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FILED

Date 4/6/16 By Susan Saylor

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

11 In the Matter of the First Amended Accusation
Against:

Case No. 2016-9

12 **BLACKOUT TERMITE AND PEST**
13 **CONTROL, ALONZO G. CONTRERAS,**
14 **III**

FIRST AMENDED ACCUSATION

15 **19197 Golden Valley Rd. #929**
16 **Santa Clarita, CA 91387**

17 **Company Registration Certificate No. PR**
18 **6902**

19 **ALONZO G. CONTRERAS, III**
20 **19197 Golden Valley Rd. #929**
21 **Santa Clarita, CA 91387**

22 **Operator's License No. OPR 11760**

23 **and**

24 **MARCOS GASTELUM MORALES**
25 **5867 Pine Avenue**
26 **Chino Hills, CA 91709**

27 **Operator's License No. OPR 12089**
28 **Field Representative's License No. FR 47056**

Respondents.

1 Complainant alleges:

2 **PARTIES AND RELEVANT LICENSE HISTORY**

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

6 **Company Registration Certificate No. PR 6902**

7 2. On or about November 12, 2013, the Structural Pest Control Board ("Board") issued
8 Company Registration Certificate Number PR 6902 to Blackout Termite and Pest Control
9 ("Respondent Blackout") in Branches 2 and 3¹ with Alonzo G. Contreras, III ("Respondent
10 Contreras") as owner and Branch 3 Qualifying Manager and Canderlario Gastelum as Branch 2
11 Qualifying Manager.²

12 3. On January 8, 2015, Company Registration Certificate No. PR 6902 was suspended
13 for failure to maintain general liability insurance as required by Business and Professions Code
14 section 8690. On January 21, 2015, Company Registration Certificate No. PR 6902 was
15 reinstated after posting the required general liability insurance.

16 4. On March 10, 2015, Company Registration Certificate No. PR 6902 was suspended
17 for not having a Branch 2 Qualifying Manager due to the suspension of Mr. Gastelum's Operator
18 License for failure to maintain general liability insurance for Redline Pest Control Management.
19 On March 18, 2015, Company Registration Certificate No. PR 6902 was reinstated due to the
20 cancelation of the company registration for Redline Pest Control Management.

21 5. On July 1, 2015, Mr. Gastelum disassociated as Branch 2 Qualifying Manager of
22 Company Registration Certificate No. PR 6902. On July 21, 2015, Company Registration

23
24 ¹ Branch 2 refers to the practice of the control of household pests, excluding fumigation with
25 poisonous or lethal gases. Branch 3 refers to the practice of controlling wood destroying pests or
organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation
with poisonous or lethal gases.

26 ² Prior to issuance of Company Registration Certificate Number PR 6902, the Board had issued
27 Company Registration Certificate No. PR 5895 to Blackout Termite Control on July 27, 2009
with Frank F. Martinez as Partner and Respondent Contreras as Partner and Qualifying Manager.
28 Company Registration Certificate No. PR 5895 was cancelled on November 12, 2013, when the
business was re-registered to Respondent Contreras as sole owner.

1 Certificate No. PR 6902 was suspended for not having a Branch 2 Qualifying Manager.

2 6. On August 5, 2015, Accusation No. 2016-9 was filed against Company Registration
3 No. PR 6902.

4 7. On August 13, 2015, Company Registration Certificate No. PR. 6902 was issued a
5 \$300 fine levied by the Los Angeles County Agricultural Commissioner for violation of section
6 8505.17(c) of the Business and Professions Code and section 15204(a) of the Food and
7 Agricultural Code. The fine was paid on October 21, 2015.

8 8. On September 18, 2015, Company Registration Certificate No. PR 6902 was
9 reinstated and reflected Marcos Gastelum Morales ("Respondent Morales") as the Branch 2
10 Qualifying Manager.

11 9. On September 18, 2015, Company Registration No. PR 6902 reflected a change of
12 address to 19197 Golden Valley Road, Unit #929, Santa Clarita, California 91387.

13 **Operator's License No. OPR 11760**

14 10. On or about October 10, 2008, the Structural Pest Control Board issued Operator's
15 License Number OPR 11760 in Branch 3 to Respondent Contreras.

16 11. On June 8, 2009, Operator's License No. OPR 11760 was suspended pursuant to
17 Family Code section 17520. On June 17, 2009, Operator's License No. OPR 11760 was
18 reinstated after compliance with Family Code section 17520.

19 12. On February 17, 2010, Operator's License No. OPR 11760 was suspended pursuant to
20 Family Code section 17520. On March 16, 2010, Operator's License No. OPR 11760 was
21 reinstated after compliance with Family Code section 17520.

22 13. On July 21, 2010, Operator's License No. OPR 11760 was suspended pursuant to
23 Family Code section 17520. On August 30, 2010, Operator's License No. OPR 11760 was
24 reinstated after compliance with Family Code section 17520.

25 14. On July 19, 2011, Operator's License No. OPR 11760 was suspended for failure to
26 maintain general liability insurance as required by Code section 8690. On August 1, 2011,
27 Operator's License No. OPR 11760 was reinstated after posting the required general liability
28 insurance.

