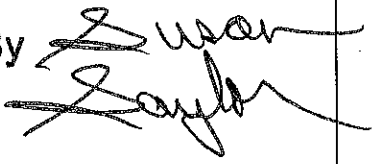


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FILED

Date 11/19/13 By 

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

12 In the Matter of the Accusation Against:

Case No. 2014-29

13 **FOXX TERMITE, INC.; ALONZO**
14 **SILLAS, PRESIDENT**
324 S. Diamond Bar Blvd., Unit #400
15 Diamond Bar, CA 91765
16 **Company Registration Certificate No. PR**
17 **6265, Branch 3**

ACCUSATION

18 **MIGUEL FUENTES**
3693 San Gabriel River Parkway
19 Pico Rivera, CA 90660
20 **Operator's License No. OPR 10598,**
21 **Branch 3**

22 Respondents.

23 Complainant alleges:

PARTIES

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

27 2. On or around April 5, 2011, the Structural Pest Control Board issued Company
28 Registration Certificate No. PR 6265 in Branch 3 to Foxx Termite, Inc. with Alonzo Sillas as

1 President and Curtis Diaz as Qualifying Manager. On or around January 27, 2012, Company
2 Registration Certificate No. PR 6265 reflected the disassociation of Curtis Diaz as Qualifying
3 Manager. On or around February 17, 2012, Foxx Termite, Inc. Company Registration Certificate
4 No. PR 6265 reflected Alonzo Sillas as President and Miguel Fuentes as Qualifying Manager.
5 (collectively, Respondent Foxx).

6 3. On or around August 27, 2013, Company Registration Certificate No. PR 6265
7 reflected the disassociation of Miguel Fuentes as Qualifying Manager.

8 4. On or around September 18, 2013, Company Registration Certificate No. PR 6265
9 reflected Jeromie Nigel Davis as Qualifying Manager.

10 5. The Company Registration Certificate No. PR 6265 was in full force and effect at all
11 times relevant to the charges brought herein, however, on or around October 2, 2013, the
12 Company Registration Certificate was suspended due to failure to maintain a surety bond in the
13 amount of \$4000.00 as required by Bus. & Prof. Code § 8697.

14 6. On or around July 24, 2002, the Structural Pest Control Board issued Operator's
15 License No. OPR 10598 in Branch 3 to Miguel Fuentes (Respondent Fuentes).

16 7. On or around February 17, 2012, Operator's License No. OPR 10598 became the
17 Qualifying Manager of Foxx Termite, Inc.

18 8. On or around August 27, 2013, Operator's License No. OPR 10598 disassociated as
19 Qualifying Manager of Foxx Termite, Inc.

20 9. Operator's License No. OPR 10598 is currently in effect and renewed through June
21 30, 2014.

22 23 JURISDICTION

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

STATUTORY PROVISIONS

11. Section 8516, subdivision (b) of the Code states, in pertinent part:

“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 this 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.”

12. Section 8516, subdivision (b)(1) of the Code states, in pertinent part, that an inspection report shall include the date of the inspection and the name of the licensed field representative or operator making the inspection.

13. Section 8516, subdivision (b)(2) of the Code states, in pertinent part, that an inspection report shall include the name and address of the person or firm ordering the report.

1 14. Section 8516, subdivision (b)(3) of the Code states, in pertinent part, that an
2 inspection report shall include the name and address of any person who is a party in interest.

3 15. Section 8516, subdivision (b)(4) of the Code states, in pertinent part, that an
4 inspection report shall include the address or location of the property.

5 16. Section 8516, subdivision (b)(6) of the Code states, in pertinent part, that an
6 inspection report shall include a foundation diagram or sketch of the structure or structures or
7 portions of the structure or structures inspected, indicating thereon the approximate location of
8 any infested or infected areas evident, and the parts of the structure where conditions that would
9 ordinarily subject those parts to attack by wood destroying pests or organisms exist.

10 17. Section 8516, subdivision (b)(7) of the Code states, in pertinent part, that an
11 inspection report shall contain information regarding the substructure, foundation walls and
12 footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes
13 the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or
14 other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed
15 likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris,
16 faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient
17 ventilation are to be reported.

18 18. Section 8516, subdivision (b)(10) of the Code states, in pertinent part, that an
19 inspection report shall contain recommendations for corrective measures.

20 19. Section 8516, subdivision (c) of the Code states:

21 “...

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

27 (1) The infestation or infection that is evident.

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

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

5 20. Section 8518 of the Code states:

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

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

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

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

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

22 21. Section 8550 of the Code states:

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

26 (b) Notwithstanding subdivision (a), an unlicensed individual may solicit pest control work
27 on behalf of a structural pest control company only if the company is registered pursuant to this
28 chapter, and the unlicensed individual does not perform or offer to perform any act for which an

1 operator, field representative, or applicator license is required pursuant to this chapter. As used in
2 this subdivision, to "solicit pest control work" means to introduce consumers to a registered
3 company and the services it provides, to distribute advertising literature, and to set appointments
4 on behalf of a licensed operator or field representative.

