FILED

Date 7/26/12 By William H. Douglas

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
GREGORY J. SALUTE
Supervising Deputy Attorney General
State Bar No. 164015
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2520
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **MASTERCARE TERMITE CONTROL SOUTH BAY; WILLIAM WHITE, PRESIDENT; LEONARDO J. CRUZ, JR., QUALIFYING MANAGER** **24404 South Vermont Avenue, Ste. 303** **Harbor City, CA 90710** **Company Registration Certificate No. PR 5620, Br. 3** **Operator's License No. OPR 11324, Br. 3** **CESAR G. SILVANO** **17341 East Hurley Street, Apt. 6** **La Puente, CA 91744** **Operator's License No. OPR 11237, Br. 3** **and** **BETTY ANN WEBSTER** **2472 Bundy Drive,** **Los Angeles, CA 90064** **Field Representative's License No. FR 32347, Br. 2 and 3** Respondents.	Case No. 2013-7 **ACCUSATION**

William H. Douglas ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in his official capacity as the Interim Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

Company Registration Certificate

2. On or about May 30, 2008, the Board issued Company Registration Certificate No. PR 5620 to Respondent Mastercare Termite Control South Bay ("Respondent Mastercare") in Branch 3, with Respondent William White ("Respondent White") as president and Respondent Cesar G. Silvano ("Respondent Silvano") as qualifying manager. On or about May 16, 2011, Company Registration Certificate No. PR 5620 reflected the disassociation of Respondent Silvano as qualifying manager. On or about June 10, 2011, Company Registration Certificate No. PR 5620 reflected Respondent Leonardo J. Cruz, Jr. ("Respondent Cruz") as qualifying manager. Company Registration Certificate No. PR 5620 was in full force and effect at all times relevant to the charges brought herein.

Operator's License No. OPR 11324

3. On or about May 22, 2006, the Board issued Operator's License No. OPR 11324 in Branch 3 to Respondent Cruz. On or about June 10, 2011, Operator's License No. OPR 11324 became the qualifying manager of Respondent Mastercare. Operator's License No. OPR 11342 was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

Operator's License No. OPR 11237

4. On or about January 4, 2006, the Board issued Operator's License No. OPR 11237 in Branch 3 to Respondent Silvano. On or about May 30, 2008, Operator's License No. OPR 11237 became the qualifying manager for Respondent Mastercare. On or about May 16, 2011, Operator's License No. OPR 11237 disassociated as the qualifying manager from Respondent Mastercare. Operator's License No 11237 was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

Field Representative's License No. FR 32347

5. On or about June 2, 2000, the Board issued Field Representative's License No. 32347 in Branch 2 to Respondent Betty Ann Webster ("Respondent Webster"). On or about June 20, 2000, Field Representative's License No. 32347 was upgraded to include Branches 2 and 3. Field Representative's License No. 32347 was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 3014, unless renewed.

JURISDICTION

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

7. Section 8620 of the Code 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.

8. Section 8622 of the Code 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 pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars ($125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

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

///

///

///

9. Section 8624 of the Code states:

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

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

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

10. Section 8625 of the Code states:

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

STATUTORY PROVISIONS

11. Section 8506.2 of the Code states, "[a] 'qualifying manager' is the licensed operator or operators designated by a registered company to supervise the daily business of the company and to be available to supervise and assist the company's employees."

12. 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 subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.

"Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section is grounds for

disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

"A written inspection report conforming to this section and on a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, field notes, and activity forms.

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

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

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

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

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

(10) Recommendations for corrective measures."

13. Section 8518 of the Code states:

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

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

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

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

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

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

14. Section 8571 of the Code states:

"If the licensed operator who is designated as the qualifying manager for a registered company ceases for any reason whatsoever to be connected with the company, the company shall notify the registrar in writing within 10 days from such cessation. If the notice is given the registration shall remain in force for a reasonable length of time, to be determined by rules of the board, during which period the company must submit to the registrar in writing the name of another qualified, or to be qualified, qualifying manager to replace the qualifying manager who has ceased to be connected with it, and who shall qualify as such within the time allowed by rules and regulations of the board.

