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7 Attorneys for Complainant

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

12 **In the Matter of the First Amended**  
13 **Accusation No. 2004-47 Against:**

14 **MERIT TERMITE AND PEST CONTROL**  
15 **James Lavender, Owner & Qualifying**  
16 **Manager for Branch 2**  
17 **Arno Offerman, Qualifying Manager, Br. 3**  
18 10630 Town Center Drive, Unit 121  
19 Rancho Cucamonga, California 91730  
20 Co. Reg. Certificate No. PR 3267, Br. 2 and 3  
21 and

22 **MEASURED TERMITE & PEST CONTROL**  
23 **James Lavender, Owner & Qualifying Mgr.**  
24 P. O. Box 2933  
25 Rancho Cucamonga, CA 92379

26 7064 Sterling Court  
27 Alta Loma, CA 91701  
28 Company Registration Certificate No. PR 4504  
Br. 2 & 3 and

29 **ARNO OFFERMAN TERMITE & PEST**  
30 **CONTROL**  
31 **Arno Offerman, Owner & Qualifying**  
32 **Mgr. Br. 3**  
33 **Timothy J. Welton, Qualifying Mgr. Branch 2**  
34 P. O. Box 253  
35 Etiwanda, CA 91739  
36 9340 7th Street, Suite B  
37 Rancho Cucamonga, California 91739  
38 Company Reg. Certificate No. PR 4568, Br. 2 &  
39 3 and

Case Nos. 2004-47 and 2006-58  
OAH Nos. L-200709060 and  
L-2007090432

**DEFAULT DECISION AND ORDER**  
**AS TO ARNO OFFERMAN ONLY**

[Gov. Code § 11520]

1 **JAMES DOUGLAS LAVENDER**  
2 10630 Town Center Drive, Unit 121  
3 Rancho Cucamonga, California 91730  
4 Operator's License No. OPR 9848, Br. 2 & 3  
5 Field Representative License No. FR 31067

6 and

7 **ARNO OFFERMAN**  
8 10630 Town Center Drive, Unit 121  
9 Rancho Cucamonga, California 91730  
10 Operator's License No. OPR 10332, Br. 3

11 -----  
12 In the Matter of the Accusation No. 2006-58  
13 Against:

14 **MERIT TERMITE AND PEST CONTROL**  
15 **Arno Offerman, Qualifying Manager**  
16 10630 Town Center Drive, Unit 121  
17 Rancho Cucamonga, California 91701  
18 Company Registration Certificate No. PR 3267,  
19 Branch 3

20 and

21 **ARNO OFFERMAN**  
22 10630 Town Center Drive, Unit 121  
23 Rancho Cucamonga, California 91701  
24 Operator's License No. OPR 10332 Branch 3  
25 Field Representative's License No. FR 17167

26 and

27 **ARNO OFFERMAN TERMITE & PEST**  
28 **CONTROL, Arno Offerman, Qualifying Mgr.**  
29 9340 7th Street, Suite B  
30 Rancho Cucamonga, California 91739  
31 Company Reg. Certificate No. PR 4568, Br. 3

32 Respondents.

33 FINDINGS OF FACT

34 1. On or about July 20, 2004, Complainant Kelli Okuma, in her official  
35 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of  
36 Consumer Affairs, filed First Amended Accusation No. 2004-47 against Merit Termite and Pest  
37 Control (Respondent Merit), James Lavender (Respondent Lavender), Arno Offerman

38 ///

1 (Respondent Arno Offerman), Measured Termite and Pest Control (Respondent Measured),  
2 Arno Offerman Termite and Pest Control (Respondent Arno Offerman Termite) before the  
3 Structural Pest Control Board (Board).

4 2. On or about March 16, 2006, Complainant Kelli Okuma, in her official  
5 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of  
6 Consumer Affairs, filed Accusation No. 2006-58 Against Merit Termite and Pest Control, Arno  
7 Offerman, and Arno Offerman Termite and Pest Control before the Structural Pest Control  
8 Board.

9 3. On or about June 21, 2004, the Structural Pest Control Board (Board)  
10 issued Company Registration Certificate No. PR 4568, Branches 2 and 3, to Arno Offerman  
11 Termite and Pest Control, and Arno Offerman, Qualifying Manager in Branch 3.

12 4. On or about March 10, 1989, the Board issued Field Representative's  
13 license No. FR 17167. Operator's License No. OPR 10332 was issued on October 30, 2000.

14 5. On or about April 2006, an employee of the Department of Justice, served  
15 by certified and first class mail a copy of the Accusation No. 2006-58, Statement To Respondent,  
16 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and  
17 11507.7 to said Respondent Arno Offerman's address of record with the Board, which were:  
18 10630 Town Center Drive, Suite 121, Rancho Cucamonga, CA 91701 and 9340 7<sup>th</sup> Street,  
19 Ste. B, Rancho Cucamonga, CA 91739.

20 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by  
21 reference.

22 6. On or about August 16, 2004, S. Reyes, an employee of the Department of  
23 Justice, served by certified and first class mail a copy of the First Amended Accusation  
24 No. 2004-47 against Respondents which had been filed by Ms. Okuma on or about July 20, 2004.  
25 Said service included the form Supplemental Statement To Respondent regarding Amended  
26 Accusation, Request for Discovery, and Government Code sections 11507.5, 11507.6, and  
27 11507.7 to Respondent Offerman's address of the Board which were 10630 Town Center Drive,  
28 Suite 121, Rancho Cucamonga, CA 91701 and 9340 7<sup>th</sup> Street, Ste. B, Rancho Cucamonga, CA

1 91730.

2 A copy of the First Amended Accusation is attached as Exhibit B, and is  
3 incorporated herein by reference.

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

6 8. Service of the Accusation No. 2006-58 was effective as a matter of law under  
7 the provisions of Government Code section 11505, subdivision (c)..

8 9. Government Code section 11506 states, in pertinent part:

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

14 10. Respondents Arno Offerman and Arno Offerman Termite and Pest Control  
15 failed to file a Notice of Defense within 15 days after service upon them of Accusation No. 2006-  
16 58 and therefore waived their right to a hearing on the merits of First Amended Accusation No.  
17 2004-47 and Accusation No. 2006-58.

18 11. California Government Code section 11520 states in pertinent part:

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

23 12. Pursuant to its authority under Government Code section 11520, the Board  
24 finds Respondents are in default. The Board will take action without further hearing and, based  
25 on the evidence on file herein, finds that the allegations in Accusation No. 2006-58 and First  
26 Amended Accusation No. 2004-47 are true.

27 13. The cost of investigation and enforcement in connection with the Accusation  
28 and First Amended Accusation is \$5,000.00.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Arno Offerman has  
3 subjected Operator's License No. OPR 10332, Branch 3, Field Representative's License  
4 No. FR 17167, Branch 3, and Company Registration Certificate No. PR 4568, Branch 3, of Arno  
5 Offerman Termite Pest Control to discipline.

6 2. A copy of Accusation No. 2006-58 and First Amended Accusation  
7 No. 2004-47 are attached.

8 3. The agency has jurisdiction to adjudicate this case by default.

9 4. The Structural Pest Control Board is authorized to revoke Respondents'  
10 Company Registration Certificate No. PR 4568, Branch 3, issued to Arno Offerman Termite and  
11 Pest Control, Operator's License No. OPR 10332, Branch 3, and Field Representative's license  
12 No. FR 17167, Branch 3, issued to Arno Offerman, based upon the following violations alleged  
13 in Accusation No. 2006-58 and First Amended Accusation No. 2004-47.

14 Failure to comply with laws regarding fraudulent and/or grossly negligent acts,  
15 failure to comply with record requirements and submit and file truthful wood destroying  
16 pests and organisms inspection reports and Notice of Completion with the Board, for  
17 numerous properties from approximately December 18, 2001 to approximately  
18 November 13, 2003.