5 (c) It is unlawful for an unlicensed individual, soliciting pest control work on behalf of a
6 registered structural pest control company pursuant to subdivision (b), to perform or offer to
7 perform any act for which an operator, field representative, or applicator license is required,
8 including, but not limited to, performing or offering pest control evaluations or inspections, pest
9 identification, making any claims of pest control safety or pest control efficacy, or to offer price
10 quotes other than what is provided and printed on the company advertising or literature, or both.

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

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

17 22. Section 8610, subdivision (c) states in pertinent part:

18 "...

19 (c) Each registered company shall designate an individual or individuals who hold an
20 operator's license to act as its qualifying manager or managers. The qualifying manager or
21 managers must be licensed in each branch of pest control in which the company engages in
22 business. The designated qualifying manager or managers shall supervise the daily business of the
23 company and shall be available to supervise and assist all employees of the company, in
24 accordance with regulations which the board may establish."

25 23. Section 8612 of the Code states:

26 "The licenses of qualifying managers and company registrations shall be prominently
27 displayed in the registered company's office, and no registration issued hereunder shall authorize
28 the company to do business except from the location for which the registration was issued. Each

1 registered company having a branch office or more than one branch office shall be required to
2 display its branch office registration prominently in each branch office it maintains.

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

8 24. Section 8619 of the Code states:

9 “(a) An inspection tag shall be posted whenever an inspection for wood destroying pests or
10 organisms is made.

11 (b) If the registered company completes any work with respect to wood destroying pests or
12 organisms, it shall post a completion tag next to the inspection tag.”

13 25. Section 8622 of the Code states:

14 “When a complaint is accepted for investigation of a registered company, the board,
15 through an authorized representative, may inspect any or all properties on which a report has been
16 issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section
17 8518 by the registered company to determine compliance with the provisions of this chapter and
18 the rules and regulations issued thereunder. If the board determines the property or properties are
19 not in compliance, a notice shall be sent to the registered company so stating. The registered
20 company shall have 30 days from the receipt of the notice to bring such property into compliance,
21 and it shall submit a new original report or completion notice or both and an inspection fee of not
22 more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent
23 reinspection is necessary, pursuant to the board's review of the new original report or notice or
24 both, a commensurate reinspection fee shall also be charged. If the board's authorized
25 representative makes no determination or determines the property is in compliance, no inspection
26 fee shall be charged.

27 The notice sent to the registered company shall inform the registered company that if it
28 desires a hearing to contest the finding of noncompliance, the hearing shall be requested by

1 written notice to the board within 20 days of receipt of the notice of noncompliance from the
2 board. Where a hearing is not requested pursuant to this section, payment of any assessment shall
3 not constitute an admission of any noncompliance charged.”

4 26. Section 8635 of the Code states, “[d]eparture from, or disregard of, plans or
5 specifications in the performance of structural pest control work in any material respect, without
6 consent of the owner or his duly authorized representative, is a ground for disciplinary action.”

7 27. Section 8638 of the Code states, in pertinent part, that failure on the part of a
8 registered company to complete any operation or construction repairs for the price stated in the
9 contract for such operation or construction repairs or in any modification of such contract is a
10 ground for disciplinary action.

11 28. Section 8644 of the Code states:

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

18 29. Section 8650, subdivision (a) of the Code states, in pertinent part, that it is unlawful
19 to act in the capacity of a licensee or registered company under any of the licenses or registrations
20 issued hereunder except in the name of the licensee or registered company as set forth upon the
21 license or registration.

22 30. Section 125.9 of the Code states in pertinent part:

23 “(a) Except with respect to persons regulated under Chapter 11 (commencing with Section
24 7500), any board, bureau, or commission within the department ... may establish, by regulation, a
25 system for the issuance to a licensee of a citation which may contain an order of abatement or an
26 order to pay an administrative fine assessed by the board, bureau, or commission where the
27 licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

28 (b) The system shall contain the following provisions:

1 (1) Citations shall be in writing and shall describe with particularity the nature of the
2 violation, including specific reference to the provision of law determined to have been violated.

3 (2) Whenever appropriate, the citation shall contain an order of abatement fixing a
4 reasonable time for abatement of the violation.”

5 6 COST RECOVERY

7 31. Section 125.3 of Code states in pertinent part:

8 “(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
9 proceeding before any board within the department ... upon request of the entity bringing the
10 proceeding may request the administrative law judge to direct a licentiate found to have
11 committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable
12 costs of the investigation and enforcement of the case.

13 (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may
14 be made against the licensed corporate entity or licensed partnership.

15 (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs
16 are not available, signed by the entity bringing the proceeding or its designated representative
17 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The
18 costs shall include the amount of investigative and enforcement costs up to the date of the
19 hearing, including, but not limited to, charges imposed by the Attorney General.

20 (d) The administrative law judge shall make a proposed finding of the amount of reasonable
21 costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The
22 finding of the administrative law judge with regard to costs shall not be reviewable by the board
23 to increase the cost award. The board may reduce or eliminate the cost award, or remand to the
24 administrative law judge where the proposed decision fails to make a finding on costs requested
25 pursuant to subdivision (a).

