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Attorneys for Complainant

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

In the Matter of the Accusation Against: Y2K EXTERMINATING Rodrigo Lopez, Owner (unlicensed) Nancy Ann Walker, Qualifying Manager Company Registration Certificate No. PR 4287 Branch Office Registration No. BR 4945, and Operator's License No. OPR 10501 Respondents.	Case Nos. 2007-14, 2007-18, 2007-20, 2007-26 and 2006-61 OAH Nos. L2007050433, L2007050435, L2007050436, L2007050438, L2007050439 **DEFAULT DECISION AND ORDER (AS TO RESPONDENT NANCY WALKER AND Y2K EXTERMINATING, ONLY)** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 6, 2006, Complainant Kelli Okuma, in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), filed Accusation Nos. 2007-14, 2007-18, 2007-20, 2007-26 and 2006-61 against Y 2 K Exterminating, Rodrigo Lopez aka Rigo Lopez, Owner, Nancy Ann Walker, Qualifying Manager (Respondent Walker) before the Board.

2. On or about March 25, 2003, the Board issued Company Registration Certificate No. PR 4287 in Branch 3 to Respondent Y2k Exterminating, with Rigo Lopez as owner and Respondent Walker as Qualifying Manager. The Company Registration Certificate was in full force and effect at all times relevant to the charges brought herein.

///

3. On or about September 15, 2003, the Board issued Branch Office Registration Number BR 4945 to Respondent Y2k Exterminating, with Respondent Walker as Branch Office Supervisor. The Registration was in full force and effect at all times relevant to the charges brought herein.

4. On or about November 20, 2001, the Board issued Operator's License Number OPR 10501 in Branch 3 to Respondent Walker. The license was in full force and effect at all times relevant to the charges brought herein and expired on June 30, 2007.

5. On or about May 18, 2006, Pamela Van Kesteren, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2007-14, 2007-18, 2007-20, 2007-26 and 2006-61, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's addresses of record with the Board, which was and is:

PO Box 3005
2021 Troy Avenue
South El Monte, California 91733

and,

7974 Haven Ave. Ste. 180
Rancho Cucamonga, CA 91730.

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

7. On or about August 23, 2006, Respondent Walker signed and returned a Notice of Defense, through her attorney Donald Brown, Esq. requesting a hearing in these matters. On November 16, 2006, Donald Brown, Esq. notified the Board that he that no longer represents Respondent Walker and that she may be reached at the following address: P.O. Box 210, Twin Peaks, CA 92391. His letter and original Notice of Defense are attached as Exhibit A. A Notice of Hearing was served by mail at Respondent's attorney's address and her address of record informing her that an administrative hearing in this matter was scheduled for August 6, 2007 and August 27, 2007. (See Notice of Hearing and certified service documents marked "refused" by Respondent, attached as Exhibit B.) Respondent failed to appear at either day of the

hearing.

8. The Administrative Law Judge made a finding of fact in the Proposed Decision that Respondent Walker "surrendered her license to the Board and did not appear at the administrative hearing, *in spite of having received proper notice of the hearing.*" (Emphasis added.)

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. California 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.

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent Walker is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation Nos. 2007-14, 2007-18, 2007-20, 2007-26 and 2006-61 are true.

11. The total cost for investigation and enforcement in connection with the Accusation are $20,000.00 as of January 20, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Y 2 K Exterminating, Rodrigo Lopez aka Rigo Lopez, Owner, Nancy Ann Walker, Qualifying Manager has subjected its Company Registration Certificate No. PR 4287, its Branch Office Registration No. BR 4945 and Respondent Walker's Operator's License No. OPR 10501 to discipline.

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

3. The Board is authorized to revoke Respondent's Branch Office Registration, Operator's License and Company Registration Certificate based upon the following violations alleged in the Accusations:

Business and Professions Code section 8514, 8516, 8518, 8519, 8622, 8624, 8625, 8638, 8641, 8642, 8644, 8652, 8654, and California Code of Regulations, title 16, sections 1937.14, 1990, 1991, and 1993.

ORDER

IT IS SO ORDERED that Company Registration Certificate No. PR 4287 and Branch Office Registration No. BR 4945, heretofore issued to Respondent Y 2 K Exterminating, Rodrigo Lopez aka Rigo Lopez, Owner, Nancy Ann Walker, Qualifying Manager, and Operator's License No. OPR 10501, heretofore issued to Respondent Walker, 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 April 11, 2009.

It is so ORDERED March 12, 2009

Clifford J. Allen

FOR THE STRUCTURAL PEST CONTROL BOARD

60373527_1.wpd
DOJ docket number:LA2006502243, LA2006502426, LA2006502427, LA2006600469 and LA2006601624

Attachment:

Exhibit A: Notice of Defense and Counsel's Notification of Non-Representation
Exhibit B: Notice of Hearing and certified service documents marked "refused"

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

In the Matter of the Accusation Against:

Y 2 K EXTERMINATING
Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
(Unlicensed)
Nancy Ann Walker, Qualifying Manager
2021 Troy Avenue
South El Monte, CA 91733
Company Registration Certificate No. PR 4287,

Y 2 K EXTERMINATING
Nancy Ann Walker, Branch Office Supervisor
7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
Branch Office Registration No. BR 4945,

NANCY ANN WALKER
2021 Troy Avenue
South El Monte, CA 91733
Operator's License No. OPR 10501,

EDWARD ANDREW AVILEZ, JR.
2021 Troy Avenue
South El Monte, CA 91733
Field Representative's License No. FR 34165,

MICHAEL J. HOWE
P.O.Box 3005
S. El Monte, CA 91733
Field Representative's License No. FR15670,

Case No. 2007-26

A C C U S A T I O N

JAVIER ZAVALA
P.O.Box 3005
S. El Monte, CA 91733
Field Representative's License No. FR 22365,
and

DALE EDWARD DAWLEY
12190 Fineview Street
El Monte, CA 91733
Field Representative's License No. FR33978

Respondents.

Complainant alleges:

PARTIES

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

Y 2 K Exterminating
Company Registration Certificate No. PR 4287

2. On or about March 25, 2003, the Board issued Company Registration Certificate Number PR 4287 in Branch 3 (termite) to Y 2 K Exterminating ("Respondent Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2 K paid a fine of $503 levied by the Board for said Respondent's violation of Business and Professions Code ("Code") section 8516, subdivision (b).

Y 2 K Exterminating
Branch Office Registration No. BR 4945

3. On or about September 15, 2003, the Board issued Branch Office Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office supervisor.

Nancy Ann Walker
Operator's License No. OPR 10501

4. On or about November 20, 2001, the Board issued Operator's License

Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators, Inc. ("Gallatin.") Respondent left the employ of Gallatin on February 11, 2003. On March 25, 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15, 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's operator's license will expire on June 30, 2007, unless renewed.

Edward Andrew Avilez, Jr.
Field Representative's License No. FR 34165

5. On or about January 16, 2002, the Board issued Field Representative's License Number FR 34165 in Branch 3 to Edward Andrew Avilez, Jr. ("Respondent Avilez"), employee of Tri-Ace Termite & Pest Control ("Tri-Ace"). Respondent left the employ of Tri-Ace on September 20, 2002. On January 15, 2005, Respondent became employed by Respondent Y 2 K. Respondent's field representative's license will expire on June 30, 2007, unless renewed.

Michael J. Howe

Field Representative's License No. FR15670

6. On or about November 3, 1987, the Board issued Field Representative's License No. FR15670 in Branch 3 to Michael Joseph Howe ("Respondent Howe.") Field Representative's License No. FR15670 is currently in effect and renewed through June 30, 2008.

Javier Zavala

Field Representative's License No. FR22365

7. On December 27, 1990, Registered Applicator's License No. RA 26544 was issued to Javier Antonio Zavala. ("Respondent Zavala.") On or about August 16, 1993, Registered Applicator's License No. RA 26544 was canceled when the Board issued Field Representative's License No. FR22365 to Respondent Zavala. Field Representative's License No. FR22365 is currently in effect and is renewed through June 30, 2008.

Dale Edward Dawley
Field Representative's License No. FR33978

8. On or about November 7, 2001, the Board issued Field Representative's License No. FR33978 to Dale Edward Dawley ("Respondent Dawley"), employee of Termite Masters, Inc., Respondent left the employ of Termite Masters on February 1, 2003. On April 15, 2003, Respondent became employed with No Nonsense Termite Company Inc., and left its employment on July 24, 2003. On August 25, 2004, Respondent became employed by Respondent Y2K. Respondent's Field Representative license will expire on June 30, 2007 unless renewed.

JURISDICTION

9. 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.

10. 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.

11. 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.

12. 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 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)

13. Code section 8514.5 states, in pertinent part:

It is unlawful for any registered company under this chapter when billing for any subcontracted work . . . to charge, bill or otherwise solicit payment from the consumer for any structural fumigation work not actually rendered by the registered company or under its direct supervision unless the consumer, prior to authorizing the performance of the work, is provided in writing with the following statement:

"NOTICE: The charge for service that this company subcontracts to another registered company may include the company's charges for arranging and administering such services that are in addition to the direct costs associated with paying the subcontractor. You may accept (company's name's) bid or you contract directly with another registered company licensed to perform the work. If you choose to contract directly with another registered company, (company name) will not in any way be responsible for any act or omission in the performance of work that you directly contract with another to perform."

14. 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 this subdivision or Section 8518 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 8518 or this section is 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 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:

. . . .

2) The name and address of the person or firm ordering the report.

3) The name and address of any person who is a party in interest.