"If the company fails to notify the registrar within the 10-day period, or fails to replace with a qualifying manager within the period fixed by the regulations of the board, at the end of the period the registration shall be ipso facto suspended. The registration shall be reinstated upon the filing of an affidavit, executed by a representative of the company, and filed with the registrar, to the effect that the qualifying manager who ceased to be connected with the company has been replaced by another operator who is authorized by this chapter to act in such capacity, and that such operator has not had his or her license suspended or revoked or that he or she has not been connected with a company which has had its registration suspended or revoked."

15. Section 8619, subdivision (a) of the Code states, "[a]n inspection tag shall be posted whenever an inspection for wood destroying pests or organisms is made."

16. Section 8622 of the Code provides, in pertinent part, that respondent shall submit an inspection fee of not more than $125. If a reinspection is necessary, a commensurate reinspection fee shall be charged.

17. Section 8641 of the Code states:

"Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection

of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action."

REGULATORY PROVISIONS

18. California Code of Regulations, title 16, section 1916 states:

"A registered company which notifies the board of the disassociation of its qualifying manager or branch supervisor within the ten day period prescribed by Section 8571 of the code, shall be granted a period of thirty (30) days in which to replace such person with another qualifying manager or branch supervisor. An additional thirty (30) day extension can be granted by the registrar for good cause."

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

"'Supervise' as used in Business and Professions Code Sections 8506.2, 8610 and 8611 means the oversight, direction, control, and inspection of the daily business of the company and its employees, and the availability to observe, assist, and instruct company employees, as needed to secure full compliance with all laws and regulations governing structural pest control.

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

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

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

(3) Infestations, infections or evidence thereof.

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

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

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

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

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

. . . .

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

21. California Code of Regulations, title 16, section 1991, states in pertinent part:

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

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

(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.

(11) Correct any excessive moisture condition that is commonly controllable. When there is reasonable evidence to believe a fungus infection exists in a concealed wall or area, recommendations shall be made to open the wall or area."

///

22. California Code of Regulations, title 16, section 1993, states in pertinent part:

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

"(a) An original inspection report is the report of the first inspection conducted on a structure at the request of a specified party or for a specified purpose. Subsequent inspections conducted on a structure at the request of a different party, for a different purpose than a previous inspection, or a different transaction relating to the same structure shall be deemed to be new inspections for which an original inspection report shall be required. An original inspection report may be either a complete or limited inspection.

"(b) A complete report is the report of an inspection of all visible and accessible portions of a structure.

"(c) A limited report is the report on only part of a structure. Such a report shall have a diagram of the area inspected and shall specifically indicate which portions of the structure were inspected with recommendation for further inspection of the entire structure and the name of the person or agency requesting a limited report.

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

"(e) A reinspection report is the report on the inspections of item(s) completed as recommended on an original report or subsequent report(s). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly. "

23. California Code of Regulations, title 16, section 1996.1, subdivision (c) states:

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

COST RECOVERY/RESTITUTION

24. Business and Professions 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.

25. 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.

THE LANE PROPERTY

The February 24, 2010 "Complete" Inspection

26. On or about February 24, 2010, at the request of Yvette Page with Callum Prop., Respondent Mastercare performed a wood-destroying organisms inspection ("WDO inspection") for property located at 5208 Berryman Avenue, Culver City, CA ("Subject Property"). Deyone Lane ("Mr. Lane") was the purchaser of the Subject Property. Respondent Silvano, the operator and qualifying manager of Respondent Mastercare, performed the inspection. Respondent Silvano issued a "complete" Wood Destroying Pests and Organisms Inspection Report containing five findings and recommendations and many notes. The findings identified cellulose debris, evidence of drywood termites and subterranean termites in the substructure, and evidence of drywood termites, drywood termite damage and dry rot (decay fungi damage) at the exterior. The decay fungi damage finding failed to identify the excessive moisture condition responsible for the infections.

27. The recommendations stated to clean out all cellulose debris from the substructure, to fumigate the structure for drywood termites and to cover and/or remove the evidence of infestation, to chemically treat the substructure for subterranean termites and to remove and replace the drywood termite and decay fungi damage for a total cost of $2,100.00. The subterranean termite recommendation failed to include a recommendation to knock down or remove the accessible evidence of infestation, and the decay fungi damage recommendation failed to include a recommendation to correct the excessive moisture condition responsible for the infection.

