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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 Accusation Against:

Case No. N2018-552

15 **HAPPY POOLS, INC.**  
16 **DBA HOME PLUS**  
17 **BYONG HWA LEE, RMO**  
18 **HYO SAN KWACK, OFFICER**  
7924 Ronson Rd., #L  
San Diego, CA 92111

**ACCUSATION**

19 Contractor's License No. 983554, B, C33

20 **BYONG HWA LEE**  
21 **DBA HOME PLUS CONSTRUCTION**  
1661 Via Estrella  
Pomona, CA 91768

22 Contractor's License No. 947481, B, C33

23 Respondents.

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25 **PARTIES**

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

2. On or about May 8, 2013, the Registrar of Contractors (Registrar) issued Contractor's License Number 983554, Classifications B (General Building) and C33 (Painting and Decorating) to Happy Pools, Inc., doing business as Home Plus (Respondent Happy Pools). The Contractor's License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2021, unless renewed. Byong Hwa Lee (Respondent Byong Lee) associated as Responsible Managing Officer (RMO) on May 8, 2013.

3. Hyo San Kwack (Respondent Kwack) is listed as the Chief Executive Officer of Respondent Happy Pools in the records of the California Secretary of State, effective September 18, 2015. However, Respondent Happy Pools has not disclosed to the Registrar that Respondent Kwack occupies this position. Therefore, Respondent Kwack is not a member of the personnel of record for Respondent Happy Pools.

4. On or about May 18, 2010, the Registrar issued Contractor's License Number 947481 to Byong Hwa Lee, doing business as Home Plus Construction (Respondent Byong Lee). The Contractor's License will expire on May 31, 2020, unless renewed.

#### **PERSONNEL OF RECORD**

5. "Members of the personnel of record" of a corporation that holds a contractor's license is defined in Business and Professions Code (Code) section 7025 and "means every person listed in the records of the registrar as then associated with a licensee." Respondent Happy Pools is a corporation organized under the laws of California, and has listed the following individuals as associated personnel, which are of record with the Board and not named as respondents herein: Young-Hee Jung became an Officer on May 8, 2013.

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## JURISDICTION

6. This Accusation is brought before the Registrar for the Board, under the authority of the following laws. All section references are to the Code (Code) unless otherwise indicated.

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

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

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

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

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

10. Section 7106.5 of the Code states:

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

11. Section 7121 of the Code states:

A person who has been denied a license for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a partner, officer, director, manager, or associate of any 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.

12. 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

13. 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) If an individual, he or she shall qualify by personal appearance or by the appearance of his or her responsible managing employee who is qualified for the same license classification as the classification being applied for.

(2) If a partnership or a limited partnership, it shall qualify by the appearance of a general partner or by the appearance of a responsible managing employee who is qualified for the same license classification as the classification being applied for.

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

(4) If a limited liability company, it shall qualify by the appearance of a responsible managing officer, a responsible managing manager, responsible managing member, or a responsible managing employee who is qualified for the same license classification as the classification being applied for.

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14. Section 7068.1, subdivision (a), of the Code states, in pertinent part:

The person qualifying on behalf of an individual or firm under paragraph (1), (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations to secure compliance with this chapter and the rules and regulations of the board.

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15. Section 7083 of the Code states:

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

(b) Failure of the licensee to notify the registrar of any change to information within 90 days shall cause the change to be effective the date the written notification is received at the board's headquarters office.

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

16. Section 7096 of the Code states:

For the purposes of this chapter, the term "licensee" shall include an individual, partnership, corporation, limited liability company, joint venture, or any combination or organization licensed under this chapter, and shall also include any named responsible managing officer, responsible managing manager, responsible managing member, or personnel of that licensee whose appearance has qualified the licensee under the provisions of Section 7068.

17. Section 7112 of the Code states:

Omission or misrepresentation of a material fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an existing license constitutes a cause for disciplinary action.

18. 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.

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19. Section 7122.5 of the Code states:

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

**COST RECOVERY, RESTITUTION AND OTHER AUTHORITY**

20. Section 125.3 states, in pertinent part:

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

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

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21. Government Code section 11519 states:

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

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

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

(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.

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

4 (g) This section does not preclude an agency from taking immediate action to  
5 protect the public interest in accordance with Article 13 (commencing with Section  
6 11460.10) of Chapter 4.5.

