

1 ROB BONTA
Attorney General of California
2 NANCY A. KAISER
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY
Deputy Attorney General
4 State Bar No. 131800
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6301
6 Facsimile: (916) 731-2126
Attorneys for Complainant
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8 **BEFORE THE**
9 **REGISTRAR OF CONTRACTORS**
10 **CONTRACTORS STATE LICENSE BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. N2023-215

14 **DANIEL AYALA DBA D A**
15 **CONSTRUCTION COMPANY**
4900 California Ave, Ste 305A
Bakersfield, CA 93309

ACCUSATION

16 Contractor's License No. 1024166

17 Respondent.
18
19

20 **PARTIES**

21 1. Brian Melvin (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 February 28, 2017, the Registrar of Contractors (Registrar) issued
25 Contractor's License Number 1024166 to Daniel Ayala dba D A Construction Company
26 (Respondent). The Contractor's License was in full force and effect at all times relevant to the
27 charges brought herein and will expire on February 28, 2025, unless renewed.

28 ///

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. 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.

5. 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.

6. 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.

7. 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.

8. 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,

1 qualifying individual, or member of the personnel of record of a licensee, and the
2 employment, election, or association of this type of person by a licensee in any
3 capacity other than as a nonsupervising bona fide employee shall constitute grounds
4 for disciplinary action.

5 **STATUTORY PROVISIONS**

6 9. Section 7109, subdivision (a) of the Code states:

7 A willful departure in any material respect from accepted trade standards for good
8 and workmanlike construction constitutes a cause for disciplinary action, unless the
9 departure was in accordance with plans and specifications prepared by or under the direct
10 supervision of an architect.

11 10. Section 7111.1 of the Code states:

12 The failure of, or refusal by, a licensee to respond to a written request of the
13 registrar to cooperate in the investigation of a complaint against that licensee
14 constitutes a cause for disciplinary action.

15 11. Section 7113 of the Code states:

16 Failure in a material respect on the part of a licensee to complete any
17 construction project or operation for the price stated in the contract for such
18 construction project or operation or in any modification of such contract constitutes a
19 cause for disciplinary action.

20 12. Section 7125.4 of the Code states, in pertinent part:

21 (a) The filing of the exemption certificate prescribed by this article that is false,
22 or the employment of a person subject to coverage under the workers' compensation
23 laws after the filing of an exemption certificate without first filing a Certificate of
24 Workers' Compensation Insurance or Certification of Self-Insurance in accordance
25 with the provisions of this article, or the employment of a person subject to coverage
26 under the workers' compensation laws without maintaining coverage for that person,
27 constitutes cause for disciplinary action.

28 13. Section 7159 of the Code states, in pertinent part:

(a) (1) This section identifies the projects for which a home improvement
contract is required, outlines the contract requirements, and lists the items that shall
be included in the contract, or may be provided as an attachment.

....

(c) In addition to the specific requirements listed under this section, every home
improvement contract and any person subject to licensure under this chapter or their agent
or salesperson shall comply with all of the following:

1 (1) The writing shall be legible.

2 (2) Any printed form shall be readable. Unless a larger typeface is specified in this article,
3 text in any printed form shall be in at least 10-point typeface and the headings shall be in at
4 least 10-point boldface type.

5 (3) (A) Before any work is started, the contractor shall give the buyer a copy of the
6 contract signed and dated by both the contractor and the buyer. The buyer's receipt of the
7 copy of the contract initiates the buyer's rights to cancel the contract pursuant to Sections
8 1689.5 to 1689.14, inclusive, of the Civil Code.

9 (B) The contract shall contain on the first page, in a typeface no smaller than that
10 generally used in the body of the document, both of the following:

11 (i) The date the buyer signed the contract.

12 (ii) The name and address of the contractor to which the applicable "Notice of
13 Cancellation" is to be mailed, immediately preceded by a statement advising the buyer that
14 the "Notice of Cancellation" may be sent to the contractor at the address noted on the
15 contract.

16 (4) The contract shall include a statement that, upon satisfactory payment being made for
17 any portion of the work performed, the contractor, prior to any further payment being made,
18 shall furnish to the person contracting for the home improvement or swimming pool work a
19 full and unconditional release from any potential lien claimant claim or mechanics lien
20 authorized pursuant to Sections 8400 and 8404 of the Civil Code for that portion of the
21 work for which payment has been made.

