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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 First Amended Accusation
13 Against:

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

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

20 Contractor's License No. 619149

21 Respondent.

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

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

Contractor's License No. 1018241

Affiliated Party.

QUATIVA INC., KENNETH GARY
GIETZ, CEO/PRESIDENT; DALLEN
GARY GIETZ, RMO

1010 Esplanade Unit 2
Redondo Beach, CA 90277

Contractor's License No. 1022887

Affiliated Party.

Case No. N2017-309

OAH No. 2018080633

FIRST AMENDED ACCUSATION AS TO
LICENSE #619149 ONLY

1 Complainant alleges:

2 **PARTIES**

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

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

11 **JURISDICTION**

12 3. This First Amended Accusation is brought before the Registrar under the authority of
13 the following laws. All section references are to the Business and Professions Code unless
14 otherwise indicated.

15 **STATUTORY PROVISIONS**

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

21 5. Section 143.5, subdivision (a) states in pertinent part:

22 "No licensee who is regulated by a board, bureau, or program within the Department of
23 Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall
24 include or permit to be included a provision in an agreement to settle a civil dispute, whether the
25 agreement is made before or after the commencement of a civil action, that prohibits the other
26 party in that dispute from contacting, filing a complaint with, or cooperating with the department,
27 board, bureau, or program within the Department of Consumer Affairs that regulates the licensee.
28 A provision of that nature is void as against public policy, and any licensee who includes or

1 permits to be included a provision of that nature in a settlement agreement is subject to
2 disciplinary action by the board, bureau, or program."

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

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

9 8. Section 7068.1 states:

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

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

18 "(2) The additional firm is a subsidiary of or a joint venture with the first. 'Subsidiary,' as
19 used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the
20 other firm."

21 "(3) With respect to a firm under paragraph (2), (3), or (4) of subdivision (b) of Section
22 7068, the majority of the partners, officers, or managers are the same."

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

25 "(c) The following definitions shall apply for purposes of this section:(1) 'Firm' means a
26 partnership, a limited partnership, a corporation, a limited liability company, or any other
27 combination or organization described in Section 7068.(2) 'Person' is limited to natural persons,
28 notwithstanding the definition of 'person' in Section 7025."

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

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

8 9. Section 7095 states that the Registrar in making his order may:

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

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

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

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

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

26 12. Section 7109 states:

27 “(a) A willful departure in any material respect from accepted trade standards for good and
28 workmanlike construction constitutes a cause for disciplinary action, unless the departure was in

1 accordance with plans and specifications prepared by or under the direct supervision of an
2 architect."

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

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

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

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

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

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

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

25 19. Section 7154 states:

26 "(a) A home improvement contractor licensed under this chapter shall notify the registrar in
27 writing, on a form prescribed by the registrar, about the employment of a registered home
28 improvement salesperson, pursuant to the terms of this article. This notification requirement shall

1 include, but not be limited to, the name and registration number of the home improvement
2 salesperson who is employed by the contractor. The form shall be submitted prior to the home
3 improvement salesperson beginning work for the contractor."

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

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

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

16 20. Section 7159.5 states:

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

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

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

25 21. Section 7161 states:

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

28

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

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

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

11 22. Section 7163 states:

12 "(a) No contract for home improvement shall be enforceable against the buyer if the
13 obtaining of a loan for all or a portion of the contract price is a condition precedent to the contract
14 or if the contractor provides financing, or in any manner assists the buyer to obtain a loan or
15 refers the buyer to any person who may loan or arrange a loan for all or a portion of the contract
16 price unless all of the following requirements are satisfied:

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

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

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

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

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

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

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

2 (c) If the contract is unenforceable pursuant to subdivision (a) or subdivision (b), the
3 contractor shall immediately and without condition return all money, property, and other
4 consideration given by the buyer. If the buyer gave any property as consideration and the
5 contractor does not or cannot return it for whatever reason, the contractor shall immediately
6 return the fair market value of the property or its value as designated in the contract, whichever is
7 greater. Nothing herein shall prohibit a contractor from receiving a downpayment otherwise
8 permitted by law provided the contractor returns the downpayment as herein required if the
9 contract is unenforceable pursuant to subdivision (a) or (b).

