

FILED

Date *7/26/12* By

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7
 8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
 9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2013-7

11 **MASTERCARE TERMITE CONTROL**
 12 **SOUTH BAY; WILLIAM WHITE,**
 13 **PRESIDENT; LEONARDO J. CRUZ, JR.,**
 14 **QUALIFYING MANAGER**
24404 South Vermont Avenue, Ste. 303
Harbor City, CA 90710

ACCUSATION

15 **Company Registration Certificate No. PR**
5620, Br. 3
 16 **Operator's License No. OPR 11324, Br. 3**

17 **CESAR G. SILVANO**
17341 East Hurley Street, Apt. 6
 18 **La Puente, CA 91744**

19 **Operator's License No. OPR 11237, Br. 3**

20 and

21 **BETTY ANN WEBSTER**
2472 Bundy Drive,
 22 **Los Angeles, CA 90064**

23 **Field Representative's License No. FR**
 24 **32347, Br. 2 and 3**

25 Respondents.

1 William H. Douglas ("Complainant") alleges:

2 PARTIES

3 1. Complainant brings this Accusation solely in his official capacity as the Interim
4 Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide
5 Regulation.

6 **Company Registration Certificate**

7 2. On or about May 30, 2008, the Board issued Company Registration Certificate No.
8 PR 5620 to Respondent Mastercare Termite Control South Bay ("Respondent Mastercare") in
9 Branch 3, with Respondent William White ("Respondent White") as president and Respondent
10 Cesar G. Silvano ("Respondent Silvano") as qualifying manager. On or about May 16, 2011,
11 Company Registration Certificate No. PR 5620 reflected the disassociation of Respondent
12 Silvano as qualifying manager. On or about June 10, 2011, Company Registration Certificate No.
13 PR 5620 reflected Respondent Leonardo J. Cruz, Jr. ("Respondent Cruz") as qualifying manager.
14 Company Registration Certificate No. PR 5620 was in full force and effect at all times relevant to
15 the charges brought herein.

16 **Operator's License No. OPR 11324**

17 3. On or about May 22, 2006, the Board issued Operator's License No. OPR 11324 in
18 Branch 3 to Respondent Cruz. On or about June 10, 2011, Operator's License No. OPR 11324
19 became the qualifying manager of Respondent Mastercare. Operator's License No. OPR 11342
20 was in full force and effect at all times relevant to the charges brought herein and will expire on
21 June 30, 2014, unless renewed.

22 **Operator's License No. OPR 11237**

23 4. On or about January 4, 2006, the Board issued Operator's License No. OPR 11237 in
24 Branch 3 to Respondent Silvano. On or about May 30, 2008, Operator's License No. OPR 11237
25 became the qualifying manager for Respondent Mastercare. On or about May 16, 2011,
26 Operator's License No. OPR 11237 disassociated as the qualifying manager from Respondent
27 Mastercare. Operator's License No 11237 was in full force and effect at all times relevant to the
28 charges brought herein and will expire on June 30, 2014, unless renewed.

1 disciplinary action and shall subject the registered company to a fine of not more than two
2 thousand five hundred dollars (\$2,500).

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

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

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

14 (3) The name and address of any person who is a party in interest.

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

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

26 (10) Recommendations for corrective measures."

27 13. Section 8518 of the Code states:

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

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

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

12 14. Section 8571 of the Code states:

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

21 "If the company fails to notify the registrar within the 10-day period, or fails to replace with
22 a qualifying manager within the period fixed by the regulations of the board, at the end of the
23 period the registration shall be ipso facto suspended. The registration shall be reinstated upon the
24 filing of an affidavit, executed by a representative of the company, and filed with the registrar, to
25 the effect that the qualifying manager who ceased to be connected with the company has been
26 replaced by another operator who is authorized by this chapter to act in such capacity, and that
27 such operator has not had his or her license suspended or revoked or that he or she has not been
28 connected with a company which has had its registration suspended or revoked."

