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**FILED**

Date 1/25/12 By *William H. Douglas*

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

12 In the Matter of the First Amended Accusation  
and Petition to Revoke Probation Against:

Case No. 2011-12

13 **ZAPPEN EXTERMINATING**  
14 **JOSEPH W. ZAPPEN, Owner and QM**  
511 South 1<sup>st</sup> Avenue #476  
15 Arcadia, California 91006  
**Company Registration License No. PR 3982,**  
16 **Br. 3**  
**Operator License No. OPR 10234, Br. 3**

**FIRST AMENDED ACCUSATION AND  
PETITION TO REVOKE PROBATION**

17 and

18  
19 **JOHN CHARLES STROM**  
1424 South Sandsprings Drive  
20 West Covina, CA 91790  
**Operator License No. OPR 11528, Br.3**

21 Respondents.

22  
23  
24 William H. Douglas ("Complainant") alleges:

25 **PARTIES**

26 1. Complainant brings this Accusation solely in his official capacity as the Interim  
27 Registrar of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.  
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1           **Company Registration Certificate No. PR 3982**

2           2.     On or about June 26, 2001, the Board issued Company Registration Certificate  
3     Number PR 3982 ("registration") to Zappen Exterminating in Branch 3, with Joseph W. Zappen  
4     ("Respondent Zappen Exterminating") as the owner and Qualifying Manager. The registration is  
5     currently under suspension for failure to comply with probation term numbers 9 and 10 of the  
6     Decision and Order in Accusation Case No. 2009-37,

7           **Operator's License No. OPR 10234**

8           3.     On or about June 8, 2000, the Board issued Operator's License Number OPR 10234  
9     in Branch 3 to Respondent Zappen. On or about June 26, 2001, Respondent Zappen became the  
10    owner and Qualifying Manager of Zappen Exterminating. The license is currently under  
11    suspension for failure to comply with probation term numbers 9 and 10 of the Decision and Order  
12    in Accusation Case No. 2009-37.

13           **Operator's License No. OPR 11528**

14           4.     On or about May 29, 2007, the Board issued Operator's License Number OPR 11528  
15    in Branch 3 to John Charles Strom ("Respondent Strom"). The license was in full force and effect  
16    at all time relevant to this matter, and will expire on June 30, 2012, unless renewed.

17           **First Disciplinary Action:**

18           5.     In a disciplinary action entitled "*In the Matter of Accusation Against Zappen*  
19    *Exterminating and Joseph W. Zappen,*" Case No. 2008-14, the Structural Pest Control Board  
20    issued a Decision and Order, effective on December 3, 2008, in which Respondents Zappen  
21    Exterminating's Company Registration Certificate No. PR 3982, and Zappen's Operator License  
22    No. OPR 10234 were revoked, stayed and placed on three (3) years probation under certain terms  
23    and conditions. In addition, Respondent was suspended from engaging in the practice of pest  
24    control for ten (10) business days. A true and correct copy of the Decision and Order, Stipulated  
25    Settlement and Disciplinary Order, and Accusation in Case No. 2008-14, are attached hereto as  
26    Exhibit "A", and incorporated by reference as though fully set forth herein.

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1                   Second Disciplinary Action:

2           6.       In a disciplinary action entitled "*In the Matter of Accusation Against Zappen*  
3 *Exterminating and Joseph W. Zappen,*" Case No. 2009-37, the Structural Pest Control Board  
4 issued a Decision and Order, effective on June 25, 2010, in which Respondents Zappen  
5 Exterminating's Company Registration Certificate No. PR 3982, and Zappen's Operator License  
6 No. OPR 10234 were revoked, stayed and extended the probation period from the prior  
7 disciplinary action set forth in paragraph 5 above, Accusation Case No. 2008-14, by a period of  
8 two (2) additional years, until December 30, 2013, under certain terms and conditions, including,  
9 but not limited to, an actual twenty (20) day suspension of both licenses from engaging in the  
10 practice of pest control. A true and correct copy of the Decision and Order, Stipulated Settlement  
11 and Disciplinary Order, and Accusation in Case No. 2009-37 is attached as Exhibit "B", and is  
12 incorporated by reference as though fully set forth herein.

13           7.       Probation Term Condition 8 of the Decision and Order in Case No. 2009-37, found at  
14 page 5, provides:

15                   **"Violation of Probation.** Should Respondents violate probation in any respect, the Board,  
16 after giving Respondents notice and an opportunity to be heard, may revoke probation and  
17 carry out the disciplinary order which was stayed. If a petition to revoke probation is filed  
18 against Respondents during probation, the Board shall have continuing jurisdiction until the  
19 matter is final, and the period of probation shall be extended until the matter is final."

20           8.       On or about August 5, 2010, the Board requested that the Attorney General's Office  
21 (AGO) prepare an Accusation against Respondents Zappen Exterminating and Zappen. That  
22 Accusation was served on Respondents Zappen Exterminating and Zappen on October 22, 2010,  
23 and is currently pending before the Board.

24           9.       On or about April 15, 2011, the Board requested that the AGO prepare a First  
25 Amended Accusation and Petition to Revoke Probation against Respondents Zappen  
26 Exterminating, Zappen and Strom, thereby automatically extending the probationary period for  
27 Respondent Zappen Exterminating and Zappen, which shall not expire until the First Amended  
28 Accusation and Petition to Revoke Probation has been acted upon by the Board.

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1 JURISDICTION

2 10. This First Amended Accusation and Petition to Revoke Probation is brought before  
3 the Structural Pest Control Board (Board), Department of Pesticide Regulations, under the  
4 authority of the following laws. All sections are referenced to the Business and Professions Code,  
5 unless otherwise indicated.