22 (5) A change-order form for changes or extra work shall be incorporated into the contract
23 and shall become part of the contract only if it is in writing and signed by the parties prior
24 to the commencement of any work covered by a change order.

25 (6) The contract shall contain, in close proximity to the signatures of the owner and
26 contractor, a notice stating that the owner or tenant has the right to require the contractor to
27 have a performance and payment bond.

28 (7) If the contract provides for a contractor to furnish joint control, the contractor shall not
have any financial or other interest in the joint control.

(8) The provisions of this section are not exclusive and do not relieve the contractor from
compliance with any other applicable provision of law.

(d) A home improvement contract and any changes to the contract shall be in writing
and signed by the parties to the contract prior to the commencement of work covered by the
contract or an applicable change order and, except as provided in paragraph (8) of
subdivision (a) of Section 7159.5, shall include or comply with all of the following:

(1) The name, business address, and license number of the contractor.

(2) If applicable, the name and registration number of the home
improvement salesperson that solicited or negotiated the contract.

1 (3) The following heading on the contract form that identifies the type of
contract in at least 10-point boldface type: "Home Improvement."

2 (4) The following statement in at least 12-point boldface type: "You are
3 entitled to a completely filled in copy of this agreement, signed by both you and the
contractor, before any work may be started."

4 (5) The heading: "Contract Price," followed by the amount of the contract
5 in dollars and cents.

6 (6) If a finance charge will be charged, the heading: "Finance Charge,"
7 followed by the amount in dollars and cents. The finance charge is to be set out
separately from the contract amount.

8 (7) The heading: "Description of the Project and Description of the
Significant Materials to be Used and Equipment to be Installed," followed by a
9 description of the project and a description of the significant materials to be used and
equipment to be installed. For swimming pools, the project description required
10 under this paragraph also shall include a plan and scale drawing showing the shape,
size, dimensions, and the construction and equipment specifications.

11 (8) If a downpayment will be charged, the details of the downpayment
12 shall be expressed in substantially the following form, and shall include the text of
the notice as specified in subparagraph (C):

13 (A) The heading: "Downpayment."

14 (B) A space where the actual downpayment appears.

15 (C) The following statement in at least 12-point boldface type:
16 "THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE
CONTRACT PRICE, WHICHEVER IS LESS."

17 (9) If payments, other than the downpayment, are to be made before the
18 project is completed, the details of these payments, known as progress payments,
shall be expressed in substantially the following form, and shall include the text of
19 the statement as specified in subparagraph (C):

20 (A) A schedule of progress payments shall be preceded by the heading:
"Schedule of Progress Payments."

21 (B) Each progress payment shall be stated in dollars and cents and
22 specifically reference the amount of work or services to be performed and materials
and equipment to be supplied.

23 (C) The section of the contract reserved for the progress payments shall include the
24 following statement in at least 12-point boldface type:

25 "The schedule of progress payments must specifically describe each phase of
work, including the type and amount of work or services scheduled to be supplied in
26 each phase, along with the amount of each proposed progress payment. IT IS
AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR
27

1 WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET
2 DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A
3 DOWNPAYMENT.”

4

5 (e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all of the
6 following notices shall be provided to the owner as part of the contract form as specified
7 or, if otherwise authorized under this subdivision, may be provided as an attachment to the
8 contract:

9 (6) (A) The notice set forth in subparagraph (B) and entitled “Three-Day Right to
10 Cancel,” shall be provided to the buyer unless the contract is:

11 (i) Negotiated at the contractor’s place of business.

12 (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph (7).

13 (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6
14 (commencing with Section 7590)), provided the alarm company licensee complies with
15 Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

16 (B) “Three-Day Right to Cancel

17 “You, the buyer, have the right to cancel this contract within three business days.
18 You may cancel by emailing, mailing, faxing, or delivering a written notice to the
19 contractor at the contractor’s place of business by midnight of the third business day after
20 you received a signed and dated copy of the contract that includes this notice. Include
21 your name, your address, and the date you received the signed copy of the contract and
22 this notice.