1 15. On October 19, 2011, Operator's License No. OPR 11760 was suspended pursuant to
2 Family Code section 17520. On December 28, 2011, Operator's License No. OPR 11760 was
3 reinstated after compliance with Family Code section 17520.

4 16. On May 23, 2012, Operator's License No. OPR 11760 was suspended pursuant to
5 Family Code section 17520. On September 6, 2012, Operator's License No. OPR 11760 was
6 reinstated after compliance with Family Code section 17520.

7 17. On September 21, 2012, Operator's License No. OPR 11760 was suspended for
8 failure to maintain general liability insurance as required by Code section 8690. On October 11,
9 2012, Operator's License No. OPR 11760 was reinstated after posting the required general
10 liability insurance.

11 18. On April 12, 2013, Operator's License No. OPR 11760 was suspended for failure to
12 maintain general liability insurance as required by Code section 8690. On April 18, 2013,
13 Operator's License No. OPR 11760 was reinstated after posting the required general liability
14 insurance.

15 19. On January 8, 2015, Operator's License No. OPR 11760 was suspended for failure to
16 maintain general liability insurance as required by Code section 8690. On January 21, 2015,
17 Operator's License No. OPR 11760 was reinstated after posting the required general liability
18 insurance.

19 20. On September 18, 2015, Operator's License No. OPR 11760 reflected a change of
20 address to 19197 Golden Valley Road, Unit #929, Santa Clarita, CA 91387.

21 21. Operator's License OPR 11760 will expire on June 30, 2017, unless renewed.

22 **Operator's License No. OPR 12089**

23 22. On or about September 20, 2010, the Board issued Operator's License Number OPR
24 12089 in Branch 2 to Respondent Morales.

25 23. On September 18, 2015, Operator's License No. OPR 12089 reflected dual
26 employment and became the Branch 2 Qualifying Manager of Blackout Termite and Pest Control
27 with a business address of 19197 Golden Valley Road, Unit #929, Santa Clarita, California
28 91387.

1 of or action or disciplinary proceeding against such licensee or company, or to render a decision
2 suspending or revoking such license or registration."

3 **STATUTES AND REGULATIONS**

4 30. Section 8509 of the Code states:

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

9 31. Section 8516 of the Code states, in pertinent part:

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

12 "(b) No registered company or licensee shall commence work on a contract, or
13 sign, issue, or deliver any documents expressing an opinion or statement relating to
14 the absence or presence of wood destroying pests or organisms until an inspection has
15 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.

16 "Every property inspected pursuant to this subdivision or Section 8518 shall be
assessed a filing fee pursuant to Section 8674.

17 "Failure of a registered company to report and file with the board the address
18 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
19 not more than two thousand five hundred dollars (\$2,500).

20 "A written inspection report conforming to this section and a form approved by
the board shall be prepared and delivered to the person requesting the inspection or to
21 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
22 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
23 original inspection reports, field notes, and activity forms.

24 "Reports shall be made available for inspection and reproduction to the
executive officer of the board or his or her duly authorized representative during
25 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
26 report:

27

28 "(7) Information regarding the substructure, foundation walls and
footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing

1 that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
2 joists, and attic walls, or other parts subject to attack by wood destroying pests or
3 organisms. Conditions usually deemed likely to lead to infestation or infection, such
4 as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive
5 moisture conditions, evidence of roof leaks, and insufficient ventilation are to be
6 reported."

7

8 32. Section 8517 of the Code states:

9 "Any work contract, billing, agreement, letter of work completed, or other correspondence
10 or document expressing an opinion or making a statement relating to the presence or absence of
11 wood destroying pests or organisms or nondecay fungi, shall refer to the inspection report
12 required by Section 8516. These documents shall indicate specifically whether all of the
13 recommended work as set forth in the inspection report was completed, or, if not, the document
14 shall indicate specifically which recommendations were not completed.

15 33. Section 8518 of the Code states:

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

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

25 "(c) A filing fee shall be assessed pursuant to Section 8674 for every property
26 upon which work is completed.

27 "(d) Failure of a registered company to report and file with the board the address
28 of any property upon which work was completed pursuant to subdivision (b) of
29 Section 8516 or Section 8518 is grounds for disciplinary action and shall subject the
30 registered company to a fine of not more than two thousand five hundred dollars
31 (\$2,500).

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

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

1 34. Section 8538 of the Code states, in pertinent part:

2 "(a) A registered structural pest control company shall provide the owner, or owner's
3 agent, and tenant of the premises for which the work is to be done with clear written notice which
4 contains the following statements and information using words with common and everyday
5 meaning:

6

7 "(2) The pesticide or pesticides proposed to be used, and the active ingredient or
8 ingredients."

9

10 35. Section 8610 of the Code states, in pertinent part:

11

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

18

19 36. Section 8618 of the Code states, " Documents as specified by regulation must be
20 maintained by all registered companies for three years."

21 37. Section 8622 of the Code states:

22 "(a) When a complaint is accepted for investigation of a registered company,
23 the board, through an authorized representative, may inspect any or all properties on
24 which a report has been issued pursuant to Section 8516 or a notice of completion has
25 been issued pursuant to Section 8518 by the registered company to determine
26 compliance with the provisions of this chapter and the rules and regulations issued
27 thereunder. If the board determines the property or properties are not in compliance, a
28 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 the property into
compliance, unless an extension is authorized by the board, 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

1 authorized representative makes no determination or determines the property is in
2 compliance, no inspection fee shall be charged.

