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7
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. N2017-309

14 **ENERGY SERVICE PARTNERS INC.**
15 **DBA ESP CONTRACTING,**
16 **KENNETH GARY GIETZ**
17 **RMO/CEO/PRES**

ACCUSATION

18 970 West 190th Street, Suite 215
19 Torrance, CA 90502

20 Contractor's License No. 619149

Respondent.

21 **RAYKER INC. DBA GREENSPIRE**
22 **CONSTRUCTION, KENNETH GARY**
23 **GIETZ, RMO; DAVID BRONSON**
24 **MURRAY, CEO/PRES; KENNETH JOHN**
25 **BIEHL, OFFICER**

26 11620 Wilshire Boulevard, Suite 410
27 Los Angeles, CA 90025

28 Contractor's License No. 1018241

Affiliated Party,

29 **QUATIVA INC., KENNETH GARY**
30 **GIETZ, CEO/PRESIDENT; DALLEN**
31 **GARY GIETZ, RMO**

32 1010 Esplanade Unit 2
33 Redondo Beach, CA 90277

34 Contractor's License No. 1022887

Affiliated Party.

1 Complainant alleges:

2 **PARTIES**

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

6 License Histories

7 **ENERGY SERVICE PARTNERS INC., DBA ESP CONTRACTING**

8 2. On or about May 11, 1991, the Registrar of Contractors (Registrar) issued
9 Contractor's License Number 619149 to Energy Service Partners Inc. dba ESP Contracting,
10 Kenneth Gary Gietz RMO/CEO/PRES (Respondent). The Contractor's License was in full force
11 and effect at all times relevant to the charges brought herein and will expire on November 30,
12 2019, unless renewed.

13 **RAYKER INC., DBA GREENSPIRE CONSTRUCTION**

14 3. On or about September 14, 2016, the Registrar issued Contractor's License Number
15 1018241 to Rayker Inc., dba Greenspire Construction, Kenneth Gary Gietz, RMO (Affiliated
16 Party). The Contractor's License was in full force and effect at all times relevant to the charges
17 brought herein and will expire on September 30, 2018, unless renewed.

18 **QUATIVA INC.**

19 4. On or about January 24, 2017, the Registrar issued Contractor's License Number
20 1022887 to Quativa Inc., Kenneth Gary Gietz, CEO/President (Affiliated Party). The Contractor's
21 License was in full force and effect at all times relevant to the charges brought herein and will
22 expire on January 31, 2019, unless renewed.

23 **JURISDICTION**

24 5. This Accusation is brought before the Registrar under the authority of the following
25 laws. All section references are to the Business and Professions Code unless otherwise indicated.

26 **STATUTORY PROVISIONS**

27 6. Section 118(b) provides, in pertinent part, that the expiration of a license shall not
28 deprive the Registrar of jurisdiction to proceed with a disciplinary action during the period within

1 which the license may be renewed, restored, reissued or reinstated. Under Code section 7076.1,
2 the Registrar may reinstate a cancelled license if the licensee pays all of the fees and meets all of
3 the qualifications and requirements for obtaining an original license.

4 7. Section 143.5, subdivision (a) states in pertinent part:

5 "No licensee who is regulated by a board, bureau, or program within the Department of
6 Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall
7 include or permit to be included a provision in an agreement to settle a civil dispute, whether the
8 agreement is made before or after the commencement of a civil action, that prohibits the other
9 party in that dispute from contacting, filing a complaint with, or cooperating with the department,
10 board, bureau, or program within the Department of Consumer Affairs that regulates the licensee.
11 A provision of that nature is void as against public policy, and any licensee who includes or
12 permits to be included a provision of that nature in a settlement agreement is subject to
13 disciplinary action by the board, bureau, or program."

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

17 9. Section 7090 provides, in pertinent part, that the Registrar may suspend or revoke any
18 license or registration if the licensee or registrant is guilty of or commits any one or more of the
19 acts or omissions constituting cause for disciplinary action.

20 10. Section 7068.1 states:

21 "(a) The person qualifying on behalf of an individual or firm under paragraph (1), (2), (3),
22 or (4) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision
23 and control of his or her employer's or principal's construction operations to secure compliance
24 with this chapter and the rules and regulations of the board. This person shall not act in the
25 capacity of the qualifying person for an additional individual or firm unless one of the following
26 conditions exists:"

27 "(1) There is a common ownership of at least 20 percent of the equity of each individual or
28 firm for which the person acts in a qualifying capacity."