15 15. Section 8619, subdivision (a) of the Code states, "[a]n inspection tag shall be posted
16 whenever an inspection for wood destroying pests or organisms is made."

17 16. Section 8622 of the Code provides, in pertinent part, that respondent shall submit an
18 inspection fee of not more than \$125. If a reinspection is necessary, a commensurate reinspection
19 fee shall be charged.

20 17. Section 8641 of the Code states:

21 "Failure to comply with the provisions of this chapter, or any rule or regulation adopted by
22 the board, or the furnishing of a report of inspection without the making of a bona fide inspection

1 of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed
2 prior to the completion of the work specified in the contract, is a ground for disciplinary action."

3 REGULATORY PROVISIONS

4 18. California Code of Regulations, title 16, section 1916 states:

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

8 19. California Code of Regulations, title 16, section 1918 states:

9 "Supervise' as used in Business and Professions Code Sections 8506.2, 8610 and 8611
10 means the oversight, direction, control, and inspection of the daily business of the company and
11 its employees, and the availability to observe, assist, and instruct company employees, as needed
12 to secure full compliance with all laws and regulations governing structural pest control.

12 "In cases of ownership of more than one registered company by the same sole owner,
13 corporation or partnership where the qualifying manager or managers cannot supervise each
14 registered company because of the location of the companies, the qualifying manager or
15 managers may designate an individual or individuals licensed as an operator or as a field
16 representative in the branch or branches of business being conducted to supervise the company.
17 This designated supervisor or supervisors must be under the direct supervision of the qualifying
18 manager or managers. Any such designation of supervisors does not relieve the qualifying
19 manager or managers of responsibility to supervise as required in sections 8506.2 and 8610."

17 20. California Code of Regulations, title 16, section 1990, states in pertinent part:

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

21 (3) Infestations, infections or evidence thereof.

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

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

26 (2) Inaccessible subareas or portions thereof and areas where there is less than
27 12 inches clear space between the bottom of the floor joists and the unimproved
28 ground area.

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

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

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

10 21. California Code of Regulations, title 16, section 1991, states in pertinent part:

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

14 (5) Structural members which appear to be structurally weakened by
15 wood-destroying pests to the point where they no longer serve their intended purpose shall be
16 replaced or reinforced. Structural members which are structurally weakened by fungus to the
17 point where they no longer serve their intended purpose shall be removed or, if feasible, may
18 remain in place if another structural member is installed adjacent to it to perform the same
19 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.

20 (9) For the extermination of subterranean termite infestations, treat an infested area
21 under the structure when subterranean termite tubes are found connected to the ground or when
22 active infestations are found in the ground. Subterranean termite tubes shall be removed where
23 accessible, except where a licensee is using an above ground termite bait station that requires the
24 use of the termite tubes to be effective. Where a licensee is using an above ground termite bait
station that requires the use of termite tubes to be effective, subterranean termite tubes can
remain in place for the duration of the licensee's use of the termite bait stations. At the
conclusion of the treatment, the subterranean termite tubes shall be removed.

25 (11) Correct any excessive moisture condition that is commonly controllable. When
26 there is reasonable evidence to believe a fungus infection exists in a concealed wall or area,
27 recommendations shall be made to open the wall or area."

28 /././

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

2 "All of the following reports must be in compliance with the requirements of Section 8516
3 of the code. All reports must be on the form prescribed by the board.

4 "(a) An original inspection report is the report of the first inspection conducted on a
5 structure at the request of a specified party or for a specified purpose. Subsequent inspections
6 conducted on a structure at the request of a different party, for a different purpose than a previous
7 inspection, or a different transaction relating to the same structure shall be deemed to be new
8 inspections for which an original inspection report shall be required. An original inspection report
9 may be either a complete or limited inspection.

10 "(b) A complete report is the report of an inspection of all visible and accessible portions of
11 a structure.

