KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General
ELENA L. ALMANZO
Deputy Attorney General
State Bar No. 131058
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-5524
Facsimile: (916) 327-8643
Attorneys for Complainant

FILED
Date 12/31/15 By Susan Saylor

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

In the Matter of the Accusation Against: **CLARK PEST CONTROL OF STOCKTON, INC.** **dba CLARK PEST CONTROL** **JOSEPH PATRICK CLARK, QM** **555 N. Guild Ave.** **Lodi, CA 95240** **Branch Office Registration Certificate No. BR 2685** **Operator License No. OPR 6816** **Company Registration Certificate No. PR 226** **BRIAN K. DOYLE** **4750 Beloit Drive** **Sacramento, CA 95838** **Operator License No. OPR 12032** Respondent.	Case No. 2016-35 **ACCUSATION**

Susan Saylor ("Complainant") alleges:

PARTIES

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

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Company Registration Certificate No. PR 226

2. On or about July 1, 1969, the Board issued Company Registration Certificate Number PR 226 ("registration") in Branches 1, 2, or 3 to Clark Pest Control of Stockton, Inc. doing business as Clark Pest Control ("Respondent Clark") with Charles F. Clark as the President and Qualifying Manager. On or about June 4, 2002, Joseph Patrick Clark became the Qualifying Manager in Branches 1, 2, and 3. On or about August 2, 2009, the registration was suspended pursuant to Business and Professions Code ("Code") section 8690 (failure to maintain general liability insurance). On or about August 18, 2009, the registration was reinstated.

Operator's License No. OPR 6816

3. On or about May 18, 1983, the Board issued Operator's License Number OPR 6816 in Branch 3 to Joseph Patrick Clark ("Respondent J. Clark") as an employee of Respondent Clark Pest Control. On or about August 28, 1985, Respondent J. Clark became the Branch Office Supervisor of Branch Office No. BR 3708. On or about December 30, 1986, the license was upgraded to include Branch 2. On or about July 26, 1989, Respondent J. Clark disassociated as the Branch Office Supervisor and remained an employee of Respondent Clark Pest Control. On or about August 1, 1990, the license was upgraded to include Branch 1. On or about June 4, 2002, Respondent J. Clark became the Qualifying Manager of Respondent Clark Pest Control. On or about August 2, 2009, the license was suspended pursuant to Code section 8690 for failing to maintain general liability insurance. On or about August 18, 2009, the license was reinstated. The license will expire on June 30, 2018, unless renewed.

Branch Office Registration Certificate No. BR 2685

4. On or about August 1, 1975, the Board issued Branch Office Registration Number BR 2685 to Respondent Clark Pest Control with Steven Lee Adams as the Branch Office Supervisor. On or about December 13, 2011, James C. Robertson became the Branch Office Supervisor. On or about January 5, 2015, Chance Michael Howell became the Branch Office Supervisor.

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Brian K. Doyle – Operator's License No. OPR 12032

5. On or about May 18, 2010, the Board issued Operator's License Number OPR 12032 in Branches 2 and 3 to Brian K. Doyle ("Respondent Doyle") as an employee of Doyle's Termite and Pest Control. On or about February 18, 2013, Respondent Doyle became employed with Respondent Clark Pest Control. The license will expire on June 30, 2018, unless renewed.

JURISDICTION

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

7. Code section 8624 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.
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> 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.
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> The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

8. Code section 8625 states:

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

9. Code section 8622 states:

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

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.

STATUTORY PROVISIONS

10. Code section 8516 states, in pertinent part:

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

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

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

(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.

(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

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

(1) The infestation or infection that is evident.

(2) The conditions that are present that are deemed likely to lead to infestation or infection. If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.

11. Code section 8638 states:

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

12. Code section 8641 states:

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

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13. Code section 8644 states:

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

REGULATORY PROVISIONS

14. 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:

(1) Faulty Grade Level. A faulty grade level exists when the top of any foundation is even with or below the adjacent earth. The existing earth level shall be considered grade.

(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.

(4) Earth-wood contacts

(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.

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

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

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

(g) Information must be reported regarding any wooden deck, wooden stairs or wooden landing in exterior exposure attached to or touching the structure being inspected. Portions of such structure that are not available for visual inspection must be designated as inaccessible.

15. 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:

(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.

COST RECOVERY/RESTITUTION

16. 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.