28. The pertinent notes reported that the foundations and ventilation are adequate, the porches/steps are wood/concrete, there are no abutments, the decks/patios and interior were inspected, the stall shower was water tested and did not leak, that a complete and thorough inspection of the attic could not be made due to insulation, and that the garage walls are covered.

29. The inspection report was not on a form prescribed by the Board because the address for the Board was incorrect. Additionally, the report failed to contain the address of the person or firm ordering the inspection report, it failed to contain the name of the property owner and/or party of interest, and it failed to report where the inspection tag was posted and whether or not any other tags were noted.

30. On April 15, 2010, Respondent Mastercare issued a Standard Notice of Work Completed and Not Completed ("completion notice"). The completion notice was not on a form prescribed by the Board because the address for the Board was incorrect. The completion notice certified that all recommendations made in the February 24, 2010 "complete" inspection report had been completed for a price of $1,400.00.

31. On September 3, 2010, Respondent Silvano, on behalf of Respondent Mastercare, returned to the Subject Property and performed a WDO inspection and treatment for subterranean termites. Respondent Mastercare failed to prepare and deliver an inspection report and completion notice for the September 3, 2010 WDO inspection and treatment.

Respondent Silvano Disassociates from Respondent Mastercare

32. On or about May 16, 2011, Respondent Silvano disassociated as qualifying manager of Respondent Mastercare. Respondent Silvano notified the Board of his disassociation but Respondent Mastercare failed to notify the Board within 10 days (or at all), as it was required.

33. On or about June 3, 2011, the Board suspended Respondent Mastercare's registration for failure to have a qualifying manager.

34. On or about June 10, 2011, Respondent Cruz associated with Respondent Mastercare as its qualifying manager. That same day, the Board lifted Respondent Mastercare's suspension.

35. Respondent Mastercare went 26 days without a qualifying manager. During this time period, Respondent Mastercare continued to perform work and filed 11 Wood Destroying Organism ("WDO") Activities with the Board.

The September 23, 2011 "Complete" Inspection

36. On or about September 23, 2011, Respondent Mastercare performed a WDO inspection at the Subject Property. Respondent Webster performed the WDO inspection and

issued a "complete" inspection report containing five findings and recommendations and many notes. The findings identified evidence of subterranean termites in the substructure, garage and interior ceiling, decay fungi damage in the substructure, and subterranean termites in the garage.

37. The recommendations stated to chemically treat and pressure treat for the control of subterranean termites and/or remove the accessible evidence of infestation and to remove and replace the decay fungi damage and subterranean termite damage.

38. The pertinent notes reported that the shower stall is on concrete, foundations and ventilation are adequate, the porches/steps are concrete, there are no abutments, the decks or patios and exterior were inspected, that a complete and thorough inspection of the attic could not be made due to insulation, and that the garage walls are covered.

39. The inspection report was not on a form prescribed by the Board because the address for the Board was incorrect. The inspection report diagram failed to indicate the approximate location of a certain finding, finding 10A. It also failed to report whether or not any other tags were noted.

The Board Specialist's Inspection

40. On or about November 28, 2011, Board Specialist Steven R. Smith ("Mr. Smith") travelled to the Subject Property to perform an inspection. Mr. Smith inspected the Subject Property and discovered: cellulose debris in the substructure; a form stake and form board in the substructure; evidence of subterranean termites in the substructure framing; evidence of excessive moisture conditions in the substructure, some of which extended into inaccessible wall areas; repair work (a board installed under the bathroom) completed in the substructure; an inaccessible area in the substructure created after blocking was installed between the floor joists under the kitchen; an inaccessible portion of the substructure; evidence of subterranean termites on the foundation wall of the converted garage; evidence of a subterranean termite treatment in the converted garage; an inaccessible area below the shower stall in the converted garage; evidence of an excessive moisture condition at the substructure access vent on the north wall; evidence of drywood termites in the attic; an inaccessible portion of the attic; an inaccessible attic area at the attached enclosed patio; patchwork completed at the front bedroom wall molding; and evidence

of drywood termites and drywood termite damage at the rafter tails and in the eave area, with some of the damage extending into an inaccessible attic area.

41. Mr. Smith took photographs and prepared a Report of Findings containing 12 separate violations. The report was sent by certified mailed to all Respondents and they received it on December 16, 2011. Respondents had 30 days from the date of receipt of the Report of Findings to bring the Subject Property into compliance.

