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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. N2022-204

15 **ZENERNET INSTALLATION COMPANY**
16 **LLC, ROBERT THOMAS GORMAN,**
17 **Responsible Managing Manager, JOHN**
18 **PAUL GERKEN, Member**
19 **4340 E Indian School Road**
20 **Phoenix, AZ 85018**

ACCUSATION

21 **Contractor License No. 1085206**

Respondent.

22 **PARTIES**

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

26 2. On or about December 20, 2021, the Registrar of Contractors (Registrar) issued
27 Contractor License Number 1085206 to Zenernet Installation Company LLC (Respondent
28 Zenernet) with John Paul Gerken (Respondent Gerken) as the sole Member, and Robert Thomas
Gorman (Respondent Gorman) as the Responsible Managing Manger (RMG) until he

1 disassociated on November 7, 2022. The contractor license was in full force and effect at all
2 times relevant to the charges brought in this Accusation and will expire on December 31, 2023,
3 unless renewed.

4 JURISDICTION

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

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

9 The suspension, expiration, or forfeiture by operation of law of a license issued
10 by a board in the department, or its suspension, forfeiture, or cancellation by order of
11 the board or by order of a court of law, or its surrender without the written consent of
12 the board, shall not, during any period in which it may be renewed, restored, reissued,
13 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.

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

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

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

20 7. Section 7106.5 of the Code states:

21 The expiration, cancellation, forfeiture, revocation, or suspension of a license
22 by operation of law or by order or decision of the registrar or a court of law, or the
23 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.

24 8. Section 7121 of the Code states:

25 A person who has been denied a license for a reason other than failure to
26 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
27 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
28 partnership, corporation, limited liability company, firm, or association whose
application for a license has been denied for a reason other than failure to document

1 sufficient satisfactory experience for a supplemental classification for an existing
2 license, or whose license has been revoked, or whose license is under suspension, or
3 who has failed to renew a license while it was under suspension, and while acting as a
4 partner, officer, director, manager, or associate had knowledge of or participated in
5 any of the prohibited acts for which the license was denied, suspended, or revoked,
6 shall be prohibited from serving as an officer, director, associate, partner, manager,
7 qualifying individual, or member of the personnel of record of a licensee, and the
8 employment, election, or association of this type of person by a licensee in any
9 capacity other than as a nonsupervising bona fide employee shall constitute grounds
10 for disciplinary action.

11 9. Section 7121.5 of the Code states:

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

19 STATUTORY PROVISIONS

20 10. Section 7159.5 of the Code states:

21 This section applies to all home improvement contracts, as defined in Section
22 7151.2, between an owner or tenant and a contractor, whether a general contractor or
23 a specialty contractor, that is licensed or subject to be licensed pursuant to this
24 chapter with regard to the transaction.

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

28 ...

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

...

11. Section 7107 of the Code states:

Abandonment without legal excuse of any construction project or operation
engaged in or undertaken by the licensee as a contractor constitutes a cause for
disciplinary action.

12. Section 7110 of the Code states:

Willful or deliberate disregard and violation of the building laws of the state, or
of any political subdivision thereof, or of Section 8550 or 8556 of this code, or of
Sections 1689.5 to 1689.15, inclusive, of the Civil Code, or of the safety laws or labor
laws or compensation insurance laws or Unemployment Insurance Code of the state,
or of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing
with Section 4100) of Part 1 of Division 2 of the Public Contract Code), or violation
by any licensee of any provision of the Health and Safety Code or Water Code,

1 relating to the digging, boring, or drilling of water wells, or Article 2 (commencing
2 with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code,
3 constitutes a cause for disciplinary action.

4
5 13. Section 7154 of the Code states:

6 ...

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

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

12 14. Section 125.3 of the Code states, in pertinent part:

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

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

21 ...

22 15. Section 11519 of the Government Code states:

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

27 (b) A stay of execution may be included in the decision or if not included
28 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

1 manner provided in Section 11505 or has actual knowledge of the decision.

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

5 (g) This section does not preclude an agency from taking immediate action to
6 protect the public interest in accordance with Article 13 (commencing with Section
7 11460.10) of Chapter 4.5.

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

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

15 17. Section 7095 of the Code states:

16 The decision may:

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

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

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

25 18. Section 7097 of the Code states:

26 Notwithstanding the provisions of Sections 7121 and 7122, when any licensee
27 has been suspended by a decision of the registrar pursuant to an accusation or
28 pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any
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.

