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

14 In the Matter of the First Amended Accusation
Against:

Case No. N2018-399

OAH No. 2020050229

15 **SIGNATURE PAINTING AND**
16 **CONSTRUCTION, INC.;**
17 **BRIAN CHRISTOPHER MITCHELL,**
18 **RMO/CEO/PRES;**
19 **ERIK ANDREW OLLER, OFFICER**
1630 North Main St. #55
Walnut Creek, CA 94596

FIRST AMENDED ACCUSATION

Contractor's License No. 931940, B, C-33

Respondents.

21
22 **PARTIES**

23 1. Wood Robinson (Complainant) brings this First Amended Accusation solely in his
24 official capacity as Supervising Special Investigator I of the Contractors State License Board
25 (Board), Department of Consumer Affairs.

26 2. On or about April 28, 2009, the Registrar of Contractors issued Contractor's License
27 Number 931940, Classifications B (General Building) and C-33(Painting and Decorating) to
28 Signature Painting and Construction, Inc. (Respondent Signature Painting), with Brian

1 Christopher Mitchell as the Responsible Managing Officer, Chief Executive Officer, and
2 President (Respondent Brian Mitchell). On June 10, 2009, Erik Andrew Oller (Respondent Erik
3 Oller) associated as an officer on the license. The contractor's license was in full force and effect
4 at all times relevant to the charges brought in this First Amended Accusation and will expire on
5 January 31, 2021, unless renewed.

6 **JURISDICTION**

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

11 4. Section 118, subdivision (b) of the Code states:

12 The suspension, expiration, or forfeiture by operation of law of a license issued
13 by a board in the department, or its suspension, forfeiture, or cancellation by order of
14 the board or by order of a court of law, or its surrender without the written consent of
15 the board, shall not, during any period in which it may be renewed, restored, reissued,
16 or reinstated, deprive the board of its authority to institute or continue a disciplinary
17 proceeding against the licensee upon any ground provided by law or to enter an order
18 suspending or revoking the license or otherwise taking disciplinary action against the
19 licensee on any such ground.

20 5. Section 7025 of the Code states:

21 (a) "Members of the personnel of record" as used in this chapter means every
22 person listed in the records of the registrar as then associated with a licensee.

23 (b) "Person" as used in this chapter includes an individual, a firm, partnership,
24 corporation, limited liability company, association or other organization, or any
25 combination thereof.

26 (c) "Qualifying person," "qualifying individual," or "qualifier," as used in this
27 chapter, means a person who qualifies for a license pursuant to Section 7068.

28 6. Section 7068 of the Code states, in pertinent part:

(a) The board shall require an applicant to show the degree of knowledge and
experience in the classification applied for, and the general knowledge of the
building, safety, health, and lien laws of the state and of the administrative principles
of the contracting business that the board deems necessary for the safety and
protection of the public.

(b) An applicant shall qualify in regard to his or her experience and knowledge
in one of the following ways:

...

1
2 (3) If a corporation, or any other combination or organization, it shall qualify by
3 the appearance of a responsible managing officer or responsible managing employee
4 who is qualified for the same license classification as the classification being applied
5 for.

6
7 7. Section 7076.5, subdivision (h) of the Code states:

8 The inactive status of a license shall not bar any disciplinary action by the
9 board against a licensee for any of the causes stated in this chapter.

10
11 8. Section 7090 of the Code provides, in pertinent part, that the Registrar may suspend
12 or revoke any license or registration if the licensee or registrant is guilty of or commits any one or
13 more of the acts or omissions constituting cause for disciplinary action.

14
15 9. Section 7106.5 of the Code states:

16 The expiration, cancellation, forfeiture, revocation, or suspension of a license
17 by operation of law or by order or decision of the registrar or a court of law, or the
18 voluntary surrender of a license by a licensee, shall not deprive the registrar of
19 jurisdiction to proceed with any investigation of or action or disciplinary proceeding
20 against the license, or to render a decision suspending or revoking the license.

21
22 10. Section 7121 of the Code states:

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

11. Section 7121.5 of the Code states:

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

STATUTORY PROVISIONS

12. Section 7109 of the Code states:

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

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

13. Section 7113 of the Code states:

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.

