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7

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation
Against:

Case No. 2008-67

12 ARISTON TERMITE
14913 Gwen Chris Court
13 Paramount, California 90723
14 JERRY WALKER, Qualifying Manager
(Disassociated on 12/27/05)
15 DONALD LEVELL QUINN SR., Qualifying
Manager, Br. 3

OAH No. 2008080258

**DEFAULT DECISION AND ORDER
AGAINST JOSE CARRILLO ONLY**

16 (Disassociated on 3/3/08)
WILFREDO PINEDA, Qualifying Manager,
17 Br. 3
CARLOS MONCADA, Partner
18 MAYRA LEON, Partner
Company Registration Certificate No. PR
19 4476, Br. 3
Operator License No. OPR 11110, Br. 3
20 Operator License No. OPR 11474, Br. 3
21 JEFFREY MATTHEW EBEL
8526 10th Street
22 Downey, California 90241
Field Representative's License No. FR 35090,
23 Br. 3
24 JOSE CARRILLO
205 North Santa Fe Avenue
25 Compton, California 90221
Field Representative's License No. FR 17136,
26 Br. 3

[Gov. Code, §11520]

27 Respondents.
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1 COAST 2 COAST FUMIGATION
2 COMPANY
3 14913 Gwen Chris Court
4 Paramount, California 90723
5 DONALD LEVELL QUINN SR., Qualifying
6 Manager, Br. 1
7 (Disassociated on 3/3/08)
8 CARLOS MONCADA, Partner
9 MAYRA LEON, Partner
10 Company Registration Certificate No. PR
11 4917, Br. 1
12 Operator License No. OPR 11110, Br. 3
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14 Affiliated License.

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FINDINGS OF FACT

1. On or about April 23, 2008, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, filed Accusation No. 2008-67 against Ariston Termite with Carlos Moncada and Mayra Leon, as partners, Donald Levell Quinn Sr., Jeffrey Matthew Ebel, Jose Carrillo, and Wilfredo Pineda before the Structural Pest Control Board. Ariston Termite with Carlos Moncada and Mayra Leon, as partners, Donald Levell Quinn Sr., Jeffrey Matthew Ebel, and Wilfredo Pineda each entered into a stipulated settlement in this matter.

2. On or about March 8, 1989, the Board issued Field Representative License No. FR 17136, in Branch 3 to Jose Carrillo ("Respondent"). On or about February 19, 2007, Respondent Carrillo became employed with Ariston Termite. On or about May 25, 2007, Respondent Carrillo disassociated from Respondent Ariston. On or about October 31, 2007, Respondent became employed with El Redondo Termite Control, Inc. On or about July 9, 2008, Respondent Carrillo became employed with Unique Termite Control. The license will expire on June 30, 2009, unless renewed.

3. On or about January 30, 2009, Maria Camacho, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2008-67, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and

1 is: 205 North Santa Fe Avenue, Compton, CA 90221. A copy of the Accusation is attached as
2 **Exhibit A**, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c).

5 On or about May 20, 2008, Respondent signed and returned a Notice of Defense, requesting
6 a hearing in this matter. A Notice of Hearing was served by mail at Respondent's address of
7 record and it informed them that an administrative hearing in this matter was scheduled for June
8 22, 2009. Respondent failed to appear at that hearing.

9 5. Government Code section 11506 states, in part:

10 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
11 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
12 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
13 right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

14 6. California Government Code section 11520 states, in part:

15 ~~"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the~~
16 ~~agency may take action based upon the respondent's express admissions or upon other evidence~~
17 ~~and affidavits may be used as evidence without any notice to respondent."~~

18 7. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 evidence on file herein, finds that the allegations in Accusation No. 2008-67 are true.

21 8. The total cost for investigation and enforcement in connection with the Accusation
22 are \$24,946.68 as of June 16, 2009.¹

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent has subjected his Field
25 Representative's License No. FR 17136 to discipline.

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27 ¹ Ariston Termite with Carlos Moncada and Mayra Leon, as partners, Donald Levell
28 Quinn Sr., Jeffrey Matthew Ebel, and Wilfredo Pineda agreed to pay costs of investigation and
enforcement in this matter in the total amount of \$18,130, pursuant to the terms of their respective
stipulated settlements.

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BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12 In the Matter of the First Amended Accusation Against:

13 **ARISTON TERMITE**
14 14913 Gwen Chris Court
Paramount, California 90723
15 **JERRY WALKER, Qualifying Manager**

16 (Disassociated on 12/27/05)
17 **DONALD LEVELL QUINN SR., Qualifying Manager, Br. 3**
18 (Disassociated on 3/3/08)
19 **WILFREDO PINEDA, Qualifying Manager, Br. 3**
20 **CARLOS MONCADA, Partner**
21 **MAYRA LEON, Partner**
22 Company Registration Certificate No. PR 4476, Br. 3
23 Operator License No. OPR 11110, Br. 3

24 **JEFFREY MATTHEW EBEL**
25 8526 10th Street
Downey, California 90241
26 Field Representative's License No. FR 35090, Br. 3

27 **JOSE CARRILLO**
28 205 North Santa Fe Avenue
Compton, California 90221
Field Representative's License No. FR 17136, Br. 3

FILED

Date 1/22/09 By Kelli Okuma

Case No. 2008-67

**FIRST AMENDED
ACCUSATION**

Respondents.

1 **COAST 2 COAST FUMIGATION COMPANY**
14913 Gwen Chris Court
2 Paramount, California 90723
3 **DONALD LEVELL QUINN SR., Qualifying Manager, Br. 1.**
(Disassociated on 3/3/08)
4 **CARLOS MONCADA, Partner**
MAYRA LEON, Partner
Company Registration Certificate No. PR 4917, Br. 1
5 Operator License No. OPR 11110, Br. 3

6 Affiliated License.

7 Kelli Okuma ("Complainant") alleges:

8 PARTIES

9 1. Complainant brings this First Amended Accusation solely in her official
10 capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of
11 Consumer Affairs.

12 LICENSE HISTORY

13 Ariston Termite

14 Company Registration Certificate No. PR 4476, Br. 3

15 2. The following is the license history of Company Registration Certificate
16 No. PR 4476, Br. 3 ("company registration") issued to Ariston Termite:

17 February 6, 2004	The Board issued Company Registration Certificate No. PR 4476 in Branch 3 to Ariston Termite ("Respondent Ariston"), with Mayra Leon and Carlos Moncada as Partners, and Jerry Walker as the Qualifying Manager.
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20 December 27, 2005	Jerry Walker disassociated as the Qualifying Manager.
21 January 9, 2006	Donald Levell Quinn Sr. became the Qualifying Manager.
22	
23 November 26, 2007	The company registration was suspended for failing to maintain general liability insurance, pursuant to Business and Professions Code ("Code") section 8690.
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25 November 27, 2007	The company registration was reinstated.
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27 December 31, 2007	The company registration was suspended for failing to maintain general liability insurance, pursuant to Code section 8690.
28	
January 4, 2008	The company registration was reinstated.
March 3, 2008	Donald Levell Quinn Sr. disassociated from Ariston Termite as Qualifying Manager.
March 14, 2008	The company registration was suspended for no Qualifying Manager.

1 May 16, 2008 Wilfred Pineda became the Qualifying Manager.
 2 June 6, 2008 The company registration was suspended due to failure to maintain a
 3 surety bond in the amount of \$4,000 as required by Code section 8697.
 4 July 14, 2008 The company registration was reinstated.

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 6 **Coast 2 Coast Fumigation Company**
Company Registration Certificate No. PR 4917, Br. 1

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 8 3. On or about November 17, 2005, the Board issued Company Registration
 9 Certificate No. PR 4917 in Branch 1 to Coast 2 Coast Fumigation Company, with Mayra Leon
 10 and Carlos Moncada as Partners, and Donald Levell Quinn Sr. as the Qualifying Manager. On
 11 or about December 31, 2007, the company registration was suspended for failing to maintain
 12 general liability insurance, pursuant to Code section 8690. On or about January 4, 2008, the
 13 company registration was reinstated. On or about March 3, 2008, Donald Levell Quinn Sr.
 14 disassociated as Qualifying Manager.

15 **Donald Levell Quinn Sr., Qualifying Manager**
Operator's License No. OPR 11110

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 17 4. The following is the license history of Operator's License No. OPR 11110
 18 issued to Donald Levell Quinn Sr.:

<u>DATE</u>	<u>ACTION</u>
19 May 26, 2005	The Board issued Operator's License No. OPR 11110 ("license") to Donald Levell Quinn Sr. ("Respondent Quinn") in Branches 1 and 3, as an employee of Quinn's Exterminating Company Inc. The license is in effect and renewed through June 30, 2010.
20 November 17, 2005	Respondent Quinn became the Qualifying Manager of Coast 2 Coast Fumigation Company in Branch 1.
21 January 9, 2006	Respondent Quinn became the Qualifying Manager of Ariston Termite in Branch 3.
22 July 20, 2006	The license was upgraded to include Branch 2.
23 September 7, 2006	Respondent Quinn became the Qualifying Manager for All Safe Termite Control in Branch 3.
24 October 13, 2006	Respondent Quinn became the Qualifying Manager for East Bay Pest Control in Branch 2.

1	October 24, 2006	Respondent Quinn became the Qualifying Manager for Abba Termite and Pest Control Inc. in Branches 2 and 3.
2	October 25, 2006	Respondent Quinn became the Vice President of Quinn's Exterminating Company Inc.
3	November 14, 2006	Respondent Quinn disassociated as the Qualifying Manager of All Safe Termite Control.
4	November 15, 2006	Respondent Quinn became the Qualifying Manager for Turbo Termite & Repair in Branch 3.
5	November 26, 2006	Respondent Quinn disassociated as the Qualifying Manager of Abba Termite and Pest Control Inc.
6	December 19, 2006	Respondent Quinn became the Branch Office Supervisor for Quinn's Exterminating Company Inc.
7	January 19, 2007	Respondent Quinn became the Qualifying Manager for West Coast Exterminating Inc. in Branches 1, 2, and 3.
8	January 22, 2007	Respondent Quinn became the Qualifying Manager for U S Termite.Com in Branch 3.
9	January 24, 2007	Respondent Quinn became the Qualifying Manager for Dynasty Termite in Branch 3.
10	February 17, 2007	Respondent Quinn disassociated as the Qualifying Manager of Dynasty Termite.
11	February 21, 2007	Respondent Quinn disassociated as the Qualifying Manager for U S Termite.Com in Branch 3.
12	February 21, 2007	Respondent Quinn became the Qualifying Manager for U S Termite.
13	March 1, 2007	Respondent Quinn disassociated as the Qualifying Manager for East Bay Pest Control in Branch 2.
14	March 1, 2007	Respondent Quinn became the Branch Office Supervisor for West Coast Exterminating Inc.
15	May 14, 2007	Respondent Quinn disassociated as the Qualifying Manager, Vice President, and Branch Office Supervisor for Quinn's Exterminating Co. Inc.
16	June 21, 2007	Respondent Quinn became the Qualifying Manager for Unique Termite Control in Branch 3.
17	July 18, 2007	Respondent Quinn became the Qualifying Manager for Parks Pest Control and Termite in Branches 2 and 3.
18	July 23, 2007	Respondent Quinn became the Qualifying Manager for Medina Pest Control in Branch 3.
19	August 7, 2007	Respondent Quinn disassociated as the Qualifying Manager and Branch Office Supervisor of West Coast Exterminating Inc.
20	August 24, 2007	Respondent Quinn became the Qualifying Manager of Medina Pest Control in Branches 1 and 3.
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1	October 25, 2007	Respondent Quinn became the Qualifying Manager for Dependable Pest & Termite in Branches 2 and 3.
2	November 26, 2007	The license was suspended for failing to maintain general liability insurance for Ariston Termite, pursuant to Code section 8690.
3	November 27, 2007	The license was reinstated.
4	November 29, 2007	Respondent Quinn became the Qualifying Manager for Inspector Termite Control in Branch 1.
5	December 12, 2007	Respondent Quinn became the Qualifying Manager for Quinn's Exterminating Co. Inc. in Branch 2.
6	December 31, 2007	The license was suspended for failing to maintain general liability insurance for Ariston Termite and Coast 2 Coast Fumigation Company, pursuant to Code section 8690.
7	January 4, 2008	The license was reinstated.
8	January 24, 2008	Respondent Quinn disassociated as the Qualifying Manager for Dependable Pest & Termite.
9	January 24, 2008	Respondent Quinn became the Qualifying Manager for Dependable Pest & Termite Inc. in Branches 2 and 3.
10	January 25, 2008	Respondent Quinn disassociated as the Qualifying Manager for Quinn's Exterminating Co. Inc., but remained as an employee.
11	February 19, 2008	Respondent Quinn disassociated as the Qualifying Manager for Dependable Pest & Termite, Inc. in Branches 2 and 3.
12	February 21, 2008	Respondent Quinn disassociated as the Qualifying Manager for U S Termite in Branch 3.
13	February 21, 2008	Respondent Quinn became the Qualifying Manager for U S Termite Inc. dba U S Termite in Branches 2 and 3.
14	March 3, 2008	Respondent Quinn disassociated with Ariston Termite as Qualifying Manager.
15	March 3, 2008	Respondent Quinn disassociated with Coast 2 Coast Fumigation Company as Qualifying Manager.
16	March 17, 2008	Respondent Quinn left the employ of Quinn's Exterminating Co., Inc.
17	April 4, 2008	Respondent Quinn became the Branch 1 Qualifying Manager for U S Termite, Inc. dba U S Termite.
18	October 23, 2008	The license was suspended due to failure to maintain the general liability insurance for Unique Termite Control, pursuant to Code section 8690.
19	October 28, 2008	The license was reinstated.
20	October 28, 2008	Respondent Quinn disassociated as the Qualifying Manager of Inspector Termite Control.
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1 **Jeffrey Mathew Ebel**
2 **Field Representative License No. FR 35090, Br. 3**

3 5. On or about September 3, 2002, the Board issued Field Representative
4 License No. FR 35090 in Branch 3 to Jeffrey Mathew Ebel ("Respondent Ebel"). On or about
5 January 19, 2005; Respondent Ebel became employed with Ariston Termite. On or about
6 February 13, 2007, Respondent Ebel left the employ of Ariston Termite. On or about
7 February 15, 2007, Respondent became employed with Master Termite Inc. The license will
8 expire on June 30, 2008, unless renewed.

9 **Jose Carrillo**
10 **Field Representative License No. FR 17136, Br. 3**

11 6. On or about March 8, 1989, the Board issued Field Representative License
12 No. FR 17136, in Branch 3 to Jose Carrillo ("Respondent Carrillo"). On or about February 19,
13 2007, Respondent Carrillo became employed with Ariston Termite. On or about May 25, 2007,
14 Respondent Carrillo left the employ of Respondent Ariston. On or about October 31, 2007,
15 Respondent became employed with El Redondo Termite Control, Inc. On or about July 9, 2008,
16 Respondent Carrillo became employed with Unique Termite Control. The license will expire on
17 June 30, 2009, unless renewed.

18 **Wilfredo Pineda, Qualifying Manager**
19 **Operator License No. OPR 11474**

20 7. The following is the license history of Operator's License No. OPR
21 11474:

22 March 5, 2007	The Board issued Operator License No. OPR 11474 in Branch 3 to Wilfrdo Pineda ("Respondent Pineda"), as an employee of Commitment Exterminators, Inc., and will expire on June 30, 2009, unless renewed
23 March 9, 2007	Respondent Pineda left the employ of Commitment Exterminators, Inc.
24 March 13, 2007	Respondent Pineda became the Owner and Qualifying Manager for Quality Termite Damage Repair, Inc.
25 May 16, 2008	Respondent Pineda associated with Ariston Termite as its Qualified Manager.

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JURISDICTION

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2 8. Code section 8620 provides, in pertinent part, that the Board may suspend
3 or revoke a license when it finds that the holder, while a licensee or applicant, has committed
4 any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may
5 assess a civil penalty.

6 9. Code section 8624 states:

7 If the board suspends or revokes an operator's license and one or more
8 branch offices are registered under the name of the operator, the suspension or
9 revocation may be applied to each branch office.

10 If the operator is the qualifying manager, a partner, responsible officer, or
11 owner of a registered structural pest control company, the suspension or
12 revocation may be applied to the company registration.

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

20 10. Code section 8625 states:

21 The lapsing or suspension of a license or company registration by
22 operation of law or by order or decision of the board or a court of law, or the
23 voluntary surrender of a license or company registration shall not deprive the
24 board of jurisdiction to proceed with any investigation of or action or disciplinary
25 proceeding against such licensee or company, or to render a decision suspending
26 or revoking such license or registration.

