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

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|---|---|
| In the Matter of the Accusation Against:<br><br>ATLAS TERMITE COMPANY<br>25 Second Avenue<br>Chula Vista, CA 91910<br><br>JOSEPH ANTHONY OLIVARRIA,<br>Owner and Qualifying Manager<br>Company Registration Certificate No. PR 1750 in Br. 1 and 3<br><br>JOSEPH ANTHONY OLIVARRIA<br>25 Second Avenue<br>Chula Vista. CA 91910<br>Operator's License No. OPR 8471 in Br. 1 and 3<br><br>ADRIAN PAUL OLIVARRIA<br>25 Second Avenue<br>Chula Vista. CA 91910<br>Field Representative No. FR 38599 in Br. 1<br><br>Respondents. | CASE NO. 2010-82<br><br>**DECISION AND ORDER AFTER REMAND FROM SUPERIOR COURT** |

On or about June 16, 2010, Complainant Kelli Okuma, as Registrar/Executive Officer of the Structural Pest Control Board ("Board") filed Accusation No. 2010-82 against Respondents ATLAS TERMITE COMPANY, JOSEPH ANTHONY OLIVARRIA and ADRIAN PAUL OLIVARRIA ("Respondents"). Respondents failed to file a timely Notice of Defense.

On or about September 29, 2010, the Board issued a Default Decision and Order

(Decision) in Accusation No. 2010-82. In the Decision, the Board made findings that Respondents waived the right to a hearing to contest the merits of the Accusation, that Respondents were in default, and that Respondents committed acts constituting grounds for disciplinary action. On that basis, the Board revoked Respondents Licenses Nos. PR 1750, OPR 8471 and FR 38599. The Board issued the order on September 29, 2010, effective October 29, 2010.

Thereafter, Respondent filed a Petition for Writ of Administrative Mandamus ("Petition") in San Diego Superior Court. To resolve the writ petition without further litigation or court appearances, the parties to that action entered into the Stipulation for Remand and Order, attached hereto as Exhibit A, which has been entered as an order by the Superior Court.

Pursuant to the Stipulation for Remand and Order:

1. The default judgment has been set aside.

2. The Superior Court, without ruling on the merits of the Petition, has remanded the matter to the Board for further consideration, thereby vesting the Board with jurisdiction to take further action.

3. Having considered the Stipulation for Remand and Order and the Stipulated Settlement and Disciplinary Order, a copy of which is attached hereto as Exhibit B, the Board hereby adopts the Stipulated Settlement and Disciplinary Order as its final order in this matter.

IT IS SO ORDERED.

FOR THE STRUCTURAL PEST CONTROL BOARD OF THE DEPARTMENT OF PESTICIDE REGULATION

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

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| In the Matter of the Accusation Against:<br><br>**ATLAS TERMITE COMPANY; JOSEPH ANTHONY OLIVARRIA, QUALIFYING MANAGER; ADRIAN PAUL OLIVARRIA**<br>**25 2nd Avenue**<br>**Chula Vista, CA 91910**<br>**Company Registration No. PR 1750**<br>**Operator's License No. OPR 8471**<br>**Field Representative No. FR 38599**<br><br>Respondents. | Case No. 2010-82 |

## DECISION AND ORDER

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

This Decision shall become effective on February 23, 2011.

It is so ORDERED January 24, 2011.

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

EDMUND G. BROWN JR.
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LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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*Attorneys for Complainant*

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

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| In the Matter of the Accusation Against:<br><br>**ATLAS TERMITE COMPANY**<br>**25 Second Avenue**<br>**Chula Vista, CA 91910**<br>**JOSEPH ANTHONY OLIVARRIA,**<br>**Owner and Qualifying Manager**<br>**Company Registration Certificate No. PR 1750 in Br. 1 and 3**<br><br>**JOSEPH ANTHONY OLIVARRIA,**<br>**25 Second Avenue**<br>**Chula Vista, CA 91910**<br>**Operator's License No. OPR 8471 in Br. 1 and 3**<br><br>**ADRIAN PAUL OLIVARRIA**<br>**25 Second Avenue**<br>**Chula Vista, CA 91910**<br>**Field Representative No. FR 38599 in Br. 1**<br><br>Respondents. | Case No. 2010-82<br><br>**STIPULATED SETTLEMENT**<br><br>**AND DISCIPLINARY ORDER** |

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

PARTIES

1. Complainant Kelli Okuma is the Registrar/Executive Officer of the Structural Pest Control Board (Board). She brought this action solely in her official capacity and is represented

in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by G. Michael German, Deputy Attorney General.

2. Respondents Atlas Termite Company; Joseph Anthony Olivarria, Owner and Qualifying Manager; and Adrian Paul Olivarria are represented in this proceeding by attorney Mark K. Stender, Higgs, Fletcher & Mack LLP, 401 West A Street, Ste. 2600, San Diego, CA 92101 (619) 236-1551.

## LICENSE HISTORIES

### COMPANY REGISTRATION CERTIFICATE NO. PR 1750

3. On December 6, 1989, Company Registration Certificate No. PR 1750 was issued in Branch 1 to Atlas Termite Company with Joseph Anthony Olivarria (Olivarria) as Owner and Qualifying Manager with an address of 5644 Kearny Mesa Road, Suite Q, San Diego, California 92111.

4. On January 2, 1990, Company Registration Certificate No. PR 1750 was upgraded to include Branches 1 and 3 and reflected Diane Marie Collard as Branch 3 Qualifying Manager.

5. On January 7, 1991, Company Registration Certificate No. PR 1750 reflected a change of Branch 3 Qualifying Manager to Joseph Anthony Olivarria.

6. On January 16, 1992, Company Registration Certificate No. PR 1750 reflected a change of address to 25 2nd Avenue, Chula Vista, California 91910.

7. On June 1, 1995, Company Registration Certificate No. PR 1750 was levied a $150 fine by the San Diego County Agricultural Commissioner (Commissioner) for violation of section 12973 of the Food and Agricultural Code, which was paid on November 8, 1995.