The January 16, 2012 "Reinspection"

42. On or about January 16, 2012, Respondent Mastercare performed a WDO inspection at the Subject Property. Respondent Webster performed the WDO inspection and issued a "reinspection" report containing fifteen findings and recommendations and several notes.

43. The findings identified cellulose debris, foundation forms and/or stakes, evidence of subterranean termites, old evidence of drywood termites, decay fungi damage and water stains in the substructure, an inaccessible area below the shower stall, old evidence of drywood termites, inaccessible areas at the house, patio, and attic areas, decay fungi damage at the front bedroom flooring which extended into an inaccessible area, an excessive moisture condition at the substructure access vent on the north wall, old evidence of drywood termites at the eaves, drywood termite damage at the rafter tails in the eave area, and an area were Respondent Mastercare previously replaced decay fungi damage in the house eaves.

44. The recommendations state to clean out the cellulose debris, to chemically treat the foundation forms and/or stakes if removal is impractical, to remove or cover the old evidence of drywood termites, for Respondent Mastercare to contact a licensed contractor to address the decay fungi damage, the water stains, the stall shower, the excessive moisture condition, and the drywood termite damage, and for further inspection of the inaccessible attic area at the patio, if made accessible. The inspection failed to include a recommendation to remove the accessible evidence of subterranean termites in the substructure. The inspection report also failed to include a recommendation to open, inspect, and issue a "supplemental" inspection report regarding the inaccessible area at the house attic.

45. The pertinent notes reported that the garage walls are covered and a limited inspection was made of the garage due to storage.

46. The inspection report was not on a form prescribed by the Board because the address for the Board was incorrect.

The January 28, 2012 "Supplemental" Inspection

47. On or about January 28, 2012, Respondent Mastercare performed a "supplemental" WDO inspection at the Subject Property. Respondent Webster performed the supplemental WDO inspection and issued a "supplemental" inspection report containing four findings and recommendations.

48. The findings identified decay fungi damage in the substructure, drywood termite damage, old evidence of drywood termites, and decay fungi damage at the interior framing.

49. The recommendations state to remove or cover the old evidence of drywood termites and for Respondent Mastercare to contact a licensed contractor to address the decay fungi and drywood termite damage.

50. The inspection report diagram failed to indicate the approximate location of a certain finding, finding 10C. Furthermore, the inspection report was not on a form prescribed by the Board because the address for the Board was incorrect.

Walls in the Subject Property Are Exposed

51. On or about February 24, 2012, Respondent Webster contacted Mr. Smith and informed him that Respondent Mastercare had located a contractor to perform the necessary work to bring the Subject Property into compliance and to comply with the Report of Findings. However, the contractor, Rodrigo Argueto's, ("Argueto"), license was suspended for failing to comply with Worker Compensation requirements. Argueto was not permitted to perform any work at the Subject Property until he resolved the issues with his license.

52. In between March 8 and March 12, 2012, Argueto's license was restored to active status. On or about March 22, 2012, Argueto opened certain floors and walls in the Subject Property, including walls in the bedrooms, the kitchen, and the sole bathroom. The work in the bathroom rendered it inoperable.

53. Mr. Smith travelled to the Subject Property on or about March 23, 2012 and took photographs of Argueto's work and the damage.

54. Respondent Mastercare was required to send a licensee back to the Subject Property to look at the exposed damage and to issue a "supplemental" inspection report. However as of the date of this Accusation, Respondent Mastercare has not sent a licensee back to the Subject Property. Additionally, Respondent Mastercare has not sent a contractor back to the Subject Property to fix the damage or to comply with the Report of Findings. The cost to complete all necessary work is approximately $16,940.00. In fact, since Argueto opened certain walls and floors at the Subject Property, no work has been performed. While there is a stall shower and toilet in the converted garage, there is only one bathroom inside the house. Therefore, Mr. Lane and his wife have been without a functioning bathroom in their house since the third week of March 2012.

FIRST CAUSE FOR DISCIPLINE

(Failure to Timely Notify Board of Disassociation of Qualifying Manager)

55. Respondents Mastercare and White, as president, are subject to disciplinary action under Code sections 8571 and 8641 and Section 1916 of title 16 of the California Code of Regulations in that Respondents failed to notify the Board of the dissociation of Respondent Mastercare's qualifying manager, Cesar G. Silvano, within 10 days of the disassociation. In fact, Respondents never notified the Board of Silvano's disassociation.

