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

In the Matter of the Accusation Against: **BEST CHOICE TERMITE CONTROL, DANIEL A. RODRIGUEZ, QUALIFYING MANAGER/OWNER** **7660 Pivot Street** **Downey, CA 90241** **-and-** **818 West Lambert Road, Suite C** **La Habra, CA 90631** **-and-** **P.O. Box 604** **Downey, CA 90241** **Company Registration No. PR 4924** **and** **DANIEL A. RODRIGUEZ** **7660 Pivot Street** **Downey, CA 90241** **Operator's License No. OPR 11174** Respondents.	Case No. 2009-45

DECISION AND ORDER

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

This Decision shall become effective on March 5, 2010.

It is so ORDERED February 3, 2010.

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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

In the Matter of the Accusation Against: **BEST CHOICE TERMITE CONTROL, DANIEL A. RODRIGUEZ, QUALIFYING MANAGER/OWNER** **7660 Pivot Street** **Downey, CA 90241** **-and-** **818 West Lambert Road, Suite C** **La Habra, CA 90631** **-and-** **P.O. Box 604** **Downey, CA 90241** **Company Registration No. PR 4924** **and** **DANIEL A. RODRIGUEZ** **7660 Pivot Street** **Downey, CA 90241** **Operator's License No. OPR 11174** Respondents.	Case No. 2009-45 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

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PARTIES

1. Kelli Okuma (Complainant) is the Registrar/Executive Officer of the Structural Pest Control Board (Board). She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Rene Judkiewicz, Deputy Attorney General.

2. Respondents Best Choice Termite Control (Respondent Best Choice) and Daniel Anthony Rodriguez (Respondent Rodriguez), Qualifying Manager and Owner of Best Choice, are representing themselves in this proceeding and have chosen not to exercise their right to be represented by counsel.

3. On or about September 1, 2005, the Board issued Operator's License No. OPR 11174, Branch 3 (termite), to Respondent Rodriguez, owner and qualifying manager of Respondent Best Choice. The Operator's License will expire on June 30, 2011, unless renewed.

4. On or about November 23, 2005, the Board issued Company Registration No. PR 4924, Branch 3 (termite), to Respondent Best Choice, with Respondent Rodriguez as owner and qualifying manager. The Company Registration was cancelled on December 11, 2007.

JURISDICTION

5. Accusation No. 2009-45 was filed before the Board, then under the Department of Consumer Affairs but now under the Department of Pesticide Regulation effective October 23, 2009, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on May 11, 2009. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 2009-45 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent Rodriguez has carefully read, and understands the charges and allegations in Accusation No. 2009-45. Respondent Rodriguez has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondents admit the truth of each and every charge and allegation in Accusation No. 2009-45.

10. Respondents agree that their Operator's License and Company Registration are subject to discipline and they agree to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Company Registration No. PR 4924, held by Best Choice Termite Control, is revoked. Operator's License No. OPR 11174, issued to Respondent Rodriguez, is revoked. However, the revocation as to Respondent Rodriguez is stayed, and Respondent Rodriguez is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws and rules relating to the practice of structural pest control.

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

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

4. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Case No. 2009-45 and the terms, conditions and restriction imposed on Respondent by said decision.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in Case No. 2009-45.

5. **Completion of Probation.** Upon successful completion of probation, Respondent's license/certificate will be fully restored.

6. **Violation of Probation.** Should Respondents violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against

Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. **Random Inspections.** Respondent Rodriguez shall reimburse the Board for random inspections by Board specialists during the period of probation not to exceed $125 per inspection.

8. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying Manager Except for Service in Own Company.** Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company except Respondent's own company, X Terminator Termite Control, company registration No. 5525, during the period that discipline is imposed on Operator's License No. OPR 11174.

9. **Cost Recovery.** Pursuant to Business and Professions Code section 125.3, Respondent Rodriguez shall pay to the Board its enforcement and investigative costs in the amount of $4,306.00, which may be paid in monthly installment payments and which is to be paid in full by three months prior to the end of the probationary period.

