

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
Deputy Attorney General
4 State Bar No. 245282
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804
E-mail: Sydney.Mehringier@doj.ca.gov
7 *Attorneys for Complainant*

FILED

Date *8/5/15* By *Susan Saylor*

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

11 In the Matter of the Accusation Against:

Case No. 2016-9

12 **BLACKOUT TERMITE AND PEST**
13 **CONTROL, ALONZO G. CONTRERAS,**
14 **III**

ACCUSATION

14 7618 Louise Avenue, Suite B
Van Nuys, CA 91406

15 Company Registration Certificate No. PR
16 6902

17 **ALONZO G. CONTRERAS, III**
18 7618 Louise Avenue, Suite B
Van Nuys, CA 91406

19 Operator's License No. OPR 11760

20 and

21 **CANDELARIO GASTELUM**
22 7450 Jamieson Avenue
Reseda, CA 91335

23 Operator's License No. OPR 12443
Field Representative's License No. FR 40962

24 Respondents.

1 Complainant alleges:

2 **PARTIES AND RELEVANT LICENSE HISTORY**

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

6 **Company Registration Certificate No. PR 6902**

7 2. On or about November 12, 2013, the Structural Pest Control Board ("Board") issued
8 Company Registration Certificate Number PR 6902 to Blackout Termite and Pest Control
9 ("Respondent Blackout") in Branches 2 and 3¹ with Alonzo G. Contreras, III ("Respondent
10 Contreras") as owner and Branch 3 Qualifying Manager and Candelario Gastelum ("Respondent
11 Gastelum") as Branch 2 Qualifying Manager.²

12 3. On January 8, 2015, Company Registration Certificate No. PR 6902 was suspended
13 for failure to maintain general liability insurance as required by Business and Professions Code
14 section 8690. On January 21, 2015, Company Registration Certificate No. PR 6902 was
15 reinstated after posting the required general liability insurance.

16 4. On March 10, 2015, Company Registration Certificate No. PR 6902 was suspended
17 for not having a Branch 2 Qualifying Manager due to the suspension of Respondent Gastelum's
18 license for failure to maintain general liability insurance for Redline Pest Control Management.
19 On March 18, 2015, Company Registration Certificate No. PR 6902 was reinstated due to the
20 cancelation of the company registration for Redline Pest Control Management.

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24 ¹ Branch 2 refers to the practice of the control of household pests, excluding fumigation with
25 poisonous or lethal gases. Branch 3 refers to the practice of controlling wood destroying pests or
organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation
with poisonous or lethal gases.

26 ² Prior to issuance of Company Registration Certificate Number PR 6902, the Board had issued
27 Company Registration Certificate No. PR 5895 to Blackout Termite Control on July 27, 2009
with Frank F. Martinez as Partner and Respondent Contreras as Partner and Qualifying Manager.
28 Company Registration Certificate No. PR 5895 was cancelled on November 12, 2013, when the
business was re-registered to Respondent Contreras as sole owner.

1 5. On July 1, 2015, Respondent Gastelum disassociated as Branch 2 Qualifying Manager
2 of Company Registration Certificate No. PR 6902. On July 20, 2015, Company Registration
3 Certificate No. PR 6902 was suspended for not having a Branch 2 Qualifying Manager.

4 **Operator's License No. OPR 11760**

5 6. On or about October 10, 2008, the Structural Pest Control Board issued Operator's
6 License Number OPR 11760 in Branch 3 to Respondent Contreras.

7 7. On June 8, 2009, Operator's License No. OPR 11760 was suspended pursuant to
8 Family Code section 17520. On June 17, 2009, Operator's License No. OPR 11760 was
9 reinstated after compliance with Family Code section 17520.

10 8. On February 17, 2010, Operator's License No. OPR 11760 was suspended pursuant to
11 Family Code section 17520. On March 16, 2010, Operator's License No. OPR 11760 was
12 reinstated after compliance with Family Code section 17520.

13 9. On July 21, 2010, Operator's License No. OPR 11760 was suspended pursuant to
14 Family Code section 17520. On August 30, 2010, Operator's License No. OPR 11760 was
15 reinstated after compliance with Family Code section 17520.

16 10. On July 19, 2011, Operator's License No. OPR 11760 was suspended for failure to
17 maintain general liability insurance as required by Code section 8690. On August 1, 2011,
18 Operator's License No. OPR 11760 was reinstated after posting the required general liability
19 insurance.

