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

In the Matter of the Accusation Against:

Case No. 2009-2

OAH No. 2008090581

IRC SERVICES, INC. dba THE TERMITE GUY 106 West Canada San Clemente, California 92672 Company Registration Certificate No. PR 5121;

and

ALEX DEL TORO 106 West Canada San Clemente, California 92672 Operator's License No. OPR 9685;

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by

the Structural Pest Control Board, Department of Consumer Affairs, as its Decision in this

matter.

This Decision shall become effective on May 22, 2009

It is so ORDERED April 22, 2009

TURAL PEST CONTROL BOARD FOR TH DEPARTMENT OF CONSUMER AFFAIRS

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	1	EDMUND G. BROWN JR., Attorney General		
	2	of the State of California KAREN B. CHAPPELLE		
· ·		Supervising Deputy Attorney General RENE JUDKIEWICZ, State Bar No. 141773		
· ·		Deputy Attorney General		
		300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
	:5	Telephone: (213) 897-2537 Facsimile: (213) 897-2804		
	6			d.
	7	Attorneys for Complainant		
· .	8	BEFORE T STRUCTURAL PEST CO	NTROL BOARD	
	9	DEPARTMENT OF CONS STATE OF CALI	SUMER AFFAIRS IFORNIA	
	10			
•	11	In the Matter of the Accusation Against:	Case No. 2009-2	
	12	IRC SERVICES, INC. dba THE TERMITE	OAH No. 2008090581	
	13	GUY 106 West Canada	STIPULATED SETTLEMENT AND	
	14	San Clemente, California 92672 Company Registration Certificate No. PR 5121,	DISCIPLINARY ORDER	
- - -				
	15	ALEX DEL TORO 106 West Canada		
	16	San Clemente, California 92672 Operator's License No. OPR 9685,		
	17			
	18	and		
	19	MARK MATTHEW PETRICK 106 West Canada		
	20	San Clemente, California 92672 -and-		
	21	23422 Via Ronda Mission Viejo, CA 92691		
	22	Operator's License No. OPR 10297,		
	23	Respondents.		
	24			
	25		AGREED by and between the parties to th	e
	26	above-entitled proceedings that the following matter	rs are true:	
	27	PARTIE	<u>es</u>	
	28	1. Kelli Okuma (Complainant) i	s the Registrar/Executive Officer of the	
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Structural Pest Control Board (Board), California Department of Consumer Affairs. She brought
 this action solely in her official capacity and is represented in this matter by Edmund G. Brown
 Jr., Attorney General of the State of California, by Rene Judkiewicz, Deputy Attorney General.
 2. Respondents IRC Services, Inc. dba The Termite Guy; Alex Del Toro; and
 Mark Matthew Petrick are represented in this proceeding by attorney James L. Frederick, whose
 address is Goeltz & Frederick, A Professional Corporation, 504 West Mission Avenue, Suite 103
 Escondido, CA 92025.

3. On or about April 14, 1997, the Board issued Operator's License No. OPR
9 9685 to Respondent Alex Del Toro. The Operator's License was in full force and effect at all
10 times relevant to the charges brought in Accusation No. 2009-2, and will expire on June 30,
11 2011, unless renewed.

4. On or about September 6, 2000, the Board issued Operator's License No.
 OPR 10297 to Respondent Mark Matthew Petrick. The Operator's License was in full force and
 effect at all times relevant to the charges brought in Accusation No. 2009-2, and will expire on
 June 30, 2009, unless renewed.

S. On or about August 24, 2006, the Board issued Respondent The Termite
 Guy (named in the Accusation as IRC Services, Inc. dba The Termite Guy) Company
 Registration Certificate No. PR 5121. The Company Registration Certificate was in full force
 and effect at all times relevant to the charges brought in Accusation No. 2009-2.