26 (e) Where an order for recovery of costs is made and timely payment is not made as
27 directed in the board’s decision, the board may enforce the order for repayment in any appropriate
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1 court. This right of enforcement shall be in addition to any other rights the board may have as to
2 any licentiate to pay costs.

3 (f) In any action for recovery of costs, proof of the board's decision shall be conclusive
4 proof of the validity of the order of payment and the terms for payment.

5 (g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license
6 of any licentiate who has failed to pay all of the costs ordered under this section.

7 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
8 reinstate for a maximum of one year the license of any licentiate who demonstrates financial
9 hardship and who enters into a formal agreement with the board to reimburse the board within
10 that one-year period for the unpaid costs.

11 (h) All costs recovered under this section shall be considered a reimbursement for costs
12 incurred and shall be deposited in the fund of the board recovering the costs to be available upon
13 appropriation by the Legislature.

14 (i) Nothing in this section shall preclude a board from including the recovery of the costs of
15 investigation and enforcement of a case in any stipulated settlement.

16 (j) This section does not apply to any board if a specific statutory provision in that board's
17 licensing act provides for recovery of costs in an administrative disciplinary proceeding.

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

21 22 **REGULATORY PROVISIONS**

23 33. California Code of Regulations, Title 16, section 1990, subdivision (a) states, in
24 pertinent part:

25 "(a) All reports shall be completed as prescribed by the board. Copies filed with the board
26 shall be clear and legible. All reports must supply the information required by Section 8516 of
27 the Code and the information regarding the pesticide or pesticides used as set forth in Section
28 8538 of the Code, and shall contain or describe the following:

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(3) Infestations, infections or evidence thereof.

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

34. California Code of Regulations, Title 16, section 1990, subdivision (b)(5) states, in pertinent part that reports must include conditions usually deemed likely to lead to infestation or infection including but not limited to commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork.

35. California Code of Regulations, Title 16, section 1990, subdivision (e) states, in pertinent part that all reports must supply information regarding all accessible areas of the structure including but not limited to the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or other parts of a structure normally subject to attack by wood-destroying pests or organisms.

36. California Code of Regulations, Title 16, section 1990, subdivision (f) states:

“...

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

‘This is a separated report which is defined as Section I/Section II conditions evident on the date of the inspection. Section I contains items where there is visible evidence of active 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.’”

37. 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.

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

9 38. California Code of Regulations, Title 16, section 1920, subdivision (d) states:

10 "...

11 (d) Compliance with Orders of Abatement:

12 When a citation is not contested or if the citation is appealed and the person cited does not
13 prevail, failure to comply with the order of abatement or to pay the fine in the citation within the
14 time allowed by a licensee may result in disciplinary action being taken by the Board against the
15 person cited, or where the cited person is unlicensed in appropriate judicial relief being taken
16 against the person cited."

17 39. California Code of Regulations, Title 16, section 1991, subdivision (a) states in
18 pertinent part:

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

23 ...

24 (5) Structural members which appear to be structurally weakened by wood-destroying
25 pests to the point where they no longer serve their intended purpose shall be replaced or
26 reinforced. Structural members which are structurally weakened by fungus to the point where
27 they no longer serve their intended purpose shall be removed or, if feasible, may remain in place
28 if another structural member is installed adjacent to it to perform the same function, if both

1 members are dry (below 20% moisture content), and if the excessive moisture condition
2 responsible for the fungus damage is corrected. Structural members which appear to have only
3 surface fungus damage may be chemically treated and/or left as is if, in the opinion of the
4 specialist, the structural member will continue to perform its originally intended function and if
5 correcting the excessive moisture condition will stop the further expansion of the fungus.

6 ...

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

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

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

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

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

16 2. removing the infested wood,

17 3. using another method of treatment which exterminates the infestation. (If any
18 recommendation is made for local treatment, the report must contain the following statement:

19 "Local treatment is not intended to be an entire structure treatment method. If infestations of
20 wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be
21 exterminated.")

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

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

1 40. California Code of Regulations, Title 16, section 1937.14 states that “[a]ll work
2 completed by licensees or registered companies shall be done within the specific requirements of
3 any plans or specifications and shall meet accepted trade standards for good and workmanlike
4 construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2),
5 (4) and (6) of Title 24, California Code of Regulations.”

6 41. California Code of Regulations, Title 16, section 1993, subdivision (d) states:

7 “...

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

14 42. California Code of Regulations, Title 16, section 1996.1 states:

15 “(a) An inspection tag shall be posted in the attic or sub-area, or in the garage whenever an
16 inspection for wood-destroying pests or organisms is made. The inspection tag shall be not less
17 than 3” by 5” and shall contain the firm's name, date of inspection and the following statement:
18 ‘Do not remove -Structural Pest Control Board Regulation 1996.1.’