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

9 38. Section 8636 of the Code states:

10 "Disregard and violation of the buildings laws of the state, or of any of its political
11 subdivisions, or of the safety laws, labor laws, health laws, or compensation insurance laws of the
12 state relating to the practice of structural pest control is a ground for disciplinary action."

13 39. Section 8638 of the Code states that "[f]ailure on the part of a registered company to
14 complete any operation or construction repairs for the price stated in the contract for such
15 operation or construction repairs or in any modification of such contract is a ground for
16 disciplinary action."

17 40. Section 8639 of the Code states:

18 "Aiding or abetting an unlicensed individual or unregistered company to evade the
19 provisions of this chapter [the Structural Pest Control Act] or knowingly combining
20 or conspiring with an unlicensed individual or unregistered company, or allowing
21 one's license or company registration to be used by an unlicensed individual or
22 unregistered company, or acting as agent or partner or associate, or otherwise, of an
23 unlicensed individual or unregistered company to evade the provisions of this chapter
24 is a ground for disciplinary action."

25 41. Section 8641 of the Code states:

26 "Failure to comply with the provisions of this chapter, or any rule or regulation adopted by
27 the board, or the furnishing of a report of inspection without the making of a bona fide inspection
28 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."

42. Section 8642 of the Code 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."

43. Section 8643 states, "The negligent handling or use of any pesticide is a ground for
disciplinary action."

1 44. Section 8644 of the Code states:

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

8 45. Section 8647 of the Code states:

9 "Failure to comply in the sale or use of pesticides with the provisions of Chapter 2
10 (commencing with Section 12751) of Division 7 of the Food and Agricultural Code is a ground
11 for disciplinary action."

12 46. Section 8652 of the Code states:

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

19 47. Section 8691 of the Code states, " A registered company shall not engage in the
20 practices for which it is required to be registered by this chapter unless it maintains an insurance
21 policy as specified in this article."

22 48. Section 8692 of the Code states:

23 "(a) An 'insurance policy' as used in this article means a contract of liability
24 insurance issued by an insurance company authorized to transact business in this state
25 or one issued by a nonadmitted carrier whose activities in this state are controlled by
26 the Surplus Line Association, which insures the policyholder against loss from legal
27 liability for damages on property upon which work is being performed or has been
28 completed, including third-party losses, as a result of an accident or occurrence due to
participation in control, prevention, or repair activities that require a license under this
chapter. The insurance policy shall provide minimum limits of five hundred thousand
dollars (\$500,000) for any one loss due to bodily injury, sickness, or disease,
including death at any time resulting therefrom, sustained by any person, and five
hundred thousand dollars (\$500,000) minimum for any one loss due to injury or

1 destruction of property, including the loss of use of the property.

2 "(b) This section shall not be construed to require errors and omissions
3 insurance for all activities relating to or during inspections, inspection reports,
4 recommendations, estimates, and bids, whether oral or written."

4 49. Code section 8695 states, "The violation of any provision of this article is a
5 misdemeanor and shall be grounds for the suspension or revocation by the board of the operator's
6 license of the owner or qualifying manager or managers of the registered company and of the
7 company registration."

8 50. Regulation 1918 states:

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

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

21 51. Regulation 1937.14 states:

22 "All work completed by licensees or registered companies shall be done within the specific
23 requirements of any plans or specifications and shall meet accepted trade standards for good and
24 workmanlike construction in any material respect, and shall comply with provisions of Section
25 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations."

26 52. Regulation 1970 states, in pertinent part:

27 "For the purpose of maintaining proper standards of safety and the establishment of
28 responsibility in handling the dangerous gases used in fumigation and the pesticides used in other

1 pest control operations, a registered company shall compile and retain for a period of at least three
2 years, a log for each fumigation job and for each pesticide control operation in which a pesticide
3 is used by the registered company or the registered company's employee. If the fumigation is to
4 be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log
5 and forward a copy of the log to the primary contractor within ten business days."

6

7 53. Regulation 1970.4 states, in pertinent part:

8

9 (c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a
10 pesticide within, around or to any structure such person shall leave in a conspicuous location a
11 written notice identifying the common, generic or chemical name of each pesticide applied. In
12 case of a multiple family structure, such notice may be given to the designated agent or the
13 owner. Such pesticide identification notice may be a door hanger, invoice, billing statement or
14 other similar written document which contains the registered company's name, address, and
15 telephone number."

16

17 54. Regulation 1990 states, in pertinent part:

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

22

23 "(3) Infestations, infections or evidence thereof.

24

25 "(e) Information regarding all accessible areas of the structure including but not limited to
26 the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents,
27 abutments, stucco walls, columns, attached structures or other parts of a structure normally
28 subject to attack by wood-destroying pests or organisms."

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55. Regulation 1996 states, in pertinent part:

"(a) A written inspection report conforming to section 8516(b) of the code...shall be prepared and delivered to the person requesting the inspection, or to the person's designated agent regardless of whether the registered company has offered to perform the inspection without charge. The granting of permission to make an inspection shall be deemed a request to make an inspection.