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

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

14 23. Section 7095 of the Code states:

15 The decision may:

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

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

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

24 24. Section 7097 of the Code states:

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

29 25. Section 7098 of the Code states:

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

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1 26. Section 7102 of the Code states:

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

5 After revocation of a license upon any of the grounds set forth in this chapter,  
6 the license shall not be reinstated or reissued and a license shall not be issued to any  
7 member of the personnel of the revoked licensee found to have had knowledge of or  
8 participated in the acts or omissions constituting grounds for revocation, within a  
9 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  
or omission for which the license was revoked has been fully satisfied and that all  
conditions imposed by the decision of revocation have been complied with.

10 The board shall promulgate regulations covering the criteria to be considered  
11 when extending the minimum one-year period. The criteria shall give due  
12 consideration to the appropriateness of the extension of time with respect to the  
13 following factors:

- 14 (a) The gravity of the violation.  
15 (b) The history of previous violations.  
16 (c) Criminal convictions.

17 When any loss has been reduced to a monetary obligation or debt, however, the  
18 satisfaction of the monetary obligation or debt as a prerequisite for the issuance,  
19 reissuance, or reinstatement of a license shall not be required to the extent the  
20 monetary obligation or debt was discharged in a bankruptcy proceeding. However,  
21 any nonmonetary condition not discharged in a bankruptcy proceeding shall be  
22 complied with prior to the issuance, the reissuance, or reinstatement of the license.

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**FACTUAL ALLEGATIONS**

**BUCK HILL PLACE PROJECT**

27. In or around January, 2018, homeowner YC met with JL to discuss possible remodel work on her home located on Buck Hill Place in Buena Park, California. (Buck Hill Place project). JL asked for a \$1,000.00 down payment to reserve his services. YC paid the down payment on January 15, 2018.

28. YC went to the house on or around January 19, 2018 and found JL demolishing parts of the house with a work crew. Homeowner YC was surprised that the work occurred without a written contract. Shortly thereafter, JL presented Homeowner YC with a written contract price of \$700,000.00. The contract listed "Sang Lee" as JL's Korean name. JL quoted a completion time of about six months. JL represented himself as a licensed contractor by falsely stating the license number belonging to a company called Morning Construction.

29. In February of 2018, the Board's SWIFT Unit<sup>1</sup> issued a citation to JL for operating without a license and for failure to maintain worker's compensation insurance. The Board's SWIFT Unit also issued a citation to Morning Construction for aiding and abetting and abetting unlicensed contractor JL.<sup>2</sup> The citations were issued for work performed at the Buck Hill Place Project.

30. On or about February 10, 2018, YC submitted a notarized letter to the Buena Park Building Department changing the contractor on record from unlicensed contractor JL, also known as SL, to Respondent Home Plus, and listed unlicensed contractor JL as the project manager, however, no contracts were signed between YC and Home Plus.

31. JL continued to work on the Buck Hill Place project intermittently. YC regularly issued payments to JL. In or about June of 2018, YC noticed that JL had not completed much more than framing and would not meet his time frame. YC called JL to discuss the matter. By this point in the project, YC paid JL \$530,000.00. JL stopped coming to the project on or around

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<sup>1</sup> Statewide Investigative Fraud Team.

<sup>2</sup> Both citations were completed and are final.

1 June 25, 2018. YC continued to call JL to schedule a full crew for completion of the project but  
2 JL sent a single employee for the month of July, and then abandoned the job completely.

3 32. On or around July 20, 2018, YC received a copy of an insurance certificate issued to  
4 Home Plus. This was the first proof of insurance supplied despite YC's repeated attempts to  
5 obtain proof of insurance. YC and her husband, MC researched JL and determined that the name  
6 listed on the contract, "Sang Lee," was not JL. MC called "Sang Lee" and the owner of Home  
7 Plus, Respondent Hyo Kwack. "Sang Lee" and Respondent Kwack admitted some sort of  
8 involvement. Around that time, YC received a certificate of liability insurance for the project  
9 which listed Respondent Happy Pools as the insured entity. Respondent Kwack sent work crew  
10 sometime in mid-August, 2018. The crew worked on the project for approximately one week.  
11 Respondent Kwack then stated he did not want to continue to work on the project. Respondent  
12 Kwack and "Sang Lee" met with MC and agreed to jointly pay \$200,000.00 to YC and MC if  
13 they agreed not to file any complaints or take any legal action. "Sang Lee" and Respondent  
14 Kwack paid YC and MC \$50,000.00 in cash and issued an additional \$50,000.00 in credit to  
15 Pacific Sales and Ganahl Lumber. The agreement required "Sang Lee" and Respondent Kwack  
16 to pay the remaining \$50,000.00 by October, 2018. YC and MC contacted "Sang Lee" and  
17 Respondent Kwack again. "Sang Lee" and Respondent Kwack demanded that YC and MC drop  
18 any complaint against JL if they wanted to receive the final \$100,000.00. YC and MC refused.