JURISDICTION

6. Accusation No. 2009-2 was filed before the Board, and is currently
pending against all three Respondents. The Accusation and all other statutorily required
documents were properly served on Respondents on July 16, 2008. Respondents timely filed
their Notice of Defense contesting the Accusation. A copy of Accusation No. 2009-2 is attached
as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

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Respondents have carefully read, fully discussed with counsel, and

understand the charges and allegations in Accusation No. 2009-2. Respondents have also
 carefully read, fully discussed with counsel, and understand the effects of this Stipulated
 Settlement and Disciplinary Order.

8. Respondents are fully aware of their legal rights in this matter, including
the right to a hearing on the charges and allegations in the Accusation; the right to be represented
by counsel at their own expense; the right to confront and cross-examine the witnesses against
them; the right to present evidence and to testify on their own behalf; the right to the issuance of
subpoenas to compel the attendance of witnesses and the production of documents; the right to
reconsideration and court review of an adverse decision; and all other rights accorded by the
California Administrative Procedure Act and other applicable laws.

9. Respondents voluntarily, knowingly, and intelligently waive and give up
 each and every right set forth above.

CULPABILITY

14 10. Respondents Alex Del Toro and IRC Services, Inc. dba The Termite Guy
15 admit the truth of each and every charge and allegation in Accusation No. 2009-2.

16 11. Respondents Alex Del Toro and IRC Services, Inc. dba The Termite Guy
agree that Respondent Alex Del Toro's Operator's License and Respondent IRC Services, Inc.
dba The Termite Guy's Company Registration Certificate are both subject to discipline, and they
agree to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order
below.

<u>CONTINGENCY</u>

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12. This stipulation shall be subject to approval by the Board. Respondents understand and agree that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of

no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
 the parties, and the Board shall not be disqualified from further action by having considered this
 matter.

The parties understand and agree that facsimile copies of this Stipulated
 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
 force and effect as the originals.

7 14. In consideration of the foregoing admissions and stipulations, the parties
8 agree that the Board may, without further notice or formal proceeding, issue and enter the
9 following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Operator's License No. OPR 9685 issued to
 Respondent Alex Del Toro and Company Registration Certificate No. PR 5121, Branch II and
 Branch III, issued to Respondent The Termite Guy are revoked. However, the revocation is
 stayed and these two Respondents are placed on probation for three (3) years on the following
 terms and conditions.

Respondent Mark Matthew Petrick, Operator's License No. OPR 10297, is to be
 removed from Accusation No. 2009-2, and is not a party subject to the Disciplinary Order.

18 Actual Suspension. The Termite Guy's Company Registration Certificate No.
19 PR 5121 issued to Respondent The Termite Guy (named in Accusation No. 2009-2 as IRC
20 Services, Inc. dba The Termite Guy) is suspended for ten (10) business days, commencing 30
21 business days from the effective date of this order. The Termite Guy may pay a civil penalty of
22 \$2,000 in lieu of the ten-day suspension.

23 1. Obey All Laws. Respondents shall obey all laws and rules relating to the
24 practice of structural pest control.

2. Quarterly Reports. Respondents shall file quarterly reports with the
Board during the period of probation, on a form supplied by the Board.

273.Tolling of Probation as to Respondent The Termite Guy. Should28Respondent The Termite Guy (named as Respondent IRC Services, Inc. dba The Termite Guy in

Accusation No. 2009-2) become inactive for any period exceeding twenty-nine (29) days during
 the time of probation, that time shall not count toward the completion of probation, and the
 probation shall be extended by that inactive time.

4 4. Tolling of Probation as to Respondent Alex Del Toro. Should Respondent Alex Del Toro cease to conduct structural pest work in California and should he 5 leave California to reside outside this state for any period exceeding twenty-nine (29) days, he 6 7 must notify the Board in writing of the dates of structural pest work inactivity, and of the dates of 8 departure and return from California. Periods that Respondent Alex Del Toro does not conduct 9 structural pest work, and periods that Respondent's residency or practice is outside California shall not apply to reduction of the probationary period, and the probationary period shall be 10 11 extended for the amount of time that Respondent Alex Del Toro is not conducting structural pest work or is residing outside the state. 12

5. Notice to Employers. Respondent Alex Del Toro shall notify all present
 and prospective employers of the decision in Case No. 2009-2 and the terms, conditions and
 restriction imposed on Respondent by said decision. Within thirty (30) days of the effective
 date of this decision, and within fifteen (15) days of Respondent Alex Del Toro undertaking new
 employment, Respondent Alex Del Toro shall cause his employer to report to the Board in
 writing acknowledging the employer has read the decision in Case No. 2009-2.