ORDER

19  
20 IT IS SO ORDERED that Arno Offerman, Field Representative's License No. FR  
21 17167, Branch 3, is revoked.

22 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
23 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
24 within seven (7) days after service of the Decision on Respondent. The agency in its discretion

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1 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
2 statute.

3 This Decision shall become effective on April 2, 2009.

4 It is so ORDERED March 3, 2009

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*C. Clifford J. Miller*  
FOR THE STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

10/16/08  
SAM:sr  
DOJ docket number:LA2005600772

Attachments:  
Exhibit A: First Amended Accusation No.2004-47  
Exhibit B: Accusation No.2006-58  
60354882.wpd

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Attorneys for Complainant

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

11 **In the Matter of the First Amended**  
12 **Accusation No. 2004-47 Against:**

13 **MERIT TERMITE AND PEST CONTROL**  
14 **James Lavender, Owner & Qualifying**  
**Manager for Branch 2**  
15 **Arno Offerman, Qualifying Manager, Br. 3**  
10630 Town Center Drive, Unit 121  
16 Rancho Cucamonga, California 91730  
Co. Reg. Certificate No. PR 3267, Br. 2 and 3  
and  
17  
18 **MEASURED TERMITE & PEST CONTROL**  
**James Lavender, Owner & Qualifying Mgr.**  
P. O. Box 2933  
19 Rancho Cucamonga, CA 92379  
20 7064 Sterling Court  
Alta Lorna, CA 91701  
21 Company Registration Certificate No. PR 4504  
Br. 2 & 3 and  
22  
23 **ARNO OFFERMAN TERMITE & PEST**  
**CONTROL**  
24 **Arno Offerman, Owner & Qualifying**  
**Mgr. Br. 3**  
25 **Timothy J. Welton, Qualifying Mgr. Branch 2**  
P. O. Box 253  
26 Etiwanda, CA 91739  
27 9340 7th Street, Suite B  
Rancho Cucamonga, California 91739  
28 Company Reg. Certificate No. PR 4568, Br. 2 &  
3 and

Case Nos. 2004-47 and  
2006-58

OAH Nos. L-200709060 and  
L-2007090432

**ORDER NUNC PRO TUNC**

1 **JAMES DOUGLAS LAVENDER**  
2 10630 Town Center Drive, Unit 121  
3 Rancho Cucamonga, California 91730  
4 Operator's License No. OPR 9848, Br. 2 and 3  
5 Field Representative License No. FR 31067

6 and

7 **ARNO OFFERMAN**  
8 10630 Town Center Drive, Unit 121  
9 Rancho Cucamonga, California 91730  
0 Operator's License No. OPR 10332, Br. 3

1 In the Matter of the Accusation No. 2006-58  
2 Against:

3 **MERIT TERMITE AND PEST CONTROL**  
4 **Arno Offerman, Qualifying Manager**  
5 10630 Town Center Drive, Unit 121  
6 Rancho Cucamonga, California 91701  
7 Company Registration Certificate No. PR 3267,  
8 Branch 3

9 and

10 **ARNO OFFERMAN**  
11 10630 Town Center Drive, Unit 121  
12 Rancho Cucamonga, California 91701  
13 Operator's License No. OPR 10332 Branch 3  
14 Field Representative's License No. FR 17167

15 and

16 **ARNO OFFERMAN TERMITE & PEST**  
17 **CONTROL, Arno Offerman, Qualifying Mgr.**  
18 9340 7th Street, Suite B  
19 Rancho Cucamonga, California 91739  
20 Company Reg. Certificate No. PR 4568, Br. 3

21 Respondents.

22  
23 The Default Decision of Arno Offerman Termite & Pest Control in the above-entitled  
24 matter contains a clerical error. The Order in the above-captioned Decision reflects that  
25 Company Registration Certificate No. PR 4568 and Operator's License No. OPR 10332 are  
26 revoked, when in truth and fact, the Order should reflect that on October 6, 2006, the Default  
27 Decision in Accusation No. 2006-59 revoked Company Registration Certificate No. PR 4568 and  
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1 Operator's License No. OPR 10332. Good cause appearing, the Decision in the above-entitled  
2 matter is hereby amended nunc pro tunc to reflect the correct Order.

3 IT IS SO ORDERED this 29<sup>th</sup> day of January, 2009.

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6 PRESIDENT  
7 STRUCTURAL PEST CONTROL BOARD

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10 60378708.wpd  
11 DOJ docket number: LA2005600772

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6 Attorneys for Complainant

**FILED**

Date 7-20-04 By Kelli Okuma

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

12 In the Matter of the Accusation Against:

Case No. 2004-47

13 **MERIT TERMITE AND PEST CONTROL**  
14 **JAMES LAVENDER, Owner and**  
15 **Qualifying Manager for Branch 2,**  
16 **ARNO OFFERMAN, Qualifying Manager for**  
17 **Branch 3**  
18 10630 Town Center Drive, Suite 121  
19 Rancho Cucamonga, CA 91730

**FIRST AMENDED ACCUSATION**

20 Company Registration Certificate No. PR 3267  
21 Branches 2 and 3

22 and

23 **MEASURED TERMITE & PEST**  
24 **CONTROL**  
25 **JAMES LAVENDER, Owner and**  
26 **Qualifying Manager**  
27 P.O. Box 2933  
28 Rancho Cucamonga, CA 92379

7064 Sterling Court  
Alta Loma, CA 91701

Company Registration Certificate No. PR 4504,  
Branches 2 and 3

and

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1                   3.     On May 24, 1999, the registration certificate was upgraded to include  
2 Branches 2 and 3.

3                   4.     On August 10, 2000, the registration certificate was downgraded to  
4 Branch 2, with Respondent Lavender as Qualifying Manager.

5                   5.     On August 18, 2000, the registration certificate was upgraded to include  
6 Branch 3, with Joseph William Zappen as Qualifying Manager.

7                   6.     On October 30, 2000, the registration certificate reflected a change of  
8 Qualifying Manager for Branch 3 to Arno Offerman (Respondent Offerman).

9                   7.     On January 4, 2002, the registration certificate reflected a change of  
10 company name to Merit Termite and Pest Control.

11                   8.     On February 21, 2003, the registration certificate paid a fine of \$100 levied  
12 by the Los Angeles County Agricultural Commissioner for violation of section 15204 of the  
13 Food and Agricultural Code and section 8505.17 of the Business and Professions Code.

14                   **Company Registration Certificate No. PR 4504 - Measured Termite**

15                   9.     On or about March 24, 2004, the Board issued Company Registration  
16 Certificate No. PR 4504, in Branches 2 and 3, to Measured Termite & Pest Control (Respondent  
17 Measured Termite) with James Lavender as the Owner and Qualifying Manager (Respondent  
18 Lavender).

19                   10.    Company Registration Certificate No. PR 4504 was issued to Respondents  
20 Measured Termite and Lavender pursuant to a March 18, 2004 Stipulation and Agreement  
21 between the Board and James Douglas Lavender, on the condition that any discipline imposed on  
22 Operator's License No. OPR 9848 and/or Company Registration Certificate No. 3267, as a result  
23 of the instant Accusation/First Amended Accusation (No. 2004-47), will also be imposed on  
24 Company Registration No. PR 4504. A copy of the Stipulation and Agreement is attached hereto  
25 as Exhibit A, and is incorporated herein by reference.

26                   **Company Registration Certificate No. PR 4568**

27                   11.    On or about June 21, 2004, the Board issued Company Registration  
28 Certificate No. PR 4568, in Branches 2 and 3, to Arno Offerman Termite & Pest Control

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**James Lavender, Field Representative License No. FR 25428**

16. On or about October 16, 1995, the Board issued Field Representative's License No. FR 25428, in Branch 2, to Respondent Lavender, employee of Terminix International Company. This license was canceled on April 9, 1998, due to issuance of an operator's license.

