

FILED

Date 7/2/12 By 

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

11 In the Matter of the Accusation Against:

Case No. 2013-1

12 **N SERVICE PEST MANAGEMENT;**
DONALD HANSBERGER, Owner and QM
 13 **3120 Oakview Lane**
Chino Hills, CA 91709

A C C U S A T I O N

14 **Company Registration Certificate No. PR**
 15 **4097, Br. 2 and 3**
 16 **Operator's License No. OPR 8475, Br. 2 and**
3

17 **and**

18 **TODD ELLIOT HANSBERGER**
3120 Oakview Lane
 19 **Chino Hills, CA 91709**

20 **Field Representative's License No. FR**
19237, Br. 2 and 3

21 Respondents.

22
23
24 William H. Douglas ("Complainant") alleges:

25 **PARTIES**

26 1. Complainant brings this Accusation solely in his official capacity as the Interim
 27 Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
 28 Regulation.

1 **Company Registration Certificate No. 4097**

2 2. On or about March 4, 2002, the Structural Pest Control Board issued Company
3 Registration Certificate Number PR 4097 to N Service Pest Management ("Respondent N
4 Service") in Branches 2 and 3, with Donald Hansberger as Owner and Qualifying Manager. The
5 Company Registration Certificate was in full force and effect at all times relevant to the charges
6 brought herein.

7 **Operator's License No. OPR 8475**

8 3. On or about December 14, 1989, the Structural Pest Control Board issued Operator's
9 License Number OPR 8475 in Branch 2 to Donald Hansberger ("Respondent D. Hansberger").
10 On or about September 1, 1993, Operator's License Number OPR 8475 was upgraded to
11 Branches 2 and 3. The Operator's License was in full force and effect at all times relevant to the
12 charges brought herein and will expire on June 30, 2013, unless renewed.

13 **Field Representative's License No. 19237**

14 4. On or about February 6, 1991, the Structural Pest Control Board issued Field
15 Representative's License Number FR 19237 in Branch 2 to Todd Elliot Hansberger ("Respondent
16 T. Hansberger"). On or about October 6, 1997, Filed Representative's License Number FR
17 19237 was upgraded to Branches 2 and 3. The Field Representative's License expired on June 30,
18 2011 and has not been renewed.

19 **JURISDICTION**

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

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

27 7. Section 8624 of the Code states:

28 If the board suspends or revokes an operator's license and one or more branch

1 offices are registered under the name of the operator, the suspension or revocation may be
2 applied to each branch office.

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

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

12 8. Section 8625 of the Code states:

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

18 9. Section 8622 of the Code states:

19 When a complaint is accepted for investigation of a registered company, the board,
20 through an authorized representative, may inspect any or all properties on which a report
21 has been issued pursuant to Section 8516 or a notice of completion has been issued
22 pursuant to Section 8518 by the registered company to determine compliance with the
23 provisions of this chapter and the rules and regulations issued thereunder. If the board
24 determines the property or properties are not in compliance, a notice shall be sent to the
25 registered company so stating. The registered company shall have 30 days from the receipt
26 of the notice to bring such property into compliance, and it shall submit a new original
27 report or completion notice or both and an inspection fee of not more than one hundred
28 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. Section 8516 of the Code 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.

1
2 Every property inspected pursuant to subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.

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

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

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

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

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

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

27 (10) Recommendations for corrective measures.

28 (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. Section 8518 of the Code states:

When a registered company completes work under a contract, it shall prepare, on a

1 form prescribed by the board, a notice of work completed and not completed, and shall
2 furnish that notice to the owner of the property or the owner's agent within 10 working days
after completing the work. The notice shall include a statement of the cost of the completed
work and estimated cost of work not completed.

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

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

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

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

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

14 12. Section 8619 of the Code states:

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

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

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

21 14. Section 8641 of the Code states:

22 Failure to comply with the provisions of this chapter, or any rule or regulation
23 adopted by the board, or the furnishing of a report of inspection without the making of a
24 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
25 a ground for disciplinary action.