SECOND CAUSE FOR DISCIPLINE

(Engaging in Practice of Structural Pest Control without a Qualifying Manager)

56. Respondents Mastercare and White, as president, are subject to disciplinary action under Code section 8506.2 and 8641 and Section 1918 of title 16 of the California Code of Regulations in that Respondents engaged in the practice of structural pest control without a qualifying manager. From May 16, 2011 to June 10, 2011, Respondent Mastercare had no qualifying manager. Nevertheless, during this time period, Respondent Mastercare continued to perform structural pest control work, including, but not limited to, filing 11 WDO activities with the Board.

THIRD CAUSE FOR DISCIPLINE

(Failure to Properly Name Property Owner on Inspection Report)

57. Respondents Mastercare, White, as president, and Silvano, as former qualifying manager, are subject to disciplinary action under Code section 8516, subdivision (b)(2) and (3) in that Respondents failed to include the address of the person or firm who ordered the February 24, 2010 "complete" inspection report and they failed to include the name of the property owner and/or party of interest on that report.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Prepare and Deliver Inspection Report on Form Prescribed by Board)

58. Respondents Mastercare, White, as president, and Silvano, as former qualifying manager, are subject to disciplinary action under Code sections 8516, subdivision (b), 8518, and 8641 and Section 1993 of title 16 of the California Code of Regulations in that Respondents failed to prepare and deliver the February 24, 2010 "complete" inspection report and the April 15, 2010 completion notice on a form prescribed by the Board. The Board's address at the bottom of the February 24, 2010 "complete" inspection report and the April 15, 2010 completion notice is wrong. The address listed on these forms is 1418 Howe Avenue, Suite 18, Sacramento, CA 95825. The Board moved to its current address at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815 in March 2008.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Prepare and Deliver Inspection Report and Completion Notice for Inspection and Work Performed)

59. Respondents Mastercare, White, as president, and Silvano, as former qualifying manager, are subject to disciplinary action under Code sections 8516, 8518, and 8641 and Section 1993 of title 16 of the California Code of Regulations in that Respondents failed to prepare and deliver any inspection report and completion notice for the WDO inspection and work performed at the Subject Property on September 3, 2010. Respondent Silvano performed a WDO inspection and treatment at the Subject Property on September 3, 2010. However Respondents failed to

prepare and deliver an inspection report or completion notice for either the inspection or the work performed.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Report)

60. Respondent Silvano, as an inspector, is subject to disciplinary action under Code sections 8516, subdivision (b)(6), (7), and (10) and 8641 and Section 1991, subdivisions (a)(11), and Section 1990, subdivision (a)(3),(4) and subdivisions (b)(2), (3), and (5), and (d) of title 16 of the California Code of Regulations in that Respondent failed to make proper reports. Specifically Respondent failed to make the following reports on the February 24, 2010 "complete" inspection report:

a. Respondent failed to report the full extent of the cellulose debris, the form stake, and the form board in the substructure.

b. Respondent failed to report the full extent of the evidence of subterranean termites in the substructure.

c. Respondent failed to report the decay fungi damage in the substructure, which extends into inaccessible wall areas below the kitchen and bathroom.

d. Respondent failed to report the evidence of excessive moisture conditions in the substructure.

e. Respondent failed to report the inaccessible areas in the substructure and to make a recommendation for further inspection and the issuance of a "supplemental" inspection report.

f. Respondent failed to report the inaccessible area below the stall shower.

g. Respondent failed to report the evidence of an excessive moisture condition at the substructure access vent on the north wall of the Subject Property. When it rains, water runs into the substructure.

h. Respondent failed to report the evidence of drywood termites in the attic.

i. Respondent failed to report the inaccessible attic areas.

j. Respondent failed to report the evidence of drywood termites and drywood termite damage at the rafter tails in the eave area. Some of the damage extends into inaccessible portions of the attic.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Make Proper Recommendation)

61. Respondent Silvano, as an inspector, is subject to disciplinary action under Code section 8516, subdivision (b)(10) and Section 1991, subdivision (a)(9) of title 16 of the California Code of Regulations in that Respondent failed to make a proper recommendation regarding the reported evidence of subterranean termites in the substructure on the February 24, 2010 "complete" report. Specifically, Respondent failed to include a recommendation to knock down or remove the accessible evidence of infestation.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Make Proper Finding and Recommendation)