**James Lavender, Registered Applicator's License Nos. RA 35514 and 35515**

17. On or about May 11, 1994, the Board issued Registered Applicator's License Nos. RA 35514 in Branch 3, and RA 35515 in Branch 2, to Respondent Lavender, employee of Terminix International Co, L.P. Both registered applicator's licenses expired on May 11, 1997.

**Arno Offerman, Field Representative License No. FR 17167**

18. On or about March 10, 1989, the Board issued Field Representative's License No. FR 17167, in Branch 3, to Respondent Offerman, employee of Antimite Associates, Inc. On July 6, 1994, the field representative's license was upgraded to include Branches 2 and 3. On June 5, 1999, the field representative's license was upgraded to include Branches 1, 2, and 3. On July 11, 2000, the field representative's license left the employ of Antimite Associates, Inc. On July 17, 2000, the field representative's license reflected employment with Merit Termite and Pest Control. On November 7, 2000, the field representative's license was downgraded to include Branches 1 and 2, due to issuance of a Branch 3 operator's license. The field representative's license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2006, unless renewed.

**JURISDICTION**

19. This Accusation is brought before the Board, under the authority of the following laws.<sup>1</sup>

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1. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

1 or presence of wood destroying pests or organisms until an inspection has been made by a  
2 licensed Branch 3 field representative or operator. The address of each property inspected or  
3 upon which work is completed shall be reported on a form prescribed by the board and shall be  
4 filed with the board no later than 10 business days after the commencement of an inspection or  
5 upon completed work.

6 "Every property inspected pursuant to subdivision (b) of Section 8516.1, or  
7 Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section  
8 8674.

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

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

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

23 ...

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

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1 requests, and if the registered company is regularly in the business of performing corrective  
2 measures.

3 "If no estimate or bid was given with the original inspection report, or thereafter,  
4 then the registered company shall not be required to perform a reinspection.

5 "A reinspection shall be an inspection of those items previously listed on an  
6 original report to determine if the recommendations have been completed. Each reinspection  
7 shall be reported on an original inspection report form and shall be labeled "Reinspection" in  
8 capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original  
9 report by date and stamp numbers.

10 "After four months from an original inspection, all inspections shall be original  
11 inspections and not reinspections.

12 "Any reinspection shall be performed for not more than the price of the registered  
13 company's original inspection price and shall be completed within 10 working days after a  
14 reinspection has been ordered."

15 24. Section 8518 of the Code states, in pertinent part:

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

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

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

26 " Failure of a registered company to report and file with the board the address of  
27 any property upon which work was completed pursuant to subdivision(b) of Section 8516,  
28 subdivision (b) of Section 8516.1, or Section 8518 are grounds for disciplinary action and shall

1                   26.     Section 8538 of the Code states:

2                   "(a) A registered structural pest control company shall provide the owner, or  
3 owner's agent, and tenant of the premises for which the work is to be done with clear written  
4 notice which contains the following statements and information using words with common and  
5 everyday meaning:

6                   ...

7                   "(3) 'State law requires that you be given the following information: CAUTION —  
8 PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are  
9 registered and regulated by the Structural Pest Control Board, and apply pesticides which are  
10 registered and approved for use by the California Department of Pesticide Regulation and the  
11 United States Environmental Protection Agency. Registration is granted when the state finds  
12 that, based on existing scientific evidence, there are no appreciable risks if proper use conditions  
13 are followed or that the risks are outweighed by the benefits. The degree of risk depends upon  
14 the degree of exposure, so exposure should be minimized.'

15                   " 'If within 24 hours following application you experience symptoms similar to  
16 common seasonal illness comparable to the flu, contact your physician or poison control center  
17 (telephone number) and your pest control company immediately.' (This statement shall be  
18 modified to include any other symptoms of overexposure which are not typical of influenza.)

19                   " 'For further information, contact any of the following: Your Pest Control  
20 Company (telephone number); for Health Questions — the County Health Department (telephone  
21 number); for Application Information — the County Agricultural Commissioner (telephone  
22 number) and for Regulatory Information — the Structural Pest Control Board (telephone number  
23 and address).'"

24                   ...

25                   " In the case of Branch 2 or Branch 3 registered company applications, the notice  
26 prescribed by subdivision (a) shall be provided no later than prior to application.  
27 In either case, the notice shall be given to the owner, or owner's agent, and tenant, if there is a  
28 tenant, in at least one of the following ways:

1                   28.     Section 8636 of the Code states:

2                   "Disregard and violation of the building laws of the state, or of any of its political  
3 subdivisions, or the safety laws, labor laws, health laws, or compensation insurance laws of the  
4 state relating to the practice of structural pest control is a ground for disciplinary action."

5                   29.     Section 8638 of the Code states:

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

9                   30.     Section 8641 of the Code states:

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

15                  31.     Section 8644 of the Code states:

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

22                  32.     California Code of Regulations, title 16, section 1937.14, states:

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

27                  ///

28                  ///



1                   "(1) Faulty Grade Level. A faulty grade level exists when the top of any  
2 foundation is even with or below the adjacent earth. The existing earth level shall be considered  
3 grade.

4                   "(2) Inaccessible subareas or portions thereof and areas where there is less than  
5 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

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

9                   .....

10                   "(d) Even though the licensee may consider the following areas inaccessible for  
11 purposes of inspection, the licensee must state specifically which of these areas or any other areas  
12 were not inspected and why the inspection of these areas is not practical: furnished interiors;  
13 inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or  
14 porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural  
15 segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is  
16 no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet  
17 work; floors beneath coverings, areas where storage conditions or locks make inspection  
18 impracticable."

19                   35. California Code of Regulations, title 16, section 1991, states, in pertinent  
20 part:

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

25                   .....

26                   "(5) Structural members which appear to be structurally weakened by  
27 wood-destroying pests to the point where they no longer serve their intended purpose shall be  
28 replaced or reinforced. Structural members which are structurally weakened by fungus to the

1 36. California Code of Regulations, title 16, section 1993, states in pertinent  
2 part:

3 "All of the following reports must be in compliance with the requirements of  
4 Section 8516 of the code. All reports must be on the form prescribed by the board and filed with  
5 the board with stamps affixed.

6 .....

7 "(c) A limited report is the report on only part of a structure. Such a report shall  
8 have a diagram of the area inspected and shall specifically indicate which portions of the  
9 structure were inspected with recommendation for further inspection of the entire structure and  
10 the name of the person or agency requesting a limited report."

11 37. Section 125.3, subdivision (a), of the Code states, in pertinent part:

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

17 **1318 SOUTH VINE PLACE PROPERTY**

18 38. On or about December 18, 2001, Respondent Lavender, representing  
19 Respondent Merit Termite, inspected the property located at 1318 South Vine Place in Ontario,  
20 California (Vine Place property), at the request of Century 21 E-N Realty, and issued original  
21 Wood Destroying Pests and Organisms Inspection Report No. 1318. In that report, he made  
22 certain findings and recommendations.

23 39. On or about March 15, 2002, Respondent Merit Termite issued Standard  
24 Notice of Work Completed and Not Completed. In that report, Respondent certified that the  
25 Vine Place property was now free of evidence of active infestation or infection except in  
26 inaccessible or uninspected areas, and that all recommendations made by Respondent Lavender  
27 in the December 18, 2001 Wood Destroying Pests and Organisms inspection report had been  
28 completed.

1                   48.     On or about October 2, 2003, the Board's Specialist examined the  
2 corrective repairs at the Vine Place property.

