

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JIM LEDAKIS
Supervising Deputy Attorney General
3 KAREN GORDON, State Bar No. 137969
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2073
Facsimile: (619) 645-2061
8
9 Attorneys for Complainant

FILED

Date 10/6/09 By Kelli Okuma

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

In the Matter of the First Amended Accusation Against:

Case No. 2009-50

CAL EX TERMITE CONTROL
8709 Spring Canyon Drive
Spring Valley, California 91977
LETICIA BELTRAN, Owner
Company Registration Certificate No. PR 5440, Br. 3

THOMAS JAMES DONAR, Qualifying Manager
Operator License No. OPR 11424, Br. 3
(Disassociated 6/9/08)

ISRAEL ERNESTO GUERRERO
8709 Spring Canyon Drive
Spring Valley, California 91977
Field Representative License No. FR 34068, Br. 3

**FIRST AMENDED
ACCUSATION**

Respondents.

Kelli Okuma ("Complainant") alleges:

PARTIES

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

Company Registration Certificate No. PR 5440

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2 September 24, 2007 The Board issued Company Registration Certificate No. PR 5440
3 ("registration") to Cal Ex Termite Control ("Respondent Cal Ex") in
4 Branch 3, with Leticia Beltran as the owner and Michael D. Edwards as
5 the Qualifying Manager.
6
7 November 29, 2007 Michael D. Edwards disassociated as the Qualifying Manager.
8
9 January 2, 2008 The registration was suspended for failing to have a Qualifying
10 Manager.
11
12 January 23, 2008 David Eugene Poplin became the Qualifying Manager and the
13 registration was reinstated.
14
15 January 30, 2008 David Eugene Poplin disassociated as the Qualifying Manager.
16
17 January 30, 2008 The registration was suspended pursuant to Business and Professions
18 Code ("Code") section 8690 for failing to maintain general liability
19 insurance.
20
21 February 6, 2008 The registration was reinstated after posting the general liability
22 insurance.
23
24 February 29, 2008 The registration was suspended for failing to have a Qualifying
25 Manager.
26
27 March 7, 2008 Thomas James Donar became the Qualifying Manager and the
28 registration was reinstated.
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30 June 9, 2008 Thomas James Donar disassociated as the Qualifying Manager.
31
32 June 24, 2008 The registration was suspended for failing to have a Qualifying
33 Manager.
34
35 July 18, 2008 John Morgan Quinn became the Qualifying Manager and the
36 registration was reinstated.
37
38 August 8, 2008 John Morgan Quinn disassociated as the Qualifying Manager.
39
40 August 20, 2008 The registration was suspended pursuant to Code section 8690 for
41 failing to maintain general liability insurance.
42
43 August 29, 2008 The registration was reinstated after posting general liability insurance.
44
45 September 10, 2008 The registration was suspended for failing to have a Qualifying
46 Manager.
47
48 September 26, 2008 Lily Tiffany Wong became the Qualifying Manager and the registration
49 was reinstated.
50
51 November 6, 2008 The registration was suspended pursuant to Code section 8690 for
52 failing to maintain general liability insurance.
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54 November 12, 2008 Lily Tiffany Wong disassociated as the Qualifying Manager.
55
56 December 15, 2008 The registration was suspended for failing to have a Qualifying
57 Manager.
58
59 February 10, 2009 The registration was reinstated after posting general liability insurance.

1 **Thomas James Donar - Operator's License No. OPR 11424**

2 2. On or about November 13, 2006, the Board issued Operator's License
3 Number OPR 11424, in Branch 3, to Thomas James Donar ("Respondent Donar"). On or about
4 March 7, 2008, Respondent Donar became the Qualifying Manager of Respondent Cal Ex. On or
5 about June 9, 2008, Donar disassociated as the Qualifying Manager of Respondent Cal Ex. The
6 license will expire on June 30, 2009, unless renewed.