REGULATORY PROVISIONS

26 15. California Code of Regulations, title 16, section 1920, subdivision (d) states:

27 Compliance with Orders of Abatement: When a citation is not contested or if the
28 citation is appealed and the person cited does not prevail, failure to comply with the order

1 of abatement or to pay the fine in the citation within the time allowed by a licensee may
2 result in disciplinary action being taken by the Board against the person cited, or where the
3 cited person is unlicensed in appropriate judicial relief being taken against the person cited.

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

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

9 (3) Infestations, infections or evidence thereof.

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

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

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

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

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

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

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

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

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

- 1 1. exposing the infested area(s) for local treatment,
2 2. removing the infested wood,
3 3. using another method of treatment which exterminates the infestation. (If any
4 recommendation is made for local treatment, the report must contain the following
5 statement: "Local treatment is not intended to be an entire structure treatment method. If
6 infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment,
7 they may not be exterminated.")

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

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

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

17 All of the following reports must be in compliance with the requirements of Section
18 8516 of the code. All reports must be on the form prescribed by the board.

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

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

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

28 20. California Code of Regulations, title 16, section 1996.3 states in pertinent part:

(a) The address of each property inspected and/or upon which work was
completed shall be reported on a form prescribed by the Board and designated as the WDO
Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the
end of this section. This form shall be prepared by each registered company and shall
comply with all of the requirements pursuant to Section 8516(b), and 8518.

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

COST RECOVERY/RESTITUTION

21. Business and Professions Code section 125.3 provides, in pertinent part, that the
Board may request the administrative law judge to direct a licentiate found to have committed a

1 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case/

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

6 DRISKILL PROPERTY

7 The May 2010 Inspection

8 23. On or about May 18, 2010, at the request of Nancy Klawitter, Respondent N Service
9 performed a wood-destroying organisms inspection ("WDO inspection") for property located at
10 6061 Calle Cortez, Yorba Linda, CA 92886 ("Subject Property") for escrow purposes.
11 Respondent T. Hansberger performed the WDO inspection and issued a "complete," "separated"
12 Wood Destroying Pests and Organisms Inspection Report containing six findings and
13 recommendations ("inspection report"). The Section I findings identified evidence of drywood
14 termites in the garage that did not appear to extend into inaccessible areas (item 2A) and evidence
15 of drywood termites and wood-destroying fungus ("decay fungi") at the attached patio (items 2B
16 and 3A). The Section I recommendations stated to locally treat for the control of drywood
17 termites and to remove or cover the accessible evidence of infestation, to repair the drywood
18 termite damage to the patio, to remove the decay fungi from the patio, to treat the patio with an
19 approved fungicide, and to seal and prime the patio to prevent future infections.

20 24. The Section II findings identified old evidence of drywood termites in the garage
21 (item 2C), decay fungi damage at the attached patio (item 4A) and separation along the grain of
22 the trim board on the back of the garage (item 4B). The Section II recommendation stated to
23 remove the old evidence of drywood termites in the garage and to have the area periodically
24 inspected. There was no recommendation regarding the decay fungi damage at the patio. There
25 was no recommendation regarding the separation of the grain of the trim board on the back of the
26 garage, only a suggestion to seal and paint the area to prevent future infestation or infection.

27 25. The inspection report was not on a form prescribed by the Board because the address
28 for the Board was incorrect. Additionally, the report failed to contain the address of the person or

1 firm ordering the inspection report and failed to contain any information in the Other Tags Posted
2 box.

3 26. On May 20, 2010, Respondent N Service issued a Standard Notice of Work
4 Completed and Not Completed ("completion notice") at the Subject Property. The completion
5 notice was not on a form prescribed by the Board because the address for the Board was
6 incorrect. The completion notice certified that Section I recommendations 2A, 2B, and 3A and
7 Section II recommendation 4B had been completed. The completion notice also reported that
8 Section II recommendations 2C and 4A were not completed. It indicated that the
9 recommendations for 2C and 4A were informational only.