3                   49.     On or about October 15, 2003, the Board's Specialist faxed a Specialist  
4 Report to Respondent Merit Termite, notifying Respondent that its completion report was  
5 undated, that seven items of work remained uncompleted at the Vine Place property, and  
6 directing Respondent to complete the incomplete items and submit a new dated completion  
7 report to the Board by October 29, 2003.

8                                   **FIRST CAUSE FOR DISCIPLINE**

9                   **(Failure to Comply with Regulation(s) Adopted by the Board - Poor Workmanship)**

10                   50.     Respondents Merit Termite, Measured Termite, and Offerman Termite are  
11 subject to disciplinary action under section 8641 of the Code, in that concerning the Vine Place  
12 property, Respondent Merit Termite and its employees failed to comply with California Code of  
13 Regulations, title 16, section 1937.14, by failing to perform repairs in a good and workmanlike  
14 manner, in the following respects:

15                   a.     Failed to properly remove and replace the fungus damaged wood at the  
16 garage eaves, item 11A, as indicated in the Notice of Work Completed and Not Completed, dated  
17 March 15, 2002;

18                   b.     Failed to properly remove and replace the fungus damaged wood at the at  
19 the front porch posts, item 3C, as indicated in the undated, 2003 Notice of Work Completed and  
20 Not Completed.

21                                   **SECOND CAUSE FOR DISCIPLINE**

22                   **(Failure to Comply with Laws or Regulations Adopted by the Board -  
23                   Improper Inspection)**

24                   51.     Respondents Merit Termite, Measured Termite, Offerman Termite,  
25 Lavender and Offerman are subject to disciplinary action under section 8641 of the Code, in that  
26 concerning the Vine Place property, Respondents failed to comply with section 8516 of the Code  
27 in the following respects:

28     ///

1 c. **Section 8516(b)(7)**: On June 5, 2003, Respondent Offerman failed to  
2 make a proper finding in regards to his finding of excessive moisture in the sub area, on a  
3 concrete slab structure.

4 d. **Section 8516(b)(9)**: On December 18, 2001, Respondent Lavender failed  
5 to report the portion of attic space, and the area under the interior staircase (inspection grill was  
6 painted shut), which were inaccessible for inspection, as required by California Code of  
7 Regulations, title 16, section 1990(d).

8 53. **Section 8516(b)(9)**: On June 5, 2003, Respondent Offerman failed to  
9 report the portion of the attic space was inaccessible due to construction (closed beam ceiling),  
10 and failed to report the area under the interior staircase that was inaccessible (inspection grill is  
11 painted shut), as required by California Code of Regulations, title 16, section 1990(d).

12 54. **Section 8516(b)(10)**: On December 18, 2001 and on February 5, 2003,  
13 Respondent Lavender failed to make a recommendation to correct the excessive moisture  
14 condition responsible for the decay fungi damage at the eaves, as required by California Code of  
15 Regulations, title 16, section 1991(a)(5).

16 55. **Section 8516(b)(10)**: On June 5, 2003, Respondent Offerman failed to  
17 make a recommendation to correct the excessive moisture condition responsible for the fungus  
18 damage at the eaves and front porch, as required by California Code of Regulations, title 16,  
19 section 1991(a)(5).

20 56. **Section 8516(b)(10)**: On June 5, 2003, Respondent Offerman failed to  
21 make a recommendation to correct item 3B (excessive moisture condition in the sub area), and  
22 failed to make a recommendation to correct the unnumbered item immediate below item 3B,  
23 (evidence of dampwood termite swarmers), as required by California Code of Regulations, title  
24 16, section 1991(a)(5).

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1 a. Respondent Lavender failed to include the proper second opinion  
2 disclosure statement on his December 18, 2001 and February 5, 2003 inspection reports.

3 b. Respondent Offerman failed to include the proper second opinion  
4 disclosure statement on his June 5, 2003 inspection report.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Laws Adopted by the Board - Improper Pesticide Disclosure)**

7 60. Respondents Merit Termite, Measured Termite, Offerman Termite,  
8 Lavender and Offerman are subject to disciplinary action under section 8641 of the Code, in that  
9 concerning the Vine Place property, Respondents Lavender and Offerman, on behalf of  
10 Respondent Merit Termite, failed to comply with section 8516(b)(8) of the Code in the following  
11 respects:

12 a. Respondent Lavender failed to include the proper roof disclosure  
13 statement on his December 18, 2001 and February 5, 2003 inspection reports.

14 b. Respondent Offerman failed to include the proper roof disclosure  
15 statement on his June 5, 2003 inspection report.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Laws Adopted by the Board - Improper Pesticide Disclosure)**

18 61. Respondents Merit Termite, Measured Termite, Offerman Termite,  
19 Lavender and Offerman are subject to disciplinary action under section 8641 of the Code, in that  
20 concerning the Vine Place property, Respondents Lavender and Offerman, on behalf of  
21 Respondent Merit Termite, failed to comply with section 8538 of the Code in the following  
22 respects:

23 a. Respondent Lavender failed to include the proper pesticide disclosure  
24 statement on his December 18, 2001 and February 5, 2003 inspection reports.

25 b. Respondent Offerman failed to include the pesticide disclosure statement  
26 on his June 5, 2003 inspection report.

27 ///

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1           73.     On or about August 11, 2003, the Board received a letter from Respondent  
2 Merit Termite indicating they would perform the work requested by the homeowners on August  
3 13, 2003.

4           74.     On or about August 20, 2003, Mr. Schaper sent a letter to the Board,  
5 indicating that Respondent Merit Termite came to the Cameo Street property on August 13,  
6 2003, and treated the closet and attic, but that Respondent Merit Termite failed to replace the  
7 damaged wood on the patio cover, as agreed, and that when treating the closet in the master  
8 bedroom, Respondent Merit Termite damaged the bedroom carpet (stained/bleached white).

9           75.     On or about November 14, 2003, a Specialist from the Board inspected the  
10 Cameo Street property. On or about November 19, 2003, the Board issued a Report of Findings.  
11 The report ordered that Respondents bring the property into compliance by correcting the items  
12 described in the Report of Findings, and submit a corrected inspection report and notice of work  
13 completed and not completed to the Board within thirty (30) calendar days from the date of  
14 receipt of the report.

15           76.     Respondent Merit Termite failed to contact the Schapers, or to bring the  
16 property into compliance, within 30 days.

#### 17   FIFTEENTH CAUSE FOR DISCIPLINE

#### 18           **(Failure to Comply with Regulation(s) Adopted by the Board - Poor Workmanship)**

19           77.     Respondents Merit Termite, Measured Termite and Offerman Termite are  
20 subject to disciplinary action under section 8641 of the Code, in that concerning the Cameo  
21 Street property, Respondent Merit Termite and its employees failed to comply with California  
22 Code of Regulations, title 16, section 1937.14, by failing to perform repairs in a good and  
23 workmanlike manner, in the following respects:

24                 a.     Failed to properly repair reported decay fungi damage at the patio  
25 latticework in that Respondent Merit Termite cut off the ends of the latticework, changing the  
26 appearance of the patio; the cuts made were uneven; and decay fungi remains at the latticework.

27                 b.     Failed to properly remove and replace the reported drywood termite  
28 damage at the patio load post facing in that the replaced facing board is split.

1 Cameo Street property, Respondent Lavender, on behalf of Respondent Merit Termite, failed to  
2 comply with section 8518 of the Code by failing to prepare and furnish a standard Notice of  
3 Work Completed and Not Completed, pertaining to the drywood termite treatment performed at  
4 the master bedroom closet and attic, on or about August 13, 2003.

5 **NINETEENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Complete Any Operation or Construction Repairs for the Price  
7 Stated in the Contract)**

8 82. Respondents Merit Termite, Measured Termite, and Offerman Termite are  
9 subject to disciplinary action under section 8638 of the Code concerning the Cameo Street  
10 property, in that Respondent Merit Termite's employees failed to complete work in the operation  
11 or construction repairs on said project for the contract price and the owners will be required to  
12 spend a sum in excess of the contract price to complete the operation or construction repairs in  
13 accordance with the contract.

