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

In the Matter of the Accusation Against: **PINNACLE PEST CONTROL INC.** **JAIME LOPEZ, President and Qualifying Manager** 600 Broadway, Suite E Sacramento, California 95818 **Company Registration License No. PR 4379, Br. 2 and 3** **Operator License No. OPR 9872** Respondents.	Case No. 2010-81 **SECOND AMENDED ACCUSATION**

Complainant William H. Douglas ("Complainant") alleges:

PARTIES

1. On June 3, 2010, Complainant Kelli Okuma brought an Accusation, and later brought an Amended Accusation, solely in her official capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of Consumer Affairs. Complainant William H. Douglas, solely in his official capacity as Interim Executive Officer and Registrar of the Board, now brings this Second Amended Accusation.

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Company Registration Certificate No. PR 4379

2. On or about August 7, 2003, the Board issued Company Registration Certificate No. PR 4379 ("registration") to Pinnacle Pest Control Inc. ("Respondent Pinnacle"), in Branches 2 and 3 with Jaime Lopez ("Respondent Lopez") as the President and Qualifying Manager. On or about May 16, 2006, the registration was suspended pursuant to Business and Professions Code ("Code") section 8690 (failure to maintain general liability insurance). On or about May 18, 2006, the registration was reinstated.

Operator's License No. OPR 9872

3. On or about May 21, 1998, the Board issued Operator's License No. OPR 9872 ("license") in Branch 2 to Jaime Lopez as the owner and Qualifying Manager of Pinnacle Pest Control. On or about May 12, 1999, the license was upgraded to include Branch 3. On or about August 7, 2003, Jaime Lopez became the President and Qualifying Manager of Pinnacle Pest Control Inc. On or about May 16, 2006, the license was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). On or about May 18, 2006, the license was reinstated. The license will expire on June 30, 2012, unless renewed.

JURISDICTION

4. Business and Professions Code ("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.

5. 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.

6. 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.

7. 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

8. Code section 8518 states, in pertinent part:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall 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.

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

9. Code section 8519 states, in pertinent part:

Certification as used in this section means a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of wood-destroying pests or organisms and listing such recommendations, if any, which appear on an inspection report prepared pursuant to Code section 8516, and which relate to (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification.

(b) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that all recommendations to remove that infestation or infection and to repair damaged caused by that infestation or infection have been completed: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas."

10. Code section 8610(c) states:

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

11. 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.

12. 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.

13. Code section 8652 states:

Failure of a registered company to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than three

years after completion of any work or operation for the control of structural pests or organisms, is a ground for disciplinary action. These records shall be made available to the registrar during business hours.

REGULATORY PROVISIONS

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

(c) If in the opinion of the inspector a building permit is required, it must be noted on the wood destroying pests and organisms inspection report.

COST RECOVERY/RESTITUTION

15. 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.

16. 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.

27th STREET PROPERTY

17. On or about May 26, 2009, Mark Sanders ("Sanders"), a field representative representing Respondent Pinnacle, inspected the property located at 2813 27th Street, Sacramento, California ("27th Street property"), for wood destroying pests and organisms. Sanders issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 6544 ("Inspection Report No. 6544"). Sanders' findings involved wood decay fungi damage and subterranean termite damage to the structure, including wood decay fungi damage and termite damage under the front porch, beneath the concrete cap. Sanders recommended replacing the damaged wood members under the front porch with new materials and re-supporting the concrete cap as needed. Sanders included a Work Authorization Contract totaling $8,853 to perform the recommended repairs.

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18. On or about June 9, 2009, the homeowner signed the Work Authorization Contract, authorizing Respondent Pinnacle to perform the recommended repairs set forth in Inspection Report No. 6544.

19. On or about June 12, 2009, Respondent Pinnacle began the work and assigned Russell James Osterhoudt ("Osterhoudt") as the lead worker.