14. Section 7117 of the Code states:

Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

15. Section 7154, subdivision (d), of the Code states:

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

16. Section 7159 of the Code states:

(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.

(2) This section does not apply to service and repair contracts that are subject to Section 7159.10, if the contract for the applicable services complies with Sections 7159.10 to 7159.14, inclusive.

(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.

1 (4) This section does not apply to any costs associated with monitoring a
burglar or fire alarm system.

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

5 (b) For purposes of this section, "home improvement contract" means an
6 agreement, whether oral or written, or contained in one or more documents, between
7 a contractor and an owner or between a contractor and a tenant, regardless of the
8 number of residence or dwelling units contained in the building in which the tenant
9 resides, if the work is to be performed in, to, or upon the residence or dwelling unit of
10 the tenant, for the performance of a home improvement, as defined in Section 7151,
11 and includes all labor, services, and materials to be furnished and performed
12 thereunder, if the aggregate contract price specified in one or more improvement
contracts, including all labor, services, and materials to be furnished by the
13 contractor, exceeds five hundred dollars (\$500). "Home improvement contract" also
14 means an agreement, whether oral or written, or contained in one or more documents,
15 between a salesperson, whether or not he or she is a home improvement salesperson,
16 and an owner or a tenant, regardless of the number of residence or dwelling units
17 contained in the building in which the tenant resides, which provides for the sale,
18 installation, or furnishing of home improvement goods or services.

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

22 (1) The writing shall be legible.

23 (2) Any printed form shall be readable. Unless a larger typeface is specified in
24 this article, text in any printed form shall be in at least 10-point typeface and the
25 headings shall be in at least 10-point boldface type.

26 (3)(A) Before any work is started, the contractor shall give the buyer a copy of
27 the contract signed and dated by both the contractor and the buyer. The buyer's
28 receipt of the copy of the contract initiates the buyer's rights to cancel the contract
pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

(B) The contract shall contain on the first page, in a typeface no smaller than
that generally used in the body of the document, both of the following:

(i) The date the buyer signed the contract.

(ii) The name and address of the contractor to which the applicable "Notice of
Cancellation" is to be mailed, immediately preceded by a statement advising the
buyer that the "Notice of Cancellation" may be sent to the contractor at the address
noted on the contract.

(4) The contract shall include 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
potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400
and 8404 of the Civil Code for that portion of the work for which payment has been
made.

1 (5) A change-order form for changes or extra work shall be incorporated into
2 the contract and shall become part of the contract only if it is in writing and signed by
3 the parties prior to the commencement of any work covered by a change order.

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

7 (7) If the contract provides for a contractor to furnish joint control, the
8 contractor shall not have any financial or other interest in the joint control.

9 (8) The provisions of this section are not exclusive and do not relieve the
10 contractor from compliance with any other applicable provision of law.

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

16 (1) The name, business address, and license number of the contractor.

17 (2) If applicable, the name and registration number of the home improvement
18 salesperson that solicited or negotiated the contract.

19 (3) The following heading on the contract form that identifies the type of
20 contract in at least 10-point boldface type: "Home Improvement."

21 (4) The following statement in at least 12-point boldface type: "You are entitled
22 to a completely filled in copy of this agreement, signed by both you and the
23 contractor, before any work may be started."

24 (5) The heading: "Contract Price," followed by the amount of the contract in
25 dollars and cents.

26 (6) If a finance charge will be charged, the heading: "Finance Charge,"
27 followed by the amount in dollars and cents. The finance charge is to be set out
28 separately from the contract amount.

(7) The heading: "Description of the Project and Description of the Significant
Materials to be Used and Equipment to be Installed," followed by a description of the
project and a description of the significant materials to be used and equipment to be
installed. For swimming pools, the project description required under this paragraph
also shall include a plan and scale drawing showing the shape, size, dimensions, and
the construction and equipment specifications.

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

(A) The heading: "Downpayment."

(B) A space where the actual downpayment appears.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The approximate date of completion.

(12) If applicable, the heading: "List of Documents to be Incorporated into the
Contract," followed by the list of documents incorporated into the contract.