14 **10131 KERNWOOD COURT PROPERTY**

15 83. On or about November 6, 2002, Respondent Offerman, representing  
16 Respondent Merit Termite, inspected the property located at 10131 Kernwood Court in Rancho  
17 Cucamonga, California (Kernwood Court property), at the request of Sauder Realty, and issued  
18 original Wood Destroying Pests and Organisms Inspection Report No. 10131. In that report, he  
19 made certain findings and recommendations.

20 84. On or about December 11, 2002, Respondent Merit Termite issued  
21 Standard Notice of Work Completed and Not Completed. In that report, Respondent certified  
22 that the Kernwood Court property was now free of evidence of active infestation or infection  
23 except in inaccessible or uninspected areas, and that all recommendations made by Respondent  
24 Offerman in the November 6, 2002 Wood Destroying Pests and Organisms inspection report had  
25 been completed.

26 85. The Kernwood Court property was subsequently sold to David and Gail  
27 Lee; escrow closed on December 11, 2002.

28 ///



1           95.    On or about April 1, 2004, the Board did a Microfilm Records Check on  
2 Respondent Merit Termite and determined Respondent Merit Termite failed to report activities at  
3 the Kernwood Court property on November 6, 2002, December 11, 2002, and April 28, 2003.

4           96.    On or about January 6, 2004, a Specialist from the Board inspected the  
5 Kernwood Court property. On or about January 13, 2004, the Board issued a Report of Findings.  
6 The report ordered that Respondents bring the property into compliance by correcting the items  
7 described in the Report of Findings (ROF), and submit a corrected inspection report and notice of  
8 work completed and not completed to the Board within thirty (30) calendar days from the date of  
9 receipt of the report.

10           97.    On or about January 13, 2004, the Board sent a copy of the ROF sent to  
11 Respondents at their address of record, Town Center Drive, in Rancho Cucamonga.

12           98.    On or about January 23, 2004, Respondent Offerman received a copy of  
13 the Board's ROF.

14           99.    On or about February 17, 2004, the ROF addressed to Respondent  
15 Lavender at his address of record, 10630 Town Center Drive, No. 121, Rancho Cucamonga,  
16 California, 91701, was returned to the Board, marked "Return to Sender. No Forward Order on  
17 File, Unable to Forward, Return to Sender."

18           100.   On or about February 18, 2004, Board Specialist Smith obtained another  
19 address for Respondent Lavender (9340 7<sup>th</sup> Street, No. B, Rancho Cucamonga, CA 91730), and  
20 faxed a copy of his ROF to Respondent Lavender, per Respondent Lavender's Request.

21           101.   On or about February 19, 2004, Board Specialist Smith had another copy  
22 of the ROF sent to Respondent Lavender at the newly provided 7<sup>th</sup> Street address, via certified  
23 mail.

24           102.   On or about February 20, 2004, the ROF sent to Respondent Lavender at  
25 the 7<sup>th</sup> Street address was returned to the Board, marked "Return to Sender."

26           103.   On or about March 5, 2004, Respondent Offerman received another copy  
27 of the ROF.

28    ///

1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Laws or Regulations Adopted by the Board -**  
3 **Improper Inspection)**

4 106. Respondents Merit Termite, Measured Termite, Offerman Termite,  
5 Lavender and Offerman are subject to disciplinary action under section 8641 of the Code, in that  
6 concerning the Kernwood Court property, Respondents failed to comply with section 8516 of the  
7 Code in the following respects:

8 a. **Sections 8516(b)(6)/8516(b)(7)**: On November 6, 2002, Respondent  
9 Offerman failed to report the decay fungi damage at the substructure framing, as required by  
10 California Code of Regulations, title 16, section 1990(a)(4).

11 b. **Sections 8516(b)(6)/8516(b)(7)**: On November 6, 2002, Respondent  
12 Offerman failed to report the inaccessible substructure at the brick abutment, as required by  
13 California Code of Regulations, title 16, section 1990(b)(2).

14 c. **Sections 8516(b)(6)/8516(b)(7)**: On November 6, 2002, Respondent  
15 Offerman failed to report the decay fungi damage inside of the inaccessible substructure area at  
16 the brick abutment, as required by California Code of Regulations, title 16, section 1990(a)(4).  
17 The damage is visible from the accessible portion of the substructure area.

18 d. **Sections 8516(b)(6)/8516(b)(7)**: On November 6, 2002, Respondent  
19 Offerman failed to report the inaccessible substructure area, due to insulation being installed  
20 between the floor joists, as required by California Code of Regulations, title 16, section  
21 1990(b)(2).

22 e. **Sections 8516(b)(6)/8516(b)(7)**: On November 6, 2002, Respondent  
23 Offerman failed to report the faulty grade condition at the west exterior foundation wall, as  
24 required by California Code of Regulations, title 16, section 1990(b)(1).

25 f. **Sections 8516(b)(6)/8516(b)(7)**: On November 6, 2002, Respondent  
26 Offerman failed to report the inaccessible area at the patio abutments, as required by California  
27 Code of Regulations, title 16, section 1990(d).

28 ///

- 1           a.     Section 8516(b): On April 28, 2003, Respondent Lavender failed to list a  
2 correct license number on his inspection report, as required by California Code of Regulations,  
3 title 16, section 1990(a)(1). Instead, Respondent Lavender listed a canceled license's number  
4 (FR 31067), on the inspection report. Respondent Lavender's field representative license,  
5 License No. FR 31067, was canceled by the Board on or about June 30, 2001.
- 6           b.     Sections 8516(b)(6)/8516(b)(7): On November 6, 2002, Respondent  
7 Offerman failed to include in his report the decay fungi damage at the substructure framing, as  
8 required by California Code of Regulations, title 16, section 1990(a)(4).
- 9           c.     Sections 8516(b)(6)/8516(b)(7): On November 6, 2002, Respondent  
10 Offerman failed to include in his report the inaccessible substructure at the brick abutment, as  
11 required by California Code of Regulations, title 16, section 1990(b)(2).
- 12          d.     Sections 8516(b)(6)/8516(b)(7): On November 6, 2002, Respondent  
13 Offerman failed to include in his report the decay fungi damage inside of the inaccessible  
14 substructure area at the brick abutment, as required by California Code of Regulations, title 16,  
15 section 1990(a)(4). The damage is visible from the accessible portion of the substructure area.
- 16          e.     Sections 8516(b)(6)/8516(b)(7): On November 6, 2002, Respondent  
17 Offerman failed to include in his report the inaccessible substructure area, due to insulation being  
18 installed between the floor joists, as required by California Code of Regulations, title 16, section  
19 1990(b)(2).
- 20          f.     Sections 8516(b)(6)/8516(b)(7): On November 6, 2002, Respondent  
21 Offerman failed to include in his report the faulty grade condition at the west exterior foundation  
22 wall, as required by California Code of Regulations, title 16, section 1990(b)(1).
- 23          g.     Sections 8516(b)(6)/8516(b)(7): On November 6, 2002, Respondent  
24 Offerman failed to include in his report the inaccessible area at the patio abutments, as required  
25 by California Code of Regulations, title 16, section 1990(d).
- 26          h.     Sections 8516(b)(6)/8516(b)(7): On November 6, 2002, Respondent  
27 Offerman failed to include in his report the evidence of drywood termites falling from inside the  
28 ///

1 approved by the Board, the address of each property inspected or upon which work was  
2 completed, within 10 business days after the commencement of the inspection or upon completed  
3 work. The November 6, 2002 and April 28, 2003 inspection reports and the December 11, 2002  
4 completion report were not reported to the Board.

