

BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**FALCON BUILDERS INC.; RONALD
CHARLES AUGER, RMO; JOHN ALBERT
MERCER, OFFICER**

73-850 Dinah Shore Drive #105
Palm Desert, CA 92211

Contractor's License No. 949148, B

Respondent.

FALCON BUILDERS; RONALD CHARLES

AUGER, Owner

P.O. Box 36

Kahului, HI 96733

Contractor's License No. 465691, B

Affiliated Party.

CASE NO. N2013-425

ORDER TO ADOPT
STIPULATED SETTLEMENT

The attached Stipulated Settlement is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter.

IT IS FURTHER ORDERED pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, that Respondent, **FALCON BUILDERS INC.** License Number, **949148** shall not apply for reissuance or reinstatement of any license for five year(s) from the effective date of this Decision.

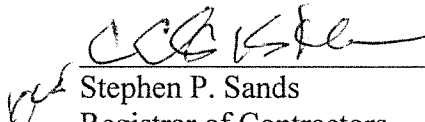
IT IS FURTHER ORDERED pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, that Respondent, **FALCON BUILDERS** License Number, **465691** shall not apply for reissuance or reinstatement of any license for five year(s) from the effective date of this Decision

IT IS FURTHER ORDERED that Respondent shall pay the investigative and restitution costs prior to issuance of a new or reinstated license.

IT IS THE responsibility of the Respondents, named in this Order, to read and follow the Order. The deadlines for meeting the terms and conditions are based upon the EFFECTIVE DATE of the Order to Adopt Stipulation and Waiver. No notices or reminders will be sent, as to the compliance of the terms and conditions. Proof of payments of restitution, and payments for the Cost of Investigation and Enforcement if ordered, are to be sent to CSLB, Sacramento Case Management, Post Office Box 26888, Sacramento, CA 95826.

This Order shall become effective on January 29, 2015.

IT IS SO ORDERED December 26, 2014.



Stephen P. Sands
Registrar of Contractors

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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
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8
9 **BEFORE THE**
REGISTRAR OF CONTRACTORS
10 **CONTRACTORS' STATE LICENSE BOARD**
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. N2013-425

13 **FALCON BUILDERS INC., RONALD**
14 **CHARLES AUGER, RMO; JOHN**
15 **ALBERT MERCER, OFFICER**
73-850 Dinah Shore Drive #105
Palm Desert, CA 92211

STIPULATED REVOCATION AND
DISCIPLINARY ORDER

16 Contractor's License No. 949148, B

17 Respondent.

18 **FALCON BUILDERS; RONALD**
19 **CHARLES AUGER, Owner**
P O Box 36
20 Kahului, HI 96733

21 Contractor's License No. 465691, B

22 Affiliated License.

23 IT IS HEREBY STIPULATED AND AGREED by and between the Complainant and
24 Respondent Falcon Builders Inc., Ronald Charles Auger, RMO, that the following matters are
25 true:

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1 PARTIES

2 1. Wood Robinson ("Complainant") is the Enforcement Supervisor I of the Contractors'
3 State License Board. He brought this action solely in his official capacity and is represented in
4 this matter by Kamala D. Harris, Attorney General of the State of California, by Marichelle S.
5 Tahimic, Deputy Attorney General.

6 2. Respondent Falcon Builders Inc., Ronald Charles Auger, RMO, ("Respondent") is
7 representing itself in this proceeding and has chosen not to exercise its right to be represented by
8 counsel.

9 3. On or about June 23, 2010, the Contractors' State License Board issued Contractor's
10 License No. 949148 to Falcon Builders Inc., Ronald Charles Auger, RMO (Respondent). The
11 Contractor's License was in full force and effect at all times relevant to the charges brought in
12 Accusation No. N2013-425 and expired on June 30, 2014, unless renewed. Section 7106.5 of the
13 Code provides, in pertinent part, that the expiration, cancellation, forfeiture, or suspension of a
14 license by operation of law or by order or decision of the registrar, or a court of law, or the
15 voluntary surrender of the license shall not deprive the registrar of jurisdiction to proceed with
16 any investigation of or action or disciplinary proceeding against the license, or to render a
17 decision suspending or revoking the license.

18 Affiliated License

19 4. On November 16, 1984, the Registrar of Contractors issued Contractor's License
20 Number 465691, classification B (General Building Contractor) to Ronald Charles Auger as Sole
21 Owner of Falcon Builders. The license expired on November 30, 2010 and has not been renewed.

22 JURISDICTION

23 5. Accusation No. N2013-425 was filed before the Registrar of Contractors (Registrar)
24 for the Contractors' State License Board, Department of Consumer Affairs, and is currently
25 pending against Respondent. The Accusation and all other statutorily required documents were
26 properly served on Respondent on August 19, 2014. Respondent timely filed its Notice of
27 Defense contesting the Accusation.

1 6. A copy of Accusation No. N2013-425 is attached as exhibit A and incorporated
2 herein by reference.

3 ADVISEMENT AND WAIVERS

4 7. Respondent has carefully read, and understands the charges and allegations in
5 Accusation No. N2013-425. Respondent has also carefully read, and understands the effects of
6 this Stipulated Revocation and Disciplinary Order.