7 **Israel Ernesto Guerrero - Field Representative's License No. FR 34068**

8 3. On or about December 7, 2001, the Board issued Field Representative's
9 License Number FR 34068, in Branch 3, to Israel Guerrero ("Respondent Guerrero"). On or
10 about October 16, 2003, Respondent Guerrero paid a \$25 fine levied by the Board for violating
11 Code section 8516 (reporting violations), and California Code of Regulations, title 16, section
12 1991 (reporting requirements). On or about September 24, 2007, Respondent Guerrero became
13 employed with Respondent Cal Ex. The license will expire on June 30, 2010, unless renewed.

14 **STATUTORY PROVISIONS**

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

19 5. Code section 8624 states:

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

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

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

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6. Code section 8625 states:

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

7. Code section 8654 states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, 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 registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as 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.

8. Code section 8516 states, in pertinent part:

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

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

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

A written inspection report conforming to this section and on a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for

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litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, filed notes, and activity forms.

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

....

(10) Recommendations for corrective measures.

9. Code section 8518 states:

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

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

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

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

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

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

10. Code section 8538 states:

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

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- (1) The pest to be controlled.
- (2) The pesticide or pesticides proposed to be used, and the active ingredient or ingredients.

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

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

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

(4) If a contract for periodic pest control has been executed, the frequency with which the treatment is to be done.

(b) In the case of Branch 1 applications, the notice prescribed by subdivision (a) shall be provided at least 48 hours prior to application unless fumigation follows inspection by less than 48 hours. In the case of Branch 2 or Branch 3 registered company applications, the notice prescribed by subdivision (a) shall be provided no later than prior to application. In either case, the notice shall be given to the owner, or owner's agent, and tenant, if there is a tenant, in at least one of the following ways:

- (1) First-class mail.
- (2) Posting in a conspicuous place on the real property.
- (3) Personal delivery.

If the building is commercial or industrial, a notice shall be posted in a conspicuous place, unless the owner or owner's agent objects, in addition to any other notification required by this section.

The notice shall only be required to be provided at the time of the initial treatment if a contract for periodic service has been executed. If the pesticide to be used is changed, another notice shall be required to be provided in the manner previously set forth herein.

(c) Any person or licensee who, or registered company which, violates any provision of this section is guilty of a misdemeanor and is punishable as set forth in Section 8553.

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11. Code section 8550(a) states:

It is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.

12. Code section 8571 states:

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

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

13. Code section 8636 states:

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

14. Code section 8638 states:

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

15. Code section 8639 states:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.

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16. Code section 8641 states:

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

17. Code section 8642 states:

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

18. Code section 8646 states:

Disregard and violation of pesticide use and application, structural pest control device, fumigation, or extermination laws of the state or of any of its political subdivisions, or regulations adopted pursuant to those laws, is a ground for disciplinary action.

19. Code section 8652 states:

Failure of a registered company to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than three years after completion of any work or operation for the control of structural pests or organisms, is a ground for disciplinary action. These records shall be made available to the registrar during business hours.

20. Code section 8691 states:

No registered company shall engage in any of the practices for which it is required to be registered by this chapter unless it maintains such insurance policy or bond as specified in this article.

COST RECOVERY

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

WOMACK PROJECT

22. In December 2007, homeowner Candance Womack ("Womack") received a telephone call from Respondent Cal Ex, offering a free termite inspection. Womack accepted the offer. Womack told the caller that she would like fumigation and asked if they performed fumigation. The caller said yes.

1 23. On or about December 19, 2007, a man arrived at Womack's residence
2 located at 14661 El Monte Road, Lakeside, California ("Womack project"), and introduced
3 himself as "Will." "Will" inspected the windowsill, wooden trim, and sliding glass door track in
4 the living room, the wooden retaining posts, the carport framing on the exterior, and the interior
5 basement/laundry area. "Will" confirmed termite infestations, and told Womack that there was a
6 beetle infestation in the paneling on the ceiling in her kitchen. "Will" also told Womack that
7 because the infestations were spotty, it would be a waste of money to fumigate. "Will" prepared
8 an estimate for the local treatment of drywood termites and beetles for \$625. The offer included
9 a three year guarantee. Womack accepted the offer. "Will" requested and received \$312.

