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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**ADVANTEX PEST CONTROL**<br>**MIKE DOUGLAS PORTER, Owner and QM**<br>9421 Fair Oaks Blvd.<br>Fair Oaks, California 95628<br><br>**Company Registration License No. PR 4030, Br. 2 and 3**<br>**Operator License No. OPR 10482**<br><br>Respondents. | Case No. 2010-63<br><br>**DEFAULT DECISION AND ORDER**<br><br>[Gov. Code, §11520] |

FINDINGS OF FACT

1. On or about March 2, 2010, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2010-63 against Advantex Pest Control with Mike Douglas Porter ("Respondent") as the owner and Qualifying Manager before the Structural Pest Control Board ("Board").

2. On or about September 26, 2001, the Board issued Company Registration Certificate Number PR 4030 ("Registration") to Respondent as the owner and Qualifying Manager of Advantex Pest Control. On or about November 12, 2004, the Registration was upgraded to include Branch 3. On or about December 4, 2008, the Registration was suspended pursuant to Business and Professions Code ("Code") section 8690 (failure to maintain general liability insurance). On or about December 8, 2008, the Registration was reinstated. On or about

September 25, 2009, the Registration was suspended pursuant to Code section 8690 (failure to maintain general liability insurance).

3. On or about September 26, 2001, the Board issued Operator's License Number OPR 10482 ("License") in Branch 2 to Respondent as the owner and Qualifying Manager of Advantex Pest Control. On or about November 10, 2004, the License was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). On or about November 12, 2004, the License was upgraded to include Branch 3. On or about November 19, 2004, the License was reinstated. On or about December 4, 2008, the License was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). On or about December 8, 2008, the License was reinstated. On or about September 25, 2009, the License was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). The License will expire on June 30, 2010, unless renewed.

4. On or about March 18, 1989, the Board issued Field Representative's License Number FR 29091 ("FR License") in Branch 2 to Respondent. On or about October 23, 2000, the FR License was upgraded to include Branches 2 & 3. On or about September 28, 2001, the FR License was downgraded to Branch 3 due to the issuance of the License in Branch 2. On or about November 4, 2004, the FR License was cancelled due to the issuance of the License in Branches 2 and 3.

5. On or about March 15, 2010, C. Cruz, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2010-63 ("Accusation"), Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 9421 Fair Oaks Blvd., Fair Oaks, California 95628.

A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

6. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

7. On or about March 22, 2010, the aforementioned documents were returned by the U.S. Postal Service marked "Not deliverable as addressed, Unable to forward."

8. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

9. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of the Accusation.

10. Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in the Accusation are true.

12. The total cost for investigation and enforcement in connection with the Accusation are $6,378.96 as of April 15, 2010.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent has subjected his Registration, and License to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Structural Pest Control Board is authorized to revoke Respondent's Registration, License, and FR License based upon the following violations alleged in the Accusation:

a. Respondent violated Business and Professions Code ("Code") section Code section 8641, in that Respondent failed to comply with several provisions of the Code, specifically Code sections 8516, subd. (b); 8516 subd. (b)(6); 8516 subds. (b)(7); and 8516 subd. (b)(9).

///

///

b. Respondent violated Code section 8638 in that Respondent failed to complete work which had been reported as having been completed on a Standard Notice of Work Completed and Not Completed.

c. Respondent violated Code section 8641, in that he failed to comply with Code section 8622, by failing to correct items described in the Board's Notice and Report of Findings for a property.

d. Respondent violated Code section 8641, in that Respondent failed to use the proper certification statement on a Completion Notice pursuant to Code section 8519(b).

e. Respondent violated Code section 8641, in that Respondent failed to post a completion tag with the date the work that was completed pursuant to Code section 8619(b).

f. Respondent violated Code section 8644, in that Respondent committed fraud or misrepresentation in a Standard Notice of Work Completed and Not Completed by certifying that all recommended items for repair contained in an Inspection Report were completed, when in fact, they were not. In addition, Respondent committed fraud or misrepresentation by certifying that the a property was free and clear of all evidence of infestations and infections in the visible and accessible areas, when in fact, it was not.