7 8. Respondent is fully aware of its legal rights in this matter, including the right to a
8 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
9 its own expense; the right to confront and cross-examine the witnesses against them; the right to
10 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
11 the attendance of witnesses and the production of documents; the right to reconsideration and
12 court review of an adverse decision; and all other rights accorded by the California
13 Administrative Procedure Act and other applicable laws.

14 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
15 every right set forth above.

16 CULPABILITY

17 10. Respondent admits the truth of each and every charge and allegation in Accusation
18 No. N2013-425.

19 11. Respondent agrees that its Contractor's License is subject to discipline and agrees to
20 be bound by the Registrar's imposition of discipline as set forth in the Disciplinary Order below.

21 CONTINGENCY

22 12. This stipulation shall be subject to approval by the Registrar of Contractors or his
23 designee. Respondent understands and agrees that counsel for Complainant and the staff of the
24 Contractors' State License Board may communicate directly with the Registrar regarding this
25 stipulation and settlement, without notice to or participation by Respondent. By signing the
26 stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek
27 to rescind the stipulation prior to the time the Registrar considers and acts upon it. If the
28 Registrar fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and

1 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
2 in any legal action between the parties, and the Registrar shall not be disqualified from further
3 action by having considered this matter.

4 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
5 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
6 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

7 14. This Stipulated Revocation and Disciplinary Order is intended by the parties to be an
8 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
9 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
10 negotiations, and commitments (written or oral). This Stipulated Revocation and Disciplinary
11 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
12 writing executed by an authorized representative of each of the parties.

13 15. In consideration of the foregoing admissions and stipulations, the parties agree that
14 the Registrar may, without further notice or formal proceeding, issue and enter the following
15 Disciplinary Order:

16 **DISCIPLINARY ORDER**

17 IT IS HEREBY ORDERED that Contractor's License No. 949148 issued to Respondent
18 Falcon Builders Inc. (Respondent) and Contractor's License Number 465691 issued to Falcon
19 Builders with Charles Auger as a sole owner (collectively, Respondents) are revoked.

20 1. Respondents fully understand and agree that if they ever file an application for
21 licensure or a petition for reinstatement in the State of California, they must comply with all the
22 laws, regulations and procedures for reinstatement of a revoked license in effect at the time the
23 petition is filed.

24 2. Respondents, jointly and severally, shall pay the Registrar its costs of investigation
25 and enforcement in the amount of \$12,578.97 prior to issuance of a reinstated license.

26 3. Respondents fully understand and agree that the Registrar shall further require as a
27 condition precedent to the restoration of a Contractor's License to Respondents that they shall file
28 or have on file a disciplinary contractor's bond in the sum to be fixed by the Registrar based upon

1 the seriousness of the violation, but which sum shall not be less than fifteen thousand dollars
2 (\$15,000) nor more than 10 times that amount required by Business and Professions Code section
3 7071.6. The disciplinary bond is in addition to, may not be combined with, and does not replace
4 any other type of contractor's bond. The disciplinary bond shall remain on file with the Registrar
5 for a period of at least two years and for such additional time as the Registrar may determine, as
6 required under Business and Professions Code section 7071.8.

7 4. Respondents further understand that the Registrar shall additionally require, as a
8 condition precedent to the restoration of any contractor's license to Respondents, proof of
9 restitution to the following, which were the subjects of Accusation No. N2013-425, unless the
10 debt has been resolved civilly or has been successfully discharged in Bankruptcy:

- 11 a. Fred's Glass & Mirror, in the amount of \$3,600.00;
- 12 b. Vortex US, in the amount of \$36,240.00;
- 13 c. West Coast Sand & Gravel, in the amount of \$4,115.75;
- 14 d. Superior Ready Mix Concrete, L.P., in the amount of \$10,954.66; and,
- 15 e. TLJ Enterprises, Inc., dba Desert Electric Supply, in the amount of \$37,666.40.

16 ACCEPTANCE

17 I have carefully read the Stipulated Revocation and Disciplinary Order. I understand the
18 stipulation and the effect it will have on my Contractor's License. I enter into this Stipulated
19 Revocation and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
20 bound by the Decision and Order of the Registrar of Contractors, Contractors' State License
21 Board.

22
23 DATED: 12/9/2014

Ronald Charles Auger
24 RONALD CHARLES AUGER, RMO, Owner and
25 authorized agent for
26 FALCON BUILDERS INC. and
27 FALCON BUILDERS
28 Respondents

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Dated: December 16, 2014

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

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Exhibit A

Accusation No. N2013-425

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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

8
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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14 **CHARLES AUGER, RMO; JOHN**
15 **ALBERT MERCER, OFFICER**
73-850 Dinah Shore Drive #105
Palm Desert, CA 92211

A C C U S A T I O N

16 **Contractor's License No. 949148, B**

17
18 Respondent.

19 **FALCON BUILDERS; RONALD**
20 **CHARLES AUGER, Owner**
P O Box 36
21 Kahului, HI 96733

22 **Contractor's License No. 465691, B**

23 Affiliated License.

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25 Complainant alleges:

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PARTIES

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

2. On or about June 23, 2010, the Registrar of Contractors issued Contractor's License Number 949148, classification B (General Building Contractor) to Falcon Builders Inc. (Respondent), with Ronald Charles Auger ("Auger") as RMO and John Albert Mercer ("Mercer") as Officer. The Contractor's License was in full force and effect at all times relevant to the charges brought herein and expired on June 30, 2014, and has not been renewed.