8. On April 10, 1996, Company Registration Certificate No. PR 1750 was levied a $700 fine by the Commissioner for violation of sections 1970.3 and 604 of the California Code of Regulations, section 12973 of the Food and Agricultural Code, and section 8505.9 of the Business and Professions Code, which was paid on June 21, 1996.

9. On September 10, 1996, Company Registration Certificate No. PR 1750 was levied a $100 fine by the Commissioner for violation of section 6724 of the California Code of Regulations, which was paid on October 10, 1996.

10. On August 20, 1999, Company Registration Certificate No. PR 1750 was levied a $151 fine by the Commissioner for violation of section 6724 of the California Code of Regulations, which was paid on September 29, 1999.

11. On March 5, 2003, Company Registration Certificate No. PR 1750 was levied a $300 fine by the Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business and Professions Code, sections 1990(a)(4), 1991 (a)(8), and 1996 of the California Code of Regulations, which was paid on March 18, 2003.

12. On June 15, 2004, Company Registration Certificate No. PR 1750 was levied a $251 fine by the Commissioner (erroneously identified in Accusation No. 2010-82 as the Orange County Agricultural Commissioner) for violation of Code section 8505.5, and Food and Agriculture Code section 12973, which has been paid.

13. On April 28, 2003, Company Registration Certificate No. PR 1750 was levied a $804 fine by the Commissioner for violation of section 12973 of the Food and Agricultural Code and section 6780(c) of the California Code of Regulations, which was paid on June 15, 2004.

14. On August 29, 2003, Company Registration Certificate No. PR 1750 was levied a $100 fine by the Board for violation of section 8516(b)(6)(7) of the Business and Professions Code, which was paid on July 6, 2004.

15. On March 30, 2006, Company Registration Certificate No. PR 1750 was levied a $250 fine by the Commissioner for violation of section 8538 of the Business and Professions Code, which was paid on April 17, 2006.

16. On September 2, 2007, Company Registration Certificate No. PR 1750 was levied a $1,500 fine by the Board for violation of section 8505.10 of the Business and Professions Code and sections 1970 and 6600 of the California Code of Regulations, which was paid on May 12, 2010.

17. On June 6, 2008, Company Registration Certificate No. PR 1750 was suspended for failure to maintain the general liability insurance required by Code section 8690.

18. On September 16, 2008, Company Registration Certificate No. PR 1750 was reinstated after posting the general liability insurance required by Code section 8690.

19. On December 7, 2009, Company Registration Certificate No. PR 1750 was levied a $5,585 fine by the Board for violation of Code section 8516. The fine was paid on November 3, 2010.

20. On February 12, 2010, Company Registration Certificate No. PR 1750 was levied a $250 fine by the Commissioner for violation of section 15204(a) of the Food and Agricultural Code, which was paid on May 12, 2010.

**OPERATOR'S LICENSE NO. OPR 8471**

21. On December 6, 1989, Operator's License No. OPR 8471 was issued in Branch 1 to Joseph Anthony Olivarria, Qualifying Manager of Atlas Termite Company with an address of 5644 Kearny Mesa Road, Suite Q, San Diego, California 92111.

22. On January 7, 1991, Operator's License No. OPR 8471 was upgraded to include Branches 1 and 3 and became the Qualifying Manager in Branch 3 for Atlas Termite Company.

23. On January 16, 1992, Operator's License No. OPR 8471 reflected a change of address to 25 2nd Avenue, Chula Vista, California 91910.

24. On March 5, 2003, Operator's License No. OPR 8471 was levied a $300 fine by the Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business and Professions Code, sections 1990(a)(4), 1991(a)(8), and 1996 of the California Code of Regulations, which was paid on March 18, 2003.

25. On August 29, 2003, Operator's License No. OPR 8471 was levied a $100 fine by the Board for violation of section 8516(b)(6)(7) of the Business and Professions Code, which was paid on July 6, 2004.

26. On September 2, 2007, Operator's License No. OPR 8471 was levied a $1,500 fine by the Board for violation of section 8505.10 of the Business and Professions Code and sections 1970 and 6600 of the California Code of Regulations, which was paid on May 12, 2010.

27. On June 6, 2008, Operator's License No. OPR 8471 was suspended for failure to maintain the general liability insurance required by section 8690 of the Code.

28. On September 16, 2008, Operator's License No. OPR 8471 was reinstated after posting the general liability insurance required by section 8690 of the Code.

29. On December 7, 2009, Operator's License No. OPR 8471 was levied a $5,585 fine by the Board for violation of section 8516 of the Business and Professions Code. The fine was paid on November 3, 2010.

30. On February 12, 2010, Operator's License No. OPR 8471 was levied a $250 fine by the Commissioner for violation of section 15204(a) of the Food and Agricultural Code, which was paid on May 12, 2010.

31. Operator's License No. OPR 8471 was revoked effective October 29, 2010.

**FIELD REPRESENTATIVE'S LICENSE NO. FR 38599**

32. On May 14, 2005, Field Representative's License No. FR 38599 was issued in Branch 1 to Adrian Paul Olivarria (Adrian Olivarria), employee of Atlas Termite Company and a mailing address of 25 2nd Avenue, Chula Vista, CA 91910.

33. On November 27, 2007, Field Representative's License No. FR 38599 was levied a $625 fine by the San Diego County Agricultural Commissioner for violation of Food and Agriculture Code section 12973, which has been paid.

34. Field Representative's License No. FR 38599 was revoked effective October 29, 2010

JURISDICTION

35. Accusation No. 2010-82 was filed before the Structural Pest Control Board (Board), Department of Pesticide Regulation, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on June 16, 2010. Respondents failed to timely file any Notice of Defense contesting the Accusation and their default was therefore entered on September 29, 2010, effective October 29, 2010. On November 16, 2010, Respondents filed a Petition for a Writ of Mandate in the case of *Joseph Anthony Ollvarria, dba Atlas Termite Company and Adrian Paul Ollvarria v. Structural Pest Control Board, Department Of Pesticide Regulation, State Of California, et al.*, San Diego Superior Court case no. 37-2010-104247-CU-WM-CTL, seeking to vacate that default. As addressed in the accompanying Stipulation and Order for Remand, to be filed in the Superior Court action, the parties have agreed to vacate the default and resolve this Accusation matter as more fully set forth herein. A copy of Accusation No. 2010-82 is attached as exhibit A.