. . . .

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 attach by wood destroying pests or organisms exists.

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 attach by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation, 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.

8) One of the following statements, as appropriate, printed in bold type:

(A) The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board.

(B) The exterior surface of the roof was inspected to determine whether or not wood destroying pests or other organisms are present.

. . . .

10) Recommendations for corrective measures.

. . . .

13) The inspection report shall contain the following statement: printed in boldface type:

"NOTICE: Reports on this structure prepared by various registered companies shall list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.) However, recommendations for correct these finding may vary from company to company. You have a right to seek a second opinion from another company.

An estimate bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.

If no estimate or bid was given with the original inspection report, of thereafter, then the registered company shall not be required to perform a reinspection.

A reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed. Each reinspection shall be reported on an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original report by date and stamp numbers.

After four months from an original inspection, all inspections shall be original inspections and not reinspections.

Any reinspection shall be performed for not more than the price of the registered company's original inspection price and shall be completed within 10 working days after a reinspection had been ordered.

15. 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. Every property upon which work is completed 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 upon which work was completed pursuant to subdivision (b) of Section 8516, subdivision (b) of Section 8516.1, or Section 8518 are grounds for disciplinary action and shall subject the registered company to a fine or not more than two thousand five hundred dollars ($2,500). The registered company shall retain for three years all original notices of work completed, work not completed and activity forms. Notices of work completed and not completed shall be made available for inspection and reproduction to the executive during business hours. Original notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

16. Code section 8519 states:

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 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.

Any registered company which makes an inspection report pursuant to Section 8516 , shall, if requested by the person ordering the inspection report, prepare and deliver to that person or his or her designated agent, a certification, to provide:

(a) When the inspection report prepared pursuant to Section 8516 has disclosed to no infestation or infection: "This is to certify that the above property was inspected on ___ (date) in accordance with the Structural Pest Control Act and rules and regulations adopted pursuant thereto, and that no evidence of active infestation or infection was found in the visible and accessible areas."

(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 damage 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."

(c) 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 the registered company has not completed all recommendations to remove that infestation or infection or to repair damage caused by it: "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 except as follows: _____ (describing infestations, infections, damage, or evidence thereof, excepted)."

This certificate shall be accompanied by a copy of the inspection report prepared pursuant to Section 8516, and by a copy of the notice of work completed prepared pursuant to Section 8518, if notice has been prepared at the time of the certification, or the certification may be endorsed on and made apart of that inspection report or notice of work completed.

17. Code section 8538 states:

(a) A registered structural pest control company shall provide the owner or owner's agents, and tenant of the premises for which they work is to be done with clear written notice which contains the following statements and information using words with common everyday meaning:

(1) The pest to be controlled or in the case of wood roof cleaning and treatment registered company applications, the purpose of applying the wood preservative or preservatives.

(2) The pesticide or pesticides proposed to be used, and the active ingredient or ingredients.

(3) "State law requires that you be given the following information: CAUTION-PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and regulated by the Structural Pest Control Board, and apply pesticides which are registered and approved for use by the California Department of Pesticide Regulation and the United States Environmental Protection Agency. Registration is granted when the state finds that based on existing scientific evidence there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree if exposure, so exposure should be minimized."

"If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center (telephone number) and your pest control company immediately." (This statement shall be modified to include any other symptoms of overexposure which are not typical of influenza.)

"For further information, contact any of the following: Your Pest Control Company (telephone number); Health Questions- the County Health Department (telephone number); for Application information- the County Agricultural Commissioner (telephone number) and for Regulatory Information- the Structural Pest Control Board (telephone number and address)."

(4) If a contract for periodic pest control has been executed, the frequency with which the treatment is to be done.

(b) In the case if Branch 1 applications, the notice, as prescribed by subdivision (a), shall be provided at least 48 hours prior to application unless fumigation follows inspection by less than 48 hours.

In the case of Branch 2, Branch 3 or wood roof cleaning and treatment registered company applications, the notice as prescribed by subdivision (a) shall be provided no later than prior to application. In either case, the notice shall be given to the owner, or owner's agent, and tenant, if there is a tenant, in at least one of the following ways:

(1) First-class mail.

(2) Posting in a conspicuous place on the real property.

(3) Personal delivery.

If the building is commercial or industrial, a notice shall be posted in a conspicuous place, unless the owner or owner's agent objects, in addition to any other notification required by this section. The notice shall only be required to be provided to be provided at the time of the initial treatment if a contract for periodic service has been executed. If the pesticide to be used is changed, another notice shall be required to be provided in the manner previously set forth herein.

(c) Any person or licensee who, or registered company which, violates any provision of this section is guilty of a misdemeanor and is punishable as set forth in Section 8553.

18. 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 property 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 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 is 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.

19. 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.

20 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.

21. Code section 8642 states:

That "[t]he commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

22. 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)

23. California Code of Regulations, title 16, section ("Regulation") 1937.14 states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

24. Regulation 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 and in earth contact shall be reported.

. . . .

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

. . . .

(f) The following language shall appear just prior to the first finding/recommendation on each separated report:

"This is a separated report which is defined as Section I/Section II conditions evident on the date of the inspection. Section I contains items where there is visible evidence of active infestation, infection or conditions that have resulted in or from evidence of active infestation or infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found. Further inspection items are defined as recommendations to inspect area(s) which during the original inspection did not allow the inspector access to complete the inspection and cannot be defined as Section I or Section II."

25. Regulation 1991 states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 9 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:

. . . .

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

. . . .

(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connect to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible.

26. Regulation 1993 states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board and filed with the board with stamps affixed.

. . . .

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

Cost Recovery

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

FACTUAL BACKGROUND

28 On and between October 3, 2004, Respondent Y2 K performed a Wood Destroying Organisms Inspection ("WDO") at the subject property located at 441 N. Ellen Drive, West Covina, CA 91790.

29 On and between October 3, 2004, Respondent Dale Dawley, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report made recommendations to remove, replace, fill or reinforce the decay fungi damage, and to chemically treat the visible and accessible drywood termites and to remove and/or cover accessible pellets. The inspection report failed to include the address of the person or firm ordering the inspection report or any owner/party of interest or sent-to information. It also reported that the stall shower was water tested, when there is no stall shower. The report also made a finding and recommendation regarding the patio, yet at the subject property there is no patio. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations section 1990(b)(3), Respondents failed to report the cellulose debris and form stake in the substructure on the October 3, 2004 "complete," "separated" inspection report

The inspection report also failed to include the required separated report statement, a subcontract cost statement, a second opinion statement, and it contained a reinspection statement and a roof statement that were not in compliance with the Structural Pest Control Act.

30. On December 2, 2004, Respondent Y2K issued a standard notice of work completed and not completed (Completion Notice) on the subject address. The Completion Notice certified that all Respondent Dawley's recommendations had been completed and that the subject address was now free of active infestation or infection. The Notice also failed to include the address of the individual or firm ordering the required information such as the name or address of property owner/party of interest and the address where the report is to be sent and failed to contain a certification statement that was in compliance with the Structural Pest Control Act.

31. On December 29, 2004, escrow closed on the subject address.

32. On December 19, 2005, the Board received a complaint from the homeowner, Vivian Zavala, which alleged, inter alia, that Respondent Y2K failed to properly report conditions

related to structural pest control and failed to complete the recommended subterranean termite work prior to the close of escrow.

33. On January 9, 2006, Field Representative Michael Howe (Respondent Howe) performed the WDO Inspection and prepared the inspection report which contained 12 findings and recommendations. The Section I findings involved evidence of subterranean termites at the substructure wood timbers; decay fungi damage at the front porch wood members; evidence of drywood termite damage at the patio and exterior wood members; and evidence of subterranean termites at the exterior wood members. The report's recommendations were to trench and pressure treat for the control of subterranean termites with a state-registered chemical; to repair, replace, reinforce, or fill the decay fungi damaged wood members; to chemically treat visible and accessible drywood termite infestations and to remove and/or cover accessible pellets; and to repair, replace, reinforce or fill the drywood termite damaged wood members. The Section II finding involved evidence of cellulose debris in the substructure, with a recommendation to remove and dispose of the cellulose debris as necessary to correct. The report indicated that the subject company would handle all treatments/repairs free of charge.

The report failed to recommend removing the accessible subterranean termite tubes. It also failed to include the required separated report statement just prior to the first finding and recommendations, as well as a subcontract cost statement and a second opinion statement. The report's reinspection, certification, roof, and pesticide statements were not in compliance with the Structural Pest Control Act.

The January 9, 2006 inspection report also indicated that there was evidence of drywood termites in the attic with a recommendation to treat the reported infestations and to remove/cover accessible pellets; yet the specialist found no evidence of previous infestation.