Affiliated License History – Falcon Builders

3. On November 16, 1984, the Registrar of Contractors issued Contractor's License Number 465691, classification B (General Building Contractor) to Ronald Charles Auger as Sole Owner of Falcon Builders. The license expired on November 30, 2010 and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Registrar of Contractors (Registrar) for the Contractors' State License Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 7090 of the Business and Professions Code ("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.

6. Code section 7095 states, in pertinent part, that the Registrar in making his order may:

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

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

(c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing, and may further provide that until such conditions are complied with, no application for

restoration of the suspended or revoked license shall be accepted by the Registrar.

7. Code section 7096 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 licentiate whose appearance has qualified the licentiate under the provisions of Section 7068.

8. Code section 7097 states:

Notwithstanding the provisions of Sections 7121 and 7122, when any license 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.

9. Code section 7098 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.

10. Code section 7121 states:

Any 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 member, officer, director, or associate of any partnership, corporation, 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 member, officer, director, 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, or qualifying individual 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.

11. Code section 7121.5 states:

Any 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, or qualifying individual of a licensee, whether or not the individual had

1 knowledge of or participated in the prohibited acts or omissions for which the
2 license was revoked, or suspended, and the employment, election, or association of
3 such person by a licensee shall constitute grounds for disciplinary action.

4 12. Code section 7122 states:

5 The performance by an individual, partnership, corporation, limited liability
6 company, firm, or association of an act or omission constituting a cause for
7 disciplinary action, likewise constitutes a cause for disciplinary action against a
8 licensee other than the individual qualifying on behalf of the individual or entity, if
9 the licensee was a partner, officer, director, manager, or associate of that individual,
10 partnership, corporation, limited liability company, firm, or association at the time
11 the act or omission occurred, and had knowledge of or participated in the
12 prohibited act or omission.

13 13. Code section 7122.5 states:

14 The performance by any individual, partnership, corporation, firm, or association of
15 any act or omission constituting a cause for disciplinary action, likewise constitutes
16 a cause for disciplinary action against any licensee who at the time such act or
17 omission occurred was the responsible managing employee, qualifying partner,
18 responsible managing officer, or qualifying member of such individual, partnership,
19 corporation, firm, or association, whether or not he had knowledge of or
20 participated in the prohibited act or omission.

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

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

29 STATUTORY PROVISIONS

30 16. Section 7056 describes a Class "A," or general engineering, contractor's license as
31 follows:

32 A general engineering contractor is a contractor whose principal contracting
33 business is in connection with **fixed works requiring specialized engineering
34 knowledge and skill**, including the following divisions or subjects: irrigation,
35 drainage, water power, water supply, flood control, inland waterways, harbors,
36 docks and wharves, shipyards and ports, dams and hydroelectric projects, levees,
37 river control and reclamation works, railroads, highways, streets and roads, tunnels,
38 airports and airways, sewers and sewage disposal plants and systems, waste
reduction plants, bridges, overpasses, underpasses and other similar works,

1 pipelines and other systems for the transmission of petroleum and other liquid or
2 gaseous substances, **parks, playgrounds and other recreational works,**
3 **refineries, chemical plants and similar industrial plants requiring specialized**
4 **engineering knowledge and skill, powerhouses, power plants and other utility plants**
5 **and installations, mines and metallurgical plants, land leveling and earthmoving**
6 **projects, excavating, grading, trenching, paving and surfacing work and**
7 **cement and concrete works in connection with the above mentioned fixed works.**

8 (Emphasis added.)

9 17. Section 7057 describes a Class "B," or general contractor's license, as follows:

10 (a) Except as provided in this section, a general building contractor is a contractor
11 whose principal contracting business is in connection with any structure built, being
12 built, or to be built, for the support, shelter, and enclosure of persons, animals,
13 chattels, or movable property of any kind, requiring in its construction the use of at
14 least two unrelated building trades or crafts, or to do or superintend the whole or
15 any part thereof.

16 This does not include anyone who merely furnishes materials or supplies under
17 Section 7045 without fabricating them into, or consuming them in the performance
18 of the work of the general building contractor.

19 (b) A general building contractor may take a prime contract or a subcontract for a
20 framing or carpentry project. However, a general building contractor shall not take
21 a prime contract for any project involving trades other than framing or carpentry
22 unless the prime contract requires at least two unrelated building trades or crafts
23 other than framing or carpentry, or unless the general building contractor holds the
24 appropriate license classification or subcontracts with an appropriately licensed
25 specialty contractor to perform the work. A general building contractor shall not
26 take a subcontract involving trades other than framing or carpentry, unless the
27 subcontract requires at least two unrelated trades or crafts other than framing or
28 carpentry, or unless the general building contractor holds the appropriate license
classification. The general building contractor may not count framing or carpentry
in calculating the two unrelated trades necessary in order for the general building
contractor to be able to take a prime contract or subcontract for a project involving
other trades.