ADVISEMENT AND WAIVERS

36. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 2010-82. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

37. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

38. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

39. Respondents understand and agree that the charges and allegations in Accusation No. 2010-82, with the exception of those noted in paragraph 11 thereof, as corrected in paragraph 12, above, if proven at a hearing, constitute cause for imposing discipline upon their Company Registration, as well as for their Operator and Field Representative's licenses.

40. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, except as limited in paragraph 39 and corrected in paragraph 12, above, and that Respondents hereby give up their right to contest those charges.

41. Respondents agree that their Company Registration, Operator and Field Representative's licenses are subject to discipline and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

42. This stipulation shall be subject to approval by the Board. Respondents understand and agree that counsel for Complainant and the staff of the Board may communicate directly with

the Board regarding this stipulation and settlement, without notice to or participation by Respondent or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

44. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Company Registration No. PR 1750 issued December 6, 1989, in Branch 1 to Atlas Termite Company with Joseph Anthony Olivarria as Owner and Qualifying Manager, and subsequently upgraded to include Branches 1 and 3; Operator's License No. OPR 8471, issued December 6, 1989, issued in Branch 1 to Joseph Anthony Olivarria, Qualifying Manager of Atlas Termite Company, and subsequently upgraded to include Branches 1 and 3; and Field Representative License No. FR 38599 issued May 14, 2005, in Branch 1 to Adrian Paul Olivarria, employee of Atlas Termite Company are revoked. However, the

revocations are stayed and Respondents are placed on probation for three years on the following terms and conditions.

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

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

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

4. **Notice to Employers.** Respondents shall notify all present and prospective employers of the decision in case no. 2010-82 and the terms, conditions and restrictions imposed on Respondents by said decision.

Within 30 days of the effective date of this decision, and within 15 days of any Respondent's undertaking new employment, Respondents shall cause their employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2010-82.

5. **Notice to Employees.** Respondents shall, upon or before the effective date of this decision, post or circulate a notice to all employees involved in structural pest control operations which accurately recite the terms and conditions of probation. Respondents shall be responsible for said notice being immediately available to said employees. "Employees" as used in this provision include all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.

6. **Completion of Probation.** Upon successful completion of probation, Respondents' licenses and certificate will be fully restored.

7. **Violation of Probation.** Should any Respondent violate probation in any respect, the Board, after giving such Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against any Respondent during probation, the Board shall have continuing jurisdiction until the

matter is final, and the period of probation shall be extended until the matter is final.

8. **Cost Recovery.** Respondents shall pay to the Board, jointly and severally, costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of $11,055.97. Respondents shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months prior to the end of the probation term.

If Respondents have not complied with this condition during the probationary term, and Respondents have presented sufficient documentation of their good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondents' probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

9. Respondent Joseph Anthony Olivarria will not seek to reactivate his Company Registration Certificate No. PR 1750 in Br. 1 or his Operator's License No. OPR 8471 in Br. 1 during the period of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark Stender. I understand the stipulation and the effect it will have on my Company Registration and Operator's Licenses. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control Board.

DATED: 12/15/10

ATLAS TERMITE COMPANY; JOSEPH ANTHONY OLIVARRIA, OWNER & QUALIFYING MANAGER
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark Stender. I understand the stipulation and the effect it will have on my Field Representative License. I enter into this Stipulated Settlement and Disciplinary

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

DATED: 12-15-2010

ADRIAN PAUL OLIVARRIA
Respondent

I have read and fully discussed with Respondents Atlas Termite Company; Joseph Anthony Olivarria, Owner and Qualifying Manager; and Adrian Paul Olivarria the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/15/10

HIGGS, FLETCHER & MACK LLP

By:
MARK K. STENDER, ESQ.
Attorneys for all Respondents

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Structural Pest Control Board of the Department of Pesticide Regulation.

DATED: 12-16-10

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

G. MICHAEL GERMAN
Deputy Attorney General
*Attorneys for Complainant*

SD2010800075

# Exhibit A

**Accusation No. 2010-82**

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*Attorneys for Complainant*

FILED

Date 6/9/10 By Kelli Okuma

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

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| In the Matter of the Accusation Against:<br><br>**ATLAS TERMITE COMPANY**<br>**25 Second Avenue**<br>**Chula Vista, CA 91910**<br>**JOSEPH ANTHONY OLIVARRIA,**<br>**Owner and Qualifying Manager**<br>**Company Registration Certificate No. PR 1750 in Br. 1 and 3**<br><br>**JOSEPH ANTHONY OLIVARRIA,**<br>**25 Second Avenue**<br>**Chula Vista, CA 91910**<br>**Operator's License No. OPR 8471 in Br. 1 and 3**<br><br>**ADRIAN PAUL OLIVARRIA**<br>**25 Second Avenue**<br>**Chula Vista, CA 91910**<br>**Field Representative No. FR 38599 in Br. 1.**<br><br>Respondents. | Case No. 2010-82<br><br>ACCUSATION |

Complainant alleges:

PARTIES

1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation (Board).

## LICENSE HISTORIES

### COMPANY REGISTRATION CERTIFICATE NO. PR 1750

2. On December 6, 1989, Company Registration Certificate No. PR 1750 was issued in Branch 1 to Atlas Termite Company with Joseph Anthony Olivarria (Olivarria) as Owner and Qualifying Manager with an address of 5644 Kearny Mesa Road, Suite Q, San Diego, California 92111.

3. On January 2, 1990, Company Registration Certificate No. PR 1750 was upgraded to include Branches 1 and 3 and reflected Diane Marie Collard as Branch 3 Qualifying Manager.

4. On January 7, 1991, Company Registration Certificate No. PR 1750 reflected a change of Branch 3 Qualifying Manager to Joseph Anthony Olivarria.

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7. On April 10, 1996, Company Registration Certificate No. PR 1750 was levied a $700 fine by the Commissioner for violation of sections 1970.3 and 604 of the California Code of Regulations, section 12973 of the Food and Agricultural Code, and section 8505.9 of the Business and Professions Code, which was paid on June 21, 1996.