34. On or about January 17, 2006, Board Inspector Steven Smith prepared his Report of Findings (ROF) on the incident address. The ROF consisted of the following violations: a.. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations section 1990(b)(3), Respondents failed to report the cellulose debris and form stake in the substructure on the October 3, 2004 "complete," "separated" inspection report.

b. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations sections 1990(a)(5) and (b)(5), Respondents failed to report and make a recommendation to correct the excessive moisture conditions at the plywood roof sheathing and the gap between the wall on both sides of the chimney on the east wall on the October 3, 2004 and January 9, 2006 "complete," "separated" inspection reports and in the substructure on the January 9, 2006 "complete," "separated" inspection reports..

c. Pursuant to Code sections 8516(b)(6)(7) and (b)(10) and California Code of Regulations sections 1990(a)(3) and (a)(9), Respondents failed to report and make proper recommendations regarding the evidence of subterranean termites in the substructure on the January 9, 2006 "complete," "separated" inspection report.

d. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations sections 1990(a)(3) and (4), Respondents failed to report the evidence of subterranean termites at the attic framing and subterranean termite and decay fungi damage at the substructure and exterior siding on the January 9, 2006 "complete," "separated" and "supplemental" inspection reports.

e. Pursuant to Code section 8638, Respondents failed to complete the work regarding replacing, repairing or filling the patio's decay fungi damage, removal of cellulose debris from the substructure and the trenching and/or pressure treating for the subterranean termites in the substructure and at the property's exterior on the January 9, 2006 "complete," "separated" inspection report.

f. Pursuant to California Code of Regulations section 1937.14, Respondents failed to complete the work in a quality and workmanlike manner regarding replacing the front porch load post and barge rafter decay fungi damage on the January 9, 2006 "complete," "separated" inspection report.

g. Pursuant to Code section 8638(b), Respondents failed to prepare and deliver to the person requesting the inspection, a copy of the inspection report prior to commencing work and the January 9, 2006 WDO Inspection in violation of section 8516(b) of the Code, the work was performed prior to the issuance of an inspection report

35. On or around March 4, 2006, Respondent Edward Avilez, a field representative, performed the WDO Inspection and prepared the inspection report which contained 13 findings

and recommendations. The Section I findings involved old evidence of subterranean termites at the attic and substructure wood timbers, subterranean termite damage at the substructure wood members, and evidence of decay fungi. The report's recommendations were to scrape and/or knock down and remove all evidence of subterranean termites and to remove and replace the subterranean termite and the decay fungi damaged wood members as necessary to correct. The Section II findings involved evidence of excessive moisture conditions and water stains, and cellulose debris. The recommendations were to call a tradesman to address the damaged conditions.

The report failed to include the required separated report statement prior to the first finding and recommendations, as well as a subcontract cost statement and a second opinion statement. The report's reinspection, roof, and pesticide statements were not in compliance with the Structural Pest Control Act.

36. On or around May 13, 2006, Respondent Javier Zavala, a field representative, performed the WDO Inspection and prepared the inspection report. The Section I findings involved evidence of subterranean termites at the substructure. The report made no recommendations. The Section II findings involved evidence of water stains but made no findings regarding the form stake or excessive moisture in the substructure.

The report failed to include the required separated report statement prior to the first finding and recommendations, as well as a subcontract cost statement and a second opinion statement. The report's reinspection, roof, and pesticide statements were not in compliance with the Structural Pest Control Act.

37. Respondent Y2K violated Code section 8622 when it took over four months to bring the incident address into compliance (3 months longer than the law allows) and Code sections 8516 and 8519 when it issued three completion notices, two of which certified that the work was completed, when in fact, it was not. Respondent Y2K also failed to file all of its WDO activities with the Board.

FIRST CAUSE FOR DISCIPLINE

(Failure to Properly Prepare Inspection Report and Make Recommendations For

Corrective Measures)

38. Respondents Y 2 K, Walker, Howe, Avilez, Zavala, and Dawley are subject to disciplinary action pursuant to Code section 8516 and Regulation 1990 in that they failed to prepare proper inspection reports and they failed to recommend proper corrective measures relating to findings in the inspection reports as follows:

A. On and between October 3, 2004, Respondent Dale Dawley, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report made recommendations to remove, replace, fill or reinforce the decay fungi damage, and to chemically treat the visible and accessible drywood termites and to remove and/or cover accessible pellets. Pursuant to Code section 8516(b)(6)(7) and California Code of Regulations section 1990(b)(3), Respondents failed to report the cellulose debris and form stake in the substructure on the October 3, 2004 "complete," "separated" inspection report. Respondents failed to report and make a recommendation to correct the excessive moisture conditions at the plywood roof sheathing and the gap between the wall on both sides of the chimney on the east wall on the October 3, 2004 and January 9, 2006 "complete," "separated" inspection reports and in the substructure on the January 9, 2006 "complete," "separated" inspection reports. The inspection report failed to include the address of the person or firm ordering the inspection report or any owner/party of interest or sent-to information. It also reported that the stall shower was water tested, when there is no stall shower. The report also made a finding and recommendation regarding the "patio," yet the subject property contains no patio.

The inspection report also failed to include the required separated report statement, a subcontract cost statement, a second opinion statement, and it contained a reinspection statement and a roof statement that were not in compliance with the Structural Pest Control Act.

B. On the January 9, 2006 inspection report, Respondent Howe's report failed to recommend removing the accessible subterranean termite tubes. Respondents failed to report and make a recommendation to correct the excessive moisture conditions at the plywood roof sheathing and the gap between the wall on both sides of the chimney on the east wall on the October 3, 2004 and January 9, 2006 "complete," "separated" inspection reports and in the

substructure on the January 9, 2006 "complete," "separated" inspection reports. It also failed to include the required separated report statement just prior to the first finding and recommendations, as well as a subcontract cost statement and a second opinion statement. The report's reinspection, certification, roof, and pesticide statements were not in compliance with the Structural Pest Control Act.

C. On or around March 4, 2006, Respondent Edward Avilez, a field representative, performed the WDO Inspection and prepared the inspection report. The report failed to include the required separated report statement prior to the first finding and recommendations, as well as a subcontract cost statement and a second opinion statement. The report's reinspection, roof, and pesticide statements were not in compliance with the Structural Pest Control Act.

D. On or around May 13, 2006, Respondent Javier Zavala, a field representative, performed the WDO Inspection and prepared the inspection report. The Section I findings involved evidence of subterranean termites at the substructure. The report made no recommendations. The Section II findings involved evidence of water stains but made no findings regarding the form stake or excessive moisture in the substructure.

The report failed to include the required separated report statement prior to the first finding and recommendations, as well as a subcontract cost statement and a second opinion statement. The report's reinspection, roof, and pesticide statements were not in compliance with the Structural Pest Control Act.

E. Respondents are subject to disciplinary action pursuant to Code section 8516 (b) in that they failed to file with the Board all of the WDO activities involving the incident address, no later than ten business days after the commencement of an inspection or upon completed work. All of the WDO activities were not filed with the Board.

SECOND CAUSE FOR DISCIPLINE

(Failure to Properly Complete Repairs)

39. Respondents Y 2 K, Walker, Howe, and Dawley are subject to disciplinary action pursuant to Code section 8638 in that:

Respondents Y2K, Walker, and Howe failed to complete the work regarding replacing, repairing or filling the patio's decay fungi damage, removal of cellulose debris from the substructure and the trenching and/or pressure treating for the subterranean termites in the substructure and at the property's exterior on the January 9, 2006 "complete," "separated" inspection report.

Respondents also failed to complete the work regarding the repair of the reported decay fungi and drywood termite damage. Respondent Dawley reported the damage on the October 3, 2004, inspection report that was certified as having been completed on the December 2, 2004 Completion Notice. On December 19, 2005, the Board received a complaint from the homeowner, Vivian Zavala, which alleged, inter alia, that Respondents failed to complete the recommended subterranean termite work prior to the close of escrow.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence or Fraud)

40. Respondents Y 2 K and Dawley are subject to disciplinary action pursuant to Code section 8642 in that on and between October 3, 2004, Respondent Dale Dawley, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report reported that the stall shower was water tested, when there is no stall shower. The report also made a finding and recommendation regarding the patio, yet at the subject property there is no patio.

FOURTH CAUSE FOR DISCIPLINE

(Fraud)

41. Respondents Y2K and Howe are subject to disciplinary action pursuant to Code section 8644 in that in and around January 9, 2006, Howe committed fraudulent acts as follows:

In violation of Code section 8642, Respondent Howe failed to issue a proper inspection report. The January 9, 2006 inspection report indicated that there was evidence of drywood termites in the attic with a recommendation to treat the reported infestations and to remove/cover accessible pellets; yet the specialist found no evidence of previous infestation.

FIFTH CAUSE FOR DISCIPLINE

(Poor Workmanship)

42. Respondents Y 2 K and Walker are subject to disciplinary action pursuant to Code section 8641 in that they failed to comply with Regulation 1937.14 by failing to perform the corrective repairs at the subject property in a good and workmanlike manner in the following respects:

a. Pursuant to California Code of Regulations section 1937.14, Respondents failed to complete the work in a quality and workmanlike manner regarding replacing the front porch load post and barge rafter decay fungi damage on the January 9, 2006 "complete," "separated" inspection report.

b. Respondents failed to complete the work regarding the repair of the drywood termite and fungi decay damage reported on the October 3, 2004 inspection report that was certified as completed on the December 2, 2004 Completion Notice.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Deliver and Prepare a Proper Supplemental Inspection Report)

43. Respondents Y 2 K, Walker, and Zavala, are subject to disciplinary action pursuant to Regulation section 1993 in that on or about May 19, 2006, Respondents failed to prepare and deliver a proper supplemental inspection report regarding the subject property.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Board's Notice)

44. Respondents Y 2 K and Walker are subject to discipline pursuant to Code section 8641 in that as to the subject property, it failed to comply with Code section 8622. Respondents failed to correct all of the items described in the Report of Findings within thirty calendar days of receipt of the Board's notice.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Board Regulations)

45. All Respondents are subject to disciplinary action pursuant to Code section

8641 in that they failed to comply with Code sections 8516, 8622, 8641, 8642, and 8644, as set forth in paragraphs 1 through 44 above.