17. Government Code section 11519(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.

CURRAGH PROPERTY

18. On or about October 11, 2013, Respondent Doyle, an employee of Clark Pest Control, inspected the property located on Curragh Oaks Lane, in Fair Oaks, California ("Curragh property"), for wood destroying pests and organisms for escrow purposes and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 07-45516 ("Inspection Report No. 07-45516").

19. Respondent Doyle's findings included wood decay fungi damage at the following areas: sliding door trim at the left side of the dining room door; 1x6 trim at the third floor garden area; six inch cedar lap siding at the third floor garden area; 1x8 corner trim at the left side of the structure; door trim at the right side of the dining room; six inch lap siding around the window arch at the right rear of the structure; 4x8 deck girder at the center deck; and 4x8 lattice support at the rear of the center deck. Respondent Doyle also found surface fungus at the underside of the deck at the left side of deck and wood members in contact with the soil at portions of the left front, the front, and right side, and cellulose debris in the subarea. Respondent Doyle recommended further inspections at the following areas due to inaccessibility: left side of garage at the built in cabinets; left and front of the front door; storage shed on the left side of the structure; the underside of the wood deck; and the inspector was unable to locate an access to the subarea.

20. Respondent Doyle recommended correcting the reported conditions including removing the damage at the dining room door trim; replacing the damaged wood members with new materials; chemically treating the adjacent wood members and the wood deck with surface fungus with a fungicide; breaking the earth contacts; removing cellulose debris; and inspecting the inaccessible areas. Respondent Doyle submitted an estimate of $5,344 to perform the recommended work. No repairs were performed by Respondent Clark Pest Control. Instead, the seller agreed to give the buyer a credit of $2,500 toward the closing costs, which is approximately half of the estimated costs to correct the conditions contained in Respondent Doyle's Inspection Report No. 07-45516 dated October 11, 2013.

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21. On or about April 15, 2014, escrow closed. Shortly after purchasing the property, the new owner began remodeling the kitchen and found evidence of termites and extensive termite damage to the framing and to the left front of the structure corner at the kitchen that led to the exterior siding and trim where extensive evidence of infestation and damage was found. The homeowner contacted Respondent Clark Pest Control regarding the damages and infestation. Respondent Clark Pest Control made arrangements to inspect the structure on November 14, 2014.

22. On or about November 14, 2014, Chad Beardslee ("Beardslee") a Field Representative (FR 38077) for Respondent Clark Pest Control, performed a limited inspection of the Curragh property addressing only the exterior trim at the side of the home. Beardslee issued a Limited Wood Destroying Pests and Organisms Inspection Report No. 07-48439 ("Limited Inspection Report No. 07-48439") containing the following findings: drywood termite infestation at the 1x6 trim at the exterior of the structure on the left side corner of the kitchen. Beardslee recommended fumigating the home and removing or masking any visible fecal pellets. Beardslee submitted an estimate in the amount of $3,475 to perform the work and fumigation. The homeowner authorized the work and fumigation.

23. On or about November 17, 2014, Jeff Mayberry ("Mayberry"), a Field Representative (FR 38064) for Millennium Termite & Pest performed a limited inspection of the Curragh property at the homeowner's request. Mayberry issued a Limited Wood Destroying Pests and Organisms Inspection Report No. TR-105719 addressing portions of the exterior. Mayberry found evidence of drywood termites at the wood members of the wood trim at the left side of the structure. Mayberry recommended fumigating the structure.

24. On or about November 20, 2014, at the request of Respondent Clark Pest Control, Your Way Fumigation Inc. fumigated the Curragh property. On that same day, Respondent Clark Pest Control issued a Standard Notice of Work Completed and Not Completed, stating that it had completed the recommendations contained in Limited Inspection Report No. 07-48439 performed by Beardslee, including masking or removing termite fecal pellets when, in fact, it had not.

25. On or about January 2, 2015, the Board received a complaint from the homeowner alleging that Respondent Clark Pest Control failed to report drywood termite infestations and numerous other conditions such as dry rot and earth to wood contacts in its original inspection report (Inspection Report No. 07-45516) dated October 11, 2013. Furthermore, the homeowner alleged that the areas Respondent Doyle noted in that report as inaccessible were in fact accessible.