(c) No general building contractor shall contract for any project that includes the
"C-16" Fire Protection classification as provided for in Section 7026.12 or the "C-
57" Well Drilling classification as provided for in Section 13750.5 of the Water
Code, unless the general building contractor holds the specialty license, or
subcontracts with the appropriately licensed specialty contractor.

18. Section 7068.1 states in part:

(a) 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. This person shall not act in the capacity of the qualifying
person for an additional individual or firm unless one of the following conditions
exists:

....

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

19. Section 7111.1 of the Code states:

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

20. Section 7115 of the Code provides, in pertinent part, that failure in any material respect to comply with the provisions of the Contractors' State License Law (Business and Professions Code, § 7000, et seq.), or any rule or regulation adopted pursuant to this chapter, constitutes a cause for disciplinary action.

21. Section 7117.6 of the Code states that "[a]cting in the capacity of a contractor in a classification other than that currently held by the licensee constitutes a cause for disciplinary action."

22. Section 7120 of the Code states:

Willful or deliberate failure by any licensee or agent or officer thereof to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

23. Section 7161 states in part:

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

...

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

...

///

1 **COST RECOVERY**

2 24. Section 125.3 of the Code provides, in pertinent part, that the Registrar may request
3 the administrative law judge to direct a licensee found to have committed a violation or violations
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **RESTITUTION**

7 25. Government Code section 11519, subdivision (d), provides, in pertinent part, that
8 the Registrar may require restitution of damages suffered as a condition of probation in the event
9 probation is ordered.

10 **OTHER MATTERS**

11 26. Pursuant to sections 7097 and 7098 of the Code, if license number 949148 issued to
12 Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any
13 other license issued in the name of Ronald Charles Auger or for which Ronald Charles Auger
14 furnished the qualifying experience and appearance.

15 27. Pursuant to section 7121 of the Code, if discipline is imposed on license number
16 949148 issued to Respondent, John Albert Mercer shall be prohibited from serving as an officer,
17 director, associate, partner, manager, or qualifying individual, or member of the personnel of
18 record of a licensee of any licensee during the time the discipline is imposed, and any licensee
19 which employs, elects, or associates John Albert Mercer shall be subject to disciplinary action.

20 28. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number
21 949148 issued to respondent, Ronald Charles Auger shall be prohibited from serving as an officer,
22 director, associate, partner, manager, or qualifying individual of any licensee during the time the
23 discipline is imposed, whether or not he had knowledge or participated in the acts or omissions
24 constituting grounds for discipline, and any licensee which employs, elects, or associates Ronald
25 Charles Auger shall be subject to disciplinary action.

26 29. Under Code section 7122.5, the causes for discipline established as to Contractor's
27 License Number 949148, issued to Falcon Builders, Inc., with Ronald Charles Auger as RMO and
28 John Albert Mercer as President, constitute causes for discipline against Contractor's License

1 Number 465691 issued to Ronald Charles Auger, as sole owner of Falcon Builders, and any other
2 license issued to Ronald Charles Auger regardless of whether Falcon Builders had knowledge of
3 or participated in the acts or omissions alleged above.

4 **FACTS**

5 30. On August 5, 2010, the Contractors' State License Board ("CSLB") received
6 Respondent's Application (No. 2010 02 00899) to add an "A" engineering classification to
7 Respondent's license number 949148. Respondent Mercer was named as the new qualifier for the
8 "A" license. Mercer failed to appear for the examination and the application became void on
9 January 28, 2011.

10 31. A renewal application for Respondent's license was signed by Mercer on May 30,
11 2012 but was rejected due to the lack of RMO Auger's signature. The renewal application was
12 re-submitted to the CSLB bearing Auger's signature on or about June 21, 2012. On December 4,
13 2013, Auger advised the investigator for the CSLB that he signed the original application but not
14 the renewal application.

15 32. At all times pertinent to this Accusation, Respondent had a Class B contractors'
16 license only and no specialty contractors' license.

17 33. In or about August, 2012, B.L. from the Center for Contract Compliance
18 (hereinafter "CCC") contacted the CSLB regarding Respondent's submission of bids for public
19 works projects out of its classification. Those projects are identified below. The CCC is a non-
20 profit Labor/Management Trust that monitors public works projects to ensure that all laws
21 governing public construction are observed by contractors and awarding agencies.

22 **METROLINK PARKING LOT PROJECT**

23 34. On or about April 6, 2011, Respondent submitted a bid to the City of Moorpark
24 for a project for the City that involved the construction of an eight-foot tall masonry block wall,
25 with the first two feet acting as a retaining wall, at the south Metrolink parking lot. The work
26 included excavation, backfilling, rebar installation and pouring footings. The Respondent was the
27 low bidder and was awarded the contract. The project was identified as the City of Moorpark
28

1 Security/Retaining Wall at South Metrolink Parking Lot project ("Metrolink Parking Lot
2 project").

3 35. On May 6, 2011, Respondent entered into a contract with the City of Moorpark to
4 perform the masonry wall construction for \$81,600. The contract identified Respondent Mercer
5 as the individual directly responsible for Respondent's overall performance of the contract; no one
6 dealt with Respondent's RMO, Auger. An amendment to the contract was executed on June 21,
7 2011 for \$2,540. The additional work included installation of irrigation lines and wiring,
8 reconfiguration of irrigation electrical conduit, removal of trees and modification of the height of
9 the wall at 81 First Street.