///

///

///

## ORDER

IT IS SO ORDERED that the Registration, and License, heretofore issued to Respondent, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 26, 2010.

It is so ORDERED May 27, 2010

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

10560510.DOC
DOJ docket number:SA2010100410

Attachment:

Exhibit A: Accusation No.2010-63

Exhibit A
Accusation No. 2010-63

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
GEOFFREY S. ALLEN
Deputy Attorney General
State Bar No. 193338
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5341
Facsimile: (916) 327-8643
*Attorneys for Complainant*

FILED
Date 3/2/10 By Kelli Okuma

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**ADVANTEX PEST CONTROL**<br>**MIKE DOUGLAS PORTER, Owner and QM**<br>9421 Fair Oaks Blvd.<br>Fair Oaks, California 95628<br><br>**Company Registration License No. PR 4030, Br. 2 and 3**<br>**Operator License No. OPR 10482**<br><br>Respondents. | Case No. 2010-63<br><br>**ACCUSATION** |

Kelli Okuma ("Complainant") alleges:

**PARTIES**

1. Complainant brings this Accusation solely in her official capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of Consumer Affairs.

**Company Registration Certificate No. PR 4030**

2. On or about September 26, 2001, the Board issued Company Registration Certificate Number PR 4030 ("Registration") to Advantex Pest Control in Branch 2, with Mike Douglas Porter ("Respondent") as the owner and Qualifying Manager. On or about November 12, 2004, the Registration was upgraded to include Branch 3. On or about December 4, 2008, the

Registration was suspended pursuant to Business and Professions Code ("Code") section 8690 (failure to maintain general liability insurance). On or about December 8, 2008, the Registration was reinstated. On or about September 25, 2009, the Registration was suspended pursuant to Code section 8690 (failure to maintain general liability insurance).

**Operator's License No. OPR 10482**

3. On or about September 26, 2001, the Board issued Operator's License Number OPR 10482 ("License") in Branch 2 to Respondent as the owner and Qualifying Manager of Advantex Pest Control. On or about November 10, 2004, the License was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). On or about November 12, 2004, the License was upgraded to include Branch 3. On or about November 19, 2004, the License was reinstated. On or about December 4, 2008, the License was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). On or about December 8, 2008, the License was reinstated. On or about September 25, 2009, the License was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). The License will expire on June 30, 2010, unless renewed.

**Field Representative's License No. FR 29091**

4. On or about March 18, 1989, the Board issued Field Representative's License Number FR 29091 ("FR License") in Branch 2 to Respondent. On or about October 23, 2000, the FR License was upgraded to include Branches 2 & 3. On or about Sepember 28, 2001, the FR License was downgraded to Branch 3 due to the issuance of the License in Branch 2. On or about November 4, 2004, the FR License was cancelled due to the issuance of the License in Branches 2 and 3.

## JURISDICTION

5. 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.

///

6. 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.

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.

7. 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.

8. 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

9. 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. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8516.1, Section 8518, or this section are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report conforming to this section and on 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, filed 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:

(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

(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.

(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in

compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

10. Section 8518 of the Code 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.

11. Section 8519 of the Code 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.

12. Section 8619 of the Code states, in pertinent part:

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

13. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

14. 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.

15. 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.

## REGULATORY PROVISIONS

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

(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:

(3) Infestations, infections or evidence thereof.

(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:

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

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

(d) Even though the licensee may consider the following areas inaccessible for purposes of inspection, the licensee must state specifically which of these areas or any other areas were not inspected and why the inspection of these areas is not practical: furnished interiors; inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath coverings, areas where storage conditions or locks make inspection impracticable.