6 STATUTORY PROVISIONS

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

11 12. Code section 8624 states:

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

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

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

24 13. Code section 8625 states:

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

14. Code section 8622 states:

When a complaint is accepted for investigation of a registered company, the board,  
through an authorized representative, may inspect any or all properties on which a report  
has been issued pursuant to Section 8516 or a notice of completion has been issued

1 pursuant to Section 8518 by the registered company to determine compliance with the  
2 provisions of this chapter and the rules and regulations issued thereunder. If the board  
3 determines the property or properties are not in compliance, a notice shall be sent to the  
4 registered company so stating. The registered company shall have 30 days from the receipt  
5 of the notice to bring such property into compliance, and it shall submit a new original  
6 report or completion notice or both and an inspection fee of not more than one hundred  
7 twenty-five dollars (\$125) for each property inspected. If a subsequent reinspection is  
8 necessary, pursuant to the board's review of the new original report or notice or both, a  
9 commensurate reinspection fee shall also be charged. If the board's authorized  
10 representative makes no determination or determines the property is in compliance, no  
11 inspection fee shall be charged.

12 The notice sent to the registered company shall inform the registered company that if  
13 it desires a hearing to contest the finding of noncompliance, the hearing shall be requested  
14 by written notice to the board within 20 days of receipt of the notice of noncompliance from  
15 the board. Where a hearing is not requested pursuant to this section, payment of any  
16 assessment shall not constitute an admission of any noncompliance charged.

17 15. Code section 8509 states:

18 "Branch office" is any fixed place of business in addition to the location of the principal  
19 office for which the company registration is issued, where records are kept, mail received,  
20 statements rendered, money is collected, or requests are received for service or bids, or  
21 information is given pertaining to the practice of pest control, other than governmental  
22 offices.

23 16. Code section 8516 states, in pertinent part:

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

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

Failure of a registered company to report and file with the board the address of any  
property inspected or work completed pursuant to Section 8516.1, Section 8518, or this  
section are grounds for disciplinary action and shall subject the registered company to a fine  
of not more than two thousand five hundred dollars (\$2,500).

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

1 inspection report prepared for use by an attorney for litigation purposes is not required to be  
2 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,  
3 filed notes, and activity forms.

4 Reports shall be made available for inspection and reproduction to the executive  
5 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  
6 within two business days. The following shall be set forth in the report:

7 (6) A foundation diagram or sketch of the structure or structures or portions of the  
8 structure or structures inspected, indicating thereon the approximate location of any infested  
or infested 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.

9 (7) Information regarding the substructure, foundation walls and footings, porches,  
10 patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves,  
11 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  
12 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  
13 insufficient ventilation are to be reported.

14 (10) Recommendations for corrective measures.

15 17. Section 8518 of the Code states, in pertinent part:

16 When a registered company completes work under a contract, it shall prepare, on a  
17 form prescribed by the board, a notice of work completed and not completed, and shall  
18 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.

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

22 18. Code section 8612 states:

23 The license of qualifying managers and company registration shall be prominently  
24 displayed in the registered company's office, and no registration issued hereunder shall  
25 authorize the company to do business except from the location for which the registration as  
26 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.

27 When a registered company opens a branch office it shall notify the registrar in  
28 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

1 individual designated as the branch supervisor and shall be submitted with the fee for a  
2 branch office prescribed by this chapter.

3 19. Code section 8638 states:

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

7 20. Code section 8639 states:

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

14 21. Code section 8641 states:

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

20 22. Code section 8642 states:

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

### 24 REGULATORY PROVISIONS

25 23. California Code of Regulations, title 16, section 1912, states:

26 A registered company that opens a branch office shall notify the board of that fact within 30  
27 days on a written form provided by the board (see form No. 43L-15 at the end of this  
28 section) accompanied by the required registration fee.

29 24. California Code of Regulations, title 16, section 1937.14, states:

30 All work completed by licensees or registered companies shall be done within the specific  
31 requirements of any plans or specifications and shall meet accepted trade standards for  
32 good and workmanlike construction in any material respect, and shall comply with  
33 provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of  
34 Regulations.

35 25. California Code of Regulations, title 16, section 1990, states, in pertinent part:

36 (a) All reports shall be completed as prescribed by the board. Copies filed with the board

1 shall be clear and legible. All reports must supply the information required by Section 8516  
2 of the Code and the information regarding the pesticide or pesticides used as set forth in  
3 Section 8538 of the Code, and shall contain or describe the following:

4 (3) Infestations, infections or evidence thereof.

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

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

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

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

12 (4) Earth-wood contacts.

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

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

24 (f) The following language shall appear just prior to the first finding/recommendation on  
25 each separated report:

26 "This is a separated report which is defined as Section I/Section II conditions evident on the  
27 date of the inspection. Section I contains items where there is visible evidence of active  
28 infestation, infection or conditions that have resulted in or from infestation of infection.  
Section II items are conditions deemed likely to lead to infestation or infection but where  
no visible evidence of such was found. Further inspection items are defined as  
recommendations to inspect area(s) which during the original inspection did not allow the  
inspector access to complete the inspection and cannot be defined as Section I or Section  
II."