27 11: Code section 8622 states:

28 When a complaint is accepted for investigation of a registered company;
the board, through an authorized representative, may inspect any or all properties
on which a report has been issued pursuant to Section 8516 or a notice of
completion has been issued pursuant to Section 8518 by the registered company
to determine compliance with the provisions of this chapter and the rules and
regulations issued thereunder. If the board determines the property or properties
are not in compliance, a notice shall be sent to the registered company so stating.
The registered company shall have 30 days from the receipt of the notice to bring
such property into compliance, and it shall submit a new original report or
completion notice or both and an inspection fee of not more than one hundred
twenty-five dollars (\$125) for each property inspected. If a subsequent
reinspection is necessary, pursuant to the board's review of the new original report
or notice or both, a commensurate reinspection fee shall also be charged. If the
board's authorized representative makes no determination or determines the
property is in compliance, no inspection fee shall be charged.

1 The notice sent to the registered company shall inform the registered
2 company that if it desires a hearing to contest the finding of noncompliance, the
3 hearing shall be requested by written notice to the board within 20 days of receipt
4 of the notice of noncompliance from the board. Where a hearing is not requested
5 pursuant to this section, payment of any assessment shall not constitute an
6 admission of any noncompliance charged.

7 **STATUTORY PROVISIONS**

8 12. Code section 8516 states, in pertinent part:

9 (b) No registered company or licensee shall commence work on a
10 contract, or sign, issue, or deliver any documents expressing an opinion or
11 statement relating to the absence or presence of wood destroying pests or
12 organisms until an inspection has been made by a licensed Branch 3 field
13 representative or operator. The address of each property inspected or upon which
14 work is completed shall be reported on a form prescribed by the board and shall
15 be filed with the board no later than 10 business days after the commencement of
16 an inspection or upon completed work.

17 Every property inspected pursuant to subdivision (b) of Section 8516.1, or
18 Section 8518, or subdivision (b) of this section shall be assessed a filing fee
19 pursuant to Section 8674.

20 Failure of a registered company to report and file with the board the
21 address of any property inspected or work completed pursuant to Section 8516.1,
22 Section 8518, or this section are grounds for disciplinary action and shall subject
23 the registered company to a fine of not more than two thousand five hundred
24 dollars (\$2,500).

25 A written inspection report conforming to this section and on a form
26 approved by the board shall be prepared and delivered to the person requesting
27 the inspection or to the person's designated agent within 10 business days of the
28 inspection, except that an inspection report prepared for use by an attorney for
litigation purposes is not required to be reported to the board. The report shall be
delivered before work is commenced on any property. The registered company
shall retain for three years all original inspection reports, filed notes, and activity
forms.

Reports shall be made available for inspection and reproduction to the
executive officer of the board or his or her duly authorized representative during
business hours. Original inspection reports or copies thereof shall be submitted to
the board upon request within two business days. The following shall be set forth
in the report:

(2) The name and address of the person or firm ordering the report.

(6) A foundation diagram or sketch of the structure or structures or
portions of the structure or structures inspected, indicating thereon the
approximate location of any infested or infected areas evident, and the parts of the
structure where conditions that would ordinarily subject those parts to attack by
wood destroying pests or organisms exist.

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(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

(10) Recommendations for corrective measures.

13. Code section 8518 states:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work.

Every property upon which work is completed shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property upon which work was completed pursuant to subdivision(b) of Section 8516, subdivision (b) of Section 8516.1, or Section 8518 are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars (\$2,500).

The registered company shall retain for three years all original notices of work completed, work not completed, and activity forms.

Notices of work completed and not completed shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

14. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

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15. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

16. Code section 8642 states:

The commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action.

17. Code section 8644 states:

Fraud or misrepresentation, after inspection, by any licensee or registered company engaged in pest control work of any infestation or infection of wood-destroying pests or organisms found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests or organisms, whether or not a report was made pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary action.

18. Code section 8567 states:

~~Should a field representative or applicator change his or her employment,~~ or should an operator enter the employ of a registered company, or being already employed by a registered company change his or her employment, or being employed by a registered company leave that employment and enter the pest control business on his or her own behalf, he or she shall notify the registrar in writing, on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. Whereupon the registrar shall register the change in his or her records.

19. Code section 8571 states:

If the licensed operator who is designated as the qualifying manager for a registered company ceases for any reason whatsoever to be connected with the company, the company shall notify the registrar in writing within 10 days from such cessation. If the notice is given the registration shall remain in force for a reasonable length of time, to be determined by rules of the board, during which period the company must submit to the registrar in writing the name of another qualified, or to be qualified, qualifying manager to replace the qualifying manager who has ceased to be connected with it, and who shall qualify as such within the time allowed by rules and regulations of the board.

If the company fails to notify the registrar within the 10-day period, or fails to replace with a qualifying manager within the period fixed by the regulations of the board, at the end of the period the registration shall be ipso facto suspended. The registration shall be reinstated upon the filing of an affidavit, executed by a representative of the company, and filed with the registrar, to the effect that the qualifying manager who ceased to be connected with the company has been replaced by another operator who is authorized by this

1 chapter to act in such capacity, and that such operator has not had his or her
2 license suspended or revoked or that he or she has not been connected with a
company which has had its registration suspended or revoked.

3 20. Code section 8505.17 states, in part:

4 (c) Registered structural pest control companies shall prepare and submit
5 to the county agricultural commissioner a monthly report of all pesticides used in
6 that county. The report shall be on a form approved by the Director of Pesticide
7 Regulation and shall contain the name and registration number of each pesticide,
8 the amount used, and the number of applications made. The report shall be
9 submitted to the commissioner by the 10th day of the month following the month
10 of application. Each pesticide use report or combination of use reports
11 representing a registered structural pest control company's total county pesticide
12 use for the month shall have affixed thereto a pesticide use stamp issued by the
board in the denomination fixed by the board in accordance with Section 8674 as
13 the pesticide use report filing fee. The board shall provide for the sale of these
14 stamps and for the refund of moneys paid for stamps which are returned to it
unused. When a registered structural pest control company performs no pest
control during a month in a county in which it has given notice pursuant to
Section 15204 of the Food and Agricultural Code, the registered company shall
submit a use report stating this fact to the commissioner. No pesticide use stamp
is required on negative use reports.

13 REGULATORY PROVISIONS

14 21. California Code of Regulations, title 16, section 1990, states, in pertinent

15 part:
16 (a) All reports shall be completed as prescribed by the board. Copies filed
17 with the board shall be clear and legible. All reports must supply the information
18 required by Section 8516 of the Code and the information regarding the pesticide
or pesticides used as set forth in Section 8538 of the Code, and shall contain or
describe the following:

- 19 (2) Signature of the Branch 3 licensee who made the inspection.
- 20 (3) Infestations, infections or evidence thereof.
- 21 (4) Wood members found to be damaged by wood destroying pests or organisms.

22 22. California Code of Regulations, title 16, section 1991, states, in pertinent

23 part:
24 (a) Recommendations for corrective measures for the conditions found
25 shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of
26 the code and shall also conform with the provisions of Title 24 of the California
Code of Regulations and any other applicable local building code, and shall
accomplish the following:

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1 (8) Exterminate all reported wood-destroying pests. Such extermination
2 shall not be considered repair under section 8516(b)(12) of the code. If evidence
3 indicates that wood-destroying pests extend into an inaccessible area(s),
4 recommendation shall be made to either:

5 (A) enclose the structure for an all encompassing treatment utilizing
6 materials listed in Section 8505.1 of the code, or

7 (B) use another all encompassing method of treatment which exterminates
8 the infestation of the structure; or

9 (C) locally treat by any or all of the following:

10 1. exposing the infested area(s) for local treatment,

11 2. removing the infested wood,

12 3. using another method of treatment which exterminates the infestation.

13 (If any recommendation is made for local treatment, the report must contain the
14 following statement: "Local treatment is not intended to be an entire structure
15 treatment method. If infestations of wood-destroying pests extend or exist beyond
16 the area(s) of local treatment, they may not be exterminated.")

17 When a complete inspection is performed, a recommendation shall be
18 made to remove or cover all accessible pellets and frass of wood-destroying pests.

19 When a limited inspection is performed, the inspection report shall state
20 that the inspection is limited to the area(s) described and diagramed. A
21 recommendation shall be made to remove or cover all accessible pellets and frass
22 of wood-destroying pests in the limited areas. The limited inspection report shall
23 include a recommendation for further inspection of the entire structure and that all
24 accessible evidence of wood-destroying pests be removed or covered.

25 23. California Code of Regulations, title 16, section § 1996.3, states, in part:

26 (a) The address of each property inspected and/or upon which work was
27 completed shall be reported on a form prescribed by the Board and designated as
28 the WDO Inspection and Completion Activity Report Form (see Form No.
43M-52 Rev. 5/03) at the end of this section. This form shall be prepared by each
registered company and shall comply with all of the requirements pursuant to
Section 8516(b), and 8518.

29 24. California Code of Regulations, title 16, section 1970(b), states:

30 The report for each pest control operation, other than fumigation, in which
31 a pesticide is used shall contain the following information:

32 Date of treatment.

33 Name of owner or his or her agent.

34 Address of property.

35 Description of area treated.

36 Target pest(s).

37 Pesticide and amount used.

38 Identity of person or persons who applied the pesticide.

1 25. California Code of Regulations, title 16, section 1911, states:

2 Each operator, field representative and applicator shall file his or her
3 address of record with the board and shall notify the board of any change in
4 address within ten (10) days of such change. The address of record of a field
5 representative, an operator or an applicator shall be the address of the registered
6 company by which he or she is employed or with which he or she is associated or
7 his or her residence address if he or she is not employed and associated.

8 Each licensee shall also file his or her address for mailing purposes with
9 the board and shall notify the board of any change in address within ten (10) days
10 of such change.

11 26. California Code of Regulations, title 16, section 1916 states:

12 A registered company which notifies the board of the disassociation of its
13 qualifying manager or branch supervisor within the ten day period prescribed by
14 Section 8571 of the code, shall be granted a period of thirty (30) days in which to
15 replace such person with another qualifying manager or branch supervisor. An
16 additional thirty (30) day extension can be granted by the registrar for good cause.

17 **COST RECOVERY/RESTITUTION**

18 27. Code section 125.3 provides, in pertinent part, that the Board may request
19 the administrative law judge to direct a licentiate found to have committed a violation or
20 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
21 and enforcement of the case.

22 28. Government Code section 11519(d) provides, in pertinent part, that the
23 Board may require restitution of damages suffered as a condition of probation in the event
24 probation is ordered.

25 **FLORES PROJECT**

26 29. On or about January 27, 2006, Respondent Ebel, a field representative for
27 Respondent Ariston, inspected the property located at 1148 Orange Avenue, located in
28 Monrovia, California ("Flores project"), for wood destroying pests and organisms and thereafter
issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 95 ("Inspection
Report No. 95").

30. Respondent Ebel's findings involved evidence of drywood termites and
drywood termite damage at the patio and exterior framing, surface fungus (decay fungi) at the
exterior framing, and excessive moisture around the loose toilet.

1 31. Respondent Ebel's recommendations were to repair, replace or fill the
2 evidence of drywood termites and drywood termite damage at the patio framing, chemically treat
3 the evidence of drywood termites at the exterior framing, repair, replace or fill the drywood
4 termite damage at the exterior framing, and scrape and treat the decay fungi at the exterior
5 framing. In addition, Respondent Ebel recommended removing the toilet and replacing the wax
6 ring.

7 32. On or about February 14, 2006, Respondent Ariston issued a Standard
8 Notice of Work Completed and Not Completed ("Completion Notice"), certifying that all
9 recommendations made in Inspection Report No. 95, had been completed.

10 33. In or about March 2006, escrow closed.

11 34. In or about March 2006, Eric and Danielle Flores ("homeowners"),
12 noticed evidence of termites and termite damage that was supposed to have been repaired by
13 Respondent Ariston.

14 35. On or about March 3, 2006, Respondent Ariston returned to the Flores
15 project and made several repairs.

16 36. In or about January 2007, the homeowners again noticed evidence of
17 termites.

18 37. On or about May 1, 2007, the homeowners contacted Respondent Ariston
19 regarding evidence of termites.

20 38. On or about May 2, 2007, Respondent Carrillo inspected the Flores project
21 for wood destroying pests and organisms and thereafter issued a Complete Wood Destroying
22 Pests and Organisms Inspection Report No. 10541 ("Inspection Report No. 10541").

23 39. Respondent Carrillo's findings involved evidence of drywood termites at
24 the garage door, decay fungi at the garage, evidence of drywood termites at the interior and
25 exterior of the house, and evidence of drywood termite damage at the exterior of the house.

26 40. Respondent Carrillo's recommendations were to repair or replace the
27 drywood termite damage, scrape and treat the decay fungi, fumigate the structure for drywood
28 termites, and cover or remove the old termite evidence.

1 41. On or about May 2, 2007, the homeowners contacted Dewey Pest Control.
2 On that same day, Dewey Pest Control performed an inspection and issued a Complete Wood
3 Destroying Pests and Organisms Inspection report. Dewey Pest Control's findings involved
4 evidence of drywood termites in the attic wood members and drywood termite damage at the
5 exterior siding, trim boards, and rafter tails. Dewey Pest Control recommended fumigating the
6 structure for control of the drywood termites, and to remove or cover the accessible termite
7 evidence.

8 42. On or about May 3, 2007, the Board received a complaint from the
9 homeowners.

10 43. On or about June 1, 2007, the Board sent a letter to Respondent Ariston
11 informing it of the complaint received on the Flores project.

12 44. On or about June 12, 2007, Respondent Ariston responded to the Board's
13 letter dated June 1, 2007, explaining the events that had taken place on the Flores project.

14 45. On or about August 13, 2007, the Board specialist requested a copy of
15 Inspection Report No. 95 from Respondent Ariston. The Board specialist reviewed the report
16 and found that the report contained eight additional findings and recommendations not contained
17 in the original Inspection Report No. 95 provided by the homeowners¹. The findings included
18 evidence of drywood termite damage at the garage door siding, at the exterior of the house and
19 garage, and decay fungi damage at the exterior of the house. The recommendations were to
20 repair, replace or fill the drywood termite damage, and to repair, replace, reinforce or fill the
21 decay fungi damage.

22 46. On or about August 13, 2007, a Board specialist inspected the Flores
23 project and noted violations.

24 47. On or about August 15, 2007, the Board specialist prepared and issued a
25 Report of Findings along with a Notice ordering Respondent Ariston to bring the property into
26 compliance by correcting the items described in the Report of Findings and to submit a corrected
27

28 1. The Board specialist conducted an activity search and found that Respondent Ariston
filed a second Inspection Report No. 95, dated January 27, 2006.

1 inspection report and Notice of Work Completed and Not Completed to the Board within thirty
2 (30) days with respect to the inspections performed on January 27, 2006, and May 2, 2007.

3 48. On or about September 11, 2007, Respondent Quinn re-inspected the
4 Flores project and thereafter issued a Complete Wood Destroying Pests and Organisms
5 Inspection Report No. 10666 ("Inspection Report No. 10666"), consisting of certain findings and
6 recommendations.

7 49. Respondent Quinn's findings involved evidence of drywood termites in
8 and at the garage, the attached patio, and the interior and exterior of the house; drywood termite
9 damage at the exterior wood trim on the garage; drywood termite damage at the wood trim,
10 eaves, back doorframe, and rafter on the house; and decay fungi damage at the attached patio and
11 exterior fence.

12 50. Respondent Quinn's recommendations were to fumigate the structure for
13 drywood termites; to cover or remove the old termite evidence; repair, replace or fill the
14 drywood termite damage; repair, replace, reinforce, or fill the decay fungi damage at the attached
15 patio; and for the owner to contact a licensed contractor to repair the fence. Additionally,
16 Respondent Quinn recommended removal of the storage in the garage to allow for further
17 inspection.

18 51. On or about September 26, 2007, the Board specialist met with
19 Respondent Quinn at the Flores project. The Board specialist found that the property was not in
20 compliance. The Board specialist questioned Respondent Quinn regarding his findings made on
21 Inspection Report No. 10666. Respondent Quinn was unable to show the Board specialist the
22 evidence of drywood termites that he had reported on Inspection Report No. 10666. The Board
23 specialist showed Respondent Quinn the drywood termite and decay fungi damage that
24 Respondent Quinn had failed to report and explained to him what would be required regarding
25 the repair work. Respondent Quinn then informed the Board specialist that his secretary had
26 faxed the wrong inspection report to him, and he would have a new report faxed to him that
27 afternoon.