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

16 "(d) A supplemental report is the report on the inspection performed on inaccessible areas
17 that have been made accessible as recommended on a previous report. Such report shall indicate
18 the absence or presence of wood-destroying pests or organisms or conditions conducive thereto.
19 This report can also be used to correct, add, or modify information in a previous report. A
20 licensed operator or field representative shall refer to the original report in such a manner to
21 identify it clearly.

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

26 23. California Code of Regulations, title 16, section 1996.1, subdivision (c) states:

27 "The inspection report shall indicate the location of the inspection tag. The inspection report
28 must also indicate the presence of any other inspection or fumigation tag that is less than two
years old and any similar completion tag. A registered company shall not remove any tag. "

COST RECOVERY/RESTITUTION

23 24. Business and Professions Code section 125.3 provides, in pertinent part, that the
24 Board may request the administrative law judge to direct a licentiate found to have committed a
25 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
26 investigation and enforcement of the case.

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1 29. The inspection report was not on a form prescribed by the Board because the address
2 for the Board was incorrect. Additionally, the report failed to contain the address of the person or
3 firm ordering the inspection report, it failed to contain the name of the property owner and/or
4 party of interest, and it failed to report where the inspection tag was posted and whether or not
5 any other tags were noted.

6 30. On April 15, 2010, Respondent Mastercare issued a Standard Notice of Work
7 Completed and Not Completed ("completion notice"). The completion notice was not on a form
8 prescribed by the Board because the address for the Board was incorrect. The completion notice
9 certified that all recommendations made in the February 24, 2010 "complete" inspection report
10 had been completed for a price of \$1,400.00.

11 31. On September 3, 2010, Respondent Silvano, on behalf of Respondent Mastercare,
12 returned to the Subject Property and performed a WDO inspection and treatment for subterranean
13 termites. Respondent Mastercare failed to prepare and deliver an inspection report and
14 completion notice for the September 3, 2010 WDO inspection and treatment.

15 **Respondent Silvano Disassociates from Respondent Mastercare**

16 32. On or about May 16, 2011, Respondent Silvano disassociated as qualifying manager
17 of Respondent Mastercare. Respondent Silvano notified the Board of his disassociation but
18 Respondent Mastercare failed to notify the Board within 10 days (or at all), as it was required.

19 33. On or about June 3, 2011, the Board suspended Respondent Mastercare's registration
20 for failure to have a qualifying manager.

21 34. On or about June 10, 2011, Respondent Cruz associated with Respondent Mastercare
22 as its qualifying manager. That same day, the Board lifted Respondent Mastercare's suspension.

23 35. Respondent Mastercare went 26 days without a qualifying manager. During this time
24 period, Respondent Mastercare continued to perform work and filed 11 Wood Destroying
25 Organism ("WDO") Activities with the Board.

26 **The September 23, 2011 "Complete" Inspection**

27 36. On or about September 23, 2011, Respondent Mastercare performed a WDO
28 inspection at the Subject Property. Respondent Webster performed the WDO inspection and

1 issued a "complete" inspection report containing five findings and recommendations and many
2 notes. The findings identified evidence of subterranean termites in the substructure, garage and
3 interior ceiling, decay fungi damage in the substructure, and subterranean termites in the garage.

4 37. The recommendations stated to chemically treat and pressure treat for the control of
5 subterranean termites and/or remove the accessible evidence of infestation and to remove and
6 replace the decay fungi damage and subterranean termite damage.

7 38. The pertinent notes reported that the shower stall is on concrete, foundations and
8 ventilation are adequate, the porches/steps are concrete, there are no abutments, the decks or
9 patios and exterior were inspected, that a complete and thorough inspection of the attic could not
10 be made due to insulation, and that the garage walls are covered.

11 39. The inspection report was not on a form prescribed by the Board because the address
12 for the Board was incorrect. The inspection report diagram failed to indicate the approximate
13 location of a certain finding, finding 10A. It also failed to report whether or not any other tags
14 were noted.