29 26. California Code of Regulations, title 16, section 1991, states, in pertinent  
30 part:

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

35 (5) Structural members which appear to be structurally weakened by wood-destroying pests



1 to the point where they no longer serve their intended purpose shall be replaced or  
2 reinforced. Structural members which are structurally weakened by fungus to the point  
3 where they no longer serve their intended purpose shall be removed or, if feasible, may  
4 remain in place if another structural member is installed adjacent to it to perform the same  
5 function, if both members are dry (below 20% moisture content), and if the excessive  
6 moisture condition responsible for the fungus damage is corrected. Structural members  
7 which appear to have only surface fungus damage may be chemically treated and/or left as  
8 is if, in the opinion of the inspector, the structural member will continue to perform its  
9 originally intended function and if correcting the excessive moisture condition will stop the  
10 further expansion of the fungus.

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

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

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

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

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

21 2. removing the infested wood,

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

27 When a complete inspection is performed, a recommendation shall be made to remove or  
28 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.

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

(12) Repair a stall shower if it is found to leak when water tested for a minimum of  
fifteen (15) minutes after the shower drain has been plugged and the base filled to within  
one (1) inch of the top of the shower dam. Stall showers with no dam or less than two (2)  
inches to the top of the dam are to be water tested by running water on the unplugged  
shower base for a minimum of five (5) minutes. Showers over finished ceilings must be

1 inspected but need to be water tested. If water stains are evidence on the ceiling,  
2 recommendations shall be made for further inspection and testing.

3 27. California Code of Regulations, title 16, section 1993, states, in pertinent  
4 part:

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

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

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

14 (a) The address of each property inspected and/or upon which work was completed shall be  
15 reported on a form prescribed by the Board and designated as the WDO Inspection and  
16 Completion Activity Report Form (see Form No. 43M-52 Rev. 5/03) at the end of this  
17 section. This form shall be prepared by each registered company and shall comply with all  
18 of the requirements pursuant to Section 8516(b), and 8518.

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

21 (1) Company Name

22 (2) Company registration number

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

25 (4) Date of Activity

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

28 (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 than two thousand five  
hundred dollars (\$2,500).

#### COST RECOVERY/RESTITUTION

29. Code section 125.3 provides, in pertinent part, that the 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.

1 30. Government Code section 11519(d) provides, in pertinent part, that the Board may  
2 require restitution of damages suffered as a condition of probation in the event probation is  
3 ordered.

4 LIEBER PROPERTY

5 31. On or about July 23, 2009, Respondent inspected the property located at 846 West  
6 Hillcrest Boulevard, in Monrovia, California, ("Lieber property"), for wood destroying pests and  
7 organisms for escrow purposes, and on that same day issued Wood Destroying Pests and  
8 Organisms Inspection Report No. 5527 ("Inspection Report No. 5527"). Inspection Report No.  
9 5527 consisted of five findings and recommendations.

10 32. On or about August 17, 2009, Respondent issued a Standard Notice of Work  
11 Completed and Not Completed ("Completion Notice"), certifying that all of the work  
12 recommended in Inspection Report No. 5527, dated July 23, 2009, had been completed in  
13 accordance with the Board's rules and regulations, and that the property was now free of evidence  
14 of active infestation or infection in visibly accessible areas.

15 33. On or about August 29, 2009, escrow closed.

16 34. On or about October 2, 2009, Foss Termite Control, Inc. ("Foss") inspected the  
17 Lieber property for wood destroying pests and organisms. Foss prepared an inspection report  
18 consisting of four findings and recommendations.

19 35. On or about October 14, 2009, the Board received a complaint from the homeowner,  
20 Elaine Lieber, due to Foss's findings of evidence of termites and termite damage to the structure.

21 36. On or about October 26, 2009, the Board notified Respondent of the homeowner's  
22 complaint.

23 37. On or about November 10, 2009, Respondent notified the Board that he contacted and  
24 met with the homeowner and is addressing the problems.

25 38. On or about December 14, 2009, a Board specialist performed a limited inspection of  
26 the Lieber property and noted violations.

27 39. On or about December 30, 2009, the Board specialist prepared and issued a Report of  
28 Findings along with a Notice ordering Respondent to bring the property into compliance by

1 correcting the items described in the Report of Findings and to submit a corrected inspection  
2 report and Notice of Work Completed and Not Completed to the Board within thirty (30) days  
3 with respect to the inspection performed on July 23, 2009.

4 40. On or about February 17, 2010, Respondent re-inspected the Lieber property and  
5 thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No.  
6 5527A ("Inspection Report No. 5527A"), consisting of 12 findings and 10 recommendations.

7 41. On or about February 19, 2010, Respondent issued a Completion Notice, certifying  
8 that all of the work recommended in Inspection Report No. 5527A, dated February 17, 2010, had  
9 been completed in accordance with the Board's rules and regulations.

10 42. On or about March 10, 2010, a Board specialist went to the Lieber property to check  
11 the Respondent's work for compliance, and found that Respondent was not in compliance.

12 43. On or about March 19, 2010, Respondent re-inspected the Lieber property and  
13 thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No.  
14 5527B ("Inspection Report No. 5527B"), consisting of 13 findings and 10 recommendations.

15 44. Respondent failed to bring the Lieber property into compliance.

16 **FIRST AMENDED ACCUSATION**

17 **FIRST CAUSE FOR DISCIPLINE**

18 ***(Inspection Report Violations)***

19 45. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline  
20 under Code section 8641, concerning the Lieber property, in that, on Inspection Report No. 5527,  
21 dated July 23, 2009, Inspection Report No. 5527A, dated February 17, 2010, and Inspection  
22 Report No. 5527B, dated March 19, 2010, Respondent failed to include language defining Section  
23 I/Section II conditions on each report, as defined in California Code of Regulations, title 16,  
24 section 1990(f).