(e) Information regarding all accessible areas of the structure including but not limited to the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or other parts of a structure normally subject to attack by wood-destroying pests or organisms.

(g) Information must be reported regarding any wooden deck, wooden stairs or wooden landing in exterior exposure attached to or touching the structure being inspected. Portions of such structure that are not available for visual inspection must be designated as inaccessible.

///

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

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

(12) Repair a stall shower if it is found to leak when water tested for a minimum of fifteen (15) minutes after the shower drain has been plugged and the base filled to within one (1) inch of the top of the shower dam. Stall showers with no dam or less than two (2) inches to the top of the dam are to be water tested by running water on the unplugged shower base for a minimum of five (5) minutes./ showers over finished ceilings must be inspected but need to be water tested. If water stains are evidence on the ceiling, recommendations shall be made for further inspection and testing.

## COST RECOVERY/RESTITUTION

18. 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.

19. 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.

## PARKER and McCORMICK PROPERTY

20. On or about April 25, 2008, Respondent inspected the property located at 2641 Carson Way, located in Sacramento, California ("Parker and McCormick property"), for wood destroying pests and organisms for escrow purposes and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 11245 ("Inspection Report No. 11245").

21. Respondent's findings involved fungus damage to the roof sheathing, trim on the water heater cabinet, and at the rafter tails and facia board of the eaves; loose grout at the hall bathroom; a plumbing leak at the faucet of the master bathtub; and portions of the subarea were inaccessible due to the inadequate clearance (less than 12 inches) between the bottom of the floor joist and the soil.

22. Respondent recommended excavation of the subarea soil to obtain 12 inches of clearance between the floor joists and soil; re-caulk the grout at the hall bathroom; replace the faucet in the master bathtub; and replace the damaged wood members.

23. On or about April 29, 2008, Respondent issued a Standard Notice of Work Completed and Not Completed ("Completion Notice"), certifying that all of the work recommended in Inspection Report No. 11245 had been completed on the Parker and McCormick property in accordance with the Board's rules and regulations, and that no visible evidence of active infestation or infection was found.

24. On or about May 5, 2008, escrow closed.

25. In or about July 2008, Parker and McCormick, the homeowners ("homeowners") began to see evidence of infestations coming from the walls in the bedroom and kitchen.

26. On or about March 11, 2009, the Board received a complaint from the homeowners.

27. In or about April 2009, a Consumer Services Representative from the Board attempted to mediate the case, but it was unsuccessful.

28. On or about May 14, 2009, a Board specialist inspected the Parker and McCormick property and noted violations.

29. On or about June 15, 2009, the Board specialist prepared and issued a Report of Findings along with a Notice ordering Respondent to bring the property into compliance by correcting the items described in the Report of Findings and to submit a corrected inspection report and Notice of Work Completed and Not Completed to the Board within thirty (30) days with respect to the inspection performed on April 23, 2008.

30. On or about August 5, 2009, Chris Abar ("Abar"), a Field Representative (License No. FR 43804), inspected the Parker and McCormick property on Respondent's behalf, and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 9745376435 ("Inspection Report No. 9745376435"). Abar made certain findings and recommendations.

31. Respondent failed to bring the Parker and McCormick property into compliance.

///

## FIRST CAUSE FOR DISCIPLINE

**(Failure to Comply with the Code - Improper Inspection)**

32. Respondent's License and Registration are subject to discipline under Code section 8641, in that on or about April 23, 2008, concerning the Parker and McCormick property, Respondent failed to comply with the following Code sections:

**Section 8516(b)**

a. Respondent failed to include the proper date of inspection on Inspection Report No. 11245, in that it has an inspection date of April 25, 2008, when in fact, the inspection was performed on April 23, 2008.

b. Respondent failed to include in Inspection Report No. 11245 a description of item 1b (fungus damage to the subfloor under the sliding glass door), as set forth in the Completed Notice as having been repaired.