15 **The Board Specialist's Inspection**

16 40. On or about November 28, 2011, Board Specialist Steven R. Smith ("Mr. Smith")
17 travelled to the Subject Property to perform an inspection. Mr. Smith inspected the Subject
18 Property and discovered: cellulose debris in the substructure; a form stake and form board in the
19 substructure; evidence of subterranean termites in the substructure framing; evidence of excessive
20 moisture conditions in the substructure, some of which extended into inaccessible wall areas;
21 repair work (a board installed under the bathroom) completed in the substructure; an inaccessible
22 area in the substructure created after blocking was installed between the floor joists under the
23 kitchen; an inaccessible portion of the substructure; evidence of subterranean termites on the
24 foundation wall of the converted garage; evidence of a subterranean termite treatment in the
25 converted garage; an inaccessible area below the shower stall in the converted garage; evidence
26 of an excessive moisture condition at the substructure access vent on the north wall; evidence of
27 drywood termites in the attic; an inaccessible portion of the attic; an inaccessible attic area at the
28 attached enclosed patio; patchwork completed at the front bedroom wall molding; and evidence

1 of drywood termites and drywood termite damage at the rafter tails and in the eave area, with
2 some of the damage extending into an inaccessible attic area.

3 41. Mr. Smith took photographs and prepared a Report of Findings containing 12
4 separate violations. The report was sent by certified mailed to all Respondents and they received
5 it on December 16, 2011. Respondents had 30 days from the date of receipt of the Report of
6 Findings to bring the Subject Property into compliance.

7 **The January 16, 2012 "Reinspection"**

8 42. On or about January 16, 2012, Respondent Mastercare performed a WDO inspection
9 at the Subject Property. Respondent Webster performed the WDO inspection and issued a
10 "reinspection" report containing fifteen findings and recommendations and several notes.

11 43. The findings identified cellulose debris, foundation forms and/or stakes, evidence of
12 subterranean termites, old evidence of drywood termites, decay fungi damage and water stains in
13 the substructure, an inaccessible area below the shower stall, old evidence of drywood termites,
14 inaccessible areas at the house, patio, and attic areas, decay fungi damage at the front bedroom
15 flooring which extended into an inaccessible area, an excessive moisture condition at the
16 substructure access vent on the north wall, old evidence of drywood termites at the eaves,
17 drywood termite damage at the rafter tails in the eave area, and an area were Respondent
18 Mastercare previously replaced decay fungi damage in the house eaves.

19 44. The recommendations state to clean out the cellulose debris, to chemically treat the
20 foundation forms and/or stakes if removal is impractical, to remove or cover the old evidence of
21 drywood termites, for Respondent Mastercare to contact a licensed contractor to address the
22 decay fungi damage, the water stains, the stall shower, the excessive moisture condition, and the
23 drywood termite damage, and for further inspection of the inaccessible attic area at the patio, if
24 made accessible. The inspection failed to include a recommendation to remove the accessible
25 evidence of subterranean termites in the substructure. The inspection report also failed to include
26 a recommendation to open, inspect, and issue a "supplemental" inspection report regarding the
27 inaccessible area at the house attic.

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1 45. The pertinent notes reported that the garage walls are covered and a limited
2 inspection was made of the garage due to storage.

3 46. The inspection report was not on a form prescribed by the Board because the address
4 for the Board was incorrect.

5 **The January 28, 2012 "Supplemental" Inspection**

6 47. On or about January 28, 2012, Respondent Mastercare performed a "supplemental"
7 WDO inspection at the Subject Property. Respondent Webster performed the supplemental WDO
8 inspection and issued a "supplemental" inspection report containing four findings and
9 recommendations.

10 48. The findings identified decay fungi damage in the substructure, drywood termite
11 damage, old evidence of drywood termites, and decay fungi damage at the interior framing.

12 49. The recommendations state to remove or cover the old evidence of drywood termites
13 and for Respondent Mastercare to contact a licensed contractor to address the decay fungi and
14 drywood termite damage.

15 50. The inspection report diagram failed to indicate the approximate location of a certain
16 finding, finding 10C. Furthermore, the inspection report was not on a form prescribed by the
17 Board because the address for the Board was incorrect.