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1 SECOND CAUSE FOR DISCIPLINE

2 *(Failure to Comply with the Code)*

3 46. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline  
4 under Code section 8641, in that, concerning the Lieber property, Respondent failed to comply  
5 with the following Code sections:

6 **Section 8516(b) and Section 8518:**

7 a. Respondents failed to issue an inspection report and completion notice for the repair  
8 work completed at the wood deck in or about October 2009.

9 **Section 8516(b)(6):**

10 b. Respondents failed to include an accurate diagram of the incident address on the  
11 July 23, 2009, February 17, 2010, and March 19, 2010, inspection reports. The diagram on the  
12 July 23, 2009, inspection report failed to include the inaccessible portion of the substructure, the  
13 wood deck/patio staircase, the entryway to the house, and the fireplace. The diagram on the  
14 February 17, 2010, inspection report failed to include the inaccessible portion of the substructure,  
15 the side carriage porch, the wood deck/patio staircase, the entryway to the house, and the  
16 fireplace.

17 c. Respondents failed to include on the inspection report diagram, the correct location of  
18 the reported old evidence of subterranean termites and subterranean termite damage in the  
19 substructure, and the decay fungi and decay fungi damage at the side carriage porch on the  
20 March 19, 2010, inspection report.

21 **Section 8516(b)(6) and (7):**

22 d. Respondents failed to report cellulose debris in the substructure on the July 23, 2009,  
23 inspection report, and the full extent of the cellulose debris on the March 19, 2010, inspection  
24 report, as defined by California Code of Regulations, title 16, section 1990(b)(3).

25 e. Respondents failed to report the full extent of the evidence of subterranean termites in  
26 the substructure on the July 23, 2009, February 17, 2010, and March 19, 2010, inspection reports,  
27 as defined by California Code of Regulations, title 16, section 1990(a)(3).

28 ///

1 f. Respondents failed to report subterranean termite damage in the substructure on the  
2 July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section  
3 1990(a)(4).

4 g. Respondents failed to report evidence of an excessive moisture condition (water  
5 stains) in the substructure on the July 23, 2009, inspection report, as defined by California Code  
6 of Regulations, title 16, section 1990(a)(5).

7 h. Respondents failed to report inaccessible portions of the substructure, due to an  
8 insulated sub-floor, on the July 23, 2009, and February 17, 2010, inspection reports, as defined by  
9 California Code of Regulations, title 16, section 1990(b)(2) and 1993(d).

10 i. Respondents failed to report decay fungi, decay fungi damage, and evidence of an  
11 excessive moisture condition (water stains) at the framing below the side carriage porch on the  
12 July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of  
13 Regulations, title 16, section 1990(a)(3) and (4), and 1990(b)(5).

14 j. Respondents failed to report evidence of subterranean termites in the attic framing on  
15 the July 23, 2009, and March 19, 2010, inspection reports, and the full extent of the evidence of  
16 subterranean termites in the attic on the February 17, 2010, inspection report, as defined by  
17 California Code of Regulations, title 16, section 1990(a)(3).

18 k. Respondents failed to report the drywood termite damage at the wood deck framing  
19 on the July 23, 2009, inspection report, and the full extent of the drywood termite damage at the  
20 wood deck on the February 17, 2010, and March 19, 2010, inspection reports, as defined by  
21 California Code of Regulations, title 16, section 1990(a)(4).

22 l. Respondents failed to report subterranean termite damage at the wood deck framing  
23 on the July 23, 2009, and March 19, 2010, inspection reports, and the full extent of the  
24 subterranean termite damage at the wood deck on the February 17, 2010, inspection report, as  
25 defined by California Code of Regulations, title 16, section 1990(a)(4).

26 m. Respondents failed to report earth-to-wood contact at the wood deck load posts on the  
27 July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section  
28 1990(b)(4) and 1993(d).

1 n. Respondents failed to report decay fungi damage at the framing of the nook below the  
2 wood deck on the July 23, 2009, and February 17, 2010, inspection reports, as defined by  
3 California Code of Regulations, title 16, section 1990(a)(4).

4 o. Respondents failed to report evidence of an excessive moisture condition (water  
5 damage) and decay fungi damage at the storage area below the wood deck on the July 23, 2009,  
6 and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16,  
7 section 1990(a)(4) and 1990(b)(5).

8 p. Respondents failed to report portions of the attic that are inaccessible due to  
9 construction on the July 23, 2009, and February 17, 2010, inspection reports, as defined by  
10 California Code of Regulations, title 16, section 1990(d).

11 q. Respondents failed to report water damage at the wood deck storage area on the  
12 March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section  
13 1990(b)(5).

14 r. Respondents failed to report decay fungi damage at the wood deck nook on the  
15 March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section  
16 1990(b)(4).

17 s. Respondents failed to report the full extent of the substandard repair work previously  
18 completed at the wood deck on the March 19, 2010, inspection report.

19 t. Respondents failed to report substandard repair work previously completed at the  
20 wood deck on the February 17, 2010, inspection report.

21 **Section 8516(b)(6) and (7) and (10):**

22 u. Respondents failed to make a proper finding and recommendation regarding the  
23 reported fungus damage at the porch post on the July 23, 2009, inspection report; and at the  
24 deck/patio on the February 17, 2010, inspection report. The findings failed to report the cause of  
25 the infection, and the recommendations failed to include a recommendation to correct the  
26 excessive moisture condition that caused the infection, as defined by California Code of  
27 Regulations, title 16, section 1991(a)(5).

28

1 v. Respondents failed to make a proper finding and recommendation regarding the  
2 reported fungus damage at the wood deck storage area on the March 19, 2010, inspection report.  
3 The findings failed to report the cause of the infection, and the recommendation failed to include  
4 a recommendation to correct the excessive moisture condition that caused the infection, as  
5 defined by California Code of Regulations, title 16, section 1991(a)(5).