26. On or about April 14, 2015, Mayberry of Millennium Termite & Pest performed a limited inspection of the property and issued Limited Wood Destroying Pests and Organisms Report No. TR-105719 containing the following findings:

a. Fungus (dry rot) damage at the following areas: 2x6 rim joist beneath the kitchen; plywood sub floor beneath the kitchen; wood steps at the right side of the structure; 3-4x6 support posts and the rear deck; 4x6 girder adjacent to the access opening at the rear deck; lattice framing at the rear of the deck; 2 sheets of siding beneath the rear deck; 4x8 girder beneath the rear deck; sliding glass door at the living room; doorjamb at the kitchen sliding glass door; wood floor at the upstairs hall bathroom; upstairs bedroom window; upper garage door trim at the front of the structure; 2x2 corner trim at the right side of the structure; 2x6 window trim at the upper oval window at the right side of the structure; 2x6 corner trim at the left side of the structure; 2x6 window trim at the left side of the structure; storage closet door at the left side of the structure; 2x6 window trim at the left side of the structure adjacent to the storage shed; 2x6 corner at the rear of the structure; 2x8 corner trim at the left side of the structure; 2x2 corner trim at the rear of the structure; window and door trim at the rear of the structure; 2x6 corner trim at the rear of the structure; 2x6 upper corner trim at the 2 corners; upper window; upper 2x8 fascia at the front of the structure; and 2x6 corner trim at the upper half wall at the roof.

b. Drywood termite and fungus (dryrot) damage at the 2x8 corner trim at the left side of the structure, and earth to wood contact and fungus (dry rot) damage at the wood steps at the right side of the structure, and to the ends of the 2x8 corner trim at the front of the structure at 2 corners, and to the 2x6 siding at the lower story at various areas.

c. Fungus growth to the siding adjacent to the 6x10 girder; cellulose debris scattered throughout the sub area; and fungus growth at various deck boards at the rear deck.

27. Mayberry noted that various areas were inaccessible and the grade level at the front of the structure was sloped towards the dwelling.

28. Mayberry recommended removing and/or replacing damaged items, applying fungicide accordingly, correcting the conditions, and opening up areas for further inspection.

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29. On or about May 20, 2015, a Board specialist inspected the property and made the following findings:

a. Evidence of an extensive and long-term drywood termite infestation with damage to the exterior siding and trim at the left front corner and left side of the structure which leads into the inaccessible areas of the structure. Structural damage and infestation appeared to have been present in the structure for a long period of time. Evidence in the subarea and leading up into the framing with damage to the framing appeared to be long-term and present prior to Respondent's original inspection.

b. Extensive fungus infection and damage to the siding and trim at the left side exterior walls, with evidenced of leaks and water instruction from the roof and design of the structure and voids in the siding of the exterior. There was fungus infection and evidence of leaks into the wall framing in multiple areas, including the subarea and below the decks. The conditions appeared long-term and present prior to Respondent's original inspection.

c. The exterior siding at the base of the structure along the front and left sides of the garage was in earth contact, which made the foundation at these areas inaccessible for inspection. The condition appeared long-term and present prior to Respondent's original inspection.

d. There was fungus damage to the siding and trim at the base of the wall at the right side of the garage where the earth contact exists. There was fungus infection and damage to the base of the siding that was embedded in the soil. The siding that was embedded in the soil also concealed the foundation in this area making it inaccessible for inspection. Respondent failed to identify the earth to wood contact as contributing to the fungus damage. The condition appeared long-term and present prior to Respondent's original inspection.

e. The deck/steps at the right rear of the structure leading to the subarea door were connected to the wood framed steps leading up the walkway at the front of the structure. The deck and steps were in earth contact and had extensive fungus damage with possible termite damage. The condition appeared long term and present prior to Respondent's original inspection.

f. Extensive and widespread fungus infection and damage to the rear middle deck framing, posts, beams, ledger, and the perimeter walls below the deck with damage extending into the walls where the deck attaches to the structure and leading into inaccessible areas. The conditions appeared long-term and present prior to Respondent's original inspection.

g. Extensive fungus damage to the sliding door frame/casing at the right side dining room door with evidence of water intrusion and leaks at both sliding door frames of the dining room. Respondent's report failed to note leaks or the cause of the damage and the repairs Respondent recommended would not have corrected the true conditions. The conditions appeared long-term and present prior to Respondent's original inspection.