18 **Walls in the Subject Property Are Exposed**

19 51. On or about February 24, 2012, Respondent Webster contacted Mr. Smith and
20 informed him that Respondent Mastercare had located a contractor to perform the necessary work
21 to bring the Subject Property into compliance and to comply with the Report of Findings.
22 However, the contractor, Rodrigo Argueto's, ("Argueto"), license was suspended for failing to
23 comply with Worker Compensation requirements. Argueto was not permitted to perform any
24 work at the Subject Property until he resolved the issues with his license.

25 52. In between March 8 and March 12, 2012, Argueto's license was restored to active
26 status. On or about March 22, 2012, Argueto opened certain floors and walls in the Subject
27 Property, including walls in the bedrooms, the kitchen, and the sole bathroom. The work in the
28 bathroom rendered it inoperable.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Failure to Properly Name Property Owner on Inspection Report)

3 57. Respondents Mastercare, White, as president, and Silvano, as former qualifying
4 manager, are subject to disciplinary action under Code section 8516, subdivision (b)(2) and (3) in
5 that Respondents failed to include the address of the person or firm who ordered the February 24,
6 2010 "complete" inspection report and they failed to include the name of the property owner
7 and/or party of interest on that report.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 (Failure to Prepare and Deliver Inspection Report on Form Prescribed by Board)

10 58. Respondents Mastercare, White, as president, and Silvano, as former qualifying
11 manager, are subject to disciplinary action under Code sections 8516, subdivision (b), 8518, and
12 8641 and Section 1993 of title 16 of the California Code of Regulations in that Respondents
13 failed to prepare and deliver the February 24, 2010 "complete" inspection report and the April 15,
14 2010 completion notice on a form prescribed by the Board. The Board's address at the bottom of
15 the February 24, 2010 "complete" inspection report and the April 15, 2010 completion notice is
16 wrong. The address listed on these forms is 1418 Howe Avenue, Suite 18, Sacramento, CA
17 95825. The Board moved to its current address at 2005 Evergreen Street, Suite 1500,
18 Sacramento, CA 95815 in March 2008.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 (Failure to Prepare and Deliver Inspection Report and Completion Notice for Inspection and
21 Work Performed)

22 59. Respondents Mastercare, White, as president, and Silvano, as former qualifying
23 manager, are subject to disciplinary action under Code sections 8516, 8518, and 8641 and Section
24 1993 of title 16 of the California Code of Regulations in that Respondents failed to prepare and
25 deliver any inspection report and completion notice for the WDO inspection and work performed
26 at the Subject Property on September 3, 2010. Respondent Silvano performed a WDO inspection
27 and treatment at the Subject Property on September 3, 2010. However Respondents failed to
28

1 prepare and deliver an inspection report or completion notice for either the inspection or the work
2 performed.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 (Failure to Report)

5 60. Respondent Silvano, as an inspector, is subject to disciplinary action under Code
6 sections 8516, subdivision (b)(6), (7), and (10) and 8641 and Section 1991, subdivisions (a)(11),
7 and Section 1990, subdivision (a)(3),(4) and subdivisions (b)(2), (3), and (5), and (d) of title 16 of
8 the California Code of Regulations in that Respondent failed to make proper reports. Specifically
9 Respondent failed to make the following reports on the February 24, 2010 "complete" inspection
10 report:

11 a. Respondent failed to report the full extent of the cellulose debris, the form stake, and
12 the form board in the substructure.

13 b. Respondent failed to report the full extent of the evidence of subterranean termites in
14 the substructure.

15 c. Respondent failed to report the decay fungi damage in the substructure, which
16 extends into inaccessible wall areas below the kitchen and bathroom.

17 d. Respondent failed to report the evidence of excessive moisture conditions in the
18 substructure.

19 e. Respondent failed to report the inaccessible areas in the substructure and to make a
20 recommendation for further inspection and the issuance of a "supplemental" inspection report.

21 f. Respondent failed to report the inaccessible area below the stall shower.

