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FILED
Date 9/6/13 By

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

In the Matter of the Accusation Against:

PRUDENT TERMITE CONTROL, INC.,
RUTH PEREZ, PRESIDENT
3728 W Park Balboa Avenue
Orange, CA 92868
Company Registration Certificate No. PR 5422, Branches 2 and 3

11100 Wright Road
Lynwood, CA 90262
Branch Office Registration No. BR 5347, Branches 2 and 3

OSCAR MAGANA, QUALIFYING MANAGER/ BRANCHES 2 AND 3 for PRUDENT TERMITE CONTROL, INC.,
8843 Marshall St.
Rosemead, CA 91770
Operator License No. OPR 12322, Branches 2 and 3

ERNESTO LARA PEREZ
3728 W. Park Balboa Ave.
Orange, CA 92868
Operator License No. OPR 11128, Branch 1
Field Representative License No. FR 43416, Branch 3

Case No. 2014-13

ACCUSATION

HECTOR P. LARA
AKA HECTOR LARA PEREZ
3728 W. Park Balboa Ave.
Orange, CA 92868
Applicator License No. RA 46446, Branches 2 and 3
and

HECTOR PEREZ AKA
HECTOR PEREZ JR.
3728 W. Park Balboa Ave.
Orange, CA 92868

1556 Edmon Way
Riverside, CA 92501
Field Representative License No. FR 46315, Branches 2 and 3,

Respondents.

Complainant alleges:

PARTIES

1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the Registrar / Executive Officer of the Structural Pest Control Board (Board), Department of Consumer Affairs.

2. On or about September 10, 2007, the Structural Pest Control Board issued Company Registration Certificate No. PR 5422 in Branch 3 to Respondent Prudent Termite Control, Inc. (Respondent Prudent), with Respondent Ruth Perez as President, Respondent Hector Lara as Vice President, and Edward Roach as Qualifying Manager (Respondent). The Company Registration Certificate was in full force and effect at all times relevant to the charges brought herein, except as alleged below:

a) On April 6, 2009, Respondent Prudent's Company Registration Certificate No. PR 5422 paid a $100 fine levied by the Riverside County Agricultural Commissioner for violation of section 8505.17(c) of the Business and Professions Code.

b) On September 24, 2009, Respondent Prudent's Company Registration Certificate No. PR 5422 reflected a change of address to 1556 Edmon Way, Riverside, California 92501.

c) On September 25, 2009, Respondent Prudent's Company Registration Certificate No. PR 5422 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Business and Professions Code.

d) On September 29, 2009, Respondent Prudent's Company Registration Certificate No. PR 5422 was reinstated after posting the general liability insurance.

e) On October 14, 2009, Respondent Prudent's Company Registration Certificate No. PR 5422 paid a $250 fine levied by the Riverside County Agricultural Commissioner for violation of section 8505.17(c) of the Business and Professions Code.

f) On June 24, 2010, Respondent Prudent's Company Registration Certificate No. PR 5422 paid a $300 fine levied by the Riverside County Agricultural Commissioner for violation of section 8505.17(c) of the Business and Professions Code.

g) On April 4, 2011, Respondent Prudent's Company Registration Certificate No. PR 5422 paid a $125 fine levied by the Riverside County Agricultural Commissioner for violation of section 8505.17(c) of the Business and Professions Code.

h) On November 16, 2011, Respondent Prudent's Company Registration Certificate No. PR 5422 reflected the disassociation of Edward Roach III as the Qualifying Manager.

i) On November 28, 2011, Respondent Prudent's Company Registration Certificate No. PR 5422 was suspended for no Qualifying Manager.

j) On December 19, 2011, Respondent Prudent's Company Registration Certificate No. PR 5422 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Business and Professions Code.

k) On February 23, 2012, Respondent Prudent's Company Registration Certificate No. PR 5422 was upgraded to include Branch 2 and 3 and reflected a change of Qualifying Manager to Oscar Magana.

l) On May 3, 2012, Respondent Prudent's Company Registration Certificate No. PR 5422 was reinstated after posting the general liability insurance.

m) On January 17, 2013, Respondent Prudent's Company Registration Certificate No. PR 5422 reflected a change of address to 3728 West Park Balboa Avenue, Orange, California 92868.