19 6. Notice to Employees. Respondent The Termite Guy (named in 20 Accusation No. 2009-2 as IRC Services, Inc. dba The Termite Guy) shall, upon or before the effective date of this decision, post or circulate a notice to all current and future employees 21 22 involved in structural pest control operations which accurately recite the terms and conditions of 23 probation. Respondent shall be responsible for said notice being immediately available to said 24 employees. "Employees" as used in this provision includes all full-time, part-time, temporary 25 and relief employees and independent contractors employed or hired at any time during 26 probation.

27 7. Posted Notice of Suspension. Should Respondents elect ten (10)
28 business days' suspension in lieu of a \$2,000 civil penalty, Respondents shall prominently post a

suspension notice provided by the Board of the Board's order of suspension at respondents'
 principal office and each of their branch offices in a place conspicuous and readable to the
 public. Said notice shall remain so posted during the entire period of actual suspension.

8. Completion of Probation. Upon successful completion of probation,
 Respondent Alex Del Toro's operator's license and Respondent The Termite Guy's company
 registration certificate shall be fully restored.

9. Violation of Probation. Should Respondents Alex Del Toro and/or The
Termite Guy (named as IRC Services, Inc. dba The Termite Guy in Accusation No. 2009-2)
violate probation in any respect, the Board, after giving Respondents notice and an opportunity to
be heard, may revoke probation and carry out the disciplinary order which was stayed. If a
petition to revoke probation is filed against Respondents during probation, the Board shall have
continuing jurisdiction until the matter is final, and the period of probation shall be extended
until the matter is final.

14 10. **Branch III and General Continuing Education.** Respondent Alex Del 15 Toro shall complete with a final grade of C Minus (C-) or better within eighteen (18) months of 16 the effective date of this decision a total of twelve (12) hours of continuing education, with eight 17 (8) of the twelve (12) hours in Branch III and four (4) of the twelve (12) hours in general rules 18 and regulations. All twelve (12) hours are to be completed within 120 days of the effective date 19 of this order. These hours are in addition to the continuing education hours required for re-20 licensure.

11. Random Inspections. Respondent Alex Del Toro shall reimburse the
 Board for one (1) random inspection per quarter by a Board specialist during the period of
 probation not to exceed \$125.00 per inspection.

Reimbursement to Consumer. Respondents shall submit proof to the
 registrar that restitution in the amount of \$6,117.00 has been made to Charles and Diane Deller
 within ninety (90) days of the effective date of this order.

27 13. Prohibited from Serving as Officer, Director, Associate, Partner or
 28 Qualifying Manager. Respondent Alex Del Toro is prohibited from serving as an officer,

director, associate, partner, owner, qualifying manager, branch office manager or responsible
 managing employee of any current or future registered company other than FRC Services, Inc.
 dba The Termite Guy during the period that discipline is imposed on Operator's License No.
 OPR 9685.

Cost Recovery. Pursuant to California Business and Professions Code
section 125.3, within ninety (90) days of the effective date of this order, Respondent IRC
Services, Inc. dba The Termite Guy shall pay to the Board its enforcement costs including
investigation, hearing, and probationary menitoring in the amount of \$7,500.00.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and
 have fully discussed it with my attorney, James L. Frederick. I understand the stipulation and the
 effect it will have on my Operator's License, and on the Company Registration Certificate of IRC
 Services, Inc. dba The Termite Guy. I enter into this Stipulated Settlement and Disciplinary
 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
 of the Structural Pest Control Board.

