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**FILED**
Date 8/12/16 By

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

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| In the Matter of the Accusation Against:<br><br>**THE X-TERMINATOR TERMITE CONTROL, CLAUDIA GALLEGOS, OWNER, DANIEL ANTHONY RODRIGUEZ, QUALIFYING MANAGER**<br>**PO Box 604**<br>**Downey, CA 90241**<br>**Company Registration Certificate No. PR 5525**<br><br>**and**<br><br>**DANIEL ANTHONY RODRIGUEZ**<br>**PO Box 604**<br>**Downey, CA 90241**<br>**Operator's License No. OPR 11174**<br><br>Respondents. | Case No. 2017-14<br><br>**ACCUSATION** |

Complainant alleges:

**PARTIES**

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

**Company Registration Certificate No. PR 5525**

2. On or about February 5, 2008, the Board issued Company Registration Certificate Number PR 5525 in Branch 3 (termite) to The X-Terminator Termite Control (Respondent X-Terminator), with Claudia Gallegos as the Owner and Daniel Anthony Rodriguez (Respondent Rodriguez) as the Qualifying Manager ("QM"). On January 26, 2009, Company Registration Certificate No. PR 5525 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Code. On February 23, 2009, Company Registration Certificate No. PR 5525 was reinstated after posting the general liability insurance. On April 6, 2009, Company Registration Certificate No. PR 5525 was suspended for failure to maintain a surety bond in the amount of $4,000 as required by section 8697 of the Code. On April 17, 2009, Company Registration Certificate No. PR 5525 was reinstated after posting a surety bond in the amount of $4,000. On July 9, 2009, Company Registration Certificate No. PR 5525 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Code. On July 15, 2009, Company Registration Certificate No. PR 5525 was reinstated after posting the general liability insurance. On September 3, 2009, Company Registration Certificate No. PR 5525 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Code. On October 1, 2009, Company Registration Certificate No. PR 5525 was reinstated after posting the general liability insurance. On July 14, 2010, Company Registration Certificate No. PR 5525 was suspended for failure to maintain a surety bond in the amount of $4,000 as required by section 8697 of the Code. On March 9, 2011, Company Registration Certificate No. PR 5525 was reinstated after posting a surety bond in the amount of $4,000. On March 10, 2011, Company Registration Certificate No. PR 5525 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Code. On March 18, 2011, Company Registration Certificate No. PR 5525 was reinstated after posting the general liability insurance. On February 29, 2012, Company Registration Certificate No. PR 5525 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Code. On March 12, 2012, Company Registration Certificate No. PR 5525 was suspended for failure to maintain a surety bond in the amount of $4,000 as required by section 8697 of the

Code. On February 13, 2013, Company Registration Certificate No. PR 5525 was reinstated after posting the general liability insurance and a surety bond in the amount of $4,000. On March 19, 2014, Company Registration Certificate No. PR 5525 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Code. On June 10, 2014, Company Registration Certificate No. PR 5525 was reinstated after posting the general liability insurance. On April 15, 2015, Company Registration Certificate No. PR 5525 was suspended for failure to maintain a surety bond in the amount of $12,500 as required by section 8697 of the Code. On April 28, 2015, Company Registration Certificate No. PR 5525 was reinstated after posting a surety bond in the amount of $12,500. On June 9, 2015, Company Registration Certificate No. PR 5525 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Code. On June 18, 2015, Company Registration Certificate No. PR 5525 was reinstated after posting the general liability insurance.

**Operator's License No. OPR 11174**

3. On or about September 1, 2005, the Board issued Operator's License Number OPR 11174 in Branch 3 to Respondent Rodriguez, employee of Strong Terminators. On November 23, 2005, Respondent Rodriguez became the Branch 3 "QM" and owner of Best Choice Termite Control. On November 2, 2006, Respondent Rodriguez became employed as the Branch 3 QM of Unique Termite Control. On February 13, 2007, Respondent Rodriguez disassociated from Strong Terminators. On June 6, 2007, Respondent Rodriguez disassociated from Unique Termite Control. On October 16, 2007, Respondent Rodriguez's operator's license was suspended for failure to maintain general liability insurance pursuant to Code section 8690. On December 11, 2007, Respondent Rodriguez disassociated from Best Choice Termite Control. On February 5, 2008, Respondent Rodriguez became employed as the Branch 3 QM for The X-Terminator Termite Control. On February 29, 2012, Operator's License No. OPR 11174 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Business and Professions Code. On February 13, 2013, Operator's License No. OPR 11174 was reinstated after posting the general liability insurance. On March 19, 2014, Operator's License No. OPR 11174 was suspended for failure to maintain the general liability insurance as required by section 8690

of the Business and Professions Code. On June 10, 2014, Operator's License No. OPR 11174 was reinstated after posting the general liability insurance. On June 9, 2015, Operator's License No. OPR 11174 was suspended for failure to maintain the general liability insurance as required by section 8690 of the Business and Professions Code. On June 18, 2015, Operator's License No. OPR 11174 was reinstated after posting the general liability insurance. The Operator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2017, unless renewed.