**Section 8516(b)(6)**

c. Respondent failed to include in the inspection report a diagram of the garage structure that was inspected as part of the original inspection performed on April 23, 2008.

**Section 8516(b)(6)(7):**

d. Respondent failed to report fungus infection and damage to the end of the roof support beam at the right front of the carport, as defined by California Code of Regulations, title 16, section 1990(a)(3) and (4).

e. Respondent failed to report fungus infection and damage to the base of the front porch support post, and the conditions contributing to the fungus infection and damage, as defined by California Code of Regulations, title 16, section 1990(a)(3)(4) and (b)(5).

f. Respondent failed to report drywood termite evidence and damage to the base of the siding at the right side of the master bedroom adjacent to the side doors, as defined by California Code of Regulations, title 16, section 1990(a)(3) and (4).

g. Respondent failed to report evidence of drywood termite infestation in the kitchen, master bedroom, exterior, and subarea, as defined by California Code of Regulations, title 16, section 1990(a)(3).

h. Respondent failed to report fungus infection and damage, and drywood termite evidence and damage to the subfloor and framing extending up into the wall above at the right side of the master bedroom under the sliding glass door which is sunk-in and settling into the floor, as defined by California Code of Regulations, title 16, section 1990(a)(3) and (4).

i. Respondent failed to report fungus infection and damage, drywood termite evidence and damage, water stains, and evidence of leaks under the stall shower and master bathroom floor, as defined by California Code of Regulations, title 16, section 1990(a)(3)(4), (b)(5), and 1991(a)(12).

j. Respondent failed to report excessive cellulose debris in the subarea, as defined by California Code of Regulations, title 16, section 1990(b)(3).

k. Respondent failed to report fungus infection and damage at the base of the access jambs in the subarea between the new addition and old subarea, as defined by California Code of Regulations, title 16, section 1990(a)(3) and (4).

l. Respondent failed to report fungus infection and damage, drywood termite evidence and damage, dampwood termite evidence and damage, and evidence of leaks to the subfloor, floor joist, and framing under the bathtub and toilet of the hall bathroom, as defined by California Code of Regulations, title 16, section 1990(a)(3)(4) and (b)(5).

m. Respondent failed to report fungus infection and damage to the base of the pier supports in the accessible portions of the main subarea with evidence leading into the inaccessible portions, and evidence of the subarea having excessive moisture conditions, as defined by California Code of Regulations, title 16, section 1990(a)(3)(4) and (b)(5).

n. Respondent failed to report fungus infection, water stains, evidence of inadequate ventilation, and excessive moisture conditions on the subfloor, rimjoist, and framing sporadically throughout the accessible portions of the main subarea and leading into the inaccessible portions, as defined by California Code of Regulations, title 16, section 1990(a)(3)(4) and (b)(5).

**Section 8516(b)(6)(7) and (9):**

o. Respondent improperly listed the subareas as inaccessible due to inadequate clearance between the soil and "bottom of floor joist," and failure to indicate the approximate location of

the inaccessible portions on the diagram[1], as defined by California Code of Regulations, title 16, section 1990(b)(2).

**Section 8516(b)(9):**

p. Respondent failed to report the inaccessible substructure area under the right side portion of the structure that appears to be a wood floor over a concrete slab of the converted garage, as defined by California Code of Regulations, title 16, section 1990(b)(2).

q. Respondent failed to report the inaccessible area under the rear steps at the right side of the master bedroom, as defined by California Code of Regulations, title 16, section 1990(e) and (g).

## SECOND CAUSE FOR DISCIPLINE

### (Violation of Contract)

33. Respondent's License and Registration are subject to discipline under Code section 8638, in that, concerning the Parker and McCormick property, Respondent failed to complete the damaged roof sheathing at the right front corner of the front porch, which had been reported as having been completed on the Standard Notice of Work Completed and Not Completed, dated April 29, 2008.