8. On September 10, 1996, Company Registration Certificate No. PR 1750 was levied a $100 fine by the Commissioner for violation of section 6724 of the California Code of Regulations, which was paid on October 10, 1996.

9. On August 20, 1999, Company Registration Certificate No. PR 1750 was levied a $151 fine by the Commissioner for violation of section 6724 of the California Code of Regulations, which was paid on September 29, 1999.

10. On March 5, 2003, Company Registration Certificate No. PR 1750 was levied a $300 fine by the Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business

and Professions Code, sections 1990(a)(4), 1991 (a)(8), and 1996 of the California Code of Regulations, which was paid on March 18, 2003.

11. On May 30, 2003, Company Registration Certificate No. PR 1750 was levied a $251 fine by the Orange County Agricultural Commissioner for violation of section 8505.5 of the Business and Professions Code and section 12973 of the Food and Agricultural Code, which was paid on June 15, 2004.

12. On April 28, 2003, Company Registration Certificate No. PR 1750 was levied a $804 fine by the Commissioner for violation of section 12973 of the Food and Agricultural Code and section 6780(c) of the California Code of Regulations, which was paid on June 15, 2004.

13. On August 29, 2003, Company Registration Certificate No. PR 1750 was levied a $100 fine by the Board for violation of section 8516(b)(6)(7) of the Business and Professions Code, which was paid on July 6, 2004.

14. On March 30, 2006, Company Registration Certificate No. PR 1750 was levied a $250 fine by the Commissioner for violation of section 8538 of the Business and Professions Code, which was paid on April 17, 2006.

15. On September 2, 2007, Company Registration Certificate No. PR 1750 was levied a $1,500 fine by the Board for violation of section 8505.10 of the Business and Professions Code and sections 1970 and 6600 of the California Code of Regulations, which was paid on May 12, 2010.

16. On June 6, 2008, Company Registration Certificate No. PR 1750 was suspended for failure to maintain the general liability insurance required by Code section 8690.

17. On September 16, 2008, Company Registration Certificate No. PR 1750 was reinstated after posting the general liability insurance required by Code section 8690.

18. On December 7, 2009, Company Registration Certificate No. PR 1750 was levied a $5,585 fine by the Board for violation of Code section 8516. The fine has not been paid.

19. On February 12, 2010, Company Registration Certificate No. PR 1750 was levied a $250 fine by the Commissioner for violation of section 15204(a) of the Food and Agricultural Code, which was paid on May 12, 2010.

OPERATOR'S LICENSE NO. OPR 8471

20. On December 6, 1989, Operator's License No. OPR 8471 was issued in Branch 1 to Joseph Anthony Olivarria, Qualifying Manager of Atlas Termite Company with an address of 5644 Kearny Mesa Road, Suite Q, San Diego, California 92111.

21. On January 7, 1991, Operator's License No. OPR 8471 was upgraded to include Branches 1 and 3 and became the Qualifying Manager in Branch 3 for Atlas Termite Company.

22. On January 16, 1992, Operator's License No. OPR 8471 reflected a change of address to 25 2nd Avenue, Chula Vista, California 91910.

23. On March 5, 2003, Operator's License No. OPR 8471 was levied a $300 fine by the Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business and Professions Code, sections 1990(a)(4), 1991(a)(8), and 1996 of the California Code of Regulations, which was paid on March 18, 2003.

24. On August 29, 2003, Operator's License No. OPR 8471 was levied a $100 fine by the Board for violation of section 8516(b)(6)(7) of the Business and Professions Code, which was paid on July 6, 2004.

25. On September 2, 2007, Operator's License No. OPR 8471 was levied a $1,500 fine by the Board for violation of section 8505.10 of the Business and Professions Code and sections 1970 and 6600 of the California Code of Regulations, which was paid on May 12, 2010.

26. On June 6, 2008, Operator's License No. OPR 8471 was suspended for failure to maintain the general liability insurance required by section 8690 of the Code.

27. On September 16, 2008, Operator's License No. OPR 8471 was reinstated after posting the general liability insurance required by section 8690 of the Code.

28. On December 7, 2009, Operator's License No. OPR 8471 was levied a $5,585 fine by the Board for violation of section 8516 of the Business and Professions Code. The fine has not been paid.

29. On February 12, 2010, Operator's License No. OPR 8471 was levied a $250 fine by the Commissioner for violation of section 15204(a) of the Food and Agricultural Code, which was paid on May 12, 2010.

30. Operator's License No. OPR 8471 is currently in effect and renewed through June 30, 2010.

FIELD REPRESENTATIVE'S LICENSE NO. FR 38599

31. On May 14, 2005, Field Representative's License No. FR 38599 was issued in Branch 1 to Adrian Paul Olivarria (Adrian Olivarria), employee of Atlas Termite Company and a mailing address of 25 2nd Avenue, Chula Vista, CA 91910.

32. On November 27, 2007, Field Representative's License No. FR 38599 was levied a $625 fine by the San Diego County Agricultural Commissioner for violation of Food and Agriculture Code section 12973, which has been paid.

33. Field Representative's License No. FR 38599 is currently in effect and renewed through June 30, 2010.

JURISDICTION

34. This Accusation is brought before the Structural Pest Control Board (Board), Department of Pesticide Regulation, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

35. Section 8620 of the Business and Professions Code (Code) states:

> The board may upon its own motion, and shall upon verified complaint in writing of any person, investigate the actions of any individual acting as a licensee, or making application for a license.
>
> After a hearing, the board may temporarily suspend or permanently revoke a license issued under this chapter if the holder, while a licensee or applicant, is guilty of or commits any one or more of the acts or omissions constituting grounds for disciplinary action. In addition to its authority to suspend or revoke a license, the board may assess a civil penalty as follows:
>
> (a) Upon the conclusion of a hearing held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, if the proposed decision of the hearing officer is that the licensee is guilty of or has committed any one of the acts or omissions constituting grounds for disciplinary action, the proposed decision shall provide for the imposition of a suspension or for the revocation of the license. In this case, the board may impose the suspension or revocation. The board may also, in lieu of a suspension, assess a civil penalty. The licensee may express a preference for a form of discipline, but the board shall not be bound by any expression of preference.
>
> If a licensee elects to stipulate to a disciplinary action prior to an administrative hearing, the board may impose a civil penalty, in accordance with this section, in lieu of suspension.