"(b) The failure or refusal of the person ordering the inspection or of his or her designated agent to pay for such inspection or report shall not excuse a registered company which has commenced an inspection from preparing and delivering a report to the person requesting the inspection or the person's designated agent."

56. Regulation 1999.5 states, in pertinent part:

....

"(a) It is unlawful for any licensee, or any employee thereof, directly or indirectly to make, disseminate, represent, claim, state, or advertise, or cause to be made, disseminated, represented, claimed, stated or advertised by any manner or means whatever, any statement or representation concerning structural pest control, as defined in Business and Professions Code section 8505, which is unfair, deceptive, untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be unfair, deceptive, untrue or misleading.

"(b) As used in this section, the terms "make," "disseminate," "represent," "claim," "state," or "advertise" and any of their variants include, but are not limited to any print communications (for example, telephone directories, newspapers, magazines or other publications or books, notices, circulars, pamphlets, letters, handbills, posters, bills, signs, placards, cards, labels, tags, vehicle or equipment signage, window displays, or store signs), electronic communication (for example, radio, television, audio or video tape, telephone, or the Internet), demonstration, direct person-to-person contact, or other means or methods now or hereafter employed to bring structural pest control services, methods, products, pesticides, or devices to the attention of the public for the direct or indirect purpose of performing or offering to perform services for which a license is required by section 8500 and following of the Code.

....

"(d) Violation of this section occurs at the time an unfair, deceptive, untrue or misleading statement or representation is made. Once a violation occurs, subsequent disclosures, caveats, disclaimers, or waivers cannot eliminate it.

1 deposit of \$838 by credit card and he paid the balance of \$1,703 by credit card on October 27,
2 2014.

3 61. On September 24, 2014, Ms. Wang in Unit 133-A signed and entered into a contract
4 with Respondent Blackout to perform the work at her unit. On that same day, Ms. Wang paid a
5 deposit of \$922 by check.

6 62. On September 25, 2014, Ms. Chen in Unit 135-B signed and entered into a contract
7 with Respondent Blackout to perform the work at her unit. That same day, Ms. Chen paid a
8 deposit of \$732 by credit card and she paid the balance of \$1,498 by credit card on October 27,
9 2014.

10 63. Mr. Chang in Unit 135-A did not sign a contract with Respondent Blackout.
11 Nevertheless, Mr. Chang paid a deposit of \$822 by credit card to Respondent Blackout on
12 September 24, 2014 and he paid the balance of \$1,669 by credit card on October 24, 2014.

13 64. Security camera footage from the Subject Newmark reveals that work occurred on
14 October 23, 24, 25, and 27, 2014 and that there were three unlicensed individuals performing
15 work at the Subject Newmark, including "Ronnie Leon," who performed the pesticide
16 applications and "Hector Ramirez," who performed the repairs at the property.

17 65. On November 3, 2014, the Board received a complaint from Ms. Chen in Unit 135-B.
18 The complaint alleged, in part, that Respondent Blackout's general liability insurance had expired
19 but the company continued to work at the Subject Newmark and that the progress on the job was
20 not proceeding as promised. Respondent Blackout's general liability insurance expired on
21 October 10, 2014.

22 66. On November 17, 2014, the Board sent Respondent Blackout a letter notifying it of
23 Ms. Chen's complaint and asking for a response within 10 days. Respondent Blackout failed to
24 respond.

25 67. On December 5, 2014, the Board reviewed Wood Destroying Organism Activity
26 Search records to ascertain what wood destroying organism activities ("WDO activities") had
27 been performed at the Subject Newmark and filed with the Board. The Board discovered that two
28 WDO activities had been submitted on November 17, 2014 for the Subject Newmark and filed

1 under Respondent Blackout's cancelled company registration certificate number PR 5895: an
2 inspection report dated August 22, 2014 and a completion notice was dated October 23, 2014.
3 The Board also discovered that Respondent Blackout had submitted eight WDO activities
4 between April 26, 2014 and November 14, 2014 under Respondent Blackout's cancelled company
5 registration certificate number PR 5895. As of December 5, 2014, no WDO activities were filed
6 with the Board under Respondent Blackout's current Company Registration Certificate No. PR
7 6902.

8 68. On or about December 18, 2014, a Board Specialist was assigned to further
9 investigate Ms. Chen's original complaint.

10 69. On January 5, 2015, the Board Specialist obtained from Blackout a copy of the
11 Standard Notice of Work Completed and Not Completed for Inspection Report No. W8975 dated
12 October 23, 2014. This completion notice, which indicated all of the items were completed by
13 Respondent Blackout for \$10,049.00, did not include a certification of the property. None of the
14 owners of Subject Newmark had received a copy of the completion notice.

15 70. On January 5, 2015, the Board Specialist emailed the Los Angeles County
16 Agricultural Commissioner's office (CAC) Robert Duong (Mr. Duong) to inquire if Respondent
17 Blackout was registered in Los Angeles county to perform pesticide applications for the year
18 2014. Mr. Duong indicated that Respondent Blackout had not registered with Los Angeles CAC
19 for the year 2014.