3. On or about February 22, 2012, the Structural Pest Control Board issued Operator License No. OPR 12322 in Branch 2 and 3 to Respondent Oscar Magana (Respondent). The license was in full force and effect at all times relevant to the charges brought herein, except as alleged below, and will expire on June 30, 2014:

a) On February 23, 2012, Respondent Oscar Magana's Operator's License No. OPR 12322 became the Qualifying Manager in Branch 2 and 3 for Prudent Termite Control Inc.

b) On February 23, 2012, Respondent Oscar Magana's Operator's License No. OPR 12322 was suspended due to failure to maintain the general liability insurance as required by section 8690 of the Business and Professions Code.

c) On May 3, 2012, Respondent Oscar Magana's Operator's License No. OPR 12322 was reinstated after posting the general liability insurance.

d) On January 17, 2013, Respondent Oscar Magana's Operator's License No. OPR 12322 reflected a change of business address to 3728 West Park Balboa Avenue, Orange, California 92868.

4. On or about June 16, 2005, the Structural Pest Control Board issued Operator License No. OPR 11128 in Branch 1 to Respondent Ernesto Lara Perez (Respondent), employee of Ideal Fumigation, Inc. with a mailing address of 2349 East Rio Verde Drive, West Covina, California 91791 and a business address of 13540 East Imperial Highway, Santa Fe Springs, California 90670. The license was in full force and effect at all times relevant to the charges brought herein, except as alleged below, and will expire on June 30, 2014:

a) On September 20, 2005, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 reflected a change of address to 11100 Wright Road, Lynwood, California 90262.

b) On May 19, 2008, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $400 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 6600(b) of the California Code of Regulations.

c) On November 20, 2008, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 6600(b) of the California Code of Regulations.

d) On May 14, 2009, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $550 fine levied by the Orange County Agricultural Commissioner for violation of section 12973 of the California Food and Agricultural Code.

e) On November 24, 2009, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $1000 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 1973(a) of the California Code of Regulations.

f) On November 10, 2011, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 6600(b) of the California Code of Regulations.

g) On October 15, 2012, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 paid a $50.00 fine levied by the Orange County Agricultural Commissioner for violation of section 8505.10 of the Business and Professions Code.

h) On December 7, 2012, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128 became the Vice President of Ideal Fumigation, Inc.

i) On July 26, 2013, Accusation No. 2014-8 was filed against Respondent Ernesto Lara Perez' Operator's License No. OPR 11128.

5. On or about On July 30, 2008, Field Representative's License No. FR 43416 was issued in Branch 3 to Respondent Ernesto L. Perez, employee of Prudent Termite Control, Inc., with an address of 13433 Pumice Street, Norwalk, CA 90650. The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2014:

a) On October 1, 2009, Respondent Ernesto L. Perez' Field Representative's License No. FR 43416 reflected a change of address to 1556 Edmon Way, Riverside, CA 92501.

b) On February 5, 2013, Respondent Ernesto L. Perez' Field Representative's License No. FR 43416 reflected a change of address to 3728 West Park Balboa Avenue, Orange, CA 92868.

c) On February 5, 2013, Respondent Ernesto L. Perez' Field Representative's License No. FR 43416 became the branch office supervisor for Prudent Termite Control, Inc., Branch Office No. BR 5347.

d) On July 26, 2013, Accusation No. 2014-8 was filed against Respondent Ernesto L. Perez' Field Representative's License No. FR 43416.

6. On or about October 5, 2006, the Structural Pest Control Board issued Applicator License No. RA 46446 in Branches 2 and 3 to Respondent Hector P. Lara also known as Hector Lara Perez (Respondent), as an employee of Prudent Termite Control, with an address of 13433 Pumice Street, Norwalk, California 90650. On September 24, 2009, Respondent's Applicator License No. RA 46446 reflected a change of address to 1556 Edmon Way, Riverside, California 92501. The license was in full force and effect at all times relevant to the charges brought herein and expired on October 5, 2012, and has not been renewed.

7. On or about December 29, 2010, the Structural Pest Control Board issued Field Representative License No. FR 46315 in Branches 2 and 3 to Hector Perez AKA Hector Perez Jr. (Respondent). On February 5, 2013, Field Representative's License No. FR 46315 reflected a change of address to 3728 West Park Balboa Avenue, Orange, CA 92868. The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016.

JURISDICTION

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

9. Section 118, subdivision (b), of the Code states:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

10. Section 8625 of the Code provides:

> 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.

STATUTES

11. Section 8516 of the Code states:

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

(c) At the time a report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:

(1) The infestation or infection that is evident.

(2) The conditions that are present that are deemed likely to lead to infestation or infection.