20. On or about June 15, 2009, Sanders re-inspected the 27th Street property and issued a Supplemental Wood Destroying Pests and Organisms Inspection Report No. 6721 ("Supplemental Inspection Report No. 6721"). Sanders' findings involved fungus and dryrot. Sanders provided a Work Authorization Contract totaling $3,515.00 to perform the recommended repairs. On that same day, Osterhoudt was underneath the porch cutting out the fungus and termite-damaged wood framing from under the concrete cap when the porch collapsed on top of him, crushing him to death. Following the accident, the City of Sacramento Building Department and the State of California, Division of Occupational Safety and Health (Cal/OSHA), were notified of the accident. Cal/OSHA performed an investigation and issued Respondent Pinnacle a citation for violating the following[1]:

a. California Code of Regulations, title 8, section 1509 (failure to establish, implement, and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders).

b. California Code of Regulations, title 8, section 1734(b)(2) (failure to have a written survey on the job site that described the condition of the framing and floors and the possibility of an unplanned collapse of any portion of the structure).

c. California Code of Regulations, title 8, section 1735(d)(1) (prior to the starting the demolition operations, the structural and hazardous deficiencies were not shored, braced or otherwise corrected).

d. California Building Code (2007), section 105.1 (failure to obtain a permit).

21. On or about June 16, 2009, the City of Sacramento, Code Enforcement, Housing and Dangerous Building Division (H&DBD), issued a "Stop Work Notice" (red tag) on the 27th Street property for performing structural repairs without the required permits (violation of the California Building Law and the City of Sacramento's regulations), and posted the structure as a

[1] Respondent Pinnacle appealed the Citation and a hearing is currently scheduled in October 2010.

dangerous building which was unsafe to occupy. In addition, the electrical and gas meters were pulled, and the structure was boarded up in many areas.

22. On or about June 18, 2009, the homeowner signed the Work Authorization Contract, authorizing Respondent Pinnacle to perform the recommended repairs set forth in Supplemental Inspection Report No. 6721.

23. On or about June 29, 2009, Sanders re-inspected the 27th Street property and issued Supplemental Wood Destroying Pests and Organisms Inspection Report No. 6821 ("Supplemental Inspection Report No. 6821"). Sanders' findings involved a faulty grade at the side of the structure at the curb wall, and additional support at the concrete cap. Sanders recommended removing the existing curb wall and installing a new stem wall, and framing the concrete cap. Sanders included a Work Authorization Contract totaling $1,835 to perform the recommended repairs.

24. On or about July 2, 2009, the homeowner signed the Work Authorization Contract, authorizing Respondent Pinnacle to perform the recommended repairs set forth in Supplemental Inspection Report No. 6821.

25. On or about July 13, 2009, a Standard Notice of Work Completed and Not Completed ("Completion Notice") was issued, certifying that all of the work recommended in Inspection Report No. 6544, and Supplemental Inspection Report Nos. 6721 and 6821, had been completed in accordance with the Board's rules and regulations, and that no visible evidence of active infestation or infection was found.

FIRST CAUSE FOR DISCIPLINE

(Inspection Report Violations)

26. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8641, in that concerning the 27th Street property, Respondents failed to use the proper certification statement on the Completion Notice, as required under Code section 8519(b).

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SECOND CAUSE FOR DISCIPLINE

(Failure to Make Inspection Records Available)

27. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8652, in that between June 15, 2009, and October 27, 2009, concerning the 27th Street property, Respondents failed to make and keep all inspection reports, field notes, contracts, documents, notices of work completed, and records, other than financial records, for a period of not less than three (3) years after completion of any work or operation for the control of structural pests or organism.

THIRD CAUSE FOR DISCIPLINE

(Inspection Report Violations)

28. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8641, in that on or about May 26, 2009, concerning the 27th Street property, Respondents failed to comply with California Code of Regulations, title 16, section 1991(c), in that they failed to include in its wood destroying pests and organisms inspection reports that a building permit was required.