10 36. The City of Moorpark required bidders with an "A" classification, or general
11 engineering contractors' license, or a specialty C-29, masonry specialty license. Respondent
12 completed the work and was paid in full. No one dealt with Respondent's RMO, Auger. Auger
13 did not supervise Respondent's work on the Metrolink Parking Lot project.

14 37. On November 7, 2012, the CSLB investigator contacted Respondent Auger,
15 RMO. Auger resides in Hawaii. Auger agreed to be the qualifier for a corporate license for
16 Mercer. Auger did not provide direct supervision of any of the projects that are the subject of this
17 Accusation. Auger is not on Respondent's payroll; he would receive money on a project basis if
18 Respondent earned a profit.

19 38. On January 9, 2013, the CSLB investigator contacted Auger with regard to seven
20 complaints received by the CSLB and requested cooperation pursuant to Code section 7111.1.
21 These complaints pertained to the Metrolink Parking Lot project, the L.A. Circus Façade project,
22 the Campus Technology Project, the Desert Willow project, the Val Verde project, the De Oro
23 Park project, the Idyllwild School project. Tracking information showed that the e-mail was read
24 on the same day. Auger did not respond to the investigator's request.

25 39. On March 5, 2013, the CSLB investigator re-sent the January 9, 2013 e-mail to
26 Auger. Tracking information confirmed the e-mail was read on the same day. On March 6, 2013,
27 Mercer contacted the CSLB investigator and agreed to a meeting at 8:00 a.m. on March 19,
28

1 2013. Confirmation of the meeting was sent to Mercer and copied to Auger. Tracking
2 information showed that the e-mail was read by Auger on March 7, 2013.

3 40. On March 19, 2013, the CSLB investigator received an e-mail from Mercer
4 requesting the meeting be rescheduled. CSLB investigator and Mercer agreed to reschedule the
5 meeting to March 26, 2013 at 9:00 a.m. and the investigator sent Mercer an e-mail confirming the
6 date and time of the rescheduled meeting. Mercer did not appear for the meeting and did not
7 attempt to reschedule it.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Failure to Exercise Direct Supervision and Control of Respondent's Contracting
10 Activities)**

11 41. Respondent is subject to discipline for violation of Code section 7115 in
12 conjunction with section 7068.1 in that Respondent Auger failed to exercise direct supervision
13 and control over Respondent's contracting activities in the Metrolink Parking Lot project, as
14 more fully set forth in paragraphs 34 – 40 above and incorporated by this reference.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Contracting Out of Classification)**

17 42. Respondent is subject to discipline for violation of Code section 7117.6 in that
18 Respondent acted in the capacity of a contractor in a classification other than that currently held
19 by the licensee when Respondent submitted a bid and performed work requiring a Class "A"
20 license for the Metrolink Parking Lot project when Respondent had a Class "B" license, as more
21 fully set forth in paragraphs 30 – 40 above and incorporated by this reference.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **((Failure to Cooperate in Investigation))**

24 43. Respondent is subject to discipline for violation of Code section 7111.1 for failure
25 or refusal to cooperate with the CSLB's investigation of complaints filed against it, as more fully
26 set forth in paragraphs 37 – 40 above and incorporated by this reference.

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1 **L.A. CIRCUS FAÇADE PROJECT**

2 44. On June 15, 2011, Respondent submitted a bid to the County of Riverside
3 Economic Development Agency ("EDA") for a project identified as the L.A. Circus Façade
4 project in Riverside. The original scope of work was for installation of wrought iron fencing with
5 reinforced CMU pilasters, swinging/rolling gates, landscaping and irrigation, concrete and
6 redwood curbs, and planters. Respondent was the low bidder and was awarded the contract.

7 45. At the recommendation of Mercer, the scope of work changed to installation of a
8 reinforced block wall with wrought iron on top instead of wrought iron fencing. On August 1,
9 2011, Respondent entered into a written agreement for the new scope of work with the County of
10 Riverside EDA for \$100,000. A class "A" contractors' license was required for the revised scope
11 of work.

12 46. No one dealt with Respondent's RMO, Auger. Auger did not supervise
13 Respondent's work on the L.A. Circus Façade project.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Exercise Direct Supervision and Control of Respondent's Contracting**
16 **Activities)**

17 47. Respondent is subject to discipline for violation of Code section 7115 in
18 conjunction with section 7068.1 in that Respondent Auger failed to exercise direct supervision
19 and control over Respondent's contracting activities in the L.A. Circus Façade project, as more
20 fully set forth in paragraphs 44 – 46 above and incorporated by this reference.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Contracting Out of Classification)**

23 48. Respondent is subject to discipline for violation of Code section 7117.6 in that
24 Respondent acted in the capacity of a contractor in a classification other than that currently held
25 by the licensee when Respondent submitted a bid and performed work requiring a Class "A"
26 license for the L.A. Circus Façade project when Respondent had a Class "B" license, as more fully
27 set forth in paragraphs 30 – 32 and 44 – 46 above and incorporated by this reference.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Cooperate in Investigation)**

3 49. Respondent is subject to discipline for violation of Code section 7111.1 for failure
4 or refusal to cooperate with the CSLB's investigation of complaints filed against it, as more fully
5 set forth in paragraphs 37 – 40 above and incorporated by this reference.