22 g. Respondent failed to report the evidence of an excessive moisture condition at the
23 substructure access vent on the north wall of the Subject Property. When it rains, water runs into
24 the substructure.

25 h. Respondent failed to report the evidence of drywood termites in the attic.

26 i. Respondent failed to report the inaccessible attic areas.
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1 j. Respondent failed to report the evidence of drywood termites and drywood termite
2 damage at the rafter tails in the eave area. Some of the damage extends into inaccessible portions
3 of the attic.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 (Failure to Make Proper Recommendation)

6 61. Respondent Silvano, as an inspector, is subject to disciplinary action under Code
7 section 8516, subdivision (b)(10) and Section 1991, subdivision (a)(9) of title 16 of the California
8 Code of Regulations in that Respondent failed to make a proper recommendation regarding the
9 reported evidence of subterranean termites in the substructure on the February 24, 2010
10 "complete" report. Specifically, Respondent failed to include a recommendation to knock down
11 or remove the accessible evidence of infestation.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 (Failure to Make Proper Finding and Recommendation)

14 62. Respondent Silvano, as inspector, is subject to disciplinary action under Code
15 sections 8516, subdivision (b)(6), (7), and (10) and 8641 and Section 1991, subdivision (a)(5) of
16 title 16 of the California Code of Regulations in that Respondent failed to make a proper finding
17 and recommendation regarding the reported decay fungi damage in the eaves on the February 24,
18 2010 "complete" inspection report. Specifically, the finding failed to identify the excessive
19 moisture condition responsible for the infections and the recommendation failed to include a
20 recommendation to correct the excessive moisture condition responsible for the infections.

21 **NINTH CAUSE FOR DISCIPLINE**

22 (Failure to Indicate Tags)

23 63. Respondent Silvano, as an inspector, is subject to disciplinary action under Code
24 sections 8619, subdivision (a) and 8641 and Section 1996.1, subdivision (c) of title 16 of the
25 California Code of Regulations in that on the February 24, 2010 "complete" inspection report,
26 Respondent failed to indicate where the inspection tag was posted and Respondent failed to
27 indicate whether any other tags, less than 2 years old, were found.

28 ///

- 1 g. Respondent failed to report the evidence of drywood termites in the attic.
2 h. Respondent failed to report the inaccessible attic areas.
3 i. Respondent failed to report the evidence of drywood termites and drywood termite
4 damage at the rafter tails in the eave area. Some of the damage extends into an inaccessible
5 portion of the attic.

6 **FIFTEENTH CAUSE FOR DISCIPLINE**

7 (Failure to Indicate Location of Findings)

8 69. Respondent Webster is subject to disciplinary action under Code section 8516,
9 subdivision (b)(6) in that Respondent failed to indicate the location of certain findings.
10 Specifically, on the September 23, 2011 "complete" inspection report, Respondent failed to
11 indicate the approximate location of finding 10A. On the January 28, 2012 "supplemental"
12 inspection report, Respondent failed to indicate the approximate location of finding 10C.

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

14 (Failure to Make a Recommendation)

15 70. Respondent Webster is subject to disciplinary action under Code sections 8516,
16 subdivision (b)(6), (7), and (10) and 8641 and Sections 1990, subdivision (d), 1991, subdivision
17 (a)(9), and 1993, subdivision (3) of title 16 of the California Code of Regulations in that
18 Respondent failed to make recommendations regarding the January 16, 2012 "reinspection"
19 report. Specifically Respondent failed to make the following recommendations on the January
20 16, 2012 "reinspection" report:

21 a. Respondent failed to make a recommendation to remove the accessible evidence of
22 subterranean termites in the substructure.

23 b. Respondent failed to make a recommendation to open, inspect, and issue a
24 "supplemental" inspection report regarding the inaccessible area at the house attic.