If a proposed stipulation is rejected by the board, it is null and void and does not constitute an admission of any violation charged.

(b) The civil penalty shall not be more than five thousand dollars ($5,000) for an actual suspension of one to 19 days.

(c) The civil penalty shall not be more than ten thousand dollars ($10,000) for an actual suspension of 20 to 45 days.

(d) If a licensee is assessed the civil penalty in lieu of an actual suspension, the penalty shall be paid before the effective date of the decision.

(e) If the civil penalty is not paid before the effective date of the suspension, the license shall be suspended until the penalty is paid or until the actual suspension is served.

No civil penalty shall be assessed in lieu of any suspension which exceeds 45 days. With the exception of the proceedings on suspensions undertaken or on fines levied pursuant to Section 8617, the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

In any order of suspension or revocation, the board may authorize the completion of any contract or work contracted for under terms and conditions set forth in the order.

36. Section 8624 of the Code states:

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

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

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

37. Section 8625 of the Code 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.

## STATUTORY PROVISIONS

38. Section 8505.5 of the Code states:

Notice of the date and place of fumigation, and chemicals to be used, shall be given by the fumigator to the fire department serving the area in which fumigation is to be performed not less than two hours prior to the time fumigation begins. The fire department shall not charge any fees for any service related to structural pest control activities except for the costs of an emergency response necessitated by illegal or negligent actions.

If requested by the county agricultural commissioner, notice of each fumigation to be performed shall be given to the commissioner in the county in which the job is to be performed. The notice, which may be mailed or given by telephone, at the option of the commissioner, shall be given at least 24 hours prior to the time fumigation begins, unless the commissioner determines that less time is sufficient. No fee shall be assessed for processing the notice which may be requested by the commissioner.

39. Section 8505.11 of the Code states:

If the structure which has been fumigated has an attic or if the area underneath such structure is accessible to inspection for purposes of structural pest control, the registered company which performed the fumigation shall, immediately upon completion, post in the attic, immediately adjacent to the entrance thereto, or in the area underneath the structure, immediately adjacent to the main entrance vent thereof, or in both of such places if the structure has an attic and an accessible underarea, a durable sign not less than five inches by seven inches in size stating the name of the registered company, the date of fumigation, and the type of fumigant used.

40. Section 8516 of the Code states:

(a) This section, and Section 8519, apply only to wood destroying pests or organisms.

(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 or Section 8518 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 8518 or this section 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).

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

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

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

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

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

(4) The address or location of the property.

(5) A general description of the building or premises inspected.

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

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

(8) One of the following statements, as appropriate, printed in bold type:
(A) The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board.

(B) The exterior surface of the roof was inspected to determine whether or not wood destroying pests or organisms are present.

(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

(10) Recommendations for corrective measures.

(11) Information regarding the pesticide or pesticides to be used for their control as set forth in subdivision (a) of Section 8538.

(12) The inspection report shall clearly disclose that if requested by the person ordering the original report, a reinspection of the structure will be performed if an estimate or bid for making repairs was given with the original inspection report, or thereafter.

(13) The inspection report shall contain the following statement, printed in boldface type:

NOTICE: Reports on this structure prepared by various registered companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.). However, recommendations to correct these findings may vary from company to company. You have a right to seek a second opinion from another company." An estimate or bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.

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

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

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

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

. . . .

41. Section 8550 of the Code states:

(a) 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.

(b) Notwithstanding subdivision (a), an unlicensed individual may solicit pest control work on behalf of a structural pest control company only if the company is registered pursuant to this chapter, and the unlicensed individual does not perform or offer to perform any act for which an operator, field representative, or applicator license is required pursuant to this chapter. As used in this subdivision, to "solicit pest control work" means to introduce consumers to a registered company and the services it provides, to distribute advertising literature, and to set appointments on behalf of a licensed operator or field representative.

(c) It is unlawful for an unlicensed individual, soliciting pest control work on behalf of a registered structural pest control company pursuant to subdivision (b), to perform or offer to perform any act for which an operator, field representative, or applicator license is required, including, but not limited to, performing or offering

pest control evaluations or inspections, pest identification, making any claims of pest control safety or pest control efficacy, or to offer price quotes other than what is provided and printed on the company advertising or literature, or both.

(d) It is also unlawful for any unlicensed individual to offer any opinion, or to make any recommendations, concerning the need for structural pest control work in general, or in connection with a particular structure.

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

42. Section 8552 of the Code states:

It is unlawful for any person to advertise or represent in any manner that any 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.

43. Section 8636 of the Code 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.

44. Section 8641 of the Code 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.

45. Section 8642 of the Code 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.

46. Section 8644 of the Code states:

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

47. Section 8654 of the Code 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.

48. Section 8697 of the Code states, "Each company registered under the provisions of this chapter shall maintain a bond executed by an admitted surety insurer in the amount of four thousand dollars ($4,000)."

49. Section 12973 of the Food & Agricultural Code states:

> The use of any pesticide shall not conflict with labeling registered pursuant to this chapter which is delivered with the pesticide or with any additional limitations applicable to the conditions of any permit issued by the director or commissioner.

## REGULATIONS

50. California Code of Regulations, Title 3, section 6780 states in pertinent part:

> . . . .
>
> (b) Whenever an employee may be exposed above an exposure standard to methyl bromide, sulfuryl fluoride, or any other fumigant for which only air-supplied respirator equipment is approved, the employer shall either:
>
> (1) require the use of air-supplied respirator equipment,
>
> (2) employ continuous monitoring to warn employees before the PEL is reached or
>
> (3) operate under the provisions of (c) below.
>
> (c) Upon written application by an employer, the director will review and may accept a Fumigation Safety Program that described methods, work practices, devices, or processes which the director determines will ensure that employees will not be exposed to concentrations of fumigants in excess of the PEL.
>
> . . . .