10 27. In June 2010, escrow closed on the Subject Property and Bryan and Jackie Driskill
11 ("the Driskills") became the owners of the Subject Property. In December 2010, the Driskills
12 discovered evidence of termites. At this time, the Subject Property was under a warranty with
13 Respondent N Service. From December 2010 through March 2011, the Driskills made multiple
14 attempts to schedule an inspection with N Service but they were unsuccessful in doing so.

15 28. On April 16, 2011, the Driskills hired "The Bugman" and "Truly Nolan" to inspect
16 the Subject Property. Both companies indicated that there was extensive termite damage which
17 could not have occurred during the 10 months that the Driskills owned the Subject Property.

18 29. Because the Subject Property was under warranty with Respondent N Service, the
19 Driskills again contacted Respondent N Service. Respondent T. Hansberger inspected the
20 Subject Property on April 22, 2011. T. Hansberger did not issue an inspection report for the April
21 22, 2011 inspection. T. Hansberger returned to the Subject Property on April 25, 2011 to perform
22 work on the property. T. Hansberger did not issue a completion notice for the April 25, 2011
23 work performed.

24 30. After Respondent T. Hansberger performed work on April 25, 2011, the Driskills
25 again contacted The Bugman and that company performed a follow up inspection. The Bugman
26 informed the Driskills that Respondent N Service has not completed the work.

27 31. On May 25, 2011, Respondent T. Hansberger performed work on the Subject
28 Property. However he did not complete the work because he did not have all the necessary

1 equipment. T. Hansberger did not issue a completion notice for the May 25, 2011 work
2 performed.

3 32. Despite multiple attempts by the Driskills to have Respondent N Service complete the
4 work, it never did. On July 13, 2011, the Board received a complaint from the Driskills alleging
5 that Respondent N Service failed to complete the work and failed to resolve their complaint.

6 33. On September 15, 2011, the Board performed several Wood Destroying Organism
7 Activity Searches to ascertain what wood destroying organism activities (“WDO activities”) had
8 been performed at the Subject Property and filed with the Board and to determine what WDO
9 activities Respondent N Service had filed with the Board in general. The searches revealed that
10 Respondent N Service had not filed with the Board any of the WDO activities it performed at the
11 Subject Property. In fact, Respondent N Service had not filed any WDO activities with the Board
12 since November 16, 2009.

13 34. On or about October 26, 2011, Board Specialist Charles Alsky (“Mr. Alsky”)
14 travelled to the Subject Property to perform an inspection. Mr. Alsky inspected the Subject
15 Property and found evidence of active, swarming infestations of drywood termites in the attic,
16 garage, patio covering, exterior framing, and eaves as well as damage to those areas. The cost to
17 complete all of the necessary work was approximately \$17,250.00. Mr. Alsky took photographs
18 and prepared a Report of Findings. The report was mailed to Respondents D. Hansberger and T.
19 Hansberger.

20 35. On or about November 4, 2011, Mr. Alsky travelled to Respondent N Service and
21 performed a limited Compliance Inspection which addressed the company’s failure to file WDO
22 activities with the Board. Respondent D. Hansberger admitted that the company had failed to file
23 approximately 100 WDO activities with the Board.

24 36. On December 28, 2011, the Board issued Respondents N Service and D. Hansberger
25 a Citation and Fine, CF 12-82, in the amount of \$2,750.00 for failing to file 100 WDO activities
26 with the Board. The fine was required to be paid within 30 days. The Citation and Fine also
27 included an Order of Abatement that required Respondent N Service to file the 100 WDO
28 activities with the Board within 30 days.