6 **CAMPUS TECHNOLOGY PROJECT**

7 50. On September 20, 2011, Respondent submitted a bid to the Desert Community
8 College District for trenching and laying communication conduit from existing buildings to a new
9 phone hub. The scope of work included removal and replacement of concrete, asphalt, curbs and
10 gutters and installation of landscaping. This project was identified as the Campus Technology
11 Infrastructure-Underground ("Campus Technology") project. Respondent's bid for \$318,435
12 was the lowest bid and Respondent was awarded the contract.

13 51. On October 12, 2011, Respondent entered into a contract with the Desert
14 Community College District. Respondent performed the work and was paid in full.

15 52. Although advertised as requiring a Class "B" license, the scope of work for this
16 project required a Class "A" license.

17 53. No one dealt with Respondent's RMO, Auger. Auger did not supervise
18 Respondent's work on the Campus Technology project.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Exercise Direct Supervision and Control of Respondent's Contracting**
21 **Activities)**

22 54. Respondent is subject to discipline for violation of Code section 7115 in
23 conjunction with section 7068.1 in that Respondent Auger failed to exercise direct supervision
24 and control over Respondent's contracting activities in the Campus Technology project, as more
25 fully set forth in paragraphs 50 – 53 above and incorporated by this reference.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Contracting Out of Classification)**

3 55. Respondent is subject to discipline for violation of Code section 7117.6 in that
4 Respondent acted in the capacity of a contractor in a classification other than that currently held
5 by the licensee when Respondent submitted a bid and performed work requiring a Class "A"
6 license for the L.A. Circus Façade project when Respondent had a Class "B" license, as more fully
7 set forth in paragraphs 30 – 32 and 50 – 53 above and incorporated by this reference.

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Failure to Cooperate in Investigation)**

10 56. Respondent is subject to discipline for violation of Code section 7111.1 for failure
11 or refusal to cooperate with the CSLB's investigation of complaints filed against it, as more fully
12 set forth in paragraphs 37 – 40 above and incorporated by this reference.

13 **DESERT WILLOW PROJECT**

14 57. On February 14, 2012, Respondent submitted a bid to the City of Palm Desert
15 Community College District for lighting upgrades, replacement of existing low level lighting on
16 existing buildings and the installation of additional lighting to provide lighting near surveillance
17 cameras. This project was identified as the Desert Willow Maintenance Building Site Lighting
18 ("Desert Willow") project. Respondent's bid of \$17,736.00 was the lowest bid and Respondent
19 was awarded the contract.

20 58. On March 8, 2012, Respondent entered into a contract with the City of Palm
21 Desert for the original bid amount plus an additional \$6,250 for an addendum to the contract
22 calling for additional electrical work for a total contract price of \$23,986. Respondent performed
23 the work and was paid in full.

24 59. The scope of work for this project required a Class "A" license.

25 60. No one dealt with Respondent's RMO, Auger. Auger did not supervise
26 Respondent's work on the Desert Willow project.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Exercise Direct Supervision and Control of Respondent's Contracting**
3 **Activities)**

4 61. Respondent is subject to discipline for violation of Code section 7115 in
5 conjunction with section 7068.1 in that Respondent Auger failed to exercise direct supervision
6 and control over Respondent's contracting activities in the Desert Willow project, as more fully
7 set forth in paragraphs 57 – 60 above and incorporated by this reference.

8 **ELEVENTH CAUSE FOR DISCIPLINE**

9 **(Contracting Out of Classification)**

10 62. Respondent is subject to discipline for violation of Code section 7117.6 in that
11 Respondent acted in the capacity of a contractor in a classification other than that currently held
12 by the licensee when Respondent submitted a bid and performed work requiring a Class "A"
13 license for the Desert Willow project when Respondent had a Class "B" license, as more fully set
14 forth in paragraphs 30 – 32 and 57 – 60 above and incorporated by this reference.

15 **TWELFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Cooperate in Investigation)**

17 63. Respondent is subject to discipline for violation of Code section 7111.1 for failure
18 or refusal to cooperate with the CSLB's investigation of complaints filed against it, as more fully
19 set forth in paragraphs 37 – 40 above and incorporated by this reference.

20 **VAL VERDE HIGH SCHOOL PROJECT**

21 64. Respondent was hired by the Val Verde School District to perform work at the
22 Val Verde High School. Respondent subcontracted with Fred's Glass & Mirror to furnish and
23 install dual pane doors with two side lights at the high school (hereinafter "Val Verde High
24 School project"). Fred's Glass & Mirror completed the work on July 27, 2012 and invoiced
25 Respondent \$9,200 with payment due in 30 days.

26 65. Respondent paid Fred's Glass & Mirror one payment of \$4,600 on September 21,
27 2012. On October 10, 2012, Respondent executed a promissory note for payment of the
28 remaining balance in five payments. On October 26, 2012, Respondent made one payment of

1 \$1,000. No other payments were made to Fred's Glass & Mirror leaving an outstanding unpaid
2 balance of \$3,600.