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

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

(e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all
of the following notices shall be provided to the owner as part of the contract form as

1 specified or, if otherwise authorized under this subdivision, may be provided as an
2 attachment to the contract:

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

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

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

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

15 (D) "(The name on the license or 'contractor') is a limited liability company
16 that carries liability insurance or maintains other security as required by law. You
17 may call (the insurance company or trust company or bank) at _____
18 to check on the contractor's insurance coverage or security."

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

24 (A) "(The name on the license or 'this contractor') has no employees and is
25 exempt from workers' compensation requirements."

26 (B) "(The name on the license or 'this contractor') carries workers'
27 compensation insurance for all employees."

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

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

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

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

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

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

(C) A statement informing the buyer that the contractor's failure to comply with
the requirements of this paragraph does not preclude the recovery of compensation

1 for work performed based upon legal or equitable remedies designed to prevent unjust
enrichment.

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

3 "MECHANICS LIEN WARNING:

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

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

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

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

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

16 PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by
17 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
18 started work and when these suppliers delivered goods or materials. Then wait 20
days, paying attention to the Preliminary Notices you receive.

19 PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a
20 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
21 joint check payable to both the contractor and the subcontractor or material supplier.

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

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

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

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

28 Contact CSLB for information about the licensed contractor you are
considering, including information about disclosable complaints, disciplinary actions,

and civil judgments that are reported to CSLB.

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

For more information:

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

Call CSLB at 800-321-CSLB (2752)

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

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

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

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

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

(B) "Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by emailing, mailing, faxing, or delivering a written notice to 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."

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

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

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

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

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

4 (v) The notice may be attached to the contract if the contract includes, in at least
5 12-point boldface type, a checkbox with the following statement: "The law requires
6 that the contractor give you a notice explaining your right to cancel. Initial the
checkbox if the contractor has given you a 'Notice of the Three-Day Right to
Cancel.'"

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

9 "Notice of Cancellation"

10 /enter date of transaction/

11 (Date)

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

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

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

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

22 To cancel this transaction, mail or deliver a signed and dated copy of this
cancellation notice, or any other written notice, or send a telegram to

23 /name of seller/,

24 at

25 /address of seller's place of business/

26 not later than midnight of

27 (Date).

28 I hereby cancel this transaction.

1 (Date)

2 (Buyer's signature)

3 (7)(A) The following notice entitled "Seven-Day Right to Cancel" shall be
4 provided to the buyer for any contract that is written for the repair or restoration of
5 residential premises damaged by any sudden or catastrophic event for which a state of
6 emergency has been declared by the President of the United States or the Governor,
7 or for which a local emergency has been declared by the executive officer or
8 governing body of any city, county, or city and county:

6 "Seven-Day Right to Cancel

7 You, the buyer, have the right to cancel this contract within seven business
8 days. You may cancel by emailing, mailing, faxing, or delivering a written notice to
9 the contractor at the contractor's place of business by midnight of the seventh
10 business day after you received a signed and dated copy of the contract that includes
11 this notice. Include your name, your address, and the date you received the signed
12 copy of the contract and this notice.

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

17 (B) The "Seven-Day Right to Cancel" notice required by this subdivision shall
18 comply with all of the following:

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

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

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

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

24 (v) The notice may be attached to the contract if the contract includes, in at least
25 12-point boldface type, a checkbox with the following statement: "The law requires
26 that the contractor give you a notice explaining your right to cancel. Initial the
27 checkbox if the contractor has given you a 'Notice of the Seven-Day Right to
28 Cancel.'"

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

1 "Notice of Cancellation"

2 /enter date of transaction/

3 (Date)

4 "You may cancel this transaction, without any penalty or obligation, within
5 seven business days from the above date.

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

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

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

19 To cancel this transaction, mail or deliver a signed and dated copy of this
20 cancellation notice, or any other written notice, or send a telegram to

21 /name of seller/ ,

22 at

23 /address of seller's place of business/

24 not later than midnight of

25 (Date).

26 I hereby cancel this transaction.

27 (Date)

28 (Buyer's signature)

17. Section 7159.5 of the Code states, in pertinent part:

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

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

...

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

3 **COST RECOVERY, RESTITUTION AND OTHER AUTHORITY**

4 18. Section 125.3 states, in pertinent part:

5 (a) Except as otherwise provided by law, in any order issued in resolution of a
6 disciplinary proceeding before any board within the department or before the
7 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
8 administrative law judge may direct a licentiate found to have committed a violation
9 or violations of the licensing act to pay a sum not to exceed the reasonable costs of
10 the investigation and enforcement of the case.

