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

In the Matter of the Accusation Against:

CASE NO. 2010-82

ATLAS TERMITE COMPANY
25 Second Avenue
Chula Vista, CA 91910

**DECISION AND ORDER AFTER
REMAND FROM SUPERIOR COURT**

JOSEPH ANTHONY OLIVARRIA,
Owner and Qualifying Manager
Company Registration Certificate No.
PR 1750 in Br. 1 and 3

JOSEPH ANTHONY OLIVARRIA
25 Second Avenue
Chula Vista, CA 91910
Operator's License No. OPR 8471
in Br. 1 and 3

ADRIAN PAUL OLIVARRIA
25 Second Avenue
Chula Vista, CA 91910
Field Representative No. FR 38599 in
Br. 1

Respondents.

On or about June 16, 2010, Complainant Kelli Okuma, as Registrar/Executive Officer of the Structural Pest Control Board ("Board") filed Accusation No. 2010-82 against Respondents ATLAS TERMITE COMPANY, JOSEPH ANTHONY OLIVARRIA and ADRIAN PAUL OLIVARRIA ("Respondents"). Respondents failed to file a timely Notice of Defense.

On or about September 29, 2010, the Board issued a Default Decision and Order

1 (Decision) in Accusation No. 2010-82. In the Decision, the Board made findings that
2 Respondents waived the right to a hearing to contest the merits of the Accusation, that
3 Respondents were in default, and that Respondents committed acts constituting grounds for
4 disciplinary action. On that basis, the Board revoked Respondents Licenses Nos. PR 1750, OPR
5 8471 and FR 38599. The Board issued the order on September 29, 2010, effective October 29,
6 2010.

7 Thereafter, Respondent filed a Petition for Writ of Administrative Mandamus ("Petition")
8 in San Diego Superior Court. To resolve the writ petition without further litigation or court
9 appearances, the parties to that action entered into the Stipulation for Remand and Order, attached
10 hereto as Exhibit A, which has been entered as an order by the Superior Court.

11 Pursuant to the Stipulation for Remand and Order:

- 12 1. The default judgment has been set aside.
- 13 2. The Superior Court, without ruling on the merits of the Petition, has remanded the
14 matter to the Board for further consideration, thereby vesting the Board with jurisdiction to take
15 further action.
- 16 3. Having considered the Stipulation for Remand and Order and the Stipulated
17 Settlement and Disciplinary Order, a copy of which is attached hereto as Exhibit B, the Board
18 hereby adopts the Stipulated Settlement and Disciplinary Order as its final order in this matter.

19 IT IS SO ORDERED.

20
21 
22 FOR THE STRUCTURAL PEST CONTROL
23 BOARD OF THE DEPARTMENT OF PESTICIDE
24 REGULATION
25
26
27
28

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

In the Matter of the Accusation Against:

Case No. 2010-82

**ATLAS TERMITE COMPANY; JOSEPH
ANTHONY OLIVARRIA, QUALIFYING
MANAGER; ADRIAN PAUL OLIVARRIA
25 2nd Avenue
Chula Vista, CA 91910
Company Registration No. PR 1750
Operator's License No. OPR 8471
Field Representative No. FR 38599**

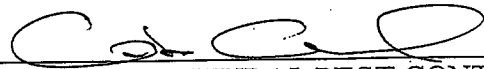
Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on February 23, 2011.

It is so ORDERED January 24, 2011.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF PESTICIDE REGULATION**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-82

12 **ATLAS TERMITE COMPANY**
25 Second Avenue
13 Chula Vista, CA 91910
JOSEPH ANTHONY OLIVARRIA,
14 **Owner and Qualifying Manager**
Company Registration Certificate No.
15 **PR 1750 in Br. 1 and 3**

STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER

16 **JOSEPH ANTHONY OLIVARRIA,**
25 Second Avenue
17 Chula Vista, CA 91910
Operator's License No. OPR 8471
18 **in Br. 1 and 3**

19 **ADRIAN PAUL OLIVARRIA**
25 Second Avenue
20 Chula Vista, CA 91910
21 **Field Representative No. FR 38599 in Br. 1**

22 Respondents.

23
24 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
25 entitled proceedings that the following matters are true:

26 PARTIES

27 1. Complainant Kelli Okuma is the Registrar/Executive Officer of the Structural Pest
28 Control Board (Board). She brought this action solely in her official capacity and is represented

1 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by G.
2 Michael German, Deputy Attorney General.