If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.

(d) When a corrective condition is identified, either as paragraph (1) or (2) of subdivision (c), and the responsible party, as negotiated between the buyer and the seller, chooses not to correct those conditions, the registered company or licensee shall not be liable for damages resulting from a failure to correct those conditions or subject to any disciplinary action by the board. Nothing in this subdivision, however, shall relieve a registered company or a licensee of any liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this chapter, or contractual obligations between the registered company or licensee and the responsible parties.

(e) The inspection report form prescribed by the board shall separately identify the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection. If a separated form is requested, the form shall explain the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection and the difference between those conditions. In no event, however, shall conditions deemed likely to lead to infestation or infection be characterized as actual "defects" or as actual "active" infestations or infections or in need of correction as a precondition to issuing a certification pursuant to Section 8519.

(f) The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect.

(g) Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and any corrections as have been agreed upon have been completed. Under a control service agreement a registered company shall refer to the original report and contract in a manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A registered company is not required to issue a report as outlined in paragraphs (1) to (11), inclusive, of subdivision (b) after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are as originally reported. A control service contract shall state specifically the particular wood destroying pests or organisms and the portions of the buildings or structures covered by the contract.

(h) A registered company or licensee may enter into and maintain a control service agreement provided the following requirements are met:

(1) The control service agreement shall be in writing, signed by both parties, and shall specifically include the following:

(A) The wood destroying pests and organisms that could infest and infect the structure.

(B) The wood destroying pests and organisms covered by the control service agreement. Any wood destroying pest or organism that is not covered must be specifically listed.

(C) The type and manner of treatment to be used to correct the infestations or infections.

(D) The structures or buildings, or portions thereof, covered by the agreement, including a statement specifying whether the coverage for purposes of

periodic inspections is limited or full. Any exclusions from those described in the original report must be specifically listed.

(E) A reference to the original inspection report and agreement.

(F) The frequency of the inspections to be provided, the fee to be charged for each renewal, and the duration of the agreement.

(G) Whether the fee includes structural repairs.

(H) If the services provided are guaranteed, and, if so, the terms of the guarantee.

(I) A statement that all corrections of infestations or infections covered by the control service agreement shall be completed within six months of discovery, unless otherwise agreed to in writing by both parties.

(2) Inspections made pursuant to a control service agreement shall be conducted by a Branch 3 licensee. Section 8506.1 does not modify this provision.

(3) A full inspection of the property covered by the control service agreement shall be conducted and a report filed pursuant to subdivision (b) at least once every three years from the date that the agreement was entered into, unless the consumer cancels the contract within three years from the date the agreement was entered into.

(4) A written report shall be required for the correction of any infestation or infection unless all of the following conditions are met:

(A) The infestation or infection has been previously reported.

(B) The infestation or infection is covered by the control service agreement.

(C) There is no additional charge for correcting the infestation or infection.

(D) Correction of the infestation or infection takes place within 45 days of its discovery.

(E) Correction of the infestation or infection does not include fumigation.

(5) All notice requirements pursuant to Section 8538 shall apply to all pesticide treatments conducted under control service agreements.

(6) For purposes of this section, "control service agreement" means any agreement, including extended warranties, to have a licensee conduct over a period of time regular inspections and other activities related to the control or eradication of wood destroying pests and organisms.

(i) All work recommended by a registered company, where an estimate or bid for making repairs was given with the original inspection report, or thereafter, shall be recorded on this report or a separate work agreement and shall specify a price for each recommendation. This information shall be provided to the person requesting the inspection, and shall be retained by the registered company with the inspection report copy for three years.

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12. Section 8518 of the Code states:

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

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

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

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

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

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

13. Section 8519, subdivision (c), of the Code states:

When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that the registered company has not completed all recommendations to remove that infestation or infection or to repair damage caused by it: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas except as follows: _____ (describing infestations, infections, damage or evidence thereof, excepted)."

This certificate shall be accompanied by a copy of the inspection report prepared pursuant to Section 8516, and by a copy of the notice of work completed prepared pursuant to Section 8518, if any notice has been prepared at the time of the certification, or the certification may be endorsed on and made a part of that inspection report or notice of work completed.

14. Section 8610, subdivision (c) of the Code states:

Each registered company shall designate an 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.

15. Section 8612 of the Code states:

The licenses of qualifying managers and company registrations shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except from the location for which the registration was issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains.