1 “(2) The additional firm is a subsidiary of or a joint venture with the first. ‘Subsidiary,’ as
2 used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the
3 other firm.”

4 “(3) With respect to a firm under paragraph (2), (3), or (4) of subdivision (b) of Section
5 7068, the majority of the partners, officers, or managers are the same.”

6 “(b) Notwithstanding paragraphs (1) to (3), inclusive, of subdivision (a), a qualifying
7 individual may act as the qualifier for no more than three firms in any one-year period.”

8 “(c) The following definitions shall apply for purposes of this section:(1) ‘Firm’ means a
9 partnership, a limited partnership, a corporation, a limited liability company, or any other
10 combination or organization described in Section 7068.(2) ‘Person’ is limited to natural persons,
11 notwithstanding the definition of ‘person’ in Section 7025.”

12 “(d) The board shall require every applicant or licensee qualifying by the appearance of a
13 qualifying individual to submit detailed information on the qualifying individual's duties and
14 responsibilities for supervision and control of the applicant's construction operations.”

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

19 5. Section 7095 states that the Registrar in making his order may:

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

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

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

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

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

10 12. Section 7109 states:

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

15 13. Section 7112 states that "[o]mission or misrepresentation of a material fact by an
16 applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an
17 existing license constitutes a cause for disciplinary action."

18 14. Section 7115 states that "[f]ailure in any material respect to comply with the
19 provisions of this chapter, or any rule or regulation adopted pursuant to this chapter, or to comply
20 with the provisions of Section 7106 of the Public Contract Code, constitutes a cause for
21 disciplinary action."

22 15. Section 7116 states that "[t]he doing of any willful or fraudulent act by the licensee as
23 a contractor in consequence of which another is substantially injured constitutes a cause for
24 disciplinary action."

25 16. Section 7116.5(a) states: that "[i]t is a cause for discipline for a licensee to do any of
26 the following:

27 "(a) Engage in any conduct that subverts or attempts to subvert an investigation of the
28 board."

1 17. Section 7117 states that "[a]cting in the capacity of a contractor under any license
2 issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in
3 accordance with the personnel of the licensee as set forth in the application for such license, or as
4 later changed as provided in this chapter [the Contractors' License Law], constitutes a cause for
5 disciplinary action."

6 18. Section 7118 states that "[e]ntering into a contract with a contractor while such
7 contractor is not licensed as provided in this chapter [the Contractors' State License Law]
8 constitutes a cause for disciplinary action."

9 19. Section 7154 states:

10 "(a) A home improvement contractor licensed under this chapter shall notify the registrar in
11 writing, on a form prescribed by the registrar, about the employment of a registered home
12 improvement salesperson, pursuant to the terms of this article. This notification requirement shall
13 include, but not be limited to, the name and registration number of the home improvement
14 salesperson who is employed by the contractor. The form shall be submitted prior to the home
15 improvement salesperson beginning work for the contractor."

16 "(b) A home improvement contractor shall notify the registrar in writing, on a form
17 prescribed by the registrar, when a registered home improvement salesperson ceases to be
18 employed by the contractor. This notification requirement shall include, but not be limited to, the
19 name and registration number of the home improvement salesperson who had been employed by
20 the contractor. The form shall be submitted within 90 days after the home improvement
21 salesperson ceases to be employed by the contractor."

22 "(c) A home improvement contractor who employs a registered home improvement
23 salesperson to sell home improvement contracts, but who fails to report to the registrar pursuant
24 to subdivision (a) or (b), is subject to disciplinary action by the registrar."

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

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1 20. Section 7159.5 states:

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

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

8 "(5) Except for a downpayment, the contractor may neither request nor accept payment
9 that exceeds the value of the work performed or material delivered."

10 21. Section 7161 states:

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

13

14 "(b) Making any substantial misrepresentation in the procurement of a contract for a home
15 improvement or other work of improvement or making any false promise of character likely to
16 influence, persuade or, 1 induce any person to enter into such a contract."