1 **The March 2012 Inspection**

2 37. On or about March 12, 2012, Board Specialist Steven Smith ("Mr. Smith") contacted
3 Respondent D. Hansberger and informed him that Report of Findings had not yet been complied
4 with. Mr. Smith further informed Respondent D. Hansberger that he needed to inspect the
5 Subject Property.

6 38. On or about March 22, 2012, Respondent D. Hansberger performed the WDO
7 inspection at the Subject Property and prepared a "complete," "limited" inspection report. The
8 findings identified evidence of drywood termites at the garage, patio, header plate, posts, and
9 slats, all extending into inaccessible areas. The finding also identified drywood termite damage at
10 the garage joist, top plate, rafters, headers, trim, jamb, and rail and decay fungi damage at the
11 garage door trim, the house fascia board and trim and at the patio plate, post, slates, and rafters.
12 The findings further identified earth to wood contact at the door jamb.

13 39. The recommendations stated to fumigate the structure to control the drywood
14 termites, to remove or cover the accessible evidence of infestation, for others to remove/repair the
15 drywood termite damage, for others to repair the decay fungi damage and to correct the moisture
16 condition responsible for the infection, and for the others to correct the earth to wood contact.

17 40. The inspection report failed to contain a "limited" inspection report statement, but it
18 did indicate that the stall shower, attic, and interior were not inspected. Additionally, the
19 inspection report was not on a form prescribed by the Board because the address for the Board
20 was incorrect. Furthermore, the report failed to contain the addresses of the person or firm
21 ordering the inspection report and of any person who is a party in interest.

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Failure to Prepare and Deliver Inspection Report and Completion Notice on Form Prescribed by
24 Board)

25 41. Respondents N Service and D. Hansberger are subject to disciplinary action under
26 Code sections 8516 and 8641 and Section 1993 of title 16 of the California Code of Regulations
27 in that Board's address at the bottom of the May 18, 2010 inspection report, the May 20, 2010
28 completion notice, and the March 22, 2012 inspection report is wrong. The address listed on

1 these forms is 1418 Howe Avenue, Suite 18, Sacramento, CA 95825. The Board moved to its
2 current address at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815 in March 2008.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Failure to Properly Name Property Owner on Inspection Report)

5 42. Respondents N Service and D. Hansberger are subject to disciplinary action under
6 Code sections 8516, subdivision (b)(2)-(3) and 8641 in that Respondents failed to include the
7 address of the person or firm who ordered the May 18, 2010 inspection report and the addresses
8 of the person or firm who ordered the March 22, 2012 inspection report and any person who is a
9 party of interest.

10 **THIRD CAUSE FOR DISCIPLINE**

11 (Failure to Issue Proper Completion Notice)

12 43. Respondents N Service and D. Hansberger are subject to disciplinary action under
13 Code sections 8518 and 8641 in that Respondents did not issue a proper completion notice. The
14 Subject Property was certified as being free of evidence of active infestation, even though old
15 evidence of drywood termites, decay fungi and decay fungi damage were not completed and were
16 incorrectly identified as informational items only.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 (Failure to Issue Inspection Report and Completion Notice for Work Performed)

19 44. Respondents N Service and D. Hansberger are subject to disciplinary action under
20 Code sections 8516, 8518, and 8641 in that Respondents failed to issue an inspection report for
21 the inspection on April 22, 2011 and Respondents failed to issue a completion notice for work
22 performed on April 25, 2011 and May 25, 2011.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 (Failure to Complete Work)

25 45. Respondents N Service and D. Hansberger are subject to disciplinary action under
26 Code section 8638 in that Respondents failed to complete the work on the Subject Property.
27 Specifically, Respondents failed to exterminate the drywood termites through the use of a local
28 chemical treatment. The evidence of drywood termites and drywood termite damage, as reported