10 24. On or about January 2, 2008, "Will" returned to Womack's residence and
11 treated the termite infestations, but he failed to treat the beetle infestation in the kitchen. "Will"
12 requested and received the remaining balance of \$312.50.

13 25. In or about March 2008, Womack began to see evidence of termites at the
14 windowsill and sliding glass door area (the same areas "Will" inspected and treated). Womack
15 telephoned Respondent Cal Ex and spoke with Respondent Guerrero. Womack explained that
16 the termites were back at the same locations and asked if "Will" could return to treat them.
17 Respondent Guerrero scheduled an appointment to return to the Womack residence, but no one
18 showed up for the appointment.

19 26. The next day Womack called Respondent Cal Ex and spoke with
20 Respondent Guerrero. Respondent Guerrero rescheduled the appointment, but no one showed up
21 for the appointment.

22 27. Womack called Respondent Cal Ex several times and reached the answering
23 machine. Womack left numerous messages but never received a return call.

24 28. On or about April 30, 2008, the Board received a complaint from Womack.

25 29. On or about October 10, 2008, a Board representative met with Womack at
26 her residence. The Board specialist confirmed the infestations and infections of drywood
27 termites.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to File Work Activity Reports with the Board - Inspection Reports)**

3 30. Respondent Cal Ex's registration is subject to discipline under Code section
4 8641, in that in or about December 2007, Respondent failed to comply with Code section
5 8516(b), in that on the Womack project, Respondent failed to report and file with the Board, the
6 address of the property inspected or upon which work was completed, within ten (10) business
7 days after the commencement of an inspection or upon completed work.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Failure to File Work Activity Reports with the Board - Completion Notices)**

10 31. Respondent Cal Ex's registration license is subject to discipline under Code
11 section 8641, in that in or about January 2008, Respondent failed to comply with Code section
12 8518, in that on the Womack project, Respondent failed to report and file with the Board, the
13 address of the property upon which work was completed, within ten (10) working days after
14 work was completed.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Failure to Make and Keep Inspection Reports)**

17 32. Respondent Cal Ex's registration is subject to discipline under Code section
18 8652, in that on the Womack project, Respondent failed to make and keep all inspection reports,
19 contracts, documents, and records for a period of not less than three years after completion of any
20 work or operation for the control of structural pests or organisms.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Fraudulent Act)**

23 33. Respondent Cal Ex's registration is subject to discipline under Code section
24 8642, in that on the Womack project, Respondent committed fraudulent acts by failing to treat
25 the beetle infestation in the kitchen after receiving payment in full.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failed to Complete Contract for Price Stated in Contract)**

3 34. Respondent Cal Ex's registration is subject to discipline under Code section
4 8638, in that, on the Womack project, Respondent failed to complete the contract for the contract
5 price and the homeowner will be required to spend a sum in excess of the contract price to
6 complete the project in accordance with the contract.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Violation of Law - Consumer Notice)**

9 35. Respondent Cal Ex's registration is subject to discipline under Code section
10 8646, in that on or about January 2, 2008, regarding the Womack project, Respondent failed to
11 comply with Code section 8538, by failing to provide the owner of the premises with a clear
12 written notice containing the pesticide or pesticides proposed to be used, the active ingredient or
13 ingredients, and the notice required by state law, no later than prior to the application.

14 **LOMBARDO PROJECT**

15 36. On or about February 22, 2008, homeowner Salvatore Lombardo
16 ("Lombardo") received a telephone call from Respondent Cal Ex offering a free termite
17 inspection. Lombardo accepted the offer. Later that same day, Respondent Guerrero arrived at
18 Lombardo's residence, located at 3436 Hugo Street, San Diego, California ("Lombardo project"),
19 and inspected the living room, kitchen, bedroom, behind the closet, and under the exterior stairs.
20 Respondent Guerrero confirmed drywood termite infestations. Respondent Guerrero prepared an
21 estimate for treating the respective areas. The estimate included covering all holes with wood
22 puddy, using XT 2000 (orange oil), and a two year guarantee for \$525. Lombardo accepted the
23 offer. Respondent Guerrero requested and received \$300.