17 "(c) Any fraud in the execution of, or in the material alteration, any contract, trust deed,
18 mortgage, promissory note, or other document incident to a home improvement transaction or
19 other transaction involving a work of improvement."

20 "(d) Preparing or accepting any trust deed, mortgage, promissory note, or other evidence of
21 indebtedness upon the obligations of a home improvement transaction or other transaction for a
22 work of improvement with knowledge that it specifies a greater monetary obligation than the
23 consideration for the improvement work, which consideration may be a time sale price.

24 22. Section 7163 states:

25 "(a) No contract for home improvement shall be enforceable against the buyer if the
26 obtaining of a loan for all or a portion of the contract price is a condition precedent to the contract
27 or if the contractor provides financing, or in any manner assists the buyer to obtain a loan or
28

1 refers the buyer to any person who may loan or arrange a loan for all or a portion of the contract
2 price unless all of the following requirements are satisfied:

3 "(1) The third party, if any, agrees to make the loan."

4 "(2) The buyer agrees to accept the loan or financing."

5 "(3) The buyer does not rescind the loan or financing transaction, within the period
6 prescribed for rescission, pursuant to the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et
7 seq.) or Regulation Z, if applicable."

8 "(b) Until the requirements of paragraphs (1), (2), and (3) of subdivision (a) are satisfied, it
9 shall be unlawful for the contractor to do any of the following:

10 "(1) Deliver any property or perform any services other than obtaining building permits or
11 other similar services preliminary to the commencement of the home improvement for which no
12 mechanic s lien can be claimed."

13 "(2) Represent in any manner that the contract is enforceable or that the buyer has any
14 obligation thereunder."

15 "Any violation of this subdivision shall render the contract unenforceable."

16 (c) If the contract is unenforceable pursuant to subdivision (a) or subdivision (b), the
17 contractor shall immediately and without condition return all money, property, and other
18 consideration given by the buyer. If the buyer gave any property as consideration and the
19 contractor does not or cannot return it for whatever reason, the contractor shall immediately
20 return the fair market value of the property or its value as designated in the contract, whichever is
21 greater. Nothing herein shall prohibit a contractor from receiving a downpayment otherwise
22 permitted by law provided the contractor returns the downpayment as herein required if the
23 contract is unenforceable pursuant to subdivision (a) or (b).

24 (d) (1) Except as provided in paragraph (2), the buyer may retain without obligation in law
25 or equity any services or property provided pursuant to a contract that is unenforceable pursuant
26 to subdivision (a) or subdivision (b).

1 (2) If the contractor has delivered any property to the buyer pursuant to a contract which is
2 unenforceable pursuant to subdivision (a) or subdivision (b), the buyer shall make the property
3 available to the contractor for return provided that all of the following requirements are satisfied:

4 (A) The property can be practically returned to the contractor without causing any damage
5 to the buyer.

6 (B) The contractor, at the contractor s expense, first returns to the buyer any money,
7 property, and other consideration taken by the contractor provided that the property is returned in
8 the condition that it was in immediately prior to its taking. If applicable, the contractor shall also,
9 at its expense, reinstall any property taken in the manner in which the property had been installed
10 prior to its taking.

11 (C) The contractor, at the contractor s expense, picks up the property within 60 days of the
12 execution of the contract.

13 (e) For the purpose of this section, home improvement means home improvement as
14 defined in Section 7151. Goods are included within the definition notwithstanding whether they
15 are to be attached to real property or to be so affixed to real property as to become a part thereof
16 whether or not severable therefrom.

17 (f) The rights and remedies provided the buyer under this section are nonexclusive and
18 cumulative to all other rights and remedies under other laws.

19 (g) Any waiver of this section shall be deemed contrary to public policy and shall be void
20 and unenforceable. However, the buyer may waive subdivisions (a) and (b) to the extent that the
21 contract is executed in connection with the making of emergency repairs or services that are
22 necessary for the immediate protection of persons or real or personal property. The buyer s
23 waiver for emergency repairs or services shall be in a dated written statement that describes the
24 emergency, states that the contractor has informed the buyer of subdivisions (a) and (b) and that
25 the buyer waives those provisions, and is signed by each owner of the property. Waivers made on
26 printed forms are void and unenforceable.