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1 e. Respondents failed to report the evidence of drywood termites and
2 drywood termite damage at the garage door framing, as defined by California Code of
3 Regulations, title 16, section 1990(a)(3)(4).

4 **Section 8516(b)(10):**

5 f. Respondents failed to make the proper recommendation regarding the
6 reported evidence of drywood termites as defined by California Code of Regulations, title 16,
7 section 1991(a)(8).

8 **MAY 2, 2007, INSPECTION**

9 55. Respondent Ariston's registration, Respondent Quinn's operator's license,
10 and Respondent Carrillo's field representative's license are subject to discipline under Code
11 section 8641, in that, concerning the Flores project, Respondents failed to comply with the
12 following Code sections:

13 **Section 8516(b):**

14 a. Respondents failed to include the signature of the Branch 3 licensee who
15 performed the inspection on Inspection Report No. 10541, as defined by California Code of
16 Regulations, title 16, section 1990(a)(2).

17 **Section 8516(b)(6)(7):**

18 b. Respondents failed to report the decay fungi damage at the patio framing,
19 as defined by California Code of Regulations, title 16, section 1990(a)(4).

20 **SEPTEMBER 11, 2007, INSPECTION**

21 56. Respondent Ariston's registration and Respondent Quinn's operator's
22 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
23 Respondents failed to comply with the following Code sections:

24 **Section 8516(b):**

25 a. Respondents failed to include the signature of the Branch 3 licensee who
26 made the inspection on Inspection Report No. 10666, as defined by California Code of
27 Regulations, title 16, section 1990(a)(2).

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1 of the house in the area of the dining room, and evidence of drywood termites and drywood
2 termite damage at the back doorframe in Inspection Report No. 10666, when in fact, the
3 infestations and damage did not exist.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Failed to Comply with Report of Findings)**

6 60. Respondent Ariston's registration and Respondent Quinn's operator's
7 license are subject to discipline under Code section 8641, in that they failed to comply with Code
8 section 8622, by failing to correct the items described in the Report of Findings within thirty (30)
9 calendar days of receipt of the Notice, bringing the Flores project into compliance with the
10 Board's Notice and Report of Findings, dated August 15, 2007.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Failure to File Work Activity Reports with the Board)**

13 61. Respondent Ariston's registration, Respondent Quinn's operator's license,
14 and Respondent Carrillo's field representative's license are subject to discipline under Code
15 section 8518, in that, concerning the Flores project, Respondents failed to prepare and deliver a
16 supplemental inspection report and completion notice for the inspection performed and work
17 completed on or about March 3, 2006, to the Board within ten (10) business days following the
18 commencement of an inspection or upon completed work.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Laws Adopted by the Board -
21 Failure to File Reports with the Board)**

22 62. Respondent Ariston's registration and Respondent Quinn's operator's
23 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
24 Respondents failed to comply with Code section 8516(b), by failing to file with the Board the
25 completion notices (2) dated February 14, 2006, and Inspection Report No. 10541, dated
26 May 2, 2007, no later than 10 business days after the commencement of an inspection or upon
27 completed work.

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SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Record Requirements)

63. Respondent Ariston's registration, and Respondent Quinn's operator's and Respondent Carrillo's field representative's license are subject to discipline under Code section 8641, in that, concerning the Flores project, Respondents failed to comply with California Code of Regulations, title 16, section 1970(b), by failing to record the name of the individual who applied pesticides, the pesticide used, and the amount of pesticide used, on the inspection report dated January 27, 2006. Furthermore, Respondents failed to include the pesticide and amount used on the Completion Notice dated February 14, 2006.

EIGHTH CAUSE FOR DISCIPLINE

(Grossly Negligent or Fraud Act)

64. Respondent Ariston's registration and Respondent Quinn's operator's license are subject to discipline under Code section 8642, in that, in or about March 2006, concerning the Flores project, Respondents committed a grossly negligent or fraudulent act by failing to properly date the second Inspection Report No. 95, and the accompanying Completion Notice.

NINTH CAUSE FOR DISCIPLINE

(Failure to Submit and File Wood Destroying Pests and Organisms Inspection Reports with the Board)

65. Respondent Ariston's registration and Respondent Quinn's operator's license are subject to discipline under Code section 8518, in that, between May 13, 2005, and March 16, 2006, Respondents failed to submit 346 Wood Destroying Pests and Organisms Inspection Reports to the Board no later than 10 business days after the commencement of an inspection or upon completed work, attached hereto as Exhibit A.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Laws Adopted by the Board -
3 Failure to File Reports with the Board)

4 66. Respondent Ariston's registration and Respondent Quinn's operator's
5 license are subject to discipline under Code section 8641, in that Respondents failed to comply
6 with the following sections:

7 a. Section 8516(b). Respondents failed to file Wood Destroying Pests and
8 Organisms Inspection and Completion Activity Reports with the Board no later than 10 business
9 days after the commencement of an inspection or upon completed work, in violation of
10 California Code of Regulations, title 16, section 1996.3(a). On November 26, 2008, the Board
11 obtained copies of Respondent Ariston's Pesticide Use Reports (PURs) from Los Angeles
12 County Agricultural Department (LA County Ag.) for the period of November 2007 through
13 November 2008, which disclosed that at least four (4) chemical applications were performed in
14 the county prior to May 16, 2008 (including three (3) chemical applications prior to March 3,
15 2008), and that the corresponding inspection reports and completion notices were not filed with
16 the Board. Furthermore, a list of approximately 73 Wood Destroying Pests and Organisms
17 activities, along with a copy of six (6) inspection reports, for said period but prior to May 16,
18 2008, were obtained from Respondent Ariston on November 26, 2008, which were not filed with
19 the Board.

20 b. Section 8505.17(c). Respondents failed to submit its PURs to LA County
21 Ag. for February 2008 and March 2008.

22 c. Section 8505.17(c). Respondents failed to include the number of
23 applications performed and the amount of pesticides used in its December 2007 PUR that it
24 submitted to LA County Ag.

25 d. Section 8516(b)(1). Respondent Ariston failed to prepare and deliver an
26 inspection report that contained the name and license number of the licensee who performed the
27 inspection. Respondent Ariston's April 3, 2008, inspection report, under inspected by, indicated
28 "other."

1 **DONALD LEVELL QUINN SR.**
2 Operator's License No. OPR 11110

3 73. On or about April 16, 2007, Respondent Quinn paid a fine in the amount
4 of \$250 levied by the San Diego County Agricultural Commissioner for violating Food and
5 Agriculture Code section 15204.

6 74. On or about May 30, 2007, Respondent Quinn paid a fine in the amount of
7 \$250 levied by the San Diego County Agricultural Commissioner for violating Food and
8 Agriculture Code section 15204.

9 75. On or about November 13, 2008, Respondent Quinn paid a \$1,124 fine
10 levied by the Board for violation of sections 8516 and 8518.

11 **JEFFREY MATTHEW EBEL**
12 Field Representative License No. FR 35090

13 76. On or about October 18, 2005, Respondent Ebel paid a fine in the amount
14 of \$75 levied by the Board for violating Code sections 8516(b)(6)(7), and California Code of
15 Regulations, title 16, section 1990.

16 **JOSE CARRILLO**
17 Field Representative License No. FR 17136

18 77. On or about January 2, 2009, pursuant to the Decision and Order in
19 Accusation No. 2008-12, Case No. 07-221-9-72-07, Respondent Carrillo's Field Representative
20 License No. FR 17136 was revoked, revocation stayed, and placed on three years probation with
21 certain terms and conditions.

22 78. On or about February 23, 2006, Respondent Carrillo paid a fine in the
23 amount of \$75 levied by the Board for violating Code sections 8516(b)(6) and (7), and California
24 Code of Regulations, title 16, section 1990(a)(4) (in connection with an inspection performed at
25 904 East Michelle Street, West Covina, California).

26 79. On February 23, 2006, Respondent paid a \$100 fine levied by the Board
27 for Respondent's violation of Code section 8516(b)(6), (7), and (9), and California Code of

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1 Regulations, title 16, section 1990(a)(4) (in connection with an inspection performed at 1823
2 East 108th Street, Los Angeles, California).

3 OTHER MATTERS

4 80. Notice is hereby given that section 8620 of the Code provides, in pertinent
5 part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in
6 lieu of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of
7 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the
8 proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed
9 in lieu of a suspension.

10 81. Pursuant to Code section 8624, the causes for discipline established as to
11 Company Registration Certificate Number PR 4476, issued to Ariston Termite, likewise
12 constitute cause for discipline against Operator's License Number OPR 11110, issued to Donald
13 Levell Quinn Sr., who served as the Qualifying Manager of Ariston Termite, regardless of
14 whether Donald Levell Quinn Sr. had knowledge of or participated in the acts or omissions
15 which constitute cause for discipline against Ariston Termite.

16 82. Pursuant to Code section 8654, if discipline is imposed on Company
17 Registration Certificate Number PR 4476, issued to Ariston Termite, then Donald Levell Quinn
18 Sr., who served as the Qualifying Manager of Ariston Termite, shall be prohibited from serving
19 as an officer, director, associate, partner, qualifying manager, or responsible managing employee
20 for any registered company during the time the discipline is imposed, and any registered
21 company which employs, elects, or associates him, shall be subject to disciplinary action.

22 83. Pursuant to Code section 8624, the causes for discipline established as to
23 Company Registration Certificate Number PR 4476, issued to Ariston Termite, likewise
24 constitute cause for discipline against Operator's License Number OPR 11474, issued to
25 Wilfredo Pineda, who serves as the Qualifying Manager of Ariston Termite, regardless of
26 whether Donald Levell Quinn Sr. had knowledge of or participated in the acts or omissions
27 which constitute cause for discipline against Ariston Termite.

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1 84. Pursuant to Code section 8654, if discipline is imposed on Company
2 Registration Certificate Number PR 4476, issued to Ariston Termite, then Wilfredo Pineda, who
3 serves as the Qualifying Manager of Ariston Termite, shall be prohibited from serving as an
4 officer, director, associate, partner, qualifying manager, or responsible managing employee for
5 any registered company during the time the discipline is imposed, and any registered company
6 which employs, elects, or associates him, shall be subject to disciplinary action.

7 85. Jeffrey Matthew Ebel, a field representative employed by Ariston Termite
8 had knowledge of and participated in the acts or omissions which constitute cause for discipline
9 against Ariston Termite.

10 86. Pursuant to Code section 8654, if discipline is imposed on Company
11 Registration Certificate Number PR 4476, issued to Ariston Termite, then Jeffrey Matthew Ebel,
12 a field representative employed by Ariston Termite, shall be prohibited from serving as an
13 officer, director, associate, partner, qualifying manager, or responsible managing employee of a
14 registered company, and the employment, election or association of him by a registered company
15 is a ground for disciplinary action.

16 87. Jose Carrillo, a field representative employed by Ariston Termite had
17 knowledge of and participated in the acts or omissions which constitute cause for discipline
18 against Ariston Termite.

19 88. Pursuant to Code section 8654, if discipline is imposed on Company
20 Registration Certificate Number PR 4476, issued to Ariston Termite, then Jose Carrillo, a field
21 representative employed by Ariston Termite, shall be prohibited from serving as an officer,
22 director, associate, partner, qualifying manager, or responsible managing employee of a
23 registered company, and the employment, election or association of him by a registered company
24 is a ground for disciplinary action.

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1 company during the period that discipline is imposed on Company Registration Certificate
2 Number PR 4476, issued to Ariston Termite;

3 11. Prohibiting Jose Carrillo from serving as an officer, director, associate,
4 partner, qualifying manager or responsible managing employee of any registered company
5 during the period that discipline is imposed on Company Registration Certificate Number PR
6 4476, issued to Ariston Termite;

7 12. Ordering Ariston Termite, Donald Levell Quinn Sr., Wilfredo Pineda,
8 Jeffrey Matthew Ebel, and Jose Carrillo to pay the Structural Pest Control Board the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3; and,

11 13. Taking such other and further action as deemed necessary and proper.

12 DATED: 1/22/09

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14 KELLI OKUMA
15 Registrar
16 Structural Pest Control Board
17 Department of Consumer Affairs
18 State of California
19 Complainant

17 LA2008900076

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FILED

Date 4/23/08 By *Helli Okuma*

6 Attorneys for Complainant

7
8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No: 2008-67

11 **ARISTON TERMITE**
14913 Gwen Chris Court
12 Paramount, California 90723
JERRY WALKER, Qualifying Manager
13 (Disassociated on 12/27/05)
DONALD LEVELL QUINN SR., Qualifying Manager, Br. 3
14 **CARLOS MONCADA, Partner**
MAYRA LEON, Partner

ACCUSATION

15 **Company Registration Certificate No. PR 4476, Br. 3**
Operator License No. OPR 11110, Br. 3

16 **JEFFREY MATTHEW EBEL**
17 8526 10th Street
Downey, California 90241
18 **Field Representative's License No. FR 35090, Br. 3**

19 **JOSE CARRILLO**
205 North Santa Fe Avenue
20 Compton, California 90221
Field Representative's License No. FR 17136, Br. 3

Respondents.

23 **COAST 2 COAST FUMIGATION COMPANY**
14913 Gwen Chris Court
24 Paramount, California 90723
DONALD LEVELL QUINN SR., Qualifying Manager, Br. 1
25 **CARLOS MONCADA, Partner**
MAYRA LEON, Partner
26 **Company Registration Certificate No. PR 4917, Br. 1**
Operator License No. OPR 11110, Br. 3

Affiliated License.

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1 Kelli Okuma ("Complainant") alleges:

2 **PARTIES**

3 1. Complainant brings this Accusation solely in her official capacity as the
4 Registrar of the Structural Pest Control Board ("Board"), Department of Consumer Affairs.

5 **LICENSE HISTORY**

6 **Ariston Termite**
7 **Company Registration Certificate No. PR 4476, Br. 3**

8 2. On or about February 6, 2004, the Board issued Company Registration
9 Certificate No. PR 4476 ("company registration") in Branch 3 to Ariston Termite ("Respondent
10 Ariston"), with Mayra Leon and Carlos Moncada as Partners, and Jerry Walker as the Qualifying
11 Manager. On or about December 27, 2005, Jerry Walker disassociated as the Qualifying
12 Manager. On or about January 9, 2006, Donald Levell Quinn Sr. became the Qualifying
13 Manager. On or about November 26, 2007, the company registration was suspended for failing
14 to maintain general liability insurance, pursuant to Business and Professions Code ("Code")
15 ~~section 8690. On or about November 27, 2007, the company registration was reinstated. On or~~
16 ~~about December 31, 2007, the company registration was suspended for failing to maintain~~
17 ~~general liability insurance, pursuant to Code section 8690. On or about January 4, 2008, the~~
18 ~~company registration was reinstated.~~

19 **Coast 2 Coast Fumigation Company**
20 **Company Registration Certificate No. PR 4917, Br.**

21 3. On or about November 17, 2005, the Board issued Company Registration
22 Certificate No. PR 4917 in Branch 1 to Coast 2 Coast Fumigation Company, with Mayra Leon
23 and Carlos Moncada as Partners, and Donald Levell Quinn Sr. as the Qualifying Manager. On or
24 about December 31, 2007, the company registration was suspended for failing to maintain
25 general liability insurance, pursuant to Code section 8690. On or about January 4, 2008, the
26 company registration was reinstated.

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Operator's License No. OPR 11110

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<u>DATE</u>	<u>ACTION</u>
May 26, 2005	The Board issued Operator's License No. OPR 11110 ("license") to Donald Levell Quinn Sr. ("Respondent Quinn") in Branches 1 and 3; as an employee of Quinn's Exterminating Company Inc.
November 17, 2005	Respondent Quinn became the Qualifying Manager of Coast 2 Coast Fumigation Company.
January 9, 2006	Respondent Quinn became the Qualifying Manager of Ariston Termite in Branch 3.
July 20, 2006	The license was upgraded to include Branch 2.
September 7, 2006	Respondent Quinn became the Qualifying Manager for All Safe Termite Control in Branch 3.
October 13, 2006	Respondent Quinn became the Qualifying Manager for East Bay Pest Control in Branch 2.
October 24, 2006	Respondent Quinn became the Qualifying Manager for Abba Termite and Pest Control Inc. in Branches 2 and 3.
October 25, 2006	Respondent Quinn became the Vice President of Quinn's Exterminating Company Inc.
November 14, 2006	Respondent Quinn disassociated as the Qualifying Manager of All Safe Termite Control.
November 15, 2006	Respondent Quinn became the Qualifying Manager for Turbo Termite & Repair in Branch 3.
November 26, 2006	Respondent Quinn disassociated as the Qualifying Manager of Abba Termite and Pest Control Inc.
December 19, 2006	Respondent Quinn became the Branch Office Supervisor for Quinn's Exterminating Company Inc.
January 19, 2007	Respondent Quinn became the Qualifying Manager for West Coast Exterminating Inc. in Branches 1, 2, and 3.
January 22, 2007	Respondent Quinn became the Qualifying Manager for U S Termite.Com in Branch 3.
January 24, 2007	Respondent Quinn became the Qualifying Manager for Dynasty Termite in Branch 3.
February 17, 2007	Respondent Quinn disassociated as the Qualifying Manager of Dynasty Termite.
February 21, 2007	Respondent Quinn disassociated as the Qualifying Manager for U S Termite.Com.
February 21, 2007	Respondent Quinn became the Qualifying Manager for U S Termite.
March 1, 2007	Respondent Quinn disassociated as the Qualifying Manager for East Bay Pest Control.