OTHER MATTERS

46. Pursuant to Code section 8624, the causes for discipline established as to Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

47. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy Ann Walker as qualifying Manager.

48. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

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 4287, issued to Y 2 K Exterminating;

2. Revoking or suspending Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating;

3. Revoking or suspending Operator's License Number OPR 10501, issued to Nancy Ann Walker;

4. Revoking or suspending Field Representative's License Number FR 34165, issued to Edward Andrew Avilez, Jr.;

5. Revoking or suspending Field Representative's License Number FR 15670 issued to Michael J. Howe;

6. Revoking or suspending Field Representative's License Number FR 22365 issued to Javier Zavala;

7. Revoking or suspending Field Representative's License Number FR3978 issued to Dale Edward Dawley;

8. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward Andrew Avilez, Jr., Michael Howe, Javier Zavala, and/or Dale Edward Dawley 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;

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

DATED: 12/8/06

KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California

Complainant

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

In the Matter of the Accusation Against: **Y 2 K EXTERMINATING** Rodrigo Lopez, a.k.a. Rigo Lopez, Owner Nancy Ann Walker, Qualifying Manager 2021 Troy Avenue South El Monte, CA 91733 Company Registration Certificate No. PR 4287, **Y 2 K EXTERMINATING** Nancy Ann Walker, Branch Office Supervisor 7974 Haven Avenue, Suite 180 Rancho Cucamonga, CA 91730 Branch Office Registration No. BR 4945, and **NANCY ANN WALKER** 2021 Troy Avenue South El Monte, CA 91733 Operator's License No. OPR 10501 Respondents.	Case No. 2007-20 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

Affairs.

Y 2 K Exterminating
Company Registration Certificate No. PR 4287

2. On or about March 25, 2003, the Board issued Company Registration Certificate Number PR 4287 in Branch 3 (Termite) to Y 2 K Exterminating ("Respondent Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2 K paid a fine of $503 levied by the Board for said Respondent's violation of Business and Professions Code ("Code") section 8516, subdivision (b).

Y 2 K Exterminating
Branch Office Registration No. BR 4945

3. On or about September 15, 2003, the Board issued Branch Office Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office supervisor.

Nancy Ann Walker
Operator's License No. OPR 10501

4. On or about November 20, 2001, the Board issued Operator's License Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators, Inc. ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25, 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15, 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's operator's license will expire on June 30, 2007, unless renewed.

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.

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 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 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)

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 this subdivision or Section 8518 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 8518 or this section is 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 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:

(1) The date of the inspection and the name of the licensed field representative or operator making the inspection.

(2) The name and address of the person or firm ordering the report.

(3) The name and address of any person who is a party in interest

(4) The address or location of the property.

(5) A general description of the building or premises inspected.

(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.

. . . .

(10) Recommendations for corrective measures . . .

10. 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 . . .

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

13. 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.

14. Code section 8652 states:

Failure of a registered company 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 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 executive officer of the board or his or her duly authorized representative during business hours.

(Regulatory Provisions)

15 California Code of Regulations, title 16, section ("Regulation") 1937.14 states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

16. Regulation 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:

(1) Structural pest control license number of the person making the inspection.

(2) Signature of the Branch 3 licensee who made the inspection.

(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:

(1) Faulty Grade Level. A faulty grade level exists when the top of any foundation is even with or below the adjacent earth. The existing earth level shall be considered grade.

. . . .

(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 . . .

17. Regulation 1991 states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 9 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:

. . . .

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

18. Regulation 1993 states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board and filed with the board with stamps affixed.

. . . .

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly . . .

Cost Recovery

19. Code section 125.3 states, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations

of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

20. Between May 2004 and December 2005, Respondents Y 2 K and Nancy Walker perpetuated fraudulent acts against consumers by soliciting inspections in that they contacted Mission Grove Realty Company and fraudulently requested access to a number of properties without the homeowner, broker, or any other authorized individual having knowledge of such requests. These solicitations were made under the guise of needing to perform the "requested work." These solicitations occurred despite the fact that no work was authorized.

21. Respondents persisted in contacting Mission Grove Realty for over eight months despite the company requesting them to stop solicitation of its agents.

22. On October 26, 2005, the Board received a formal complaint from Megan Ednar, a listing agent for homeowners residing at 29542 Silver Buckle Court, Highland, CA. Ednar alleged harassment by Respondents, between August 17, 2005 and October 26, 2005, in that they were requesting payment for work that neither she nor the homeowners authorized them to perform and threatening her with a lawsuit if they did not receive payment.

23. On March 13, 2006, Board Specialist Steven Smith visited the business office of Respondents. He observed that the original field sheet and Notice of Work Completed and Not Completed were missing. Pursuant to Business and Professions Code sections 8516 and 8562, the registered company is required to retain these records for three years.

FIRST CAUSE FOR DISCIPLINE

(Fraudulent or Deceptive Practices)

24. Respondents Y 2 K and Nancy Walker are subject to disciplinary action pursuant to Code section 8642 in that between May 2004 and December 2005, Respondents engaged in fraudulent or deceptive practices as detailed in paragraphs 20 through 22 above.

SECOND CAUSE FOR DISCIPLINE

(Fraud or Misrepresentation (Post-Inspection))

25. Respondents Y 2 K and Nancy Walker are subject to disciplinary action pursuant to Code section 8644 in that between August 17, 2005 and October 26, 2005, they committed fraudulent and/or misrepresentation acts as detailed in paragraph 22 above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Records Relating to Structural Pest Control Activities)

27. Respondents Y 2 K and Nancy Walker are subject to disciplinary action pursuant to Code sections 8516 and 8652 in that they failed to keep all inspection records, including inspection reports, field notes, contracts, documents, notices of work completed, and related records, for a period of not less than three years after completion of work or operations for the control of structural pests or organisms. On March 13, 2006, Board Specialist Steven Smith visited the business office of Respondents. He observed that the original field sheet and Notice of Work Completed and Not Completed were missing.

OTHER MATTERS

28. 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 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.

29. Pursuant to Code section 8624, the causes for discipline established as to Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

30. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke

Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy Ann Walker as Qualifying Manager.

31. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

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 4287, issued to Y 2 K Exterminating;

2. Revoking or suspending Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating;

3. Revoking or suspending Operator's License Number OPR 10501, issued to Nancy Ann Walker;

4. Ordering Respondents Y 2 K Exterminating and Nancy Ann Walker, 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;

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

DATED: 10-20-06

Kelli Okuma

KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California

Complainant

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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Y 2 K EXTERMINATING
Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
(Unlicensed)
Nancy Ann Walker, Qualifying Manager
2021 Troy Avenue
South El Monte, CA 91733
Company Registration Certificate No. PR 4287,

Y 2 K EXTERMINATING
Nancy Ann Walker, Branch Office Supervisor
7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
Branch Office Registration No. BR 4945,

NANCY ANN WALKER
2021 Troy Avenue
South El Monte, CA 91733
Operator's License No. OPR 10501,

EDWARD ANDREW AVILEZ, JR.
2021 Troy Avenue
South El Monte, CA 91733
Field Representative's License No. FR 34165,

and

VICTOR R. ORTEGA
1077 Park Avenue, Suite 5
Long Beach, CA 90804
Field Representative's License No. FR35249

Respondents.

Case No. 2007-18

ACCUSATION

Complainant alleges:

PARTIES

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

Y 2 K Exterminating
Company Registration Certificate No. PR 4287

2. On or about March 25, 2003, the Board issued Company Registration Certificate Number PR 4287 in Branch 3 (termite) to Y 2 K Exterminating ("Respondent Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2 K paid a fine of $503 levied by the Board for said Respondent's violation of Business and Professions Code ("Code") section 8516, subdivision (b).

Y 2 K Exterminating
Branch Office Registration No. BR 4945

3. On or about September 15, 2003, the Board issued Branch Office Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office supervisor.

Nancy Ann Walker
Operator's License No. OPR 10501

4. On or about November 20, 2001, the Board issued Operator's License Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators, Inc. ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25, 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15, 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's operator's license will expire on June 30, 2007, unless renewed.

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Edward Andrew Avilez, Jr.
Field Representative's License No. FR 34165

5. On or about January 16, 2002, the Board issued Field Representative's License Number FR 34165 in Branch 3 to Edward Andrew Avilez, Jr. ("Respondent Avilez"), employee of Tri-Ace Termite & Pest Control ("Tri-Ace"). Respondent left the employ of Tri-Ace on September 20, 2002. On January 15, 2005, Respondent became employed by Respondent Y 2 K. Respondent's field representative's license will expire on June 30, 2007, unless renewed.

Victor R. Ortega
Field Representative's License No. FR35249

6. On or about October 24, 2002, the Board issued Field Representative's License No. FR35249 to Victor R. Ortega ("Respondent Ortega"), employee of Dewey Pest Control. Respondent's Field Representative License reflected employment with Y 2 K Exterminating and Dewey Pest Control on September 21, 2003. On June 16, 2005, Respondent's license was placed on inactive status. On June 20, 2006, Respondent's license was levied a $1500.00 fine by the Structural Pest Control Board for violation of section 8644 of the Business and Professions Code. Respondent's Field Representative license is currently inactive will expire on June 30, 2008, unless renewed.

JURISDICTION

7. 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.

8. 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.

9. 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.

10. 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 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)

11. 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 this subdivision or Section 8518 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 8518 or this section is 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 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:

. . . .

2) The name and address of the person or firm ordering the report.

3) The name and address of any person who is a party in interest.

. . . .

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 attach by wood destroying pests or organisms exists.

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 attach by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation, 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.

. . . .