5 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

6 **(Failure to Comply With Report of Findings)**

7 108. Respondents Merit Termite, Measured Termite and Offerman Termite are  
8 subject to disciplinary action under section 8641 for failure to comply with section 8622 in that  
9 Respondent Merit Termite failed to bring the Kernwood Court property into compliance within  
10 30 days after receipt of the Board's Report of Findings, dated January 13, 2004.

11 **OTHER MATTERS**

12 109. Business and Professions Code section 8624 states:

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

16 "If the operator is the qualifying manager, a partner, responsible officer, or owner  
17 of a registered structural pest control company, the suspension or revocation may be applied to  
18 the company registration.

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

25 110. Pursuant to section 8624, if Operator License No. OPR 9848, issued to  
26 James Douglas Lavender is suspended or revoked, the Board may suspend or revoke the  
27 registration of any branch office registered under the name of James Douglas Lavender,  
28 qualifying manager in Branch 2 for Respondent Merit Termite.

1           116. Pursuant to Business and Professions Code section 8654, if discipline is  
2 imposed on Operator's License No. OPR 9848, issued to Respondent Lavender, James Lavender  
3 shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or  
4 responsible managing employee for any registered company during the time the discipline is  
5 imposed, and any registered company which employs, elects, or associates James Lavender shall  
6 be subject to disciplinary action.

7           117. Pursuant to Business and Professions Code section 8654, if discipline is  
8 imposed on Field Representative License No. FR 31067, issued to Respondent Lavender, James  
9 Lavender shall be prohibited from serving as an officer, director, associate, partner, qualifying  
10 manager, or responsible managing employee for any registered company during the time the  
11 discipline is imposed, and any registered company which employs, elects, or associates James  
12 Lavender shall be subject to disciplinary action.

13           118. Pursuant to Business and Professions Code section 8654, if discipline is  
14 imposed on Operator License No. OPR 10332 issued to Respondent Offerman, Arno Offerman  
15 shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or  
16 responsible managing employee for any registered company during the time the discipline is  
17 imposed, and any registered company which employs, elects, or associates Arno Offerman shall  
18 be subject to disciplinary action.

19           119. Business and Professions Code section 8620 states, in pertinent part:  
20           "(a) Upon the conclusion of a hearing . . . , if the proposed decision of the  
21 [administrative law judge] is that the licensee is guilty of or has committed any one of the acts or  
22 omissions constituting grounds for disciplinary action, the proposed decision shall provide for  
23 the imposition of a suspension or for the revocation of the license. In this case, the board may  
24 impose the suspension or revocation. The board may also, in lieu of a suspension, assess a civil  
25 penalty. The licensee may express a preference for a form of discipline, but the board shall not  
26 be bound by any expression of preference.

27 ///

28 ///

1 Owner and Qualifying Manager in Branch 3, and Timothy John Welton as Qualifying Manager  
2 in Branch 2;

3 4. Revoking or suspending Operator's License No. OPR 9848, Branches 2  
4 and 3, issued to James Douglas Lavender;

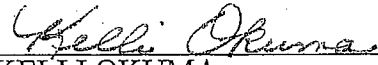
5 5. Revoking or suspending Field Representative License No. FR 31067,  
6 issued to James Douglas Lavender;

7 6. Revoking or suspending Operator's License No. OPR 10332, Branch 3,  
8 issued to Arno Offerman;

9 7. Ordering Respondents Merit Termite, Measured Termite, Offerman  
10 Termite, Arno Offerman and James Douglas Lavender to pay the Structural Pest Control Board  
11 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
12 Professions Code section 125.3;

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

14 DATED: 7-20-04

15  
16   
17 KELLI OKUMA  
18 Registrar  
19 Structural Pest Control Board  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant  
23  
24  
25  
26

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6 Attorneys for Complainant

**FILED**

Date *3-16-06* By *Kelli Okuma*

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

11 In the Matter of the Accusation Against:

Case No. 2006-58

12 **MERIT TERMITE AND PEST CONTROL**  
13 **ARNO OFFERMAN, Qualifying Manager**  
10630 Town Center Drive, Unit 121  
Rancho Cucamonga, California 91701  
14 Company Registration Certificate No. PR 3267, Br. 3

**ACCUSATION**

15 **ARNO OFFERMAN**  
10630 Town Center Drive, Unit 121  
16 Rancho Cucamonga, California 91701  
Operator's License No. OPR 10332, Br. 3  
17 Field Representative's License No. FR 17167, Br. 1 and 2

18 **ARNO OFFERMAN TERMITE & PEST CONTROL**  
19 **ARNO OFFERMAN, Qualifying Manager**  
9340 7<sup>th</sup> Street, Suite B  
Rancho Cucamonga, California 91739  
20 Company Registration Certificate No. PR 4568, Br. 3

21 Respondents.

22  
23 Kelli Okuma ("Complainant") alleges:

24 **PARTIES**

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

27 ///

28 ///

1                                   **Merit Termite and Pest Control**  
2                                   **Company Registration Certificate No. PR 3267**

3                                   2.     On or about April 29, 1998, the Board issued Company Registration  
4 Certificate No. PR 3267 ("registration") in Branch 2 to Merit Pest Control ("Respondent Merit")  
5 with James Lavender as the owner and Qualifying Manager. On October 30, 2000, Arno  
6 Offerman ("Respondent Offerman") became the Qualifying Manager in Branch 3. On  
7 January 4, 2002, the registration namestyle changed to Merit Termite and Pest Control. On  
8 December 11, 2003, the registration was suspended for failure to maintain general liability  
9 insurance pursuant to Business and Professions Code ("Code") section 8695. On  
10 January 8, 2004, the registration was reinstated after posting the required general liability  
11 insurance. On February 17, 2004, Accusation No. 2004-47 was filed against the registration, and  
12 is pending. On March 26, 2004, the registration was canceled.

13                                   **Arno Offerman**  
14                                   **Operator's License No. OPR 10332**

15                                   3.     On or about October 30, 2000, the Board issued Operator's License  
16 No. OPR 10332 ("operator license") in Branch 3 to Respondent Offerman as the Qualifying  
17 Manager of Respondent Merit. On December 11, 2003, the operator license was suspended for  
18 failure to maintain general liability insurance pursuant to Code section 8695. On  
19 January 8, 2004, the operator license was reinstated after posting the required general liability  
20 insurance. On February 17, 2004, Accusation No. 2004-47 was filed against the operator's  
21 license and is pending. On March 26, 2004, Respondent Offerman disassociated from  
22 Respondent Merit. On June 21, 2004, Respondent Offerman became the Owner and Qualifying  
23 Manager in Branch 3 for Arno Offerman Termite & Pest Control. On September 15, 2004, the  
24 operator's license was suspended for failure to maintain general liability insurance pursuant to  
25 Code section 8695. On July 18, 2005, the operator's license was reinstated after posting general  
26 liability insurance. The operator's license is in effect through June 30, 2006.

27     ///

28     ///



1                   **Arno Offerman**  
2                   **Field Representative's License No. FR 17167**

3                   4.       On or about March 10, 1989, the Board issued Field Representative's  
4 License No. FR 17167 ("field representative license") in Branch 3 to Respondent Offerman.  
5 On July 6, 1994, the license was upgraded to include Branch 2. On June 5, 1999, the license was  
6 upgraded to include Branch 1. On July 17, 2000, Respondent became employed with Merit Pest  
7 Control. On November 7, 2000, the license was downgraded to include Branches 1 and 2, due to  
8 the issuance of Operator's License No. OPR 10332 to Respondent Offerman. The license is in  
9 effect through June 30, 2006.