3 66. No one dealt with Respondent's RMO, Auger. Auger did not supervise
4 Respondent's work on the Val Verde project.

5 **THIRTEENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Exercise Direct Supervision and Control of Respondent's Contracting**
7 **Activities)**

8 67. Respondent is subject to discipline for violation of Code section 7115 in
9 conjunction with section 7068.1 in that Respondent Auger failed to exercise direct supervision
10 and control over Respondent's contracting activities in the Val Verde project, as more fully set
11 forth in paragraphs 64 – 66 above and incorporated by this reference.

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Pay Subcontractor)**

14 68. Respondent is subject to discipline for violation of Code section 7120 for failure to
15 pay Fred's Glass & Mirror when due for materials and services rendered for the Val Verde High
16 School project, as more fully set forth in paragraphs 64 – 66 above and incorporated by this
17 reference.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Cooperate in Investigation)**

20 69. Respondent is subject to discipline for violation of Code section 7111.1 for failure
21 or refusal to cooperate with the CSLB's investigation of complaints filed against it, as more fully
22 set forth in paragraphs 37 – 40 above and incorporated by this reference.

23 **DE ORO PARK PROJECT**

24 70. On April 18, 2012, Respondent submitted a bid to the City of Coachella for
25 trenching and installation of path lighting, a jogging/walking trail, landscaping, irrigation, concrete
26 mow curbs, concrete flatwork and a handicap ramp at De Oro Park ("De Oro Park project").
27 Respondent's bid of \$306,656 was the lowest bid and Respondent was awarded the contract.

1 71. On April 26, 2012, Respondent entered into a contract with the City of Coachella.
2 Respondent performed the work and was paid with only a portion of the retention released due
3 to the filing of various stop notices as described below.

4 72. Respondent identified one subcontractor on the subcontractors bid form, MC
5 Electric. However, MC Electric never submitted a bid to Respondent for the De Oro Park
6 project. MC Electric did not have a subcontract with Respondent to perform work for this
7 project and did not perform work on this project.

8 73. The Notice Inviting Bids for this project states, "Contractor shall possess a valid
9 C-10 [electrical] and Class A, B, or C (General) and or other specialty licenses applicable to this
10 project at the time that the bid is submitted."

11 74. Respondent failed to pay suppliers for this project resulting in the filing of Stop
12 Notices by vendors. The vendors who filed Stop Notices were Southwest Boulder & Stone
13 (amount owed was \$2,101.13), Vortex US (amount owed was \$36,240), West Coast Sand &
14 Gravel (amount owed was \$4,115.75), Superior Ready Mix Concrete, L.P. (amount owed was
15 \$10,954.66) and T.L.R. Enterprises, Inc. dba Desert Electric Supply (amount owed was
16 \$37,666.46.

17 75. Southwest Boulder & Stone was eventually paid and their Stop Notice released.
18 However, the other vendors and material suppliers have not been paid in full.

19 76. No one dealt with Respondent's RMO, Auger. Auger did not supervise
20 Respondent's work on the De Oro Park project.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Exercise Direct Supervision and Control of Respondent's Contracting**
23 **Activities)**

24 77. Respondent is subject to discipline for violation of Code section 7115 in
25 conjunction with section 7068.1 in that Respondent Auger failed to exercise direct supervision
26 and control over Respondent's contracting activities in the De Oro Park project, as more fully set
27 forth in paragraphs 70 – 76 above and incorporated by this reference.

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1 SEVENTEENTH CAUSE FOR DISCIPLINE

2 (Contracting Out of Classification)

3 78. Respondent is subject to discipline for violation of Code section 7117.6 in that
4 Respondent acted in the capacity of a contractor in a classification other than that currently held
5 by the licensee when Respondent submitted a bid and performed work requiring a Class "C-10"
6 and a Class A, B or C license for the De Oro Park project when Respondent had only a Class "B"
7 license, as more fully set forth in paragraphs 30 – 32 and 70 – 76 above and incorporated by this
8 reference.

9 EIGHTEENTH CAUSE FOR DISCIPLINE

10 (Failure to Cooperate in Investigation)

11 79. Respondent is subject to discipline for violation of Code section 7111.1 for failure
12 or refusal to cooperate with the CSLB's investigation of complaints filed against it, as more fully
13 set forth in paragraphs 37 – 40 above and incorporated by this reference.

14 NINETEENTH CAUSE FOR DISCIPLINE

15 (Failure to Pay Subcontractor)

16 80. Respondent is subject to discipline for violation of Code section 7120 for failure to
17 pay Southwest Boulder & Stone, Vortex US, West Coast Sand & Gravel, Superior Ready Mix
18 Concrete, L.P. and T.L.R. Enterprises, Inc. dba Desert Electric Supply when due for materials
19 and services rendered for the De Oro Park project, necessitating the filing of Stop Notices, as
20 more fully set forth in paragraphs 70 – 76 above and incorporated by this reference.

21 TWENTIETH CAUSE FOR DISCIPLINE

22 (Making Substantial Misrepresentation)

23 81. Respondent is subject to discipline for violation of Code section 7161, subdivision
24 (b) for making a substantial misrepresentation in the procurement of a public works contract when
25 Respondent listed MC Electric on its list of subcontractors for the De Oro Park project when MC
26 Electric did not bid on the project, contract for the project nor perform any work on the project,
27 as more fully set forth in paragraphs 70 – 76 above and incorporated by this reference.