1	March 1, 2007	Respondent Quinn became the Branch Office Supervisor for West Coast Exterminating Inc.
2	May 14, 2007	Respondent Quinn disassociated as the Qualifying Manager, Vice President, and Branch Office Supervisor for Quinn's Exterminating Co. Inc.
3	June 21, 2007	Respondent Quinn became the Qualifying Manager for Unique Termite Control in Br. 3:
4	July 18, 2007	Respondent Quinn became the Qualifying Manager for Parks Pest Control and Termite in Branches 2 and 3.
5	July 23, 2007	Respondent Quinn became the Qualifying Manager for Medina Pest Control in Branch 3.
6	August 7, 2007	Respondent Quinn disassociated as the Qualifying Manager and Branch Office Supervisor of West Coast Exterminating Inc.
7	August 24, 2007	Respondent Quinn became the Qualifying Manager of Medina Pest Control in Branches 1 and 3.
8	October 25, 2007	Respondent Quinn became the Qualifying Manager for Dependable Pest & Termite in Branches 2 and 3.
9	November 26, 2007	The license was suspended for failing to maintain general liability insurance for Ariston Termite, pursuant to Code section 8690.
10	November 27, 2007	The license was reinstated.
11	November 29, 2007	Respondent Quinn became the Qualifying Manager for Inspector Termite Control in Branch 1.
12	December 12, 2007	Respondent Quinn became the Qualifying Manager for Quinn's Exterminating Co. Inc. in Branch 2.
13	December 31, 2007	The license was suspended for failing to maintain general liability insurance for Ariston Termite and Coast 2 Coast Fumigation Company, pursuant to Code section 8690.
14	January 4, 2008	The license was reinstated.
15	January 24, 2008	Respondent Quinn disassociated as the Qualifying Manager for Dependable Pest & Termite.
16	January 24, 2008	Respondent Quinn became the Qualifying Manager for Dependable Pest & Termite Inc. in Branches 2 and 3.
17	January 25, 2008	Respondent Quinn disassociated as the Qualifying Manager for Quinn's Exterminating Co. Inc.
18	February 19, 2008	Respondent Quinn disassociated as the Qualifying Manager for Dependable Pest & Termite, Inc. in Branches 2 and 3.
19	February 21, 2008	Respondent Quinn disassociated as the Qualifying Manager for U S Termite in Branch 3.
20	February 21, 2008	Respondent Quinn became the Qualifying Manager for U S Termite Inc. dba U S Termite in Branches 2 and 3.
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1 **Jeffrey Mathew Ebel**
2 **Field Representative License No. FR 35090, Br. 3**

3 4. On or about September 3, 2002, the Board issued Field Representative
4 License No. FR 35090 in Branch 3 to Jeffrey Mathew Ebel ("Respondent Ebel"). On or about
5 January 19, 2005, Respondent Ebel became employed with Ariston Termite. On or about
6 February 13, 2007, Respondent Ebel left the employ of Ariston Termite. On or about
7 February 15, 2007, Respondent became employed with Master Termite Inc. The license will
8 expire on June 30, 2008, unless renewed.

9 **Jose Carrillo**
10 **Field Representative License No. FR 17136, Br. 3**

11 5. On or about March 8, 1989, the Board issued Field Representative License
12 No. FR 17136, in Branch 3 to Jose Carrillo ("Respondent Carrillo"). On or about
13 February 19, 2007, Respondent Carrillo became employed with Ariston Termite. The license
14 will expire on June 30, 2009, unless renewed.

15 **JURISDICTION**

16 6. Code section 8620 provides, in pertinent part, that the Board may suspend
17 or revoke a license when it finds that the holder, while a licensee or applicant, has committed any
18 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
19 civil penalty.

20 7. Code section 8624 states:

21 If the board suspends or revokes an operator's license and one or more
22 branch offices are registered under the name of the operator, the suspension or
23 revocation may be applied to each branch office.

24 If the operator is the qualifying manager, a partner, responsible officer, or
25 owner of a registered structural pest control company, the suspension or
26 revocation may be applied to the company registration.

27 The performance by any partnership, corporation, firm, association, or
28 registered company of any act or omission constituting a cause for disciplinary
action, likewise constitutes a cause for disciplinary action against any licensee
who, at the time the act or omission occurred, was the qualifying manager, a
partner, responsible officer, or owner of the partnership, corporation, firm,
association, or registered company whether or not he or she had knowledge of, or
participated in, the prohibited act or omission.

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8. Code section 8625 states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

9. Code section 8622 states:

When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

STATUTORY PROVISIONS

10. Code section 8516 states, in pertinent part:

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

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1 Failure of a registered company to report and file with the board the
2 address of any property inspected or work completed pursuant to Section 8516.1,
3 Section 8518, or this section are grounds for disciplinary action and shall subject
4 the registered company to a fine of not more than two thousand five hundred
5 dollars (\$2,500).

6 A written inspection report conforming to this section and on a form
7 approved by the board shall be prepared and delivered to the person requesting the
8 inspection or to the person's designated agent within 10 business days of the
9 inspection, except that an inspection report prepared for use by an attorney for
10 litigation purposes is not required to be reported to the board. The report shall be
11 delivered before work is commenced on any property. The registered company
12 shall retain for three years all original inspection reports, filed notes, and activity
13 forms.

14 Reports shall be made available for inspection and reproduction to the
15 executive officer of the board or his or her duly authorized representative during
16 business hours. Original inspection reports or copies thereof shall be submitted to
17 the board upon request within two business days. The following shall be set forth
18 in the report:

19 (2) The name and address of the person or firm ordering the report.

20 (6) A foundation diagram or sketch of the structure or structures or
21 portions of the structure or structures inspected, indicating thereon the
22 approximate location of any infested or infected areas evident, and the parts of the
23 structure where conditions that would ordinarily subject those parts to attack by
24 wood destroying pests or organisms exist.

25 (7) Information regarding the substructure, foundation walls and footings,
26 porches, patios and steps, air vents, abutments, attic spaces, roof framing that
27 includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
28 joists, and attic walls, or other parts subject to attack by wood destroying pests or
organisms. Conditions usually deemed likely to lead to infestation or infection,
such as earth-wood contacts, excessive cellulose debris, faulty grade levels,
excessive moisture conditions, evidence of roof leaks, and insufficient ventilation
are to be reported.

(10) Recommendations for corrective measures.

11. Code section 8518 states:

When a registered company completes work under a contract, it shall
prepare, on a form prescribed by the board, a notice of work completed and not
completed, and shall furnish that notice to the owner of the property or the owner's
agent within 10 working days after completing the work. The notice shall include
a statement of the cost of the completed work and estimated cost of work not
completed.

The address of each property inspected or upon which work was
completed shall be reported on a form prescribed by the board and shall be filed
with the board no later than 10 working days after completed work.

Every property upon which work is completed shall be assessed a filing
fee pursuant to Section 8674.

1 Failure of a registered company to report and file with the board the
2 address of any property upon which work was completed pursuant to
3 subdivision(b) of Section 8516, subdivision (b) of Section 8516.1, or Section
4 8518 are grounds for disciplinary action and shall subject the registered company
5 to a fine of not more than two thousand five hundred dollars (\$2,500).

6 The registered company shall retain for three years all original notices of
7 work completed, work not completed, and activity forms.

8 Notices of work completed and not completed shall be made available for
9 inspection and reproduction to the executive officer of the board or his or her duly
10 authorized representative during business hours. Original notices of work
11 completed or not completed or copies thereof shall be submitted to the board upon
12 request within two business days.

13 12. Code section 8638 states:

14 Failure on the part of a registered company to complete any operation or
15 construction repairs for the price stated in the contract for such operation or
16 construction repairs or in any modification of such contract is a ground for
17 disciplinary action.

18 13. Code section 8641 states:

19 Failure to comply with the provisions of this chapter, or any rule or
20 regulation adopted by the board, or the furnishing of a report of inspection without
21 the making of a bona fide inspection of the premises for wood-destroying pests or
22 organisms, or furnishing a notice of work completed prior to the completion of the
23 work specified in the contract, is a ground for disciplinary action.

24 14. Code section 8642 states:

25 The commission of any grossly negligent or fraudulent act by the licensee
26 as a pest control operator, field representative, or applicator or by a registered
27 company is a ground for disciplinary action.

28 15. Code section 8644 states:

Fraud or misrepresentation, after inspection, by any licensee or registered
company engaged in pest control work of any infestation or infection of
wood-destroying pests or organisms found in property or structures, or respecting
any conditions of the structure that would ordinarily subject structures to attack by
wood-destroying pests or organisms, whether or not a report was made pursuant to
Sections 8516 and 8517 of this code, is a ground for disciplinary action.

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REGULATORY PROVISIONS

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16. California Code of Regulations, title 16, section 1990, states, in pertinent

part:

(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

- (2) Signature of the Branch 3 licensee who made the inspection.
- (3) Infestations, infections or evidence thereof.
- (4) Wood members found to be damaged by wood destroying pests or organisms.

17. California Code of Regulations, title 16, section 1991, states, in pertinent

part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

- 1. exposing the infested area(s) for local treatment,
- 2. removing the infested wood,
- 3. using another method of treatment which exterminates the infestation.

(If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagramed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall

1 include a recommendation for further inspection of the entire structure and that all
2 accessible evidence of wood-destroying pests be removed or covered.

3 18. California Code of Regulations, title 16, section 1970(b), states:

4 The report for each pest control operation, other than fumigation, in which
5 a pesticide is used shall contain the following information:

6 Date of treatment.
7 Name of owner or his or her agent.
8 Address of property.
9 Description of area treated.
10 Target pest(s).
11 Pesticide and amount used.
12 Identity of person or persons who applied the pesticide.

13 COST RECOVERY/RESTITUTION

14 19. Code section 125.3 provides, in pertinent part, that the Board may request
15 the administrative law judge to direct a licentiate found to have committed a violation or
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
17 and enforcement of the case.

18 20. Government Code section 11519(d) provides, in pertinent part, that the
19 Board may require restitution of damages suffered as a condition of probation in the event
20 probation is ordered.

21 FLORES PROJECT

22 21. On or about January 27, 2006, Respondent Ebel, a field representative for
23 Respondent Ariston, inspected the property located at 1148 Orange Avenue, located in Monrovia,
24 California ("Flores project"), for wood destroying pests and organisms and thereafter issued a
25 Complete Wood Destroying Pests and Organisms Inspection Report No. 95 ("Inspection Report
26 No. 95").

27 22. Respondent Ebel's findings involved evidence of drywood termites and
28 drywood termite damage at the patio and exterior framing, surface fungus (decay fungi) at the
29 exterior framing, and excessive moisture around the loose toilet.

30 23. Respondent Ebel's recommendations were to repair, replace or fill the
31 evidence of drywood termites and drywood termite damage at the patio framing, chemically treat

1 the evidence of drywood termites at the exterior framing, repair, replace or fill the drywood
2 termite damage at the exterior framing, and scrape and treat the decay fungi at the exterior
3 framing. In addition, Respondent Ebel recommended removing the toilet and replacing the wax
4 ring.

5 24. On or about February 14, 2006, Respondent Ariston issued a Standard
6 Notice of Work Completed and Not Completed ("Completion Notice"), certifying that all
7 recommendations made in Inspection Report No. 95, had been completed.

8 25. In or about March 2006, escrow closed.

9 26. In or about March 2006, Eric and Danielle Flores ("homeowners"), noticed
10 evidence of termites and termite damage that was supposed to have been repaired by Respondent
11 Ariston.

12 27. On or about March 3, 2006, Respondent Ariston returned to the Flores
13 project and made several repairs.

14 28. In or about January 2007, the homeowners again noticed evidence of
15 termites.

16 29. On or about May 1, 2007, the homeowners contacted Respondent Ariston,
17 regarding evidence of termites.

18 30. On or about May 2, 2007, Respondent Carrillo inspected the Flores project
19 for wood destroying pests and organisms and thereafter issued a Complete Wood Destroying
20 Pests and Organisms Inspection Report No. 10541 ("Inspection Report No. 10541").

21 31. Respondent Carrillo's findings involved evidence of drywood termites at
22 the garage door, decay fungi at the garage, evidence of drywood termites at the interior and
23 exterior of the house, and evidence of drywood termite damage at the exterior of the house.

24 32. Respondent Carrillo's recommendations were to repair or replace the
25 drywood termite damage, scrape and treat the decay fungi, fumigate the structure for drywood
26 termites, and cover or remove the old termite evidence.

27 33. On or about May 2, 2007, the homeowners contacted Dewey Pest Control.
28 On that same day, Dewey Pest Control performed an inspection and issued a Complete Wood

1 Destroying Pests and Organisms Inspection report. Dewey Pest Control's findings involved
2 evidence of drywood termites in the attic wood members and drywood termite damage at the
3 exterior siding, trim boards, and rafter tails. Dewey Pest Control recommended fumigating the
4 structure for control of the drywood termites, and to remove or cover the accessible termite
5 evidence.

6 34. On or about May 3, 2007, the Board received a complaint from the
7 homeowners.

8 35. On or about June 1, 2007, the Board sent a letter to Respondent Ariston
9 informing it of the complaint received on the Flores project.

10 36. On or about June 12, 2007, Respondent Ariston responded to the Board's
11 letter dated June 1, 2007, explaining the events that had taken place on the Flores project.

12 37. On or about August 13, 2007, the Board specialist requested a copy of
13 Inspection Report No. 95 from Respondent Ariston. The Board specialist reviewed the report
14 and found that the report contained eight additional findings and recommendations not contained

15 in the original Inspection Report No. 95 provided by the homeowners¹. The findings included
16 evidence of drywood termite damage at the garage door siding, at the exterior of the house and
17 garage, and decay fungi damage at the exterior of the house. The recommendations were to
18 repair, replace or fill the drywood termite damage, and to repair, replace, reinforce or fill the
19 decay fungi damage.

20 38. On or about August 13, 2007, a Board specialist inspected the Flores
21 project and noted violations.

22 39. On or about August 15, 2007, the Board specialist prepared and issued a
23 Report of Findings along with a Notice ordering Respondent Ariston to bring the property into
24 compliance by correcting the items described in the Report of Findings and to submit a corrected
25 inspection report and Notice of Work Completed and Not Completed to the Board within thirty
26 (30) days with respect to the inspections performed on January 27, 2006, and May 2, 2007.

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28 1. The Board specialist conducted an activity search and found that Respondent Ariston
filed a second Inspection Report No. 95, dated January 27, 2006.

1 40. On or about September 11, 2007, Respondent Quinn re-inspected the
2 Flores project and thereafter issued a Complete Wood Destroying Pests and Organisms
3 Inspection Report No. 10666 ("Inspection Report No. 10666"), consisting of certain findings and
4 recommendations.

5 41. Respondent Quinn's findings involved evidence of drywood termites in
6 and at the garage, the attached patio, and the interior and exterior of the house; drywood termite
7 damage at the exterior wood trim on the garage; drywood termite damage at the wood trim,
8 eaves, back doorframe, and rafter on the house; and decay fungi damage at the attached patio and
9 exterior fence.

10 42. Respondent Quinn's recommendations were to fumigate the structure for
11 drywood termites; to cover or remove the old termite evidence; repair, replace or fill the drywood
12 termite damage; repair, replace, reinforce, or fill the decay fungi damage at the attached patio;
13 and for the owner to contact a licensed contractor to repair the fence. Additionally, Respondent
14 Quinn recommended removal of the storage in the garage to allow for further inspection.