20 11. On May 23, 2012, Operator's License No. OPR 11760 was suspended pursuant to
21 Family Code section 17520. On September 6, 2012, Operator's License No. OPR 11760 was
22 reinstated after compliance with Family Code section 17520.

23 12. On September 21, 2012, Operator's License No. OPR 11760 was suspended for
24 failure to maintain general liability insurance as required by Code section 8690. On October 11,
25 2012, Operator's License No. OPR 11760 was reinstated after posting the required general
26 liability insurance.

27 13. On April 12, 2013, Operator's License No. OPR 11760 was suspended for failure to
28 maintain general liability insurance as required by Code section 8690. On April 18, 2013,

1 Operator's License No. OPR 11760 was reinstated after posting the required general liability
2 insurance.

3 14. On January 8, 2015, Operator's License No. OPR 11760 was suspended for failure to
4 maintain general liability insurance as required by Code section 8690. On January 21, 2015,
5 Operator's License No. OPR 11760 was reinstated after posting the required general liability
6 insurance.

7 15. Operator's License OPR 11760 will expire on June 30, 2017, unless renewed.

8 **Operator's License No. OPR 12443**

9 16. On or about November 15, 2012, the Board issued Operator's License Number OPR
10 12443 in Branch 2 to Respondent Gastelum.

11 17. On January 8, 2015, Operator's License No. OPR 12443 was suspended for
12 Respondent Blackout's failure to maintain general liability insurance as required by Code section
13 8690. On January 21, 2015, Operator's License No. OPR 12443 was reinstated after Respondent
14 Blackout posted the required general liability insurance.

15 18. On February 23, 2015, Operator's License No. OPR 12443 was suspended for Redline
16 Pest Control's failure to maintain general liability insurance. On March 18, 2015, Operator's
17 License No. OPR 12443 was reinstated due to the cancelation of the company registration for
18 Redline Pest Control Management.

19 19. Operator's License No. OPR 12443 will expire on June 30, 2018, unless renewed.

20 **Field Representative License No. FR 40962**

21 20. On or about October 30, 2006, the Board issued Field Representative's License
22 Number FR 40962 in Branch 2 to Respondent Gastelum. On July 8, 2009, Field Representative's
23 License Number FR 40962 was upgraded to include Branches 2 and 3. On November 15, 2012,
24 Field Representative's License Number FR 40962 was downgraded to include Branch 3 only due
25 to the issuance of a Branch 2 Operator's License. The Field Representative's License was in full
26 force and effect at all times relevant to the charges brought herein and will expire on June 30,
27 2018, unless renewed.

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1 **JURISDICTION**

2 21. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Code") and all
4 regulations references are to Title 16 of the California Code of Regulations ("Regulations"),
5 unless otherwise indicated

6 22. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or
7 revoke a license when it finds that the holder, while a licensee or applicant, has committed any
8 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
9 civil penalty.

10 23. Section 8624 of the Code states:

11 "If the board suspends or revokes an operator's license and one or more branch
12 offices are registered under the name of the operator, the suspension or revocation
may be applied to each branch office.

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

15 "The performance by any partnership, corporation, firm, association, or
16 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
17 time the act or omission occurred, was the qualifying manager, a partner, responsible
officer, or owner of the partnership, corporation, firm, association, or registered
18 company whether or not he or she had knowledge of, or participated in, the prohibited
act or omission."

19 24. Section 8625 of the Code states:

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

25 **STATUTES AND REGULATIONS**

26 25. Section 8516 of the Code states, in pertinent part:

27 "(a) This section, and Section 8519, apply only to wood destroying pests or
28 organisms.

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"(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:

....

"(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."

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26. Section 8518 of the Code states:

"(a) 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 business 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.

"(b) 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 business days after completed work.

1 (c) A filing fee shall be assessed pursuant to Section 8674 for every property
upon which work is completed.

2 (d) Failure of a registered company to report and file with the board the address
3 of any property upon which work was completed pursuant to subdivision (b) of
Section 8516 or Section 8518 is grounds for disciplinary action and shall subject the
4 registered company to a fine of not more than two thousand five hundred dollars
(\$2,500).

5 (e) The registered company shall retain for three years all original notices of
6 work completed, work not completed, and activity forms.

7 (f) Notices of work completed and not completed shall be made available for
inspection and reproduction to the executive officer of the board or his or her duly
8 authorized representative during business hours. Original notices of work completed
or not completed or copies thereof shall be submitted to the board upon request within
9 two business days."