62. Respondent Silvano, as inspector, is subject to disciplinary action under Code sections 8516, subdivision (b)(6), (7), and (10) and 8641 and Section 1991, subdivision (a)(5) of title 16 of the California Code of Regulations in that Respondent failed to make a proper finding and recommendation regarding the reported decay fungi damage in the eaves on the February 24, 2010 "complete" inspection report. Specifically, the finding failed to identify the excessive moisture condition responsible for the infections and the recommendation failed to include a recommendation to correct the excessive moisture condition responsible for the infections.

NINTH CAUSE FOR DISCIPLINE

(Failure to Indicate Tags)

63. Respondent Silvano, as an inspector, is subject to disciplinary action under Code sections 8619, subdivision (a) and 8641 and Section 1996.1, subdivision (c) of title 16 of the California Code of Regulations in that on the February 24, 2010 "complete" inspection report, Respondent failed to indicate where the inspection tag was posted and Respondent failed to indicate whether any other tags, less than 2 years old, were found.

///

TENTH CAUSE FOR DISCIPLINE

(Failure to Prepare and Deliver Inspection Reports on Form Prescribed by the Board)

64. Respondents Mastercare, White, as president, and Cruz, as qualifying manager, are subject to disciplinary action under Code sections 8516, subdivision (b) and 8641 and Section 1993 of title 16 of the California Code of Regulations in that Respondents failed to prepare and deliver the September 23, 2011 "complete" inspection report, the January 16, 2012 "reinspection" report, and the January 28, 2012 "supplemental" inspection report on a form prescribed by the Board. The Board's address at the bottom of the September 23, 2011 "complete" inspection report, the January 16, 2012 "reinspection" report, and the January 28, 2012 "supplemental" inspection report is wrong. The address listed on these forms is 1418 Howe Avenue, Suite 18, Sacramento, CA 95825. The Board moved to its current address at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815 in March 2008.

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Report of Findings)

65. Respondents Mastercare, White, as president, and Cruz, as qualifying manager, and Silvano as former qualifying manager are subject to disciplinary action under Code section 8622 in that Respondents failed to comply with the Report of Findings within the required 30 days. The Report of Findings was received on December 16, 2011, but as of the date of the Accusation, the work is nowhere close to being completed.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Indicate Other Tags)

66. Respondent Webster is subject to disciplinary action under Code sections 8619, subdivision (a) and 8641 and Section 1996.1, subdivision (c) of the California Code of Regulations in that on the September 23, 2011 "complete" inspection report, Respondent failed to indicated whether any other tags, less than 2 years old, were found.

///

///

///

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Make Proper Finding and Recommendation)

67. Respondent Webster is subject to disciplinary action under Code sections 8516, subdivisions (b)(6), (7), and (10) 8641 and Section 1991, subdivision (a)(5) of title 16 of the California Code of Regulations for failure to make a proper finding and recommendation regarding the reported decay fungi damage in the substructure on the September 23, 2011 "complete" inspection report. Specifically, the finding failed to identify the excessive moisture condition responsible for the infection and the recommendation failed to include a recommendation to correct the excessive moisture condition responsible for the infection.

FOURTEENTH CAUSE FOR DISCIPLINE

(Failure to Report)

68. Respondent Webster is subject to disciplinary action under Code sections 8516, subdivision (b)(6), (7), and (10) and 8461, and Section 1990, subdivision (a)(3), (4), and (11), subdivision (b)(2), (3), and (5), and subdivision (d) of title 16 of the California Code of Regulations in that Respondent failed to make proper reports. Specifically Respondent failed to make the following reports on the September 23, 2011 "complete" inspection report:

a. Respondent failed to report the cellulose debris, form stake, and form board in the substructure.

b. Respondent failed to report the full extent of the decay fungi damage in the substructure. The decay fungi damage extends into inaccessible wall areas below the kitchen and bathroom.

c. Respondent failed to report the evidence of excessive moisture conditions in the substructure.

d. Respondent failed to report the inaccessible areas in the substructure and to make a recommendation for further inspection and the issuance of a "supplemental" inspection report.

e. Respondent failed to report the inaccessible area below the stall shower.