19 33. On or about May 20, 2019, a Board enforcement representative (ER) met with YC,  
20 who informed the ER that the contact person for Respondent Happy Pools was Respondent  
21 Kwack, who represented himself as David Hyo Kwack to the homeowner. Thereafter, YC filed a  
22 civil lawsuit against Respondents. A financial injury was not determined.

23 34. On or about May 20, 2019, the Board's ER spoke with Respondent Byong Lee, who  
24 admitted to the ER that Respondent Byong Lee 1) had not had any involvement nor exercised  
25 direct supervision and control over the project; 2) did not have a regular role with the day to day  
26 operations of Respondent Happy Pools; and 3) confirmed that he owned only 11% of the  
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1 company.<sup>3</sup> Respondent Byong Lee further informed the ER that undisclosed principal,  
2 Respondent Kwack, was the primary owner and operator of Respondent Happy Pools.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Failure to Exercise Direct Supervision – Respondent Happy Pools)**

5 35. Respondent Happy Pools has subjected its license to disciplinary action under Code  
6 section 7068.1, as set forth at paragraphs 27 through 34, which are incorporated here by this  
7 reference, in that on the YC project, Respondent Byong Lee failed to exercise direct  
8 supervision and control of construction operations.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Failure to Notify of Personnel Change – Respondent Happy Pools)**

11 36. Respondent Happy Pools has subjected its license to disciplinary action under Code  
12 section 7083, subdivision (c), as set forth at paragraph 3, in that Respondent Happy Pools failed  
13 to notify the Registrar of a change in the personnel of the corporation within 90 days, as required  
14 by Code section 7083, subdivision (a). Respondent Kwack became an officer of Respondent  
15 Happy Pools according to the records of the Secretary of State, effective September 18, 2015.  
16 However, Respondent Happy Pools failed to disclose to the Registrar that Respondent Kwack  
17 became an officer.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Omission or Misrepresentation of a Material Fact – Respondent Happy Pools)**

20 37. Respondent Happy Pools has subjected its license to disciplinary action under Code  
21 section 7112, as set forth at paragraphs 27 through 34, which are incorporated here by this  
22 reference, in that on the Application for Original Contractors License – Examination Waiver  
23 dated November 6, 2012, Respondent Happy Pools' RMO, Respondent Byong Lee,  
24 misrepresented under penalty of perjury the percentage of ownership of Respondent Happy Pools.

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27 <sup>3</sup> On or about November 6, 2012, Respondent Byong Lee signed an Application for  
28 Original Contractor License which he signed under penalty of perjury attesting to owning 10% of  
the company.

**FOURTH CAUSE FOR DISCIPLINE**

**(Undisclosed Personnel – Respondent Happy Pools)**

38. Respondent Happy Pools has subjected its license to disciplinary action under Code section 7117, subdivision (b), in that Respondent Happy Pools acted in the capacity of a contractor, as set forth in paragraphs 3 and 27 through 34, which are incorporated here by this reference, with personnel who were not listed in the records of the Registrar as then associated with it. Respondent Kwack became an Officer/Secretary of Respondent Happy Pools in the records of the Secretary of State, effective September 18, 2015. However, Respondent Happy Pools failed to disclose to the Board that Respondent Kwack became an officer.

**FIFTH CAUSE FOR DISCIPLINE**

**(Cause for Discipline for Qualifier – Respondent Byong Lee)**

39. Pursuant to section 7122.5 of the Code, the causes for discipline established as to Respondent Happy Pools constitute cause for discipline against Respondent Byong Lee, doing business as Home Plus Construction, under license number 947481, regardless of whether Respondent Byong Lee had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent Happy Pools.

**CAUSES FOR OTHER ACTION**

**FIRST CAUSE FOR OTHER ACTION**

**(Restrictions on Corporate Qualifier – Respondent Byong Lee)**

40. Pursuant to section 7121.5 of the Code, if license number 983554 issued to Respondent Happy Pools is revoked or suspended, Respondent Byong Lee shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee during the time the discipline is imposed, whether or not he had knowledge of or participated in the acts or omissions constituting grounds for discipline as alleged in the causes for discipline, above, and any licensee which employs, elects, or associates Respondent Byong Lee other than as a bona fide nonsupervising employee shall be subject to disciplinary action.

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7. Taking such other and further action deemed proper.

DATED:

11/5/19



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

FILED

NOV 05 2019

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