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

12 In the Matter of the Accusation Against:

Case No. N2018-144

13 **PHOENIX CONSTRUCTION & REMODELING,**
6947 Sycamore Rd, Unit B
Atascadero, CA 93422
14 RONALD GENE BERRY, RMO/CEO/PRES
(3/22/2013-present),
15 KACY RAY ELISARRARAS, RMO
(1/5/2009-1/13/2013),
16 ANDREW MITCHELL BERRY, Officer
(1/5/2009-3/25-2016),
17 SCOTT ANTHONY BERRY, CEO/President
(1/5/2009-9/23/2012)

**FIRST SUPPLEMENTAL
ACCUSATION**

18 Contractor's License No. 926848,

19 Respondent.

20
21 **BERRY CONSTRUCTION,**
2500 Monterey Road
22 Atascadero, CA 93422
RONALD GENE BERRY, Sole Owner.

23 Contractor's License No. 724224,

24 Affiliated Party.

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27 Complainant alleges:
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1 **PARTIES**

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

5 2. The allegations contained in the Accusation heretofore filed are re-alleged and
6 incorporated by reference as if fully set forth.

7 **JURISDICTION**

8 3. This First Supplemental Accusation is brought before the Registrar of Contractors
9 (Registrar) for the Contractors' State License Board, Department of Consumer Affairs, under the
10 authority of the following laws. All section references are to the Business and Professions Code
11 unless otherwise indicated.

12 4. Section 118, subdivision (b), provides that the expiration of a license shall not deprive
13 the Registrar of jurisdiction to proceed with a disciplinary action during the period within which
14 the license may be renewed, restored, reissued or reinstated. Under section 7076.1, the Registrar
15 may reinstate a cancelled license if the licensee pays all of the fees and meets all of the
16 qualifications and requirements for obtaining an original license.

17 5. Section 7076.5 provides that the inactive status of a license shall not bar any
18 disciplinary action for violating provisions of the Contractors' State License Law (Bus. & Prof.
19 Code §§ 7000, et seq.).

20 6. Section 7090 provides that the Registrar may suspend or revoke any license or
21 registration if the licensee or registrant is guilty of or commits any one or more of the acts or
22 omissions constituting cause for disciplinary action.

23 7. Section 7095 states that the Registrar in making his order may:

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

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

28 "(c) Impose upon the licensee compliance with such specific conditions as may be just in

1 connection with its operations as a contractor disclosed at the hearing, and may further provide
2 that until such conditions are complied with, no application for restoration of the suspended or
3 revoked licensee shall be accepted by the Registrar.”

4 8. Sections 7097 and 7098 provide that when any license has been suspended or revoked
5 following a hearing, the Registrar may suspend or revoke any additional license issued in the
6 name of the licensee or for which the licensee furnished qualifying experience and appearance
7 under the provisions of 7068 of the Code, without further notice.

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

13 10. Section 7121 states:

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

1 11. Section 7121.5 states:

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

9 12. Section 7122 states:

10 “The performance by an individual, partnership, corporation, limited liability company,
11 firm, or association of an act or omission constituting a cause for disciplinary action, likewise
12 constitutes a cause for disciplinary action against a licensee other than the individual qualifying
13 on behalf of the individual or entity, if the licensee was a partner, officer, director, manager, or
14 associate of that individual, partnership, corporation, limited liability company, firm, or
15 association at the time the act or omission occurred, and had knowledge of or participated in the
16 prohibited act or omission.”

17 13. Section 7122.5 states:

18 “The performance by an individual, partnership, corporation, limited liability company,
19 firm, or association of an act or omission constituting a cause for disciplinary action, likewise
20 constitutes a cause for disciplinary action against a licensee who at the time that the act or
21 omission occurred was the qualifying individual of that individual, partnership, corporation,
22 limited liability company, firm, or association, whether or not he or she had knowledge of or
23 participated in the prohibited act or omission.”

24 14. Section 7141 states:

25 “(a) Except as otherwise provided in this chapter, a license that has expired may be
26 renewed at any time within five years after its expiration by filing an application for renewal on a
27 form prescribed by the registrar and payment of the appropriate renewal fee. Renewal under this
28 section shall be effective on the date an acceptable renewal application is filed with the board.