1112-1114 V STREET PROPERTY

FOURTH CAUSE FOR DISCIPLINE

(Fraud or Misrepresentation After Inspection)

29. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8644, in that concerning the property located at 1112-1114 V Street, Sacramento, California, Respondents committed fraud or misrepresentation in that a Standard Notice of Work Completed and Not Completed, was filed on June 5, 2009, certifying that all recommended items for repair contained in Wood Destroying Pests and Organisms Inspection Report No. 6548 were completed, when in fact, they were not. In addition, Respondents committed fraud or misrepresentation by certifying that the property was free of evidence of active infestation or infection in the visible and accessible areas, when in fact, it was not.

FIFTH CAUSE FOR DISCIPLINE

(Inspection Report Violations)

30. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8641 in that concerning the property located at 1112-1114 V Street, Sacramento, California, Respondents failed to use the proper certification statement on the Completion Notice, as required under Code section 8519(b).

OTHER PROPERTY VIOLATIONS

SIXTH CAUSE FOR DISCIPLINE

(Inspection Report Violations)

31. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8641, in that between November 13, 2007, and June 5, 2009, Respondents failed to comply with California Code of Regulations, title 16, section 1991(c), in that they failed to include in the wood destroying pests and organisms inspection reports that a building permit was required, including, but not limited to, the following properties:

a. 1225 42nd Street, Sacramento, California;

b. 1112-1114 V Street, Sacramento, California; and

c. 2443-2445 36th Street, Sacramento, California.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to File Addresses of Completed Work with the Board)

32. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8518, in that Respondents failed to file with the Board, the address of each property inspected or upon which work was completed within ten (10) working days after completing the work, including, but not limited to, the following addresses:

a. 2443-2445 36th Street, Sacramento, California;

b. 1201 46th Street, Sacramento, California; and

c. 1557 Santa Ynez Way, Sacramento, California.

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EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Laws Adopted by the Board - No Supervision by Qualifying Manager)

33. Complainant incorporates the allegations of Paragraphs 17 through 32, inclusive. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8641, in that Jamie Lopez, who was serving as the Qualifying Manager of Pinnacle Pest Control Inc., failed to comply with Code section 8610(c), by failing to supervise the daily operations, business, and employees in the respects alleged, including but not limited to supervision of Respondent Pinnacle's employees working at the 27th Street property.

PRIOR DISCIPLINE

Company Registration No. PR 4379

34. On or about February 4, 2004, the company registration paid a fine in the amount of $50 levied by the Placer County Agricultural Commissioner for violating Food and Agricultural Code section 15204.

35. On or about November 6, 2007, the company registration paid a fine in the amount of $300 levied by the Sacramento County Agricultural Commissioner for violating Code section 8505.17.

36. On or about November 3, 2008, the company registration paid a fine in the amount of $750 levied by the Board for violating Code sections 8648 and 8651.

37. On or about January 6, 2009, the company registration paid a fine in the amount of $300 levied by the Sacramento County Agricultural Commissioner for violating Code section 8505.17.

38. On or about March 11, 2010, the company registration paid a fine in the amount of $250 levied by the Sacramento County Agricultural Commissioner for violating Code section 8538.

Operator License No. OPR 9872

39. On or about November 3, 2008, Respondent paid a fine in the amount of $750 levied by the Board for violating Code sections 8648 and 8651.

OTHER MATTERS

40. 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.

41. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 4379, issued to Pinnacle Pest Control Inc., likewise constitute cause for discipline against Operator's License Number OPR 9872, issued to Jaime Lopez, who serves as the President and Qualifying Manager of Pinnacle Pest Control Inc., regardless of whether Jaime Lopez had knowledge of or participated in the acts or omissions which constitute cause for discipline against Pinnacle Pest Control Inc.

42. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 4379, issued to Pinnacle Pest Control Inc., then Jaime Lopez, who serves as the President and Qualifying Manager of Pinnacle Pest Control Inc., 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 No. PR 4379, issued to Pinnacle Pest Control Inc.;

2. Revoking or suspending Operator's License No. OPR 9872, issued to Jaime Lopez;

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

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

5. Prohibiting Jaime Lopez 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 4379, issued to Pinnacle Pest Control Inc.;

6. Ordering Jaime Lopez and Pinnacle Pest Control 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,

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

DATED: 6/27/11

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