6 **Section 8516(b)(10):**

7 w. Respondents failed to make a proper recommendation regarding the reported  
8 evidence of subterranean termites in the substructure on the July 23, 2009, and February 17, 2010,  
9 inspection reports. The recommendations failed to include a recommendation to remove the  
10 accessible evidence of infestation, as defined by California Code of Regulations, title 16, section  
11 1991(a)(9).

12 x. Respondents failed to make a recommendation for the water stains reported in the  
13 substructure, the evidence of drywood termites reported at the decks/patios, and the water stains  
14 reported at the decks/patios on the February 17, 2010, inspection reports, as defined by California  
15 Code of Regulations, title 16, section 1990(g).

16 y. Respondents failed to make a proper recommendation regarding the water stains in  
17 the substructure reported on the February 17, 2010, and March 19, 2010, inspection reports. A  
18 recommendation was not made to have the proper tradesmen determine the source of the water  
19 stains, and to make repairs if needed, as defined by California Code of Regulations, title 16,  
20 section 1990(b)(5).

21 z. Respondents failed to make a proper recommendation regarding the inaccessible  
22 portion of the substructure, reported on the March 19, 2010, inspection report. The  
23 recommendation failed to include a recommendation for further inspection of the inaccessible  
24 substructure, and the issuance of a "supplemental" inspection report, as defined by California  
25 Code of Regulations, title 16, section 1993(d).

26 aa. Respondents failed to make a proper recommendation regarding the reported  
27 evidence of drywood termites at the decks/patios on the March 19, 2010, inspection report. The  
28



1 recommendation failed to include a recommendation to cover or remove the accessible evidence  
2 of infestation, as defined by California Code of Regulations, title 16, section 1991(a)(8).

3 bb. Respondents failed to make a proper recommendation regarding the drywood termite  
4 damage at the decks/patios reported on the March 19, 2010, inspection report. A  
5 recommendation was made to just patch the damage, when the damage needs to be replaced, as  
6 defined by California Code of Regulations, title 16, section 1991(a)(5).

7 **THIRD CAUSE FOR DISCIPLINE**

8 ***(Workmanship)***

9 47. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline  
10 under Code section 8641, in that, on the Lieber property, Respondents failed to complete all work  
11 to meet accepted trade standards for good and workmanlike construction in any material respect,  
12 as defined by California Code of Regulations, title 16, section 1937.14, in the following respects:

13 **Inspection Report No. 5527, dated July 23, 2009:**

14 a. Respondents failed to properly repair the fungus damage at the side porch post, in that  
15 instead of replacing the entire board, only a section was cut out and replaced, and the replaced  
16 section was loose.

17 b. Respondents failed to properly repair the damage at the wood deck framing, in that the  
18 replacements are not properly cut, nailed, or installed; some of the replacements are split; some of  
19 the damage was sloppily patched, when it should have been replaced; some of the damage was  
20 sloppily patched and not sanded; and the downspout was not properly installed.

21 **Inspection Report No. 5527A, dated February 17, 2010:**

22 c. Respondents failed to properly repair the reinforcements at the subterranean termite  
23 damage in the substructure, in that a cleat was not used to support the reinforcements; the  
24 reinforcements were either toe-nailed into the floor joist, or nailed through the floor joist into the  
25 reinforcements.

26 d. Respondents failed to properly repair the decay fungi damage and excessive moisture  
27 condition (water stains) at the framing below the side carriage porch, in that scrap lumber was  
28

1 randomly installed under the porch, serving little or no purpose at all, and the boards that  
2 appeared to have a purpose were not properly nailed.

3 e. Respondents failed to properly repair the damage at the earth-to-wood contact at the  
4 wood deck load posts, in that instead of leveling the soil beneath the wood deck, a stretch was  
5 created around the load posts, which has already started to allow the earth to re-accumulate  
6 against the wood in the trenches.

7 f. Respondents failed to properly repair the decay fungi damage at the framing of the  
8 nook below the wood deck, in that it is not properly installed or nailed.

9 g. Respondents failed to properly repair the decay fungi damage at the framing of the  
10 storage area below the wood deck, in that the repair work is not properly installed.

#### 11 **FOURTH CAUSE FOR DISCIPLINE**

##### 12 *(Violation of Contract)*

13 48. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline  
14 under Code section 8638, in that, concerning the Lieber property, Respondents failed to complete  
15 the following work, as set forth in the Completion Notice dated February 19, 2010:

- 16 a. Respondents failed to remove the cellulose debris in the substructure.  
17 b. Respondents failed to repair the subterranean termite damage in the substructure.  
18 c. Respondents failed to remove the evidence of subterranean termites in the attic.  
19 d. Respondents failed to repair the drywood termite damage at the wood deck framing.

#### 20 **FIFTH CAUSE FOR DISCIPLINE**

##### 21 *(Failed to Comply with Report of Findings)*

22 49. Respondent's registration and operator's license are subject to discipline under Code  
23 section 8641, in that, Respondents failed to comply with Code section 8622, by failing to correct  
24 the items described in the Report of Findings within thirty (30) calendar days of receipt of the  
25 Notice, bringing the Lieber property into compliance with the Board's Notice and Report of  
26 Findings, dated January 5, 2010.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 *(Aiding and Abetting)*

3 50. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline  
4 under Code section 8639, in that on or about March 19, 2010, on the Lieber property,  
5 Respondents aided or abetted an unlicensed individual or knowingly combined or conspired with  
6 an unlicensed individual, Ruben Salas, to evade the provisions of the Structural Pest Control Act,  
7 in that Ruben Salas performed an inspection of the attic space over the garage.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 *(Grossly Negligent or Fraud Act)*

10 51. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline  
11 under Code section 8642, in that, on or about July 23, 2009, concerning the Lieber property,  
12 Respondent committed a grossly negligent or fraudulent act by failing to indicate on Inspection  
13 Report No. 5527, what type of report he was issuing.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 *(Unregistered Branch Office)*

16 52. Respondents Zappen Exterminating, Zappen and Strom's licenses are subject to  
17 discipline under Code sections 8509 and 8612, in conjunction with California Code of  
18 Regulations, title 16, section 1912, in that, from on or about August to October 2010, and other  
19 dates, Respondents operated a branch office which was not registered with the Board.

