 limited to, public or city streets, highways, or any public conveyance."

3 10. Section 7026.1 states, in part:

4 "(a) The term 'contractor' includes all of the following:

5 "(1) Any person not exempt under Section 7053 who maintains or services air-conditioning,
6 heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.

7 "(2)(A) Any person, consultant to an owner-builder, firm, association, organization,
8 partnership, business trust, corporation, or company, who or which undertakes, offers to
9 undertake, purports to have the capacity to undertake, or submits a bid to construct any building
10 or home improvement project, or part thereof.

11 "(B) For purposes of this paragraph, a consultant is a person, other than a public agency or
12 an owner of privately owned real property to be improved, who meets either of the following
13 criteria as it relates to work performed pursuant to a home improvement contract as defined in
14 Section 7151.2:

15 "(i) Provides or oversees a bid for a construction project.

16 "(ii) Arranges for and sets up work schedules for contractors and subcontractors and
17 maintains oversight of a construction project.

18 "..."

19 11. Section 7055 states:

20 "For the purpose of classification, the contracting business includes any or all of the
21 following branches:

22 "(a) General engineering contracting.

23 "(b) General building contracting.

24 "(c) Specialty contracting."

25 12. Section 7056 states:

26 "A general engineering contractor is a contractor whose principal contracting business is in
27 connection with fixed works requiring specialized engineering knowledge and skill, including the
28 following divisions or subjects: irrigation, drainage, water power, water supply, flood control,

1 inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric
2 projects, levees, river control and reclamation works, railroads, highways, streets and roads,
3 tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction
4 plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for
5 the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and
6 other recreational works, refineries, chemical plants and similar industrial plants requiring
7 specialized engineering knowledge and skill, powerhouses, powerplants and other utility plants
8 and installations, mines and metallurgical plants, land leveling and earthmoving projects,
9 excavating, grading, trenching, paving and surfacing work and cement and concrete works in
10 connection with the above-mentioned fixed works.”

11 **13. Section 7057 states:**

12 “(a) Except as provided in this section, a general building contractor is a contractor whose
13 principal contracting business is in connection with any structure built, being built, or to be built,
14 for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any
15 kind, requiring in its construction the use of at least two unrelated building trades or crafts, or to
16 do or superintend the whole or any part thereof.

17 “This does not include anyone who merely furnishes materials or supplies under Section
18 7045 without fabricating them into, or consuming them in the performance of, the work of the
19 general building contractor.

20 “(b) A general building contractor may take a prime contract or a subcontract for a framing
21 or carpentry project. However, a general building contractor shall not take a prime contract for
22 any project involving trades other than framing or carpentry unless the prime contract requires at
23 least two unrelated building trades or crafts other than framing or carpentry, or unless the general
24 building contractor holds the appropriate license classification or subcontracts with an
25 appropriately licensed contractor to perform the work. A general building contractor shall not
26 take a subcontract involving trades other than framing or carpentry, unless the subcontract
27 requires at least two unrelated trades or crafts other than framing or carpentry, or unless the
28 general building contractor holds the appropriate license classification. The general building

1 contractor shall not count framing or carpentry in calculating the two unrelated trades necessary
2 in order for the general building contractor to be able to take a prime contract or subcontract for a
3 project involving other trades.

4 “(c) A general building contractor shall not contract for any project that includes a fire
5 protection system as provided for in Section 7026.12 or 7026.13; or the “C-57” Well Drilling
6 classification as provided for in Section 13750.5 of the Water Code, unless the general building
7 contractor holds the appropriate license classification, or subcontracts with the appropriately
8 licensed contractor.”

9 14. **Section 7058** states:

10 “(a) A specialty contractor is a contractor whose operations involve the performance of
11 construction work requiring special skill and whose principal contracting business involves the
12 use of specialized building trades or crafts.

13 “(b) A specialty contractor includes a contractor whose operations include the business of
14 servicing or testing fire extinguishing systems.

15 “(c) A specialty contractor includes a contractor whose operations are concerned with the
16 installation and laying of carpets, linoleum, and resilient floor covering.

17 “(d) A specialty contractor includes a contractor whose operations are concerned with
18 preparing or removing roadway construction zones, lane closures, flagging, or traffic diversions
19 on roadways, including, but not limited to, public streets, highways, or any public conveyance.”

20 15. **Section 7083, subdivisions (a) and (c)** state:

21 “(a) Notwithstanding any other law, licensees shall notify the registrar, on a form
22 prescribed by the registrar, in writing within 90 days of any change to information recorded under
23 this chapter. This notification requirement shall include, but not be limited to, changes in business
24 address, personnel, business name, qualifying individual bond exemption pursuant to Section
25 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

26 ...

27 “(c) Failure to notify the registrar of the changes within the 90 days is grounds for
28 disciplinary action.”