15 43. On or about September 26, 2007, the Board specialist met with
16 Respondent Quinn at the Flores project. The Board specialist found that the property was not in
17 compliance. The Board specialist questioned Respondent Quinn regarding his findings made on
18 Inspection Report No. 10666. Respondent Quinn was unable to show the Board specialist the
19 evidence of drywood termites that he had reported on Inspection Report No. 10666. The Board
20 specialist showed Respondent Quinn the drywood termite and decay fungi damage that
21 Respondent Quinn had failed to report and explained to him what would be required regarding
22 the repair work. Respondent Quinn then informed the Board specialist that his secretary had
23 faxed the wrong inspection report to him, and he would have a new report faxed to him that
24 afternoon.

25 44. On or about September 26, 2007, the Board specialist received a
26 "Corrected" version of Inspection Report No. 10666, which excluded the previously reported
27 evidence of drywood termites at the interior of the house in the dining room area and the
28 evidence of drywood termites and drywood termite damage at the back doorframe. Furthermore,

1 the report included evidence of drywood termites in the garage and additional decay fungi
2 damage.

3 45. Between September 26, 2007, and October 31, 2007, Respondent Ariston
4 failed to bring the property into compliance.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with the Code - Improper Inspection)**

7 46. Respondent Ariston's registration, Respondent Quinn's operator's license,
8 and Respondent Ebel's field representative's license are subject to discipline under Code section
9 8641, in that, concerning the Flores project, Respondents failed to comply with the following
10 Code sections:

11 **JANUARY 27, 2006, INSPECTION**

12 **Section 8516(b):**

13 a. Respondents failed to include the signature of the Branch 3 licensee who
14 performed the inspection on Inspection Report No. 95, as defined by California Code of
15 Regulations, title 16, section 1990(a)(2).

16 **Section 8516(b)(2):**

17 b. Respondents failed to include the address of the person or firm ordering
18 the report.

19 **Section 8516(b)(6)(7):**

20 c. Respondents failed to report the decay fungi damage at the patio framing,
21 as defined by California Code of Regulations, title 16, section 1990(a)(4).

22 d. Respondents failed to report the full extent of the drywood termite damage
23 at the house and garage, as defined by California Code of Regulations, title 16, section
24 1990(a)(4).

25 e. Respondents failed to report the evidence of drywood termites and
26 drywood termite damage at the garage door framing, as defined by California Code of
27 Regulations, title 16, section 1990(a)(3)(4).

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1 **Section 8516(b)(10):**

2 f. Respondents failed to make the proper recommendation regarding the
3 reported evidence of drywood termites as defined by California Code of Regulations, title 16,
4 section 1991(a)(8).

5 **MAY 2, 2007, INSPECTION**

6 47. Respondent Ariston's registration, Respondent Quinn's operator's license,
7 and Respondent Carrillo's field representative's license are subject to discipline under Code
8 section 8641, in that, concerning the Flores project, Respondents failed to comply with the
9 following Code sections:

10 **Section 8516(b):**

11 a. Respondents failed to include the signature of the Branch 3 licensee who
12 performed the inspection on Inspection Report No. 10541, as defined by California Code of
13 Regulations, title 16, section 1990(a)(2).

14 **Section 8516(b)(6)(7):**

15 b. Respondents failed to report the decay fungi damage at the patio framing,
16 as defined by California Code of Regulations, title 16, section 1990(a)(4).

17 **SEPTEMBER 11, 2007, INSPECTION**

18 48. Respondent Ariston's registration and Respondent Quinn's operator's
19 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
20 Respondents failed to comply with the following Code sections:

21 **Section 8516(b):**

22 a. Respondents failed to include the signature of the Branch 3 licensee who
23 made the inspection on Inspection Report No. 10666, as defined by California Code of
24 Regulations, title 16, section 1990(a)(2).

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1 **Section 8516(b)(6)(7):**

2 b. Respondents failed to report drywood termite damage at the garage brick
3 molding; failed to report the full extent of the decay fungi damage at the attached patio; and
4 failed to report the full extent of the drywood termite damage at the wood trim on the house, as
5 defined by California Code of Regulations, title 16, section 1990(a)(4).

6 **SEPTEMBER 26, 2007, INSPECTION**

7 49. Respondent Ariston's registration and Respondent Quinn's operator's
8 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
9 Respondents failed to comply with the following Code sections:

10 **Section 8516(b):**

11 a. Respondents failed to include the signature of the Branch 3 licensee who
12 performed the inspection on Supplemental Inspection Report No. 10666, as defined by California
13 Code of Regulations, title 16, section 1990(a)(2).

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Violation of Contract)**

16 50. Respondent Ariston's registration, Respondent Quinn's operator's license,
17 and Respondent Ebel's field representative's license are subject to discipline under Code section
18 8638, in that, concerning the Flores project, Respondents failed to complete the following repairs,
19 which had been reported as having been completed on the Standard Notice of Work Completed
20 and Not Completed, dated February 14, 2006:

21 a. Respondents failed to exterminate the reported evidence of drywood
22 termites through the use of a localized Timbor chemical treatment, as reported in Inspection
23 Report No. 95.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Fraud or Misrepresentation After Inspection)**

26 51. Respondent Ariston's registration and Respondent Quinn's operator's
27 license are subject to discipline under Code section 8644, in that, concerning the Flores project,
28 Respondent Quinn reported evidence of drywood termites at the attached patio and at the interior

1 of the house in the area of the dining room, and evidence of drywood termites and drywood
2 termite damage at the back doorframe in Inspection Report No. 10666, when in fact, the
3 infestations and damage did not exist.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Failed to Comply with Report of Findings)**

6 52. Respondent Ariston's registration and Respondent Quinn's operator's
7 license are subject to discipline under Code section 8641; in that they failed to comply with Code
8 section 8622, by failing to correct the items described in the Report of Findings within thirty (30)
9 calendar days of receipt of the Notice, bringing the Flores project into compliance with the
10 Board's Notice and Report of Findings, dated August 15, 2007.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Failure to File Work Activity Reports with the Board)**

13 53. Respondent Ariston's registration, Respondent Quinn's operator's license,
14 and Respondent Carrillo's field representative's license are subject to discipline under Code
15 section 8518, in that, concerning the Flores project, Respondents failed to prepare and deliver a
16 supplemental inspection report and completion notice for the inspection performed and work
17 completed on or about March 3, 2006, to the Board within ten (10) business days following the
18 commencement of an inspection or upon completed work.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Laws Adopted by the Board -
21 Failure to File Reports with the Board)**

22 54. Respondent Ariston's registration and Respondent Quinn's operator's
23 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
24 Respondents failed to comply with Code section 8516(b), by failing to file with the Board the
25 completion notices (2) dated February 14, 2006, and Inspection Report No. 10541, dated
26 May 2, 2007, no later than 10 business days after the commencement of an inspection or upon
27 completed work.

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SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Record Requirements)

55. Respondent Ariston's registration, and Respondent Quinn's operator's and Respondent Carrillo's field representative's license are subject to discipline under Code section 8641, in that, concerning the Flores project, Respondents failed to comply with California Code of Regulations, title 16, section 1970(b), by failing to record the name of the individual who applied pesticides, the pesticide used, and the amount of pesticide used, on the inspection report dated January 27, 2006. Furthermore, Respondents failed to include the pesticide and amount used on the Completion Notice dated February 14, 2006.

EIGHTH CAUSE FOR DISCIPLINE

(Grossly Negligent or Fraud Act)

56. Respondent Ariston's registration and Respondent Quinn's operator's license are subject to discipline under Code section 8642, in that, in or about March 2006, concerning the Flores project, Respondents committed a grossly negligent or fraudulent act by failing to properly date the second Inspection Report No. 95, and the accompanying Completion Notice.

NINTH CAUSE FOR DISCIPLINE

(Failure to Submit and File Wood Destroying Pests and Organisms Inspection Reports with the Board)

57. Respondent Ariston's registration and Respondent Quinn's operator's license are subject to discipline under Code section 8518, in that, between May 13, 2005, and March 16, 2006, Respondents failed to submit 346 Wood Destroying Pests and Organisms Inspection Reports to the Board no later than 10 business days after the commencement of an inspection or upon completed work, attached hereto as Exhibit A.

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PRIOR DISCIPLINE

ARISTON TERMITE
Company Registration Certificate No. PR 4476, Br. 3

58. On or about May 12, 2005, Respondent Ariston paid a fine in the amount of \$50 levied by the Los Angeles County Agricultural Commissioner for violating Food and Agriculture Code section 15204.

59. On or about July 26, 2005, Respondent Ariston paid a fine in the amount of \$100 levied by San Bernardino County Agricultural Commissioner for violating Code section 8505.17.

60. On or about November 9, 2005, Respondent Ariston paid a fine in the amount of \$100 levied by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations sections 6678 and 6726.

DONALD LEVELL QUINN SR.
Operator's License No. OPR 11110

61. On or about April 16, 2007, Respondent Quinn paid a fine in the amount of \$250 levied by the San Diego County Agricultural Commissioner for violating Food and Agriculture Code section 15204.

62. On or about May 30, 2007, Respondent Quinn paid a fine in the amount of \$250 levied by the San Diego County Agricultural Commissioner for violating Food and Agriculture Code section 15204.

JEFFREY MATTHEW EBEL
Field Representative License No. FR 35090

63. On or about October 18, 2005, Respondent Ebel paid a fine in the amount of \$75 levied by the Board for violating Code sections 8516(b)(6)(7), and California Code of Regulations, title 16, section 1990.

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1 **JOSE CARRILLO**
2 **Field Representative License No. FR 17136**

3 64. On or about February 23, 2006, Respondent Carrillo paid a fine in the
4 amount of \$100 levied by the Board for violating Code sections 8516(b)(6)(7)(9), and California
5 Code of Regulations, title 16, section 1990(a)(4).

6 65. On or about February 23, 2006, Respondent Carrillo paid a fine in the
7 amount of \$75 levied by the Board for violating Code sections 8516(b)(6)(7), and California
8 Code of Regulations, title 16, section 1990(a)(4).

9 **OTHER MATTERS**

10 66. Notice is hereby given that section 8620 of the Code provides, in pertinent
11 part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu
12 of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20
13 to 45 days. Such request must be made at the time of the hearing and must be noted in the
14 proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed
15 in lieu of a suspension.

16 67. Pursuant to Code section 8624, the causes for discipline established as to
17 Company Registration Certificate Number PR 4476, issued to Ariston Termite, likewise
18 constitute cause for discipline against Operator's License Number OPR 11110, issued to Donald
19 Levell Quinn Sr., who serves as the Qualifying Manager of Ariston Termite, regardless of
20 whether Donald Levell Quinn Sr. had knowledge of or participated in the acts or omissions
21 which constitute cause for discipline against Ariston Termite.

22 68. Pursuant to Code section 8654, if discipline is imposed on Company
23 Registration Certificate Number PR 4476, issued to Ariston Termite, then Donald Levell Quinn
24 Sr., who serves as the Qualifying Manager of Ariston Termite, shall be prohibited from serving
25 as an officer, director, associate, partner, qualifying manager, or responsible managing employee
26 for any registered company during the time the discipline is imposed, and any registered company
27 which employs, elects, or associates him, shall be subject to disciplinary action.

28 ///

1 69. Jeffrey Matthew Ebel, a field representative employed by Ariston Termite
2 had knowledge of and participated in the acts or omissions which constitute cause for discipline
3 against Ariston Termite.

4 70. Pursuant to Code section 8654, if discipline is imposed on Company
5 Registration Certificate Number PR 4476, issued to Ariston Termite, then Jeffrey Matthew Ebel,
6 a field representative employed by Ariston Termite, shall be prohibited from serving as an
7 officer, director, associate, partner, qualifying manager, or responsible managing employee of a
8 registered company, and the employment, election or association of him by a registered company
9 is a ground for disciplinary action.

10 71. Jose Carrillo, a field representative employed by Ariston Termite had
11 knowledge of and participated in the acts or omissions which constitute cause for discipline
12 against Ariston Termite.

13 72. Pursuant to Code section 8654, if discipline is imposed on Company
14 Registration Certificate Number PR 4476, issued to Ariston Termite, then Jose Carrillo, a field
15 representative employed by Ariston Termite, shall be prohibited from serving as an officer,
16 director, associate, partner, qualifying manager, or responsible managing employee of a
17 registered company, and the employment, election or association of him by a registered company
18 is a ground for disciplinary action.

19 **PRAYER**

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters
21 herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

22 1. Revoking or suspending Company Registration Certificate Number
23 PR 4476, issued to Ariston Termite;

24 2. Revoking or suspending Operator's License Number OPR 11110, issued to
25 Donald Levell Quinn Sr.;

26 3. Revoking or suspending any other license for which Donald Levell Quinn
27 Sr. is furnishing the qualifying experience or appearance;

28 ///

1 4. Revoking or suspending Field Representative License Number FR 35090,
2 issued to Jeffrey Matthew Ebel;

3 5. Revoking or suspending Field Representative License Number FR 17136,
4 issued to Jose Carrillo;

5 6. Prohibiting Donald Levell Quinn Sr. from serving as an officer, director,
6 associate, partner, qualifying manager or responsible managing employee of any registered
7 company during the period that discipline is imposed on Company Registration Certificate
8 Number PR 4476, issued to Ariston Termite;


9 7. Prohibiting Jeffrey Matthew Ebel from serving as an officer, director,
10 associate, partner, qualifying manager or responsible managing employee of any registered
11 company during the period that discipline is imposed on Company Registration Certificate
12 Number PR 4476, issued to Ariston Termite;

13 8. Prohibiting Jose Carrillo from serving as an officer, director, associate,
14 partner, qualifying manager or responsible managing employee of any registered company during
15 the period that discipline is imposed on Company Registration Certificate Number PR 4476,
16 issued to Ariston Termite;

17 9. Ordering Ariston Termite, Donald Levell Quinn Sr., Jeffrey Matthew Ebel,
18 and Jose Carrillo to pay the Structural Pest Control Board the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,

21 10. Taking such other and further action as deemed necessary and proper.

22 DATED: 4/23/08

23 
24 KEELI OKUMA
25 Registrar
26 Structural Pest Control Board
27 Department of Consumer Affairs
28 State of California
Complainant

LA2008900076
Accusation (kdg) 4/7/08

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GALLATIN EXTERMINATORS
1742 West Katella Avenue
Orange, CA 92867

and

JOSE CARRILLO
6249 Alondra Blvd.
Paramount, California 90723

Field Representative No. FR 17136

Respondent.

Case No. 2008-12

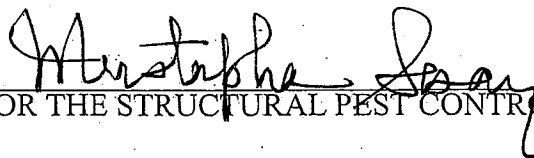
OAH No. L-2008060967

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Structural Pest Control Board as its Decision in this matter.

This Decision shall become effective on January 2, 2009

It is so ORDERED December 3, 2008


FOR THE STRUCTURAL PEST CONTROL BOARD

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON, State Bar No. 158935
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-6294
Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2008-12

12 GALLATIN EXTERMINATORS
1742 West Katella Avenue
Orange, CA 92867

OAH No. L-2008060967

13 and

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT JOSE CARRILLO**

14 JOSE CARRILLO
6249 Alondra Blvd.
15 Paramount, CA 90723

16 Field Representative No. FR 17136

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. Kelli Okuma ("Complainant") is the Registrar/Executive Officer of the
23 Structural Pest Control Board ("Board"). She brought this action solely in her official capacity
24 and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
25 California, by Terrence M. Mason, Deputy Attorney General.

26 2. Jose Carrillo ("Respondent") is representing itself in this proceeding and
27 has chosen not to exercise his right to be represented by counsel.

28 3. On or about March 8, 1989, the Structural Pest Control Board issued Field

1 Representative's License No. FR 17136 in Branch 3 to Respondent Jose Carrillo. The license
2 will expire on June 30, 2009, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2008-12 was filed before the Structural Pest Control
5 Board, and is currently pending against Respondent. The Accusation and all other statutorily
6 required documents were properly served on Respondent on September 27, 2007. Respondent
7 timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-12
8 is attached as Exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations
11 in Accusation No. 2008-12. Respondent has also carefully read, and understands the effects of
12 this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
16 the right to present evidence and to testify on his own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in
24 Accusation No. 2008-12 against him.

25 9. Respondent agrees that his Field Representative's License is subject to
26 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
27 Disciplinary Order below.

28 ///

CONTINGENCY

1
2 10. The parties understand and agree that facsimile copies of this Stipulated
3 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
4 force and effect as the originals.

