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**FILED**

Date 7/6/17 By

*Susan  
Saylor*

8  
9 **BEFORE THE**  
**STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2018-1

12 **WEED ENTERPRISES INC., DBA**  
13 **PROVEN TERMITE SOLUTIONS, JIM**  
14 **BOB WEED, OWNER AND QUALIFYING**  
15 **MANAGER**  
662 Giguere Court, Suite F  
San Jose, CA 95133

**ACCUSATION**

16 **Company Registration Certificate No. PR**  
17 **3030 in Branch 1 and 3,**

18 **JIM BOB WEED**  
662 Giguere Court, Suite F  
San Jose, CA 95133

19 **Operator License No. OPR 9158 in Branch 1**  
20 **and 3,**

21 &

22 **RAPHAEL J. DE ANDA**  
4396 Enterprise Place, Suite N  
23 Fremont, CA 94538

24 **Field Representative License No. FR 45221**  
25 **in Branch 1**

26 Respondents.

1 Complainant alleges:

2 PARTIES

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

6 **License Histories**

7 **Weed Enterprises Inc., dba Proven Termite Solutions—Company Registration**  
8 **Certificate No. PR 3030**

9 2. On or about February 21, 1997, the Structural Pest Control Board issued Company  
10 Registration License Number PR 3030 to Weed Enterprises Inc., dba Proven Termite Solutions  
11 (Respondent Proven Termite Solutions), with Jim Bob Weed serving as the qualified manager.  
12 The company registration certificate was in full force and effect at all times relevant to the  
13 charges alleged in this Accusation.

14 **Jim Bob Weed—Operator License No. OPR 9158**

15 3. On or about July 27, 1993, the Structural Pest Control Board issued Operator Number  
16 OPR 9158 (Branches 1 and 3) to Jim Bob Weed (Respondent Weed). The Operator's License  
17 was in full force and effect at all times relevant to the charges alleged in this Accusation and will  
18 expire on June 30, 2020, unless renewed.

19 **Raphael J. De Anda—Field Representative License No. FR 45221**

20 4. On or about February 23, 2010, the Structural Pest Control Board issued Field  
21 Representative Number FR 45221 (Branch 1) to Raphael J. De Anda (Respondent De Anda). The  
22 Field Representative License was in full force and effect at all times relevant to the charges  
23 alleged in this Accusation and will expire on June 30, 2018, unless renewed.

24 JURISDICTION

25 5. This Accusation is brought before the Structural Pest Control Board (Board),  
26 Department of Consumer Affairs, under the authority of the following laws. All section  
27 references are to the Business and Professions Code unless otherwise indicated.

1       6.    Section 8620 of the Business and Professions Code (Code) provides, in relevant part,  
2 that the Board may suspend or revoke a license when it finds that the holder, while a licensee or  
3 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu  
4 of a suspension may assess a civil penalty.

5       7.    Section 8625 of the Code states:

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

11       8.    Section 118, subdivision (b), of the Code provides that the  
12 suspension/expiration/surrender/cancellation of a license shall not deprive the Board, Registrar, or  
13 Director of jurisdiction to proceed with a disciplinary action during the period within which the  
14 license may be renewed, restored, reissued or reinstated.

15                                       STATUTORY/REGULATORY PROVISIONS

16       9.    Section 8505.12 of the Code states:

17       "A registered company performing fumigation shall use an adequate warning agent with all  
18 fumigants which lack those properties. There may be circumstances in which the use of  
19 chloropicrin is not possible due to its unknown effects on sensitive items, including, but not  
20 limited to, artifacts in museums or in police evidence storage. In these circumstances, waiving the  
21 use of chloropicrin shall be approved by the state regulatory authority and documented in advance  
22 and shall include alternative safety precautions which address initial clearance of the site to be  
23 fumigated, potential movement of the fumigant to unattended areas, and continued site security.  
24 When conditions involving abnormal hazards exist, the licensee exercising direct and personal  
25 supervision shall take those safety precautions in addition to those prescribed by this chapter as  
26 are reasonably necessary to protect the public health and safety."

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1           10. Section 8505.13 of the Code states:

2           "A registered company shall maintain a log of each fumigation job performed by it in this  
3 state. The log shall be in the form required by the regulations of the board and shall be preserved  
4 for a period of at least three years, during which time it shall be available at all times during  
5 business hours for inspection by the board and its authorized representatives."

6           11. Section 8641 of the Code states:

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

11           12. Section 8642 of the Code states that "[t]he commission of any grossly negligent or  
12 fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a  
13 registered company is a ground for disciplinary action."