24 37. On or about February 23, 2008, Respondent Guerrero returned to
25 Lombardo's residence to treat the infestations. Upon completion of the work, Respondent
26 Guerrero requested and received the remaining balance of \$225.

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1 38. In or about March 2008, Lombardo discovered that Respondent Guerrero
2 failed to treat under the stairs. Lombardo contacted Respondent Guerrero. Respondent Guerrero
3 told Lombardo that he would stop by his residence and treat the area under the stairs.
4 Respondent Guerrero never returned.

5 39. On or about March 11, 2008, the Board received a complaint from
6 Lombardo.

7 40. On or about June 27, 2008, a Board specialist met with Lombardo at his
8 residence and inspected the property. The Board specialist confirmed the presence of drywood
9 termites on the interior and exterior of the property.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Failure to File Work Activity Reports with the Board - Inspection Reports)**

12 41. Respondent Cal Ex's registration and Respondent Guerrero's field
13 representative's license are subject to discipline under Code section 8641, in that in or about
14 February 2008, Respondents failed to comply with Code section 8516(b), in that on the
15 Lombardo project, Respondents failed to report and file with the Board the address of the
16 property inspected or upon which work was completed, within ten (10) business days after the
17 commencement of an inspection or upon completed work.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 **(Failure to File Work Activity Reports with the Board - Completion Notices)**

20 42. Respondent Cal Ex's registration and Respondent Guerrero's field
21 representative's license are subject to discipline under Code section 8641, in that in or about
22 February 2008, Respondents failed to comply with Code section 8518, in that on the Lombardo
23 project, Respondents failed to report and file with the Board, the address of the property upon
24 which work was completed, within ten (10) working days after work was completed.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Make Inspection Records Available)**

3 43. Respondent Cal Ex's registration is subject to discipline under Code section
4 8652, in that on the Lombardo project, Respondent failed to make and keep all inspection
5 reports, contracts, documents, and records for a period of not less than three years after
6 completion of any work or operation for the control of structural pests or organisms.

7 **TENTH CAUSE FOR DISCIPLINE**

8 **(Fraudulent Act)**

9 44. Respondent Cal Ex's registration and Respondent Guerrero's field
10 representative's license are subject to discipline under Code section 8642, in that Respondents
11 committed fraudulent acts by failing to complete the Lombardo project after receiving payment
12 in full.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Failed to Complete Contract for Price Stated in Contract)**

15 45. Respondent Cal Ex's registration is subject to discipline under Code section
16 8638, in that on the Lombardo project, Respondent failed to complete the contract for the
17 contract price by failing to treat termite infestation under the stairs, and the homeowner will be
18 required to spend a sum in excess of the contract price to complete the project in accordance with
19 the contract.

20 **TWELFTH CAUSE FOR DISCIPLINE**

21 **(Violation of Law - Consumer Notice)**

22 46. Respondent Cal Ex's registration and Respondent Guerrero's field
23 representative's license are subject to discipline under Code section 8646, in that on the
24 Lombardo project, Respondents failed to comply with Code section 8538 by failing to provide
25 the owner of the premises with a clear written notice containing the pesticide or pesticides
26 proposed to be used, the active ingredient or ingredients, and the notice required by state law, no
27 later than prior to the application.

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1 POTTER PROJECT

2 47. On or about February 26, 2008, homeowner Robert Potter ("Potter")
3 received a telephone call from Respondent Cal Ex offering a free termite inspection. Potter
4 accepted the offer.

5 48. On or about February 27, 2008, William Hughes ("Hughes"), an unlicensed
6 individual, representing Respondent Cal Ex, arrived at Potter's residence located at 8776
7 Crockett Street, La Mesa, California ("Potter project"). Hughes inspected the living room and
8 exterior roof eaves, and confirmed the presence of drywood termites. Hughes recommended a
9 local treatment using orange oil. Hughes also stated that there was fungus and termite damage at
10 the roof eaves. Hughes prepared an estimate to locally treat and repair the damaged wood for
11 \$850. Potter accepted the offer. Hughes requested and received \$425.