20 **NINTH CAUSE FOR DISCIPLINE**

21 *(Failure to File Wood Destroying Pests and Organisms Inspection Reports)*

22 53. Respondents Zappen Exterminating, Zappen and Strom's licenses are subject to  
23 discipline under Code sections 8516(b), in conjunction with California Code of Regulations, title  
24 16, section 1996.3(a), in that, Respondents failed to file reports of Wood Destroying Pests and  
25 Organisms (WDO) activities with the Board on or after December 29, 2009, as required by law.

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1                                   **PETITION TO REVOKE PROBATION**

2                                   **FIRST CAUSE TO REVOKE PROBATION**

3                                   *(Failure to Obey All Laws)*

4                   54. Probation Term/Condition 2 of the Decision and Order in Accusation Case No. 2009-  
5 37, found at page 4 of the Stipulated Settlement and Disciplinary Order under the heading "Obey  
6 All Laws", provides:

7                   "Respondents shall obey all federal, state and local laws, and all laws and rules relating to  
8 the practice of structural pest control."

9                   55.. Respondents Zappen Exterminating and Zappen's probation is subject to revocation  
10 because they failed to comply with Probation Condition No. 2 referenced above. There are  
11 several violations of this condition. Each violation in and of itself is an independent ground to  
12 revoke probation. The facts and circumstances regarding this violation are that:

13                  a. Respondents Zappen Exterminating and Zappen operated an unregistered branch  
14 office at 1424 S. Sandsprings Drive, West Covina, California, 91793;

15                  b. Respondents Zappen Exterminating and Zappen used an unregistered address on  
16 inspection reports of P. O. Box 1415, West Covina, California, 91793-1415;

17                  c. Respondents Zappen Exterminating and Zappen failed to file any reports of Wood  
18 Destroying Pests and Organisms (WDO) activities with the Board since December 29, 2009, as  
19 required by law;

20                  d. Respondents Zappen Exterminating and Zappen failed to notify the Board of their  
21 change of physical address and telephone number.

22                                   **SECOND CAUSE TO REVOKE PROBATION**

23                                   *(Failure to File Quarterly Reports)*

24                   56. Probation Term/Condition 3 of the Decision and Order in Accusation Case No. 2009-  
25 37, found at page 4 of the Stipulated Settlement and Disciplinary Order under the heading  
26 "Quarterly Reports", provides:

27                   "Respondents shall file quarterly reports with the Board during the period of probation.  
28 Failure to file any quarterly report during the time period as required shall be considered a  
violation of probation."

1 57. Respondents Zappen Exterminating and Zappen's probation is subject to revocation  
2 because they failed to comply with Probation Condition No. 3 referenced above. The facts and  
3 circumstances regarding this violation are that Respondents failed to file any quarterly reports, as  
4 required.

### 5 **THIRD CAUSE TO REVOKE PROBATION**

6 *(Failure to Post Notice of Suspension)*

7 58. Probation Term/Condition 6 of the Decision and Order in Accusation Case No. 2009-  
8 37, found at page 5 of the Stipulated Settlement and Disciplinary Order under the heading  
9 "Posted Notice of Suspension", provides:

10 "Respondents' structural pest control company, Zappen Exterminating, shall prominently  
11 post a suspension notice provided by the Board of the Board's order of suspension at its  
12 principal office and each of its branch offices in a place conspicuous and readable to the  
13 public. Said notice shall remain so posted during the entire period of actual suspension."

14 59. Respondents Zappen Exterminating and Zappen's probation is subject to revocation  
15 because they failed to comply with Probation Condition No. 6 referenced above. The facts and  
16 circumstances regarding this violation are that Respondents failed to post a Notice of Suspension  
17 at their principal office and each of the branch offices during the term of their suspension, as  
18 required.

### 19 **THIRD CAUSE TO REVOKE PROBATION**

20 *(Failure to Take and Pass Licensure Examination)*

21 60. Probation Term/Condition 9 of the Decision and Order in Accusation Case No. 2009-  
22 37, found at page 5 of the Stipulated Settlement and Disciplinary Order under the heading "Take  
23 and Pass Examination", provides:

24 "Respondent shall take and pass the Structural Pest Control License examination  
25 currently required of new applicants for Operator Branch III before December 30,  
26 2010. If Respondent does not pass the examination by December 30, 2010,  
27 Respondents' licenses shall be suspended until Respondent submits proof of passing  
28 the examination to the Board."

29 61. Respondents Zappen Exterminating and Zappen's probation is subject to revocation  
30 because they failed to comply with Probation Condition No. 9 referenced above. The facts and  
31 circumstances regarding this violation are that Respondent Zappen failed to take and pass the

1 Structural Pest Control License examination required of new applicants for Operator Branch III,  
2 and to submit proof of passing the examination to the Board before December 30, 2010, as  
3 required.