1 The licensee shall be considered unlicensed and there will be a break in the licensing time
2 between the expiration date and the date the renewal becomes effective. Except as provided in
3 subdivision (b), if the license is renewed after the expiration date, the licensee shall also pay the
4 delinquency fee prescribed by this chapter.

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6 “(d) If a license is not renewed within five years, the licensee shall make an application for
7 a license pursuant to Section 7066.”

8 STATUTORY PROVISIONS

9 15. Section 7109 states:

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

14 16. Section 7110 states:

15 “Willful or deliberate disregard and violation of the building laws of the state, or of any
16 political subdivision thereof, or of Section 8505 or 8556 of this code, or of Sections 1689.5 to
17 1689.8, inclusive, or Sections 1689.10 to 1689.13, inclusive, of the Civil Code, or of the safety
18 laws or labor laws or compensation insurance laws or Unemployment Insurance Code of the state,
19 or violation by any licensee of any provision of the Health and Safety Code or Water Code,
20 relating to the digging, boring, or drilling of water wells, or Article 2 (commencing with
21 Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code, constitutes a cause
22 for disciplinary action.”

23 2021 KLECK ROAD PROJECT

24 17. On or about June 23, 2015, homeowner L.S. entered into a written contract with
25 Kleck Rd LLC to purchase a new construction home erected by Respondent located at 2021
26 Kleck Road in Paso Robles, California (2021 Kleck Road Project). After the initial revised build
27 out upgrades, Respondent and homeowner L.S. entered into additional change orders to the
28 project. Homeowner L.S. paid \$775,543.53 for the project. An industry expert inspected the

1 project and estimated the costs to correct Respondent's work is approximately \$70,060.00. In
2 addition, on or about May 15, 2018, L.S. chose subcontractor, J.P., from a list of contractors
3 provided by Respondent to repair a cracked ledger board. On or about July 10, 2018, J.P., made
4 the repairs to the cracked ledger board.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(Building Law Violation - No Building Permit)**

7 18. Respondent is subject to disciplinary action under section 7110, in that on the 2021
8 Kleck Road Project, Respondent willfully or deliberately disregarded and violated building codes
9 when he: (1) failed to obtain required permit approvals for a larger deck construction prior to
10 commencement of work; and (2) failed to acquire a permit for the cracked ledger board repair
11 prior to the repair being made by subcontractor, J.P.

12 **2015 KLECK ROAD PROJECT**

13 19. On or about October 25, 2015, homeowner D.W. entered into a written contract with
14 Kleck Rd LLC to purchase a new construction home erected by Respondent located at 2015
15 Kleck Road in Paso Robles, California (2015 Kleck Road Project). Homeowner D.W. paid
16 \$749,600.00 for the project, of which \$40,600.00 was for upgrades. An industry expert inspected
17 the project and estimated the costs to correct Respondent's work is approximately \$73,622.00.
18 Additionally, an industry expert estimated the costs to correct Respondent's work specifically
19 regarding the water pipe to be an additional \$2,537.12, approximately.

20 **EIGHTH CAUSE FOR DISCIPLINE**

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

22 24. Respondent is subject to disciplinary action under section 7109, subdivision (a), in
23 that on the 2015 Kleck Road Project, Respondent willfully departed in a material respect from
24 accepted trade standards for good and workmanlike construction.

25 a. As follows:

26 1) Respondent failed to properly install the water pipe at the correct depth.

27 **OTHER MATTERS**

28 20. Pursuant to sections 7097 and 7098 of the Code, if license No.926848 issued to

1 Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any
2 other license issued in the name of Ronald Gene Berry or for which Ronald Gene Berry furnished
3 the qualifying experience and appearance.

4 21. Pursuant to sections 7121, 7121.5, 7122 and/or 7122.5, if discipline is imposed on
5 license number 926848 issued to Respondent, Ronald Gene Berry shall be prohibited from
6 serving as an officer, director, associate, partner, manager, or qualifying individual, or member of
7 the personnel of record of any licensee during the time the discipline is imposed, and any licensee
8 which employs, elects, or associates Ronald Gene Berry shall be subject to disciplinary action.