23 “If you cancel, the contractor must return to you anything you paid within 10 days
24 of receiving the notice of cancellation. For your part, you must make available to the
25 contractor at your residence, in substantially as good condition as you received them,
26 goods delivered to you under this contract or sale. Or, you may, if you wish, comply with
27 the contractor’s instructions on how to return the goods at the contractor’s expense and
28 risk. If you do make the goods available to the contractor and the contractor does not pick
them up within 20 days of the date of your notice of cancellation, you may keep them
without any further obligation. If you fail to make the goods available to the contractor, or
if you agree to return the goods to the contractor and fail to do so, then you remain liable
for performance of all obligations under the contract.”

14. Section 7159.5 of the Code states, in pertinent part:

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

. . . .

(3) If a downpayment will be charged, the downpayment shall not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever amount is less.

COST RECOVERY, RESTITUTION AND OTHER AUTHORITY

15. Section 125.3 of the Code 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.

...

16. Section 11519 of the Government Code 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.

(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.

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

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

18. Section 7095 of the Code states:

(a) The decision may:

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

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

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

(4)

(A) Provide for the stay of execution of the decision pending completion of specified terms and conditions of probation.

(B) Failure to fully comply with the terms and conditions of probation set pursuant to subparagraph (A) may result in automatic termination of the stay of execution without further notice. If a stay of execution is terminated pursuant to this subparagraph, the decision shall be considered a disciplinary action within the meaning of this chapter.

(b) The specific terms and conditions imposed pursuant to paragraph (3) or (4) of subdivision (a) may include, but are not limited to, any of the following:

(1) Payment of restitution to persons injured as a result of the violation.

(2) Payment of the costs of investigation and enforcement pursuant to Section 125.3.

(3) Enrollment in, and completion of, specified administrative or trade-specific coursework.

(4) Successful completion of the board's law and business examination or trade examination, as appropriate.

(5) Any further terms and conditions as are set forth for specified violations in the board's disciplinary guidelines in Section 871 of Title 16 of the California Code of Regulations.

19. Section 7097 of the Code states:

Notwithstanding the provisions of Sections 7121 and 7122, when any licensee has been suspended by a decision of the registrar pursuant to an accusation or 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.

20. 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.

21. Section 7102 of the Code states:

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

After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be reinstated or reissued and a license shall not be issued to any member of the personnel of the revoked licensee found to have had knowledge of or

participated in the acts or omissions constituting grounds for revocation, within a 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.

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

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

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

CHERRY HILLS DRIVE PROJECT

22. On May 20, 2022, Respondent entered into a written home improvement contract with R.S. to remodel R.S.'s kitchen and two living rooms at his property located on Cherry Hills Drive in Bakersfield, California for \$25,153.60 (Cherry Hills Drive Project). R.S. paid Respondent an initial deposit of \$20,000.00.

23. On June 23, 2022, Respondent and R.S. executed a written change order for plumbing, electrical work, new shelving, and mold mitigation, at an additional cost of \$2,297.40.

24. On July 27, 2022, Respondent and R.S. executed a written change order for countertop fabrication, at an additional cost of \$1,500.00.

25. The new contract total was \$28,951.00. Work on the Cherry Hills Drive Project commenced on June 6, 2022, and ceased on September 14, 2022, at which point R.S had paid Respondent a total of \$26,094.80 on the contract.

26. Thereafter, R.S. filed a consumer complaint with the Board, alleging poor workmanship and abandonment against Respondent.

27. The Board investigator subsequently retained a Board industry expert to inspect Respondent's work on the Cherry Hills Drive Project. On August 17, 2022, the industry expert inspected the Cherry Hills Drive Project and determined that Respondent's work on the project failed to meet industry standards in the following numerous respects:

- a. Respondent left nails exposed on upper trim of kitchen cabinets.
- b. Respondent left nails exposed on lower cabinets of kitchen cabinets.
- c. Respondent failed to cut the kitchen cabinet above the stove location to accommodate exhaust.
- d. Respondent drilled multiple holes in the back panels of kitchen cabinetry.
- e. Respondent failed to apply necessary caulking throughout kitchen cabinetry.
- f. Respondent failed to install lower cabinet trim throughout the kitchen.
- g. Respondent installed two slabs on kitchen sink side, when one large slab was called for under the contract.
- h. Respondent installed a slab on the kitchen sink side with only one rounded corner.