## JURISDICTION

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

5. Code section 477 states, in pertinent part:

"(b) 'License' includes certificate, registration or other means to engage in a business or profession regulated by this code."

## STATUTORY AND REGULATORY PROVISIONS

6. 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.

7. Code section 8624 states, in pertinent part:

> "If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration."

8. Code section 8637 states:

> "Misrepresentation of a material fact by the applicant in obtaining a license or company registration is a ground for disciplinary action."

9. Code section 8654 states:

"Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible 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."

10. Code section 8641 states, in pertinent part:

"Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board . . . is a ground for disciplinary action."

11. Code section 8642 states:

"The 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."

12. Code section 8593 states, in pertinent part, that:

"The board shall require as a condition to the renewal of each operator's and field representative's license that the holder submit proof satisfactory to the board that he or she has informed himself or herself of developments in the field of pest control either by completion of courses of continuing education in pest control approved by the board or equivalent activity approved by the board."

13. California Code of Regulations, title 16, section 1950 states, in pertinent part:

"(a) Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

"(b) Each licensee is required to gain a certain number of continuing education hours during the three year renewal period. The number of hours required depends on the number of branches of pest control in which licenses are held. The subject matter covered by each activity shall be designated as "technical" or "general" by the Board

when the activity is approved. Hour values shall be assigned by the Board to each approved educational activity, in accordance with the provisions of section 1950.5.

"(c) Operators licensed in one branch of pest control shall complete 16 continuing education hours during each three year renewal period. Operators licensed in two branches of pest control shall complete 20 continuing education hours during each three year renewal period. Operators licensed in three branches of pest control shall complete 24 continuing education hours during each three year renewal period. In each case, a minimum of four continuing education hours in a technical subject directly related to each branch of pest control held by the licensee must be completed for each branch license, a minimum of two hours in Integrated Pest Management as defined in section 1984 must be completed by Branch 2 and/or 3 licensees renewing on or after June 30, 2010, and a minimum of eight hours must be completed from Board approved courses on the Structural Pest Control Act, the Rules and Regulations, or structural pest control related agencies' rules and regulations."

## COST RECOVERY

14. 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.

## FIRST CAUSE FOR DISCIPLINE

### (Failure to Verify Completion of Continuing Education)

15. Respondents are subject to disciplinary action pursuant to Code section 8641, in that Respondent Rodriguez failed to comply with provisions of Code section 8593 and California Code of Regulations, title 16, section 1950, by failing to verify that he completed courses of continuing education in pest control approved by the Board. Specifically, Respondent Rodriguez failed to submit copies of any continuing education certificates for the renewal period of July 1, 2011, through June 30, 2014, upon request by the Board. The circumstances are as follows:

16. On or about July 12, 2014, Respondent Rodriguez submitted a license renewal application to the Board. On or about July 12, 2014, Respondent Rodriguez certified under penalty of perjury on the application form that he successfully completed 16 hours of continuing education during his last renewal period.

17. On May 5, 2015, a representative of the Board sent Respondent Rodriguez a written request for copies of his continuing education certificates for the renewal period of July 1, 2011, through June 30, 2014. The representative informed Respondent Rodriguez that he would be

subject to disciplinary action if he failed to verify his continuing education requirements or hours. On or about May 27, 2015, the representative sent Respondent Rodriguez a second written request. On or about June 27, 2015, the representative sent a final audit letter to both addresses of record for Respondent and left a voicemail on Respondent's cell phone.

18. On or about August 25, 2015, Respondent Rodriguez responded and informed the representative that he took the courses with ACEAPP but did not have the certificates. The representative found that Respondent had taken courses with ACEAPP on June 30, 2011 (the prior renewal period). On or about August 26, 2015, the representative left Respondent a voicemail asking for proof of hours during the relevant renewal period or a letter of explanation. On or about September 4, 2015, the Board received correspondence from Respondent Rodriguez indicating that he did not complete the required number of continuing education hours to renew his license.