51. Regulations, Title 16, section 1970 states:

> For the purpose of maintaining proper standards of safety and the establishment of responsibility in handling the dangerous gases used in fumigation and the pesticides used in other pest control operations, a registered company shall compile and retain for a period of at least three years, a log for each fumigation job and for each pesticide control operation in which a pesticide is used by the registered

company or the registered company's employee. If the fumigation is to be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log and forward a copy of the log to the primary contractor within ten business days.

(a) The log (See Form 43M-47 (Rev. 5/07) at the end of this section) for each fumigation job shall contain the following information:

Name, address and company registration certificate number of prime contractor.

Name, address and company registration certificate number of subcontractor, if any.

Address of property.

Date of fumigation.

Name and address of owner or his or her agent.

Date and hour fire department was notified pursuant to Business and Professions Code section 8505.5.

Date and hour county agricultural commissioner was notified and method of notification, where required.

Property description including type of structure as to details of roofing, walls, and the presence of construction elements, conduits, drains, air ducts, or vacuum systems that could allow the passage of fumigant from the structure to be fumigated to any adjacent or adjoining structure(s), thereby connecting them, and method(s) used to prevent passage of the fumigant.

Cubic feet fumigated.

Target pest(s).

Kind of fumigant(s) used.

United States Environmental Protection Agency registration number(s) of fumigant(s).

Name of warning agent and amount used.

Type of sealing method used.

Weather conditions as to temperature and wind.

Date and hour fumigant introduced.

Cylinder number of each fumigant used.

Weight of each fumigant cylinder before introduction of gas.

Pounds of fumigant used from each cylinder.

Total pounds of fumigant used.

List of any extraordinary safety precautions taken.

Name, signature and license number of operator or field representative releasing fumigant.

First name and surname of crew when fumigant was released, when aeration commenced and when the property was released for occupancy.

Indication of whether or not safety equipment was available at the fumigation site at the time the fumigant was introduced, when ventilation commenced and when the property was released for occupancy.

Date and hour aeration commenced.

Conditions of tarp and seal.

Name, signature and license number of operator or field representative commencing ventilation.

Type of device(s) used to test for re-entry.

Date and hour ready for occupancy.

Name, signature and license number of operator or field representative releasing property for occupancy.

Method used to calculate amount of fumigant used.

Factors used in calculation of fumigant.

Special notes or comments pertinent to fumigation.

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

Date of treatment.

Name of owner or his or her agent.

Address of property.

Description of area treated.

Target pest(s).

Pesticide and amount used.

Identity of person or persons who applied the pesticide.

(c) The term "fraudulent act" as used in Section 8642 includes but is not limited to the falsification of any records pertaining to fumigation jobs or other pest control operations in which a pesticide other than a fumigant is used.

52. Regulations, Title 16, section 1996.3, states:

(a) The address of each property inspected and/or upon which work was

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

(b) The form shall contain the following information for each property inspected and/or upon which work was completed.

(1) Company Name

(2) Company registration number

(3) Branch office registration number (when a branch office issues an inspection report or notice of work completed

(4) Date of Activity

(5) Address of property inspected or upon which work was completed, including zip code

(6) Activity Code

(7) License number of licensee performing the inspection

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

## COST RECOVERY

53. 125.3 of the Code 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.

## FACTS

54. On July 17, 2009, the San Diego County Department of Agriculture, Weights and Measures (County) referred violations by Respondent Atlas Termite Company to Complainant for consideration of enforcement action. The referral was largely due to Atlas' continuing to engage in pest control while its registration with the Board was suspended, and its pattern of failing to give notice of the date and place of fumigations. Complainant received the referral on July 22, 2009.

55. Complainant's investigation of the County's referral revealed that between March 2008 and May 2009, Respondents had violated the laws and regulations of the Board as follows:

a. No Surety Bond: Respondents failed to maintain a surety bond in the amount of $4,000, for which its company registration was suspended on June 6, 2008. However, Respondents continued to engage in pest control between June 6 and September 16, 2008, without the required surety bond.

b. Proctor Valley Rd. Property: In July and August 2008, Respondents conducted a Branch I fumigation at 13518 Proctor Valley Road, Jamul, California. On August 25 and 26, 2008, the County performed and recorded a video surveillance of the fumigation, and photographed the treated structure. Respondent Olivarria submitted the fumigation log and three written Notices of Intent (NOI) to the County for the Proctor Valley job, but claimed that his wife verbally submitted a NOI to the County for the August 25, 2008 work the day before the actual fumigation by telephone, when, in fact, no such telephonic NOI was submitted.

c. Eighth St. Property: On October 21, 2008, the County received an illness complaint from a dentist located at 2340 East 8th Street, National City, California, whose office Respondents had fumigated three days earlier on October 18, 2008. The office workers' symptoms included watery, itchy eyes; headaches; vomiting; and respiratory irritation. The County's investigation concluded that Respondents had:

1. failed to use the proper amount of chloropicrin in one of three chloropicrin pans placed in the structure at the property. Respondent Olivarria, the licensee in charge of the fumigation, exceeded the maximum amount of chloropicrin allowed for use in a single pan by using it more than allowed by fumigant label directions;

2. failed to remove water bottles from coolers within the structure prior to introducing the fumigant at the property. Respondent Olivarria did not remove open water bottles as required by fumigant label directions;

3. failed to accurately record the dates of aeration and occupancy on the fumigation log for the property;

4. failed to file a NOI for the property within 24 hours of the commencement of fumigation; and

5. failed to file a Wood Destroying Pests and Organisms report and Notice of Work Completed and Not Completed at the property within 10 days after inspection was made or work was completed.

d. Inconsistent Structural Pest Control Records: On November 17, 2008, the County conducted a records inspection at Respondents' company, with Respondent Olivarria present. Inspection of fumigation logs for fumigations performed in San Diego County in April and May of 2008 revealed that cylinder weights during the course of use were sometimes logged as having more weight after fumigation than after fumigation on a previous date; starting weights in some instances did not reflect the amount of stated weight after the previous day's use.

e. Missing Notices of Intent: On December 18, 2008, the County reviewed NOIs submitted for April through October 2008, but found that Respondents failed to submit any NOIs for the months of July and August, even though Respondents' Monthly Summary Pesticide Use Reports (MSPURs) reported 19 applications of Vikane fumigant in July 2008, and 14 applications of Vikane fumigant in August 2008. In all, Respondents' company failed to submit NOIs for fumigations completed from April through August 2008.

f. Tricia S. Property:

1. On May 19, 2009 the County performed a fumigation compliance inspection at 14117 Tricia St, Poway, California. However, Respondents failed to submit an NOI to the County for the May 18, 2009 fumigation within the 24-hour limit of doing so, since the NOI Respondents submitted on May 13, 2009, was premature.