1 16. **Section 7109, subdivision (a)** states:

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

6 17. **Section 7110** states:

7 “Willful or deliberate disregard and violation of the building laws of the state, or of any
8 political subdivision thereof, or of Section 8550 or 8556 of this code, or of Sections 1689.5 to
9 1689.15, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation
10 insurance laws or Unemployment Insurance Code of the state, or of the Subletting and
11 Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of
12 Division 2 of the Public Contract Code), or violation by any licensee of any provision of the
13 Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells,
14 or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the
15 Government Code, constitutes a cause for disciplinary action.”

16 18. **Section 7116** states:

17 “The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of
18 which another is substantially injured constitutes a cause for disciplinary action.”

19 19. **Section 7117.6** states:

20 “Acting in the capacity of a contractor in a classification other than that currently held by
21 the licensee constitutes a cause for disciplinary action.”

22 20. **Section 7164** states, in part:

23 “(a) Notwithstanding Section 7044, every contract and any changes in a contract, between
24 an owner and a contractor, for the construction of a single-family dwelling to be retained by the
25 owner for at least one year shall be evidenced in writing signed by both parties.”

26 ////

27 ////

28 ////

1 **COST RECOVERY/RESTITUTION**

2 21. Section 125.3 provides, in part, that the Board may request the administrative law
3 judge to direct a licensee found to have committed a violation or violations of the licensing act to
4 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

8 **FACTUAL BACKGROUND**

9 23. On or about November 4, 2015, J.P. and R.P.¹ entered into a contract with
10 Respondent to construct a retaining wall at their residence in Alamo. The contract amount was
11 \$118,000.00. On or about November 4, 2015, J.P. and R.P. paid Respondent a deposit totaling
12 \$30,000.00. J.P. and R.P. also paid Respondent \$9,300.00 on or about December 27, 2015, and
13 \$38,000.00 on or about April 8, 2016, prior to Respondent performing any work on the project.

14 24. A contractor must have an "A" General Engineering Contractor's license in order to
15 construct the type of retaining wall that Respondent agreed to build for J.P. and R.P. Respondent
16 does not have an "A" General Engineering Contractor's license. Rather, Respondent only has a
17 "B" General Building Contractor's license.

18 25. A building permit was required to construct the retaining wall at J.P.'s and R.P.'s
19 residence. Respondent did not obtain a building permit in order to construct the retaining wall.

20 26. Respondent began the project, in or about did not begin work on the project until on
21 or about April 14, 2016. On or about that date, Elijah David Matoza, Respondent's officer, began
22 digging into the bottom of a hill located behind the home where the retaining wall was to be
23 constructed. Digging into the bottom of the hill was an improper way of stabilizing the earth in
24 the hill.

25 27. In or around June 2016, J.P. and R.P. terminated their contract with Respondent. By
26 that point, J.P. and R.P. had paid Respondent a total of \$101,380.00 for the work on the project.

27
28 ¹ The names of individuals identified in this Second Amended Accusation by initials will be
disclosed pursuant to a proper discovery request.

1 Respondent did not complete the retaining wall, and the work Respondent did perform provided
2 little, if any, value to J.P. and R.P. Respondent did not refund J.P. and R.P. any of the money
3 they had paid Respondent, in spite of requests made by J.P. and R.P.

4 28. In or around March 2017, J.P. and R.P. hired another contractor to stabilize the
5 hillside, which had begun collapsing, and complete the retaining wall. J.P. and R.P. have paid the
6 contractor \$73,444.99 for that work, which has not yet been completed.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Departure from Trade Standards)
(Bus. & Prof. Code § 7109, subd. (a))

9 29. Respondent has subjected its Contractor License to disciplinary action for its willful
10 departure in any material respect from accepted trade standards for good and workmanlike
11 construction. (Bus. & Prof. Code §§ 7090 and 7109, subd. (a)). The circumstances are set forth
12 in paragraphs 23 through 28, above.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Willful and/or Deliberate Disregard of Building Laws)
(Bus. & Prof. Code § 7110)

15 30. Respondent has subjected its Contractor License to disciplinary action for its willful
16 or deliberate disregard and violation of the building laws of the state or any political subdivision
17 of the state. (Bus. & Prof. Code §§ 7090 and 7110). The circumstances are set forth in paragraph
18 25, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Willful or Fraudulent Injury)
(Bus. & Prof. Code § 7116)

21 31. Respondent has subjected its Contractor License to disciplinary action for doing a
22 willful or fraudulent act as a contractor in consequence of which another is substantially injured.
23 (Bus. & Prof. Code § 7116). The circumstances are set forth in paragraphs 23 through 28, above.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 (Acting Outside of Classification)
(Bus. & Prof. Code §§ 7026, 7026.1, 7055, 7056, 7057, 7058, and 7117.6)

26 32. Respondent has subjected its Contractor License to disciplinary action for acting in
27 the capacity of a contractor in a classification other than that held by Respondent. (Bus. & Prof.
28

Code §§ 7026, 7026.1, 7055, 7056, 7057, 7058, and 7117.6). The circumstances are set forth in paragraph 24, above.

