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**FILED**

Date 2/21/14 By 

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

11 In the Matter of the First Amended Accusation Against:

Case No. 2013-39

12 **MARK ANTHONY GRUBERT**  
13 **6278 Prentis Court**  
**Magalia, CA 95954**

**FIRST AMENDED**

**ACCUSATION**

14 **Field Representative License No. FR 37981**  
15 **Branches 2 and 3<sup>1</sup>**

16 Respondent.

17 Susan Saylor ("Complainant") alleges:

18 **PARTIES**

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

22 2. On or about November 29, 2004, the Board issued Field Representative License  
23 Number FR 37981 in Branch 3, to Mark Anthony Grubert ("Respondent"), as an employee of  
24 Terminix International Company L P. On or about December 6, 2004, the license was upgraded

25  
26 <sup>1</sup> Pursuant to Business and Professions Code section 8560, subdivision (a), Branch 2,  
27 general pest, is "[T]he practice relating to the control of household pests, excluding fumigation  
28 with poisonous or lethal gases," and Branch 3, termite, is "[T]he practice relating to the control of  
wood-destroying pests or organisms by the use of insecticides, or structural repairs and  
corrections excluding fumigation with poisonous or lethal gases."

1 to include Branch 2. On or about May 20, 2005, Respondent left the employ of Terminix  
2 International Company L.P. On or about December 2, 2010, Respondent became employed with  
3 Hunters Pest Control, Inc. On or about June 2, 2011, Respondent left the employ of Hunters Pest  
4 Control, Inc. and became employed with Hunters Services, Inc. On or about March 5, 2012,  
5 Respondent left the employ of Hunters Services, Inc. and his license was placed on an inactive<sup>2</sup>  
6 status. The license will expire on June 30, 2016, unless renewed.

### 7 JURISDICTION

8 3. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that  
9 the Board may suspend or revoke a license when it finds that the holder, while a licensee or  
10 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu  
11 of a suspension may assess a civil penalty.

12 4. Code section 8623 provides that the board may revoke, suspend, or deny at any time a  
13 license on any of the grounds for disciplinary action under the Structural Pest Control Operators  
14 law [Bus. & Prof. Code §§ 8500 set seq.].

15 5. Code section 8625 states:

16 The lapsing or suspension of a license or company registration by operation of  
17 law or by order or decision of the board or a court of law, or the voluntary  
18 surrender of a license or company registration shall not deprive the board of  
19 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.

### 20 STATUTORY PROVISIONS

21 6. Code section 8506.1 states, in pertinent part:

22 A "registered company" is any sole proprietorship, partnership, corporation,  
23 or other organization or any combination thereof that is registered with the  
Structural Pest Control Board to engage in the practice of structural pest control.

24 A registered company may secure structural pest control work submit bids, or  
25 otherwise contract for pest control work. A registered company may employ  
26 licensed field representatives and licensed operator to identify infestations or  
infections, make inspections, and represent the company in the securing of pest  
control work.

27 <sup>2</sup> "Inactive" means that the licensee is not actively employed in structural pest control.  
28 The licensee is not permitted to practice while the license is inactive.

1 7. Code section 8507 states, in pertinent part:

2 (a) "Structural pest control field representative" is any individual who is  
3 licensed by the board to secure structural pest control work, identify infestations or  
4 infections, make inspections, apply pesticides, submit bids for or otherwise  
contract, on behalf of a registered company.

5 A pest control field representative shall not contract for pest control work or  
6 perform pest control work on his or her own behalf.

7 8. Code section 8550 states, in pertinent part:

8 (a) It is unlawful for any individual to engage or offer to engage in the  
9 business or practice of structural pest control, as defined in Section 8505, unless he  
10 or she is licensed under this chapter. Each registered company shall designate an  
11 individual or individuals who hold an operator's license to act as its qualifying  
manager or managers. The qualifying manager or managers must be licensed in  
each branch of pest control in which the company engages in business. The  
designated qualifying manager or managers shall supervise the daily business of the  
company and shall be available to supervise and assist all employees of the  
company, in accordance with regulations which the board may establish.

12 (e) It is unlawful for any firm, sole proprietorship, partnership, corporation,  
13 association, or other organization or combination thereof to engage or offer to engage  
14 in the practice of structural pest control unless registered in accordance with Article 6  
(commencing with Section 8610).