When a registered company opens a branch office it shall notify the registrar in writing on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

16. Section 8613 of the Code states:

A registered company which changes the location of its principal office or any branch office or which changes its qualifying manager, branch supervisor, officers, or its bond or insurance shall notify the registrar in writing of such change within 30 days thereafter. A fee for filing such changes shall be charged in accordance with Section 8674.

17. Section 8624 of the Code provides:

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.

18. Section 8641 of the Code provides:

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.

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19. Section 8652 of the Code states:

> Failure of a registered company to make and keep all inspection reports, field notes, contracts, documents, notices of work completed, and records, other than financial records, for a period of not less than three years after completion of any work or operation for the control of structural pests or organisms, is a ground for disciplinary action. These records shall be made available to the executive officer of the board or his or her duly authorized representative during business hours.

20. Section 8654 of the Code states, in pertinent part:

> Any individual 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.

21. Section 8691 of the Code states:

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

REGULATIONS

22. California Code of Regulations, title 16, section 1911, states:

> Each operator, field representative and applicator shall file his or her address of record with the board and shall notify the board of any change in address within ten (10) days of such change. The address of record of a field representative, an operator or an applicator shall be the address of the registered company by which he or she is employed or with which he or she is associated or his or her residence address if he or she is not employed and associated.
>
> Each licensee shall also file his or her address for mailing purposes with the board and shall notify the board of any change in address within ten (10) days of such change.

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

> "Supervise" as used in Business and Professions Code Sections 8506.2, 8610 and 8611 means the oversight, direction, control, and inspection of the daily business of the company and its employees, and the availability to observe, assist,

and instruct company employees, as needed to secure full compliance with all laws and regulations governing structural pest control.

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

24. California Code of 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.

[FORM OF STANDARD STRUCTURAL FUMIGATION LOG OMITTED]

25. California Code of Regulations, title 16, section 1990, states:

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

(1) Structural pest control license number of the person making the inspection.

(2) Signature of the Branch 3 licensee who made the inspection.

(3) Infestations, infections or evidence thereof.

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

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

. . . .

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

. . . .

26. California Code of Regulations, title 16, section 1991, states:

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

. . . .

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

1. exposing the infested area(s) for local treatment,

2. removing the infested wood,

3. using another method of treatment which exterminates the infestation. (If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

. . . .

27. California Code of Regulations, title 16, section 1993.1, states:

The following statement must appear on any wood destroying pests and organisms inspection report when an estimate or bid for making repairs is given with the original inspection report, or thereafter:

"This company will reinspect repairs done by others within four months of the original inspection. A charge, if any, can be no greater than the original inspection fee for each reinspection. The reinspection must be done within ten (10) working days of request. The reinspection is a visual inspection and if inspection of concealed areas is desired, inspection of work in progress will be necessary. Any guarantees must be received from parties performing repairs."

28. California Code of Regulations, title 16, section 1996.3, states in part:

(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. 5/09) 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.

. . . .

(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).

FACTS

29. On November 28, 2011, the Board notified Respondent Prudent that its Qualifying Manager had disassociated himself from Respondent Prudent, effective November 16, 2011, causing Respondent Prudent to be without a Qualifying Manager, and therefore Respondent Prudent's license was suspended and ordered that it "**MUST CEASE ALL WORK IMMEDIATELY**." (Original in bold and underlined.)

30. No new Qualifying Manager existed for Respondent Prudent until on or about February 23, 2012, when Respondent Oscar Magana became its Qualifying Manager. As set forth above, from November 28, 2011, to May 3, 2012, Respondent Prudent was suspended by operation of law for failure to have a Qualifying Manager and, starting December 19, 2011, was suspended for the additional reason of failing to have required insurance or appropriate bond. Despite his appointment as Qualifying Manager, Respondent Oscar Magana only was visiting Respondent Prudent two to three times a month according to Respondent Ruth Perez.

31. On October 2, 2012, a Board investigator traveled to Respondent Prudent's address of record at 1156 Edmon Ave. Riverside, CA 92501 to perform a compliance inspection of Respondent Prudent's office. An individual answered the door and stated that she was a tenant and had lived at the property for more than a year, indicating that Respondent Prudent no longer had a business at that address. The Board's investigator then contacted Respondent Prudent at the phone number found on an Internet advertisement and traveled to a new address, 3728 W. Park Balboa Orange, CA 92868, and met with Respondents Ruth Perez and Hector L. Perez.