19 (b) If the registered company completes any work with respect to wood-destroying pests or
20 organisms, it shall post a completion tag next to the inspection tag. The completion tag shall be
21 not less than 3” by 5” and shall contain the firm's name, date of completion, trade name of any
22 pesticide used, active ingredient or method(s) of treatment.

23 (c) The inspection report shall indicate the location of the inspection tag. The inspection
24 report must also indicate the presence of any other inspection or fumigation tag that is less than
25 two years old and any similar completion tag. A registered company shall not remove any tag.”

26 43. California Code of Regulations, Title 16, section 1996.3, subdivision (a) states:

27 “(a) The address of each property inspected and/or upon which work was completed shall
28 be reported on a form prescribed by the Board and designated as the WDO Inspection and

1 Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the end of this section.
2 This form shall be prepared by each registered company and shall comply with all of the
3 requirements pursuant to Section 8516(b), and 8518.”
4

5 BACKGROUND FACTS

6 44. On or around 5/1/12, Foxx Termite, Inc.’s (Respondent Foxx) Qualifying Manager,
7 Miguel Fuentes (Respondent Fuentes) performed a wood destroying organism (WDO) inspection
8 and issued a “complete”, “separated” WDO Inspection Report (Report 1) on the property located
9 at 21543 Running Branch Road, Diamond Bar, CA 91765 (incident property).

10 45. On or around 7/12/12, Respondents issued a Standard Notice of Work Completed and
11 Not Completed (Completion Notice) on the incident property for a total cost of \$2,885.00.

12 46. On or around 7/27/12, escrow closed on the incident property.

13 47. On or around 11/28/12 residents of the incident property filed a complaint against
14 Respondent’s for failing to complete the work prior to the close of escrow. The residents also
15 alleged that Respondents failed to follow up on appointments to correct the incomplete work.

16 48. On or around 12/27/12 pursuant to a Board investigation, a Board Specialist
17 (specialist) identified the following items at the incident property:

- 18 a. Evidence of drywood termites in the attic and drywood damage.
- 19 b. Inaccessible portions of the attic area.
- 20 c. Respondent’s inspection tag in the attic incorrectly dated 5/3/12, not 5/1/12 as
21 indicated on the report.
- 22 d. Decay fungi damage at the garage barge rafter.
- 23 e. Decay fungi damage at the garage roof sheathing, above the completed repair work.
- 24 f. Substandard repair work completed in the garage eaves.
- 25 g. Evidence of drywood termites and drywood termite damage at the balcony/deck
26 framing, adjacent to the completed repairs.
- 27 h. Drywood termite damage at the balcony/deck that was patched, instead of being
28 replaced as recommended.

- 1 i. Decay fungi damage at the balcony/deck framing, adjacent to the completed repairs.
- 2 j. Substandard repair work at the balcony/deck.
- 3 k. Evidence of excessive moisture conditions at the balcony/deck.
- 4 l. Evidence of excessive moisture conditions at an interior ceiling.
- 5 m. Inaccessible areas below the interior staircase.
- 6 n. Evidence of drywood termites and drywood termite damage at the front porch
- 7 framing, adjacent to completed repairs.
- 8 o. Decay fungi damage at the front porch framing, adjacent to completed repairs.
- 9 p. Substandard repair work completed at and below the living room windows.
- 10 q. Evidence of drywood termites and drywood termite damage at rafter tails in the house
- 11 eaves.
- 12 r. Substandard repair work completed in the house eaves.
- 13 s. Decay fungi damage in the house eaves.
- 14 t. Evidence of an excessive moisture condition in the house eaves.
- 15 49. On or around 12/31/12 the specialist prepared a Report of Findings (ROF) identifying
- 16 25 violations and informed Respondents of non-compliance at the incident property.
- 17 50. Respondents received the ROF by certified mail on or around 1/4/13.
- 18 51. On or around 1/10/13, Respondents performed a second WDO inspection of the
- 19 incident address.
- 20 52. On or around 1/30/13, Respondents delivered to the specialist, a copy of a
- 21 "complete", "separated" WDO inspection report (Report 2) incorrectly dated 5/1/12, instead of
- 22 1/10/13, the date the second inspection was performed.
- 23 53. On or around 1/31/13, Respondents delivered to the specialist, a copy of report 2
- 24 (Report 2 *copy*) with the corrected date, 1/10/13. With the exception of the changed date, the
- 25 Report 2 *copy* was identical to report 2.
- 26 54. The specialist informed Respondents that Report 2 *copy* was also out of compliance
- 27 with the Board's requirements.
- 28

1 55. On or around 2/4/13, Respondents performed a third WDO inspection of the incident
2 address.

3 56. On or around 2/12/13, Respondents delivered to the specialist, a revised copy of
4 report 2 (*Report 2 revised copy*) incorrectly dated 1/10/13, instead of 2/4/13, the date the third
5 inspection was performed.

6 57. On or around 2/25/13, Respondents delivered to the specialist, a "supplemental",
7 "separated" WDO inspection report (*Supplemental Report*) of the incident address, dated 2/4/13.

8 58. On or around 2/25/13, the specialist informed Respondents that the *Supplemental*
9 *Report* was also out of compliance and discussed the needed corrections with Respondents.