20 71. On or about January 8, 2015, the Board Specialist travelled to the Subject Newmark
21 to perform an inspection. The Board Specialist inspected the Subject Newmark and found
22 evidence of active termite infestations and discovered that many of the repairs had not been
23 completed properly.

24 72. On January 8, 2015, the Board issued Respondent Blackout, Respondent Contreras
25 and Mr. Gastelum an Order of Suspension as a result of their failure to maintain an insurance
26 policy.

27 73. On January 13, 2015, the Board received a complaint from Ms. Wang in Unit 133-A.
28 The complaint alleged, in part, that Respondent Blackout promised the project would be

1 completed in one week in October 2014 and that progress on the job was not proceeding as
2 promised.

3 74. On January 15, 2015, the Board Specialist met with Respondent Contreras at
4 Respondent Blackout's office to discuss the complaints. The Board Specialist learned the
5 following information during this meeting:

6 a) Despite the Order of Suspension, Respondent Blackout was actively conducting
7 business.

8 b) Respondent Contreras provided the Board Specialist with the Standard Notice of
9 Work Completed and Not Completed for Inspection Report No. W8975 dated October 23, 2014
10 from Respondent Blackout. This completion notice, which indicated all of the items were
11 completed by Respondent Blackout for \$10,049.00, included a certification for the Subject
12 Newmark.

13 c) Respondent Contreras admitted that unlicensed individual "Ronnie Leon" performed
14 the pesticide applications and he admitted that unlicensed individual "Hector Ramirez" performed
15 the repairs at the property.

16 75. On January 19, 2015, the Board received a complaint from Mr. Lee in Unit 133-B.
17 The complaint alleged that the repairs were poor and there was still evidence of termite
18 droppings.

19 76. On January 21, 2015, the Board received a complaint from Mr. Chang in Unit 135-A.
20 The complaint alleged that the repairs were poor and there was no completion report.

21 77. On or about January 21, 2015, Respondent Blackout obtained general liability
22 insurance from Gemini Insurance Company, effective October 10, 2014 (the date of the
23 expiration of its previous policy) to October 10, 2015, but failed to provide the Board with a
24 Certificate of Insurance and failed to timely notify the Board of changes to its policy.
25 Additionally, the new policy erroneously indicates "Fumigation Covered," even though
26 Respondent Blackout is not licensed to perform Branch 1 services.

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1 a) On January 8, 2015, the Board Specialist inspected the Subject Newmark and found
2 multiple violations of the rules and regulations governing structural pest control, as follows:

3 b) Failure to exterminate subterranean termite infestations through the use of chemical
4 treatments. There was evidence of active infestations and chemical treatment are necessary to
5 remediate the infestations.

6 c) Failure to exterminate drywood termite infestations through the use of chemical
7 treatments. There was evidence of active infestations that extend into areas physically
8 inaccessible for local chemical treatments. Fumigation will be necessary.

9 d) Failure to report the following drywood termite infestations that were active and that
10 extend into areas that are physically inaccessible for local chemical treatments such that
11 fumigation will be necessary:

- 12 i. Infestation at the exterior mailbox trim boards;
- 13 ii. Infestation at the exterior porch support of Unit 133-B;
- 14 iii. Infestation at the porch window trims of Unit 135-B;
- 15 iv. Infestation at the exterior electric meter box wall voids of Units 133-A and 133-
16 B, the exterior stucco wall voids, stucco trims, fascias, rafter tails, eaves, porch header beams,
17 support post beams, support post trims, garage doorjamb, decorative plant shelves and corbels,
18 electric meter box, and adjacent wall voids of Units 133-A, 133-B, 135-A, and 135-B.

19 e) Failure to complete the following work and to complete the following work in a quality
20 and workmanlike manner regarding the reported drywood termite damage at the following areas:

- 21 i. Units 133-A, 133-B, 135-A, and 135-B: At the exterior stucco trims, wood
22 siding panels, support posts, fascias, rafter tails, eaves, porch header beams, trims, garage
23 doorjamb, decorative plant shelves and corbels. The damage was recorded as completed on the
24 October 23, 2014 completion notice, however drywood termite damage remains. Moreover,
25 several of the exterior trims were cut off and pieced together with blockings and old rusted nails,
26 some of the damage was patched and painted over when it should have been replaced, the
27 replaced exterior trims and support posts are not the same length and the ends are cut at different
28 angles leaving large gaps and cracked lumber. The reported drywood termite damaged wood

1 members were replaced without being primed and/or painted and the areas that were replaced and
2 painted have peeling, bubbling, and flaking paint separating from the lumber. Exterior areas of
3 drywood termite damage findings and recommendations above 8 feet from the ground were never
4 completed.

5 ii. Unit 133-B: At the entry doorjamb, stucco molding, and adjacent trims. Some
6 of the damage was filled with a product called Great Stuff, a polyurethane-based insulating foam
7 and painted over when it should have been replaced, the replaced wood members are not the same
8 length and the ends are cut at different angles leaving large gaps. Additionally, the security door
9 was removed and reinstalled incorrectly with improper hardware or no hardware at all.

10 iii. Unit 135-A: At the porch support and trims. Additionally, the brick veneer
11 base of the support post was left with broken/missing bricks and loose/broken grout joints.

