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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**

13 In the Matter of the Accusation Against:

Case No. N2021-210

14 **CIRO CABALLERO GARZA**
15 **DBA GARZA'S HEATING AND AIR**
16 **CONDITIONING**
2928 9th Street
Riverside, CA 92507

ACCUSATION

17 Contractor's License No. 1020682
18 Classification: C-20

Respondent.

19
20 **PARTIES**

21 1. Thomas Jager (Complainant) brings this Accusation solely in his official capacity as
22 the Supervising Special Investigator I of the Contractors State License Board (Board),
23 Department of Consumer Affairs.

24 2. On or about November 10, 2016, the Registrar of Contractors (Registrar) issued
25 Contractor's License Number 1020682, in Classification C-20 (Warm-Air Heating, Ventilating
26 and Air-Conditioning) to Ciro Caballero Garza, doing business as Garza's Heating and Air
27 Conditioning (Respondent). The Contractor's License expired on November 30, 2018, and has
28 not been renewed.

JURISDICTION

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

4. Code section 7076.5, subdivision (h), 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.

5. Code section 7090 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.

6. Code section 7106.5 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.

7. Code section 7121 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.

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STATUTORY PROVISIONS

8. Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

....

9. Code section 493 states:

(a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

(c) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

...

(e) This section shall become operative on July 1, 2020.

10. Code section 7123 states:

A conviction of a crime substantially related to the qualifications, functions and duties of a contractor constitutes a cause for disciplinary action. The record of the conviction shall be conclusive evidence thereof.

11. Code section 7124 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 868, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act, as defined in Section 480 of the code, shall be considered to be substantially related to the qualifications, functions, or duties of a licensee (under Division 3, Chapter 9 of the code) if it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the licensee in a manner consistent with the public health, safety, and welfare. The crimes or acts shall include, but not be limited to, the following:

(a) Any violation of the provisions of Chapter 9 of Division 3 of the code.

(b) Failure to comply with the provisions of the California Administrative Code, Chapter 8, Title 16.

(c) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another.

(d) Crimes or acts involving physical violence against persons.

(e) Crimes or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.

13. California Code of Regulations, title 16, section 869, subdivision (a), states:

When considering the denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the code, the Board in evaluating the applicant's or licensee's rehabilitation and present eligibility for a license will consider the following criteria:

(1) Subject to the provisions of subsection (a)(2), an applicant or licensee may be determined to be rehabilitated if he or she meets the following criteria:

1 (A) For felony convictions that are substantially related to the qualifications,
2 functions, or duties of a licensee as defined in Section 868, seven (7) years have passed
3 from the time of release from incarceration or completion of probation if no
4 incarceration was imposed, without the occurrence of additional criminal activity or
5 substantially-related acts.

6 (B) For misdemeanor convictions that are substantially related to the
7 qualifications, functions, or duties of a licensee as defined in Section 868, three (3)
8 years have passed from the time of release from incarceration or completion of
9 probation if no incarceration was imposed, without the occurrence of additional
10 criminal activity or substantially-related acts.

11 (C) For acts that are substantially related to the qualifications, functions, or
12 duties of a licensee as defined in Section 868, three (3) years have passed from the time
13 of commission of the act(s), without the occurrence of criminal activity or additional
14 substantially-related acts.

15 (2) The amount of time needed to demonstrate rehabilitation under subsection
16 (a)(1) may be increased or decreased by taking into account the following:

17 (A) The nature and severity of the crime(s) or act(s) that are under
18 consideration as, or that were, the grounds for denial, suspension, or revocation.

19 (B) Evidence of any crime(s) or act(s) committed subsequent to the crime(s)
20 or act(s) that are under consideration as, or that were, the grounds for denial,
21 suspension, or revocation, which also could be considered as grounds for denial,
22 suspension, or revocation.

23 (C) The time that has elapsed since commission of the crime(s) or act(s) that
24 are under consideration as, or that were, the grounds for denial, suspension, or
25 revocation.

26 (D) The extent to which the applicant or licensee has complied with any
27 terms of parole, probation, restitution, or any other sanctions lawfully imposed against
28 the applicant or licensee.

(E) Consistent work history subsequent to the release from incarceration, or
the completion of probation if no incarceration was imposed, or subsequent to the time
of commission of the act(s).

(F) Documents or testimony from credible individuals who have personal
knowledge of the applicant's or licensee's life and activities subsequent to the time of
commission of the crime(s) or act(s) who can attest to the applicant's or licensee's
present fitness for licensure.

(G) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

(H) Other relevant evidence, if any, of rehabilitation submitted by the
applicant or licensee. For example, relevant evidence may include evidence of recovery
from drug and/or alcohol addiction or abuse or completion of a drug and/or alcohol
aversion program if the crime(s) or act(s) related to or involved drug and/or alcohol
use; or evidence of completion of an anger management program if the crime(s) or
act(s) demonstrated the applicant's or licensee's inability to control one's temper.

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

2 14. Code section 125.3 states, in pertinent part:

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

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

11

12 15. Government Code section 11519 states:

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

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

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

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

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

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

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

 16. Code section 7095 states:

 The decision may:

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

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

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

5 17. Code section 7097 states:

6 Notwithstanding the provisions of Sections 7121 and 7122, when any licensee
7 has been suspended by a decision of the registrar pursuant to an accusation or pursuant
8 to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any additional license
9 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.

10 18. Code section 7098 states:

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

14 19. Code section 7102 states:

15 After suspension of a license upon any of the grounds set forth in this chapter
16 [the Contractors' State License Law], the registrar may reinstate the license upon proof
17 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.