10) Recommendations for corrective measures.

12. 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. Every property upon which work is completed 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 upon which work was completed pursuant to subdivision (b) of Section 8516, subdivision (b) of Section 8516.1, or Section 8518 are grounds for disciplinary action and shall subject the registered company to a fine or not more than two thousand five hundred dollars ($2,500). The registered company shall retain for three years all original notices of work completed, work not completed and activity forms. Notices of work completed and not completed shall be made available for inspection and reproduction to the executive during business hours. Original notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

13. 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 property 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 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 is 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.

14. 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.

15. 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.

16. 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 . . . is a ground for disciplinary action.

(Regulatory Provisions)

17. California Code of Regulations, title 16, section ("Regulation") 1937.14 states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

18. Regulation 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:

. . . .

(4) Earth-wood contacts.

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

(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. . . .

19. Regulation 1991 states, in pertinent part:

> (a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 9 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:
>
> . . . .
>
> (5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.
>
> . . . .
>
> (8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under Section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendations shall be made to either:
>
> (A) Enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or
> (B) use another all encompassing method of treatment which exterminates the infestation of the structure, or
> (C) locally treat by any or all of the following:
> 1. exposing the infested area(s) for local treatment,
> 2. removing the infested wood,
> 3. using another method of treatment which exterminates the infestation.
>
> When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.
>
> When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

20. Regulation 1993 states, in pertinent part:

> All of the following reports must be in compliance with the requirements

of Section 8516 of the code. All reports must be on the form prescribed by the board and filed with the board with stamps affixed.

. . . .

(c) A limited report is the report on only part of a structure. Such a report shall have a diagram of the area inspected and shall specifically indicate which portions of the structure were inspected with recommendation for further inspection of the entire structure and the name of the person or agency requesting a limited report.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

Cost Recovery

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

FACTUAL BACKGROUND

22. On August 4, 2004, through January 4, 2006, Respondent Y2 K performed Wood Destroying Organisms Inspections ("WDO") at the subject property located at 123 E. Via Vaquero, San Dimas, CA 91773.

23. On August 4, 2004, Respondent Victor Ortega, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report made findings of the following: evidence of drywood termites at the deck/patio joists and wood members, evidence of decay fungi damage at deck/patio wood members, evidence of drywood termites and damage at the exterior trims, roof sheathing, window trims and studs, and decay fungi damage at the exterior trims, roof sheathing, window trims and blocking, and evidence of earth-to-wood contact at the exterior trims and siding. The inspection report made recommendations to chemically treat the visible and accessible drywood termite infestations, to remove and/or cover accessible termite pellets, to repair, replace and/or reinforce,

or fill the drywood termite and to lower the soil to correct the earth-to-wood contact. On the inspection report, Respondent failed to make proper findings regarding the excessive moisture condition at the living room and hallways responsible for the reported infections. The inspection report failed to include the address of the individual or firm ordering the required information such as the name or address of property owner/party of interest and the address where the report is to be sent.

On September 24, 2005, November 19, 2005, December 1, 2005, and January 4, 2006, Respondent Edward Avilez, a field representative, performed inspections and prepared the inspection reports at the subject property. The inspection reports failed to make findings of the following: evidence of drywood termites and damage, evidence of decay fungi and damage and evidence of earth-to-wood contact. The inspection report made recommendations to chemically treat the visible and accessible drywood termite infestations, to remove and/or cover accessible termite pellets, to repair, replace and/or reinforce, The inspection reports failed to include accurate information regarding the attic, decking, accessibility and other features.

On the inspection reports, Respondent failed to make proper findings regarding the excessive moisture condition at the living room and hallways responsible for the reported infections. The reports also indicated that there was no deck; however, the subject property contains an attached wood deck at the rear. The inspection reports also failed to include the address of the individual or firm ordering the required information such as the name or address of property owner/party of interest and the address where the report is to be sent.

24. On October 8, 2004, Respondent Y2K issued a standard notice of work completed and not completed (Completion Notice) on the subject address. The Completion Notice certified that all Respondent Ortega's recommendations but one, involving exterior earth-wood contact, had been completed and failed to include the address of the individual or firm ordering the required information such as the name or address of property owner/party of interest and the address where the report is to be sent. The Completion Notice also stated the subject address was now free of evidence of active infestation or infection in the visible and accessible areas.

25. On June 7, 2005, after escrow closed on the subject address, the homeowner, Margo Boss, requested that another structural pest control company, Speed Pro, inspect the subject address. After reviewing the inspection report wherein Speed Pro made a number of findings including earth-to-wood contact at the exterior and recommendations including fumigation of the structure for drywood termites, the homeowner became aware that, among other things, Respondents failed to complete the necessary work prior to the close of escrow.

26. On September 16, 2005, the Board received a complaint from the homeowner which alleged that Respondents failed to properly report conditions related to structural pest control, failed to make proper recommendations for corrective measures and failed to properly complete the necessary work prior to the close of escrow. After the complaint was filed and the Board issued their Report of Findings, Respondent Y2K took over six months to bring the subject address into compliance, issuing five different Completion Notices, four of which certified that the work had been completed, when in fact it had not been. Furthermore, Respondent Y2K failed to file all of the required documentation regarding WDO activities at the subject address.

FIRST CAUSE FOR DISCIPLINE

(Failure to Properly Prepare Inspection Report and Make Recommendations For Corrective Measures)

27. Respondents Y 2 K, Walker, Avilez, and Ortega are subject to disciplinary action pursuant to Code section 8516 and Regulation 1990 in that from August 4, 2004, through January 4, 2006, they failed to prepare proper inspection reports as follows:

A. The inspection reports made the following findings: evidence of drywood termites at the deck/patio joists and wood members, evidence of decay fungi damage at deck/patio wood members, evidence of drywood termites and damage at the exterior trims, roof sheathing, window trims and studs, and decay fungi damage at the exterior trims, roof sheathing, window trims and blocking, and evidence of earth-to-wood contact at the exterior trims and siding. Evidence indicated that the infestation extended into the subject property's inaccessible

areas, including the attic, but no such findings were noted and none of the inspection reports even noted the presence of the attached rear deck or inaccessible areas, such as the attic. On the inspection reports, Respondents failed to make proper findings regarding the excessive moisture condition at the living room and hallways responsible for the reported infections.

B. Respondents are subject to disciplinary action pursuant to Code section 8516(b)(10) in that from in and around August 4, 2004 through January 4, 2006, they failed to recommend proper corrective measures relating to findings in the inspection reports as follows:

The inspection reports made recommendations to chemically treat the visible and accessible drywood termite infestations, to remove and/or cover accessible termite pellets, to repair, replace and/or reinforce, or fill the drywood termite and to lower the soil to correct the earth-to-wood contact. On the inspection reports, Respondents failed to make proper recommendations for corrective measures regarding the excessive moisture condition at the living room and hallways responsible for the reported infections. Evidence indicated that the termite infestation extended into the subject property's inaccessible areas, including the attic, but none of the inspection reports of the subject property contained recommendations for corrective measures or even noted the presence of the attached rear deck or inaccessible areas, such as the attic.

C. Respondents are subject to disciplinary action pursuant to Code section 8516 (b) in that they failed to file with the Board all of the WDO activities involving the incident address no later than ten business days after the commencement of an inspection or upon completed work. Completion Notices for October 8, 2004, January 19, 2006, February 25, 2006 and May 11, 2006, were not filed with the Board.

D. Respondents are subject to disciplinary action pursuant to Code section 8516(b)(2)(3), in that all of the inspection reports regarding the subject property failed to include required information such as the name and address of the person or firm requesting the report, the name and address of any person who is a party in interest and the address where the report is to be sent.

SECOND CAUSE FOR DISCIPLINE

(Failure to Properly Complete Repairs)

28. Respondents Y 2 K, Walker, Avilez, and Ortega are subject to disciplinary action pursuant to Code section 8638 in that on approximately October 4, 2004, through January 4, 2006:

Respondents failed to properly complete repairs by their failure to exterminate the drywood termite infestations and decay fungi damage and satisfactorily complete related repairs which were certified as having been completed and exterminated on the October 8, 2004, November 19, 2005, December 1, 2005, January 19, 2006, January 25, 2006, February 26, 2006, and May 11, 2006 Completion Notices. At the siding and eaves, the roof sheathing was not properly sanded and painted and at the wood deck, the prime coat was still visible on the eaves and latticework. At present, the reported drywood termite infestation, decay fungi and related damage remains at the subject property.

THIRD CAUSE FOR DISCIPLINE

(Failure to Prepare Proper Inspection Reports)

29 Respondents Y 2 K, Walker, Avilez, and Ortega are subject to disciplinary action pursuant to Regulation section 1993(d)(e) in that on or about October 4, 2004, through January 4, 2006, Respondents failed to properly prepare and deliver proper inspection reports regarding the subject property.

FOURTH CAUSE FOR DISCIPLINE

(Fraud)

30. Respondents Y2K and Walker are subject to disciplinary action pursuant to Code section 8644 in that from approximately October 8, 2004, through May 11, 2006, they committed fraudulent acts as follows:

In violation of Code section 8644, the October 8, 2004, January 19, 2006,

February 25, 2006, and May 11, 2006 Completion Notices all certified that the subject address was free of active infestation or infection, when in fact such infestation and infection remain.