32. The Board's investigator thereby determined that Respondent Prudent's principle office location of record with the Board, namely 1156 Edmon Ave. Riverside, CA 92501, was abandoned by Respondents no later than April 18, 2012. On or about January 17, 2013, Respondent Prudent notified the Board that its new address of record was 3728 West Park Balboa

Avenue, Orange, California 92868.

33. Neither Respondent Ruth Perez nor Respondent Hector L. Perez had previously notified the Board within 30 days that they had moved Respondent Prudent's operations to this new address. Respondents Ruth Perez and Hector L. Perez also stated to the Board's investigator: "The company records for the last 3 years were lost during the move to Orange." Respondent Ruth Perez provided the investigator computer printouts of Respondent Prudent's 2012 records and partial 2011 records and informed the investigator that she would call him to arrange a further appointment. At that appointment, on January 4, 2013, Respondent Ruth Perez signed a declaration indicating that Respondents had no hard copies or original files of Respondent Prudent's work files, and reiterated that they had been "lost in the process of moving." Together, theses statements and absence of records showed that Respondents had failed to keep and maintain all Respondent Prudent's records for a period of not less than three years after completion of any work or operation.

34. Nevertheless, Respondent Prudent supplied to the Board three (3) termite inspection reports dated February 1, 2012, February 17, 2012, and February 22, 2012, and one (1) completion report dated February 23, 2012, during the period Respondent Prudent was suspended. Furthermore, Respondent Prudent provided the Board with three (3) termite inspection reports dated March 14, 2012, April 10, 2012, and May 1, 2012, and two (2) completion reports dated March 27, 2012, and April 30, 2012, during the period of Respondent Prudent's license was suspended.

35. Respondent Prudent produced to the Board's investigator computer data showing that from January 5, 2011, to December 28, 2012, that Respondent Prudent prepared 1,230 Wood Destroying Pest and Organism Inspection Reports (inspection reports) and Standard Notice of Work Completed Not Completed Reports (completion reports) (together, "WDOs").

36. A search of the Board's WDO records regarding Respondent Prudent was performed to verify that all WDO activities had been filed with the Board. The Board's records were then compared to the computer printout that Prudent provided to the Board's investigator. The comparison between the Board's records for Respondent Prudent and Respondent Prudent's

own records showed the following:

- Respondent Prudent failed to report WDO activities from January 5, 2011 to December 28, 2012.
- The WDO report number on January 5, 2011 starts at number 1959 and the report dated December 28, 2012 ends at report number 3189, totaling 1,230 WDO activities; nevertheless, the Board's data shows 161 WDO activities for the same period as being timely reported to the Board after the commencement of an inspection or upon completed work.
- Subtracting those WDO reports made by Respondent to the Board leaves 1069 inspection reports and 94 completion reports that were not made to the Board or, stated differently, Respondent Prudent had 1,163 WDO activity failures to provide reports to the Board within ten (10) days as required by law.

37. Of those WDO reports prepared by Respondent Prudent and reviewed by the Board's investigator, several were missing mandatory disclaimers regarding Reinspection language and Separated Report language. Furthermore, WDO inspection reports for the following addresses were also incomplete:

- 14625 Funston Ave., Norwalk CA 90650: The WDO report submitted to the Board notes that an inspector with license number FR-26758 inspected this property, but the actual inspection report in Respondent Prudent's files notes that an inspector with the license number FR-46315 inspected the subject property. Furthermore, the inspection report misclassified its findings; the completion report certifies all the items were completed but the report recommends contact proper tradesman on items not bid or mentioned on the completion report.
- 14556 Bellflower Ave. Bellflower, CA 90706: The inspection report is dated January 18, 2012, with a completion date of July 24, 2012, but has a handwritten date of June 27, 2012. The original report indicates that the property was inspected six months prior to the completion report date (a complete new original report is needed after four months). The completion report dated July 24, 2012, still notes the January 18, 2012, inspection report

date.

- 1551 W. 66th St. Los Angeles, CA 90047: The completion report certifies the entire structure, but there are items of repair that recommend contacting a licensed tradesman with no mention of the items on the Completion report. Item 6A and 6B of the inspection report present findings noting inaccessible areas with no recommendations for correction. For inaccessible areas, recommendations should have provided.
- 12423 Camilla St. Whittier, CA 90601: The inspection report is not signed by the inspector and drywood termite recommendations do not include the required statement to cover or remove accessible pellets.