12 iv. Unit 135-B: At the exterior stucco and window trims. Additionally, the
13 wrought iron side gate was removed and reinstalled incorrectly with improper hardware or no
14 hardware at all.

15 82. Respondent Blackout and Respondent Contreras issued a Standard Notice of Work
16 Completed and Not Completed for Inspection Report No. W8975 dated October 23, 2014 which
17 indicated that all the work identified in the August 22, 2014 inspection report was completed on
18 that day. However work continued at the Subject Newmark on October 24, 25, and 27, 2014.

19 83. Respondent Blackout and Respondent Contreras issued two different versions of the
20 Standard Notice of Work Completed and Not Completed for Inspection Report No. W8975 dated
21 October 23, 2014. One version of the completion report contains a certification and the other
22 version does not contain a certification.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Disregard of Building Laws)**

25 84. Respondent Blackout and Respondent Contreras are subject to disciplinary action
26 under Code sections 8636 and 8641 in that Respondent Blackout and Respondent Contreras failed
27 to comply with applicable building codes and laws by failing to obtain a building permit prior to
28 the reported drywood termite damage replacement of the exterior stucco trims, wood siding

1 panels, support posts, fascias, rafter tails, eaves, porch header beams, trims, garage doorjambs,
2 entry doorjambs, decorative plant shelves, and corbels.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Aiding and Abetting Unlicensed Activity)**

5 85. Respondent Blackout and Respondent Contreras are subject to disciplinary action
6 under Code section 8639 in that Respondent Blackout and Respondent Contreras hired unlicensed
7 workers to perform pesticide applications and wood repairs at the Subject Newmark, including
8 "Ronnie Leon" and "Johnny," who performed the pesticide applications.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Negligent Handling of Poisonous Exterminating Agent)**

11 86. Respondent Blackout and Respondent Contreras are subject to disciplinary action
12 under Code section 8643 in that Respondent Blackout and Respondent Contreras permitted
13 unlicensed workers to handle and/or use poisonous exterminating agents in a negligent manner.

14 The circumstances are as follows:

15 a) The August 22, 2014 inspection report indicates that the pesticide Bora Care was used
16 for the extermination of the drywood termites at the Subject Newmark.

17 b) Unlicensed individuals applied the pesticide without proper supervision.

18 c) The persons who applied the pesticides used no personal protective equipment such
19 as a respirator, long sleeve shirt, gloves, chemical resistant shoes, etc.

20 d) Bora Care was applied to painted wood surfaces and overhead to second story eaves
21 in a manner inconsistent with the product's label.

22 e) Repairman Hector Ramirez, Ms. Chen, and her pet cat were present in the treatment
23 areas during and after the treatment was applied.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Evidence of an Insurance Policy)**

26 87. Respondent Blackout and Respondent Contreras are subject to disciplinary action
27 under Code sections 8691, 8692, and 8695 in that Respondent Blackout and Respondent
28 Contreras failed to maintain evidence of liability insurance and conducted structural pest control

1 business without having liability insurance. Respondent Blackout and Respondent Contreras'
2 general liability insurance expired on October 10, 2014 and was not renewed until January 21,
3 2015, yet Respondent Blackout and Respondent Contreras continuously operated their structural
4 pest control business between that time period.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(False and Misleading Advertising)**

7 88. Respondent Blackout and Respondent Contreras are subject to disciplinary action
8 under Code section 8641 and Regulation 1999.5 in that Respondents falsely and misleadingly
9 advertised their services and products as "safe," "safer for your family," and "eco-friendly" which
10 could easily deceive a consumer into believing that the pesticides they use are not hazardous,
11 regardless of how they are treated. Even though the toxicity level may be low, pesticides are still
12 toxic and may harm someone who is exposed to enough of the product.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Failure to Provide of Notice of Pesticides)**

15 89. Respondent Blackout and Respondent Contreras are subject to disciplinary action
16 under Code sections 8538, subdivision (a)(2) and 8641, and Regulation 1970.4 in that the August
17 22, 2014 inspection report recommends the pesticide "Bora Care" but the pesticide disclosure on
18 page 5 of the inspection report does not disclose the pesticide "Bora Care."

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Failure to Maintain Proper Records)**

21 90. Respondent Blackout and Respondent Contreras are subject to disciplinary action
22 under Code sections 8618, 8641, and 8652, in conjunction with Regulation 1970 in that
23 Respondent failed to keep and make available for inspection all records regarding structural pest
24 control activities performed in the past three years. During a meeting with a Board Specialist on
25 January 15, 2015, Respondent Contreras was unable to supply records regarding structural pest
26 control activities, other than financial records, for the past three years.

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1 96. Respondent Contreras stopped by the job site briefly while the two (2) men were
2 present. Respondent Contreras did not assist the two (2) men with the job.

3 97. The homeowner did not see any of the men enter the sub area of his home with tools
4 to apply the termite treatment. He did not see them spray the clay-tiled wooden front door awning
5 over his front door or see them spray the kitchen door. He did not see any of the workers perform
6 any type of treatment in the garage. He saw only one (1) type of chemical used, a white powder
7 that was mixed with water.

8 98. The homeowner expressed his concerns to Respondent Contreras. Respondent
9 Contreras stated he would send Mr. Martinez back to the home to work on those areas identified
10 by the homeowner.