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

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

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

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

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

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

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

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

11 COST RECOVERY/RESTITUTION

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

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

19 MARRILLA PROJECT

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

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

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

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

11 **FIRST CAUSE FOR DISCIPLINE**

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

13 29. Respondent is subject to disciplinary action under section 7068.1, in that on the
14 Marrilla Project, Respondent admitted he did not have direct knowledge and did not participate in
15 the project. He further admitted he did not personally check the qualifications of Richard Alvarez
16 and had used him for many years in other projects. Complainant realleges paragraphs 25-28
17 above as though set forth fully herein.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Departure from Trade Standards)**

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

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

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

27 Complainant realleges paragraphs 25-28 above as though set forth fully herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 31. Respondent is subject to disciplinary action under section 7112, in that on or about
4 August 16, 2012, in his original application for licensure, Respondent omitted the fact that his
5 Arizona Contractor's License No. 091073 was revoked on January 12, 2011. Complainant
6 realleges paragraphs 25-28 above as though set forth fully herein.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Willful or Fraudulent Act)**

9 32. Respondent is subject to disciplinary action under section 7116, in that on the Marrilla
10 Project, Respondent committed willful and/or fraudulent acts causing substantial injury to others.
11 Complainant realleges paragraphs 25-28 above as though set forth fully herein.

12 **FIFTH CAUSE FOR DISCIPLINE**

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

14 33. Respondent is subject to disciplinary action under section 7117, subdivision (b) in that
15 Dallen Gietz is listed on the Articles of Incorporation filed with the Secretary of State as the
16 Secretary and Treasurer of ESP but is not listed on CSLB license information. Complainant
17 realleges paragraphs 25-28 above as though set forth fully herein.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Contracting with Unlicensed Contractor)**

20 34. Respondent is subject to disciplinary action under section 7118 in that Respondent
21 referred unlicensed personnel Richard Alvarez to the homeowner to repair the roof and acted as a
22 representative of the company. Complainant realleges paragraphs 25-28 above as though set
23 forth fully herein.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Employed an Unregistered Salesperson)**

26 35. Respondent is subject to disciplinary action under section 7154 in that Respondent
27 employed an unregistered home improvement salesperson. Bobby Tetsch is not listed as a Home
28

1 Improvement Salesperson on license number 619149. Complainant realleges paragraphs 25-28
2 above as though set forth fully herein.

3 **EIGHT CAUSE FOR DISCIPLINE**

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

5 36. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(5)
6 in that the contract for the Marrilla Project requested a progress payment that exceeds the value of
7 work performed. Complainant realleges paragraphs 25-28 above as though set forth fully herein.

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Misrepresentation in Obtaining Contract)**

10 37. Respondent is subject to disciplinary action under section 7161, subdivision (b) in
11 that ESP representatives told M.R. that an inspection of the roof would be done to confirm the
12 roof was adequate to install solar panels. Per the Correction Notice by the city, the roof was not
13 appropriate to have solar panels installed. Octavio Rosales does not have a C-39 license or any
14 other construction license. M.R. relied on the information that a professional roofer would inspect
15 the roof before installation for her to enter into the contract. Complainant realleges paragraphs
16 25-28 above as though set forth fully herein.

17 **VILLAGE ROAD PROJECT**

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

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

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

5 41. Respondent filed for arbitration, to which R.O. did not attend, and obtained a default
6 judgment in the amount of \$26,162.00 against R.O. Respondent contacted R.O. to "help make
7 things right" and offered a proposed settlement which would include installing another set of solar
8 panels and a new roof on R.O.'s house by obtaining financing through the HERO (Home Energy
9 Renovation Opportunity) program¹. The settlement included a provision R.O. must remove all
10 consumer complaints and the judgment of \$26,162.00 would be absorbed in the HERO loan
11 masked by the new construction with a new price of \$47,100.00, exceeding the amount of the
12 installation contract. Respondent also required R.O. to falsely sign the completion certificate after
13 the material were ordered and delivered by the work was not complete.

14 **TENTH CAUSE FOR DISCIPLINE**

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

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

23 ///

24 ///

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 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 43. Respondent is subject to disciplinary action under sections 7115 for violating section
4 7163 in that on or about October 11, 2016, Respondent failed to obtain approval or
5 countersignature from Mosaic to secure the financing as a noted requirement, rendering the
6 contract for construction unenforceable. Complainant realleges paragraphs 38-41 above as
7 though set forth fully herein.