25 c. Respondent failed to make a proper finding and recommendation regarding the
26 limited inspection of the garage due to storage that was reported as a note. The limited inspection
27 of the garage due to storage should have been reported as a finding with a recommendation.
28

OTHER MATTERS

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

7 72. Pursuant to Code section 8624, the causes for discipline established as to Company
8 Registration Certificate No. PR 5620 issued to Respondent Mastercare likewise constitute cause
9 for discipline against Operator's License No. OPR 11324 issued to Respondent Cruz who serves
10 as the qualifying manager of Respondent Mastercare, regardless of whether Respondent Cruz had
11 knowledge of or participated in the acts or omissions which constitute cause for discipline against
12 Respondent Mastercare.

13 73. Pursuant to Code section 8624, the causes for discipline established as to Company
14 Registration Certificate No. PR 5620 issued to Respondent Mastercare likewise constitute cause
15 for discipline against Operator's License No. OPR 11237 issued to Respondent Silvano who
16 served as the qualifying manager of Respondent Mastercare, regardless of whether Respondent
17 Silvano had knowledge of or participated in the acts or omissions which constitute cause for
18 discipline against Respondent Mastercare.

19 74. Pursuant to Code section 8654, if discipline is imposed on Company Registration
20 Certificate No. 5620 issued to Respondent Mastercare, then Respondent White, who serves as the
21 president of Respondent Mastercare, shall be prohibited from serving as an officer, director,
22 associate, partner, qualifying manager, or responsible managing employee for any registered
23 company during the time the discipline is imposed, and any registered company which employs,
24 elects, or associates him shall be subject to disciplinary action.

25 75. Pursuant to Code section 8654, if discipline is imposed on Company Registration
26 Certificate No. 5620 issued to Respondent Mastercare, then Respondent Cruz, who serves as the
27 qualifying manager of Respondent Mastercare, shall be prohibited from serving as an officer,
28 director, associate, partner, qualifying manager, or responsible managing employee for any

1 registered company during the time the discipline is imposed, and any registered company which
2 employs, elects, or associates him shall be subject to disciplinary action.

3 76. Pursuant to Code section 8654, if discipline is imposed on Company Registration
4 Certificate No. 5620 issued to Respondent Mastercare, then Respondent Silvano, who served as
5 the qualifying manager of Respondent Mastercare, shall be prohibited from serving as an officer,
6 director, associate, partner, qualifying manager, or responsible managing employee for any
7 registered company during the time the discipline is imposed, and any registered company which
8 employs, elects, or associates him shall be subject to disciplinary action.

9 **PRAYER**

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

12 1. Revoking or suspending Company Registration Certificate No. PR 5620, issued to
13 Mastercare Termite Control South Bay with William White as president and Leonardo J. Cruz, Jr.
14 as qualifying manager;

15 2. Revoking or suspending Operator's License No. OPR 11324, issued to Leonardo J.
16 Cruz, Jr.;

17 3. Revoking or suspending any other license for which Leonardo J. Cruz, Jr. is
18 furnishing the qualifying experience or appearance;

19 4. Revoking or suspending Operator's License No. OPR 11237, issued to Cesar G.
20 Silvano;

21 5. Revoking or suspending any other license for which Cesar G. Silvano is furnishing
22 the qualifying experience or appearance;

23 6. Revoking or suspending Field Representative Number FR 32347, issued to Betty Ann
24 Webster;

25 7. Prohibiting William White, Leonardo J. Cruz, Jr., and Cesar G. Silvano from serving
26 as an officer, director, associate, partner, qualifying manager or responsible managing employee
27 from any company during the period that discipline is imposed on Company Registration
28 Certificate No. PR 5620;

1 8. Ordering restitution of all damages, according to proof, that Deyone Lane suffered, as
2 a condition of probation in the event that probation is ordered;

3 9. Ordering Mastercare Termite Control South Bay, William White, Leonardo J. Cruz
4 Jr., Cesar G. Silvano, and Betty Ann Webster to pay the reasonable costs of the investigation and
5 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

7
8 DATED: 7/26/12

William H. Douglas
WILLIAM H. DOUGLAS
Interim Executive Officer
Structural Pest Control Board
State of California
Complainant

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