11 (b) In the case of a disciplined licentiate that is a corporation or a partnership,
12 the order may be made against the licensed corporate entity or licensed partnership.

13 . . .

14 19. Government Code section 11519 states:

15 (a) The decision shall become effective 30 days after it is delivered or mailed
16 to respondent unless: a reconsideration is ordered within that time, or the agency itself
17 orders that the decision shall become effective sooner, or a stay of execution is
18 granted.

19 (b) A stay of execution may be included in the decision or if not included
20 therein may be granted by the agency at any time before the decision becomes
21 effective. The stay of execution provided herein may be accompanied by an express
22 condition that respondent comply with specified terms of probation provided;
23 provided, however, that the terms of probation shall be just as reasonable in light of
24 the findings and decision.

25 (c) If respondent was required to register with any public officer, a
26 notification of any suspension or revocation shall be sent to the officer after the
27 decision has become effective.

28 (d) As used in subdivision (b), specified terms of probation may include an
order of restitution. Where restitution is ordered and paid pursuant to the provisions
of this subdivision, the amount paid shall be credited to any subsequent judgment in a
civil action.

(e) The person to which the agency action is directed may not be required to
comply with a decision unless the person has been served with the decision in the
manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the
agency has made the decision available for public inspection and copying or the
nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to
protect the public interest in accordance with Article 13 (commencing with Section
11460.10) of Chapter 4.5.

27. Section 143.5, subdivision (b) of the Code states:

1 Any board, bureau, or program within the Department of Consumer Affairs
2 that takes disciplinary action against a licensee or licensees based on a complaint or
3 report that has also been the subject of a civil action and that has been settled for
4 monetary damages providing for full and final satisfaction of the parties may not
5 require its licensee or licensees to pay any additional sums to the benefit of any
6 plaintiff in the civil action.

7 20.. Section 7095 of the Code states:

8 The decision may:

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

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

13 (c) Impose upon the licensee compliance with such specific conditions as may
14 be just in connection with his operations as a contractor disclosed at the hearing and
15 may further provide that until such conditions are complied with no application for
16 restoration of the suspended or revoked licensee shall be accepted by the registrar.

17 21. Section 7097 of the Code states:

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

25 22. Section 7098 of the Code states:

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

29 23. Section 7102 of the Code states:

30 After suspension of a license upon any of the grounds set forth in this chapter
31 [the Contractors' State License Law], the registrar may reinstate the license upon
32 proof of compliance by the contractor with all provisions of the decision as to
33 reinstatement or, in the absence of a decision or any provisions of reinstatement, in
34 the sound discretion of the registrar.

35 After revocation of a license upon any of the grounds set forth in this chapter,
36 the license shall not be reinstated or reissued and a license shall not be issued to any
37 member of the personnel of the revoked licensee found to have had knowledge of or
38 participated in the acts or omissions constituting grounds for revocation, within a
minimum period of one year and a maximum period of five years after the final
decision of revocation and then only on proper showing that all loss caused by the act

1 or omission for which the license was revoked has been fully satisfied and that all
2 conditions imposed by the decision of revocation have been complied with.

3 The board shall promulgate regulations covering the criteria to be considered
4 when extending the minimum one-year period. The criteria shall give due
5 consideration to the appropriateness of the extension of time with respect to the
6 following factors:

- 7 (a) The gravity of the violation.
- 8 (b) The history of previous violations.
- 9 (c) Criminal convictions.

10 When any loss has been reduced to a monetary obligation or debt, however, the
11 satisfaction of the monetary obligation or debt as a prerequisite for the issuance,
12 reissuance, or reinstatement of a license shall not be required to the extent the
13 monetary obligation or debt was discharged in a bankruptcy proceeding. However,
14 any nonmonetary condition not discharged in a bankruptcy proceeding shall be
15 complied with prior to the issuance, the reissuance, or reinstatement of the license.