19. Section 7098 of the Code states:

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

20. Section 7102 of the Code states:

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

6 After revocation of a license upon any of the grounds set forth in this chapter,
7 the license shall not be reinstated or reissued and a license shall not be issued to any
8 member of the personnel of the revoked licensee found to have had knowledge of or
9 participated in the acts or omissions constituting grounds for revocation, within a
10 minimum period of one year and a maximum period of five years after the final
11 decision of revocation and then only on proper showing that all loss caused by the act
12 or omission for which the license was revoked has been fully satisfied and that all
13 conditions imposed by the decision of revocation have been complied with.

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

- 18 (a) The gravity of the violation.
- 19 (b) The history of previous violations.
- 20 (c) Criminal convictions.

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

27 FACTUAL ALLEGATIONS

28 21. On March 24, 2021, homeowner DP was solicited at his home by an unregistered
Home Improvement Salesman on behalf of Respondent Zenernet. DP entered into a written
contract with Respondent Zenernet to install solar panels and a backup battery storage system at
DP's home for a total cost of \$42,827.00.

22 22. A subcontractor started the installation at DP's home on July 26, 2021, but the new
23 breaker box was left empty, and the system was never connected to DP's existing utility service.

24 23. According to the City of Fremont Building Department, the plans for DP's project
25 went through two review cycles but were "disapproved" due to insufficient information and non-
26 compliance with the building codes. The City has received no response to the comments it sent
27 on November 4, 2022, and as of December 9, 2022, no permit was issued for DP's system.

28 24. Respondent Zenernet has not completed or corrected DP's project, or provided a final

1 inspection from the City of Fremont. Respondent Zenernet has not obtained a final inspection
2 from PG&E or obtained a Permission to Operate for the system.

3 25. Respondent Zenernet received full payment of the contract price even though DP's
4 system is not functional and DP is not receiving credit from PG&E.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Abandoned Project without Legal Excuse While Work Still Needed to be Completed)

7 26. Respondent Zenernet subjected its license to disciplinary action under Code section
8 7107 in that it abandoned the DP project without legal excuse, and without completing the work
9 on the DP project, as set forth in paragraphs 21 through 25, which are incorporated by reference.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Failed to Obtain Permit Before Work Being Performed)

12 27. Respondent Zenernet subjected its license to disciplinary action under Code section
13 7110 in that it started working on DP's project before applying for or obtaining the permit. The
14 circumstances are more particularly set forth in paragraphs 22 through 25 above, which are
15 incorporated by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Employed Unregistered Salesperson)

18 28. Respondent Zenernet subjected its license to disciplinary action under Code section
19 7154, subdivision (d) in that it employed an unregistered Home Improvement Salesperson. The
20 circumstances are more particularly set forth in paragraph 21 above, which is incorporated by
21 reference.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 (Requested and Received Excess Amount of Money
24 Before Work Performed or Materials Delivered)

25 29. Respondent Zenernet subjected its license to disciplinary action under Code section
26 7159.5, subdivision (a)(5) in that it received full payment for the DP project before completing
27 the work. The circumstances are more particularly set forth in paragraphs 21 through 25 above,
28 which are incorporated by reference.

///

1 Installation Company LLC, is ordered, an order for restitution of all damages suffered by DP as a
2 result of Respondent Zenernet Installation Company LLC's conduct as a contractor, as a
3 condition precedent to any future restoration of Contractor License Number 1085206, or before
4 any new license is issued;

5 4. Ordering Respondent Zenernet Installation Company LLC to pay the Registrar costs
6 for the investigation and enforcement of the case according to proof at the hearing, pursuant to
7 Code section 125.3;

8 5. Ordering Respondent Zenernet Installation Company LLC to provide the Registrar
9 with a listing of all contracting projects in progress and the anticipated completion date of each,
10 pursuant to Code section 7095;

11 6. Ordering that Respondent Robert Thomas Gorman is prohibited from serving as an
12 officer, director, associate, partner, manager or qualifying individual of a licensee, pursuant to
13 Code section 7121.5;

14 7. Ordering that Respondent John Paul Gerken is prohibited from serving as an officer,
15 director, associate, partner, manager, qualifying individual or member of the personnel of record
16 of a licensee, pursuant to Code section 7121;

17 8. Taking such other and further action deemed proper.

18
19
20 DATED: 2-3-23



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

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