## THIRD CAUSE FOR DISCIPLINE

### (Failed to Comply with Report of Findings)

34. Respondent's License and Registration are subject to discipline under Code section 8641, in that he failed to comply with Code section 8622, by failing to correct the items described in the Report of Findings within thirty (30) calendar days of receipt of the Notice, bringing the Parker and McCormick property into compliance with the Board's Notice and Report of Findings, dated June 15, 2009.

///

///

///

[1] Portions of the subarea were inaccessible due to the inadequate clearance between the girders and soil below, which requires trenching under the girders.

## FOURTH CAUSE FOR DISCIPLINE

**(Inspection Report Violations)**

35. Respondent's License and Registration are subject to discipline under Code section 8641, in that, concerning the Parker and McCormick property, Respondent failed to use the proper certification statement on the Completion Notice, pursuant to Code section 8519(b).

## FIFTH CAUSE FOR DISCIPLINE

**(Inspection Report Violations)**

36. Respondent's License and Registration are subject to discipline under Code section 8641, in that, concerning the Parker and McCormick property, Respondent failed to post a completion tag with the date the work that was completed, pursuant to Code section 8619(b).

## SIXTH CAUSE FOR DISCIPLINE

**(Failure to File Work Activity Reports with the Board)**

37. Respondent's License and Registration are subject to discipline under Code section 8518, in that, concerning the Parker and McCormick property, Respondent failed to prepare and deliver Inspection Report No. 9745376435, dated August 5, 2009, to the Board within ten (10) business days following the commencement of an inspection or upon completed work.

## SEVENTH CAUSE FOR DISCIPLINE

**(Fraud or Misrepresentation After Inspection)**

38. Respondent's License and Registration are subject to discipline under Code section 8644, in that, concerning the Parker and McCormick property, Respondent committed fraud or misrepresentation in the Standard Notice of Work Completed and Not Completed, dated April 29, 2008, by certifying that all recommended items for repair contained in Inspection Report No. 11245 were completed, when in fact, they were not. In addition, Respondent committed fraud or misrepresentation by certifying that the Parker and McCormick property was free and clear of all evidence of infestations and infections in the visible and accessible areas, when in fact, it was not.

///

///

///

## PRIOR DISCIPLINE

**Company Registration No. PR 4030**

39. On or about June 20, 2007, the company Registration paid a fine in the amount of $200 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 1970(b), and Code section 8528.

40. On or about June 3, 2009, the company Registration paid a fine in the amount of $50 levied by the Yolo County Agricultural Commissioner for violating Food and Agricultural Code section 15204.

**Operator License No. OPR 10482**

41. On or about June 20, 2007, Respondent paid a fine in the amount of $200 levied by the Sacramento County Agricultural Commissioner for violating California Code of Regulations, title 16, section 1970(b), and Code section 8528.

42. On or about June 3, 2009, Respondent paid a fine in the amount of $50 levied by the Yolo County Agricultural Commissioner for violating Food and Agricultural Code section 15204.

## OTHER MATTERS

43. 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.

44. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 4030, issued to Advantex Pest Control, likewise constitute cause for discipline against Operator's License Number OPR 10482, issued to Mike Douglas Porter, who serves as the Qualifying Manager of Advantex Pest Control, regardless of whether Mike Douglas Porter had knowledge of or participated in the acts or omissions which constitute cause for discipline against Advantex Pest Control.

45. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 4030, issued to Advantex Pest Control, then Mike Douglas Porter, who serves as the Qualifying Manager of Advantex Pest Control, 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 Number PR 4030, issued to Advantex Pest Control;

2. Revoking or suspending Operator's License Number OPR 10482, issued to Mike Douglas Porter;

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

4. Prohibiting Mike Douglas Porter 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 4030, issued to Advantex Pest Control;

5. Ordering Mike Douglas Porter and Advantex Pest Control 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,

///

///

///

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

DATED: 3/2/10

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
*Complainant*

SA2010100410 (kdg)
10538530.doc