2. On May 20, 2009, the County observed the aeration phase of the fumigation at the Tricia St. property. Respondents' personnel present at the property were Respondents Adrian Olivarria and his father Joseph Anthony Olivarria, who failed to don Self Contained Breathing Apparatus (SCBA), to install equipment to facilitate the required Tarpaulin Aeration Removal Plan (TARP), and to remove the chloropicrin pan (pic-pan) as required by the fumigant's label directions.

3. On May 21, 2009, County Inspectors met with Respondent Olivarria at the Tricia St. property to verify that the treated areas of the structure did not exceed a fumigant level of 1 part per million. The Inspectors observed that the structure had been posted with a Notice of Re-Entry, and the County's gas analyzer did not detect readable levels of sulfuryl fluoride fumigant. A fumigation completion sign had not been posted in the attic as required, and Respondent Olivarria ascended into the attic and confirmed that no completion sign was present. Though Respondent Olivarria noted that a completion sign had been placed on the garage wall, it measured only 3" x 5", which is less than the 5" x 7" required. A check of Respondents' company's Interscan device for its most recent calibration date showed a sticker on its top panel identifying a calibration date of August 18, 2008 by UNIVAR. Respondent Olivarria said that particular device was not used to check the structure on Tricia St., but that his company had two such devices and the other had been used to test the structure.

4. On May 22, 2009, the County asked Respondent Olivarria to bring to the County the Interscan device that was used to clear the Tricia St. property for examination, but Respondent Olivarria brought in the same Interscan device that was present at the Tricia St. property the previous day. Though Respondent Olivarria claimed that there were additional stickers indicating calibration dates on the side panel of the device, there was only a calibration date on the sticker of January 19, 2009, and that sticker showed a serial number different from that of the device to which it was attached, which Respondent was unable to explain. The Vikane fumigant label requires that the Interscan be calibrated according to the manufacturer recommendations within one-month prior to use as a clearance device.

5. On May 29, 2009, the County provided the Board with a copy of Respondent's fumigation log for the Tricia St. property indicating May 20, 2009, 12:45 p.m. as the date and time of commencement of aeration. However, County Inspectors were on-site from 8:07 a.m. to 2:00 p.m., and did not observe commencement of aeration at 12:45 PM as indicated on Respondent's fumigation log. The Vikane fumigant label requires that the structure aerate with all operable windows and doors open.

g. Rob Roy Place Property:

1. On May 19, 2009, a County Inspector observed a fumigation truck belonging to Respondent company parked in the driveway of 3412 Rob Roy Place, San Diego, California. The Inspector noted that the date on the NOI for the fumigation that Respondents had submitted to the County was May 15, 2009, beyond the 24-hour limit. When the Inspector left and returned approximately two hours later, she found the truck gone but observed that a shed on the property had been tented and had fumigation warning signs posted on it, indicating that the fumigant had been released into the structure on May 19, 2008 at 10:30 a.m.

2. On May 20, 2009, County Inspectors conducted an undercover use-monitoring inspection at the Rob Roy Place property. Respondents' personnel present at the property were Adrian Olivarria and Joseph Anthony Olivarria. Respondents' personnel failed to don the SCBA as required, to install equipment to facilitate the required Tarpaulin Aeration Removal Plan (TARP), and to remove the chloropicrin pan (pic-pan) as required by the fumigant's label directions.

**FIRST CAUSE FOR DISCIPLINE**

(Fraud & Misrepresentation)

56. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field Representative's License No. FR 38599, Branch 1, (together, Respondents), are subject to discipline under Code sections 8641, 8642, and 8644, in that, as more fully set forth in paragraph 55(f)(5), above, Respondents misrepresented and fraudulently prepared and delivered to the County a fumigation log for the Tricia S. property indicating May 20, 2009, 12:45 p.m. as the date and time of aeration commencement, when in fact, Respondents did not commence aeration at that time.

**SECOND CAUSE FOR DISCIPLINE**

(Engaging in Pest Control Without Proper Registration)

57. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; and Joseph Anthony Olivarria, Owner and Qualifying Manager, and his

Operator's License No. OPR 8471, Branch 1 and 3, are subject to discipline under Code sections 8550, 8552, and 8641 in that, as more fully set forth in paragraph 55(a) and (b), above, Respondents advertised for and engaged in the business of pest control while Company Registration Certificate No. PR 1750, Branch 1 and 3, and Operator's License No. OPR 8471, Branch 1 and 3 were suspended for failure to maintain a surety bond.

**THIRD CAUSE FOR DISCIPLINE**

(Failure to Maintain Surety Bond)

58. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; and Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3, are subject to discipline under Code sections 8641 and 8697 in that, as more fully set forth in paragraphs 16, 17, 26, 27, and 55(a) and (b), above, Respondents failed to maintain a surety bond while engaging in the business of pest control.

**FOURTH CAUSE FOR DISCIPLINE**

(Failure to File Work Activity Reports with the Board)

59. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; and Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3, are subject to discipline under Code sections 8516, subdivision (b) and 8641, and Regulations section 1996.3, in that, as more fully set forth in paragraph 55(c)(5), above, Respondents failed to file a Wood Destroying Pest and Organisms Report and Notice of Work Completed and Not Completed with the Board in relation to the October 18, 2008 Eighth Street property fumigation.