h. Extensive and widespread fungus infection and damage throughout the wood deck at the left side of the structure in the framing, posts, beams, steps, ledger, lattice walls, and perimeter walls below and extending into the structure walls. The damage at the perimeter extended into the siding and showed evidence of water intrusion into

the wall and framing where the deck attached to the structure that leads into inaccessible areas. The conditions appeared long-term and present prior to Respondent's original inspection.

i. Extensive fungus infection and damage to the cripple wall and subarea framing at the left rear corner of the subarea with evidence of drywood termites under the kitchen. This area along with other areas in the subareas had evidence of water intrusion from above with damage extending into inaccessible areas. The condition appeared long-term and present prior to Respondent's original inspection.

j. A portion of the subarea under the right rear of the structure was converted to a storage room. The area below the store room floor was inaccessible for inspection due to it being improperly built on the ground creating earth wood contacts and fungus damage. The area around the perimeter of the original construction did not have a continuous foundation. It appeared that the original construction of this portion of the structure was pier/post and beam construction. The right side of the structure had a faulty grade with fungus damage to the base of the cripple walls. The girders and supports under the rear store room were in earth contact and had fungus infection and damage with conditions extending into inaccessible areas. The conditions appeared long-term and present prior to Respondent's original inspection.

k. Fungus infection and damage to the base of the siding, cripple walls and girder beams/supports at the left rear subarea with fault grades level around the base of the walls under the dining room. The left rear area under the dining room had a faulty grade level as there was no continuous foundation and it appeared that the original construction of this portion of the structure was pier/post and beam with large girder beams at the base of the walls connected to the supports to frame in the siding. The beams and walls were only slightly above the soil and had fungus infection and damage with conditions extending into inaccessible areas. The conditions appeared long-term and present prior to Respondent's original inspection.

l. A portion of the structure under the laundry room and front door foyer was not accessible from the subarea and could not be accessed from any other area. The interior floor at the front door appeared that it could be a concrete slab but had a floor covering concealing the type of construction. The laundry room area appeared to have a raised wood floor but could not be accessed or determined the construction or conditions below. Respondent's report failed to indicate any condition of inaccessibility in this area.

m. No inspection tag was present for the limited inspection or fumigation performed by Respondent.

30. On or about August 12, 2015, the Board specialist prepared and issued a Report of Findings along with a Notice ordering Respondent to bring the property into compliance by correcting the items described in the Report of Findings and to submit a corrected inspection report and Notice of Work Completed and Not Completed to the Board within thirty (30) days with respect to the inspections performed on October 11, 2013, and November 14, 2014.

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31. On or about August 17, 2015, the Board specialist received a signed certified return receipt card from the United States Postal Service confirming that Respondent received the Report of Findings on August 14, 2015.

32. On or about August 21, 2015, Respondent Doyle performed a complete inspection of the Curragh property and issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 07-50322 ("Complete Inspection Report No. 07-50322"). Respondent Doyle made many findings and recommendations including the following:

> Evidence of drywood termites at the exterior trim; fungi damage to living room slider door; wood decay fungi damage to the trim boards at the garden roof; wood decay fungi damage to the siding at the garden roof; wood decay fungi damage to the corner trim; wood decay fungi damage to the siding; wood decay fungi damage to the trim; faulty grades causing fungi damage to the deck framing and skirt; wood decay fungi damaging support posts; wood decay fungi damage to the deck girders; wood decay fungi damage to the lattice skirt framing; wood decay fungi damage to the siding under the deck; wood decay fungi damage to the window trim; fungi damage to the shed door; wood decay fungi damage to the corner trims; earth to wood contact at the siding and trims; wood decay fungi damage to the door trim; wood decay fungi damage to the siding and trim at the arched window; earth to wood contact damage at the wood members at the deck; surface fungus at the top plate and rim joist; wood decay fungi damage to the cripple at the subarea under the kitchen; wood decay fungi damage to the OSB shed flooring; wood decay fungi damage to the deck girder; surface fungus was found at various wood members at the deck; wood decay fungi damage to the deck framing; wood decay fungi damage to the interior door jamb and trim; wood decay fungi damage to the access frame in the subarea; faulty grades at the base of the stair jacks and/or deck support posts; wood members in contact with soil; faulty grade at the base of the stair jack and/or deck support posts; drywood termite damage at the wood members at the exterior trim; wood siding is embedded in the brick and absorbing moisture at the front entry way; cellulose debris is present in the subarea; wood members are in contact with the soil; and water is leaking from the gutter drain at the side of the home behind the garage. Respondent Doyle also noted various inaccessible areas.