1 in the May 18, 2010 inspection report, was certified as having been completed in the May 20,
2 2010 completion notice. However drywood termites and drywood terminate damage are present
3 in the exterior roof eaves, decorative trim, damage, and patio. Extermination and repairs are
4 necessary. Additionally, the drywood terminate damage in the patio cover was reported in the
5 May 18, 2010 report and was certified as completed on the May 20, 2010 completion report.
6 However drywood terminate damage is still present. Minor repairs as well as wood replacements
7 are necessary.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 (Failure to Make Proper Recommendations)

10 46. Respondents N Service and D. Hansberger are subject to disciplinary action under
11 Code sections 8516 and 8641 and Section 1991, subdivision (a)(8) of title 16 of the California
12 Code of Regulations in that Respondents failed to make a proper recommendation regarding the
13 local treatment of drywood termites. Respondents concluded that infestations did not appear to
14 extend to inaccessible areas. However the infestations did appear to extend to inaccessible areas
15 and in fact, infestations are active and swarming has occurred. Therefore, the recommendation
16 for local treatment failed to address infestations that appear to extend to inaccessible areas.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 (Failure to Comply with Report of Findings)

19 47. Respondents N Service and D. Hansberger are subject to disciplinary action under
20 Code sections 8622 and 8641 in that Respondents failed to comply with the Report of Findings
21 within 30 days. Respondents received the Report of Findings on December 12, 2011 but as of the
22 date of the Accusation, have failed to comply.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 (Failure to File WDO Activities)

25 48. Respondents N Service and D. Hansberger are subject to disciplinary action under
26 Code section 8615, subdivision (b) and Section 1996.3, subdivision (a) of title 16 of the
27 California Code of Regulations in that Respondents failed to file the May 18, 2010 inspection
28 report, the May 20, 2010 completion notice, and the March 22, 2012 inspection report with the

1 Board. Furthermore, Respondents failed to file approximately 100 WDO activities from
2 November 19, 2009 to the date of this Accusation.

3 **NINTH CAUSE FOR DISCIPLINE**

4 (Failure to Comply with Citation and Fine and Order of Abatement)

5 49. Respondents N Service and D. Hansberger are subject to disciplinary action under
6 Section 1920, subdivision (d) of title 16 of the California Code of Regulations in that
7 Respondents failed to comply with the Citation and Fine issued on December 28, 2011 and the
8 Order of Abatement. Respondent N Service was given 30 days from the date of the Citation to
9 pay the fine and to file its unfiled WDO activities. As of the date of this Accusation, the fine
10 remains unpaid and the WDO activities have not been filed.

11 **TENTH CAUSE FOR DISCIPLINE**

12 (Failure to Include "Limited" Inspection Report Statement)

13 50. Respondent D. Hansberger is subject to disciplinary action under Code sections 8516
14 and 8641 and Section 1993, subsection (c) of title 16 of the California Code of Regulations in that
15 Respondent failed to include a "limited" inspection report statement on the March 22, 2012
16 "complete," "limited" inspection report.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 (Failure to Make Proper Findings and Recommendations)

19 51. Respondent T. Hansberger is subject to disciplinary action under Code sections 8516,
20 subdivision (b)(10) and 8641 and Section 1991(a) of title 16 of the California Code of
21 Regulations in that Respondent failed to make a proper finding and recommendation regarding
22 the reported decay fungi and decay fungi damage on the May 18, 2010 inspection report.
23 Specifically, Respondent's finding failed to identify the excessive moisture condition that was
24 responsible for the infection. Respondent also failed to make a recommendation to correct the
25 excessive moisture condition that was responsible for the inspection. Additionally, Respondent
26 failed to make a recommendation for either the reported decay fungi damage at the patio (item
27 4A) or the separation along the grain of the trim board on the back of the garage (item 4B).

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 (Failure to Make Damage Finding)

3 52. Respondent T. Hansberger is subject to disciplinary action under Code sections 8616,
4 subdivision (b)(7) and 8641 and Section 1990, subdivision (a)(3) of title 16 of the California
5 Code of Regulations in that Respondent failed to make a drywood termite damage finding to
6 correspond with the drywood termite recommendation at the attached patio (item 2B).