FIFTH CAUSE FOR DISCIPLINE

(Poor Workmanship)

31. Respondents Y 2 K and Walker are subject to disciplinary action pursuant to Code section 8641 in that they failed to comply with Regulation 1937.14 by failing to perform the corrective repairs at the subject property in a good and workmanlike manner in the following respects:

Failure to exterminate the drywood termite infestations and decay fungi damage and make related repairs which were certified as having been completed and exterminated on the October 8, 2004, January 19, 2006, February 25, 2006, and May 11, 2006 Completion Notices. At the siding and eaves, the roof sheathing was not properly sanded and painted and at the wood deck, the prime coat was still visible on the eaves and latticework. At present, the reported drywood termite infestation, decay fungi and related damage remains at the subject property.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Board's Notice)

32. Respondents Y 2 K and Walker are subject to discipline pursuant to Code section 8641, in that as to the subject property, it failed to comply with Code section 8622. Respondents failed to correct all of the items described in the November 4, 2005 Report of Findings (ROF) within thirty calendar days of receipt of the Board's notice (received on November 15, 2005.)

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Board Regulations)

33 All Respondents are subject to disciplinary action pursuant to Code section 8641, in that they failed to comply with Code sections 8516, 8518, 8622, 8638, 8641, and 8644 and sections 1937.14, 1990, 1991, and 1993 of the California Code of Regulations, as set forth in

paragraph 1 through 32 above.

OTHER MATTERS

34. Pursuant to Code section 8624, the causes for discipline established as to Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

35. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy Ann Walker as qualifying Manager.

36. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

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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 4287, issued to Y 2 K Exterminating;

2. Revoking or suspending Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating;

3. Revoking or suspending Operator's License Number OPR 10501, issued to Nancy Ann Walker;

4. Revoking or suspending Field Representative's License Number FR 34165, issued to Edward Andrew Avilez, Jr.;

5. Revoking or suspending Field Representative's License Number FR 35249 issued to Victor R. Ortega;

6. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward Andrew Avilez, Jr., and/or Victor R. Ortega 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;

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

DATED: 9/13/06

KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California

Complainant

03591110-LA2006502427
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phd; 03/28/2006

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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Y 2 K EXTERMINATING
Rodrigo Lopez, a.k.a. Rigo Lopez, Owner
(Unlicensed)
Nancy Ann Walker, Qualifying Manager
2021 Troy Avenue
South El Monte, CA 91733
Company Registration Certificate No. PR 4287,

Y 2 K EXTERMINATING
Nancy Ann Walker, Branch Office Supervisor
7974 Haven Avenue, Suite 180
Rancho Cucamonga, CA 91730
Branch Office Registration No. BR 4945,

NANCY ANN WALKER
2021 Troy Avenue
South El Monte, CA 91733
Operator's License No. OPR 10501,

EDWARD ANDREW AVILEZ, JR.
2021 Troy Avenue
South El Monte, CA 91733
Field Representative's License No. FR 34165,

and

DALE EDWARD DAWLEY
12190 Fineview Street
El Monte, CA 91733
Field Representative's License No. FR33978

Respondents.

Case No. 2007-14

ACCUSATION

Complainant alleges:

PARTIES

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

Y 2 K Exterminating
Company Registration Certificate No. PR 4287

2. On or about March 25, 2003, the Board issued Company Registration Certificate Number PR 4287 in Branch 3 (termite) to Y 2 K Exterminating ("Respondent Y 2 K"), with Rodrigo Lopez, also known as Rigo Lopez ("Lopez"), as owner and Nancy Ann Walker ("Respondent Walker"), as qualifying manager. On October 18, 2005, Respondent Y 2 K paid a fine of $503 levied by the Board for said Respondent's violation of Business and Professions Code ("Code") section 8516, subdivision (b).

Y 2 K Exterminating
Branch Office Registration No. BR 4945

3. On or about September 15, 2003, the Board issued Branch Office Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office supervisor.

Nancy Ann Walker
Operator's License No. OPR 10501

4. On or about November 20, 2001, the Board issued Operator's License Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators, Inc. ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25, 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15, 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's operator's license will expire on June 30, 2007, unless renewed.

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Edward Andrew Avilez, Jr.
Field Representative's License No. FR 34165

5. On or about January 16, 2002, the Board issued Field Representative's License Number FR 34165 in Branch 3 to Edward Andrew Avilez, Jr. ("Respondent Avilez"), employee of Tri-Ace Termite & Pest Control ("Tri-Ace"). Respondent left the employ of Tri-Ace on September 20, 2002. On January 15, 2005, Respondent became employed by Respondent Y 2 K. Respondent's field representative's license will expire on June 30, 2007, unless renewed.

Dale Edward Dawley
Field Representative's License No. FR33978

6. On or about November 7, 2001, the Board issued Field Representative's License No. FR33978 to Dale Edward Dawley ("Respondent Dawley"), employee of Termite Masters, Inc., Respondent left the employ of Termite Masters on February 1, 2003. On April 15, 2003, Respondent became employed with No Nonsense Termite Company Inc., and left its employment on July 24, 2003. On August 25, 2004, Respondent became employed by Respondent Y2K. Respondent's Field Representative license will expire on June 30, 2007 unless renewed.

JURISDICTION

7. 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.

8. 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.

9. 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.

10. 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 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)

11. 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 this subdivision or Section 8518 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 8518 or this section is 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 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:

. . . .

2) The name and address of the person or firm ordering the report.

3) The name and address of any person who is a party in interest.

. . . .

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 attach by wood destroying pests or organisms exists.

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 attach by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation, 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.

. . . .

10) Recommendations for corrective measures.

12. 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. Every property upon which work is completed 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 upon which work was completed pursuant to subdivision (b) of Section 8516, subdivision (b) of Section 8516.1, or Section 8518 are grounds for disciplinary action and shall subject the registered company to a fine or not more than two thousand five hundred dollars ($2,500). The registered company shall retain for three years all original notices of work completed, work not completed and activity forms. Notices of work completed and not completed shall be made available for inspection and reproduction to the executive during business hours. Original notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

13. 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 property 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 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 is 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.

14. 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.

15. 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.

16. Code section 8642 states:

That "[t]he commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

(Regulatory Provisions)

17. California Code of Regulations, title 16, section ("Regulation") 1937.14 states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

18. Regulation 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.

. . . .

(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

. . . .

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

. . . .

(4) Earth-wood contacts.

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

(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. . . .

19. Regulation 1991 states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 9 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:

. . . .

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

. . . .

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under Section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendations shall be made to either:

(A) Enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or
(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or
(C) locally treat by any or all of the following:
1. exposing the infested area(s) for local treatment,
2. removing the infested wood,
3. using another method of treatment which exterminates the infestation.

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

20. Regulation 1993 states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board and filed with the board with stamps affixed.

. . . .

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

(e) A reinspection report is the report on the inspections of item(s) completed as recommended on an original report or subsequent report(s). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

Cost Recovery

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

FACTUAL BACKGROUND

22. On and between January 21, 2005, Respondent Y2 K performed a Wood Destroying Organisms Inspection ("WDO") at the subject property located at 1805 Raintree Place, San Bernardino, CA 92408.

23. On or around January 21, 2005, Respondent Dale Dawley, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report made recommendations to repair, replace and/or reinforce the decay fungi damage, to chemically treat the visible and accessible drywood termites and to remove and/or cover accessible pellets, to repair, replace and/or reinforce the drywood termite damage.

On or around January 21, 2005, Respondent Edward Avilez, a field representative, performed the inspection and prepared the inspection report at the subject property. The inspection report failed to include accurate information regarding the foundation, decking, accessibility and other features. It indicated that the substructure area was a crawl, was 60% accessible and was dry with "above grade" ventilation. The structure is on a concrete slab and is 90% inaccessible. The report also indicated that the stall shower was tested and that there was no

deck; however, the subject property contains no stall shower and does contain an attached wood deck.

24. On February 9, 2005, Respondent Y2K issued a standard notice of work completed and not completed (Completion Notice) on the subject address. The Completion Notice certified that all Respondent Dawley's recommendations had been completed and failed to include the address of the individual or firm ordering the required information such as the name or address of property owner/party of interest and the address where the report is to be sent.

25. On March 1, 2005, escrow closed on the subject address. On June 25, 2005, the homeowners, David and Emelda Coles, requested that another structural pest control company, Terminix, inspect the subject address. Terminix made recommendations to remove decking and earth-to-wood contact at the fence post and to fumigate the structure for drywood termite and water damage.

26. On August 15, 2005, the Board received a complaint from the homeowners which alleged that Respondent Y2K failed to properly report conditions related to structural pest control, failed to make proper recommendations for corrective measures and failed to properly complete the necessary work prior to the close of escrow.

FIRST CAUSE FOR DISCIPLINE

(Failure to Properly Prepare Inspection Report and Make Recommendations For Corrective Measures)

27. Respondents Y 2 K, Walker and Dawley are subject to disciplinary action pursuant to Code section 8516 and Regulation 1990 in that in and around January 21, 2005, they failed to prepare a proper inspection report as follows:

A. On the January 21, 2005 inspection report, Respondents failed to report the earth-to-wood contact at the fence post, the evidence of excessive moisture condition (water damage) at the garage siding and at the linoleum adjacent to the stool in the downstairs bathroom and adjacent to the bathtub in the upstairs bathroom, and the sagging floor boards at the attached wood deck. Respondents also failed to report that there was a deck attached to the structure and erroneously included findings regarding a nonexistent stall shower in the report.

B. Respondents are subject to disciplinary action pursuant to Code section 8516(b)(10) in that in and around January 21, 2005, they failed to recommend proper corrective measures relating to findings in the inspection report as follows:

On the January 21, 2005, inspection report, Respondents failed to make a proper recommendation for corrective measures regarding the evidence of drywood termites reported at the exterior framing of the subject property.