8 **TWELFTH CAUSE FOR DISCIPLINE**

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

10 44. Respondent is subject to discipline under section 7116.5, subdivision (a) for engaging
11 in conduct that subverts or attempts to subvert a Contractors State License Board investigation.
12 Respondent entered into a new contract and a settlement agreement to demand R.O. remove any
13 consumer complaints as a part of a contingency to the agreement. Complainant realleges
14 paragraphs 38-41 above as though set forth fully herein.

15 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

17 45. Respondent is subject to disciplinary action under section 7154, subdivision (d) in
18 that on the Village Road Project, Respondent employed Trevor Rizzuto to sell a home
19 improvement contract when Trevor Rizzuto was not registered with the Board as a home
20 improvement salesperson. Complainant realleges paragraphs 38-41 above as though set forth
21 fully herein.

22 **FOURTEENTH CAUSE FOR DISCIPLINE**

23 **(Excessive Payment)**

24 46. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(5),
25 in that on the Village Road Project, Respondent received and requested payments in excess of the
26 value of work performed. Complainant realleges paragraphs 38-41 above as though set forth
27 fully herein.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

5 a. The payment would be \$105.00 per month

6 b. The installation of the solar panels would not be charged

7 Complainant realleges paragraphs 38-41 above as though set forth fully herein.

8 **SIXTEENTH CAUSE FOR DISCIPLINE**

9 **(Fraud in the Execution)**

10 48. Respondent is subject to discipline for fraud in the execution under section 7161,
11 subdivision (c), because on the Village Road Project, Respondent willfully filed the HERO
12 application with a balance of \$47,100.00 remarking new work including installation of solar
13 panels, electrical panel, insulation, and inverters, after a majority of the work had already been
14 performed in the prior contract. Complainant realleges paragraphs 38-41 above as though set
15 forth fully herein.

16 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

18 49. Respondent is subject to disciplinary action under section 7161, subdivision (d),
19 because on the Village Road Project, Respondent reported the cost of the second contract to be
20 \$47,100.00 for the insulation, electrical panel, inverters, and solar panels after admitting he
21 inflated the cost to include the \$26,000.00 arbitration judgment from the previous contract and
22 billing for work that was already performed. Complainant realleges paragraphs 38-41 above as
23 though set forth fully herein.

24 **ADDITIONAL VIOLATIONS – MARRILLA PROJECT**

25 50. In 2018, after the instant Accusation had been filed and served on Respondent,
26 Respondent entered into a settlement agreement with M.R. whereby Respondent would remove a
27 mechanics lien it had filed against M.R.'s residence, re-install the solar panels that had been
28 previously removed and left on the ground in M.R.'s backyard for over a year after a new roof

1 had to be installed when the original roof leaked within the first week of the initial installment of
2 the solar panels by Respondent, and arranged new financing of the project for M.R. The
3 settlement agreement was contingent upon M.R.'s agreeing to remove any complaints she had
4 made against Respondent, including the consumer complaint M.R. had submitted to the
5 Contractors State License Board (CSLB) against Respondent in connection with the subject
6 project. M.R. subsequently contacted the CSLB and tried to remove the consumer complaint she
7 had previously submitted to them regarding the subject project.

8 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

10 51. Respondent is subject to disciplinary action under section 143.5, subdivision (a), as
11 Respondent, a licensee regulated by the Contractors State License Board, included or permitted to
12 be included in his settlement agreement to settle the civil dispute with M.R. on the Marilla Project
13 a provision whereby M.R. would be required to remove all complaints she had previously made
14 against Respondent in regard to the instant project, including the consumer complaint she had
15 previously submitted to the CSLB against Respondent regarding the subject project. Complainant
16 realleges paragraphs 25-28, and 50 above as though set forth fully herein.

17 **NINETEENTH CAUSE FOR DISCIPLINE**

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

19 52. 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 which included a requirement
22 that M.R. remove any complaints she had previously made against Respondent, including the
23 consumer complaint she had previously submitted to the Contractors State License Board against
24 Respondent in connection with the subject project. Complainant realleges paragraphs 25-28, and
25 50 above as though set forth fully herein.

26 **PRAYER**

27 *WHEREFORE*, Complainant requests that a hearing be held on the matters herein alleged,
28 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; and
8. Taking such other and further action as deemed necessary and proper.

DATED: 2/21/19


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

FILED
FEB 21 2019
CSLB DSS