18 After revocation of a license upon any of the grounds set forth in this chapter, the
19 license shall not be reinstated or reissued and a license shall not be issued to any
20 member of the personnel of the revoked licensee found to have had knowledge of or
21 participated in the acts or omissions constituting grounds for revocation, within a
22 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.

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

- 26 (a) The gravity of the violation.
- 27 (b) The history of previous violations.
- 28 (c) Criminal convictions.

1 When any loss has been reduced to a monetary obligation or debt, however, the
2 satisfaction of the monetary obligation or debt as a prerequisite for the issuance,
3 reissuance, or reinstatement of a license shall not be required to the extent the monetary
4 obligation or debt was discharged in a bankruptcy proceeding. However, any
5 nonmonetary condition not discharged in a bankruptcy proceeding shall be complied
6 with prior to the issuance, the reissuance, or reinstatement of the license.

7 CAUSE FOR DISCIPLINE

8 **(April 28, 2021 Criminal Convictions for Negligent Discharge of a Firearm, Unlawful 9 Possession of an Assault Weapon and Animal Cruelty on June 7, 2020)**

10 20. Respondent has subjected his contractor's license to disciplinary action under Code
11 sections 490 and 7123 because he was convicted of crimes that are substantially related to the
12 qualifications, functions or duties of a licensed contractor. On April 28, 2021, in a criminal
13 proceeding entitled *The People of the State of California v. Ciro Caballero Garza*, in Riverside
14 County Superior Court, Case No. RIF2001430, Respondent pled guilty and was convicted of
15 violating Penal Code sections 246.3, subdivision (a) and 1192.7, subdivision (c)(8) (negligent
16 discharge of a firearm); Penal Code section 30605, subdivision (a) (possession of an assault
17 weapon); and Penal Code section 597, subdivision (a) (malicious killing, maiming, torture,
18 wounding and mutilating an animal, to wit, a dog), all felonies. Respondent was sentenced to 180
19 days in sheriff's custody, with a credit of four days for time served, and the remaining 176 days to
20 be served in the Work Release Program. Respondent was granted formal probation for 24 months
21 and was ordered to, among other things, complete a counseling/treatment rehabilitation program,
22 to pay various court fines and fees, and to have no direct contact with the minor child who was
23 present during the commission of Respondent's crimes.

24 21. The circumstances that led to the convictions are that on June 7, 2020, officers with
25 the Riverside Police Department responded to a local residence to investigate multiple reports of
26 gunshots fired. Upon arrival, officers made contact with Respondent who stated that he was
27 shooting his rifle in the backyard. During a search of the residence, officers observed multiple
28 open and empty beer cans throughout the home and found a six-year-old child sitting on the
living room couch. Officers also located two firearms and retrieved approximately 1000 live
rounds of ammunition and AR-15 accessories that were located in Respondent's bedroom. The
rifle was registered to Respondent and had been stripped of its California Compliance

1 components in violation of Penal Code section 30900, subdivision (b)(1).¹ While officers
2 conducted a safety sweep of the backyard, they located a severely injured dog and noticed several
3 bullet strikes on the fence and ground. The dog sustained a single gunshot wound to the upper
4 back, shoulder area. During questioning, Respondent admitted to shooting his dog. Respondent
5 was arrested for possession of an assault rifle (Pen. Code, § 30605(a)), animal cruelty (Pen. Code,
6 § 597(a)), child endangerment (Pen. Code, 273a(a)), and negligent discharge of a firearm (Pen.
7 Code, § 246.3(a)).

8 **CAUSE FOR OTHER ACTION**

9 **(Restrictions for Respondent Ciro Caballero Garza)**

10 22. Pursuant to Code section 7121, if license number 1020682, issued to Respondent is
11 revoked or suspended, Respondent Ciro Caballero Garza shall be prohibited from serving as an
12 officer, director, associate, partner, manager, qualifying individual or member of the personnel of
13 record of a licensee.

14 **PRAYER**

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

17 1. Ordering the revocation or suspension of Contractor's License Number 1020682
18 issued to Respondent Ciro Caballero Garza, doing business as Garza's Heating and Air
19 Conditioning, pursuant to Code section 7090;

20 2. Ordering Respondent Ciro Caballero Garza, doing business as Garza's Heating and
21 Air Conditioning to pay the Registrar costs for the investigation and enforcement of the case
22 according to proof at the hearing, pursuant to Code section 125.3;

23 3. Ordering that Respondent Ciro Caballero Garza is prohibited from serving as an
24 officer, director, associate, partner, manager, qualifying individual, or member of the personnel of
25 record of a licensee, pursuant to Code section 7121;

26
27 ¹ Pen Code, § 30900(b)(1) states, in pertinent part, that any person who, from January 1,
28 2001, to December 31, 2016... lawfully possessed an assault weapon that does not have a fixed
magazine... including those weapons with an ammunition feeding device that can be readily
removed from the firearm with the use of a tool, shall register the firearm....

1 4. Ordering Respondent Ciro Caballero Garza, doing business as Garza's Heating and
2 Air Conditioning to provide the Registrar with a listing of all contracting projects in progress and
3 the anticipated completion date of each, pursuant to Code section 7095; and

4 5. Taking such other and further action deemed proper.
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6

7 DATED: 5-11-22



THOMAS JAGER
Supervising Special Investigator I
Contractors State License Board
Department of Consumer Affairs
State of California
Complainant

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