5 11. In consideration of the foregoing admissions and stipulations, the parties
6 agree that the Board may, without further notice or formal proceeding, issue and enter the
7 following Disciplinary Order:

DISCIPLINARY ORDER

8
9 IT IS HEREBY ORDERED that Field Representative's License No. FR 17136
10 issued to Respondent Jose Carrillo is revoked. However, the revocation is stayed and
11 Respondent is placed on probation for three (3) years on the following terms and conditions.

12 1. **Obey All Laws.** Respondent shall obey all laws and rules relating to the
13 practice of structural pest control.

14 2. **Quarterly Reports.** Respondent shall file quarterly reports with the
15 Board during the period of probation.

16 3. **Tolling of Probation.** Should Respondent leave California to reside
17 outside this state, Respondent must notify the Board in writing of the dates of departure and
18 return. Periods of residency or practice outside the state shall not apply to reduction of the
19 probationary period.

20 4. **Notice to Employers.** Respondent shall notify all present and prospective
21 employers of the decision in Case No. 2008-12 and the terms, conditions and restriction imposed
22 on Respondent by said decision. Within 30 days of the effective date of this decision, and within
23 15 days of Respondent undertaking new employment, Respondent shall cause his employer to
24 report to the Board in writing acknowledging the employer has read the decision in Case No.
25 2008-12.

26 5. **Completion of Probation.** Upon successful completion of probation,
27 Respondent's license/certificate will be fully restored.

28 6. **Violation of Probation.** Should Respondent violate probation in any

1 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
2 probation and carry out the disciplinary order which was stayed. If a petition to revoke probation
3 is filed against Respondent during probation, the Board shall have continuing jurisdiction until
4 the matter is final, and the period of probation shall be extended until the matter is final.

5 7. **Additional course(s).** Respondent Jose Carrillo shall successfully
6 complete within eighteen (18) months of the effective date of this decision a course(s), to be
7 approved in advance by the Board, pertaining to Proper Inspection for Wood Destroying Pests
8 and Organisms. Respondent shall submit written proof of successful course completion to the
9 Board. Said course(s) may not be taken for satisfaction of continuing education requirements.

10 8. **Random Inspections.** Respondent shall reimburse the Board for one (1)
11 random inspection per quarter by Board specialists during the period of probation not to exceed
12 \$125 per inspection.

13 9. **Inspection Fees.** Respondent shall pay to the registrar, or designee, an
14 inspection fee of \$50 within thirty (30) days from the effective date of this decision.

15 10. **Prohibited from Serving as Officer, Director, Associate, Partner or**
16 **Qualifying Manager.** Respondent is prohibited from serving as an officer, director, associate,
17 partner, qualifying manager or branch office manager of any registered company during the
18 period that discipline is imposed on Field Representative's License No. FR 17136.

19 11. **No Interest In Any Registered Company.** Respondent shall not have
20 any legal or beneficial interest in any company registered by the Board during the period that
21 discipline is imposed on Field Representative's License No. FR 17136.

22 ACCEPTANCE

23 I have carefully read the Stipulated Settlement and Disciplinary Order. I
24 understand the stipulation and the effect it will have on my Field Representative's License. I
25 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and

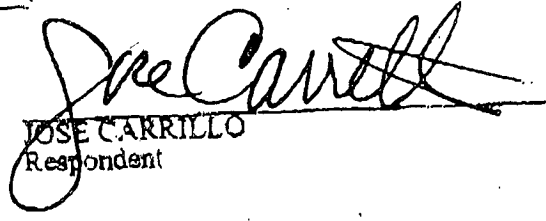
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28 ///

1 intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control
2 Board.

3 DATED: 9/19/08

4
5 
6 JOSE CARRILLO
7 Respondent

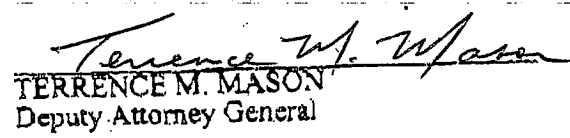
8
9 **ENDORSEMENT**

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Structural Pest Control Board.

12 DATED: 9/19/08

13 EDMUND G. BROWN JR., Attorney General
14 of the State of California

15 GREGORY J. SALUTE
16 Supervising Deputy Attorney General

17 
18 TERRENCE M. MASON
19 Deputy Attorney General

20 Attorneys for Complainant
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27 DOJ Matter ID: LA2007601457
28 CarrilloStip.wpd

1 intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control
2 Board.

3 DATED: _____
4

5 _____
6 JOSE CARRILLO
7 Respondent
8

9 **ENDORSEMENT**

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Structural Pest Control Board.

12 DATED: _____

13 EDMUND G. BROWN JR., Attorney General
14 of the State of California

15 GREGORY J. SALUTE
Supervising Deputy Attorney General

16
17
18 _____
19 TERRENCE M. MASON
20 Deputy Attorney General

21 Attorneys for Complainant
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23
24
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26

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS, Supervising
Deputy Attorney General
3 TERRENCE M. MASON
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6294
6 Facsimile: (213) 897-2804

FILED

Date 9/18/07 By *Kelli Okuma*

7 Attorneys for Complainant

8
9
10
11

**BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-12

13 **GALLATIN EXTERMINATORS**
EDWARD COUNT LINCOLN, QM
14 SOFIA BASULTO, CO-OWNER
JOSEPH FIERRO, CO-OWNER

ACCUSATION

15 1742 West Katella Avenue
Orange, California 92867

16 Company Registration Certificate No. PR 3742,

17 **EDWARD COUNT LINCOLN**
18 529 South Citadel Lane
Anaheim, California 92806

19 Operator's License No. OPR 7356,

20 **JOSE CARRILLO**
21 205 North Santa Fe Avenue
Compton, California 90221

22 Field Representative's License No. FR 17136,

23 and

24 **ERIC FRANCISCO VALENCIA**
25 1318 North Cozy Terrace
Anaheim, California 92806

26 Field Representative's License No. FR 36003

27 Respondents.
28

1 Complainant alleges:

2 **PARTIES**

3 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
4 capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"),
5 Department of Consumer Affairs.

6 **Company Registration Certificate No. PR 3742**

7 2. On or about August 1, 2000, the Board issued Company Registration
8 Certificate Number PR 3742 in Branch 3 (termite) to Gallatin Exterminators (hereinafter
9 "Respondent Gallatin Exterminators" or "Gallatin "), with Thomas J. Walker as qualifying
10 manager and Sofia Basulto and Joseph Fierro as co-owners. On April 27, 2005, Edward Count
11 Lincoln (hereinafter "Respondent Lincoln" or "Lincoln") replaced Thomas J. Walker as
12 qualifying manager for Gallatin. On February 1, 2007, Respondent Lincoln disassociated as
13 qualifying manager. Gallatin's company registration certificate was suspended on the dates
14 indicated below and was canceled on July 3, 2007.

<u>Suspension Date</u>	<u>Violation</u>	<u>Status</u>
08/27/2004	Failure to maintain a surety bond in the amount of \$4,000 as required by Business and Professions Code ("Code") section 8697.	Registration reinstated 09/08/2004 after \$4,000 surety bond posted
11/28/2005	Failure to maintain general liability insurance as required by Code section 8690.	Registration reinstated 12/16/2005 after general liability insurance posted
03/21/2007	Failure to replace qualifying manager	Registration canceled 07/03/2007
04/27/2007	Failure to maintain general liability insurance as required by Code section 8690	Registration canceled 07/03/2007

24 **Operator's License No. OPR 7356**

25 3. On or about November 8, 1985, the Board issued Operator's License
26 Number OB 7356 in Branches 2 (fumigation) and 3 to Respondent Lincoln, employee of
27 Pestronics, Inc. On or about September 25, 1987, Respondent's license was converted to
28 Operator's License Number OPR 7356. On April 27, 2005, Respondent became the Branch 3

1 qualifying manager for Respondent Gallatin Exterminators. On March 9, 2007, Respondent
2 disassociated as the Branch 3 qualifying manager of Gallatin. Respondent's operator's license
3 was suspended on the dates indicated below and will expire on June 30, 2009, unless renewed.

<u>Suspension Date</u>	<u>Violation</u>	<u>Status</u>
05/22/1992	Failure to maintain general liability insurance as required by Code section 8690	License reinstated 07/02/1992 after general liability insurance posted
04/10/1993	Same as above.	License reinstated 07/01/1994
11/28/2005	Same as above.	License reinstated 12/16/2005 after general liability insurance posted
07/03/2007	Same as above.	License reinstated 07/18/2007 after general liability insurance posted

14 **Field Representative's License No. FR 17136**

15 4. On or about March 8, 1989, the Board issued Field Representative's
16 License Number FR 17136 in Branch 3 to Jose Carrillo (hereinafter "Respondent Carrillo" or
17 "Carrillo"), employee of Wholesale Fumigators. On or about August 14, 2000, Respondent
18 became employed by Gallatin. Respondent left his employment with Gallatin on May 19, 2006.
19 Respondent's field representative's license will expire on June 30, 2009, unless renewed.

20 **Field Representative's License No. FR 36003**

21 5. On or about May 29, 2003, the Board issued Field Representative's
22 License Number FR 36003 in Branch 3 to Eric Francisco Valencia (hereinafter "Respondent
23 Valencia" or "Valencia"), employee of Affordable Termite Control. On or about April 24, 2006,
24 Respondent became employed by Gallatin. Respondent's field representative's license will
25 expire on June 30, 2008, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

1
2 6. Code section 8620 provides, in pertinent part, that the Board may suspend
3 or revoke a license when it finds that the holder, while a licensee or applicant, has committed any
4 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
5 civil penalty.

6 7. Code section 8625 states:

7 The lapsing or suspension of a license or company registration by
8 operation of law or by order or decision of the board or a court of law, or the
9 voluntary surrender of a license or company registration shall not deprive the
10 board of jurisdiction to proceed with any investigation of or action or disciplinary
11 proceeding against such licensee or company, or to render a decision suspending or
12 revoking such license or registration.

13 8. Code section 118, subdivision (b), states:

14 The suspension, expiration, or forfeiture by operation of law of a license
15 issued by a board in the department, or its suspension, forfeiture, or cancellation
16 by order of the board or by order of a court of law, or its surrender without the
17 written consent of the board, shall not, during any period in which it may be
18 renewed, restored, reissued, or reinstated, deprive the board of its authority to
19 institute or continue a disciplinary proceeding against the licensee upon any
20 ground provided by law or to enter an order suspending or revoking the license or
21 otherwise taking disciplinary action against the licensee on any such ground.

22 9. Code section 8624 states, in pertinent part:

23
24 If the operator is the qualifying manager, a partner, responsible officer, or
25 owner of a registered structural pest control company, the suspension or
26 revocation may be applied to the company registration.

27 The performance by any partnership, corporation, firm, association, or
28 registered company of any act or omission constituting a cause for disciplinary
action, likewise constitutes a cause for disciplinary action against any licensee
who, at the time the act or omission occurred, was the qualifying manager, a
partner, responsible officer, or owner of the partnership, corporation, firm,
association, or registered company whether or not he or she had knowledge of, or
participated in, the prohibited act or omission.

 10. Code section 8654 states:

 Any individual who has been denied a license for any of the reasons
specified in Section 8568, 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, associate,
qualifying manager, or responsible managing employee of any partnership,

1 corporation, firm, or association whose application for a company registration has
2 been denied for any of the reasons specified in Section 8568, or whose company
3 registration has been revoked as a result of disciplinary action, or whose company
4 registration is under suspension, and while acting as such member, officer,
5 director, associate, qualifying manager, or responsible managing employee had
6 knowledge of or participated in any of the prohibited acts for which the license or
7 registration was denied, suspended or revoked, shall be prohibited from serving as
8 an officer, director, associate, partner, qualifying manager, or responsible
9 managing employee of a registered company, and the employment, election or
10 association of such person by a registered company is a ground for disciplinary
11 action.

12 STATUTORY AND REGULATORY PROVISIONS

13 Statutory Provisions

14 11. Code section 8516 states, in pertinent part:

15

16 (b) No registered company or licensee shall commence work on a contract,
17 or sign, issue, or deliver any documents expressing an opinion or statement
18 relating to the absence or presence of wood destroying pests or organisms until an
19 inspection has been made by a licensed Branch 3 field representative or operator.
20 The address of each property inspected or upon which work is completed shall be
21 reported on a form prescribed by the board and shall be filed with the board no
22 later than 10 business days after the commencement of an inspection or upon
23 completed work.

24

25 Failure of a registered company to report and file with the board the
26 address of any property inspected or work completed pursuant to Section 8518 or
27 this section is grounds for disciplinary action and shall subject the registered
28 company to a fine of not more than two thousand five hundred dollars (\$2,500).

A written inspection report conforming to this section and a form
approved by the board shall be prepared and delivered to the person requesting the
inspection or to the person's designated agent within 10 business days of the
inspection, except that an inspection report prepared for use by an attorney for
litigation purposes is not required to be reported to the board. The report shall be
delivered before work is commenced on any property. The registered company
shall retain for three years all original inspection reports, field notes, and activity
forms.

Reports shall be made available for inspection and reproduction to the
executive officer of the board or his or her duly authorized representative during
business hours. Original inspection reports or copies thereof shall be submitted to
the board upon request within two business days. The following shall be set forth
in the report:

(1) The date of the inspection and the name of the licensed field
representative or operator making the inspection.

28

1 (6) A foundation diagram or sketch of the structure or structures or
2 portions of the structure or structures inspected, indicating thereon the
3 approximate location of any infested or infected areas evident, and the parts of the
4 structure where conditions that would ordinarily subject those parts to attack by
5 wood destroying pests or organisms exist.

6 (7) Information regarding the substructure, foundation walls and footings,
7 porches, patios and steps, air vents, abutments, attic spaces, roof framing that
8 includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
9 joists, and attic walls, or other parts subject to attack by wood destroying pests or
10 organisms. Conditions usually deemed likely to lead to infestation or infection,
11 such as earth-wood contacts, excessive cellulose debris, faulty grade levels,
12 excessive moisture conditions, evidence of roof leaks, and insufficient ventilation
13 are to be reported.

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(10) Recommendations for corrective measures . . .

12. Code section 8518 states, in pertinent part:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work.

Failure of a registered company to report and file with the board the address of any property upon which work was completed pursuant to subdivision (b) of Section 8516 or Section 8518 is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars (\$2,500) . . .

13. Code section 8519 states, in pertinent part:

Certification as used in this section means a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of wood-destroying pests or organisms and, listing such recommendations, if any, which appear on an inspection report prepared pursuant to Section 8516, and which relate to (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification.

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1 Any registered company which makes an inspection report pursuant to
2 Section 8516, shall, if requested by the person ordering the inspection report,
3 prepare and deliver to that person or his or her designated agent, a certification, to
4 provide:

5 (b) When the inspection report prepared pursuant to Section 8516
6 discloses infestation or infection and the notice of work completed prepared
7 pursuant to Section 8518 indicates that all recommendations to remove that
8 infestation or infection and to repair damage caused by that infestation or
9 infection have been completed: "This is to certify that the property described
10 herein is now free of evidence of active infestation or infection in the visible and
11 accessible areas" . . .

12 14. Code section 8622 states:

13 When a complaint is accepted for investigation of a registered company,
14 the board, through an authorized representative, may inspect any or all properties
15 on which a report has been issued pursuant to Section 8516 or a notice of
16 completion has been issued pursuant to Section 8518 by the registered company to
17 determine compliance with the provisions of this chapter and the rules and
18 regulations issued thereunder. If the board determines the property or properties
19 are not in compliance, a notice shall be sent to the registered company so stating.
20 The registered company shall have 30 days from the receipt of the notice to bring
21 such property into compliance, and it shall submit a new original report or
22 completion notice or both and an inspection fee of not more than one hundred
23 twenty-five dollars (\$125) for each property inspected. If a subsequent
24 reinspection is necessary, pursuant to the board's review of the new original report
25 or notice or both, a commensurate reinspection fee shall also be charged. If the board's
26 authorized representative makes no determination or determines the property is in
27 compliance, no inspection fee shall be charged.

28 The notice sent to the registered company shall inform the registered
company that if it desires a hearing to contest the finding of noncompliance, the
hearing shall be requested by written notice to the board within 20 days of receipt
of the notice of noncompliance from the board. Where a hearing is not requested
pursuant to this section, payment of any assessment shall not constitute an
admission of any noncompliance charged.

15. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or
regulation adopted by the board, or the furnishing of a report of inspection without
the making of a bona fide inspection of the premises for wood-destroying pests or
organisms, or furnishing a notice of work completed prior to the completion of the
work specified in the contract, is a ground for disciplinary action.