12 49. Respondent Cal Ex never performed any termite treatments or made any
13 repairs on the Potter project.

14 50. On or about April 11, 2008, the Board received a complaint from Potter.

15 51. On or about June 25, 2008, a Board specialist met with Potter at his
16 residence and inspected the property. The Board specialist confirmed the presence of drywood
17 termites on the interior, and drywood termites/decay fungi/termite damage on the exterior roof
18 eaves.

19 THIRTEENTH CAUSE FOR DISCIPLINE

20 **(Failure to File Work Activity Reports with the Board - Inspection Reports)**

21 52. Respondent Cal Ex's registration is subject to discipline under Code section
22 8641, in that in or about February 2008, Respondent failed to comply with Code section 8516(b),
23 in that on the Potter project, Respondent failed to report and file with the Board, the address of
24 the property inspected or upon which work was completed, within ten (10) business days after
25 the commencement of an inspection or upon completed work.

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to File Work Activity Reports with the Board - Completion Notices)**

3 53. Respondent Cal Ex's registration license is subject to discipline under Code
4 section 8641, in that in or about February 2008, Respondent failed to comply with Code section
5 8518, in that on the Potter project, Respondent failed to report and file with the Board, the
6 address of the property upon which work was completed, within ten (10) working days after
7 work was completed.

8 **FIFTEENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Make or Keep Inspection Reports)**

10 54. Respondent Cal Ex's registration is subject to discipline under Code section
11 8652, in that on the Potter project, Respondent failed to make and keep all inspection reports,
12 contracts, documents, and records for a period of not less than three years after completion of any
13 work or operation for the control of structural pests or organisms.

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

15 **(Fraudulent Act)**

16 55. Respondent Cal Ex's registration is subject to discipline under Code section
17 8642, in that on the Potter project, Respondent committed the following fraudulent acts:

18 a. On or about February 27, 2008, on behalf of Respondent Cal Ex, Hughes
19 performed a pest control evaluation, made pest identification, treatment recommendations,
20 claims of pest control safety or pest control efficacy, and offered price quotes other than what
21 was provided and printed on the company advertising or literature, or both, without being
22 licensed to do so, as defined in Code section 8550.

23 b. Respondent failed to perform any work on the Potter project after receiving
24 \$425.

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1 60. In or about June 2008, Van Dorn found evidence of termite infestations.
2 Van Dorn called Respondent Cal Ex several times and left messages on the answering machine.
3 Subsequently, Van Dorn received a telephone call from Respondent Guerrero. Respondent
4 Guerrero scheduled an appointment with Van Dorn on June 6, 2008. Respondent Cal Ex never
5 returned to the property.

6 61. On or about July 9, 2008, the Board received a complaint from Van Dorn.

7 62. On or about September 24, 2008, a Board specialist met with Mr. and Mrs.
8 Van Dorn at their residence. The Board specialist confirmed evidence of subterranean termites
9 on the interior, and live subterranean termites, live drywood termites, and termite damage on the
10 exterior of the property.

11 63. On or about September 29, 2008, the Board sent a Report of Findings to
12 Respondent Cal Ex and Respondent Donar notifying them of the complaint filed by Van Dorn
13 and violations of Code sections 8516 and 8518.

14 64. On or about October 4, 2008, Respondent Donar, Qualifying Manager of
15 Respondent Cal Ex, and Leticia Beltran, owner of Respondent Cal Ex, signed and received the
16 notice of the Report of Findings.

17 65. Respondent Cal Ex failed to respond.

18 66. On or about November 4, 2008, Respondent Donar reimbursed Van Dorn in
19 full for \$700.

20 **EIGHTEENTH CAUSE FOR DISCIPLINE**

21 **(Failure to File Work Activity Reports with the Board - Inspection Reports)**

22 67. Respondent Cal Ex's registration, Respondent Donar's operator's license,
23 and Respondent Guerrero's field representative license are subject to discipline under Code
24 section 8641, in that in or about April 2008, Respondents failed to comply with Code section
25 8516(b), in that on the Van Dorn project, Respondents failed to report and file with the Board,
26 the address of the property inspected or upon which work was completed, within ten (10)
27 business days after the commencement of an inspection or upon completed work.