## SECOND CAUSE FOR DISCIPLINE

**(Misrepresentation of a Material Fact)**

19. Respondents are subject to discipline under Code section 8637, in that Respondent Rodriguez misrepresented a material fact in obtaining a license. Specifically, in Respondent Rodriguez's Operator, Branch 3, License Renewal Application, which was signed under penalty of perjury on or about July 12, 2014, Respondent Rodriguez certified that he had successfully completed 16 hours of continuing education as required for the renewal of his Operator's License, Branch 3. In fact, Respondent Rodriguez had not completed 16 hours of continuing education at the time of the certification of his renewal application. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraphs 15 through 18, above.

## THIRD CAUSE FOR DISCIPLINE

**(Fraud)**

20. Respondents are subject to disciplinary action pursuant to Code section 8642, in that Respondent Rodriguez committed a fraudulent act, as follows: On or about July 12, 2014, Respondent Rodriguez falsely represented on his license renewal application that he successfully completed 16 hours of continuing education during his last renewal period, July 1, 2011, through

June 30, 2014, with the intent to substantially benefit himself or another. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraphs 15 through 19, above.

**DISCIPLINE CONSIDERATIONS**

21. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that:

22. On or about October 23, 2009, the Board issued Citation No. CF 10-43 with a fine of $500 to Respondents for violating Section 8652 (failure to maintain records). That Citation is now final and is incorporated by reference as if fully set forth.

23. On or about March 5, 2010, in a prior disciplinary action entitled *In the Matter of the Accusation against Best Choice Termite Control, Daniel A. Rodriguez, Qualifying Manager/Owner, and Daniel A. Rodriguez,* before the Structural Pest Control Board, in Case Number 2009-45. Respondent Rodriguez's Operator's License was revoked, revocation stayed, and placed on probation for three years for violating Code sections 8641, 8550, subdivision (e), and 8610, subdivision (a) (unregistered practice of structural pest control); section 8639 (aiding or abetting an unregistered company); section 8644 (misrepresentation after inspection); section 8552 (advertising by unregistered company); and section 8642 (fraudulent acts). That decision is now final and is incorporated by reference as if fully set forth.

24. On or about January 4, 2011, the Board issued Citation No. CF 11-42 with a fine of $2,500 to Respondents for violating sections 8516, subdivision (b), and 8518 (Failure to file Wood Destroying Organisms (WDO) Activities). That Citation is now final and is incorporated by reference as if fully set forth.

25. On or about August 25, 2011, Company Registration Certificate No. PR 5525 was issued a $250 fine levied by the Los Angeles County Agricultural Commissioner for violation of section 15204(a) of the Food and Agricultural Code. The fine was paid on January 14, 2013.

26. On or about November 30, 2011, the Board issued Citation No. CF 12-55, with a fine of $50, to Respondents for violating California Code of Regulations, title 16, section 1948,

subdivision (a)(16) (failure to file a "Change of Bond or Insurance Form"). That Citation is now final and is incorporated by reference as if fully set forth.

## OTHER MATTERS

27. Code section 8620 provides, in pertinent part, that a respondent may request that a civil penalty of not more than $5,000 be assessed in lieu of an actual suspension of 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.

28. Pursuant to Code section 8624, if Operator's License Number OPR 11174, issued to Respondent Daniel Anthony Rodriguez, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 5525 issued to The X-Terminator Termite Control, with Daniel Anthony Rodriguez as qualifying manager.

29. Pursuant to Code section 8654, if discipline is imposed on Operator's License Number OPR 11174, issued to Respondent Daniel Anthony Rodriguez, he shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company, during the time the discipline is imposed, and any registered company which employs, elects, or associates Respondent Daniel Anthony Rodriguez shall be subject to disciplinary action.

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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 No. PR 5525 issued to The X-Terminator Termite Control;

2. Revoking or suspending Operator's License Number OPR 11174 issued to Daniel Anthony Rodriguez;

3. Prohibiting Daniel Anthony Rodriguez and Claudia Gallegos from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the period that discipline is imposed on Operator License Number OPR 11174, issued to Daniel Anthony Rodriguez and Company Registration Certificate No. PR 5525, issued to The X-Terminator Termite Control.

4. Ordering The X-Terminator Termite Control and Daniel Anthony Rodriguez 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: 8/12/16

SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
*Complainant*

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