16. Code section 8642 states that "[t]he commission of any grossly negligent
or fraudulent act by the licensee as a pest control operator, field representative, or applicator or
by a registered company is a ground for disciplinary action."

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17. Code section 8644 states:

Fraud or misrepresentation, after inspection, by any licensee or registered company engaged in pest control work of any infestation or infection of wood-destroying pests or organisms found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests or organisms, whether or not a report was made pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary action.

Regulatory Provisions

18. California Code of Regulations, title 16, section ("Regulation") 1937.14 states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

19. Regulation 1990 states, in pertinent part:

(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

....

(2) Signature of the Branch 3 licensee who made the inspection.

(3) Infestations, infections or evidence thereof.

(4) Wood members found to be damaged by wood destroying pests or organisms.

....

(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

....

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

(4) Earth-wood contacts.

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(e) Information regarding all accessible areas of the structure including but not limited to the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or other parts of a structure normally subject to attack by wood-destroying pests or organisms . . .

20. Regulation 1991 states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

.....
(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

.....
(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

- 1. exposing the infested area(s) for local treatment,
- 2. removing the infested wood,

3. using another method of treatment which exterminates the infestation. (If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")

1 When a complete inspection is performed, a recommendation shall be
2 made to remove or cover all accessible pellets and frass of wood-destroying pests.

3 When a limited inspection is performed, the inspection report shall state
4 that the inspection is limited to the area(s) described and diagramed. A
5 recommendation shall be made to remove or cover all accessible pellets and frass
6 of wood-destroying pests in the limited areas. The limited inspection report shall
7 include a recommendation for further inspection of the entire structure and that all
8 accessible evidence of wood-destroying pests be removed or covered . . .

9 21. Regulation 1993 states, in pertinent part:

10 All of the following reports must be in compliance with the requirements
11 of Section 8516 of the code. All reports must be on the form prescribed by the
12 board.

13

14 (c) A limited report is the report on only part of a structure. Such a report
15 shall have a diagram of the area inspected and shall specifically indicate which
16 portions of the structure were inspected with recommendation for further
17 inspection of the entire structure and the name of the person or agency requesting
18 a limited report.

19

20 (e) A reinspection report is the report on the inspections of item(s)
21 completed as recommended on an original report or subsequent report(s). The
22 areas reinspected can be limited to the items requested by the person ordering the
23 original inspection report. A licensed operator or field representative shall refer to
24 the original report in such a manner to identify it clearly.

25 22. Regulation 1996.1 states, in pertinent part:

26 (a) An inspection tag shall be posted in the attic or sub-area, or in the
27 garage whenever an inspection for wood-destroying pests or organisms is made.
28 The inspection tag shall be not less than 3" by 5" and shall contain the firm's
name, date of inspection and the following statement: "Do not remove--Structural
Pest Control Board Regulation 1996.1."

 (b) If the registered company completes any work with respect to
wood-destroying pests or organisms, it shall post a completion tag next to the
inspection tag. The completion tag shall be not less than 3" by 5" and shall
contain the firm's name, date of completion and name of any chemical used or
method(s) of treatment . . .

Cost Recovery

 23. Code section 125.3 states, in pertinent part, that a Board may request the
administrative law judge to 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.

1 4117 MERCURY AVENUE, LOS ANGELES, CA

2 24. On October 14, 2005, Gallatin's field representative, Carrillo, inspected
3 the property located at 4117 Mercury Avenue, Los Angeles, California (hereinafter "property" or
4 "Mercury Avenue property"), at the request of Sandra Alvarez of American Team Properties and
5 issued a limited Wood Destroying Pests and Organisms inspection report. Carrillo reported
6 evidence of drywood termites in the substructure, dry rot (decay fungi damage) at the roof
7 sheathing in the eave area, evidence of termite-damaged wood in the eave area and at the front
8 porch, and cellulose debris and earth-to-wood contacts in the substructure. Carrillo
9 recommended chemically treating the evidence of drywood termites, repairing and replacing the
10 decay fungi damage, having the owner contact a licensed tradesman to repair the termite-
11 damaged wood, cleaning out and removing the cellulose debris from the substructure, and
12 breaking the earth-to-wood contacts and/or heavily treating wood members where conditions
13 were deemed likely to lead to infestation.

14 25. On October 21, 2005, Gallatin issued a Standard Notice of Work
15 Completed and Not Completed (hereinafter "notice of completion"), certifying that the
16 recommendations pertaining to the cellulose debris, evidence of drywood termites, earth-to-wood
17 contacts, and decay fungi damage had been completed in accordance with the Board's rules and
18 regulations and that the property was now free of evidence of active infestation or infection in the
19 visible and accessible areas. Gallatin also certified that others had completed repairs to the
20 termite-damaged wood in the eave area in a workmanlike manner.

21 26. In or about December 2005, Jose Andres ("Andres") and Espinoza
22 Navarro ("Navarro") purchased the property.

23 27. On April 20, 2006, Carrillo inspected the property at the request of Andres
24 and issued a reinspection report. Carrillo reported evidence of termite-damaged wood at the
25 garage ceiling joists and decay fungi damage at the garage roof, for which he recommended
26 repairing and replacing the termite-damaged wood and decay fungi damage.

27 28. Later that same day, the property was inspected by Gallatin at the request
28 of Andres and another reinspection report was issued, consisting of eight findings and

1 recommendations. The findings included evidence of drywood termites in the garage and at the
2 exterior framing of the house, termite-damaged wood in the garage and at the rafter tails and roof
3 sheathing in the eave area of the house, and decay fungi damage at the garage and at the rafter
4 tails and roof sheathing in the eave area of the house. Recommendations were made to drill and
5 treat all exposed wood members for the drywood termites and to repair and replace the termite-
6 damaged wood and decay fungi damage. The report failed to include the name of the Branch 3
7 licensee who performed the inspection. Further, Carrillo's Field Representative's License
8 Number FR 17136 was listed on the report, but the report was signed by Gallatin's field
9 representative, *Valencia*.

10 29. On October 6, 2006, the Board received a complaint from Andres and
11 Navarro stating that at the time they purchased the property, it was reported to be free and clear
12 of termites and damage. In or about March 2006, Andres and Navarro found termites in the
13 house eaves and garage and contacted Gallatin. After Carrillo inspected the property and issued
14 his report, Andres and Navarro asked Gallatin to send out a second inspector. Valencia inspected
15 the property and found more damage than was reported on the limited report of October 14,
16 2005, and the first reinspection report of April 20, 2006.

17 30. On November 13, 2006, Board Specialist Steven R. Smith ("Smith")
18 performed several Wood Destroying Organisms ("WDO") Activity Searches on the property and
19 determined that Gallatin had failed to file any of its WDO activities at the property with the
20 Board. That same day, Smith inspected the property.

21 31. On November 15, 2006, Smith issued a Report of Findings ("ROF")
22 outlining numerous violations of the Code which he found during his inspection. That same day,
23 the Board sent¹ a notice to Lincoln and Gallatin directing them to bring the property into
24 compliance by correcting the items described in the ROF and to submit a corrected inspection
25

26 1. Copies of the Board's notice and the ROF were sent by certified mail to Lincoln, Gallatin, Carrillo, and
27 Valencia at their respective addresses of record. The Board received signed Domestic Return Receipts indicating
28 that the notice and ROF were, in fact, received at Lincoln's, Carrillo's, and Valencia's addresses of record;
however, the notice and ROF sent to Lincoln and Gallatin at Gallatin's address of record were returned to the
Board as "unclaimed".

1 report and completion notice to the Board within thirty (30) calendar days from receipt of the
2 notice.

3 32. Gallatin and Lincoln failed to return to the property to correct the items
4 described in the ROF, leaving the property badly infested and damaged, and failed to submit a
5 corrected inspection report to the Board.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Code: Improper Inspections)**

8 33. Respondents Gallatin, Carrillo, and Valencia are subject to disciplinary
9 action pursuant to Code section 8641 in that as to the Mercury Avenue property, they
10 failed to comply with Code section 8516, in the following respects:

11 **Respondent Gallatin:**

12 a. Respondent failed to report the inspections of October 14, 2005, and April
13 20, 2006, and the work completed as of October 21, 2005, to the Board within ten (10) business
14 days after commencement of the inspections or upon completion of the work, in violation of
15 Code section 8516, subdivision (b).

16 b. Respondent failed to set forth in the second inspection report of April 20,
17 2006, the name of the licensed field representative making the inspection in that the "inspected
18 by" space on the report was left blank. Further, Respondent listed Carrillo's field
19 representative's license number on the report when, in fact, Valencia made the inspection
20 (Valencia also signed the report, as set forth in paragraph 28 above).

21 **Respondent Carrillo:**

22 c. Respondent failed to report on his April 20, 2006, inspection report the
23 cellulose debris in the substructure, in violation of Code section 8516, subdivisions (b)(6) and
24 (7), and Regulation 1990, subdivision (b)(3).

25 d. Respondent failed to report on his October 14, 2005, and April 20, 2006,
26 inspection reports the form boards in the substructure, in violation of Code section 8516,
27 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(3).

28 ///

1 e. Respondent failed to report on his April 20, 2006, inspection report the
2 earth-to-wood contact in the substructure, in violation of Code section 8516, subdivisions (b)(6)
3 and (7), and Regulation 1990, subdivision (b)(4).

4 f. Respondent failed to report on his October 14, 2005, and April 20, 2006,
5 inspection reports the earth-to-wood contact at the substructure access vent, in violation of Code
6 section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(4).

7 g. Respondent failed to report on his October 14, 2005, and April 20, 2006,
8 inspection reports the form board at the front porch steps, in violation of Code section 8516,
9 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(3).

10 h. Respondent failed to report on his October 14, 2005, and April 20, 2006,
11 inspection reports the inaccessible area under the front porch, in violation of Code section 8516,
12 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (b)(2).

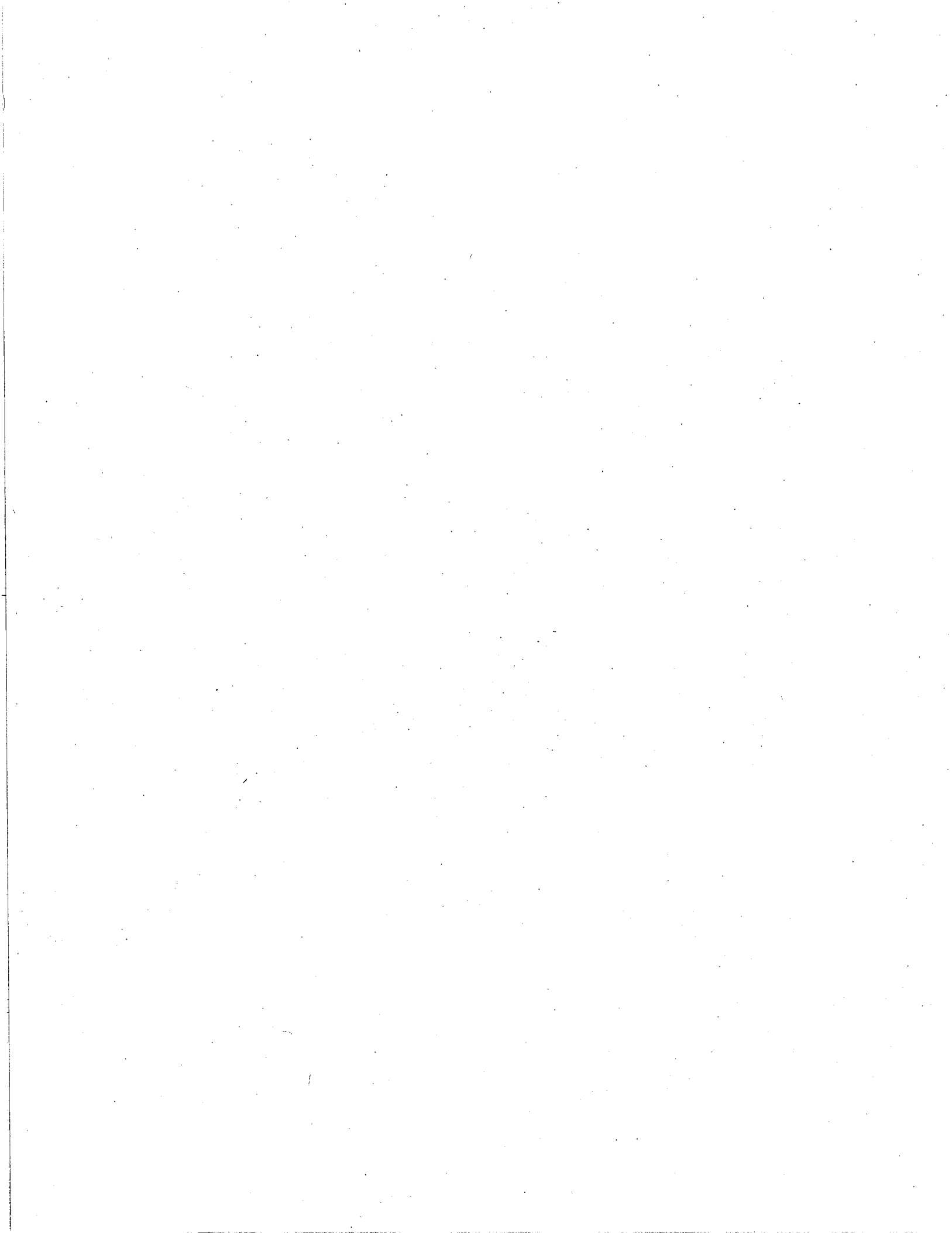
13 i. Respondent failed to report on his April 20, 2006, inspection report the
14 presence of an attic, in violation of Code section 8516, subdivisions (b)(6) and (7), and
15 Regulation 1990, subdivision (e).

16 j. Respondent failed to report on his October 14, 2005, inspection report the
17 evidence of drywood termites in the attic, in violation of Code section 8516, subdivisions (b)(6)
18 and (7), and Regulation 1990, subdivision (a)(3).

19 k. Respondent failed to report on his October 14, 2005, and April 20, 2006,
20 inspection reports the absence of attic ventilation, in violation of Code section 8516, subdivisions
21 (b)(6) and (7), and Regulation 1990, subdivision (e).

22 l. Respondent failed to report on his October 14, 2005, inspection report the
23 evidence of drywood termites, drywood termite damage, and decay fungi damage in the garage,
24 in violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions
25 (a)(3) and (4).

26 m. Respondent failed to report on his October 14, 2005, and April 20, 2006,
27 inspection reports the inaccessible area at the garage parapet walls, in violation of Code section
28 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivision (e).



1 n. Respondent failed to report on his October 14, 2005, inspection report the
2 full extent of the evidence of drywood termites, drywood termite damage, and decay fungi
3 damage in the eaves, in violation of Code section 8516, subdivisions (b)(6) and (7), and
4 Regulation 1990, subdivisions (a)(3) and (4).

5 o. Respondent failed to report on his April 20, 2006, inspection report the
6 evidence of drywood termites, drywood termite damage, and decay fungi damage in the eaves, in
7 violation of Code section 8516, subdivisions (b)(6) and (7), and Regulation 1990, subdivisions
8 (a)(3) and (4).

9 p. Respondent failed to report on his October 14, 2005, and April 20, 2006,
10 inspection reports the inaccessible area in the eave area on the south wall (the plywood roof
11 sheathing had been covered with another layer of plywood), in violation of Code section 8516,
12 subdivisions (b)(6) and (7), and Regulation 1990, subdivision (e).

13 q. Respondent failed to make a proper recommendation regarding the decay
14 fungi damage reported on his October 14, 2005, and April 20, 2006, inspection reports in that he
15 failed to make a recommendation to correct the excessive moisture condition responsible for the
16 infections, in violation of Code section 8516, subdivision (b)(10), and Regulation 1991,
17 subdivision (a)(5).

18 r. Respondent failed to make a proper recommendation regarding the
19 evidence of drywood termites in the substructure reported on his October 14, 2005, inspection
20 report in that he failed to make a recommendation to cover or remove all accessible termite
21 evidence, in violation of Code section 8516, subdivision (b)(10), and Regulation 1991,
22 subdivision (a)(8).

23 s. Respondent failed to make a proper finding and recommendation
24 regarding the termite damaged wood reported on his October 14, 2005, and April 20, 2006,
25 inspection reports in that he failed to report the source of the damage and failed to make a
26 recommendation to exterminate that source, in violation of Code section 8516, subdivisions
27 (b)(6), (7), and (10), and Regulations 1990, subdivisions (a)(3) and (4), and 1991, subdivision
28 (a)(8).