**FIFTH CAUSE FOR DISCIPLINE**

(Failure to File Timely Notices of Intent with the County)

60. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field Representative's License No. FR 38599, Branch 1, are subject to discipline under Code sections

8505 and 8641, in that, as more fully set forth in paragraphs 55(b), (c)(4), (e), (f)(1), and g(1), above, Respondents failed to file Notices of Intent with the County 24 hours in advance of the fumigations performed for the Proctor Valley Road, Eighth Street, Tricia S., and Rob Roy Place properties, and for the fumigations Respondents performed from April through August 2008, inclusive.

## SIXTH CAUSE FOR DISCIPLINE

(Failure to Post Proper Fumigation Completion Sign)

61. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field Representative's License No. FR 38599, Branch 1, are subject to discipline under Code section 8505.11 and 8641, in that, as more fully set forth in paragraph 55(f)(3, above, Respondents failed to post a properly-sized fumigation completion sign for the May 18, 2009 fumigation Respondents performed at the Tricia S. property.

## SEVENTH CAUSE FOR DISCIPLINE

(Failure to Follow Fumigant Label Directions)

62. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field Representative's License No. FR 38599, Branch 1, are subject to discipline under Code section 8641, and Food & Agricultural Code section 12973, in that, as more fully set forth in paragraphs 55(c)(1) and (2), (f)(5), and g(2), above, Respondents failed to follow the label directions on the fumigants used for the Eighth Street, Tricia S., and Rob Roy Place properties.

## EIGHTH CAUSE FOR DISCIPLINE

(Failure to Maintain Proper Fumigation Logs)

63. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field

Representative's License No. FR 38599, Branch 1, are subject to discipline under Code sections 8641 and Regulations section 1970, subdivision (a), in that, as more fully set forth in paragraphs 55(c)(3) and (d), above, Respondents failed to maintain proper fumigation logs for the fumigations performed for the Eighth Street property, and for the fumigations Respondents performed during April and May 2008, inclusive.

## NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Respirator and Exposure Regulations )

64. Respondents Atlas Termite Company, and its Company Registration Certificate No. PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field Representative's License No. FR 38599, Branch 1, are subject to discipline under Code sections 8636 and 8641, and Regulations, title 3, section 6780 as follows:

a. Respirator Violation: As more fully set forth in paragraph 55(f)(2, above, Respondents failed to require the use of, and use, air-supplied respirators while performing the aeration phase of fumigation at the Tricia S. property, in violation of Regulations, title 3, section 6780, subdivision (b).

b. Exposure Violations: As more fully set forth in paragraphs 55(f)(2, above, Respondents failed to obtain approval of a Fumigation Safety Program in substitution of the requirement that Respondents employ TARPs while performing the aeration phase of fumigation at the Tricia S. and Rob Roy Place properties, in violation of Regulations, title 3, section 6780, subdivision (c).

## OTHER MATTERS

65. Pursuant to Code section 8624, the causes for discipline established as to Respondent Atlas Termite Company likewise constitute cause for discipline against Respondent Joseph Anthony Olivarria, Qualifying Manager in Branch 3 for Atlas Termite Company, regardless of whether he had knowledge of or participated in the acts or omissions which constitute cause for discipline against Atlas Termite Company.

66. Pursuant to Code section 8654, if discipline is imposed on Atlas Termite Company, with Joseph Anthony Olivarria, as the Qualifying Manager in Branch 3, then he shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associated her shall be subject to disciplinary action.

67. Pursuant to Code section 8624, if Operator's License Number OPR 8471, issued to Joseph Anthony Olivarria in Branch 1 and 3, is suspended or revoked, the Board may suspend or revoke the registration of any branch office registered under the name of Joseph Anthony Olivarria.

68. Pursuant to Code section 8624, the causes for discipline established as to Respondent Atlas Termite Company likewise constitute cause for discipline against Respondent Joseph Anthony Olivarria, Owner of Atlas Termite Company, regardless of whether he had knowledge of or participated in the acts or omissions which constitute cause for discipline against Atlas Termite Company.

69. Pursuant to Code section 8654, if discipline is imposed on Atlas Termite Company, and Joseph Anthony Olivarria, Owner of Atlas Termite Company, then he shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates him shall be subject to disciplinary action.

70. Pursuant to Code section 8624, if Field Representative's License Number FR 38599, issued to Adrian Paul Olivarria in Branch 1, is suspended or revoked, the Board may suspend or revoke the registration of any branch office registered under the name of Adrian Paul Olivarria.

## DISCIPLINARY CONSIDERATIONS

71. For purposes of determining the amount of discipline, if any, proper under the circumstances of this matter, Complainant incorporates by reference Respondents' history of

prior violations of pest control laws and regulations, as detailed in paragraphs, 6—19, 23—29, and 32, inclusive, above.

PRAYER

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

1. Revoking or suspending Company Registration Number PR 1750, in Branches 1 and 3 issued to Atlas Termite Company; Joseph Anthony Olivarria, Owner and Qualifying Manager;

2. Revoking or suspending Operator's License Number OPR 8471, in Branches 1 and 3 issued to Joseph Anthony Olivarria, Qualifying Manager of Atlas Termite Company;

3. Revoking or suspending Field Representative Number FR 38599, in Branch 1 issued to Adrian Paul Olivarria;

4. Revoking or suspending any other license for which Respondent Joseph Anthony Olivarria is furnishing the qualifying experience or appearance;

5. Prohibiting Respondent Joseph Anthony Olivarria from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Company Registration Certificate Number PR 1750, issued to Respondent Atlas Termite Company;

6. Prohibiting Respondent Joseph Anthony Olivarria from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Operator's License No. OPR 8741 in Branches 1 and 3 issued to Respondent Joseph Anthony Olivarria;

7. Prohibiting Respondent Adrian Paul Olivarria from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative's License No. 38599 in Branch 1 issued to Respondent Adrian Paul Olivarria;

8. Ordering Respondents Atlas Termite Company, Joseph Anthony Olivarria, Adrian Paul Olivarria, jointly and severally, to pay the Structural Pest Control Board, Department of

Pesticide Regulation, the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 6/9/10

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
*Complainant*

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