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1 IDYLLWILD SCHOOL PROJECT

2 82. On October 23, 2012, Respondent submitted a bid to the Hemet Unified School
3 District ("HUSD") to construct an accessible pedestrian ramp from the middle playing fields to
4 the upper fields. The project was known as the Idyllwild K-8 School Construction of Accessible
5 Pedestrian Ramp ("Idyllwild School project"). Specifically, the project included saw-cutting and
6 demolishing existing asphalt concrete paving; performing earthwork as needed for construction of
7 the new ramp; construction of the concrete ramp, paving, walls, curbs; and, installation of
8 handrails and guardrails.

9 83. The HUSD's Notice Inviting Bid required bidders for the project to possess a
10 Class "B" license. Respondent's bid of \$173,400.00 was the lowest bid. On October 25, 2012,
11 B.L. from CCC advised the CSLB that Respondent was about to be awarded another contract for
12 concrete work when such work was out of its classification.

13 84. On November 6, 2012, the CSLB's Classification Deputy advised H.T. at the
14 HUSD that the proposed work required specialized engineering and that the scope of work fell
15 within the Class "A" license and not the "B" license.

16 85. On November 7, 2012, the HUSD contracted with Respondent for the Idyllwild
17 School Project. No one dealt with Respondent's RMO, Auger. Auger did not supervise
18 Respondent's work on the Idyllwild School project.

19 86. Respondent failed to perform its work in accordance with its contract with the
20 HUSD. Respondent failed to complete the project by the April 1, 2013 deadline and failed to
21 provide additional manpower and materials to timely complete the project. Respondent
22 demanded payment for work not completed and some work was performed incorrectly. The
23 HUSD received a number of Stop Notices from vendors or material suppliers who had not
24 received payment for services or materials provided from Respondent.

25 87. Respondent had been paid approximately \$130,000 when the HUSD Governing
26 Board voted to terminate Respondent from the project on or about June 18, 2013.

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1 **TWENTY—FIRST CAUSE FOR DISCIPLINE**

2 (Failure to Exercise Direct Supervision and Control of Respondent's Contracting
3 Activities)

4 88. Respondent is subject to discipline for violation of Code section 7115 in
5 conjunction with section 7068.1 in that Respondent Auger failed to exercise direct supervision
6 and control over Respondent's contracting activities in the Idyllwild School project, as more fully
7 set forth in paragraphs 82 – 87 above and incorporated by this reference.

8 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

9 (Contracting Out of Classification)

10 89. Respondent is subject to discipline for violation of Code section 7117.6 in that
11 Respondent acted in the capacity of a contractor in a classification other than that currently held
12 by the licensee when Respondent submitted a bid and performed work requiring a Class "A"
13 license for the Idyllwild School Respondent had only a Class "B" license, as more fully set forth in
14 paragraphs 30 – 32 and 82 – 87 above and incorporated by this reference.

15 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

16 (Failure to Cooperate in Investigation)

17 90. Respondent is subject to discipline for violation of Code section 7111.1 for failure
18 or refusal to cooperate with the CSLB's investigation of complaints filed against it, as more fully
19 set forth in paragraphs 37 – 40 above and incorporated by this reference.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Registrar of Contractors issue a decision:

23 1. Revoking or suspending Contractor's License Number 949148 issued to Falcon
24 Builders Inc.;

25 2. Prohibiting Ronald Charles Auger and John Albert Mercer from serving as an officer,
26 director, associate, partner, or qualifying individual of any licensee during the period that discipline
27 is imposed on license Number 949148, issued to Falcon Builders Inc.;

1 3. Revoking or suspending any other license for which Ronald Charles Auger is
2 furnishing the qualifying experience or appearance;

3 4. Ordering restitution of all damages according to proof suffered by Fred's Glass &
4 Mirror, Vortex US, West Coast Sand & Gravel, Superior Ready Mix Concrete, L.P. and T.L.R.
5 Enterprises, Inc. dba Desert Electric Supply, as a condition of probation in the event probation is
6 ordered;

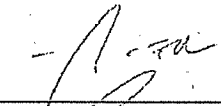
7 5. Ordering restitution of all damages suffered by Fred's Glass & Mirror, Vortex US,
8 West Coast Sand & Gravel, Superior Ready Mix Concrete, L.P. and T.L.R. Enterprises, Inc. dba
9 Desert Electric Supply as a result of Ronald Charles Auger's conduct as a contractor, as a
10 condition of restoration of license Number 949148, issued to Falcon Builders Inc.;

11 6. Ordering Falcon Builders Inc. to pay the Registrar of Contractors his costs in the
12 investigation and enforcement of the case according to proof at the hearing, pursuant to Business
13 and Professions Code section 125.3;

14 7. Ordering Falcon Builders Inc. to provide the Registrar with a listing of all contracting
15 projects in progress and the anticipated completion date of each;

16 8. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: August 18, 2014


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

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25 **FILED**
26 AUG 18 2014
27 **CSLB DSS**
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