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1 NINETEENTH CAUSE FOR DISCIPLINE

2 (Failure to File Work Activity Reports with the Board - Completion Notices)

3 68. Respondent Cal Ex's registration, Respondent Donar's operator's license,
4 and Respondent Guerrero's field representative license are subject to discipline under Code
5 section 8641, in that in or about April 2008, Respondents failed to comply with Code section
6 8518, in that on the Van Dorn project, Respondents failed to report and file with the Board, the
7 address of the property upon which work was completed, within ten (10) working days after
8 work was completed.

9 TWENTIETH CAUSE FOR DISCIPLINE

10 (Failure to Make Inspection Records Available)

11 69. Respondent Cal Ex's registration is subject to discipline under Code section
12 8652, in that on the Van Dorn project, Respondent failed to make and keep all inspection reports,
13 contracts, documents, and records for a period of not less than three years after completion of any
14 work or operation for the control of structural pests or organisms.

15 TWENTY-FIRST CAUSE FOR DISCIPLINE

16 (Fraudulent Act)

17 70. Respondent Cal Ex's registration, Respondent Donar's operator's license,
18 and Respondent Guerrero's field representative license are subject to discipline under Code
19 section 8642, in that on the Van Dorn project, Respondents committed fraudulent acts by failing
20 to treat the beetle infestation in the kitchen after receiving payment in full.

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1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

2 **(Failed to Complete Contract for Price Stated in Contract)**

3 71. Respondent Cal Ex's registration is subject to discipline under Code section
4 8638, in that on the Van Dorn project, Respondent failed to complete the contract for the contract
5 price and the homeowner will be required to spend a sum in excess of the contract price to
6 complete the project in accordance with the contract.

7 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

8 **(Violation of Law - Consumer Notice)**

9 72. Respondent Cal Ex's registration, Respondent Donar's operator's license,
10 and Respondent Guerrero's field representative license are subject to discipline under Code
11 section 8646, in that on the Van Dorn project, Respondents failed to comply with Code section
12 8538, by failing to provide the owner of the premises with a clear written notice containing the
13 pesticide or pesticides proposed to be used, the active ingredient or ingredients, and the notice
14 required by state law, no later than prior to the application.

15 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Notify the Board of Disassociation of Qualifying Manager)**

17 73. Respondent Cal Ex's company registration is subject to discipline under
18 Code section 8641, in that Respondent failed to comply with Code section 8571 by failing to
19 notify the Board within ten (10) days of the disassociation of Qualifying Manager, Thomas James
20 Donar.

21 **EHELBERGER PROJECT**

22 74. On or about July 25, 2008, homeowner Jean Echelberger ("Echelberger")
23 received a telephone call from Respondent Cal Ex, who offered Echelberger a free termite
24 inspection. Echelberger accepted the offer.

25 75. On or about July 26, 2008, a man arrived at Echelberger's residence located
26 at 13222 Idyl Drive, Lakeside, California ("Echelberger project"). The man did not identify
27 himself, but stated that he was from Cal Ex. He asked Echelberger where she had seen termites.
28 The man inspected the areas and confirmed drywood termite infestations. The man stated that

1 fumigation was not necessary stating that, "Orange oil will take care of the termites."
2 Echelberger understood that she would not be required to leave her home for 3-4 days, unlike
3 fumigations. The man did not go under the house or in the attic. The man prepared an
4 estimate/contract entitled "Cal Ex Termite service agreement." The contract amount was
5 \$1,220.00. Echelberger accepted the offer. The man requested and received \$610. The check
6 was made payable to Israel Guerrero.