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1 **COST RECOVERY/RESTITUTION**

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

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

9 **MARRILLA PROJECT**

10 25. On or about November 5, 2016, Respondent entered into a home improvement
11 contract with homeowner M.R. through unregistered sales person Bobby Tetsch, representing
12 Energy Service Partners, Inc. (ESP) to install a photovoltaic solar panel system array on M.R.'s
13 home in Norwalk, California for the agreed amount of \$38,283.00 (Marrilla Project). M.R. only
14 speaks Spanish and the documents and sales pitch were in English. The contract was contingent
15 on a licensed professional inspection of the roof to ensure the quality of the roof to hold the
16 weight of the solar panels. ESP used their employee Octavio Rosales, who is unlicensed, to
17 inspect and approve the roof. The contract also requested 80% of the contract price at the time of
18 materials ordered and 20% when the work was complete.

19 26. The system was installed on December 20, 2016 based on the information the roof
20 had been inspected and approved and further, if the solar panels were not installed, M.R. would
21 incur legal problems and can lose her house.

22 27. On or about December 23, 2016, the roof began to leak. ESP sent their representative,
23 Richard Alvarez, an unlicensed contractor, to inspect and repair the possible damage. He
24 purportedly patched the leak using a blue tarp and charged M.R. \$1,800.00, made payable to Mr.
25 Alvarez directly but ESP would reimburse M.R.

26 28. On or about December 29, 2016, the City of Norwalk issued a correction notice upon
27 inspection of the installation of the solar panels, citing the roof was not suitable for a solar panel
28 array along with other corrections of workmanship.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Duty of Qualifying Individual on Behalf of Another)**

3 29. Respondent is subject to disciplinary action under section 7068.1, in that on the
4 Marrilla Project, Respondent admitted he did not have direct knowledge and did not participate in
5 the project. He further admitted he did not personally check the qualifications of Richard Alvarez
6 and had used him for many years in other projects. Complainant realleges paragraphs 25-28.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Departure from Trade Standards)**

9 30. Respondent is subject to disciplinary action under section 7109, subdivision (a), in
10 that on the Marrilla Project, Respondent willfully departed in a material respect from accepted
11 trade standards for good and workmanlike construction as follows:

12 1. Respondent did not use the correct size fasteners. The nails protruded through
13 the underside of the perimeter sheathing.

14 2. Respondent did not complete the painting of the pipe and vent flashings and
15 fasteners along the ridgeline.

16 Complainant realleges paragraphs 25-28.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Omission or Misrepresentation of a Material Fact by an Applicant)**

19 31. Respondent is subject to disciplinary action under section 7112, in that on or about
20 August 16, 2012, in his original application for licensure, Respondent omitted the fact that his
21 Arizona Contractor's License No. 091073 was revoked on January 12, 2011. Complainant
22 realleges paragraphs 25-28.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Willful or Fraudulent Act)**

25 32. Respondent is subject to disciplinary action under section 7116, in that on the
26 Marrilla Project, Respondent committed willful and/or fraudulent acts causing substantial injury
27 to others. Complainant realleges paragraphs 25-28.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Working with Personnel Not On Record)**

3 33. Respondent is subject to disciplinary action under section 7117, subdivision (b) in
4 that Dallen Gietz is listed on the Articles of Incorporation filed with the Secretary of State as the
5 Secretary and Treasurer of ESP but is not listed on CSLB license information. Complainant
6 realleges paragraphs 25-28.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Contracting with Unlicensed Contractor)**

9 34. Respondent is subject to disciplinary action under section 7118 in that Respondent
10 referred unlicensed personnel Richard Alvarez to the homeowner to repair the roof and acted as a
11 representative of the company. Complainant realleges paragraphs 25-28.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Employed an Unregistered Salesperson)**

14 35. Respondent is subject to disciplinary action under section 7154 in that Respondent
15 employed an unregistered home improvement salesperson. Bobby Tetsch is not listed as a Home
16 Improvement Salesperson on license number 619149. Complainant realleges paragraphs 25-28.

17 **EIGHT CAUSE FOR DISCIPLINE**

18 **(Payment Exceeds Value of Work Performed)**

19 36. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(5)
20 in that the contract for the Marrilla Project requested a progress payment that exceeds the value of
21 work performed. Complainant realleges paragraphs 25-28.