10 27. Section 8538 of the Code states, in pertinent part:

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

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

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19 28. Section 8618 of the Code states, " Documents as specified by regulation must be
20 maintained by all registered companies for three years."

21 29. Section 8622 of the Code states:

22 (a) When a complaint is accepted for investigation of a registered company,
23 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
24 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
25 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
26 have 30 days from the receipt of the notice to bring the property into compliance,
unless an extension is authorized by the board, and it shall submit a new original
27 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
28 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

1 authorized representative makes no determination or determines the property is in
2 compliance, no inspection fee shall be charged.

3 "(b) The notice sent to the registered company shall inform the registered
4 company that if it desires a hearing to contest the finding of noncompliance, the
5 hearing shall be requested by written notice to the board within 20 days of receipt of
6 the notice of noncompliance from the board. If a hearing is not requested pursuant to
7 this section, payment of any assessment shall not constitute an admission of any
8 noncompliance charged."

9 30. Section 8636 of the Code states:

10 "Disregard and violation of the buildings laws of the state, or of any of its political
11 subdivisions, or of the safety laws, labor laws, health laws, or compensation insurance laws of the
12 state relating to the practice of structural pest control is a ground for disciplinary action."

13 31. Section 8638 of the Code states that "[f]ailure on the part of a registered company to
14 complete any operation or construction repairs for the price stated in the contract for such
15 operation or construction repairs or in any modification of such contract is a ground for
16 disciplinary action."

17 32. Section 8639 of the Code states:

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

25 33. Section 8641 of the Code states:

26 "Failure to comply with the provisions of this chapter, or any rule or regulation adopted by
27 the board, or the furnishing of a report of inspection without the making of a bona fide inspection
28 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."

34. Section 8642 of the Code 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."

35. Section 8643 states, "The negligent handling or use of any pesticide is a ground for
disciplinary action."

1 36. Section 8652 of the Code states:

2 "Failure of a registered company to make and keep all inspection reports, field notes,
3 contracts, documents, notices of work completed, and records, other than financial records, for a
4 period of not less than three years after completion of any work or operation for the control of
5 structural pests or organisms, is a ground for disciplinary action. These records shall be made
6 available to the executive officer of the board or his or her duly authorized representative during
7 business hours."

8 37. Section 8691 of the Code states, " A registered company shall not engage in the
9 practices for which it is required to be registered by this chapter unless it maintains an insurance
10 policy as specified in this article."

11 38. Section 8692 of the Code states:

12 "(a) An 'insurance policy' as used in this article means a contract of liability
13 insurance issued by an insurance company authorized to transact business in this state
14 or one issued by a nonadmitted carrier whose activities in this state are controlled by
15 the Surplus Line Association, which insures the policyholder against loss from legal
16 liability for damages on property upon which work is being performed or has been
17 completed, including third-party losses, as a result of an accident or occurrence due to
18 participation in control, prevention, or repair activities that require a license under this
chapter. The insurance policy shall provide minimum limits of five hundred thousand
dollars (\$500,000) for any one loss due to bodily injury, sickness, or disease,
including death at any time resulting therefrom, sustained by any person, and five
hundred thousand dollars (\$500,000) minimum for any one loss due to injury or
destruction of property, including the loss of use of the property.

19 "(b) This section shall not be construed to require errors and omissions
20 insurance for all activities relating to or during inspections, inspection reports,
recommendations, estimates, and bids, whether oral or written."

21 39. Code section 8695 states, "The violation of any provision of this article is a
22 misdemeanor and shall be grounds for the suspension or revocation by the board of the operator's
23 license of the owner or qualifying manager or managers of the registered company and of the
24 company registration."

25 40. Regulation 1937.14 states:

26 "All work completed by licensees or registered companies shall be done within the specific
27 requirements of any plans or specifications and shall meet accepted trade standards for good and
28

1 workmanlike construction in any material respect, and shall comply with provisions of Section
2 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations."

3 41. Regulation 1970 states, in pertinent part:

4 "For the purpose of maintaining proper standards of safety and the establishment of
5 responsibility in handling the dangerous gases used in fumigation and the pesticides used in other
6 pest control operations, a registered company shall compile and retain for a period of at least three
7 years, a log for each fumigation job and for each pesticide control operation in which a pesticide
8 is used by the registered company or the registered company's employee. If the fumigation is to be
9 performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log and
10 forward a copy of the log to the primary contractor within ten business days."