17 DATED: 2-28-2009 18

ALEX DEL TORO both as an Individual Respondent and as the authorized representative of Entity Respondent IRC Services, Inc. dba The Termite Guy

PAGE 82/82 P2 PAGE 82/82

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1	I have read and fully discussed with Respondents Alex Del Toro and IRC
2	Services, Inc. dbs The Termite Guy the terms and conditions and other manars contained in the
3	above Stipulated Sattlement and Disciplinary Order. I approve its form and content.
4	DATED: 3-04-09
5	
б	James 2. Trederick
7	JAMES L. FREDERICK Attomcy for Respondents
8	
9	ENDORSEMENT
10	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11	submitted for consideration by the Structural Pest Control Board of the Department of Consumer
12	Affairs.
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14	DATED; 3/4/09
15	EDMIND G. BROWN JR., Attorney General
16	of the State of California
17	KAREN B. CHAPPELLE Supervising Deputy Attorney General
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20	RENE JUDGIEWICZZ
21	Deputy Altorney, General
22	Attorneys for Complainant
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Exhibit A

Accusation No. 2009-2

e.	
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1	EDMUND G. BROWN JR., Attorney General
2	of the State of California KAREN B. CHAPPELLE
3	KAREN B. CHAPPELLE Supervising Deputy Attorney General RENE JUDKIEWICZ Deputy Attorney General 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2537 Facsimile: (213) 897-2804 Date 7/3/08 By Helli Churne
	Deputy Attorney General 300 So. Spring Street, Suite 1702
4	Los Angeles, CA 90013
5	Telephone: (213) 897-2537 Facsimile: (213) 897-2804
6	Attorneys for Complainant
7	
8	BEFORE THE STRUCTURAL PEST CONTROL BOARD
	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
9	BIAID OF CALINORMA
10	In the Matter of the Accusation Against: Case No. 2009-2
11	
12	IRC SERVICES, INC. dba THE TERMITE GUY A C C U S A T I O N
13	ALEX DEL TORO, QM/PRES. MARIA DEL TORO, SECTY
14	MARK PETRICK, QM
	San Clemente, CA 92672
15 ,	Company Registration Certificate No. PR 5121
16	ALEX DEL TORO 106 West Canada
17	San Clemente, CA 92672
18	Operator's License No. OPR 9685
19	and
• •	MARK MATTHEW PETRICK
20	106 West Canada San Clemente, CA 92672
21	-and- 23422 Via Ronda
- 22	Mission Viejo, CA 92691
23	Operator's License No. OPR 10297
24	Respondents.
25	Complainant alleges:
26	PARTIES
27	1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
28	capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"),
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1 Department of Consumer Affairs.

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Company Registration Certificate No. PR 5121

2. On or about August 24, 2006, the Board issued Company Registration
 Certificate Number PR 5121 in Branches 2 (general pest) and 3 (termite) to IRC Services, Inc.
 ("Respondent IRC Services, Inc."), doing business as The Termite Guy, with Alex Del Toro
 ("Respondent Del Toro") as Branch 3 qualifying manager and president, Mark Matthew Petrick
 ("Respondent Petrick") as Branch 2 qualifying manager, and Maria Del Toro as secretary.

Operator's License No. OPR 9685

9 3. On or about April 14, 1977, the Board issued Operator's License Number OPR 9685 in Branch 3 to Respondent Del Toro, employee of Catalina Termite Control. On 10 August 2, 2001, Respondent Del Toro's license was suspended due to failure to maintain the 11 general liability insurance required by Business and Professions Code ("Code") section 8690. 12On August 6, 2001, Respondent Del Toro's license was reinstated after he posted general liability 13 insurance. On August 24, 2006, Respondent Del Toro became the president and Branch 3 14 qualifying manager of Respondent IRC Services, Inc. Respondent Del Toro's operator's license 15 16 will expire on June 30, 2008, unless renewed.

Operator's License No. OPR 10297

4. On or about September 6, 2000, the Board issued Operator's License
 Number OPR 10297 in Branch 2 to Respondent Petrick, employee of Little Bugger Pest Control.
 On August 24, 2006, Respondent Petrick became the Branch 2 qualifying manager of
 Respondent IRC Services, Inc. Respondent's operator's license will expire on June 30, 2009,
 unless renewed.