ACCEPTANCE

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

DATED: 11/24/2009

BEST CHOICE TERMITE CONTROL; DANIEL ANTHONY RODRIGUEZ, QUALIFYING MANAGER
Respondents

ENDORSEMENT

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

Dated: 12/2/09

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

RENE JUDKIEWICZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2009-45

EDMUND G. BROWN JR., Attorney General
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Attorneys for Complainant

FILED

Date 2/25/09 By Kelli Okuma

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

In the Matter of the Accusation Against:	Case No. 2009-45
BEST CHOICE TERMITE CONTROL DANIEL A. RODRIGUEZ, QM/OWNER 7660 Pivot Street Downey, CA 90241 -and- 818 West Lambert Road, Suite C La Habra, CA 90631 -and- P.O. Box 604 Downey, CA 90241 Company Registration Certificate No. PR 4924 and DANIEL A. RODRIGUEZ 7660 Pivot Street Downey, CA 90241 Operator's License No. OPR 11174 Respondents.	**ACCUSATION**

Complainant alleges:

PARTIES

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

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Company Registration Certificate No. PR 507

2. On May 15, 1987, the Board issued Company Registration Certificate Number PR 4924 in Branch 3 (termite) to Best Choice Termite Control ("Respondent Best Choice"), with Daniel Rodriguez ("Respondent Rodriguez") as owner and qualifying manager. On July 17, 2007, Respondent Best Choice's company registration certificate was suspended due to failure to maintain a surety bond in the amount of $4,000, as required by Business and Professions Code ("Code") section 8697. On October 16, 2007, Respondent Best Choice's registration was suspended due to failure to maintain general liability insurance as required by Code section 8690. On December 11, 2007, Respondent Best Choice's registration was canceled.

Operator's License No. OPR 11174

3. On or about September 1, 2005, the Board issued Operator's License Number OPR 11174 in Branch 3 to Respondent Rodriguez, employee of Strong Terminators. On November 23, 2005, Respondent Rodriguez became the Branch 3 qualifying manager ("QM") and owner of Best Choice Termite Control. On November 2, 2006, Respondent Rodriguez became employed as the Branch 3 QM of Unique Termite Control. On February 13, 2007, Respondent Rodriguez disassociated from Strong Terminators. On June 6, 2007, Respondent Rodriguez disassociated from Unique Termite Control. On October 16, 2007, Respondent Rodriguez's operator's license was suspended for failure to maintain general liability insurance pursuant to Code section 8690. On December 11, 2007, Respondent Rodriguez disassociated from Best Choice Termite Control. On February 5, 2008, Respondent Rodriguez became employed as the Branch 3 QM for The X-Terminator Termite Control. Respondent Rodriguez's operator's license will expire on June 30, 2011, unless renewed.

JURISDICTION

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

5. Code section 8625 states:

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

6. Code section 118, subdivision (b), states:

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

7. Code section 8624 states, in pertinent part:

. . . .

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

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

8. Code section 8654 states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as

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an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company is a ground for disciplinary action.

STATUTORY PROVISIONS

9. Code section 8610, subdivision (a), states:

Every company that engages in the practice of structural pest control, as a sole proprietorship, partnership, corporation, or other organization or any combination thereof, shall be registered with the Structural Pest Control Board. . .

10. Code section 8550, subdivision (e), states:

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

11. Code section 8552 states:

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

12. Code section 8641 states:

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

13. Code section 8642 states that "[t]he commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

14. Code section 8644 states:

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

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Cost Recovery

15. Code section 125.3 states, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6439 VINEYARD AVENUE, ALTA LOMA, CA

16. On or about January 26, 2008[1], Respondent Rodriguez, the qualifying manager/owner of Respondent Best Choice, inspected the property located at 6439 Vineyard Avenue, Alta Loma, California (hereinafter "property" or "6439 Vineyard Avenue property"), at the request of "Mari" (no further information was provided). Respondent Rodriguez issued a complete Wood Destroying Pests and Organisms ("WDO") Inspection Report, which included findings of drywood termite infestations, drywood termite damage, dryrot damage, moisture damage, subterranean termites, an earth-to-wood contact, and fungus. Respondent Rodriguez recommended fumigation, replacement of damaged areas, others to correct, breaking the earth-to-wood contact, and application of a fungicide.

17. On or about January 30, 2008, Respondent Rodriguez issued a Standard Notice of Work Completed and Not Completed certifying that the property was free of evidence of active infestations or infection in visible and accessible areas.

18. On February 6, 2008, escrow closed and Robert Mourad ("Mourad") became the owner of the property based, in part, on the inspection report of January 26, 2008.

19. On February 29, 2008, the Board received a complaint from Mourad, stating that on February 6, 2008, while performing repair work to a patio post, Respondent Rodriguez had caused the entire patio to collapse resulting in damage to the patio, waterfall, patio furniture, dog run, electrical, and drywall of the home. Further, Mourad stated that he had discovered Respondent Best Choice did not have an active license.

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1. On December 11, 2007, Respondent Best Choice's registration was canceled and Respondent Rodriguez disassociated as the qualifying manager, as set forth in paragraphs two and four above.

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20. On April 14, 2008, Board Specialist Steve Winfrey ("Winfrey") inspected the property.