f. Respondent failed to report the evidence of an excessive moisture condition at the substructure access vent on the north wall. When it rains, water runs into the substructure.

g. Respondent failed to report the evidence of drywood termites in the attic.

h. Respondent failed to report the inaccessible attic areas.

i. Respondent failed to report the evidence of drywood termites and drywood termite damage at the rafter tails in the eave area. Some of the damage extends into an inaccessible portion of the attic.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Indicate Location of Findings)

69. Respondent Webster is subject to disciplinary action under Code section 8516, subdivision (b)(6) in that Respondent failed to indicate the location of certain findings. Specifically, on the September 23, 2011 "complete" inspection report, Respondent failed to indicate the approximate location of finding 10A. On the January 28, 2012 "supplemental" inspection report, Respondent failed to indicate the approximate location of finding 10C.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Make a Recommendation)

70. Respondent Webster is subject to disciplinary action under Code sections 8516, subdivision (b)(6), (7), and (10) and 8641 and Sections 1990, subdivision (d), 1991, subdivision (a)(9), and 1993, subdivision (3) of title 16 of the California Code of Regulations in that Respondent failed to make recommendations regarding the January 16, 2012 "reinspection" report. Specifically Respondent failed to make the following recommendations on the January 16, 2012 "reinspection" report:

a. Respondent failed to make a recommendation to remove the accessible evidence of subterranean termites in the substructure.

b. Respondent failed to make a recommendation to open, inspect, and issue a "supplemental" inspection report regarding the inaccessible area at the house attic.

c. Respondent failed to make a proper finding and recommendation regarding the limited inspection of the garage due to storage that was reported as a note. The limited inspection of the garage due to storage should have been reported as a finding with a recommendation.

OTHER MATTERS

71. Notice is hereby given that 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.

72. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate No. PR 5620 issued to Respondent Mastercare likewise constitute cause for discipline against Operator's License No. OPR 11324 issued to Respondent Cruz who serves as the qualifying manager of Respondent Mastercare, regardless of whether Respondent Cruz had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent Mastercare.

73. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate No. PR 5620 issued to Respondent Mastercare likewise constitute cause for discipline against Operator's License No. OPR 11237 issued to Respondent Silvano who served as the qualifying manager of Respondent Mastercare, regardless of whether Respondent Silvano had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent Mastercare.

74. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate No. 5620 issued to Respondent Mastercare, then Respondent White, who serves as the president of Respondent Mastercare, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates him shall be subject to disciplinary action.

75. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate No. 5620 issued to Respondent Mastercare, then Respondent Cruz, who serves as the qualifying manager of Respondent Mastercare, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any

registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates him shall be subject to disciplinary action.

76. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate No. 5620 issued to Respondent Mastercare, then Respondent Silvano, who served as the qualifying manager of Respondent Mastercare, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates him shall be subject to disciplinary action.

PRAYER

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

1. Revoking or suspending Company Registration Certificate No. PR 5620, issued to Mastercare Termite Control South Bay with William White as president and Leonardo J. Cruz, Jr. as qualifying manager;

2. Revoking or suspending Operator's License No. OPR 11324, issued to Leonardo J. Cruz, Jr.;

3. Revoking or suspending any other license for which Leonardo J. Cruz, Jr. is furnishing the qualifying experience or appearance;

4 Revoking or suspending Operator's License No. OPR 11237, issued to Cesar G. Silvano;

5. Revoking or suspending any other license for which Cesar G. Silvano is furnishing the qualifying experience or appearance;

6. Revoking or suspending Field Representative Number FR 32347, issued to Betty Ann Webster;

7. Prohibiting William White, Leonardo J. Cruz, Jr., and Cesar G. Silvano from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee from any company during the period that discipline is imposed on Company Registration Certificate No. PR 5620;

8. Ordering restitution of all damages, according to proof, that Deyone Lane suffered, as a condition of probation in the event that probation is ordered;

9. Ordering Mastercare Termite Control South Bay, William White, Leonardo J. Cruz Jr., Cesar G. Silvano, and Betty Ann Webster to pay the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 7/26/12

William H. Douglas

WILLIAM H. DOUGLAS
Interim Executive Officer
Structural Pest Control Board
State of California
Complainant

LA2012507201
51134452.doc