11 99. On February 4, 2016, Mr. Martinez came back to Project Blix. Mr. Martinez was
12 alone this time, and came back in the same non-commercially marked vehicle. Mr. Martinez
13 mixed the white powder with water and put it into the compressor. He sprayed around the awning
14 and went into the subarea of the home.

15 100. On February 5, 2016, the homeowner contacted Respondent Contreras to express his
16 dissatisfaction with the lack of any trenching or treatment for subterranean termites. Respondent
17 Contreras offered to return to work on the home. The homeowner declined, and asked for the
18 money allocated for the subterranean treatment back. Respondent Contreras issued the
19 homeowner a refund of \$960.00.

20 101. The homeowner never received a Completion Report.

21 102. On February 22, 2016, the homeowner contacted Respondent Contreras to discuss his
22 dissatisfaction with the work done on his home. Respondent Contreras agreed to refund the
23 homeowner's remaining \$1,375.00.

24 103. On February 29, 2016, the homeowner contacted Trident Termite Services Inc. to
25 inspect his home. The company found:

- 26 a. Subterranean termite infestation in the fireplace foundation.
- 27 b. Dry wood termite infestations in the rafters extending into inaccessible areas.
- 28 c. Dry wood termite damage at the rafter and roof sheathing.

1 d. Fungus infection and damage (decay fungi damage) at the patio framing.
2 104. Trident Termite Services Inc. told the homeowner it would cost \$2,580.00 to treat and
3 repair the identified areas.
4 105. On or about March 7, 2016, a Board Specialist travelled to Subject Blix to perform an
5 inspection. The Board Specialist inspected Subject Blix and found evidence of active termite
6 infestations.

7 **ELEVENTH CAUSE FOR DISCIPLINE**

8 **(Improper Branch Office)**

9 106. Respondent Blackout and Respondent Contreras are subject to disciplinary action
10 under Code section 8509 in that Respondent Blackout and Respondent Contreras listed the branch
11 office address of record as 19197 Golden Valley Rd., #929, Santa Clarita, California 91387,
12 which is a United Postal Service (UPS) store. This was not an office where records could be kept,
13 money could be collected, or request for service, bids, or information could be given.

14 **TWELFTH CAUSE FOR DISCIPLINE**

15 **(Failure to Provide Report)**

16 107. Respondent Blackout and Respondent Contreras are subject to disciplinary action
17 under Code section 8516, subdivision (b), in conjunction with Code section 8517, and Regulation
18 1996(a), in that Respondent Blackout and Respondent Contreras failed to issue or deliver a
19 written inspection report for the January 12, 2016 inspection within ten (10) business days of the
20 inspection, and before commencing work on February 2, 2016 and February 4, 2016 at Subject
21 Blix. Complainant refers to, and by this reference incorporates, the allegations set forth in above
22 paragraphs 92 through 105, inclusive, as though set forth fully.

23 **THIRTEENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Issue a Timely and Proper Completion Notice)**

25 108. Respondent Blackout and Respondent Contreras are subject to disciplinary action
26 under Code section 8518 in that Respondent Blackout and Respondent Contreras did not issue a
27 timely and proper completion notice of the work performed on February 2, 2016 and February 4,
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1 2016. Complainant refers to, and by this reference incorporates, the allegations set forth in above
2 paragraphs 92 through 105, inclusive, as though set forth fully.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Provide of Notice of Pesticides)**

5 109. Respondent Blackout, Respondent Morales, and Respondent Contreras are subject to
6 disciplinary action under Code sections 8538, subdivision (a)(2) and 8641, and Regulation 1970.4
7 in that Respondents failed to provide the homeowner on Subject Blix a clear written notice of the
8 pesticide or pesticides proposed to be used, and the active ingredient or ingredients in said
9 pesticides. Complainant refers to, and by this reference incorporates, the allegations set forth in
10 above paragraphs 92 through 105, inclusive, as though set forth fully.

11 **FIFTEENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Properly Supervise)**

13 110. Respondent Blackout, Respondent Contreras, and Respondent Morales are subject to
14 disciplinary action under Code section 8610, subdivision (c), and Regulation 1918 in that
15 Respondents failed to supervise the daily business of the company during the work completed on
16 February 2, 2016 and February 4, 2016. Complainant refers to, and by this reference incorporates,
17 the allegations set forth in above paragraphs 92 through 105, inclusive, as though set forth fully.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

19 **(Disregard of Safety Laws)**

20 111. Respondent Blackout, Respondent Morales, and Respondent Contreras are subject to
21 disciplinary action under Code sections 8636, 8641, and 8647 in that Respondents failed to
22 comply with applicable building laws, health laws, and safety laws when they sent an unlicensed
23 individual and his assistant to perform a full treatment on Subject Blix without an inspection
24 report, a clear written notice of the pesticide or pesticides proposed to be used for subterranean
25 and dry wood termites, and without personal protection and supervision. Complainant refers to,
26 and by this reference incorporates, the allegations set forth in above paragraphs 92 through 105,
27 inclusive, as though set forth fully.

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1 Complainant refers to, and by this reference incorporates, the allegations set forth in above
2 paragraphs 92 through 105, inclusive, as though set forth fully.