15 9. Code section 8552 states, in pertinent part:

16 It is unlawful for any person to advertise or represent in any manner that any  
17 pest control work, in whole or in part, has been done upon any structure, unless the  
work has been performed by a company registered under this chapter.

18 10. Code section 8553 states:

19 Any person who violates any provision of this chapter, or who conspires  
20 with another person to violate any provision of this chapter, is guilty of a  
21 misdemeanor, and is punishable by a fine of not less than one hundred dollars  
(\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the  
county jail for not more than six months, or by both such fine and imprisonment.

22 11. Code section 8610, states, in pertinent part:

23 (a) Every company that engages in the practice of structural pest control as a  
24 sole proprietorship, partnership, corporation, or other organization or any  
25 combination thereof, shall be registered with the Structural Pest Control Board.  
26 Each application for a company registration shall include the name of the  
27 company's owner if it is a sole proprietorship, the name of the partners, if it is  
28 partnership, or the names of its officers and shareholders with 10 percent or more  
ownership interest, if it a corporation, and the address of the company's principal  
office in this states.

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12. 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.

13. 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.

14. Code section 8648 states:

Authorizing, directing, conniving at or aiding in the publication, advertisement, distribution or circulation of any material by false statement or representation concerning a registered company's business is a ground for disciplinary action.

15. Code section 8649 of the Code states:

Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof.

16. Code section 8655 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article of Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 12031.4 of the Penal Code allowing the individual or registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

17. Code section 8650 states:

Acting in the capacity of a licensee or registered company under any of the licenses or registrations issued hereunder except:

(a) In the name of the licensee or registered company as set forth upon the license or registration, or

1 (b) At the address and location or place or places of business as licensed or  
2 registered or as later changed as provided in this chapter is a ground for  
disciplinary action.

3 18. Code section 490 states, in pertinent part:

4 (a) In addition to any other action that a board is permitted to take against a  
5 licensee, a board may suspend or revoke a license on the ground that the licensee  
6 has been convicted of a crime, if the crime is substantially related to the  
qualifications, functions, or duties of the business or profession for which the  
license was issued.

7 (b) Notwithstanding any other provision of law, a board may exercise any  
8 authority to discipline a licensee for conviction of a crime that is independent of  
9 the authority granted under subdivision (a) only if the crime is substantially related  
to the qualifications, functions, or duties of the business or profession for which  
the licensee's license was issued.

10 (c) A conviction within the meaning of this section means a plea or verdict  
11 of guilty or a conviction following a plea of nolo contendere. An action that a  
12 board is permitted to take following the establishment of a conviction may be  
13 taken when the time for appeal has elapsed, or the judgment of conviction has been  
affirmed on appeal, or when an order granting probation is made suspending the  
imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
the Penal Code.

14 19. Section 17500 of the Code states, in pertinent part:

15 It is unlawful for any person, firm, corporation or association, or any  
16 employee thereof with intent directly or indirectly. . . to perform services,  
17 professional or otherwise, or anything of any nature whatsoever or to induce the  
18 public to enter into any obligation relating thereto, to make or disseminate or cause  
19 to be made or disseminated before the public in this state, or to make or  
disseminate or cause to be made or disseminated from this state before the public  
in any state, in any newspaper or other publication, or any advertising device, or by  
public outcry or proclamation, or in any other manner or means whatever,  
including over the Internet, any statement, concerning . . . those services,  
20 professional or otherwise, or concerning any circumstance or matter of fact  
21 connected with the proposed performance or disposition thereof, which is untrue or  
misleading, and which is known, or which by the exercise of reasonable care  
22 should be known, to be untrue or misleading, . . . Any violation of the provisions  
of this section is a misdemeanor punishable by imprisonment in the county jail not  
23 exceeding six months, or by a fine not exceeding two thousand five hundred  
dollars (\$2,500), or by both that imprisonment and fine.

24 **REGULATORY PROVISION**

25 20. California Code of Regulations, Title 16, section 1937.1 states, in pertinent  
26 part:

27 For the purposes of denial, suspension or revocation of a license or company  
28 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a  
crime or act shall be considered to be substantially related to the qualifications,

1 functions or duties of a licensee or registered company under Chapter 14 of  
2 Division 3 of the code if to a substantial degree it evidences present or potential  
3 unfitness of such licensee or registered company to perform the functions  
4 authorized by the license or company registration in a manner consistent with the  
5 public health, safety, or welfare. Such crimes or acts shall include, but not be  
6 limited to, the following:

7 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

#### 8 COST RECOVERY AND RESTITUTION

9 21. Code section 125.3 provides, in pertinent part, that the Board may request the admini-  
10 strative law judge to direct a licentiate found to have committed a violation or violations of the  
11 licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement  
12 of the case.