10 59. On or around 3/12/13, Respondents delivered to the specialist, a revised copy of the
11 supplemental report (*Revised Supplemental Report*).

12 60. On or around 3/13/13, the specialist informed Respondents that the *Revised*
13 *Supplemental Report* was out of compliance and discussed the needed corrections with
14 Respondents.

15 61. On or around 3/15/13, Respondents delivered to the specialist, a second revised
16 supplemental report (*Revised Supplemental Report 2*).

17 62. On or around 3/15/13, the specialist informed Respondents that the *Revised*
18 *Supplemental Report 2* was out of compliance and discussed the needed corrections with
19 Respondents.

20
21 **ADDITIONAL BACKGROUND FACTS**

22 63. On or around 5/22/13, the specialist met with Respondent Fuentes to discuss
23 Respondents Foxx and Sillas.

24 64. Respondent Fuentes admitted that he "seldom" visits Respondent Foxx and receives
25 all of his work for Respondent Foxx via text messages.

26 65. Respondent Fuentes admitted that he does not estimate any of the inspection bids,
27 fumigation projects, treatments and/or repairs for Respondent Foxx projects.

28

1 66. Respondent Fuentes admitted that Respondent Sillas goes to consumer properties
2 inspects jobs and directs his crews to fix the problems. Respondent Fuentes further admitted that
3 Respondent Sillas 'still misses a lot of the problems.'

4 67. Respondent Fuentes admitted that Respondent Foxx pays him \$500.00 monthly for
5 the use of his Operator's License.

6 68. Respondent Fuentes admitted that he has no written contract with Respondent Foxx
7 and has never seen the liability insurance or surety bond policies.

8
9 **FOXX TERMITE, INC., PR 6265 and**
10 **MIGUEL FUENTES, OPR 10598, former Qualifying Manager**

11
12 **FIRST CAUSE FOR DISCIPLINE**

13 (Acting As a Registered Company)

14 69. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action
15 under § 8650(a) in conjunction with Cal. Code of Regs. Title 16 § 1990(a) in that Respondents
16 acted in the capacity of a registered company under a name that is different than the name that
17 appears on the company registration regarding the incident property. Specifically, on Report 1,
18 Completion Notice, Report 2, Report 2 *copy*, Report 2 *revised copy*, supplemental report and the
19 *Revised Supplemental Report* (collectively referred to as "REPORTS"), the name "Foxx Termite"
20 appeared, not Foxx Termite, Inc., as per the company's registration.

21
22 **SECOND CAUSE FOR DISCIPLINE**

23 (Incorrect Address of Property Inspected)

24 70. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action
25 under § 8516(b)(4) in conjunction with Cal. Code of Regs. Title 16 § 1990(a) in that Respondents
26 failed to include the correct incident property address in Report 1 and on the completion notice.
27 Specifically, Respondents incorrectly identified the incident address as "21543 Running Ranch
28 Road."

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Failure to Include Correct Name and Address of Person Ordering the Report)

3 71. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action
4 under § 8516(b)(2) and 8516(b)(3) in conjunction with Cal. Code of Regs. Title 16 § 1990(a) in
5 that Respondents failed to include the name and address of the person or firm ordering inspection
6 and correct name of any party in interest in Report 1 and Report 2 relating to the incident
7 property.

8
9 **FOURTH CAUSE FOR DISCIPLINE**

10 (Failure to File WDO Activites)

11 72. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action
12 under §§ 8516(b) and 8518 in conjunction with Cal. Code of Regs. Title 16 § 1996.3(a) in that
13 Respondents failed to file WDO activities with the Board relating to the incident property.
14 Specifically, Respondents failed to file all REPORTS.

15 73. In addition to the above referenced failure to file WDO relating to the incident
16 property, Respondent failed to file approximately 3,200 WDO activities with the Board during the
17 time period between 12/14/11 and 3/19/13.

18
19 **FIFTH CAUSE FOR DISCIPLINE**

20 (Failure to Deliver the Inspection Report)

21 74. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action
22 under § 8516(b) in conjunction with Cal. Code of Regs. Title 16 § 1990(a) in that Respondents
23 failed to prepare and deliver Report 2 to the party making the request, relating to the incident
24 property.

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SIXTH CAUSE FOR DISCIPLINE

(Failure to Include Accurate Date on the Inspection Report)

75. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action under § 8516(b)(1) in conjunction with Cal. Code of Regs. Title 16 § 1990(a) in that Respondents failed to issue an inspection report containing the correct date of the inspection, relating to the incident property. Specifically, the date on Report 1 is “5/1/12”, however, the date on the inspection tag in the attic of the incident property indicates “5/3/12.” In addition, Report 2 and Report 2 *revised copy* were incorrectly dated. Complainant incorporates by reference paragraph Nos. 44 – 62, as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Complete Work for Price Stated in a Workmanlike Manner)

76. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action under § 8638 in conjunction with Cal. Code of Regs. Title 16 § 1937.14 in that Respondents failed to complete the work for the price stated and in a workmanlike manner, relating to the incident property.