9 **PRAYER**

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

12 As to Phoenix Construction & Remodeling

13 1. Revoking or suspending Contractor's License No. 926848 issued to Phoenix
14 Construction & Remodeling, Ronald Gene Berry, RMO/CEO/PRES (3/22/2013-present), Kacy
15 Ray Elisarraras, RMO (1/5/2009-1/13/2013), Andrew Mitchell Berry, Officer (1/5/2009-3/25-
16 2016), Scott Anthony Berry, CEO/President (1/5/2009-9/23/2012);

17 2. Prohibiting Ronald Gene Berry from serving as an officer, director, associate, partner,
18 or qualifying individual of any licensee during the period that discipline is imposed on license
19 No. 926848, issued to Phoenix Construction & Remodeling, Ronald Gene Berry,
20 RMO/CEO/PRES (3/22/2013-present), Kacy Ray Elisarraras, RMO (1/5/2009-1/13/2013),
21 Andrew Mitchell Berry, Officer (1/5/2009-3/25-2016), Scott Anthony Berry, CEO/President
22 (1/5/2009-9/23/2012);

23 3. Revoking or suspending any other license for which Ronald Gene Berry is furnishing
24 the qualifying experience or appearance;

25 4. Ordering restitution of all damages according to proof suffered by homeowners L.S.
26 and D.W., as a condition of probation in the event probation is ordered;

27 5. Ordering restitution of all damages suffered by homeowners L.S. and D.W. as a result
28 of Ronald Gene Berry's conduct as a contractor, as a condition of restoration of license

1 No. 926848, issued to Phoenix Construction & Remodeling, Ronald Gene Berry,
2 RMO/CEO/PRES (3/22/2013-present), Kacy Ray Elisarraras, RMO (1/5/2009-1/13/2013),
3 Andrew Mitchell Berry, Officer (1/5/2009-3/25-2016), Scott Anthony Berry, CEO/President
4 (1/5/2009-9/23/2012);

5 6. Ordering Phoenix Construction & Remodeling, Ronald Gene Berry,
6 RMO/CEO/PRES (3/22/2013-present), Kacy Ray Elisarraras, RMO (1/5/2009-1/13/2013),
7 Andrew Mitchell Berry, Officer (1/5/2009-3/25-2016), Scott Anthony Berry, CEO/President
8 (1/5/2009-9/23/2012) to pay the Registrar costs for the investigation and enforcement of the case
9 according to proof at the hearing, pursuant to section 125.3;

10 7. Ordering Phoenix Construction & Remodeling, Ronald Gene Berry,
11 RMO/CEO/PRES (3/22/2013-present), Kacy Ray Elisarraras, RMO (1/5/2009-1/13/2013),
12 Andrew Mitchell Berry, Officer (1/5/2009-3/25-2016), Scott Anthony Berry, CEO/President
13 (1/5/2009-9/23/2012) to provide the Registrar with a listing of all contracting projects in progress
14 and the anticipated completion date of each;

15 As to Berry Construction

16 8. Revoking or suspending Contractor's License No. 724224 issued to Berry
17 Construction, Ronald Gene Berry, Sole Owner;

18 9. Prohibiting Ronald Gene Berry from serving as an officer, director, associate, partner,
19 or qualifying individual of any licensee during the period that discipline is imposed on license
20 No. 724224, issued to Berry Construction, Ronald Gene Berry, Sole Owner;

21 10. Revoking or suspending any other license for which Ronald Gene Berry is furnishing
22 the qualifying experience or appearance;

23 11. Ordering Berry Construction, Ronald Gene Berry, Sole Owner to provide the
24 Registrar with a listing of all contracting projects in progress and the anticipated completion date
25 of each; and,

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As to All

12. Taking such other and further action as deemed necessary and proper.

DATED: 9/24/19



FILED
SEP 24 2019
CSLB DSS

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

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