1 **Respondent Valencia:**

2 t. Respondent failed to report on his April 20, 2006, inspection report the
3 cellulose debris in the substructure, in violation of Code section 8516, subdivisions (b)(6) and
4 (7), and Regulation 1990, subdivision (b)(3).

5 u. Respondent failed to report on his April 20, 2006, inspection report the
6 form boards in the substructure, in violation of Code section 8516, subdivisions (b)(6) and (7),
7 and Regulation 1990, subdivision (b)(3).

8 v. Respondent failed to report on his April 20, 2006, inspection report the
9 earth-to-wood contact in the substructure, in violation of Code section 8516, subdivisions (b)(6)
10 and (7), and Regulation 1990, subdivision (b)(4).

11 w. Respondent failed to report on his April 20, 2006, inspection report the
12 form board at the front porch steps, in violation of Code section 8516, subdivisions (b)(6) and
13 (7), and Regulation 1990, subdivision (b)(3).

14 x. Respondent failed to report on his April 20, 2006, inspection report the
15 inaccessible area under the front porch, in violation of Code section 8516, subdivisions (b)(6)
16 and (7), and Regulation 1990, subdivision (b)(2).

17 y. Respondent failed to report on his April 20, 2006, inspection report the
18 presence of an attic, in violation of Code section 8516, subdivisions (b)(6) and (7), and
19 Regulation 1990, subdivision (e).

20 z. Respondent failed to report on his April 20, 2006, inspection report the
21 absence of attic ventilation, in violation of Code section 8516, subdivisions (b)(6) and (7), and
22 Regulation 1990, subdivision (e).

23 aa. Respondent failed to report on his April 20, 2006, inspection report the
24 inaccessible area at the garage parapet walls, in violation of Code section 8516, subdivisions
25 (b)(6) and (7), and Regulation 1990, subdivision (e).

26 bb. Respondent failed to report on his April 20, 2006, inspection report the
27 inaccessible area in the eave area on the south wall (the plywood roof sheathing had been

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1 covered with another layer of plywood), in violation of Code section 8516, subdivisions (b)(6)
2 and (7), and Regulation 1990, subdivision (e).

3 cc. Respondent failed to make a proper recommendation regarding the decay
4 fungi damage reported on his April 20, 2006, inspection report in that he failed to make a
5 recommendation to correct the excessive moisture condition responsible for the infections, in
6 violation of Code section 8516, subdivision (b)(10), and Regulation 1991, subdivision (a)(5).

7 dd. Respondent failed to make a proper recommendation regarding the
8 evidence of drywood termites in the garage reported on his April 20, 2006, inspection report in
9 that he failed to make a recommendation to cover or remove all accessible termite evidence, in
10 violation of Code section 8516, subdivision (b)(10), and Regulation 1991, subdivision (a)(8).

11 ee. Respondent failed to make a proper finding and recommendation
12 regarding the termite damaged wood reported on his April 20, 2006, inspection report in that he
13 failed to report the source of the damage and failed to make a recommendation to exterminate
14 that source, in violation of Code section 8516, subdivisions (b)(6), (7), and (10), and Regulations
15 1990, subdivisions (a)(3) and (4), and 1991, subdivision (a)(8).

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Code - Completion Notices)**

18 34. Respondent Gallatin is subject to disciplinary action pursuant to Code
19 section 8641 in that as to the Mercury Avenue property, it failed to comply with Code section
20 8518. Respondent failed to prepare or issue a completion notice after completing the drywood
21 termite and decay fungi damage repair work in the garage and at the house eaves.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Code - Improper Certifications)**

24 35. Respondent Gallatin is subject to disciplinary action pursuant to Code
25 section 8641 in that as to the Mercury Avenue property, it failed to comply with Code section
26 8519, in the following respects:

27 a. Respondent certified in the completion notice that the recommendations
28 regarding the cellulose debris in the substructure had been completed in accordance with the

1 Board's rules and regulations. In fact, the cellulose debris had not been cleaned out or removed
2 from the substructure.

3 b. Respondent certified in the completion notice that the recommendations
4 regarding the earth-to-wood contacts in the substructure had been completed in accordance with
5 the Board's rules and regulations. In fact, the earth-to-wood contacts had not been corrected and
6 remained in the substructure.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code -**

9 **Noncompliance with Notice Issued by the Board)**

10 36. Respondents Gallatin and Lincoln are subject to disciplinary action
11 pursuant to Code section 8641 in that they failed to comply with Code section 8622.
12 Respondents failed to bring the Mercury Avenue property into compliance by failing to
13 correct all of the items described in the Report of Findings and submit a corrected inspection
14 report to the Board within thirty (30) calendar days from receipt of the Board's notice dated
15 November 15, 2006.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Poor Workmanship)**

18 37. Respondent Gallatin is subject to disciplinary action pursuant to Code
19 section 8641 in that Respondent failed to comply with Regulation 1937.14 by failing to perform
20 the repairs at the Mercury Avenue property in a good and workmanlike manner in the following
21 respects:

22 **Replacement of plywood roof sheathing over the front porch:**

23 a. Respondent failed to use the correct size nails when re-nailing the roof
24 shingles in that some of the nails were too long.

25 b. Respondent failed to install the adjoining roof sheathing so that it rested
26 on the rafter tails.

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Patchwork of rafter tails over the front porch:

c. Respondent broke the patched rafter tails and/or failed to ensure that the patched side of the rafter tails were uniform.

Replacement of reported drywood termite and decay fungi damage in garage:

d. Respondent failed to re-nail the roof sheathing to the replaced rafters and blocking.

e. Respondent failed to properly nail or bolt the support strap.

f. Respondent failed to properly run the electrical conduit through the replaced rafters.

g. Respondent failed to reinstall one of the replaced rafters in its original location.

Repair and replacement of reported drywood termite and decay fungi damage in eaves:

h. Respondent failed to properly perform the patchwork.

i. Respondent cut off one of the damaged rafter tails and reinstalled it in a different location.

j. Respondent cut off three consecutive rafter tails at the wall and replaced them with imitation rafter tails, causing the eave area to lose structural support;

k. Respondent damaged the drip edge or failed to properly reinstall it during the repair work.

l. Respondent failed to properly reinstall the roof shingles, and used nails that were too long.

m. Respondent failed to properly install the plywood roof sheathing, and used plywood roof sheathing that was of poor quality.

n. Respondent failed to properly cut some of the replaced rafter tails.

o. Respondent failed to properly nail some of the replaced plywood roof sheathing to the replaced rafter tails.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Improper Completion Tag)**

3 38. Respondent Gallatin is subject to disciplinary action pursuant to Code
4 section 8641 in that Respondent failed to comply with Regulation 1996.1, as follows:
5 Respondent failed to include on the completion tag posted at the Mercury Avenue property the
6 name of the chemical used to treat the evidence of drywood termites. Further, Respondent
7 referred to the wrong Regulation in its "Do not remove" statement (Respondent referred to
8 Regulation "1996.6." rather than Regulation 1996.1).

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Include Limited Report Statement)**

11 39. Respondent Carrillo is subject to disciplinary action pursuant to Code
12 section 8641 in that Respondent failed to comply with Regulation 1993, subdivision (c), as
13 follows: Respondent failed to include on his October 14, 2005, limited inspection report the
14 required statement indicating which portions of the structure were inspected, with a
15 recommendation for further inspection of the entire structure, and the name of the person or
16 agency requesting a limited report.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Improper Reinspection/Reinspection Report)**

19 40. Respondent Gallatin is subject to disciplinary action pursuant to Code
20 section 8641 in that Respondent failed to comply with Regulation 1993, subdivision (e), as
21 follows: Respondent failed to perform a proper reinspection regarding the termite-damaged
22 wood in the eave area which it reported on the October 14, 2005, inspection report. Further,
23 Respondent failed to issue a reinspection inspection report regarding the termite-damaged wood
24 repairs completed by others. Further, termite damage is still present in the reported areas.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence or Fraud)**

3 41. Respondent Gallatin is subject to disciplinary action pursuant to Code
4 section 8642 in that as to the Mercury Avenue property, it committed grossly negligent or
5 fraudulent acts, as follows:

6 a. Respondent represented on the completion notice that the property was
7 free of evidence of active infestation or infection in the visible and accessible areas when, in fact,
8 only a "limited" inspection had been performed at the property.

9 b. Respondent represented on the completion notice that the
10 recommendations regarding the cellulose debris in the substructure had been completed in
11 accordance with the Board's rules and regulations. In fact, the cellulose debris had not been
12 cleaned out or removed from the substructure.

13 c. Respondent represented on the completion notice that the
14 recommendations regarding the earth-to-wood contacts in the substructure had been completed in
15 accordance with the Board's rules and regulations. In fact, the earth-to-wood contacts had not
16 been corrected and remained in the substructure.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Fraud or Misrepresentation Irrespective of Report)**

19 42. Respondent Gallatin is subject to disciplinary action pursuant to Code
20 section 8644 in that it misrepresented the condition of the Mercury Avenue property, as set forth
21 in paragraph 41 above.

22 **MATTERS IN AGGRAVATION**

23 43. To determine the degree of penalty, if any, to be imposed on Respondents
24 Gallatin Exterminators, Edward Count Lincoln, Jose Carrillo, and Eric Francisco Valencia,
25 Complainant alleges:

26 **Respondent Gallatin Exterminators:**

27 a. On February 19, 2003, Respondent paid a \$50 fine levied by the Orange
28 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

1 b. On October 16, 2003, Respondent paid a \$100 fine levied by the Orange
2 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

3 c. On January 9, 2004, Respondent paid a \$100 fine levied by the Riverside
4 County Agricultural for Respondent's violation of Food and Agriculture Code section 15204.

5 d. On March 15, 2005, Respondent paid a \$150 fine levied by the Orange
6 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

7 e. On April 14, 2005, Respondent paid a \$50 fine levied by the Los Angeles
8 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

9 f. On May 18, 2005, Respondent paid a \$200 fine levied by the Los Angeles
10 County Agricultural Commissioner for Respondent's violation of California Code of
11 Regulations, title 3, section 6627 and Food and Agriculture Code section 15204.

12 g. On July 8, 2005, Respondent paid a \$150 fine levied by the Riverside
13 County Agricultural Commissioner for Respondent's violation of Food and Agriculture Code
14 section 15204.

15 h. On August 16, 2005, Respondent paid a \$100 fine levied by the San
16 Bernardino County Agricultural Commissioner for Respondent's violation of Code section
17 8505.17.

18 i. On January 5, 2006, Respondent paid a \$450 fine levied by the Board for
19 Respondent's violation of Code section 8638.

20 j. On June 19, 2006, Respondent paid a \$151 fine levied by the Los Angeles
21 County Agricultural Commissioner for Respondent's violation of Code section 8505.17.

22 **Respondent Edward Count Lincoln:**

23 **Field Representative's License No. FR 8032:**

24 k. On September 29, 1983, pursuant to the Stipulation for Settlement adopted
25 by the Board as its Decision in the disciplinary proceeding titled *Sears, Roebuck and Co. Termite*
26 *& Pest Control dba Terminix International, Inc.*, Case No. 82-20, Respondent Edward Count

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1 Lincoln's Field Representative's License Number FR 8032² was suspended for 30 days. The
2 suspension was stayed and Respondent was placed on probation for two (2) years on terms and
3 conditions, including 5 days actual suspension. Respondent was also required to post a \$2,000
4 restoration bond for each year of probation.

5 **Operator's License No. OPR 7356:**

6 1. On November 9, 1993, Respondent paid a \$50 fine levied by the Riverside
7 County Agricultural Commissioner for a violation of California Code of Regulations, title 3,
8 section 6630.

9 m. On February 6, 2004, Respondent paid a \$750 fine levied by the Board for
10 violation of Code section 8638 and Regulation 1937.14.

11 **Respondent Jose Carrillo:**

12 n. On February 23, 2006, Respondent paid a \$100 fine levied by the Board
13 for Respondent's violation of Code section 8516, subdivisions (b)(6), (7), and (9), and
14 Regulation 1990, subdivision (a)(4) (in connection with an inspection performed at 1823 East
15 108th Street, Los Angeles, California). Respondent also paid a \$75 fine issued by the Board for
16 Respondent's violation of Code section 8516, subdivisions (b)(6) and (b)(7), and Regulation
17 1990, subdivision (a)(4) (in connection with an inspection performed at 904 East Michelle Street,
18 West Covina, California).

19 **Respondent Eric Francisco Valencia:**

20 o. On October 14, 2005, Respondent paid a \$25 fine levied by the Board for
21 Respondent's violation of Code section 8516.

22 **OTHER MATTERS**

23 44. Code section 8620 provides, in pertinent part, that a respondent may
24 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
25 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request

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28 2. On or about November 8, 1977, the Board issued Field Representative's License No. FR 8032 to
Respondent Edward Count Lincoln. The license was canceled by the Board on June 30, 1992.

1 must be made at the time of the hearing and must be noted in the proposed decision. The
2 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

3 45. Pursuant to Code section 8624, if Operator's License Number OPR 7356,
4 issued to Edward Count Lincoln, is suspended or revoked, the Board may suspend or revoke
5 Company Registration Certificate Number PR 3742, issued to Gallatin Exterminators, with
6 Edward Count Lincoln as qualifying manager.

7 46. Pursuant to Code section 8624, the causes for discipline established as to
8 Respondent Gallatin Exterminators likewise constitute causes for discipline against Edward
9 Count Lincoln regardless of whether Edward Count Lincoln had knowledge of or participated in
10 the acts or omissions which constitute causes for discipline against Respondent Gallatin
11 Exterminators.

12 47. Pursuant to Code section 8654, if discipline is imposed on Operator's
13 License Number OPR 7356, issued to Edward Count Lincoln, Edward Count Lincoln shall be
14 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
15 responsible managing employee for any registered company during the time the discipline is
16 imposed, and any registered company which employs, elects, or associates Edward Count
17 Lincoln shall be subject to disciplinary action.

18 48. Pursuant to Code section 8654, if discipline is imposed on Field
19 Representative's License Number FR 17136, issued to Jose Carrillo, Jose Carrillo shall be
20 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
21 responsible managing employee for any registered company during the time the discipline is
22 imposed, and any registered company which employs, elects, or associates Jose Carrillo shall be
23 subject to disciplinary action.

24 49. Pursuant to Code section 8654, if discipline is imposed on Field
25 Representative's License Number FR 36003, issued to Eric Francisco Valencia, Eric Francisco
26 Valencia shall be prohibited from serving as an officer, director, associate, partner, qualifying
27 manager, or responsible managing employee for any registered company during the time the

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1 discipline is imposed, and any registered company which employs, elects, or associates
2 Eric Francisco Valencia shall be subject to disciplinary action.

3 50. Code section 8622 provides, in pertinent part, that Respondents shall
4 submit an inspection fee of not more than \$125. If a reinspection is necessary, a commensurate
5 reinspection fee shall be charged.

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

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

12 1. Revoking or suspending Company Registration Certificate Number
13 PR 3742, issued to Gallatin Exterminators;

14 2. Revoking or suspending Operator's License Number OPR 7356, issued to
15 Edward Count Lincoln;

16 3. Prohibiting Edward Count Lincoln from serving as an officer, director,
17 associate, partner, qualifying manager or responsible managing employee of any registered
18 company during the period that discipline is imposed on Operator's License Number
19 OPR 7356, issued to Edward Count Lincoln;

20 4. Revoking or suspending Field Representative's License Number
21 FR 17136, issued to Jose Carrillo;

22 5. Prohibiting Jose Carrillo from serving as an officer, director, associate,
23 partner, qualifying manager or responsible managing employee of any registered company during
24 the period that discipline is imposed on Field Representative's License Number FR 17136, issued
25 to Jose Carrillo;

26 6. Revoking or suspending Field Representative's License Number
27 FR 36003, issued to Eric Francisco Valencia;

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1 7. Prohibiting Eric Francisco Valencia from serving as an officer, director,
2 associate, partner, qualifying manager or responsible managing employee of any registered
3 company during the period that discipline is imposed on Field Representative's License Number
4 FR 36003, issued to Eric Francisco Valencia;

5 8. Ordering restitution of all damages according to proof suffered by
6 Jose Andres and Espinoza Navarro as a condition of probation in the event probation is ordered;

7 9. Ordering Respondents Gallatin Exterminators, Edward Count Lincoln,
8 Jose Carrillo, and Eric Francisco Valencia to pay the Structural Pest Control Board the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 10. Taking such other and further action as deemed necessary and proper.

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13 DATED: 9/18/07
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15 *Kelli Okuma*
16 KELLI OKUMA
17 Registrar
18 Structural Pest Control Board
19 Department of Consumer Affairs
20 State of California

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28 Complainant