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

#### 16 BACKGROUND INFORMATION

17 23. On or about April 4, 2012, the Board received a complaint from C.S., the owner of  
18 Hunters Pest Control Inc. ("Hunters"). C.S. stated that Respondent, who was terminated from his  
19 company on March 2, 2012, had been selling, soliciting, and performing termite treatments on his  
20 own behalf without being properly licensed, and had been soliciting his pest control customers  
21 after being terminated. C.S. provided the Board representative with a list of customers/real estate  
22 agents who Respondent had done work for while employed at his company, and with the name,  
23 address, and an invoice dated March 12, 2012, bearing the name "Mark Grubert Services" for one  
24 of his customers by the name of C.W., located at 741 Roberts Rd., Paradise, California, for whom  
25 Respondent had performed termite treatment on his own behalf.

26 24. On or about May 9, 2012, a Board representative went to C.W.'s property and spoke  
27 with C.W. She stated that she hired Hunters to do an inspection of her home. After C.W.  
28 received the inspection report and bid from Hunters, she was contacted by Respondent, who told  
her that he had left the employment of Hunters and started his own business using a friend's  
license and could do the work for less than the original bid from Hunters. C.W. hired Respondent  
to do the work, which was performed on March 13, 2012. C.W. paid Respondent \$800.00.

1           25. On or about June 27, 2012, a Board representative contacted Respondent to discuss  
 2 his work and activities. Respondent admitted that he had been doing inspections, repair work,  
 3 termite treatments, and general pest control work. In addition, Respondent admitted that he had  
 4 performed 10-12 inspections for real estate agents since being terminated from Hunters, using the  
 5 name and company registration number of John Moss Pest Control, PR 6242, on inspection  
 6 reports without J.M.'s knowledge or authorization and without disclosing to the real estate agents  
 7 that he was not properly licensed.

8           26. On or about July 17, 2012, Respondent provided a Board representative with three  
 9 Wood Destroying Pests and Organisms Inspection Reports (Inspection Reports) and one Standard  
 10 Notice of Work Completed and Not Completed ("NOC") that he had performed at the following  
 11 addresses, bearing the name "John Moss Pest Control" and company registration number  
 12 PR 6242.

Property	Dated	Ordered by
508-945 Stone Rd., Susanville, California	March 18, 2012	Susan River Realty – L.S.
478-825 Alta Dr., Susanville, California NOC	March 23, 2012 April 2, 2012	Town & Country – T.C.
709 North St., Susanville, California	April 2, 2012	Susan River Realty – "D"

18           27. On or about July 18, 2012, a Board representative met with J.M. J.M. stated that he  
 19 did not give Respondent authorization to use his name, company registration number, or issue  
 20 inspection reports, or any documents with his name or company registration number on it.

21           28. On or about July 19, 2012, a Board representative called and spoke to various real  
 22 estate companies based on information received during the investigation, including the list of  
 23 customers and real estate agents provided by Hunters, who may have used Respondent to perform  
 24 inspections. The Board representative found that Respondent performed inspections and prepared  
 25 Inspection Reports using J.M.'s name and company registration number at the following  
 26 locations:

Property	Dated	Ordered by
8648 Cohasset Rd., Cohasset, California	May 7, 2012	I.C.