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JURISDICTION

5. 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.

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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 of company, or to render a decision suspending or revoking such license or registration."

7. Code section 118, subdivision (b), states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

8. Code section 8624 states, in pertinent part:

"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. Code-section 8654 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

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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."

STATUTORY AND REGULATORY PROVISIONS

Statutory Provisions

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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

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

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

"(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"

Code section 8622 states: 11.

"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."

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."

Regulatory Provision

13. California Code of Regulations, title 16, section ("Regulation") 1990

"(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:

"(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:

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

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states, in pertinent part:

COST RECOVERY

2 14. Code section 125.3 states, in pertinent part, that a Board may request the 3 administrative law judge to direct a licentiate found to have committed a violation or violations 4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 5 enforcement of the case.

3809 VIA MANZANA, SAN CLEMENTE, CA

15. On or about April 30, 2007, Respondent Del Toro, the qualifying manager/
president of Respondent IRC Services, Inc., inspected the property located at 3809 Via Manzana,
San Clemente, California (hereinafter "property" or "3809 Via Manzana property"), at the
request of Prudential California Realty. Respondent Del Toro issued a complete Wood
Destroying Pests and Organisms ("WDO") Inspection Report, which included findings of
drywood termite infestations, drywood termite damage, and dryrot damage. Respondent Del
Toro recommended fumigation and replacement of damaged areas.

16. On or about May 30, 2007, Respondent Del Toro issued a Standard Notice
of Work Completed and Not Completed certifying that the property was free of evidence of
active infestations, infections, or adverse conditions in visible and accessible areas.

17 17. On June 11, 2007, escrow closed and Charles and Diane Deller ("the
18 Dellers") became the owners of the property based, in part, on the inspection report of April 30,
19 2007.

18. On or about August 13, 2007, Michael Reynolds ("Reynolds"), pest
control operator for Reynolds Termite Control, inspected the property at the request of the
Dellers and issued a limited inspection report which included findings of subterranean termite
damage, drywood termite damage, dryrot damage, delamination, and water damage. Reynolds
recommended chemical treatment, removal of tubes, replacement and/or repair of damaged areas,
cutting off of door damage and repairing with cement filler, possible future installation of a new
door, others to correct, further inspection, and a supplemental report.

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On or about August 16, 2007. Respondent Del Toro inspected the property 19. 1 and issued a complete inspection report which included findings of drywood termite damage, 2 dryrot damage, old drywood termite evidence, water stains, and inaccessible areas. Del Toro 3 recommended replacement of the damaged areas, inspection and correction of water stain 4 damaged areas by an outside contractor, further inspection, and a supplemental report. 5 20. On August 20, 2007, the Board received a complaint from the Dellers, 6 stating that Respondent IRC Services, Inc. omitted several areas needing repair at the time of its 7 8 original inspection and requesting that Respondent complete the repairs to these areas. On November 5, 2007, Board Specialist Gregory K. Adams ("Adams") 21. 9 inspected the property. 10 22. On November 9, 2007, Adams issued a Report of Findings ("ROF") 11 identifying certain violations of the Code which he found during his inspection. 12 On November 9, 2007, the Board sent a notice to Respondents Del Toro 13 23. and IRC Services, Inc. directing them to bring the property into compliance by correcting the 14 items described in the ROF and to submit a WDO Inspection Report and Standard Notice of -15 Work Completed and Not Completed to the Board within 30 calendar days from receipt of the 16 17 notice. On December 10, 2007, the Board received a request for a hearing from 18 24. 19 Respondents Del Toro and IRC Services, Inc. CAUSE FOR DISCIPLINE 20 (Improper Inspection) 21 Respondents IRC Services, Inc. and Del Toro are subject to disciplinary 22 25. action pursuant to Code section 8641 in that as to the 3809 Via Manzana property, they failed to 23 comply with Code section 8516, in the following respects: 24 25 Respondents failed to report on the inspection report dated April 30, 2007, the decay fungi damage at the second story plant shelf adjacent to the second story balcony deck 26 over the front porch, in violation of Code section 8516, subdivision (b)(7), and Regulation 1990, 2728 subdivision (a)(4).