10                   **Arno Offerman Termite & Pest Control**  
11                   **Company Registration Certificate No. PR 4568**

12                   5.       On or about June 21, 2004, the Board issued Company Registration  
13 Certificate No. PR 4568 ("registration") to Arno Offerman Termite & Pest Control ("Respondent  
14 Termite"), with Respondent Offerman as the owner and Qualifying Manager in Branch 3. On  
15 September 15, 2004, the registration was suspended due to the expiration of the general liability  
16 insurance pursuant to Code section 8690. On May 31, 2005, the registration was suspended due  
17 to failure to maintain a surety bond in the amount of \$4,000 pursuant to Code section 9697. On  
18 July 18, 2005, the registration was reinstated after posting a surety bond in the amount of \$4,000,  
19 and posting general liability insurance.

20                   **STATUTORY PROVISIONS**

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

25                   7.       Code section 8624 states:

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

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

3           The performance by any partnership, corporation, firm, association, or  
4 registered company of any act or omission constituting a cause for disciplinary  
5 action, likewise constitutes a cause for disciplinary action against any licensee  
6 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.

7           8.       Code section 8625 states:

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

13           9.       Code section 8622 states:

14           When a complaint is accepted for investigation of a registered company,  
15 the board, through an authorized representative, may inspect any or all properties  
16 on which a report has been issued pursuant to Section 8516 or a notice of  
17 completion has been issued pursuant to Section 8518 by the registered company to  
18 determine compliance with the provisions of this chapter and the rules and  
19 regulations issued thereunder. If the board determines the property or properties  
20 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.

21           The notice sent to the registered company shall inform the registered  
22 company that if it desires a hearing to contest the finding of noncompliance, the  
23 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.

24           10.      Code section 8516 states, in pertinent part:

25           (b) No registered company or licensee shall commence work on a  
26 contract, or sign, issue, or deliver any documents expressing an opinion or  
27 statement relating to the absence or presence of wood destroying pests or  
28 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

1 work is completed shall be reported on a form prescribed by the board and shall  
2 be filed with the board no later than 10 business days after the commencement of  
an inspection or upon completed work.

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

5 Failure of a registered company to report and file with the board the  
6 address of any property inspected or work completed pursuant to Section 8516.1,  
7 Section 8518, or this section 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).

8 A written inspection report conforming to this section and on a form  
9 approved by the board shall be prepared and delivered to the person requesting the  
10 inspection or to the person's designated agent within 10 business days of the  
11 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  
12 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.

13 Reports shall be made available for inspection and reproduction to the  
14 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  
15 the board upon request within two business days. The following shall be set forth  
in the report:

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

19 (7) Information regarding the substructure, foundation walls and footings,  
20 porches, patios and steps, air vents, abutments, attic spaces, roof framing that  
includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling  
21 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,  
22 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.

23 11. Code section 8654 states:

24 Any individual who has been denied a license for any of the reasons  
25 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  
26 was under suspension, or who has been a member, officer, director, associate,  
qualifying manager, or responsible managing employee of any partnership,  
27 corporation, firm, or association whose application for a company registration has  
been denied for any of the reasons specified in Section 8568, or whose company  
28 registration has been revoked as a result of disciplinary action, or whose company  
registration is under suspension, and while acting as such member, officer,

1 director, associate, qualifying manager, or responsible managing employee had  
2 knowledge of or participated in any of the prohibited acts for which the license or  
3 registration was denied, suspended or revoked, shall be prohibited from serving as  
4 an officer, director, associate, partner, qualifying manager, or responsible  
managing employee of a registered company, and the employment, election or  
association of such person by a registered company is a ground for disciplinary  
action.

5 12. Code section 8638 states:

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

9 13. Code section 8641 states:

10 Failure to comply with the provisions of this chapter, or any rule or  
11 regulation adopted by the board, or the furnishing of a report of inspection without  
12 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.

13 14. Code section 8642 states:

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

17 **REGULATORY PROVISIONS**

18 15. California Code of Regulations, title 16, section 1990, states, in pertinent  
19 part:

20 (a) All reports shall be completed as prescribed by the board. Copies filed  
21 with the board shall be clear and legible. All reports must supply the information  
22 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:

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

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

26 (5) Commonly controllable moisture conditions which would foster the  
27 growth of a fungus infection materially damaging to woodwork.

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1 (d) Even though the licensee may consider the following areas  
2 inaccessible for purposes of inspection, the licensee must state specifically which  
3 of these areas or any other areas were not inspected and why the inspection of  
4 these areas is not practical: furnished interiors; inaccessible attics or portions  
5 thereof; the interior of hollow walls; spaces between a floor or porch deck and the  
6 ceiling or soffit below; stall showers over finished ceilings; such structural  
7 segments as porte cocheres, enclosed bay windows, buttresses, and similar areas  
8 to which there is no access without defacing or tearing out lumber, masonry or  
9 finished work; built-in cabinet work; floors beneath coverings, areas where  
10 storage conditions or locks make inspection impracticable.

11 16. California Code of Regulations, title 16, section 1937.14, states:

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

#### 17 COST RECOVERY/RESTITUTION

18 17. 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 18. 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 McNAMARA PROPERTY

26 19. On or about November 14, 2003, Respondent Offerman, on behalf of  
27 Respondent Merit, inspected the property located at 2106 East Mesita Avenue, West Covina,  
28 California ("McNamara property"), for wood destroying pests and organisms at the request of  
Dee Winters of Lyons and Associates, for escrow purposes. On that same day, Respondent  
Offerman issued Original Wood Destroying Pests and Organisms Inspection Report No. 2188  
("Inspection Report No. 2188"). Respondent Offerman reported evidence of subterranean  
termites at the garage and drywood termites and drywood termite damage at the garage eaves.  
Respondent Offerman recommended to pressure treat the subterranean termites, locally treat the  
drywood termites, and replace the drywood termite damaged wood.

1                   20.     On or about November 19, 2003, Respondent Merit issued a Standard  
2 Notice of Work Completed and Not Completed, certifying that all corrective work recommended  
3 in Inspection Report No. 2188 had been completed in accordance with the Board's rules and  
4 regulations and at that time was free and clear of any active infestation or infection in visible and  
5 accessible areas.

6                   21.     On or about December 5, 2003, escrow closed.

7                   22.     On or about March 28, 2005, the Board received a Complaint Form from  
8 Mark and Janice McNamara ("complainants") alleging that Respondent Merit failed to complete  
9 repairs and treat termite infestations before and/or after the close of escrow.

10                  23.     On or about June 22, 2005, a specialist from the Board performed a  
11 limited inspection of the McNamara property and noted violations.

12                  24.     On or about July 7, 2005, the Board issued a Report of Findings along  
13 with a Notice ordering Respondent Merit and Respondent Offerman to bring the property into  
14 compliance by correcting the items described in the Report of Findings and to submit a corrected  
15 inspection report and Notice of Work Completed and Not Completed to the Board within thirty  
16 (30) days. Respondent Merit and Respondent Offerman failed to comply or respond to this  
17 request.

18   **FIRST CAUSE FOR DISCIPLINE**

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

20                  25.     Respondent Merit's registration, and Respondent Offerman's operator's  
21 license and field representative licenses are subject to discipline under Code section 8641, in that  
22 on Inspection Report No. 2188, dated November 14, 2003, concerning the McNamara property,  
23 Respondents failed to comply with Code section 8516(b), in the following respects:

24   **Section 8516(6)(7):**

25                  a.     Failed to report drywood termite damage at the attic rafter, as defined by  
26 California Code of Regulations, title 16, section 1990(a)(4).

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

b. Failed to report the inaccessible portions of the attic area, as defined by California Code of Regulations, title 16, section 1990(d).

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

c. Failed to report the subterranean termite and decay fungi damage at the garage doorjamb, as defined by California Code of Regulations, title 16, section 1990(a)(4).