Property	Dated	Ordered by
101 5 <sup>th</sup> St., Orland, California	May 25, 2012	Keller Williams-K.H.
1095 Overlook, Susanville, California	July 5, 2012	Town & Country-T.C.
470-930 Wingfield Rd., Susanville, California	April 27, 2012	Town & Country - T.C.
2695 Johnstoneville Rd., #2, Susanville, California	July 5, 2012	Town & Country - A.J.
710-205 Center Rd., Susanville, California	July 18, 2012	Town & Country - A.J.
220 N. McDow St., Susanville, California Supplemental Inspection and NOC	May 8, 2012 May 15, 2012	Century 21 - N.H-R.
820 Ellen Ave., Portola, California NOC	April 20, 2012 May 4, 2012	Coldwell Banker - L.B.
12 Graeagle Meadows, Blairsden-Graeagle, CA	April 27, 2012	Coldwell Banker - L.B.
1145 Cherry Cr., Portola, California NOC	May 15, 2012 June 7, 2012	Coldwell Banker - B.H.
28 White St., Loyalton, California	May 22, 2012	Coldwell Banker - L.B.
333 Sixth Ave., Portola, California	July 5, 2012	Coldwell Banker - L.B.
708 Roundup Rd., Loyalton, California	July 24, 2012	Coldwell Banker - L.B.
69950 Mule Deer Rd., Clio, California	July 24, 2012	Coldwell Banker - L.B.
437 Cedar Ridge, Portola, California	July 31, 2012	F.M.
250 Monument Ct., Chilcoot, California	July 31, 2012	Coldwell Banker - L.B.
515 Lincoln, Sierraville, California	July 31, 2012	Coldwell Banker - L.B.
209 Calpine Ave., Calpine, California	July 31, 2012	Coldwell Banker - L.B.

29. On or about July 11, 2013, Respondent performed a complete inspection of the property located at 126 Poplar Valley Road, Blairsden-Graeagle, California, owned by J.L.



1 Respondent issued an Inspection Report under the name "Big Country Pest Services Inc.," 6278  
2 Prentis Court, Magalia, California, with the typed statement "A Licensed Pest Control Operator is  
3 an Expert in His/Her Field. Questions Should Be Referred to Him/Herself," and Respondent's  
4 printed name and signature. Big Country Pest Services Inc. is not a licensee of the Board.  
5 Respondent issued a NOC to J.L. stating Big Country Pest Services Inc., dated July 11, 2013,  
6 noting items completed, and an invoice for \$615.00.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Contracting for and Performing Pest Control Work on Own Behalf)**

9 30. Respondent's field representative's license is subject to discipline under Code section  
10 8641, in that between March 13 and July 31, 2012, and on July 11, 2013, Respondent secured  
11 structural pest control work, identified infestations or infections, performed inspections, and  
12 submitted bids on his own behalf, without holding a company registration, in violation of Code  
13 section 8507, subdivision (a), as alleged in paragraphs 13 through 29, above, incorporated herein  
14 by reference.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unlicensed Activity)**

17 31. Respondent's field representative's license is subject to discipline under Code  
18 section 8641, in that between March 13 and July 31, 2012, and on July 11, 2013, as follows:

19 a. **Section 8550:** Respondent violated this section in that he engaged in the business or  
20 practice of structural pest control on his own behalf without being properly licensed as an  
21 operator and/or registered company by the Board, as alleged in paragraphs 23 through 29, above,  
22 incorporated herein by reference.

23 b. **Section 8552:** Respondent violated this section in that he made representations that  
24 pest control work performed had been performed by a properly licensed operator and/or  
25 registered company when, in fact, it was not, as alleged in paragraphs 23 through 29, above,  
26 incorporated herein by reference.

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**THIRD CAUSE FOR DISCIPLINE**

**(Acting in the Capacity of a Registered Company)**

32. Respondent's field representative's license is subject to discipline under Code section 8641, in that between March 13 and July 31, 2012, and on July 11, 2013, Respondent failed to comply with Code section 8610, subdivision (a), by engaging in the practice of structural pest control without being registered with the Board, as alleged in paragraphs 23 through 29, above, incorporated herein by reference.

**FOURTH CAUSE FOR DISCIPLINE**

**(Fraudulent Act)**

33. Respondent's field representative's license is subject to discipline under Code section 8642, in that between March 13 and July 31, 2012, and on July 11, 2013, as follows:

a. Respondent committed acts constituting fraud by engaging in or offering to engage in the practice of structural pest control work on his own behalf without being properly licensed or registered with the Board and performing structural pest control inspections, as alleged in paragraphs 23 through 29, above, incorporated herein by reference.

b. Respondent fraudulently represented himself to consumers as an entity of John Moss Pest Control, in that Respondent used the name and company registration number (PR 6242) of John Moss Pest Control on inspection reports and NOC without J.M.'s knowledge or authorization, as alleged in paragraphs 25 through 28, above, incorporated herein by reference.