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12 42. Regulation 1970.4 states, in pertinent part:

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14 (c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a
15 pesticide within, around or to any structure such person shall leave in a conspicuous location a
16 written notice identifying the common, generic or chemical name of each pesticide applied. In
17 case of a multiple family structure, such notice may be given to the designated agent or the owner.
18 Such pesticide identification notice may be a door hanger, invoice, billing statement or other
19 similar written document which contains the registered company's name, address, and telephone
20 number."

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22 43. Regulation 1990 states, in pertinent part:

23 "(a) All reports shall be completed as prescribed by the board. Copies filed with the board
24 shall be clear and legible. All reports must supply the information required by Section 8516 of the
25 Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of
26 the Code, and shall contain or describe the following:

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28 "(3) Infestations, infections or evidence thereof.

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"(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."

....

44. Regulation 1999.5 states, in pertinent part:

....

"(a) It is unlawful for any licensee, or any employee thereof, directly or indirectly to make, disseminate, represent, claim, state, or advertise, or cause to be made, disseminated, represented, claimed, stated or advertised by any manner or means whatever, any statement or representation concerning structural pest control, as defined in Business and Professions Code section 8505, which is unfair, deceptive, untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be unfair, deceptive, untrue or misleading.

"(b) As used in this section, the terms "make," "disseminate," "represent," "claim," "state," or "advertise" and any of their variants include, but are not limited to any print communications (for example, telephone directories, newspapers, magazines or other publications or books, notices, circulars, pamphlets, letters, handbills, posters, bills, signs, placards, cards, labels, tags, vehicle or equipment signage, window displays, or store signs), electronic communication (for example, radio, television, audio or video tape, telephone, or the Internet), demonstration, direct person-to-person contact, or other means or methods now or hereafter employed to bring structural pest control services, methods, products, pesticides, or devices to the attention of the public for the direct or indirect purpose of performing or offering to perform services for which a license is required by section 8500 and following of the Code.

....

"(d) Violation of this section occurs at the time an unfair, deceptive, untrue or misleading statement or representation is made. Once a violation occurs, subsequent disclosures, caveats, disclaimers, or waivers cannot eliminate it.

"(e) The remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws and regulations of this State.

"(f) Examples of direct or indirect statements or representations which are unfair, deceptive, untrue or misleading include, but are not limited to, the following:

....

"(13) claims that a pesticide application, a pesticide or pesticide ingredients are safe, including statements such as 'safe,' 'nonpoisonous,' 'non-injurious,' 'harmless' or 'nontoxic to humans and pets' with or without such a

1 qualifying phrase as 'when used as directed';"
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4 COST RECOVERY/RESTITUTION

5 45. Business and Professions Code section 125.3 provides, in pertinent part, that the
6 Board may request the administrative law judge to direct a licensee found to have committed a
7 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
8 investigation and enforcement of the case.

9 46. Government Code section 11519, subdivision (d) provides, in pertinent part, that the
10 Board may require restitution of damages suffered as a condition of probation in the event
11 probation is ordered.

12 RELEVANT BACKGROUND INFORMATION – THE NEWMARK AVENUE PROJECT

13 47. On August 22, 2014, Respondent Contreras, on behalf of Respondent Blackout,
14 inspected the property located at 133-135 West Newmark Ave. in Monterey Park ("Subject
15 Property"), a four unit condominium complex, and issued limited Wood Destroying Pests and
16 Organisms Inspection Report No. W8975. The inspection report contained eight findings and
17 recommendations. Section 1 findings identified evidence of subterranean termite infestations
18 (items 1A and 1B), drywood termite infestations (items 2A and 2D), and termite damage (2B, 2C,
19 2E, and 2F.) The total price for the work was \$10,049 with the breakdown for each unit as
20 follows: Unit 135-A (John Chang): \$2,491; Unit 135-B (Terry Chen): \$2,221; Unit 133-A (May
21 Wang): \$2,796; and Unit 133-B (Freddy Lee): \$2,541.

22 48. On September 22, 2014, Mr. Lee in Unit 133-B signed and entered into a contract
23 with Respondent Blackout to perform the work at his unit. On October 3, 2014, Mr. Lee paid a
24 deposit of \$838 by credit card and he paid the balance of \$1,703 by credit card on October 27,
25 2014.