- i. Respondent left multiple pitted areas throughout both kitchen countertops.
- j. Respondent failed to have sufficient support under kitchen countertop overhang, and the overhang is too long.
- k. Respondent failed to install kitchen countertop soap dispenser.
- l. Respondent installed the kitchen sink such that it is not flush with the countertop.
- m. Respondent failed to apply sealant between kitchen sink and cabinet.
- n. Respondent failed to seal/polish kitchen countertops.
- o. Respondent failed to install kitchen backsplash.
- p. Respondent failed to install tile strip at the new living room entryway.
- q. Respondent failed to finish painting around sink window, and paint is peeling.
- r. Respondent's painting is peeling off kitchen nook wall.
- s. Respondent's painting is peeling off the ceiling above cabinets near kitchen nook.
- t. Respondent failed to spray clear coat evenly on kitchen cabinets.
- u. Respondent's drywall work in front living room that surrounds the ceiling light was not mudded, textured, or painted.
- v. Respondent failed to texture or paint the old doorway in front living room.
- w. Respondent failed to texture or paint the new doorway in front living room.
- x. Respondent failed to paint front living room.
- y. The ceiling fan Respondent installed in the rear living room wobbles.
- z. The texture Respondent installed on wall was not complete.
- aa. Respondent failed to mud, sand, or paint the pre-existing holes above sliding glass door.
- bb. Respondent failed to texture or paint the ceiling around rear living room fan.
- cc. Respondent failed to create a flat surface finish of the kitchen ceiling.
- dd. Respondent failed to patch and paint old electric outlets in kitchen.
- ee. Respondent failed to mud, sand, or paint the pre-existing holes in kitchen nook.
- ff. Respondent failed to finish the front living room outlets.
- gg. Respondent failed to change kitchen outlets to GFCI.

1 hh. Respondent left a loose sink faucet loose.
2 ii. Respondent failed to install dishwasher.
3 jj. Respondent failed to install range.
4 kk. Respondent failed to install exhaust.
5 ll. Respondent failed to install gas line.
6 mm. Respondent failed to install baseboards and trim.
7 nn. Respondent failed to install baseboards and trim in the kitchen nook.
8 oo. Respondent failed to install shiplap and shelving in kitchen nook.
9 pp. Respondent failed to install 3 feet picket vinyl fencing-fabrication, retro fitting with a
10 concrete base

11 qq. Respondent failed to install 6 feet picket vinyl fencing-fabrication, retro fitting with a
12 concrete base.

13 28. The industry expert further determined that the total cost to correct and/or complete
14 Respondent's work on the Cherry Hills Drive Project to be \$35,119.00. Based thereon, according
15 to the Board investigator's calculations, Respondent caused R.S. to sustain a financial injury in
16 the amount of \$17,262.80 in connection with the Cherry Hills Drive Project.

17 29. Respondent failed to cooperate with the Board's investigation regarding the Cherry
18 Hills Drive Project, in that he (Respondent) never responded to the Board investigator's written
19 10-day letter that was sent to Respondent's address of record with the Board.

20 30. The Board investigator also determined that Respondent failed to secure workers'
21 compensation insurance coverage for his employees on the Cherry Hills Drive Project.

22 31. The Board investigator further determined that Respondent's contract with R.S.
23 regarding the Cherry Hills Drive Project failed to contain numerous elements that are required for
24 a valid home improvement contract.

FIRST CAUSE FOR DISCIPLINE

(Departure from Accepted Trade Standards)

27 32. Respondent has subjected his license to disciplinary action under Code section
28 7109, subdivision (a), in that on the Cherry Hills Drive Project, he willfully departed from

1 accepted trade standards for good and workmanlike construction, as set forth in paragraphs 22-31
2 above.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Complete Project for Price Stated in Contract)**

5 33. Respondent has subjected his license to disciplinary action under Code section 7113,
6 in that on the Cherry Hills Drive Project, he failed in a material respect to complete the project for
7 the price stated in the contract. R.S. will be obligated to pay one or more contractors the amount
8 of \$35,119.00 to correct the project, and thereby sustained a financial injury in the amount of
9 \$17,262.80 in connection with the Cherry Hills Drive Project. Complainant hereby incorporates
10 paragraphs 22-31 above as though set forth fully herein.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Requested and Received Excessive Downpayment)**