**FIFTH CAUSE FOR DISCIPLINE**

**(False Statement; False Advertising)**

34. Respondent's field representative's license is subject to discipline under Code section 8641, in that between March 13 and July 31, 2012, and on July 11, 2013, as follows:

a. **Section 8648:** Respondent violated this section in that he committed acts of authorizing, directing, conniving at or aiding in the publication, advertisement, distribution or circulation of materials by false statement or representation concerning John Moss Pest Control (PR6242) in that he falsely advertised and made false statements using J.M.'s name and company registration number to perform numerous inspections and issued Inspection Reports and a NOC,

1 as alleged in paragraphs 25 through 28, above, and performed an inspection and issued an  
2 Inspection Report under "Big Country Pest Services Inc.," an unlicensed entity, as alleged in  
3 paragraph 29, above, all of which are incorporated herein by reference.

4 b. **Section 17500:** Respondent violated this section in that he committed acts  
5 constituting false advertising by performing structural pest control work on his own behalf  
6 without being properly licensed or registered with the Board, performed structural pest control  
7 inspections, and disseminated to the public publications falsely advertising that he was a licensee  
8 of the Board or giving the false impression that he was a Board licensee, as alleged in paragraphs  
9 23 through 29, above, incorporated herein by reference. Respondent knew that his statements  
10 were untrue and/or misleading, or with the exercise of reasonable care should have known them  
11 to be untrue or misleading.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Criminal Conviction)**

14 35. Respondent's field representative's license is subject to discipline under Code sections  
15 8649 and 490, in that on or about October 9, 2013, Respondent was convicted in the case titled  
16 *People v. Mark Grubert*, Lassen County Superior Court Case No. CR030921, on his plea of  
17 guilty to one count of violating Business and Professions Code ("Code") sections 8550 [engaging  
18 in structural pest control services without a license], one count of violating Code section 8552  
19 [representing pest control work was done by a licensed company], both misdemeanors under  
20 Code section 8553 [conviction and penalty]. Said crimes are substantially related to the  
21 qualifications, functions, and duties of a licensed structural pest control operator.

22 a. The underlying circumstances of the crime are: On or about January 1, 2012, and  
23 July 18, 2012, Respondent engaged in acts violating Code section 8550 in that he willfully and  
24 unlawfully engaged in and offered to engage in the business of structural pest control with a  
25 license, and, further, engaged in acts violating Code section 8552 in that he willfully and  
26 unlawfully advertised and represented that pest control work had been done on a structure when it  
27 was not performed by a licensed company. Paragraphs 23 through 28, above, state Respondent's  
28 unlawful acts and are incorporated herein by this reference.

1 **OTHER MATTERS**

2 36. Notice is hereby given that section 8620 of the Code 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. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a  
7 suspension.

8 37. Pursuant to Code section 8654, if discipline is imposed on Field Representative's  
9 License Number FR 37981, issued to Mark Anthony Grubert, the Respondent shall be prohibited  
10 from serving as an officer, director, associate, partner, qualifying manager, or responsible  
11 managing employee for any registered company during the time the discipline is imposed, and  
12 any registered company which employs, elects, or associates him, shall be subject to disciplinary  
13 action.

14 **PRAYER**

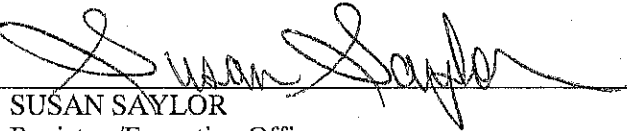
15 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Structural Pest Control Board issue a decision:

- 17 1. Revoking or suspending Field Representative's License Number 37981, issued to Mark  
18 Anthony Grubert;
- 19 2. Revoking or suspending any other license for which Mark Anthony Grubert is  
20 furnishing the qualifying experience or appearance;
- 21 3. Ordering restitution of all damages according to proof suffered by any persons as a  
22 condition of probation in the event probation is ordered;
- 23 4. Prohibiting Mark Anthony Grubert from serving as an officer, director, associate,  
24 partner, qualifying manager or responsible managing employee of any registered company during  
25 the period that discipline is imposed on Field Representative's License Number FR 37981, issued  
26 to Mark Anthony Grubert;
- 27  
28

1           5. Ordering Mark Anthony Grubert to pay the Structural Pest Control Board the  
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 125.3; and,

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

5  
6 DATED: 2/21/14



SUSAN SAYLOR  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
*Complainant*

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