a. Respondents failed to exterminate the reported evidence of drywood termites in the attic through the use of localized treatment and to cover and/or remove accessible evidence of infestation. Despite being reported as complete in the completion notice, active evidence of drywood termites remain at the reported areas.

b. Respondents failed to complete replacement of the reported decay fungi damage in the garage eaves. Decay fungi damage remains above the replaced portion of the fascia board, the replaced portion of the fascia board was not properly cut and the wrong nails were used to secure it. The patchwork is substandard. The rain gutter was not properly reinstalled and the replaced portion of the fascia board was not prime painted.

c. Respondents failed to exterminate reported evidence of drywood termites at the balcony/deck through the use of a localized chemical treatment, and to cover or remove the accessible evidence of infestation. Despite being reported as complete in the completion notice,

1 active evidence of drywood termites remain at the reported areas. In addition, the wrong nails
2 were used to secure the replacement pieces on the balcony/deck, the patchwork is substandard,
3 the drip edge was not reinstalled, a footing was damaged and some of the replacements were not
4 properly nailed or prime painted.

5 d. Respondents failed to complete the work to repair/correct the water stains reported in
6 the interior of the incident property. The water stains were reported in Report 1 and was certified
7 as having been completed in the Completion Notice. However, water stains still remain at the
8 reported area.

9 e. Respondents failed to properly replace the reported decay fungi damage at the living
10 room window trim. The decay fungi damage at the living room was identified in Report 1 and
11 was certified as having been completed in the completion notice. Instead of replacing the entire
12 board, an attempt was made to splice in a new piece of wood, a substandard repair. The vertical
13 and horizontal replacements do not properly align with each other.

14 f. Respondents failed to exterminate the reported evidence of drywood termites at the
15 front porch framing through the use of a localized chemical treatment, and to cover or remove the
16 accessible evidence of infestation. The presence of drywood termites in that area was reported in
17 Report 1 and was certified as having been completed in the Completion Notice. However, active
18 evidence of drywood termites still remain at the reported area.

19 g. Respondents failed to complete the work regarding replacement of the reported
20 drywood termite and decay fungi at the front porch framing. The damage was reported in Report
21 1 and was certified as having been completed in the Completion Notice. However, drywood
22 termite and decay fungi damage still remain at the reported area.

23 h. Respondents failed to complete the work regarding replacement of the drywood
24 termite damage at the rafter tail in the house eaves. Instead of extending into the attic area, the
25 rafter tail was cut off at the wall and spliced together. Some of the nails used to secure the rafter
26 tail are visible. The adjacent roof sheathing was damage during the repair process and the rafter
27 tail was not prime painted. The damage was reported in Report 1 and was certified as having
28 been completed in the Completion Notice.

1 i. Respondents failed to complete the work regarding the replacement of materials
2 caused by drywood termite and decay fungi at the front porch, garage, balcony/deck and exterior
3 framing. All of the replacements were not primed as recommended. The damage was reported in
4 Report 1 and was certified as having been completed in the Completion Notice.

5 Complainant incorporates by reference paragraph Nos. 44 – 62, as if fully set forth herein.
6

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 (Failure to Complete Work According to Specifications)

9 77. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action
10 under §§ 8635 and 8538 in conjunction with Cal. Code of Regs. Title 16 § 1937.14 in that
11 Respondents failed to complete the work according to its own specifications, relating to the
12 incident property.

13 a. The drywood termite damage to the balcony/deck area was reported in Report 1 and
14 was certified as having been completed in the completion notice. However, drywood termite
15 damage remains at the reported areas and some of the damage was not replaced as recommended,
16 merely patched.

17 b. The reported decay fungi damage in the house eaves was reported in Report 1 and
18 was certified as having been completed in the completion notice. However, some of the damage
19 was not replaced as recommended, merely patched.

20 Complainant incorporates by reference paragraph Nos. 44 – 62, as if fully set forth herein.
21

22 **NINTH CAUSE FOR DISCIPLINE**

23 (Failure to Complete Work According to Specifications)

24 78. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action
25 under § 8516(b) in conjunction with Cal. Code of Regs. Title 16 § 1990(a) in that Respondents
26 failed to complete the work according to its own specifications, relating to the incident property.

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TENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Report of Findings)

79. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action under § 8622 in that Respondents failed to bring the incident property into compliance pursuant to the ROF issued on or around 1/4/13. As of 3/16/13 the work had not commenced or been completed. Complainant incorporates by reference paragraph Nos. 44 – 62, as if fully set forth herein.

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Pay Fine and Comply with Order of Abatement)

80. Respondents Foxx Termite, Inc. and Miguel Fuentes are subject to disciplinary action under § 125.9 in conjunction with Cal. Code of Regs. Title 16 § 1920(d) in that Respondents failed to comply with an Order of Abatement (Order) within the 30 days time period, as required. Specifically, on or around 12/18/12, the Board issued Citation and Fine to Respondent Foxx for failing to file WDO activities and failing to make records available to the Board. The fine issued to Respondent Foxx in the amount of \$3,500.00 was to be paid within 30 days of the citation. As of the current date, the fine has not been paid. In addition, the Citation and Fine included an Order of Abatement requiring Respondent Foxx to file all of its unreported WDO activities with the Board which it performed during the time period between 12/15/11 and 11/13/12. Respondent Foxx has failed to comply with the Order as of the current date.