14           13. Section 8643 of the Code states:

15           "The negligent handling or use of any pesticide is a ground for disciplinary action."

16           14. Section 8646 of the Code states:

17           "Disregard and violation of pesticide use and application, structural pest control device,  
18 fumigation, or extermination laws of the state or of any of its political subdivisions, or regulations  
19 adopted pursuant to those laws, is a ground for disciplinary action."

20           15. Pursuant to section 8624 of the Code, the causes for discipline established as to  
21 Respondent Proven Termite Solutions likewise constitutes cause for discipline against  
22 Respondent Weed as the owner regardless of whether Respondent Weed had knowledge of or  
23 participated in the acts or omissions which constitute cause for discipline against Respondent  
24 Proven Termite Solutions.

25           16. California Code of Regulations, title 16, section 1970, states, in relevant part:

26           "For the purpose of maintaining proper standards of safety and the establishment of  
27 responsibility in handling the dangerous gases used in fumigation and the pesticides used in other  
28 pest control operations, a registered company shall compile and retain for a period of at least three

1 years, a log for each fumigation job and for each pesticide control operation in which a pesticide  
2 is used by the registered company or the registered company's employee. If the fumigation is to  
3 be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log  
4 and forward a copy of the log to the primary contractor within ten business days.

5       “(a) The log (See Form 43M-47 (Rev. 5/07) at the end of this section) for each fumigation  
6 job shall contain the following information:

7       Name, address and company registration certificate number of prime contractor.

8       Name, address and company registration certificate number of subcontractor, if any.

9       Address of property.

10       Date of fumigation.

11       Name and address of owner or his or her agent.

12       Date and hour fire department was notified pursuant to Business and Professions Code  
13 section 8505.5.

14       Date and hour county agricultural commissioner was notified and method of notification,  
15 where required.

16       Property description including type of structure as to details of roofing, walls, and the  
17 presence of construction elements, conduits, drains, air ducts, or vacuum systems that could allow  
18 the passage of fumigant from the structure to be fumigated to any adjacent or adjoining  
19 structure(s), thereby connecting them, and method(s) used to prevent passage of the fumigant.

20       Cubic feet fumigated.

21       Target pest(s).

22       Kind of fumigant(s) used.

23       United States Environmental Protection Agency registration number(s) of fumigant(s).

24       Name of warning agent and amount used.

25       Type of sealing method used.

26       Weather conditions as to temperature and wind.

27       Date and hour fumigant introduced.

28       Cylinder number of each fumigant used.

- 1 Weight of each fumigant cylinder before introduction of gas.
- 2 Pounds of fumigant used from each cylinder.
- 3 Total pounds of fumigant used.
- 4 List of any extraordinary safety precautions taken.
- 5 Name, signature and license number of operator or field representative releasing fumigant.
- 6 First name and surname of crew when fumigant was released, when aeration commenced
- 7 and when the property was released for occupancy.
- 8 Indication of whether or not safety equipment was available at the fumigation site at the
- 9 time the fumigant was introduced, when ventilation commenced and when the property was
- 10 released for occupancy.
- 11 Date and hour aeration commenced.
- 12 Conditions of tarp and seal.
- 13 Name, signature and license number of operator or field representative commencing
- 14 ventilation.
- 15 Type of device(s) used to test for re-entry.
- 16 Date and hour ready for occupancy.
- 17 Name, signature and license number of operator or field representative releasing property
- 18 for occupancy.
- 19 Method used to calculate amount of fumigant used.
- 20 Factors used in calculation of fumigant.
- 21 Special notes or comments pertinent to fumigation.”

22 17. California Code of Regulations, title 16, section 1974, states:  
23 “Prior to commencement of fumigation, warning signs which comply with the provisions of  
24 sections 8505.9 and 8505.10 (see Form 43M-15 (New 8/93)) shall be posted. Such warning signs  
25 shall be at least 11" x 15".

26 “(a) Prior to sealing a structure which is to be fumigated, fumigation warning signs shall be  
27 posted on the structure at or near all entrances and on each side of the structure and kept at those  
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1 locations until the structure is declared to be safe for re-occupancy by the licensee exercising  
2 direct and personal supervision over the fumigation.

3 “(b) Fumigation warning signs shall also be placed on the outside surface of the tarps used  
4 to seal the structure and shall be clearly visible on all accessible sides of the space under  
5 fumigation and from any direction from which the site may be approached.

6 “(c) All warning signs must contain the trade name of the fumigant used and its active  
7 ingredient.

8 “Additional fumigation warnings signs shall be posted at all joint seams of the tarp at the  
9 first floor level.”

