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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT  
11

12 NICHOLS LUMBER & HARDWARE CO.,

13 Plaintiff,

14 v.

15 KARA YAMAGAMI; CHU TING LU  
individually and dba HALLMADE  
16 CONSTRUCTION, INC., a California  
Corporation; and DOES 1 through 50, inclusive,

17 Defendants.  
18

Case No. [REDACTED]

**NOTICE OF MOTION AND MOTION  
TO STRIKE COMPLAINT AND FOR  
SANCTIONS AGAINST EDWARD A.  
TREDER AND BARRETT DAFFIN  
FRAPPIER TREDER & WEISS, LLP  
PURSUANT TO CODE OF CIVIL  
PROCEDURE SECTION 128.7**

Hearing:

Date: [REDACTED]

Time: [REDACTED]

Dept.: [REDACTED]

Action Filed: January 4, 2013

Trial Date: None set  
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:


PLEASE TAKE NOTICE that on [REDACTED] a.m., or as soon as thereafter as the matter may be heard in Department [REDACTED] of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California 90012, Defendant Kara Yamagami (Defendant) will move this Court to strike the Complaint and impose sanctions, jointly and severally, against Edward A. Treder and Barrett Daffin Frappier Treder & Weiss, LLP, attorneys for Plaintiff Nichol's Lumber & Hardware Co. ("Plaintiff). The sanctions sought will be in the form of an award of reasonable attorneys' fees and costs in the anticipated amount of \$14,120.

This Motion is made pursuant to *Code of Civil Procedure* section 128.7 on the ground that the Complaint is devoid of evidentiary support, as proven by the discovery responses prepared by said attorneys, and despite this, said attorneys failed and refused to withdraw the unmeritorious Complaint prior to expiration of the 21-day safe harbor period causing Defendant to incur fees and costs to file this motion, a motion to expunge lis pendens and motion for summary judgment.

This Motion will be based upon this Notice, Memorandum of Points and Authorities, and the pleadings and records on file in this action, and upon such further documents and evidence as may be presented at the hearing of this motion to substantiate all fees and costs incurred up to that point in time.

Dated: May 2, 2013

DAGRELLA LAW FIRM

By:   
JERRY R. DAGRELLA  
Attorney for Defendant Kara Yamagami

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. INTRODUCTION**

4 On January 4, 2013, Plaintiff filed this action to foreclose on a mechanic’s lien claiming it  
5 provided materials that were used in constructing improvements on Defendant’s property. In fact,  
6 none of Plaintiff’s material is installed on Defendant’s property. Plaintiff supplied said materials  
7 to a contractor who used unsupervised and unlicensed personnel to do the installation work; said  
8 personnel abandoned the project and Defendant was forced to hire a replacement contractor to  
9 redo the work with new materials. Plaintiff is aware of this and admits in discovery responses  
10 that it has no evidence to refute this. Nonetheless, Plaintiff refuses to dismiss the Complaint.

11 **II. ANALYSIS**

12 Pursuant to Code of Civil Procedure section 128.7(b), an attorney’s signature on a  
13 pleading is deemed an implied certification that (1) the action “is not being presented primarily  
14 for an improper purpose, such as to harass[,]” (2) “[t]he claims...are warranted by existing law or  
15 by a nonfrivolous argument for the extension, modification, or reversal of existing law or the  
16 establishment of new law[,]” and (3) “[t]he allegations and other factual contentions have  
17 evidentiary support or, if specifically so identified, are likely to have evidentiary support after a  
18 reasonable opportunity for further investigation or discovery.” (C.C.P., § 128.7(b)(3).) This  
19 certification is designed to create an affirmative duty of investigation as to both law and fact, and  
20 thus to deter frivolous actions and costly meritless maneuvers.

21 California law is very clear that a contractor has no right to payment for unlicensed work  
22 and a contractor who performs unlicensed work is required to return all compensation received  
23 without reductions or offsets for the value of material or services provided. (*White v Cridlebaugh*  
24 (2009) 178 CA4th 506, 520–521; *Goldstein v Barak Constr.* (2008) 164 CA4th 845, 855.)

25 Moreover, Defendant’s contract with the installer fails to comply with over a dozen rules  
26 and regulations of California Contractors' State License Law. The California *Business and*  
27 *Professions Code* section 7159 *et seq.* requires, as a condition of enforceability, that any home  
28 improvement contract be in writing, signed by the homeowner, and that it contain all the required



1 information, notices, and disclosures set forth in the statute, including a statement that the owner  
2 has a right to cancel or rescind the contract. Below is a sampling of what is required in the  
3 contract:

- 4 • A notice about the Contractors' State License Board in at least 12-point type;
- 5 • The heading, "Description of the Project and Description of the Significant  
6 Materials to be used and Equipment to be Installed, " with a description of work  
7 and materials;
- 8 • A heading that states, "Contract Price" and the amount of the contract in dollars  
9 and cents;
- 10 • A statement that upon payment, lien releases will be provided;
- 11 • The heading, "Note about Extra Work and Change Orders," with prescribed  
12 language describing written authorization on change orders and a sample change  
13 order;
- 14 • A provision that provides notice that failure to commence work within 20 days of  
15 commencement is a violation of License Law, along with a statement that  
16 describes what constitutes substantial commencement of work;
- 17 • The heading, "Approximate Start Date" with the date of commencement and the  
18 heading "Approximate Completion Date" with the date of completion are both  
19 required;
- 20 • The heading, "List of Documents to Be Incorporated into the Contract" is required,  
21 along with a clear description of any other document to be incorporated;
- 22 • A 12-point 3-Day/7-Day Notice of Right to Cancel and Notice of Cancellation is  
23 also required, along with a 12-point notice that the owner is entitled to a complete  
24 signed copy of the contract;
- 25 • The heading, "Down Payment" and a 12-point notice that a down payment cannot  
26 exceed the lesser of \$1000 or 10%;
- 27 • A 12-point notice with schedule of progress payments with a description of each  
28 phase of work;
- A notice about liability insurance (whether the contractor has it or not) and  
workers' compensation;
- A 12-point notice stating that it is illegal to collect payment for work not yet  
completed.