81. In addition, on or around November 14, 2012, the Board issued citation and fine to Respondent Foxx for failing to file WDO activities with the Board no later than 10 business days. The fine issued to Respondent Foxx in the amount of \$2,500.00 was to be paid within 30 days of the citation. As of the current date, the fine has not been paid.

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1 **MIGUEL FUENTES, OPR 10598, former Qualifying Manager**
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3 **TWELFTH CAUSE FOR DISCIPLINE**

4 (Inadequate/Improper Inspection Report Findings)

5 82. Respondent Miguel Fuentes is subject to disciplinary action under §§ 8516(b)(6) and
6 8516(b)(7) in conjunction with Cal. Code of Regs. Title 16 §§ 1990(a)(3), 1990(b)(5), 1990(e),
7 1991(a)(5) and 1993(d) in that Respondent failed to provide a compliant inspection report,
8 relating to the incident property pursuant to the following findings:

9 *Porches/Steps/Garage*

10 a. Report 1 and Report 2 identified evidence of drywood termites, termite damaged
11 wood and dry rot (decay fungi damage) at the porches/steps, decay fungi damage at the garage
12 and evidence of drywood termites, termite damaged wood and decay fungi damage. The findings
13 failed to identify the excessive moisture conditions responsible for the damage.

14 *Attic*

15 b. Report 1 and Report 2 failed to document the full extent of evidence of drywood
16 termite presence in the attic of the incident property.

17 c. Report 1 failed to document the full extent of drywood termite damage in the attic.

18 *Front Porch Framing*

19 d. Report 1 failed to document the full extent of drywood termite presence at the front
20 porch framing.

21 e. Report 1 failed to document the full extent of drywood termite and decay fungi
22 damage at the front porch framing.

23 *Eaves*

24 f. Report 1 failed to document the full extent of drywood termite and decay fungi
25 damage in the house eaves.

26 g. Report 1 failed to document evidence of an excessive moisture condition in the house
27 eaves.

28 *Balcony/Deck*

1 h. Report 1 failed to document the full extent of the evidence of drywood termite
2 presence at the balcony/deck.

3 i. Report 1 and Report 2 *revised copy* failed to document the full extent of the evidence
4 of drywood termite damage at the balcony/deck.

5 j. Report 1 failed to document evidence of an excessive moisture condition at the
6 balcony/deck which caused water stains.

7 *Inaccessible Areas*

8 k. Report 1 failed to document the inaccessible area below the interior staircase, and to
9 make a recommendation for further inspection and issuance of a supplemental inspection report.

10 *Substandard Work*

11 l. Respondent failed to report the substandard repair work completed at the front porch,
12 garage, deck and eaves on Report 2 *copy*.

13 Complainant incorporates by reference paragraph Nos. 43 – 61, as if fully set forth herein.
14

15 **THIRTEENTH CAUSE FOR DISCIPLINE**

16 (Inadequate/Improper Inspection Recommendations)

17 83. Respondent Miguel Fuentes is subject to disciplinary action under §§ 8516(b)(10) in
18 conjunction with Cal. Code of Regs. Title 16 §§ 1991(a)(8) and 1993(d) in that Respondent failed
19 to make proper recommendations, relating to the incident property pursuant to the following
20 findings:

21 a. Respondent failed to make a proper recommendation in Report 1 regarding the
22 reported evidence of drywood termites in the attic, at the balcony/deck, the front porch framing
23 and house eaves. Infestations extended into inaccessible areas, which required an all-
24 encompassing treatment to eliminate, not just a localized chemical treatment as was
25 recommended.

26 b. Respondent failed to make proper recommendations in Report 1 and Report 2
27 regarding the reported evidence of drywood termites. Respondent failed to recommend covering
28 or removing accessible evidence of infestation.

1 c. Respondent failed to make proper recommendations in Report 1 and Report 2
2 regarding the reported inaccessible area at the staircase. Respondent failed to recommend issuing
3 an “supplemental” inspection report after the area is opened and inspected.
4

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

6 (Improperly Issued Inspection Reports)

7 84. Respondent Miguel Fuentes is subject to disciplinary action under § 8516(c) in
8 conjunction with Cal. Code of Regs. Title 16 §§ 1990(f) and 1993(d) in that Respondent failed to
9 issue proper inspection reports, relating to the incident property pursuant to the following
10 findings:

11 a. Report 1 and Report 2 incorrectly identified some of the water stain as “Section I
12 Findings and Recommendations”, instead of “Section II Findings and Recommendations”. In
13 addition, several of the findings for Reports 1 and 2 were identified as “Section Unknown
14 Findings and Recommendations”, which is not a category on the inspection report.

15 b. Report 2 should have been identified as a “supplemental” inspection report since it
16 corrected, added or modified information in a previous inspection report.