#### 10 COST RECOVERY/RESTITUTION

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

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

#### 18 OTHER MATTERS

19 20. Pursuant to section 8624 of the Code, if Operator License Number OPR 9158, issued  
20 to Respondent Jim Bob Weed, is suspended or revoked, the Board may suspend or revoke  
21 Company Registration Certificate Number PR 3030, issued to Weed Enterprises Inc., dba Proven  
22 Termite Solutions.

23 21. Pursuant to section 8624 of the Code, if Operator License Number OPR 9158, issued  
24 to Respondent Jim Bob Weed, is suspended or revoked, the Board may suspend or revoke the  
25 registration of any branch office registered under the name of Jim Bob Weed.

26 22. Pursuant to section 8624 of the Code, if Operator License Number OPR 9158 issued  
27 to Respondent Weed, is suspended or revoked, the Board may suspend or revoke Company  
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1 Registration Certificate Number PR 3030, issued to Weed Enterprises Inc. d.b.a. Proven Termite  
2 Solutions.

3 23. Pursuant to section 8654 of the Code, if discipline is imposed on Operator License  
4 Number OPR 9158, issued to Respondent Weed, Respondent Weed shall be prohibited from  
5 serving as an officer, director, associate, partner, qualifying manager, or responsible managing  
6 employee for any registered company during the time the discipline is imposed, and any  
7 registered company which employs, elects, or associates Respondent Weed shall be subject to  
8 disciplinary action.

9 24. Pursuant to section 8654 of the Code, if discipline is imposed on Field Representative  
10 License No. FR 45221 issued to Respondent De Anda, Respondent De Anda shall be prohibited  
11 from serving as an officer, director, associate, partner, qualifying manager, or responsible  
12 managing employee for any registered company during the time the discipline is imposed, and  
13 any registered company which employs, elects, or associates Respondent De Anda shall be  
14 subject to disciplinary action.

15 FACTUAL BACKGROUND

16 25. Sulfuryl fluoride (trade name Vikane) is a lethal fumigant designated by the U.S.  
17 Environmental Protection Agency (EPA) and the California Department of Pesticide Regulation  
18 (DPR) as a restricted use pesticide. Vikane labelling states that the warning agent Chloropicrin  
19 (pic) must be used at least 5-10 minutes prior to the introduction of the fumigant.

20 26. On July 7, 2016, a Santa Clara County Department of Agriculture (SCL DoA)  
21 Biologist (Biologist) conducted a covert fumigation monitoring inspection of Respondent Proven  
22 Termite Solutions as they were working on a structural pest control project (Sunnyvale Project) at  
23 1250 South Mary Avenue in Sunnyvale, California. During the inspection, the Biologist  
24 observed that Respondent De Anda failed to introduce the warning agent Chloropicrin (pic)  
25 before releasing the Vikane into the structure. The Biologist halted the fumigation, and  
26 questioned Respondent De Anda. Ultimately, Respondent De Anda admitted that he failed to  
27 introduce Chloropicrin before releasing the Vikane.

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1           27.   Additionally, on July 7, 2016, the Biologist observed Respondent De Anda allowing  
2 his crew members to post warning signs which indicated the presence of the warning agent  
3 Chloropicrin (pic) when, in fact, no warning agent was applied. If a person without appropriate  
4 protective gear enters the structure during the fumigation, serious illness or death could result.  
5 Respondent De Anda's placing of the misleading warning sign could have posed a severe health  
6 hazard to the general public.

7           28.   On or around July 12, 2016, Respondent Proven Termite Solutions and Respondent  
8 Weed, as qualifying manager sent to the Biologist the fume log form for the Sunnyvale Project.  
9 Respondents had changed the form by adding additional information such as key instructions,  
10 return instructions, and invoicing information. The form also failed to record the name of the  
11 licensee introducing the fumigant.

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13 Causes of Discipline against Respondents Proven Termite Solutions and Jim Bob Weed

14                                   **FIRST CAUSE FOR DISCIPLINE**  
15                                   **(Improper Fumigation Logs)**  
16                                   **(Bus. & Prof Code § 8505.13; Cal. Code Regs., tit. 16, § 1970, subd. (a))**

17           29.   Respondent Proven Termite Solutions and Respondent Weed, as owner, have  
18 subjected their Company Registration Certificate and Operator License, respectively, to  
19 disciplinary action under Business and Professions Code section 8505.13, in that they submitted  
20 fumigation job logs for the Sunnyvale Project which did not comply with California regulations  
21 (Cal. Code Regs., tit. 16, § 1970, subdivision (a)). The circumstances are more fully explained in  
22 paragraphs 25 through 28, above.