b. Respondents failed to report on the inspection report dated April 30, 2007,
 all of the decay fungi damage at the second story balcony deck over the front porch at the
 balusters, railings, fascia, and trim and the excessive moisture condition at the deck covering
 system, in violation of Code section 8516, subdivision (b)(7), and Regulation 1990, subdivisions
 (a)(4) and (b)(5).

c. Respondents failed to report on the inspection report dated April 30, 2007,
all of the decay fungi damage at the window shelf area at the corbels and trim, in violation of
Code section 8516, subdivision (b)(7), and Regulation 1990, subdivision (a)(4).

9 d. Respondents failed to issue a supplemental report reporting the decay
10 fungi damage found inside of the kitchen wall upon removal of the reported decay fungi damaged
11 window trim, in violation of Code section 8516, subdivision (b)(7), and Regulation 1990,
12 subdivision (a)(4).

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MATTERS IN AGGRAVATION

To determine the degree of penalty, if any, to be imposed on Respondent
Del Toro, Complainant alleges as follows: On April 28, 2006, Respondent Del Toro paid a \$151
fine levied by the San Diego County Agricultural Commissioner for Respondent's violation of
Food and Agriculture Code section 15204.

OTHER MATTERS

19 27. Code section 8620 provides, in pertinent part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 201 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request 21 must be made at the time of the hearing and must be noted in the proposed decision. The 22 23 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension. Pursuant to Code section 8624, if Operator's License Number OPR 9685, 24 28. issued to Respondent Alex Del Toro, is suspended or revoked, the Board may suspend or 25 revoke Company Registration Certificate Number PR 5121, issued to IRC Services, Inc., doing 26 27business as The Termite Guy, with Alex Del Toro as qualifying manager in Branch 3 and Mark - 28 Matthew Petrick as qualifying manager in Branch 2.

29. Pursuant to Code section 8624, the causes for discipline established as to
 Respondent IRC Services, Inc., doing business as The Termite Guy, likewise constitute causes
 for discipline against Alex Del Toro and Mark Matthew Petrick regardless of whether Alex Del
 Toro and Mark Matthew Petrick had knowledge of or participated in the acts or omissions which
 constitute causes for discipline against IRC Services, Inc., doing business as The Termite Guy.

30. Pursuant to Code section 8654, if discipline is imposed on Operator's
License Number OPR 9685, issued to Respondent Alex Del Toro, Alex Del Toro 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 Alex Del Toro shall
be subject to disciplinary action.

31. Code section 8622 provides, in pertinent part, that Respondents shall
submit an inspection fee of not more than \$125. If a reinspection is necessary, a commensurate
reinspection fee shall be charged.

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

PRAYER

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

Revoking or suspending Company Registration Certificate Number
 PR 5121, issued to IRC Services, Inc., doing business as The Termite Guy;

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23 2. Revoking or suspending Operator's License Number OPR 9685, issued to
24 Alex Del Toro;

Prohibiting Alex Del Toro 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 Number OPR 9685, issued to Alex
 Del Toro;

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. 1	4. Revoking or suspending Operator's License Number 10297, issued to
· 2	Mark Matthew Petrick;
. 3	5. Ordering restitution of all damages according to proof suffered by Charles
4	and Diana Deller as a condition of probation in the event probation is ordered;
5	6. Ordering Respondents IRC Services, Inc., doing business as The Termite
6	Guy, Alex Del Toro, and Mark Matthew Petrick to pay the Board the reasonable costs of the
-7	investigation and enforcement of this case, pursuant to Code section 125.3; and
8	7. Taking such other and further action as deemed necessary and proper.
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10	DATED: 7/3/07
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-13	KELLIOKUMA
14	Registrar/Executive Officer Structural Pest Control Board
15	Department of Consumer Affairs State of California
16	Complainant
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