16 **HOA - OAKLAND TOWN SQUARE PROJECT**

17 24. On or about January 27, 2016, Respondent Signature Painting entered into a contract
18 with the Oakland Town Square Homeowners Association (HOA – Oakland Town Square Project)
19 to replace siding and paint for at the HOA townhomes in Oakland. The original contract price
20 was \$96,925.00 but various subsequent change orders adding up to \$25,287.84 raised the contract
21 price to \$122,212.84. Respondent Signature Painting worked on the project from on or about
22 March 21, 2016 to on or about August 30, 2016, and was paid in full.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Departure from Trade Standards for Good and Workmanlike Construction)**

25 25. Respondent Signature Painting’s license is subject to disciplinary action under Code
26 section 7109, subdivision (a), in that on the HOA – Oakland Town Square Project, Respondent
27 Signature Painting departed from accepted trade standards for good and workmanlike
28 construction, as follows:

- 29 (A) Respondent Signature Painting failed to install trim to be flat, with event joints, with
30 required clearances from paving and grade;
- 31 (B) Respondent Signature Painting failed to install hardboard siding with a minimum of
32 2” clearance of any paved surface, or within 6” of any soil; and

1 (C) Respondent Signature Painting failed to install gutter joints to be aligned and to
2 match existing pieces.

3 **SECOND CAUSE FOR DISCIPLINE**

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

5 26. Respondent Signature Painting's license is subject to disciplinary action under Code
6 section 7113 in that on the HOA – Oakland Town Square Project, Respondent Signature Painting
7 failed in a material respect to complete the project for the contract price, requiring the owner to
8 secure the services of another contractor to correct the project at a substantial sum above the
9 contract price. The HOA was or is required to spend approximately \$31,300.00 above the
10 contract price to have the project completed correctly.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Working with Personnel Not on License Record)**

13 27. Respondent Signature Painting's license is subject to disciplinary action under Code
14 section 7117, subdivision (b), in that on the HOA – Oakland Town Square Project, Respondent
15 Signature Painting worked with personnel not on the license record. Respondent Erik Oller, who
16 was not licensed as a Home Improvement Salesperson, signed the contract on behalf of
17 Respondent Signature Painting and operated as a project manager on the project prior to
18 associating on the license as an officer.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Employing Unregistered Home Improvement Salesperson)**

21 28. Respondent Signature Painting's license is subject to disciplinary action under Code
22 section 7154, subdivision (d), in that on the HOA – Oakland Town Square Project, Respondent
23 Signature Painting employed an unregistered home improvement salesperson. Respondent Erik
24 Oller, who was not licensed as a Home Improvement Salesperson, signed the contract on behalf
25 of Respondent Signature Painting and operated as a project manager on the project prior to
26 associating on the license as an officer.

27 **FIFTH CAUSE FOR DISCIPLINE**

28 **(Failure to Comply with Home Improvement Contract Requirements)**

1 29. Respondent Signature Painting’s license is subject to disciplinary action under Code
2 section 7159 in that on the HOA – Oakland Town Square Project, Respondent Signature Painting
3 failed to comply with home improvement contract requirements by violating the following
4 subsections:

- 5 (d) No written change orders;
- 6 (d)(2) No name or registration number of the salesperson;
- 7 (d)(8)(C) Excessive down payment and no statement as to down payment limits;
- 8 (d)(10)(A) No notice describing substantial commencement of work;
- 9 (d)(11)(A) Did not provide the appropriate heading "Approximate Completion Date;"
- 10 (e)(2)(B) No notice as to the name of the Workers' Compensation carrier;
- 11 (e)(4) No heading or notice as to the mechanic's lien;
- 12 (e)(5) No notice regarding the CSLB; and
- 13 (e)(6)(A) Did not provide a 3 day right to cancel notice.

SIXTH CAUSE FOR DISCIPLINE

(Excessive Downpayment)

14
15
16 30. Respondent Signature Painting’s license is subject to disciplinary action under Code
17 section 7159 in that on the HOA – Oakland Town Square Project, Respondent Signature Painting
18 requested and received an excessive downpayment, i.e. a downpayment that was greater than ten
19 percent of the contract price or \$1,000.00, whichever is less. On or about February 26, 2016
20 (more than three weeks prior to commencing work on the project), Respondent Signature Painting
21 received a downpayment in the amount of \$13,542.50.