33. Respondent Doyle made recommendations (excluding fumigation as it had already been completed on November 20, 2014, and because there was no indication of active termites) to remove, replace and/or repair wood members, re-grade to provide adequate clearance, break earth to wood contacts, and further inspection of inaccessible areas.

34. Respondent Doyle did not provide an estimated cost to perform the recommended work.

35. Respondent Clark Pest Control failed to bring the Curragh property into compliance, as set forth in the Report of Findings dated August 12, 2015.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with the Code - Improper Inspection)

36. Respondent's operator's license and company registration, and Doyle's operator's license are subject to discipline under Code section 8641, in that on or about October 11, 2013, concerning the Curragh property, Respondent failed to comply with the following Code sections:

Section 8516(b)(6)(7):

a. Respondent failed to report evidence of drywood termite infestation and damage to the exterior siding and trim at the left front corner and left side of the structure with evidence leading into inaccessible areas of the structure, as required by California Code of Regulations, title 16, section 1990(a)(3) and (4).

b. Respondent failed to report the full extent of fungus infection and damage to the siding and trim at the left side walls and evidence of leaks and water intrusion to the exterior and subarea wood members, and failure to make recommendations to open the walls or areas for further inspection, as required by California Code of Regulations, title 16, section 1990(a)(3).

c. Respondent failed to report fungus damage and earth wood contacts at the wood deck and steps at the right rear of the structure and leading into the inaccessible areas, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), (b)(4), and (g).

d. Respondent failed to report fungus damage to the sliding glass door framing and casings, failure to report evidence of water intrusion or leaks at the sliding glass doors and framing of the dining room, and failure to make proper recommendations to correct the condition, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), and (b)(5).

Section 8516(b)(9):

e. Respondent failed to report the exterior base of the foundation as inaccessible at areas where there was earth-wood contact at the back of the siding along the walls at the front of the structure and garage, as required by California Code of Regulations, title 16, section 1990(d) and (e).

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Section 8516(b)(6)(7)(9) and (c):

f. Respondent failed to report fungus infection and damage to the siding and trim at the base of the wall where the earth contact exists at the right rear aide, failed to report the exterior of the foundation in this area as inaccessible, and failed to identify he condition of the earth wood contact as contributing to the fungus damage, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), (d), (e), and (f).

Section 8516(b)(6)(7) and (9):

g. Respondent failed to report the full extent of fungus infection and damage to the rear middle deck framing, posts, beams, ledger, and perimeters of walls below with the damage extending into the siding and evidence of water intrusion at the attachment method to the structure and leading into inaccessible areas, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), (b)(5), (g), and 1991(a)(11).

h. Respondent failed to report the full extent of fungus infection and damage to the wood deck at the left rear of the structure, framing, posts, beams, steps, ledger, lattice walls and perimeter of the walls below, and storage room floor, with damage extending into the siding and evidence of water instruction at the attachment method to the structure and leading into inaccessible areas, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), (b)(5), (g), and 1991(a)(11).

i. Respondent failed to report fungus infection and damage to the cripple walls and subarea framing at the left rear corner of the subarea under the kitchen with evidence of water intrusion and damage extending into inaccessible areas, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), (b)(5), and 1991(a)(11).

j. Respondent failed to report earth wood contacts, faulty grade levels, and fungus damage to the base of the cripple walls, girders, and rear storeroom supports at the right rear of the subarea with conditions extending into inaccessible areas, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), (b)(1)(4), (g), and 1991(a)(11).

k. Respondent failed to report fungus infection and damage to the base of the siding, cripple walls and girder at the left rear subarea with faulty grade levels around the base of the

walls under the dining room, as required by California Code of Regulations, title 16, section 1990(a)(3)(4), and (b)(1).

l. Respondent failed to report a portion of the subarea or area under the structure as inaccessible for inspection at the front of the house near the entrance and front wall. The area could be a wood over concrete slab, but would need to be determined and reported, as required by California Code of Regulations, title 16, section 1990(b)(2) and (e).

SECOND CAUSE FOR DISCIPLINE

(Violation of Contract)

37. Respondent's registration and operator's license, and Respondent Doyle's operator license are subject to discipline under Code section 8638, in that, concerning the Curragh property, Respondent failed to mask or cover the termite pellets, which had been reported as having been completed on the Standard Notice of Work Completed and Not Completed, dated November 20, 2014.