17 c. Report 2 *revised copy* should have been a “supplemental” inspection report since it
18 corrected, added, or modified information in a previous inspection report.

19 Complainant incorporates by reference paragraph Nos. 44 – 62, as if fully set forth herein.
20

21 **FIFTEENTH CAUSE FOR DISCIPLINE**

22 (Failure to Post Inspection Tag)

23 85. Respondent Miguel Fuentes is subject to disciplinary action under § 8619 in
24 conjunction with Cal. Code of Regs. Title 16 § 1996.1(c) in that Respondent failed to indicate on
25 the Supplemental Report, relating to the incident property, where the inspection tag was posted.

26 Complainant incorporates by reference paragraph Nos. 44 – 62, as if fully set forth herein.

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SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Properly Supervise as Qualifying Manager)

86. Respondent Miguel Fuentes is subject to disciplinary action under § 8610(c) in conjunction with Cal. Code of Regs. Title 16 § 1918 in that prior to August 27, 2013, Respondent failed to supervise the daily business of Respondent Foxx. Respondent was not made available to observe, assist, and instruct Respondent Foxx employees as necessary to secure full compliance with all the laws and regulations governing structural pest control. Complainant incorporates by reference paragraphs 63 – 68, as if fully set forth herein.

**FOXX TERMITE, INC., PR 6265 and
ALONZO SILLAS, President**

SEVENTEENTH CAUSE FOR DISCIPLINE

(Providing False Identity)

87. Respondents Foxx and Sillas (Respondents Foxx) are subject to disciplinary action under § 8644 in that Respondents gave false identities to the public while in engaged in structural pest control work. Specifically, Respondent Sillas performed an inspection and recommendation for WDO at a property located at 24555 and 24557 University Ave., Loma Linda, CA. During the course and scope of the inspection, Respondent Sillas represented that his name was “Chris”.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Unlawful Practice)

88. Respondents Foxx and Sillas (Respondents Foxx) are subject to disciplinary action under § 8550 in that Respondents engaged in the unlicensed practice of structural pest control. Specifically, Respondents Foxx offered opinions and made recommendations concerning the need for structural pest control work, made evaluations for job costs, performed inspections and pest identifications.

1 **NINETEENTH CAUSE FOR DISCIPLINE**

2 (Failure to Display License)

3 89. Respondents Foxx are subject to disciplinary action under § 8612 in that Respondents
4 failed to prominently display the licenses of the Qualifying Manager, Respondent Fuentes and the
5 company registration in the registered company's office.

6
7 **OTHER MATTERS**

8 90. Any individual who has been denied a license for any of the reasons specified in
9 Section 8568, or who has had his or her license revoked, or whose license is under suspension, or
10 who has failed to renew his or her license while it was under suspension, or who has been a
11 member, officer, director, associate, qualifying manager, or responsible managing employee of
12 any partnership, corporation, firm, or association whose application for a company registration
13 has been denied for any of the reasons specified in Section 8568, or whose company registration
14 has been revoked as a result of disciplinary action, or whose company registration is under
15 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
16 responsible managing employee had knowledge of or participated in any of the prohibited acts for
17 which the license or registration was denied, suspended or revoked, shall be prohibited from
18 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
19 employee of a registered company, and the employment, election or association of such person by
20 a registered company is a ground for disciplinary action.

21
22 **PRAYER**

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

25 1. Revoking or suspending Company Registration Certificate Number PR 6265, issued
26 to Foxx Termite, Inc.; Alonzo Sillas;

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1 2. Prohibiting Alonzo Sillas from serving as an officer, director, associate, partner,
2 qualifying manager or responsible managing employee of any registered company during the
3 period that discipline is imposed on Company Registration Certificate No. PR 6265.

4 3. Ordering Alonzo Sillas to pay the Structural Pest Control Board the reasonable costs
5 of the investigation and enforcement of this case, pursuant to Business and Professions Code
6 section 125.3;

7 4. Ordering Alonzo Sillas to pay restitution of all damages according to proof suffered
8 by owners of the incident property as a condition of probation in the event probation is ordered;

9 5. Revoking or suspending Operator's License No. OPR 10598 in Branch 3 issued to
10 Miguel Fuentes.

11 6. Prohibiting Miguel Fuentes from serving as an officer, director, associate, partner,
12 qualifying manager or responsible managing employee of any registered company during the
13 period that discipline is imposed on Operator's License No. OPR 10598.

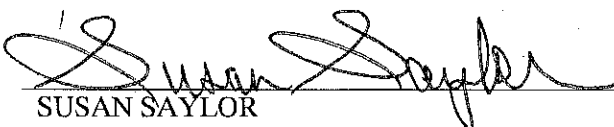
14 7. Ordering Miguel Fuentes to pay the Structural Pest Control Board the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3;

17 8. Ordering Miguel Fuentes to pay restitution of all damages according to proof suffered
18 by owners of the incident property as a condition of probation in the event probation is ordered;

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

20
21
22 DATED: _____

11/19/13


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

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