26 49. On September 24, 2014, Ms. Wang in Unit 133-A signed and entered into a contract
27 with Respondent Blackout to perform the work at her unit. On that same day, Ms. Wang paid a
28 deposit of \$922 by check.

1 50. On September 25, 2014, Ms. Chen in Unit 135-B signed and entered into a contract
2 with Respondent Blackout to perform the work at her unit. That same day, Ms. Chen paid a
3 deposit of \$732 by credit card and she paid the balance of \$1,498 by credit card on October 27,
4 2014.

5 51. Mr. Chang in Unit 135-A did not sign a contract with Respondent Blackout.
6 Nevertheless, Mr. Chang paid a deposit of \$822 by credit card to Respondent Blackout on
7 September 24, 2014 and he paid the balance of \$1,669 by credit card on October 24, 2014.

8 52. Security camera footage from the Subject Property reveals that work occurred on
9 October 23, 24, 25, and 27, 2014 and that there were three unlicensed individuals performing
10 work at the Subject Property, including "Ronnie Leon," who performed the pesticide applications
11 and "Hector Ramirez," who performed the repairs at the property.

12 53. On November 3, 2014, the Board received a complaint from Ms. Chen in Unit 135-B.
13 The complaint alleged, in part, that Respondent Blackout's general liability insurance had expired
14 but the company continued to work at the Subject Property and that the progress on the job was
15 not proceeding as promised. Respondent Blackout's general liability insurance expired on
16 October 10, 2014.

17 54. On November 17, 2014, the Board sent Respondent Blackout a letter notifying it of
18 Ms. Chen's complaint and asking for a response within 10 days. Respondent Blackout failed to
19 respond.

20 55. On December 5, 2014, the Board reviewed Wood Destroying Organism Activity
21 Search records to ascertain what wood destroying organism activities ("WDO activities") had
22 been performed at the Subject Property and filed with the Board. The Board discovered that two
23 WDO activities had been submitted on November 17, 2014 for the Subject Property and filed
24 under Respondent Blackout's cancelled company registration certificate number PR 5895: an
25 inspection report dated August 22, 2014 and a completion notice was dated October 23, 2014.
26 The Board also discovered that Respondent Blackout had submitted eight WDO activities
27 between April 26, 2014 and November 14, 2014 under Respondent Blackout's cancelled company
28 registration certificate number PR 5895. As of December 5, 2014, no WDO activities were filed

1 with the Board under Respondent Blackout's current Company Registration Certificate No. PR
2 6902.

3 56. On or about December 18, 2014, a Board Specialist was assigned to further
4 investigate Ms. Chen's original complaint.

5 57. On January 5, 2015, the Board Specialist obtained from Blackout a copy of the
6 Standard Notice of Work Completed and Not Completed for Inspection Report No. W8975 dated
7 October 23, 2014. This completion notice, which indicated all of the items were completed by
8 Respondent Blackout for \$10,049.00, did not include a certification of the property. None of the
9 owners of Subject Property had received a copy of the completion notice.

10 58. On January 5, 2015, the Board Specialist emailed the Los Angeles County
11 Agricultural Commissioner's office (CAC) Robert Duong (Mr. Duong) to inquire if Respondent
12 Blackout was registered in Los Angeles county to perform pesticide applications for the year
13 2014. Mr. Duong indicated that Respondent Blackout had not registered with Los Angeles CAC
14 for the year 2014.

15 59. On or about January 8, 2015, the Board Specialist travelled to the Subject Property to
16 perform an inspection. The Board Specialist inspected the Subject Property and found evidence
17 of active termite infestations and discovered that many of the repairs had not been completed
18 properly.

19 60. On January 8, 2015, the Board issued Respondent Blackout, Respondent Contreras
20 and Respondent Gastelum (collectively, "Respondents") an Order of Suspension as a result of
21 their failure to maintain an insurance policy.

22 61. On January 13, 2015, the Board received a complaint from Ms. Wang in Unit 133-A.
23 The complaint alleged, in part, that Respondent Blackout promised the project would be
24 completed in one week in October 2014 and that progress on the job was not proceeding as
25 promised.

26 62. On January 15, 2015, the Board Specialist met with Respondent Contreras at
27 Respondent Blackout's office to discuss the complaints. The Board Specialist learned the
28 following information during this meeting:

1 a) Despite the Order of Suspension, Respondent Blackout was actively conducting
2 business.

