FILED

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KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
ADRIAN R. CONTRERAS
Deputy Attorney General
State Bar No. 267200
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2634
Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **ENVIRONMENT 1ST EXTERMINATING INC.; JAMES SEABERN, OWNER AND QUALIFYING MANAGER** **2340 South El Camino Real, Suite #13** **San Clemente, CA 92672** **Company Registration Certificate No. PR 2060** **and** **JAMES JUSTIN SEABERN** **2340 South El Camino Real, Suite #13** **San Clemente, CA 92672** **Operator's License No. OPR 9071** Respondents.	Case No. 2013-12 **ACCUSATION**

Complainant alleges:

PARTIES

1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the Assistant Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.

2. On or about June 6, 1991, the Structural Pest Control Board issued Company Registration Certificate Number PR 2060 (the Company Registration Certificate) to Environment First Termite Control, with Alex A. Del Toro and James Justin Seabern as co-owners and John H. Burnard as qualifying manager. On or about February 28, 1992, John H. Burnard disassociated as qualifying manager. On or about January 24, 1993, Seabern became the qualifying manager. On or about September 3, 1996, the company registration name was changed to Environment 1st Exterminating Inc. (Respondent Environment). On or about September 17, 1998, Seabern became the owner.

3. On or about December 30, 1992, the Structural Pest Control Board issued Operator's License Number OPR 9071 (the Operator's License) to James Justin Seabern (Respondent Seabern). The Operator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

JURISDICTION

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

5. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty. Section 8620 of the Code further provides that a respondent may request that a civil penalty of not more than $5,000.00 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than $10,000.00 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.

6. Section 8625 of the Code states:

"The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation

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

STATUTORY PROVISIONS

7. Section 8617 of the Code states:

". . .

"(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

"Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

"Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any pesticide use stamps until the assessed fine has been paid.

"Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction."

8. Section 8624 of the Code states:

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

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

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

9. Section 8654 of the Code states:

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

REGULATORY PROVISIONS

10. Title 16, California Code of Regulations, Section 1920 states:

". . .

"(d) Compliance with Orders of Abatement:

"When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the

person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited.

". . . ."

COSTS

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

CAUSE FOR DISCIPLINE

(Failure to Pay Citation and Comply with Order of Abatement)

12. Respondents Environment and Seabern are subject to disciplinary action under Code section 8617, subdivision (f), and title 16, California Code of Regulations, section 1920 in that they failed to pay a citation and comply with an order of abatement. The circumstances are as follows:

13. On or about March 24, 2011, Respondents Environment and Seabern were issued Citation No. CF 11-77 for failure to file 458 Wood Destroying Organism (WDO) activities. The citation included a fine of $3,645.00 and an order of abatement requiring Respondents to file all remaining unreported WDO activities within thirty days of the citation. Respondents requested an informal conference about the citation, and on or about May 3, 2011, Respondent and Complainant held an informal conference. On or about May 5, 2011, Complainant issued a written decision affirming the citation in full. Specifically, Complainant ordered Respondents to "comply with the order of abatement and shall file all unreported wood destroying organisms activities within 30 days of receipt of this decision toward the first $1,145 of the fine. [¶] The remaining balance of $2,500 shall be paid within one hundred twenty (120) days of receipt of this decision." Respondents did not pay the fine or comply with the order of abatement.

14. On or about September 20, 2011, Respondents Environment and Seabern were issued Citation No. CF 12-34 for practicing structural pest control without appropriate bond coverage.

The citation included a fine of $50.00 to be paid within thirty days. Respondents did not comply with this citation.

15. On or about September 26, 2011, Respondents Environment and Seabern were issued Citation No. CF 12-41 for failure to pay monies due for materials or services rendered in connection with its operations as a registered pest control company. The citation included a fine of $750.00 to be paid within thirty days. Respondents did not comply with this citation.

16. On or about April 10, 2012, Respondents Environment and Seabern were issued Citation No. CF 12-113 for practicing structural pest control without appropriate bond coverage. The citation included a fine of $500.00 to be paid within thirty days. Respondents did not comply with this citation.

OTHER MATTERS

17. Respondent Seabern was the qualifying manager and owner on the Company Registration Certificate at the time acts or omission occurred that constitute cause for discipline against Respondent Environment.

18. Pursuant to Section 8624, if the Board suspends or revokes Respondent Seabern's operator's license and one or more branch offices are registered under Respondent Seabern, the suspension or revocation may be applied to each branch office and the suspension or revocation may be applied to his company's registration. Also, the performance by Respondent Environment of any act or omission constituting a cause for disciplinary action likewise constitutes a cause for disciplinary action against Respondent Seabern as the qualifying manager or owner of Respondent Environment.

19. Pursuant to Section 8654 of the Code, if Respondent Seabern has his operator's license revoked or suspended, or the company registration of Respondent Environment is revoked, Respondent Seabern shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of Respondent Seabern by a registered company will be a ground for 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 2060, issued to Environment 1st Exterminating Inc.;

2. Revoking or suspending Operator's License Number OPR 9071, issued to James Seabern;

3. Ordering James Seabern and Environment 1st Exterminating Inc. 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

4. Prohibiting James Seabern from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company; and

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

DATED: 9/4/12

SUSAN SAYLOR
Assistant Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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