23                                   **SECOND CAUSE FOR DISCIPLINE**  
24                                   **(Failure to Introduce Warning Agent Chloropicrin in Violation of Vikane Labeling)**  
25                                   **(Bus. & Prof. Code 8505.12)**

26           30.   Respondent Proven Termite Solutions and Respondent Weed, as owner, have  
27 subjected their Company Registration Certificate and Operator License, respectively, to  
28 disciplinary action under Business and Professions Code section 8505.12 in that, on or about July  
7, 2016, their employee, Respondent De Anda, failed to introduce the warning agent Chloropicrin  
before introducing the fumigant Vikane to the structure. This failure was contrary to the labelling

1 instructions of the Vikane. The circumstances are more fully explained in paragraphs 25 through  
2 27, above.

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4 Causes of Discipline against Respondent De Anda

5 **THIRD CAUSE FOR DISCIPLINE**  
6 **(Violating Pesticide Application Laws)**  
7 **(Bus. & Prof Code, § 8646)**

8 31. Respondent De Anda has subjected his Field Representative License to disciplinary  
9 action under Business and Professions Code section 8646 in that, on or about July 7, 2016, he  
10 violated state pesticide application laws and federal law (Food and Agricultural Code section  
11 12973). The circumstances are more fully explained in paragraphs 25 through 27, above.

12 **FOURTH CAUSE FOR DISCIPLINE**  
13 **(Negligent Handling or Use of Pesticide)**  
14 **(Bus. & Prof. Code, § 8643)**

15 32. Respondent De Anda has subjected his Field Representative License to disciplinary  
16 action under Business and Professions Code section 8643 in that, on or about July 7, 2016, he  
17 negligently handled fumigants when he failed to introduce the warning agent Chloropicin before  
18 introducing the fumigant Vikane to the structure. The circumstances are more fully explained in  
19 paragraphs 25 through 27, above.

20 **FIFTH CAUSE FOR DISCIPLINE**  
21 **(Gross Negligence)**  
22 **(Bus. & Prof. Code, § 8642; Cal. Code of Regs., tit 16, § 1974)**

23 33. Respondent De Anda has subjected his Field Representative License to disciplinary  
24 action under Business and Professions Code section 8642 and California Code of Regulations,  
25 title 16, section 1974 in that, on or about July 7, 2016, he acted with gross negligence when he  
26 failed to introduce the warning agent Chloropicin before introducing the fumigant Vikane to the  
27 structure after he had allowed his staff to post warning signs which falsely indicated the presence  
28 of the warning agent. The circumstances are more fully explained in paragraphs 25 through 27,  
above.

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**SIXTH CAUSE FOR DISCIPLINE**  
**(Failure to Comply with the Rules and Regulations)**  
**(Bus. & Prof. Code, § 8641)**

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34. Respondent De Anda has subjected his Field Representative License to disciplinary action under Business and Professions Code section 8641 in that, on or about July 7, 2016, he failed to comply with the rules and regulations of the Structural Pest Control Board when he failed to introduce the warning agent Chloropicin before introducing the fumigant Vikane to the structure. The circumstances are more fully explained in paragraphs 25 through 27, above.

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DISCIPLINE CONSIDERATIONS

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35. To determine the degree of discipline, if any, to be imposed on Respondent Jim Bob Weed, Complainant alleges that on or about February 21, 1997, in a prior disciplinary action entitled In the Matter of the Accusation Against National Termite Services Inc., dba Proven Termite Solutions; Jim Bob Weed before the Structural Pest Control Board, in Case Number 95-09, Respondent Weed's Operator license was suspended for 90 days, with the 90-day suspension stayed, and the license placed on probation for one year. That decision is now final and is incorporated by reference as if fully set forth.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate Number PR 3030, issued to Weed Enterprises Inc., dba Proven Termite Solutions;
2. Revoking or suspending Operator License Number OPR 9158, issued to Jim Bob Weed;
3. Revoking or suspending Field Representative License Number FR 45221, issued to Raphael J. De Anda;
4. Prohibiting Jim Bob Weed 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 9158 issued to Jim Bob Weed;

1           5.     Ordering Weed Enterprises Inc., dba Proven Termite Solutions, Jim Bob Weed and  
2 Raphael J. De Anda to pay the Structural Pest Control Board the reasonable costs of the  
3 investigation and enforcement of this case, pursuant to Business and Professions Code section  
4 125.3; and,

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

6  
7     DATED: 7/6/17

  
8     SUSAN SAYLOR  
9     Registrar/Executive Officer  
10    Structural Pest Control Board  
11    Department of Consumer Affairs  
12    State of California  
13    Complainant

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