C. Respondents are subject to disciplinary action pursuant to Code section 8516 in that in and around January 21, 2005, they failed to report damage at the subject property's doorjamb and wood trim.

D. Respondents are subject to disciplinary action pursuant to Code section 8516 (b) in that they failed to file with the Board all of the WDO activities involving the incident address, no later than ten business days after the commencement of an inspection or upon completed work. Two of the October 8, 2005 inspection reports, all three of the October 28, 2005 inspection reports and the March 4, 2006 Completion Notice were not filed with the Board.

E. Respondents are subject to disciplinary action pursuant to Code section 8516(b)(2)(3) in that Respondents failed to indicate the name and address of the person or firm requesting the report, and the name and address of any person who is a party in interest. The January 21, 2005 inspection report failed to include the address of the person or firm requesting the report and the name of the person who is a party in interest.

SECOND CAUSE FOR DISCIPLINE

(Failure to Properly Complete Repairs)

28. Respondents Y 2 K, Walker and Dawley are subject to disciplinary action pursuant to Code section 8638 in that approximately January 21, 2005 and February 9, 2005:

A. Respondents failed to complete the work regarding the repair of the drywood termite damage reported at the exterior wood timbers. The damage was reported on the January 21, 2005, inspection report and was certified as having been completed on the February 9, 2005 Completion Notice. At present, drywood termite damage remains at the

reported area.

B. Respondents also failed to complete the work, regarding the lowering of the reported earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-to-wood contact was reported on the October 22, 2005, and three different October 28, 2005 inspection reports, and was certified as having been completed on the December 4, 2005 Completion Notice. At present, earth-to-wood contact remains at the fence posts.

C. Respondents also failed to complete the work regarding the repair of the reported water stained/damaged linoleum in the downstairs bathroom. The water stained/damaged linoleum was reported on three different October 8, 2005 inspection reports. The October 22, 2005 inspection report and three different October 28, 2005 inspection reports were certified as having been completed on the December 4, 2005 Completion Notice. At present, water stained/damaged linoleum remained at the subject property's linoleum bathroom floor.

D. Respondents also failed to complete the work regarding the lowering of the reported earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-to-wood contact was reported on the October 22, 2005, and three different October 28, 2005 inspection reports, and was certified as having been completed on the March 4, 2006 Completion Notice. At present, earth-to-wood contact remains at the fence posts.

THIRD CAUSE FOR DISCIPLINE

(Failure to Deliver and Prepare a Proper Inspection Report)

29 Respondents Y 2 K, Walker and Dawley are subject to disciplinary action pursuant to Regulation section 1993(d)(e) in that on or about October 8, 2005, Respondents failed to prepare and deliver a proper inspection report regarding the subject property.

FOURTH CAUSE FOR DISCIPLINE

(Fraud)

30. Respondent Avilez is subject to disciplinary action pursuant to Code section 8642 in that in and around January 21, 2005, he committed fraudulent acts as follows:

In violation of Code section 8642, Respondent failed to issue a proper inspection report. The January 21, 2005 inspection report indicated that the substructure was a "crawl/ accessible/dry," when the structure is on a concrete slab. The report indicated that the stall shower "tested OK," when the subject property contains no stall shower. The report indicated foundation was "concrete above grade," the porches/steps were "concrete earth fill" and that the ventilation "appears OK above grade" when the structure is on a concrete slab. Also, the report indicated the attic was, "60% accessible," when in fact it is 90% inaccessible. Finally, under decks/patios, the report it indicated "none." However, the subject house contains an attached wood deck.

FIFTH CAUSE FOR DISCIPLINE

(Poor Workmanship)

31. Respondents Y 2 K and Walker are subject to disciplinary action pursuant to Code section 8641 in that they failed to comply with Regulation 1937.14 by failing to perform the corrective repairs at the subject property in a good and workmanlike manner in the following respects:

a. Respondents' patchwork repair of the decay fungi damage at the front porch pillar was excessive, sloppily applied, and not properly sanded.

b. Respondents' repair of the unreported damage at the garage doorjamb included wood trim that was not properly caulked, nailed or puttied.

c.. Respondents failed to complete the work regarding the repair of the drywood termite damage reported at the exterior wood timbers. The damage was reported on the January 21, 2005, inspection report and was certified as having been completed on the February 9, 2005 Completion Notice. At present, drywood termite damage remains.

d. Respondents also failed to complete the work, regarding the lowering of the reported earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-to-wood contact was reported on the October 22, 2005, and three different October 28, 2005 inspection reports, and was certified as having been completed on the December 4, 2005 Completion Notice. At present, earth-to-wood contact remains at the fence posts.

e. Respondents also failed to complete the work regarding the repair of the reported

water stained/damaged linoleum in the downstairs bathroom. The water stained/damaged linoleum was reported on three different October 8, 2005 inspection reports, the October 22, 2005 inspection report, and three different October 28, 2005 inspection reports and was certified as having been completed on the December 4, 2005 Completion Notice. At present, the reported water stained and damaged linoleum remains at the subject property's linoleum bathroom floor.

f. Respondents also failed to complete the work regarding the lowering of the reported earth-to-wood contact at the fence posts attached to the garage and chimney. The earth-to-wood contact was reported on the October 22, 2005, and three different October 28, 2005 inspection reports, and was certified as having been completed on the March 4, 2006 Completion Notice. At present, earth-to-wood contact remains at the fence posts in the subject property's exterior.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Board's Notice)

32. Respondents Y 2 K and Walker are subject to discipline pursuant to Code section 8641 in that as to the subject property, it failed to comply with Code section 8622 Respondents failed to correct all of the items described in the October 3, 2005 Report of Findings, within thirty calendar days of receipt of the Board's notice dated March 4, 2006.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Board Regulations)

33. All Respondents are subject to disciplinary action pursuant to Code section 8641 in that they failed to comply with Code section 8516, 8518, 8622, and 8642 as set forth in paragraph 1 through 32 above.

OTHER MATTERS

34. Pursuant to Code section 8624, the causes for discipline established as to Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

35. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy Ann Walker as qualifying Manager.

36. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

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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 4287, issued to Y 2 K Exterminating;

2. Revoking or suspending Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating;

3. Revoking or suspending Operator's License Number OPR 10501, issued to Nancy Ann Walker;

4. Revoking or suspending Field Representative's License Number FR 34165, issued to Edward Andrew Avilez, Jr.;

5. Revoking or suspending Field Representative's License Number FR3978 issued to Dale Edward Dawley;

6. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward Andrew Avilez, Jr., and/or Dale Edward Dawley 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;

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

DATED: 8/15/06

(for)

KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California

Complainant

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phd; 03/28/2006

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **Y 2 K EXTERMINATING** Rodrigo Lopez, a.k.a. Rigo Lopez, Owner Nancy Ann Walker, Qualifying Manager 2021 Troy Avenue South El Monte, CA 91733 Company Registration Certificate No. PR 4287, **Y 2 K EXTERMINATING** Nancy Ann Walker, Branch Office Supervisor 7974 Haven Avenue, Suite 180 Rancho Cucamonga, CA 91730 Branch Office Registration No. BR 4945, **NANCY ANN WALKER** 2021 Troy Avenue South El Monte, CA 91733 Operator's License No. OPR 10501, **EDWARD ANDREW AVILEZ, JR.** 2021 Troy Avenue South El Monte, CA 91733 Field Representative's License No. FR 34165, and **JUAN MANUEL ARTEAGA** 3831 Arden Drive El Monte, CA 91731 Registered Applicator's License No. RA 9518 Respondents.	Case No. 2006-61 **ACCUSATION**

Complainant alleges:

PARTIES

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

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3. On or about September 15, 2003, the Board issued Branch Office Registration Number BR 4945 to Respondent Y 2 K with Respondent Walker as branch office supervisor.

Nancy Ann Walker
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4. On or about November 20, 2001, the Board issued Operator's License Number OPR 10501 in Branch 3 to Respondent Walker, employee of Gallatin Exterminators, Inc. ("Gallatin"). Respondent left the employ of Gallatin on February 11, 2003. On March 25, 2003, Respondent became the qualifying manager for Respondent Y 2 K. On September 15, 2003, Respondent became the branch office supervisor for Respondent Y 2 K. Respondent's operator's license will expire on June 30, 2007, unless renewed.

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Field Representative's License No. FR 34165

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Juan Manuel Arteaga
Registered Applicator's License No. RA 9518

6. On or about May 13, 1998, the Board issued Registered Applicator's License Number RA 9518 to Juan Manuel Arteaga ("Respondent Arteaga"), employee of Termicon Exterminators, Inc. Respondent's registered applicator's license expired on May 13, 2004.

JURISDICTION

7. 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.

8. 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.

9. 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.

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.

STATUTORY PROVISIONS

10. 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 this subdivision or Section 8518 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 8518 or this section is 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 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 . . .

11. Code section 8550 states, in pertinent part:

(a) It is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.

(b) Notwithstanding subdivision (a), an unlicensed individual may solicit pest control work on behalf of a structural pest control company only if the company is registered pursuant to this chapter, and the unlicensed individual does not perform or offer to perform any act for which an operator, field representative, or applicator license is required pursuant to this chapter. As used in this subdivision, to "solicit pest control work" means to introduce consumers to a registered company and the services it provides, to distribute advertising literature, and to set appointments on behalf of a licensed operator or field representative.