FIRST CAUSE FOR DISCIPLINE

(Failure to Notify Board of Change in Location of Office)

38. Respondents Prudent, Oscar Magana, and Hector Perez are subject to disciplinary action under Code sections 8613, 8641 and California Code of Regulations, title 16, section 1911 in that Respondents failed to file his or its address of record with the Board with ten (10) days (for Respondents Oscar Magana, Ernesto Lara Perez, and Hector Perez) or thirty (30) days (for Respondent Prudent), as required by law.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain All Records)

39. Respondents Prudent, Oscar Magana, Ruth Perez and Hector L. Perez are subject to disciplinary action under Code section 8612, 8624, 8641 and 8652 and California Code of Regulations, title 16, section 1970 in that Respondents failed to maintain all records regarding structural pest control activities performed for three years and make such records available for inspection, and failed to prominently display their licenses in the registered company's office as required by law.

THIRD CAUSE FOR DISCIPLINE

(Failure to Designate Qualifying Manager)

40. Respondents Prudent, Ruth Perez and Hector L. Perez are subject to disciplinary action under Code section 8610, subdivision (c), 8624, and 8641 and California Code of

Regulations, title 16, section 1918 in that Respondents failed to designate a qualifying manager to supervise the daily business of Respondent Prudent and to be able to supervise and assist all employees for the period of November 28, 2011 to February 23, 2012.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Insurance Policy or Bond)

41. Respondents Prudent, Oscar Magana, Ruth Perez and Hector L. Perez are subject to disciplinary action under Code sections 8624, 8641 and 8691 in that Respondents failed to maintain an insurance policy or bond as required by the Board for the period of December 19, 2011 to May 3, 2012.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Report WDO Activities)

42. Respondents Prudent, Oscar Magana, Ruth Perez and Hector L. Perez are subject to disciplinary action under Code sections 8516, subdivision (b), 8518, and 8641 and California Code of Regulations, title 16, section 1996.3, in that Respondents failed to timely notify Respondent Prudent's WDO activities to the Board for the period of January 5, 2011 to December 28, 2012.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Make Proper Findings and Required Disclaimers)

43. Respondents Prudent, Oscar Magana, and Hector Perez are subject to disciplinary action under Code sections 8516 (9)(10), 8516 (13), 8516 (e), 8519 (c), and 8641 and California Code of Regulations, title 16, sections 1990 subdivisions (a) and (b)(2), 1991 subdivision (a)(8)(C)(3), and 1993.1, in that Respondents failed to make proper findings and required disclaimers in Respondent Prudent's WDO reports to the Board for the period of January 5, 2011 to December 28, 2012.

DISCIPLINE CONSIDERATIONS

44. To determine the degree of discipline, if any, to be imposed, Complainant incorporates herein those allegations pertaining to those fines imposed on Respondents as alleged above.

45. To determine the degree of discipline, if any, to be imposed against Respondent Ernesto Lara Perez, Complainant incorporates those allegations in Accusation No. 2014-8 against Respondent Ernesto Lara Perez' Operator's License No. OPR11128 and his Field Representative's License No. FR43416, and any final determination made in that matter.

OTHER MATTERS

46. Pursuant to section 8654 of the Code, if any of the individual Respondents has his or her license revoked, or placed under suspension, or who was a member, officer, director, associate, qualifying manager, or responsible managing employee of any company whose registration is 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 suspended or revoked, that Respondent 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 Respondent by a registered company is a ground for disciplinary action.

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 Certificate No. PR 5422, issued to Prudent Termite Control, Inc., Ruth Perez, President/ Branch 2 and 3;

2. Revoking or suspending Branch Office Registration No. BR 5347, issued to Prudent Termite Control, Inc., Ruth Perez, President/ Branch 2 and 3;

3. Revoking or suspending Operator License No. OPR 12322, issued to Oscar Magana;

4. Revoking or suspending Operator License No. OPR 11128, issued to Ernesto Lara Perez;

5. Revoking or suspending Field Representative License No. FR 43416, issued to Ernesto Lara Perez;

6. Revoking or suspending Applicator License No. RA 46446, issued to Hector P. Lara AKA Hector Lara Perez;

7. Revoking or suspending Field Representative License No. FR 46315, issued to Hector P. Lara AKA Hector Lara Perez;

8. Ordering Prudent Termite Control, Inc., Ruth Perez, Oscar Magana, Ernesto Lara Perez, Hector Lara Perez and Hector Perez AKA Hector Perez Jr., and each of them, to pay the Structural Pest Control Board 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: 9/6/13

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

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