7 **THIRTEENTH CAUSE FOR DISCIPLINE**

8 (Failure to Prepare and Deliver Proper Inspection Report)

9 53. Respondent T. Hansberger is subject to disciplinary action under Code sections 8516,
10 subdivision (c) and 8641 and Section 1990, subdivision (f) of title 16 of the California Code of
11 Regulations in that Respondent's May 18, 2010 inspection report incorrectly identified the old
12 evidence of drywood termites (item 2C) and decay fungi damage at the patio (item 4A) as Section
13 II findings. Respondent should have identified them as Section I findings because they are
14 conditions that have resulted in or from infestation or inspection.

15 **FOURTEENTH CAUSE FOR DISCIPLINE**

16 (Failure to Indicate Other Tags)

17 54. Respondent T. Hansberger is subject to disciplinary action under Code sections 8619
18 and 8641 and Section 1996.1(c) of title 16 of the California Code of Regulations in that
19 Respondent failed to indicate whether any other tags, less than 2 years old, were noted on May
20 18, 2010 inspection report.

21 **DISCIPLINE CONSIDERATIONS**

22 55. To determine the degree of discipline, if any, to be imposed on Respondent N
23 Service, Complainant alleges that on or about November 7, 2011, the San Bernardino County
24 Agricultural Commission levied a \$100.00 fine against Respondent N Service for violating Code
25 section 8505.17, subdivision (c).

26 56. To determine the degree of discipline, if any, to be imposed on Respondents N
27 Service and D. Hansberger, Complainant alleges that on or about December 28, 2011, the
28 Structural Pest Control Board issued Citation Number CF 12-82 to Respondents N Service and D.

1 Hansberger. The Citation ordered Respondents N Service and D. Hansberger to pay a \$2,750.00
2 fine for violating Business and Professions Code section 8516, subdivision (b). The Citation also
3 included an Order of Abatement that required Respondents N Service and D. Hansberger to file
4 100 unfiled WDO activities with the Board. As of the date of this Accusation, the fine has not
5 been paid and the Order of Abatement has not been complied with.

6 **OTHER MATTERS**

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

12 58. Pursuant to Code section 8624, the causes for discipline established as to Company
13 Registration Certificate Number PR 4097 issued to N Service, likewise constitute cause for
14 discipline against Operator's License Number OPR 8475 issued to D. Hansberger, who serves as
15 the Owner and Qualifying Manager of N Service, regardless of whether D. Hansberger had
16 knowledge of or participated in the acts or omissions which constitute cause for discipline against
17 N Service.

18 59. Pursuant to Code section 8654, if discipline is imposed on Company Registration
19 Certificate Number PR 4097 issued to N Service, then D. Hansberger, who serves as the Owner
20 and Qualifying Manager of N Service, shall be prohibited from serving as an officer, director,
21 associate, partner, qualifying manager, or responsible managing employee for any registered
22 company during the time the discipline is imposed, and any registered company which employs,
23 elects, or associates him shall be subject to disciplinary action.

24 **PRAYER**

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

27 1. Revoking or suspending Company Registration Certificate Number PR 4097, issued
28 to N Service Pest Management with Donald Hansberger as Owner and Qualifying Manager;

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2. Revoking or suspending Operator's License Number OPR 8475, issued to Donald Hansberger;

3. Revoking or suspending any other license for which Donald Hansberger is furnishing the qualifying experience or appearance;

4. Revoking or suspending Field Representative's License Number FR 19237, issued to Todd Elliot Hansberger;


5. Prohibiting Donald Hansberger 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 4097, issued to N Service Management;

6. Ordering restitution of all damages according to proof suffered by Bryan and Jackie Driskill as a condition of probation in the event probation is ordered;

7. Ordering N Service Pest Management, Donald Hansberger, and Todd Elliot Hansberger 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

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

DATED: 7/2/12


WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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