J.W. - OAKLAND TOWN SQUARE PROJECT

22
23 31. On or about March 21, 2016, Respondent Signature Painting entered into a contract
24 with J.W. to replace residential siding on J.W.’s townhome at Town Square in Oakland (J.W. –
25 Oakland Town Square Project). The original contract price was \$7,920.00. On or about August
26 1, 2016, Respondent Signature Painting started work on and was paid in full for the project.

SEVENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards for Good and Workmanlike Construction)

1 Signature Painting employed an unregistered home improvement salesperson. Respondent Erik
2 Oller, who was not licensed as a Home Improvement Salesperson, signed the contract on behalf
3 of Respondent Signature Painting and operated as a project manager on the project prior to
4 associating on the license as an officer.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Home Improvement Contract Requirements)**

7 36. Respondent Signature Painting's license is subject to disciplinary action under Code
8 section 7159 in that on the J.W. – Oakland Town Square Project, Respondent Signature Painting
9 failed to comply with home improvement contract requirements by violating the following
10 subsections:

- 11 (d) No written change orders;
- 12 (d)(2) No name or registration number of the salesperson;
- 13 (d)(8)(C) Excessive down payment and no statement as to down payment limits;
- 14 (d)(10)(A) No notice describing substantial commencement of work;
- 15 (d)(11)(A) Did not provide the appropriate heading "Approximate Completion Date;"
- 16 (e)(2)(B) No notice as to the name of the Workers' Compensation carrier;
- 17 (e)(4) No heading or notice as to the mechanic's lien;
- 18 (e)(5) No notice regarding the CSLB; and
- 19 (e)(6)(A) Did not provide a 3 day right to cancel notice.

20 **M.F. - OAKLAND TOWN SQUARE PROJECT**

21 37. On or about November 1, 2016, Respondent Signature Painting entered into a
22 contract with M.F. to replace residential siding on M.F.'s townhome at Town Square in Oakland
23 (M.F. – Oakland Town Square Project). The original contract price was \$5,813.00 but a change
24 order on December 9, 2016, to replace exterior trim for \$1,875.00, raised the contract price to
25 \$7,688.00. Respondent Signature Painting started work on the project on or around November
26 28, 2016, but subsequently ceased working due to winter weather, and returned to the project in
27 early June of 2017. On or about June 15, 2017, Respondent Signature Painting was paid in full
28 for the project.

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards for Good and Workmanlike Construction)**

3 38. Respondent Signature Painting’s license is subject to disciplinary action under Code
4 section 7109, subdivision (a), in that on the M.F. – Oakland Town Square Project, Respondent
5 Signature Painting departed from accepted trade standards for good and workmanlike
6 construction as follows:

7 (A) Respondent Signature Painting failed to install trim to be flat, with event joints, with
8 required clearances from paving and grade; and

9 (B) Respondent Signature Painting failed to install hardboard siding with a minimum of
10 2” clearance of any paved surface, or within 6” of any soil.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

13 39. Respondent Signature Painting’s license is subject to disciplinary action under Code
14 section 7113 in that on the M.F. – Oakland Town Square Project, Respondent Signature Painting
15 failed in a material respect to complete the project for the contract price, requiring the owner to
16 secure the services of another contractor to correct the project at a substantial sum above the
17 contract price. M.F. was or is required to spend approximately \$3,258.00 above the contract price
18 to have the project completed correctly.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**

20 **(Working with Personnel Not on License Record)**

21 40. Respondent Signature Painting’s license is subject to disciplinary action under Code
22 section 7117, subdivision (b), in that on the M.F. – Oakland Town Square Project, Respondent
23 Signature Painting worked with personnel not on the license record. Respondent Erik Oller, who
24 was not licensed as a Home Improvement Salesperson, signed the contract on behalf of
25 Respondent Signature Painting and operated as a project manager on the project prior to
26 associating on the license as an officer.

27 **FIFTEENTH CAUSE FOR DISCIPLINE**

28 **(Employing Unregistered Home Improvement Salesperson)**

1 41. Respondent Signature Painting’s license is subject to disciplinary action under Code
2 section 7154, subdivision (d), in that on the M.F. – Oakland Town Square Project, Respondent
3 Signature Painting employed an unregistered home improvement salesperson. Respondent Erik
4 Oller, who was not licensed as a Home Improvement Salesperson, signed the contract on behalf
5 of Respondent Signature Painting and operated as a project manager on the project prior to
6 associating on the license as an officer.