3 b) Respondent Contreras provided the Board Specialist with the Standard Notice of
4 Work Completed and Not Completed for Inspection Report No. W8975 dated October 23, 2014
5 from Respondent Blackout. This completion notice, which indicated all of the items were
6 completed by Respondent Blackout for \$10,049.00, included a certification for the Subject
7 Property.

8 c) Respondent Contreras admitted that unlicensed individual "Ronnie Leon" performed
9 the pesticide applications and he admitted that unlicensed individual "Hector Ramirez" performed
10 the repairs at the property.

11 63. On January 19, 2015, the Board received a complaint from Mr. Lee in Unit 133-B.
12 The complaint alleged that the repairs were poor and there was still evidence of termite droppings.

13 64. On January 21, 2015, the Board received a complaint from Mr. Chang in Unit 135-A.
14 The complaint alleged that the repairs were poor and there was no completion report.

15 65. On or about January 21, 2015, Respondent Blackout obtained general liability
16 insurance from Gemini Insurance Company, effective October 10, 2014 (the date of the expiration
17 of its previous policy) to October 10, 2015, but failed to provide the Board with a Certificate of
18 Insurance and failed to timely notify the Board of changes to its policy. Additionally, the new
19 policy erroneously indicates "Fumigation Covered," even though Respondent Blackout is not
20 licensed to perform Branch 1 services.

21 66. On January 21, 2015, the Board sent the Report of Findings to Respondents by
22 certified mail and subsequently received confirmation that the Report of Findings was received on
23 January 24, 2015.

24 67. On February 11, 2015, Respondent Blackout resubmitted the eight WDO activities
25 between April 26, 2014 and November 14, 2014 under current Company Registration Certificate
26 No. PR 6902.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Issue a Timely and Proper Completion Notice)**

3 68. Respondents are subject to disciplinary action under Code sections 8518 and 8641 in
4 that Respondents did not issue a timely and proper completion notice. The facts and
5 circumstances are as follows:

6 a) Respondent Blackout did not provide the owners of the Subject Property with a copy
7 of the October 23, 2014 completion notice (either the certified or uncertified version).

8 b) Respondent Blackout did not file a completion notice with the Board until November
9 17, 2014. Respondent Blackout's initial submission was improper because Respondent Blackout
10 filed it under Respondent Blackout's cancelled company registration certificate number PR 5895.
11 Respondent Blackout did not submit the completion notice under current Company Registration
12 Certificate No. PR 6902 until February 11, 2015.

13 c) The Subject Property was certified as being free of active infestation even though the
14 Board Specialist found evidence of active subterranean termite infestations and active drywood
15 termite infestations when he inspected the Subject Property on January 8, 2015.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Gross Negligence and Fraud)**

18 69. Respondents are subject to disciplinary action under Code section 8642, in
19 conjunction with Code sections 8516, subdivision (b)(7) and 8638, and Regulations 1990,
20 subdivisions (a)(3) and (e), 1970.4, subdivision (c), and 1937.14, on the grounds of gross
21 negligence and fraud. The facts and circumstances are as follows:

22 70. On January 8, 2015, the Board Specialist inspected the Subject Property and found
23 multiple violations of the rules and regulations governing structural pest control, as follows:

24 a) Failure to exterminate subterranean termite infestations through the use of chemical
25 treatments. There was evidence of active infestations and chemical treatment are necessary to
26 remediate the infestations.

1 b) Failure to exterminate drywood termite infestations through the use of chemical
2 treatments. There was evidence of active infestations that extend into areas physically
3 inaccessible for local chemical treatments. Fumigation will be necessary.

4 c) Failure to report the following drywood termite infestations that were active and that
5 extend into areas that are physically inaccessible for local chemical treatments such that
6 fumigation will be necessary:

- 7 i. Infestation at the exterior mailbox trim boards;
- 8 ii. Infestation at the exterior porch support of Unit 133-B;
- 9 iii. Infestation at the porch window trims of Unit 135-B;
- 10 iv. Infestation at the exterior electric meter box wall voids of Units 133-A and 133-
11 B, the exterior stucco wall voids, stucco trims, fascias, rafter tails, eaves, porch header beams,
12 support post beams, support post trims, garage doorjamb, decorative plant shelves and corbels,
13 electric meter box, and adjacent wall voids of Units 133-A, 133-B, 135-A, and 135-B.