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Misrepresentation in Obtaining Contract)**

24 37. Respondent is subject to disciplinary action under section 7161, subdivision (b) in
25 that ESP representatives told M.R. that an inspection of the roof would be done to confirm the
26 roof was adequate to install solar panels. Per the Correction Notice by the city, the roof was not
27 appropriate to have solar panels installed. Octavio Rosales does not have a C-39 license or any
28 other construction license. M.R. relied on the information that a professional roofer would inspect

1 the roof before installation for her to enter into the contract. Complainant realleges paragraphs 25-
2 28.

3 VILLAGE ROAD PROJECT

4 38. On or about October 7, 2016, an unregistered salesperson, Trevor Rizzuto represented
5 "Elevate Energy Partners," a sales company for Respondent "Energy Service Partners, Inc."
6 Respondent entered into a written home improvement contract with homeowner R.O. through Mr.
7 Rizzuto to install solar photovoltaic panels at his residence located on Village Road in Lakewood,
8 California. Mr. Rizzuto promised R.O. he would pay \$105.00 per month for the solar services and
9 the installation cost of the solar panels would be free.

10 39. Work began or about October 27, 2016 and was completed in about a week. The
11 permit was not approved by the City of Lakewood until November 21, 2016. The financial
12 agreement was not agreed to by the lender, Mosaic, until November 11, 2016, after the panels
13 were installed.

14 40. R.O. received the terms of the loan, he immediately reported to Dallen Gietz,
15 Respondent's son, the contract was not reflective of the agreement. Mr. Gietz responded by email
16 stating R.O. was still liable for the construction contract and he would have to find another way to
17 pay or a lien would be filed. R.O. dismantled the solar panels and sent them back to ESP.

18 41. Respondent filed for arbitration, to which R.O. did not attend, and obtained a default
19 judgment in the amount of \$26,162.00 against R.O. Respondent contacted R.O. to "help make
20 things right" and offered a proposed settlement which would include installing another set of solar
21 panels and a new roof on R.O.'s house by obtaining financing through the HERO (Home Energy
22 Renovation Opportunity) program¹. The settlement included a provision R.O. must remove all
23 consumer complaints and the judgment of \$26,162.00 would be absorbed in the HERO loan
24 masked by the new construction with a new price of \$47,100.00, exceeding the amount of the
25
26

27 ¹ HERO Financing allows the homeowner to obtain a loan of up to 15% of the home's
28 value towards energy efficiency upgrades. Repayment the loan in this matter was set up through
an impound escrow account and the lender added the payment to the property tax for up to a 25-
year term.

1 installation contract. Respondent also required R.O. to falsely sign the completion certificate after
2 the material were ordered and delivered by the work was not complete.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Illegal Gag Order in Settlement Agreement)**

5 42. Respondent is subject to disciplinary action under section 143.5, subdivision (a), as
6 Respondent, a licensee regulated by the Contractor's State License Board, included or permitted
7 to be included in his settlement agreement to settle the civil dispute with R.O. on the Village
8 Road project to "help make things right" by proposing to install another set of solar panels and a
9 new roof by obtaining financing through the HERO loan program, further requiring R.O. to
10 remove all consumer complaints. Complainant realleges paragraphs 38-41.

11 **ELEVENTH CAUSE FOR DISCIPLINE**

12 **(Failed to Secure Financing Prior to Commencement of the Project)**

13 43. Respondent is subject to disciplinary action under sections 7115 for violating section
14 7163 in that on or about October 11, 2016, Respondent failed to obtain approval or
15 countersignature from Mosaic to secure the financing as a noted requirement, rendering the
16 contract for construction unenforceable. Complainant realleges paragraphs 38-41.

17 **TWELFTH CAUSE FOR DISCIPLINE**

18 **(Subverting Investigation or Attempting to Subvert Investigation)**

19 44. Respondent is subject to discipline under section 7116.5, subdivision (a) for engaging
20 in conduct that subverts or attempts to subvert a Contractor's State License Board investigation.
21 Respondent entered into a new contract and a settlement agreement to demand R.O. remove any
22 consumer complaints as a part of a contingency to the agreement. Complainant realleges
23 paragraphs 38-41.