7 **SIXTEENTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Home Improvement Contract Requirements)**

9 42. Respondent Signature Painting’s license is subject to disciplinary action under Code
10 section 7159 in that on the M.F. – Oakland Town Square Project, Respondent Signature Painting
11 failed to comply with home improvement contract requirements by violating the following
12 subsections:

- 13 (d) No written change orders;
- 14 (d)(2) No name or registration number of the salesperson;
- 15 (d)(8)(C) Excessive down payment and no statement as to down payment limits;
- 16 (d)(10)(A) No notice describing substantial commencement of work;
- 17 (d)(11)(A) Did not provide the appropriate heading "Approximate Completion Date;"
- 18 (e)(2)(B) No notice as to the name of the Workers' Compensation carrier;
- 19 (e)(4) No heading or notice as to the mechanic's lien;
- 20 (e)(5) No notice regarding the CSLB; and
- 21 (e)(6)(A) Did not provide a 3 day right to cancel notice.

22 ///

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25 **CAUSES FOR OTHER ACTION**

26 **FIRST CAUSE FOR OTHER ACTION**

27 **(Restrictions on Corporate Qualifier – Respondent Brian Mitchell)**

28

1 43. Pursuant to section 7121.5 of the Code, if Contractor’s License Number 931940,
2 issued to Respondent Signature Painting, is revoked or suspended, Respondent Brian Mitchell
3 shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying
4 individual of a licensee during the time the discipline is imposed, whether or not he had
5 knowledge of or participated in the acts or omissions constituting grounds for discipline as
6 alleged in the causes for discipline, above, and any licensee which employs, elects, or associates
7 Respondent Brian Mitchell other than as a bona fide nonsupervising employee shall be subject to
8 disciplinary action.

9 **SECOND CAUSE FOR OTHER ACTION**

10 **(Restrictions on Officer – Respondent Erik Oller)**

11 44. Pursuant to section 7121 of the Code, if Contractor’s License Number 931940, issued
12 to Respondent Signature Painting, is revoked or suspended, Respondent Erik Oller shall be
13 prohibited from serving as an officer, director, associate, partner, manager, qualifying individual,
14 or member of the personnel of record of a licensee in that, while serving as an officer of
15 Respondent Signature Painting, he had knowledge of or participated in the acts or omissions
16 which constitute cause for discipline against Respondent Signature Painting, as alleged in the
17 causes for discipline, above.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
20 First Amended Accusation, and that following the hearing, the Registrar of Contractors issue a
21 decision:

- 22 1. Ordering the revocation or suspension of Contractor’s License Number 931940,
23 issued to Respondent Signature Painting, pursuant to Code section 7090;
- 24 2. Ordering restitution of all damages according to proof suffered by the Oakland Town
25 Square HOA as a condition of probation in the event probation is ordered for Respondent
26 Signature Painting, pursuant to Government Code section 11519, subdivision (d);
- 27
28

1 3. Ordering restitution of all damages according to proof suffered by M.F. as a condition
2 of probation in the event probation is ordered for Respondent Signature Painting, pursuant to
3 Government Code section 11519, subdivision (d);

4 4. Ordering Respondent Signature Painting to pay the Registrar of Contractors costs for
5 the investigation and enforcement of the case according to proof at the hearing, pursuant to
6 Business and Professions Code section 125.3;

7 5. Ordering Respondent Signature Painting to provide the Registrar with a listing of all
8 contracting projects in progress and the anticipated completion date of each, pursuant to Code
9 section 7095;

10 6. Ordering that Respondent Brian Mitchell is prohibited from serving as an officer,
11 director, associate, partner, or qualifying individual of a licensee, pursuant to Code section
12 7121.5;

13 7. Ordering that Respondent Erik Oller is prohibited from serving as an officer, director,
14 associate, partner, or qualifying individual of a licensee, pursuant to Code section 7121; and

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

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DATED: _____

WOOD ROBINSON
Supervising Special Investigator I
Contractors State License Board
Department of Consumer Affairs
State of California
Complainant

OK2019900319