14 d) Failure to complete the following work and to complete the following work in a
15 quality and workmanlike manner regarding the reported drywood termite damage at the following
16 areas:

- 17 i. Units 133-A, 133-B, 135-A, and 135-B: At the exterior stucco trims, wood
18 siding panels, support posts, fascias, rafter tails, eaves, porch header beams, trims, garage
19 doorjamb, decorative plant shelves and corbels. The damage was recorded as completed on the
20 October 23, 2014 completion notice, however drywood termite damage remains. Moreover,
21 several of the exterior trims were cut off and pieced together with blockings and old rusted nails,
22 some of the damage was patched and painted over when it should have been replaced, the
23 replaced exterior trims and support posts are not the same length and the ends are cut at different
24 angles leaving large gaps and cracked lumber. The reported drywood termite damaged wood
25 members were replaced without being primed and/or painted and the areas that were replaced and
26 painted have peeling, bubbling, and flaking paint separating from the lumber. Exterior areas of
27 drywood termite damage findings and recommendations above 8 feet from the ground were never
28 completed.

1 Subject Property, including "Ronnie Leon" and "Johnny," who performed the pesticide
2 applications.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Negligent Handling of Poisonous Exterminating Agent)**

5 75. Respondents are subject to disciplinary action under Code section 8643 in that
6 Respondents permitted unlicensed workers to handle and/or use poisonous exterminating agents
7 in a negligent manner. The circumstances are as follows:

8 a) The August 22, 2014 inspection report indicates that the pesticide Bora Care was used
9 for the extermination of the drywood termites at the Subject Property.

10 b) Unlicensed individuals applied the pesticide without proper supervision.

11 c) The persons who applied the pesticides used no personal protective equipment such as
12 a respirator, long sleeve shirt, gloves, chemical resistant shoes, etc.

13 d) Bora Care was applied to painted wood surfaces and overhead to second story eaves
14 in a manner inconsistent with the product's label.

15 e) Repairman Hector Ramirez, Ms. Chen, and her pet cat were present in the treatment
16 areas during and after the treatment was applied.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Failure to Maintain Evidence of an Insurance Policy)**

19 76. Respondents are subject to disciplinary action under Code sections 8691, 8692, and
20 8695 in that Respondents failed to maintain evidence of liability insurance and conducted
21 structural pest control business without having liability insurance. Respondents' general liability
22 insurance expired on October 10, 2014 and was not renewed until January 21, 2015, yet
23 Respondents continuously operated their structural pest control business between that time period.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(False and Misleading Advertising)**

26 77. Respondents are subject to disciplinary action under Code section 8641 and
27 Regulation 1999.5 in that Respondents falsely and misleadingly advertised their services and
28 products as "safe," "safer for your family," and "eco-friendly" which could easily deceive a

1 consumer into believing that the pesticides they use are not hazardous, regardless of how they are
2 treated. Even though the toxicity level may be low, pesticides are still toxic and may harm
3 someone who is exposed to enough of the product.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Failure to Provide of Notice of Pesticides)**

6 78. Respondents are subject to disciplinary action under Code sections 8538, subdivision
7 (a)(2) and 8641, and Regulation 1970.4 in that the August 22, 2014 inspection report recommends
8 the pesticide "Bora Care" but the pesticide disclosure on page 5 of the inspection report does not
9 disclose the pesticide "Bora Care."

10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Failure to Maintain Proper Records)**

12 79. Respondents are subject to disciplinary action under Code sections 8618, 8641, and
13 8652, in conjunction with Regulation 1970 in that Respondent failed to keep and make available
14 for inspection all records regarding structural pest control activities performed in the past three
15 years. During a meeting with a Board Specialist on January 15, 2015, Respondent Contreras was
16 unable to supply records regarding structural pest control activities, other than financial records,
17 for the past three years.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Report of Findings)**

20 80. Respondents are subject to disciplinary action under Code sections 8622 and 8641 in
21 that Respondents failed to comply with the Report of Findings within 30 days from receipt.
22 Respondents received the Report of Findings on January 24, 2015, but as of the date of the
23 Accusation, have failed to comply.

24 **DISCIPLINE CONSIDERATIONS**

25 81. To determine the degree of discipline, if any, to be imposed on Respondents,
26 Complainant alleges the following:

27 (a) On April 7, 2011, Respondent Contreras was issued a \$2,800 fine and order of
28 abatement for violations of Code sections 8516, subdivision (b) and 8518. The fine was

1 subsequently reduced and modified to \$280.00 if the order of abatement was complied with by
2 November 16, 2011. The \$280.00 fine was paid and the order of abatement complied with by
3 November 16, 2011.