24 **THIRTEENTH CAUSE FOR DISCIPLINE**

25 **(Employment of Unregistered Home Improvement Salesperson)**

26 45. Respondent is subject to disciplinary action under section 7154, subdivision (d) in
27 that on the Village Road Project, Respondent employed Trevor Rizzuto to sell a home
28

1 improvement contract when Trevor Rizzuto was not registered with the Board as a home
2 improvement salesperson. Complainant realleges paragraphs 38-41.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Excessive Payment)**

5 46. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(5),
6 in that on the Village Road Project, Respondent received and requested payments in excess of the
7 value of work performed. Complainant realleges paragraphs 38-41.

8 **FIFTEENTH CAUSE FOR DISCIPLINE**

9 **(Substantial Misrepresentation to Procure Contract)**

10 47. Respondent is subject to disciplinary action under section 7161, subdivision (b), in
11 that on the Village Road Project, Respondent made the following substantial misrepresentations:

- 12 a. The payment would be \$105.00 per month
13 b. The installation of the solar panels would not be charged

14 Complainant realleges paragraphs 38-41.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

16 **(Fraud in the Execution)**

17 48. Respondent is subject to discipline for fraud in the execution under section 7161,
18 subdivision (c), because on the Village Road Project, Respondent willfully filed the HERO
19 application with a balance of \$47,100.00 remarking new work including installation of solar
20 panels, electrical panel, insulation, and inverters, after a majority of the work had already been
21 performed in the prior contract. Complainant realleges paragraphs 36-39.

22 **SEVENTEENTH CAUSE FOR DISCIPLINE**

23 **(Preparing or Accepting Trust Deed as Obligation for Improvement Work)**

24 49. Respondent is subject to disciplinary action under section 7161, subdivision (d),
25 because on the Village Road Project, Respondent reported the cost of the second contract to be
26 \$47,100.00 for the insulation, electrical panel, inverters, and solar panels after admitting he
27 inflated the cost to include the \$26,000.00 arbitration judgment from the previous contract and
28 billing for work that was already performed. Complainant realleges paragraphs 36-39.

PRAYER

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

1. Revoking or suspending Contractor's License Number 619149 issued to Energy Service Partners Inc. dba ESP Contracting, Kenneth Gary Gietz;

2. Prohibiting Kenneth Gary Gietz from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license Number 619149, issued to Energy Service Partners Inc. dba ESP Contracting, Kenneth Gary Gietz;

3. Revoking or suspending any other license for which Kenneth Gary Gietz is furnishing the qualifying experience or appearance;

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

5. Ordering restitution of all damages suffered by M.R. and R.O. as a result of Kenneth Gary Gietz's conduct as a contractor, as a condition of restoration of license Number 619149, issued to Energy Service Partners Inc. dba ESP Contracting, Kenneth Gary Gietz;

6. Ordering Energy Service Partners Inc. dba ESP Contracting, Kenneth Gary Gietz 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 Energy Service Partners Inc. dba ESP Contracting, Kenneth Gary Gietz to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each;

As to Rayker Inc. dba Greenspire Construction

8. Revoking or suspending Contractor's License No. 1018241 issued to Rayker Inc. dba Greenspire Construction, Kenneth Gary Gietz, RMO;

9. Prohibiting Kenneth Gary Gietz from serving as an officer, director, associate, partner, or qualifying individual of any license during the period that discipline is imposed on

license no. 1018241, issued to Rayker Inc. dba Greenspire Construction, Kenneth Gary Gietz, RMO;

10. Revoking or suspending any other license for which Kenneth Gary Gietz is furnishing the qualifying experience or appearance;

11. Ordering Rayker Inc. dba Greenspire Construction, Kenneth Gary Gietz, RMO to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each;

As to Quativa Inc.

12. Revoking or suspending Contractor's License No. 1022887 issued to Quativa Inc., Kenneth Gary Gietz, CEO/President;

13. Prohibiting Kenneth Gary Gietz from serving as an officer, director, associate, partner, or qualifying individual of any license during the period that discipline is imposed on license no. 1022887 issued to Quativa Inc., Kenneth Gary Gietz, CEO/President

14. Revoking or suspending any other license for which Kenneth Gary Gietz is furnishing the qualifying experience or appearance;

15. Ordering Quativa Inc., Kenneth Gary Gietz, CEO/President to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each;

As to All

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

DATED:

05/29/18

FILED

MAY 29 2018

CSLB DSS



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

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