7 76. On or about July 28, 2008, two men arrived at Echelberger's residence. One
8 of the men identified himself as Israel Guerrero. A man named Hector accompanied Guerrero.
9 Guerrero asked Echelberger where the termites were. She showed him the areas she knew to
10 have termites. Guerrero looked inside the home and into the attic, at the shop Echelberger
11 wanted fumigated and at the exterior perimeter of the property. Guerrero told her fumigation was
12 not necessary, that orange oil would take care of the termites. Guerrero told her there is dryrot at
13 the roof eave near the front door. Guerrero said he needed an additional \$400.00 to complete the
14 repairs. Echelberger wrote a check to Israel Guerrero for an additional \$400.00.

15 77. On or about July 29, 2008, Guerrero and Hector returned to the property.
16 Guerrero requested and received an additional \$1,035.00 for lumber and roofing material.

17 78. On or about July 30, 2008, Guerrero and Hector returned to the property.
18 Guerrero requested and received an additional \$350.00 for repairs.

19 79. Guerrero was expected to return and continue working the following day,
20 however, he did not return as scheduled. Echelberger made numerous telephone calls to
21 Guerrero who repeatedly promised to return. Respondent Cal Ex never returned to the property.

22 80. At some point, the original contract was replaced with a document entitled
23 Cal Ex Termite service agreement dated July 26, 2008 and containing notations regarding
24 additional charges for material, labor, and replacing the side patio cover with fiberglass paneling.

25 81. On or about October 9, 2008, the Board received a complaint from
26 Echelberger. Echelberger paid a total of \$2,395.00 to Guerrero.

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TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Failure to File Work Activity Reports with the Board - Inspection Reports)

82. Respondent Cal Ex's registration, Respondent Donar's operator's license, and Respondent Guerrero's field representative license are subject to discipline under Code section 8641, in that in or about July 2008, Respondents failed to comply with Code section 8516 (b), in that on the Echelberger project, Respondents failed to report and file with the Board, the address of the property inspected or upon which work was completed, within ten (10) business days after the commencement of an inspection or upon completed work.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to File Work Activity Reports with the Board - Completion Notices)

83. Respondent Cal Ex's registration, Respondent Donar's operator's license, and Respondent Guerrero's field representative license are subject to discipline under Code section 8641, in that in or about July 2008, Respondents failed to comply with Code section 8518, in that on the Echelberger project, Respondents failed to report and file with the Board, the address of the property upon which work was completed, within ten (10) working days after work was completed.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Make Inspection Records Available)

84. Respondent Cal Ex's registration is subject to discipline under Code section 8652, in that on the Echelberger project, Respondent failed to make and keep all inspection reports, contracts, documents, and records for a period of not less than three years after completion of any work or operation for the control of structural pests or organisms.

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1 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

2 (Fraudulent Act)

3 85. Respondent Cal Ex's registration, Respondent Donar's operator's license,
4 and Respondent Guerrero's field representative license are subject to discipline under Code
5 section 8642, in that on the Echelberger project, Respondents committed fraudulent acts by
6 failing to treat the drywood termites and replace termite and fungus damage after receiving
7 payment.

8 TWENTY-NINTH CAUSE FOR DISCIPLINE

9 (Failed to Complete Contract for Price Stated in Contract)

10 86. Respondent Cal Ex's registration is subject to discipline under Code section
11 8638, in that on the Echelberger project, Respondent failed to complete the contract for the
12 contract price and the homeowner will be required to spend a sum in excess of the contract price
13 to complete the project in accordance with the contract.

14 THIRTIETH CAUSE FOR DISCIPLINE

15 (Failure to Complete Repairs in a Workmanlike Manner)

16 87. Respondent Cal Ex's company registration, Respondent Donar's operator's
17 license, and Respondent Guerrero's field representative license are subject to discipline under
18 Code section 8636, in that on the Echelberger project, Respondents failed to complete repairs in
19 a workmanlike manner.

20 THIRTY-FIRST CAUSE FOR DISCIPLINE

21 (Failure to Notify the Board of Disassociation of Qualifying Manager)

22 88. Respondent Cal Ex's company registration is subject to discipline under
23 Code section 8641, in that Respondent failed to comply with Code section 8571 by failing to
24 notify the Board within ten (10) days of the disassociation of Qualifying Manager, Thomas James
25 Donar.