21. On April 16, 2008, Winfrey issued a Report of Findings ("ROF") identifying certain violations of the Code which he found during his inspection. That day, the Board sent a notice to Respondent Rodriguez directing him to bring the property into compliance by correcting the items described in the ROF and to submit a WDO Inspection Report and Standard Notice of Work Completed and Not Completed to the Board within 30 calendar days from receipt of the notice.

22. On May 12, 2008, the Board's notice was returned by the U.S. postal service as undeliverable. Winfrey contacted Respondent Rodriguez by phone and faxed him a copy of the Board's notice. Respondent Rodriguez acknowledged receipt of the Board's notice by fax from Winfrey. Respondent Rodriguez stated to Winfrey that he would attempt to comply with the ROF by performing another inspection and any corrective work using his current company registration, The X-Terminator Termite Control. However, Mourad would not allow Respondent Rodriguez to return to the property.

FIRST CAUSE FOR DISCIPLINE

(Engaging in the Practice of Structural Pest Control While Not Registered)

23. Respondents Best Choice and Rodriguez are subject to disciplinary action pursuant to Code section 8641 in that they failed to comply with Code sections 8550, subdivision (e), and 8610, subdivision (a), by engaging in the practice of structural pest control while Respondent Best Choice was not registered, as follows:

a. On or about January 26, 2008, Respondent Rodriguez issued a WDO on behalf of Respondent Best Choice for the for the 6439 Vineyard Avenue property.

b. On or about January 30, 2008, Respondent Rodriguez issued a Standard Notice of Work Completed and Not Completed on behalf of Respondent Best Choice for the 6439 Vineyard Avenue property.

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SECOND CAUSE FOR DISCIPLINE

(Aiding or Abetting an Unregistered Company)

24. Respondent Rodriguez is subject to disciplinary action pursuant to Code section 8639 in that he aided or abetted, combined or conspired with, allowed his license to be used by, or acted as agent or partner or associate of Respondent Best Choice, an unregistered company, with the intent to evade the provisions of the Structural Pest Control Operators Law.

THIRD CAUSE FOR DISCIPLINE

(Misrepresentation After Inspection)

25. Respondent Rodriguez is subject to disciplinary action pursuant to Code section 8644 in that, while licensed as a pest control operator, he made false representations on the WDO and Standard Notice of Work Completed and Not Completed for the 6439 Vineyard Avenue property, as set forth in paragraph 23 above.

FOURTH CAUSE FOR DISCIPLINE

(Advertising by Unregistered Company)

26. Respondent Rodriguez is subject to disciplinary action pursuant to Code section 8641 in that he failed to comply with Code Section 8552 by representing that pest control work had been done upon the 6439 Vineyard Avenue property, as set forth in paragraph 23 above, when Respondent Best Choice was not a registered company.

FIFTH CAUSE FOR DISCIPLINE

(Fraudulent Acts)

27. Respondent Rodriguez is subject to disciplinary action pursuant to Code section 8642 in that, while licensed as a pest control operator, he committed fraudulent acts, as set forth in paragraphs 23, 24, 25, and 26 above.

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OTHER MATTERS

28. Code section 8620 provides, in pertinent part, that a respondent may request that a civil penalty of not more than $5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than $10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

29. Pursuant to Code section 8624, if Operator's License Number OPR 11174, issued to Respondent Daniel Anthony Rodriguez, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4924, issued to Best Choice Termite Control, with Daniel Anthony Rodriguez as qualifying manager.

30. Pursuant to Code section 8624, the causes for discipline established as to Respondent Best Choice Termite Control likewise constitute causes for discipline against Respondent Daniel Anthony Rodriguez, regardless of whether Daniel Anthony Rodriguez had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Best Choice Termite Control.

31. Pursuant to Code section 8654, if discipline is imposed on Operator's License Number OPR 11174, issued to Respondent Daniel Anthony Rodriguez, Daniel Anthony Rodriguez shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company, including Company Registration Certificate Number 5525 issued to The X-Terminator Termite Control, during the time the discipline is imposed, and any registered company which employs, elects, or associates Daniel Anthony Rodriguez shall be subject to disciplinary action.

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

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PRAYER

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

1. Revoking or suspending Company Registration Certificate Number PR 4924, issued to Best Choice Termite Control;

2. Revoking or suspending Operator's License Number OPR 11174, issued to Daniel Anthony Rodriguez;

3. Prohibiting Daniel Anthony Rodriguez from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Operator's License Number OPR 11174, issued to Daniel Anthony Rodriguez;

4. Ordering restitution of all damages according to proof suffered by Robert Mourad as a condition of probation in the event probation is ordered;

5. Ordering Respondents Best Choice Termite Control and Daniel Anthony Rodriguez to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 2/25/09

Kelli Okuma

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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