(c) It is unlawful for an unlicensed individual, soliciting pest control work on behalf of a registered structural pest control company pursuant to subdivision (b), to perform or offer to perform any act for which an operator, field representative, or applicator license is required, including, but not limited to, performing or offering pest control evaluations or inspections, pest identification, making any claims of pest control safety or pest control efficacy, or to offer price quotes other than what is provided and printed on the company advertising or literature, or both . . .

12. Code section 8639 states:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter [the Structural Pest Control Act] or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.

13. 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.

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

15. Code section 8652 states:

Failure of a registered company 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 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 executive officer of the board or his or her duly authorized representative during business hours.

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Cost Recovery

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

FACTUAL BACKGROUND

17. On and between May 6, 2004, and August 17, 2004, Respondent Y 2 K (hereinafter "Y 2 K") reported and filed with the Board the addresses of approximately 1,108 properties that were allegedly inspected by Y 2 K's licensed field representatives Victor Romero ("Romero"), Anthony Munoz, Freddy Duron, and Dale Edward Dawley ("Dawley"). Approximately 891 of those inspections were allegedly performed by Romero.[1/] Y 2 K also reported and filed with the Board the addresses of approximately 483 properties where structural pest control work was completed on behalf of Y 2 K.[2/]

18. On and between November 1, 2004, and November 30, 2004, Y 2 K reported and filed with the Board the addresses of approximately 645 properties that were allegedly inspected by Romero and Dawley and approximately 314 properties where structural pest control work was completed on behalf of Y 2 K.[3/]

19. On and between February 1, 2005, and February 28, 2005, Y 2 K reported and filed with the Board the addresses of approximately 298 properties that were allegedly inspected by Dawley.

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1. Based upon the information provided by Respondent Y 2 K, Romero allegedly performed an average of 14 to 16 Wood Destroying Pests and Organisms inspections per day.

2. The information provided by Respondent indicates that Respondent completed an average of 10 or 11 jobs (corrective repairs allegedly recommended by Respondent's field representatives) per day.

3. Romero allegedly performed an average of 11 inspections per day; Dawley allegedly performed an average of 13 inspections per day. Respondent completed an average of 16 jobs per day.

20. In or about August 2005, Y 2 K reported and filed with the Board the addresses of approximately 517 properties that were allegedly inspected by Respondent Avilez (hereinafter "Avilez")[4/] and approximately 366 properties that were allegedly inspected by Dawley.

21. On September 14, 2005, and September 19, 2005, Board Specialist Steven R. Smith ("Smith") went to Y 2 K's office located in South El Monte, California, and requested copies of the pest control firm's inspection records, including inspection reports and inspector's field sheets for the last three years. Y 2 K's office personnel were unable to produce any of the requested documentation, with the exception of two field sheets for inspections conducted on February 8, 2005.

22. On and between September 1, 2005, and September 25, 2005, Y 2 K reported and filed with the Board the addresses of approximately 465 properties that were allegedly inspected by Avilez, approximately 347 properties that were allegedly inspected by Dawley, and 13 properties that were allegedly inspected by Mike Simpson ("Simpson").

23. On September 26, 2005, Smith returned to Y 2 K's office and met with the owner, Lopez. Lopez told Smith that Y 2 K's inspectors were Dawley, Simpson, and Avilez and its crew members were Elpidio Perez, Alan Spencer, and Respondent Arteaga. Respondent Arteaga was out working in the field that day, although his registered applicator's license had expired on May 13, 2004. Lopez admitted in a declaration provided to Smith that unlicensed individuals had been making inspections on behalf of Y 2 K. Smith gave a list of properties to the operations manager, Robert Lopez, and requested copies of the inspection reports and field sheets pertaining to the inspections performed at the properties.

24. On October 4, 2005, Smith went to Y 2 K's office in South El Monte and asked Robert Lopez whether he had the documents Smith had requested on September 26, 2005. Robert Lopez did not have the requested documentation.

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4. Avilez allegedly performed an average of 22 inspections per day. On August 11, 2005, Avilez allegedly performed 45 inspections throughout Southern California, including Hemet, Norwalk, Altadena, Perris, San Bernardino, Chino, Arcadia, Los Angeles, La Mirada, Fontana, Moreno Valley, Lake Elsinore, Canyon Country, Montebello, Chatsworth, Murrieta, Sun City, Alhambra, Montclair, Riverside, and Westchester.

25. On October 22, 2005, Smith met with Avilez. Avilez told Smith that he normally performed between five and seven inspections per day. Smith showed Avilez documentation indicating that he was performing 20 to 40 inspections per day. Avilez told Smith that he had a signature stamp that the office used to stamp his inspection reports and that he had "lost track of it." Avilez suggested to Smith that someone must be using the signature stamp to stamp inspection reports that were not his, which would explain the figures. Smith told Avilez that he was responsible for checking the contents and accuracy of his inspection reports before he signs them and that no one should have access to his signature stamp.

Respondent Y 2 K Exterminating:

FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Individuals)

26. Respondent Y 2 K is subject to disciplinary action pursuant to Code section 8639 in that in and between May 2004, and October 2005, it aided or abetted, knowingly combined or conspired with, or acted as agent or partner or associate, or otherwise, of unlicensed individuals, including, but not limited to, Respondent Arteaga, to evade the provisions of the Structural Pest Control Act.

SECOND CAUSE FOR DISCIPLINE

(Failure to Make Bona Fide WDO Inspections)

27. Respondent Y 2 K is subject to disciplinary action pursuant to Code section 8641 in that in and between May 2004, and October 2005, Respondent furnished Wood Destroying Pests and Organisms ("WDO") inspection reports to an unknown number of consumers without the making of bona fide inspections of the consumers' premises for wood-destroying pests or organisms in that the WDO inspections were performed by unlicensed individuals.

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THIRD CAUSE FOR DISCIPLINE

(Fraud)

28. Respondent Y 2 K is subject to disciplinary action pursuant to Code section 8642 in that in and between May 2004, and October 2005, it committed fraudulent acts as follows:

a. Respondent perpetuated a fraud against the Board and consumers by aiding or abetting, knowingly combining or conspiring with, or acting as agent or partner or associate or otherwise, of unlicensed individuals, by allowing or permitting said unlicensed individuals to conduct inspections of the consumers' premises for wood-destroying pests or organisms, therefore depriving an unknown number of consumers of bona fide WDO inspections of their properties.

b. Respondent falsely represented on its report forms or documentation submitted to the Board that its WDO inspections were performed by licensed field representatives, including Victor Romero, Anthony Munoz, Freddy Duron, Dale Edward Dawley, Mike Simpson, and Respondent Avilez, when, in fact, an known number of inspections were conducted by unlicensed individuals.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records Relating to Structural Pest Control Activities)

29. Respondent Y 2 K is subject to disciplinary action pursuant to Code section 8652 in that it failed to keep all of its inspection records, including inspection reports, field notes, contracts, documents, notices of work completed, and related records, for a period of not less than three years after completion of work or operations for the control of structural pests or organisms. Further, Respondent failed to make its inspection records available to Board Specialist Steven R. Smith on September 14, 2005, September 19, 2005, September 26, 2005, and October 4, 2005.

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Respondent Edward Andrew Avilez, Jr.

FIFTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Individuals)

30. Respondent Avilez is subject to disciplinary action pursuant to Code section 8639 in that in and between January 15, 2005, and October 2005, he aided or abetted, knowingly combined or conspired with, allowed his field representative's license to be used by, or acted as agent or partner or associate, or otherwise, of unlicensed individuals, to evade the provisions of the Structural Pest Control Act, as follows: Respondent Avilez allowed Respondent Y 2 K to use his signature stamp to stamp Wood Destroying Pests and Organisms inspection reports prepared by unlicensed individuals.

Respondent Juan Manuel Arteaga

SIXTH CAUSE FOR DISCIPLINE

(Unlicensed Activity)

31. Respondent Juan Manuel Arteaga is subject to disciplinary action pursuant to Code section 8641 in that on or about September 26, 2005, he failed to comply with Code section 8550, subdivision (a), by engaging in or offering to engage in the business or practice of structural pest control when, in fact, his registered applicator's license was not valid, as set forth in paragraph 6 above.

OTHER MATTERS

32. 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 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.

33. Pursuant to Code section 8624, the causes for discipline established as to Respondent Y 2 K Exterminating likewise constitute causes for discipline against Nancy Ann Walker regardless of whether Nancy Ann Walker had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Y 2 K Exterminating.

34. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 4287 issued to Y 2 K Exterminating, with Nancy Ann Walker as qualifying Manager.

35. Pursuant to Code section 8624, if Operator's License Number OPR 10501, issued to Nancy Ann Walker, is suspended or revoked, the Board may suspend or revoke Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating with Nancy Ann Walker as branch office supervisor.

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 4287, issued to Y 2 K Exterminating;

2. Revoking or suspending Branch Office Registration Number BR 4945, issued to Y 2 K Exterminating;

3. Revoking or suspending Operator's License Number OPR 10501, issued to Nancy Ann Walker;

4. Revoking or suspending Field Representative's License Number FR 34165, issued to Edward Andrew Avilez, Jr.;

5. Revoking or suspending Registered Applicator's License Number RA 9518, issued to Juan Manuel Arteaga;

6. Ordering Respondents Y 2 K Exterminating, Nancy Ann Walker, Edward Andrew Avilez, Jr., and/or Juan Manuel Arteaga, to pay the Structural Pest Control Board the

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reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 3/31/06

KELLI OKUMA
Registrar
Structural Pest Control Board
Department of Consumer Affairs
State of California

Complainant

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