13 34. Respondent has subjected his license to disciplinary action under section 7159.5,
14 subdivision (a)(3), in that on the Cherry Hills Drive Project, he requested and received a
15 downpayment that exceeded one thousand dollars (\$1,000) or 10 percent of the contract amount,
16 whichever amount is less. Complainant hereby incorporates paragraphs 22-31 above as though
17 set forth fully herein.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Obtain Workers' Compensation Insurance)**

20 35. Respondent has subjected his license to disciplinary action under Code section
21 7125.4, subdivision (a), in that on the Cherry Hills Drive Project, Respondent failed to obtain
22 workers' compensation insurance for his employees. Complainant hereby incorporates
23 paragraphs 22-31 above as though set forth fully herein.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Utilize and/or Execute Legally Sufficient Home Improvement Contract)**

3 36. Respondent has subjected his license to disciplinary action under Code section 7159,
4 in that on the Cherry Hills Drive Project, he failed to provide, utilize, and/or execute a legally
5 sufficient written home improvement contract, with all of the terms that are required by law to be
6 expressly contained therein. Complainant hereby incorporates paragraphs 21-30 above as though
7 set forth fully herein.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Failure to Cooperate with Board Investigation)**

10 37. Respondent has subjected his license to disciplinary action under Code section
11 7111.1, in that on the Cherry Hills Drive Project, he failed to cooperate in the Board's
12 investigation. Complainant hereby incorporates paragraphs 21-30 above as though set forth fully
13 herein.

14 **CAUSE FOR OTHER ACTION**

15 **FIRST CAUSE FOR OTHER ACTION**

16 **(Restrictions on Qualifier – Respondent Daniel Ayala)**

17 38. Pursuant to section 7121 of the Code, if license number 1024166, issued to
18 Respondent is revoked or suspended, Respondent Daniel Ayala shall be prohibited from serving
19 as an officer, director, associate, partner, manager, or qualifying individual of a licensee during
20 the time the discipline is imposed, whether or not he had knowledge of or participated in the acts
21 or omissions constituting grounds for discipline as alleged in the causes for discipline, above, and
22 any licensee which employs, elects, or associates Respondent Daniel Ayala other than as a bona
23 fide nonsupervising employee shall be subject to disciplinary action.

24 **PRAYER**

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

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- 1 1. Ordering the revocation or suspension of Contractor's License Number 1024166
2 issued to Respondent Daniel Ayala dba D A Construction Company, pursuant to Code section
3 7090;
- 4 2. Ordering restitution of all damages according to proof suffered by R.S. as a condition
5 of probation, in the event probation is ordered for Respondent Daniel Ayala dba D A
6 Construction Company, pursuant to Government Code section 11519, subdivision (d);
- 7 3. If revocation of license Number 1024166, issued to Respondent Daniel Ayala dba D
8 A Construction Company, is ordered, an order for restitution of all damages suffered by R.S. as a
9 result of Respondent Daniel Ayala dba D A Construction Company's conduct as a contractor, as a
10 condition precedent to any future restoration of license Number 1024166, or before any new
11 license is issued;
- 12 4. Ordering Respondent Daniel Ayala dba D A Construction Company to pay the
13 Registrar costs for the investigation and enforcement of the case according to proof at the hearing,
14 pursuant to Code section 125.3;
- 15 5. Ordering that Respondent Daniel Ayala is prohibited from serving as an officer,
16 director, associate, partner, manager, qualifying individual, or member of the personnel of record
17 of a licensee, pursuant to Code section 7121;
- 18 6. Ordering Respondent Daniel Ayala dba D A Construction Company to provide the
19 Registrar with a listing of all contracting projects in progress and the anticipated completion date
20 of each, pursuant to Code section 7095; and
- 21 7. Taking such other and further action deemed proper.

22
23 DATED: 4/30/2024

Brian Melvin

BRIAN MELVIN
Supervising Special Investigator I
Contractors State License Board
Department of Consumer Affairs
State of California
Complainant

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