4 **FIFTH CAUSE TO REVOKE PROBATION**

5 *(Failure to Complete and Pass Ethics Course)*

6 62. Probation Term/Condition 10 of the Decision and Order in Accusation Case No.  
7 2009-37, found at page 5 of the Stipulated Settlement and Disciplinary Order under the heading  
8 "Course - Ethics", provides:

9 "Respondent Joseph Zappen must complete at his own expense, with a passing grade  
10 before December 30, 2010, a course in business ethics. Respondent shall submit the  
11 syllabus for the course to the Board for prior approval before taking the course. This  
12 course is in addition to the continuing education hours required for relicensure. If  
13 Respondent does not pass the examination by December 30, 2010, Respondents' licenses  
14 shall be suspended until Respondent submits proof of passing the examination to the  
15 Board. In addition, if Respondent does not pass the course by December 30, 2010, the  
16 Board shall consider this a violation of probation."

17 63. Respondents Zappen Exterminating and Zappen's probation is subject to revocation  
18 because they failed to comply with Probation Condition No. 10 referenced above. The facts and  
19 circumstances regarding this violation are that Respondent Zappen failed to take and pass a  
20 course in business ethics, and to submit proof of passing the course to the Board before December  
21 30, 2010, as required.

22 **SIXTH CAUSE TO REVOKE PROBATION**

23 *(Failure to Take and Pass Pre-Operator Courses)*

24 64. Probation Term/Condition 11 of the Decision and Order in Accusation Case No.  
25 2009-37, found at pages 5-6 of the Stipulated Settlement and Disciplinary Order under the  
26 heading "Pre-Operator Courses", provides:

27 "Respondent must complete at his own expense, with a passing grade before December 30,  
28 2010, the Branch III Pre-Operator courses, to be approved by the Board prior to taking the  
courses. If Respondent does not pass the courses by December 30, 2010, the Board shall  
consider this a violation of probation."

65. Respondents Zappen Exterminating and Zappen's probation is subject to revocation  
because they failed to comply with Probation Condition No. 11 referenced above. The facts and  
circumstances regarding this violation are that Respondent Zappen failed to take and pass the

1 Branch III Pre-Operator courses, and to submit proof of passing the courses to the Board before  
2 December 30, 2010, as required.

3 **SEVENTH CAUSE TO REVOKE PROBATION**

4 *(Failure to Reimburse Costs)*

5 66. Probation Term/Condition 12 of the Decision and Order in Accusation Case No.  
6 2009-37, found at pages 6 of the Stipulated Settlement and Disciplinary Order under the heading  
7 "Costs Reimbursement", provides:

8 "Respondents shall pay to the Board, pursuant to Business and Professions Code section  
9 125.3, the cost of investigation and enforcement in this matter in the amount of \$5,000.  
10 Respondents shall be permitted to pay these costs pursuant to a payment plan approved by  
11 the Board with the payment to be completed by January 1, 2012. All costs for the prior  
12 disciplinary case in Accusation No. 2008-14 must also be paid by January 1, 2012. Failure  
13 to make a timely payment according to the payment schedule, and/or failure to complete  
14 payment of costs recovery, shall constitute a violation of probation, which may subject  
15 Respondents' licenses to outright revocation."

16 67. Respondents Zappen Exterminating and Zappen's probation is subject to revocation  
17 because they failed to comply with Probation Condition No. 12 referenced above. There are two  
18 violations of this condition. Each violation in and of itself is an independent ground to revoke  
19 probation. The facts and circumstances regarding this violation are that:

20 a. Respondent Zappen failed to pay all costs owed for the prior disciplinary case in  
21 Accusation No. 2008-14 in the amount of \$12,499.99, before January 1, 2012.

22 b. Respondent Zappen failed to pay all costs owed for the prior disciplinary case in  
23 Accusation No. 2009-37 in the amount of \$5,000.00, before January 1, 2012.

24 **EIGHTH CAUSE TO REVOKE PROBATION**

25 *(Failure to Allow Random Inspections)*

26 68. Probation Term/Condition 13 of the Decision and Order in Accusation Case No.  
27 2009-37, found at pages 6 of the Stipulated Settlement and Disciplinary Order under the heading  
28 "Random Inspections", provides:

"Respondents shall reimburse the Board for one (1) random inspection per quarter by Board  
specialists during the period of probation, not to exceed \$125 per inspection."

69. Respondents Zappen Exterminating and Zappen's probation is subject to  
revocation because they failed to comply with Probation Condition No. 13 referenced above. The

1 facts and circumstances regarding this violation are that Respondents Zappen Exterminating and  
2 Zappen failed to comply with random quarterly inspections during the period of probation, as  
3 required.

4 **NINTH CAUSE TO REVOKE PROBATION**

5 *(Failure to Submit Notices of Work Completed)*

6 70. Probation Term/Condition 14 of the Decision and Order in Accusation Case No.  
7 2009-37 found at pages 6 of the Stipulated Settlement and Disciplinary Order under the heading  
8 "Submission of Notices of Work Completed", provides:

9 "In addition to condition 13 above, Respondent shall provide the Board with a copy of each  
10 and every Notice of Work Completed issued during the period of probation within ten (10)  
11 days of the date of the notice for the Board's review, together with the corresponding  
12 inspection report. The Board specialists shall randomly inspect any and all of the work set  
13 forth in these reports during the period of probation and Respondent agrees to reimburse the  
14 Board for these inspections not to exceed \$125 per inspection."

15 71. Respondents Zappen Exterminating and Zappen's probation is subject to  
16 revocation because they failed to comply with Probation Condition No. 14 referenced above. The  
17 facts and circumstances regarding this violation are that Respondents Zappen Exterminating and  
18 Zappen failed to submit notices of work completed during the period of probation, as required.