3 **TWENTIETH CAUSE FOR DISCIPLINE**

4 **(Fraud or Misrepresentation)**

5 115. Respondent Blackout, Respondent Morales, and Respondent Contreras are subject to
6 disciplinary action under Code section 8644 in that when the Board Specialist conducted an
7 inspection of Subject Blix he found no evidence of treatment for dry wood or subterranean
8 termites at the structure's exterior, interior, attic, garage, or substructure area. Respondents had
9 misrepresented to the homeowner of Subject Blix that the work had been completed. Complainant
10 refers to, and by this reference incorporates, the allegations set forth in above paragraphs 92
11 through 105, inclusive, as though set forth fully.

12 **DISCIPLINE CONSIDERATIONS**

13 116. To determine the degree of discipline, if any, to be imposed on Respondents,
14 Complainant alleges the following:

15 (a) On April 7, 2011, Respondent Contreras was issued a \$2,800 fine and order of
16 abatement for violations of Code sections 8516, subdivision (b) and 8518. The fine was
17 subsequently reduced and modified to \$280.00 if the order of abatement was complied with by
18 November 16, 2011. The \$280.00 fine was paid and the order of abatement complied with by
19 November 16, 2011.

20 (b) On April 30, 2012, Respondent Blackout (PR 5859) and Respondent Contreras
21 were issued a \$3,000.00 fine and order of abatement for violations of Code sections 8516,
22 subdivision (b), 8518, and 8652. On May 1, 2013, Respondent Blackout (PR 5895) and
23 Respondent Contreras were issued a \$600.00 fine for violations of Code sections 8613 and 8652.
24 In a Stipulation and Agreement that became effective on October 24, 2013, Mr. Gastelum agreed
25 to assume responsibility for the \$3,000.00 and \$600.00 fines. The \$600.00 fine was paid on
26 August 28, 2014 and the \$3,000.00 fine was paid on September 25, 2014.

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OTHER MATTERS

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

7 118. Pursuant to Code section 8624, the causes for discipline established as to Company
8 Registration Certificate No. PR 6902 issued to Respondent Blackout likewise constitute cause for
9 discipline against Operator's License No. OPR 11760 issued to Respondent Contreras and
10 Operator's License No. OPR 12089 issued to Respondent Morales who serve as the qualifying
11 managers of Respondent Blackout, regardless of whether Respondent Contreras and/or
12 Respondent Morales had knowledge of or participated in the acts or omissions which constitute
13 cause for discipline against Respondent Blackout.

14 119. Pursuant to Code section 8654, if discipline is imposed on Company Registration
15 Certificate No. PR 6902 issued to Respondent Blackout, then Respondent Contreras, who serves
16 as the president of Respondent Blackout, shall be prohibited from serving as an officer, director,
17 associate, partner, qualifying manager, or responsible managing employee for any registered
18 company during the time the discipline is imposed, and any registered company which employs,
19 elects, or associates him shall be subject to disciplinary action.

20 120. Pursuant to Code section 8654, if discipline is imposed on Company Registration
21 Certificate No. PR 6902 issued to Respondent Blackout, then Respondent Contreras and
22 Respondent Morales, who serve as the qualifying managers of Respondent Blackout, shall be
23 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
24 responsible managing employee for any registered company during the time the discipline is
25 imposed, and any registered company which employs, elects, or associates them shall be subject
26 to disciplinary action.

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1 **PRAYER**

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

4 1. Revoking or suspending Company Registration Certificate Number PR 6902, issued
5 to Blackout Termite and Pest Control with Alonzo G. Contreras, III as owner and Branch 3
6 Qualifying Manager and Marcos Gastelum Morales as Branch 2 Qualifying Manager;

7 2. Revoking or suspending Operator's License Number OPR 11760, issued to Alonzo G.
8 Contreras, III;

9 3. Revoking or suspending Operator's License Number OPR 12089, issued to Marcos
10 Gastelum Morales;

11 4. Revoking or suspending Field Representative's License Number FR 47056, issued to
12 Marcos Gastelum Morales;

13 5. Prohibiting Alonzo G. Contreras, III from serving as an officer, director, associate,
14 partner, qualifying manager, or responsible managing employee of any registered company
15 during the period that discipline is imposed on Operator License Number OPR 11760 issued to
16 Alonzo G. Contreras, III;

17 6. Prohibiting Marcos Gastelum Morales from serving as an officer, director, associate,
18 partner, qualifying manager, or responsible managing employee of any registered company
19 during the period that discipline is imposed on Operator License Number OPR 12089 and Field
20 Representative License No. FR 47056, issued to Marcos Gastelum Morales.

21 7. Ordering restitution of all damages according to proof suffered by John Chang, Terry
22 Chen, May Wang, Freddy Lee, and Mr. Jonathan Gregory as a condition of probation in the event
23 probation is ordered;

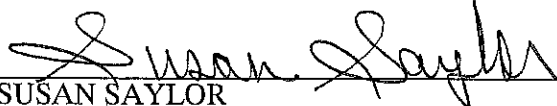
24 8. Ordering Blackout Termite and Pest Control, Alonzo G. Contreras, III, and Marcos
25 Gastelum Morales to pay the Structural Pest Control Board the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3; and

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

DATED: 4/6/16


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