21 Notably, Defendant's contract with the installer contains almost none of the provisions mandated  
22 by law. "Failure by the licensee, his or her agent or salesperson, or by a person subject to be  
23 licensed under this chapter, to provide the specified information, notices, and disclosures in the  
24 contract, or to otherwise fail to comply with any provision of this section, is cause for discipline."

25 (*Bus. & Prof. Code § 7159(a)(5).*)

26 Lastly, none of Plaintiff's material was ultimately used on the property, which is a pre-  
27 condition for enforcement of any mechanic's lien.

1 Mr. Treder and his firm are aware of Defendant's contentions and assisted Plaintiff in  
2 responding to discovery wherein Plaintiff admits to having no evidence to refute Defendant's  
3 contentions. Counsel has an affirmative duty to dismiss the complaint, but has chosen to proceed  
4 despite the lack of evidence. As a consequence, Defendant is forced to incur unnecessary fees  
5 and costs to file this motion, a motion to expunge lis pendens and a motion for summary  
6 judgment and request \$14,120 in monetary sanctions pursuant to Code of Civil Procedure section  
7 128.7(d). (See also *Levy v. Blum* (2001) 92 Cal.App.4th 625, 637.)

8 **III. CONCLUSION**

9 For the foregoing reasons, Defendant respectfully requests that this Court impose  
10 sanctions against Edward A. Treder and Barrett Daffin Frappier Treder & Weiss, LLP, attorneys  
11 for Plaintiff Nichol's Lumber & Hardware Co. in the anticipated amount of \$14,120, subject to  
12 proof as may be presented at the hearing of this motion to substantiate all fees and costs incurred  
13 up to that point in time.

14 **Notice: This Memorandum of Points and Authorities is served on May 2, 2013.**  
15 ***Code of Civil Procedure* Section 128.7 provides for a mandatory 21-day safe-harbor period.**  
16 **If Plaintiff and its counsel do not withdraw the Complaint before the 21-day deadline**  
17 **expires, then Defendant may file this motion for section 128.7 sanctions.**

18 Dated: May 2, 2013

DAGRELLA LAW FIRM

19  
20 By:   
21 JERRY R. DAGRELLA  
22 Attorney for Defendant Kara Yamagami  
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1 **PROOF OF SERVICE**

2 At the time of service I was over 18 years of age and not a party to this action. My  
3 business address is Dagrella Law Firm, 11801 Pierce St., Suite 200, Riverside, California 92503.  
4 On May 2, 2013, I served the following document(s):

5 **NOTICE OF MOTION AND MOTION TO STRIKE COMPLAINT AND FOR**  
6 **SANCTIONS AGAINST EDWARD A. TREDER AND BARRETT DAFFIN**  
7 **FRAPPIER TREDER & WEISS, LLP PURSUANT TO CODE OF CIVIL**  
8 **PROCEDURE SECTION 128.7**

9  **By United States mail.** I enclosed the documents in a sealed envelope or package  
10 addressed to the persons at the addresses listed below (specify one):

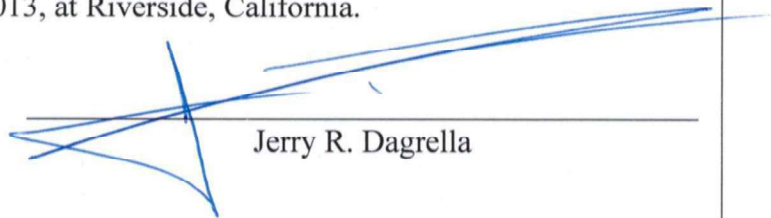
11  Deposited the sealed envelope with the United States Postal Service, with the  
12 postage fully prepaid.

13  Placed the envelope for collection and mailing, following our ordinary business  
14 practices. I am readily familiar with this business's practice for collecting and  
15 processing correspondence for mailing. On the same day that correspondence is  
16 placed for collection and mailing, it is deposited in the ordinary course of business  
17 with the United States Postal Service, in a sealed envelope with postage fully  
18 prepaid.

19 I am a resident or employed in the county where the mailing occurred. The envelope or  
20 package was placed in the mail at Riverside, California.

21 <b>Edward A. Treder, Esq.</b> 22 <b>Barrett Daffin &amp; Frappier</b> 23 <b>Treder &amp; Weiss, LLP</b> 24 <b>20955 Pathfinder Road, Suite 300</b> 25 <b>Diamond Bar, CA 91765</b>	26 <b>Attorney For:</b> 27 <b>Plaintiff Nichols Lumber &amp; Hardware Co.</b>
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28 I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct. Executed on May 2, 2013, at Riverside, California.

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30 \_\_\_\_\_  
31 Jerry R. Dagrella