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THIRTY-SECOND CAUSE FOR DISCIPLINE

(Failure to Make a Proper Treatment Recommendation)

89. Respondent Cal Ex's registration, Respondent Donar's operator's license, and Respondent Guerrero's field representative license are subject to discipline under Code section 8641, in that in or about July 2008, Respondents failed to comply with Code section 8516 (b)(10), in that on the Echelberger project, Respondents failed to make a proper treatment recommendation.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain an Insurance Policy)

90. Respondent Cal Ex's registration is subject to discipline under Code section 8641, in that in or about March 2008 through August 2008, Respondents failed to comply with Code section 8691, in that it failed to maintain an insurance policy.

OTHER MATTERS

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

92. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 5440, issued to Cal Ex Termite Control, likewise constitute cause for discipline against Operator's License Number OPR 11424, issued to Thomas James Donar, who served as the Qualifying Manager of Cal Ex Termite Control¹, regardless of whether Thomas James Donar had knowledge of or participated in the acts or omissions which constitute cause for discipline against Cal Ex Termite Control.

1. Thomas James Donar served the Qualifying Manager of Cal Ex Termite Control between March 7, 2008, and June 9, 2008.

1 93. Pursuant to Code section 8654, if discipline is imposed on Company
2 Registration Certificate Number PR 5440, issued to Cal Ex Termite Control, then Thomas James
3 Donar, who served as the Qualifying Manager of Cal Ex Termite Control, shall be prohibited
4 from serving as an officer, director, associate, partner, qualifying manager, or responsible
5 managing employee for any registered company during the time the discipline is imposed, and
6 any registered company which employs, elects, or associates him, shall be subject to disciplinary
7 action.

8 94. Israel Ernesto Guerrero, a field representative employed by Cal Ex Termite
9 Control had knowledge of and participated in the acts or omissions which constitute cause for
10 discipline against Cal Ex Termite Control.

11 95. Pursuant to Code section 8654, if discipline is imposed on Company
12 Registration Certificate Number PR 5440, issued to Cal Ex Termite Control, then Israel Ernesto
13 Guerrero, a field representative employed by Cal Ex Termite Control, shall be prohibited from
14 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
15 employee of a registered company, and the employment, election or association of him by a
16 registered company is a ground for disciplinary action.

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

20 PRAYER

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

- 23 1. Revoking or suspending Company Registration Certificate Number
24 PR 5440, issued to Cal Ex Termite Control with Leticia Beltran as the owner;
- 25 2. Revoking or suspending Operator's License Number OPR 11424, issued to
26 Thomas James Donar;
- 27 3. Revoking or suspending any other license for which Thomas James Donar is
28 furnishing the qualifying experience or appearance;

1 4. Revoking or suspending Field Representative License No. FR 34068, issued
2 to Israel Ernesto Guerrero;

3 5. Prohibiting Thomas James Donar from serving as an officer, director,
4 associate, partner, qualifying manager or responsible managing employee of any registered
5 company during the period that discipline is imposed on Company Registration Certificate
6 Number PR 5440, issued to Cal Ex Termite Control;


7 6. Prohibiting Israel Ernesto Guerrero from serving as an officer, director,
8 associate, partner, qualifying manager or responsible managing employee of any registered
9 company during the period that discipline is imposed on Company Registration Certificate
10 Number PR 5440, issued to Cal Ex Termite Control;

11 7. Ordering restitution of all damages according to proof suffered by any
12 person as a result of an operation or construction repairs as a condition of probation in the event
13 probation is ordered.

14 8. Ordering Cal Ex Termite Control, Thomas James Donar, and Israel Ernesto
15 Guerrero to pay the Structural Pest Control Board the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

17 9. Taking such other and further action as deemed necessary and proper.

18 DATED: 10-6-09

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20 KELLI OKUMA
21 Registrar
22 Structural Pest Control Board
23 Department of Consumer Affairs
24 State of California
25 Complainant

26 SD2009308353