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

d. Failed to report evidence of an excessive moisture condition (loose commode) in the upstairs bathroom, as defined by California Code of Regulations, title 16, section 1990(b)(5).

**SECOND CAUSE FOR DISCIPLINE**

**(Failure to Complete Repairs for Price Stated in Contract)**

26. Respondent Merit's registration, and Respondent Offerman's operator's license, and field representative licenses are subject to discipline under Code section 8638, in that concerning the McNamara property, Respondents failed to remove or destroy the subterranean termite evidence in the garage.

**THIRD CAUSE FOR DISCIPLINE**

**(Workmanship)**

27. Respondent Merit's registration, and Respondent Offerman's operator's license, and field representative licenses are subject to discipline under Code section 8641, in that concerning the McNamara property, Respondents failed to comply with the provisions of California Code of Regulations, title 16, section 1937.14, by failing to perform the repairs to meet accepted trade standards for good and workmanlike construction in the following respects:

- a. Failed to properly seal the pressure treatment hole in the garage.
- b. Failed to replace the rafter tail on the north wall with the proper size, failed to sand it, and the adjoining roof sheathing was damaged.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Grossly Negligent or Fraudulent Act)**

3 28. Respondent Merit's registration, and Respondent Offerman's operator's  
4 license, and field representative licenses are subject to discipline under Code section 8642, in that  
5 concerning the McNamara property, Respondents committed a grossly negligent or fraudulent act  
6 by preparing and delivering to the Board a letter stating that the complainants had informed him  
7 that Lavender, Respondent's ex-partner, had been to the McNamara property and was taking care  
8 of the problems when, in fact, the complainants have never heard of Lavender, nor has Lavender  
9 been to the McNamara property.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Laws Adopted by the Board -**  
12 **Failure to File Reports with the Board)**

13 29. Respondent Merit's registration, and Respondent Offerman's operator's  
14 license, and field representative licenses are subject to discipline under Code section 8641, in that  
15 concerning the McNamara property, Respondents failed to comply with Code section 8516(b), by  
16 failing to prepare and deliver an inspection report to the Board after performing an inspection of  
17 the garage in or about February 2004.

18 **SIXTH CAUSE FOR DISCIPLINE**

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

20 30. Respondent Merit's registration, and Respondent Offerman's operator's  
21 license, and field representative licenses are subject to discipline under Code section 8641, in that  
22 concerning the McNamara property, Respondents failed to comply with Code section 8622 by  
23 not complying with the Board's Notice dated July 7, 2005. Respondent failed to bring the  
24 property into compliance by correcting the items described in the Report of Findings and  
25 submitting a corrected Inspection Report and Notice of Work Completed and Not Completed to  
26 the Board within thirty (30) calendar days of receipt of the Notice.

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**PRIOR DISCIPLINE**

**Operator's License No. OPR 10332**

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3 31. On July 13, 2005, the registrant was issued Cite & Fine No. 2006-3 in the  
4 amount of \$300 for violation of California Code of Regulations, title 16, section 1937.14 and  
5 Code section 8622. The fine is outstanding.

6 32. On July 13, 2005, the registrant was issued Cite & Fine No. 2006-5 in the  
7 amount of \$75 for violation of Code section 8638. The fine is outstanding.

**OTHER MATTERS**

8  
9 33. Code section 8620 provides, in pertinent part, that a respondent may  
10 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of  
11 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request  
12 must be made at the time of the hearing and must be noted in the proposed decision. The  
13 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

14 34. Pursuant to Code section 8624, the causes for discipline established as to  
15 Company Registration Certificate No. PR 3267, issued to Merit Termite and Pest Control,  
16 likewise constitutes cause for discipline against Operator's License No. OPR 10332, issued to  
17 Arno Offerman (who served as the Qualifying Manager of Merit Termite and Pest Control  
18 between the approximate period of October 30, 2000, through March 26, 2004), regardless of  
19 whether Arno Offerman had knowledge of or participated in the acts or omissions which  
20 constitute cause for discipline against Merit Termite and Pest Control.

21 35. Pursuant to Code section 8624, the causes for discipline established as to  
22 Company Registration Certificate Number PR 3267, issued to Merit Termite and Pest Control,  
23 likewise constitutes cause for discipline against Company Registration Certificate Number  
24 PR 4568, issued to Arno Offerman Termite & Pest Control, with Arno Offerman as the  
25 Qualifying Manager, regardless of whether Arno Offerman had knowledge of or participated in  
26 the acts or omissions which constitute cause for discipline against Merit Termite and Pest  
27 Control.

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1           36. Pursuant to Code section 8654, if discipline is imposed on Company  
2 Registration Certificate number PR 3267, issued to Merit Termite and Pest Control, then Arno  
3 Offerman, who serves as the Qualifying Manager, shall be prohibited from serving as an officer,  
4 director, associate, partner, qualifying manager, or responsible managing employee for any  
5 registered company during the time of the discipline is imposed, and any registered company  
6 which employs, elects, or associates Arno Offerman shall be subject to disciplinary action.

7           37. Pursuant to Code section 8624, if Operator License Number OPR 10332,  
8 issued to Arno Offerman, is suspended or revoked, the Board may suspend or revoke Company  
9 Registration Certificate Number PR 3267, issued to Merit Termite and Pest Control.

10           38. Pursuant to Code section 8624, if Operator License Number OPR 10332,  
11 issued to Arno Offerman, is suspended or revoked, the Board may suspend or revoke Company  
12 Registration Certificate Number PR 4568, issued to Arno Offerman Termite & Pest Control.

13           39. Pursuant to Code section 8624, if Operator License Number OPR 10332,  
14 issued to Arno Offerman, is suspended or revoked, the Board may suspend or revoke the  
15 registration of any branch office registered under the name of Arno Offerman.

16           40. Pursuant to section 8654 of the Code, if discipline is imposed on Company  
17 Registration Certificate Number PR 3267, issued to Merit Termite and Pest Control, then Arno  
18 Offerman (who was a field representative for Merit Termite and Pest Control) shall be prohibited  
19 from serving as an officer, director, associate, partner, qualifying manager, or responsible  
20 managing employee of a registered company, and the employment, election or association of  
21 Arno Offerman by a registered company is a ground for disciplinary action..

22           41. Code section 8622 provides, in pertinent part, that Respondent shall  
23 submit an inspection fee of not more than \$125. If a reinspection is necessary, a commensurate  
24 reinspection fee shall be charged.


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PRAYER

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

- 4           1.       Revoking or suspending Company Registration Certificate Number  
5 PR 3267, issued to Merit Termite and Pest Control;
- 6           2.       Revoking or suspending Company Registration Certificate Number  
7 PR 4568, issued to Arno Offerman Termite & Pest Control;
- 8           3.       Revoking or suspending Operator's License Number OPR 10332, issued to  
9 Arno Offerman;
- 10          4.       Revoking or suspending Field Representative License Number FR 17167,  
11 issued to Arno Offerman;
- 12          5.       Revoking or suspending any other license for which Arno Offerman is  
13 furnishing the qualifying experience or appearance;
- 14          6.       Prohibiting Arno Offerman from serving as an officer, director, associate,  
15 partner, qualifying manager or responsible managing employee of any registered company during  
16 the period that discipline is imposed on Company Registration Certificate Number PR 3267,  
17 issued to Merit Termite and Pest Control;
- 18          7.       Ordering restitution of all damages according to proof suffered by Mark  
19 and Janice McNamara as a condition of probation in the event probation is ordered;
- 20          8.       Ordering Arno Offerman to pay the Structural Pest Control Board the  
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
22 Professions Code section 125.3; and,
- 23          9.       Taking such other and further action as deemed necessary and proper.

24 DATED: 3-16-06

  
KELLI OKUMA  
Registrar  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
Complainant