FIFTH CAUSE FOR DISCIPLINE
(Failure to Evidence Contract or Change Order in Writing)
(Bus. & Prof. Code § 7164, subd. (a))

33. Respondent has subjected its Contractor License to disciplinary action for failing to evidence its contract or change in a contract, between Respondent and J.P. and/or R.P., in writing signed by both parties. (Bus. & Prof. Code § 7164, subd. (a)). In particular, before commencing the project referenced in paragraphs 23 through 28, above, Respondent performed grading of the property, which was work that was not covered in a written contract or change order signed by both parties.

SIXTH CAUSE FOR DISCIPLINE
(Failure to Notify of Change in Personnel)
(Bus. & Prof. Code § 7083, subds. (a) and (c))

34. Respondent has subjected its Contractor License to disciplinary action for failing to notify the Registrar of the addition of Rodney J. Quigley as Respondent's Secretary and Chief Financial Officer within 90 days of that change. (Bus. & Prof. Code § 7083, subds. (a) and (c)). In particular, according to a Statement of Information form Respondent filed with the California Secretary of State on January 30, 2018, Mr. Quigley is Respondent's Secretary and Chief Financial Officer. To date, Respondent has not informed the Registrar of this change in personnel.

OTHER MATTERS

35. Pursuant to Sections 7097 and 7098, if License Number 893804 issued to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any other license issued in the name of Henry Matoza, Jr. or for which Henry Matoza, Jr. furnished the qualifying experience and appearance.

36. Pursuant to Section 7121, if discipline is imposed on License Number 893804 issued to Respondent; Henry Matoza, Jr., Rodney J. Quigley, and Elijah David Matoza shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of any licensee during the time discipline is

1 imposed, and any licensee which employs, elects, or associates Henry Matoza, Jr., Rodney J.
2 Quigley, or Elijah David Matoza shall be subject to disciplinary action.

3 37. Pursuant to Section 7121.5, if discipline is imposed on License Number 893804
4 issued to Respondent, Henry Matoza, Jr. shall be prohibited from serving as an officer, director,
5 associate, partner, manager, or qualifying individual of any licensee during the time discipline is
6 imposed, whether or not he had knowledge of or participated in the acts or omissions constituting
7 grounds for discipline, and any licensee which employs, elects, or associates Henry Matoza, Jr.
8 shall be subject to disciplinary action.

9 38. Henry Matoza, Jr., while serving as Respondent's RMO/CEO/President, had
10 knowledge of or participated in the acts or omissions which constitute cause for discipline against
11 Respondent.

12 39. Elijah David Matoza, while serving as Respondent's officer, had knowledge of or
13 participated in the acts or omissions which constitute cause for discipline against Respondent.

14 40. Government Code section 11519, subdivision (d) provides that specified terms of
15 probation may include an order of restitution, and where restitution is ordered and paid pursuant
16 to the provisions of this subdivision, the amount paid shall be credited to any subsequent
17 judgment in a civil action.

18 41. Section 7095 provides, in part, that the Registrar in making his order may:

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

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

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

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Second Amended Accusation, and that following the hearing, the Registrar of Contractors issue a decision;

1. Revoking or suspending Contractor License Number 893804 issued to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/President, Elijah David Matoza, Officer;

2. Prohibiting Henry Matoza, Jr., Rodney J. Quigley, and Elijah David Matoza from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on License Number 893804 issued to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/PRES, Elijah David Matoza, Officer;

3. Revoking or suspending any other license for which Henry Matoza, Jr., Rodney J. Quigley, and/or Elijah David Matoza is furnishing the qualifying experience or appearance;

4. Ordering restitution of all damages according to proof suffered by J.P. and R.P. as a condition of probation in the event probation is ordered;

5. Ordering restitution of all damages suffered by J.P. and R.P. as a result of Henry Matoza Construction, Inc.'s conduct as a contractor, as a condition of restoration of License Number 893804 issued to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/PRES, Elijah David Matoza, Officer;

6. Ordering Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/President; Rodney J. Quigley, Secretary and Chief Financial Officer; and Elijah David Matoza, Officer to pay the Registrar of Contractors costs for the investigation and enforcement of the case according to proof at the hearing pursuant to Business and Professions Code section 125.3;

7. Ordering Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/President; Rodney J. Quigley, Secretary and Chief Financial Officer; and Elijah David Matoza, Officer to

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1 provide the Registrar with a listing of all contracting projects in progress and the anticipated
2 completion date of each; and

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

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5 DATED: 12/12/18

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7 **FILED**
8 **DEC 12 2018**
9 **CSLB DSS**

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

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