4 (b) On April 30, 2012, Respondent Blackout (PR 5859) and Respondent Contreras
5 were issued a \$3,000.00 fine and order of abatement for violations of Code sections 8516,
6 subdivision (b), 8518, and 8652. On May 1, 2013, Respondent Blackout (PR 5895) and
7 Respondent Contreras were issued a \$600.00 fine for violations of Code sections 8613 and 8652.
8 In a Stipulation and Agreement that became effective on October 24, 2013, Respondent Gastelum
9 agreed to assume responsibility for the \$3,000.00 and \$600.00 fines. The \$600.00 fine was paid
10 on August 28, 2014 and the \$3,000.00 fine was paid on September 25, 2014.

11 OTHER MATTERS

12 82. Notice is hereby given that Code section 8620 provides, in pertinent part, that a
13 respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an
14 actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45
15 days. Such request must be made at the time of the hearing and must be noted in the proposed
16 decision.

17 83. Pursuant to Code section 8624, the causes for discipline established as to Company
18 Registration Certificate No. PR 6902 issued to Respondent Blackout likewise constitute cause for
19 discipline against Operator's License No. OPR 11760 issued to Respondent Contreras and
20 Operator's License No. OPR 12443 issued to Respondent Gastelum who serve as the qualifying
21 managers of Respondent Blackout, regardless of whether Respondent Contreras and/or
22 Respondent Gastelum had knowledge of or participated in the acts or omissions which constitute
23 cause for discipline against Respondent Blackout.

24 84. Pursuant to Code section 8654, if discipline is imposed on Company Registration
25 Certificate No. PR 6902 issued to Respondent Blackout, then Respondent Contreras, who serves
26 as the president of Respondent Blackout, shall be prohibited from serving as an officer, director,
27 associate, partner, qualifying manager, or responsible managing employee for any registered
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1 company during the time the discipline is imposed, and any registered company which employs,
2 elects, or associates him shall be subject to disciplinary action.

3 85. Pursuant to Code section 8654, if discipline is imposed on Company Registration
4 Certificate No. PR 6902 issued to Respondent Blackout, then Respondent Contreras and
5 Respondent Gastelum, who serve as the qualifying managers of Respondent Blackout, shall be
6 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
7 responsible managing employee for any registered company during the time the discipline is
8 imposed, and any registered company which employs, elects, or associates them shall be subject
9 to disciplinary action.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Structural Pest Control Board issue a decision:

13 1. Revoking or suspending Company Registration Certificate Number PR 6902, issued
14 to Blackout Termite and Pest Control with Alonzo G. Contreras, III as owner and Branch 3
15 Qualifying Manager and Candelario Gastelum as former Branch 2 Qualifying Manager;

16 2. Revoking or suspending Operator's License Number OPR 11760, issued to Alonzo G.
17 Contreras, III;

18 3. Revoking or suspending Operator's License Number OPR 12443, issued to
19 Candelario Gastelum;

20 4. Revoking or suspending Field Representative's License Number FR 40962, issued to
21 Candelario Gastelum;

22 5. Prohibiting Alonzo G. Contreras, III from serving as an officer, director, associate,
23 partner, qualifying manager, or responsible managing employee of any registered company during
24 the period that discipline is imposed on Operator License Number OPR 11760 issued to Alonzo
25 G. Contreras, III;

26 6. Prohibiting Candelario Gastelum from serving as an officer, director, associate,
27 partner, qualifying manager, or responsible managing employee of any registered company during
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1 the period that discipline is imposed on Operator License Number OPR 12443 and Field
2 Representative License No. FR 40962, issued to Candelario Gastelum.

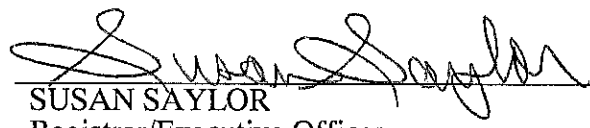
3 7. Ordering restitution of all damages according to proof suffered by John Chang, Terry
4 Chen, May Wang, and Freddy Lee as a condition of probation in the event probation is ordered;

5 8. Ordering Blackout Termite and Pest Control, Alonzo G. Contreras, III, and
6 Candelario Gastelum to pay the Structural Pest Control Board the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3; and

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

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DATED: 8/5/15



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

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