19 **PRIOR DISCIPLINE/MATTERS IN AGGRAVATION**

20 72. This is the third disciplinary Action against Respondents Zappen Exterminating  
21 and Zappen since September 27, 2007, as set forth fully in paragraphs 5 and 6 above. (See  
22 Exhibits "A" and "B"). Respondents Zappen Exterminating and Zappen have been on and  
23 continually in violation of their probation since December 3, 2008.

24 73. The facts alleged in this First Amended Accusation and Petition to Revoke Probation  
25 in violation of the Decision and Order in Case No. 2009-27, granting probation effective June 25,  
26 2010, which extended the probation granted in the prior Decision and Order in Case No. 2008-14,  
27 effective December 3, 2008, establish that Respondents Zappen Exterminating and Zappen are  
28 not candidates for probation, and that their licenses should be revoked.

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1                   **Company Registration No. PR 3982**

2           74.     On or about November 29, 2005, the company registration paid a fine in the  
3 amount of \$50 levied by the Los Angeles County Agricultural Commissioner for violating Code  
4 section 8505.17.

5           75.     On or about July 2, 2008, the company registration paid a fine in the amount of  
6 \$50 levied by the Los Angeles County Agricultural Commissioner for violating Code section  
7 8505.17.

8           76.     On or about December 14, 2009, the company registration paid a fine in the  
9 amount of \$50 levied by the Los Angeles County Agricultural Commissioner for violating Code  
10 section 8505.17.

11                   **Operator License No. OPR 10234**

12           77.     On or about September 27, 2011, the operator's license paid fine in the mount of  
13 \$50 levied by the Los Angeles County Agricultural Commissioner for violating Code section  
14 8505.17.

15           78.     On September 27, 2011, the operator's license paid Citation NO. CF 11-16 in the  
16 amount of \$2,600, which was levied by the Structural Pest Control Board for violating title 16,  
17 sections 1911 and 1996.3 of the California Code of Regulations. Respondent Zappen did not  
18 comply with the Order of Abatement.

19           79.     On November 1, 2011, the operator's license was cancelled for failure to comply  
20 with the Order of Abatement for Citation No. CF 11-16.

21           80.     On November 17, 2011, the operator's license was reinstated due to compliance  
22 with the Order of Abatement for Citation No. CF 11-16.

23                                   **OTHER MATTERS**

24           81.     Notice is hereby given that section 8620 of the Code provides, in pertinent part,  
25 that a respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of  
26 an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to  
27 45 days. Such request must be made at the time of the hearing and must be noted in the proposed  
28

1 decision.. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a  
2 suspension.

3 82. Pursuant to Code section 8624, if Operator's License No. OPR 10234, issued to  
4 Joseph W. Zappen, is suspended or revoked, the Board may suspend or revoke Company  
5 Registration No. PR 3982, issued to Zappen Exterminating.

6 83. Pursuant to Code section 8624, the causes for discipline established as to Zappen  
7 Exterminating, likewise constitutes causes for discipline against Joseph W. Zappen, regardless of  
8 whether he had knowledge of or participated in the acts or omissions which constitute causes for  
9 discipline against Zappen Exterminating.

10 84. Pursuant to Code section 8654, if discipline is imposed on Operator's License No.  
11 OPR 10234, issued to Joseph W. Zappen, and/or Operator's License No. OPR 11528 issued to  
12 John Charles Strom, then Joseph W. Zappen and/or John Charles Strom shall be prohibited from  
13 serving as an officer, director, associate, partner, qualifying manager, or responsible managing  
14 employee for any registered company during the time the discipline is imposed, and any  
15 registered company which employs, elects, or associates Joseph W. Zappen and/or John Charles  
16 Strom, shall be subject to disciplinary action.

17 **PRAYER**

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

- 20 1. Revoking or suspending Company Registration Certificate Number PR 3982,  
21 issued to Zappen Exterminating;
- 22 2. Revoking or suspending Operator's License Number OPR 10234, issued to Joseph  
23 W. Zappen;
- 24 3. Revoking or suspending Operator's License Number OPR 11528, issued to John  
25 Charles Strom;
- 26 4. Revoking or suspending any other license for which Joseph W. Zappen is  
27 furnishing the qualifying experience or appearance;

1           5.     Revoking or suspending any other license for which John Charles Strom is  
2 furnishing the qualifying experience or appearance;

3           6.     Ordering restitution of all damages according to proof suffered by Elaine Lieber as  
4 a condition of probation in the event probation is ordered;

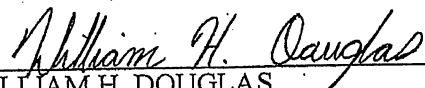
5           7.     Prohibiting Joseph W. Zappen from serving as an officer, director, associate,  
6 partner, qualifying manager or responsible managing employee of any registered company during  
7 the period that discipline is imposed on Company Registration Certificate Number PR 3982,  
8 issued to Zappen Exterminating;

9           8.     Prohibiting John Charles Strom from serving as an officer, director, associate,  
10 partner, qualifying manager or responsible managing employee of any registered company during  
11 the period that discipline is imposed on Company Registration Certificate Number PR 3982,  
12 issued to Zappen Exterminating;

13           9.     Ordering Joseph W. Zappen and John Charles Strom to pay the Structural Pest  
14 Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to  
15 Business and Professions Code section 125.3; and,

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

18 DATED: 1/25/12

  
WILLIAM H. DOUGLAS  
Interim Registrar/Executive Officer  
Structural Pest Control Board  
Department of Pesticide Regulation  
State of California  
*Complainant*