THIRD CAUSE FOR DISCIPLINE

(Failed to Comply with Report of Findings)

38. Respondent's registration and operator's license are subject to discipline under Code section 8641, in that it failed to comply with Code section 8622 by failing to correct the items described in the Report of Findings within thirty (30) calendar days of receipt of the Notice to bring the Curragh property into compliance with the Board's Notice and Report of Findings, dated August 12, 2015.

FOURTH CAUSE FOR DISCIPLINE

(Fraud or Misrepresentation After Inspection)

39. Respondent's registration and operator's license are subject to discipline under Code section 8644, in that, concerning the Curragh property, Respondent committed fraud or misrepresentation by failing to report infestation or infection of wood-destroying pests or organisms found in the property or structures or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests or organisms, as more particularly set forth above in paragraph 35.

PRIOR DISCIPLINE

Company Registration No. PR 226

40. Effective July 12, 1991, pursuant to the Stipulated Decision and Order in Accusation No. 1991-03, Respondent Clark Pest Control's Company Registration Certificate No. PR 226 was suspended for 35 days. However the suspension was stayed.

Company Registration No. PR 226
Operator' License No. OPR 6816

41. Effective February 21, 2002, pursuant to the Stipulated Settlement and Disciplinary Order in Accusation and First Supplemental Accusation No. 2000-27, the Board revoked Respondent Clark Pest Control's Company Registration Certificate No. PR 226 and Respondent P. Clark's Operator's License No. OPR 6816. However, the revocations were stayed and Respondents were placed on probation for a period of three (3) years with certain terms and conditions. Respondents either paid a civil penalty in the amount of $3,000 or served a fifteen (15) days suspension.

MATTERS IN AGGRAVATION

Company Registration No. PR 226

42. On or about October 31, 1988, Respondent paid a fine in the amount of $400 levied by the Calaveras County Agricultural Commissioner for violating Code section 8538 and Food and Agricultural Code section 12973.

43. On or about February 23, 1989, Respondent paid a fine in the amount of $50 levied by the Solano County Agricultural Commissioner for violating Food and Agricultural Code section 15204(a).

44. On or about September 22, 1989, Respondent paid a fine in the amount of $150 levied by the Fresno County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6600(e).

45. On or about May 31, 1991, Respondent paid a fine in the amount of $100 levied by the Sacramento County Agricultural Commissioner for violating Food and Agricultural Code section 12973 and California Code of Regulations, title 16, section 6738(b).

46. On or about October 8, 1991, Respondent paid a fine in the amount of $150 levied by the San Joaquin County Agricultural Commissioner for violating California Code of Regulations, title 16, sections 6726(b) and 6738(b)(1)(c).

47. On or about November 13, 1991, Respondent paid a fine in the amount of $200 levied by the Marin County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6702.

48. On or about November 13, 1991, Respondent paid a fine in the amount of $175 levied by the Marin County Agricultural Commissioner for violating Food and Agricultural Code section 12973.

49. On or about December 20, 1991, Respondent paid a fine in the amount of $200 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6738(b).

50. On or about April 9, 1992, Respondent paid a fine in the amount of $300 levied by the Yolo County Agricultural Commissioner for violating California Code of Regulations, title 16, sections 6600(b)(c) and 6614(c) and Food and Agricultural Code section 12973.

51. On or about April 9, 1992, Respondent paid a fine in the amount of $150 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, sections 6738(b)(c) and 6614(c) and Food and Agricultural Code section 12973.

52. On or about April 9, 1992, Respondent paid a fine in the amount of $150 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 660038(b)(c) and Food and Agricultural Code section 12973.

53. On or about September 16, 1994, Respondent paid a fine in the amount of $235 levied by the Marin County Agricultural Commissioner for violating Food and Agricultural Code section 12973.

54. On or about September 27, 1994, Respondent paid a fine in the amount of $350 levied by the Solano County Agricultural Commissioner for violating California Code of Regulations, title 16, sections 6726, 6738(b)(c) and 6678.

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55. On or about June 1, 1995, Respondent paid a fine in the amount of $300 levied by the Calaveras County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6738(b)(c).

56. On or about August 24, 1995, Respondent paid a fine in the amount of $375 levied by the Marin County Agricultural Commissioner for violating California Code of Regulations, title 16, sections 6738(b)(1)(c) and 6604.

57. On or about September 13, 1995, Respondent paid a fine in the amount of $100 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6738(b).

58. On or about September 20, 1995, Respondent paid a fine in the amount of $100 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6738(b).

59. On or about January 5, 1998, Respondent paid a fine in the amount of $200 levied by the Contra Costa County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6600.

60. On or about March 31, 1998, Respondent paid a fine in the amount of $50 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6678.

61. On or about July 2, 1998, Respondent paid a fine in the amount of $151 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6738(b).

62. On or about July 14, 1998, Respondent paid a fine in the amount of $200 levied by the Contra Costa County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6600.

63. On or about December 2, 1998, Respondent paid a fine in the amount of $200 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6738(b)(c).

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64. On or about November 17, 1999, Respondent paid a fine in the amount of $200 levied by the San Mateo County Agricultural Commissioner for violating Code section 8505.15.

65. On or about November 17, 1999, Respondent paid a fine in the amount of $55.00 levied by the Board for violating Code section 8516(b).

66. On or about March 13, 2002, Respondent paid a fine in the amount of $275 levied by the Santa Clara County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6702(b)(3).

67. On or about March 19, 2002, Respondent paid a fine in the amount of $100 levied by the Los Angeles County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6742(a).

68. On or about April 16, 2002, Respondent paid a fine in the amount of $650 levied by the Santa Clara County Agricultural Commissioner for violating Food and Agricultural Code section 12973 and California Code of Regulations, title 16, section 1983(i).

69. On or about May 20, 2003, Respondent was issued a citation by the Board for violating Code sections 8516 and 8644.

70. On or about November 20, 2006, Respondent paid a fine in the amount of $151 levied by the Plumas County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6726(b).

71. On or about December 13, 2012, Respondent paid a fine in the amount of $500 levied by the Calaveras County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6742(a).

Operator's License No. OPR 6816

72. On or about November 20, 2006, Respondent paid a fine in the amount of $151 levied by the Plumas County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6726(b).

73. On or about December 13, 2012, Respondent paid a fine in the amount of $500 levied by the Calaveras County Agricultural Commissioner for violating California Code of Regulations, title 16, section 6742(a).

OTHER MATTERS

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

75. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 226, issued to Clark Pest Control of Stockton Inc., doing business as Clark Pest Control, likewise constitute cause for discipline against Operator's License Number OPR 6816, issued to Joseph Patrick Clark, who serves as the Qualifying Manager of Clark Pest Control of Stockton Inc., doing business as Clark Pest Control, regardless of whether Joseph Patrick Clark had knowledge of or participated in the acts or omissions which constitute cause for discipline against Clark Pest Control of Stockton Inc., doing business as Clark Pest Control.

76. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 226, issued to Clark Pest Control of Stockton Inc., doing business as Clark Pest Control, then Joseph Patrick Clark, who serves as the Qualifying Manager of Clark Pest Control of Stockton Inc., doing business as Clark Pest Control, 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.

77. Pursuant to Code section 8654, if discipline is imposed on Operator's License No. OPR 12032, issued to Brian K. Doyle, then Brian K. Doyle 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 Number PR 226, issued to Clark Pest Control of Stockton Inc., doing business as Clark Pest Control;

2. Revoking or suspending Operator's License Number OPR 6816, issued to Joseph Patrick Clark;

3. Revoking or suspending any other license for which Joseph Patrick Clark is furnishing the qualifying experience or appearance;

4. Revoking or suspending Operator's License Number OPR 12032, issued to Brian K. Doyle;

5. Revoking or suspending any other license for which Brian K. Doyle is furnishing the qualifying experience or appearance;

6. Revoking or suspending Branch Office Registration Certificate No. BR 2685, issued to Clark Pest Control of Stockton Inc., doing business as Clark Pest Control;

7. Ordering restitution of all damages according to proof suffered by M.L. as a condition of probation in the event probation is ordered;

8. Prohibiting Joseph Patrick Clark from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Company Registration Certificate Number PR 226, issued to Clark Pest Control of Stockton Inc., doing business as Clark Pest Control;

9. Prohibiting Brian K. Doyle from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Operator's License No. OPR 12032;

10. Ordering Joseph Patrick Clark and Clark Pest Control of Stockton Inc., doing business as Clark Pest Control and Brian K. Doyle to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 12/31/15

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

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