3 2. Respondents Atlas Termite Company; Joseph Anthony Olivarria, Owner and
4 Qualifying Manager; and Adrian Paul Olivarria are represented in this proceeding by attorney
5 Mark K. Stender, Higgs, Fletcher & Mack LLP, 401 West A Street, Ste. 2600, San Diego, CA
6 92101 (619) 236-1551.

7 LICENSE HISTORIES

8 COMPANY REGISTRATION CERTIFICATE NO. PR 1750

9 3. On December 6, 1989, Company Registration Certificate No. PR 1750 was issued in
10 Branch 1 to Atlas Termite Company with Joseph Anthony Olivarria (Olivarria) as Owner and
11 Qualifying Manager with an address of 5644 Kearny Mesa Road, Suite Q, San Diego, California
12 92111.

13 4. On January 2, 1990, Company Registration Certificate No. PR 1750 was upgraded to
14 include Branches 1 and 3 and reflected Diane Marie Collard as Branch 3 Qualifying Manager.

15 5. On January 7, 1991, Company Registration Certificate No. PR 1750 reflected a
16 change of Branch 3 Qualifying Manager to Joseph Anthony Olivarria.

17 6. On January 16, 1992, Company Registration Certificate No. PR 1750 reflected a
18 change of address to 25 2nd Avenue, Chula Vista, California 91910.

19 7. On June 1, 1995, Company Registration Certificate No. PR 1750 was levied a \$150
20 fine by the San Diego County Agricultural Commissioner (Commissioner) for violation of section
21 12973 of the Food and Agricultural Code, which was paid on November 8, 1995.

22 8. On April 10, 1996, Company Registration Certificate No. PR 1750 was levied a \$700
23 fine by the Commissioner for violation of sections 1970.3 and 604 of the California Code of
24 Regulations, section 12973 of the Food and Agricultural Code, and section 8505.9 of the Business
25 and Professions Code, which was paid on June 21, 1996.

26 9. On September 10, 1996, Company Registration Certificate No. PR 1750 was levied a
27 \$100 fine by the Commissioner for violation of section 6724 of the California Code of
28 Regulations, which was paid on October 10, 1996.

1 10. On August 20, 1999, Company Registration Certificate No. PR 1750 was levied a
2 \$151 fine by the Commissioner for violation of section 6724 of the California Code of
3 Regulations, which was paid on September 29, 1999.

4 11. On March 5, 2003, Company Registration Certificate No. PR 1750 was levied a \$300
5 fine by the Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business
6 and Professions Code, sections 1990(a)(4), 1991 (a)(8), and 1996 of the California Code of
7 Regulations, which was paid on March 18, 2003.

8 12. On June 15, 2004, Company Registration Certificate No. PR 1750 was levied a \$251
9 fine by the Commissioner (erroneously identified in Accusation No. 2010-82 as the Orange
10 County Agricultural Commissioner) for violation of Code section 8505.5, and Food and
11 Agriculture Code section 12973, which has been paid.

12 13. On April 28, 2003, Company Registration Certificate No. PR 1750 was levied a \$804
13 fine by the Commissioner for violation of section 12973 of the Food and Agricultural Code and
14 section 6780(c) of the California Code of Regulations, which was paid on June 15, 2004.

15 14. On August 29, 2003, Company Registration Certificate No. PR 1750 was levied a
16 \$100 fine by the Board for violation of section 8516(b)(6)(7) of the Business and Professions
17 Code, which was paid on July 6, 2004.

18 15. On March 30, 2006, Company Registration Certificate No. PR 1750 was levied a
19 \$250 fine by the Commissioner for violation of section 8538 of the Business and Professions
20 Code, which was paid on April 17, 2006.

21 16. On September 2, 2007, Company Registration Certificate No. PR 1750 was levied a
22 \$1,500 fine by the Board for violation of section 8505.10 of the Business and Professions Code
23 and sections 1970 and 6600 of the California Code of Regulations, which was paid on May 12,
24 2010.

25 17. On June 6, 2008, Company Registration Certificate No. PR 1750 was suspended for
26 failure to maintain the general liability insurance required by Code section 8690.

27 18. On September 16, 2008, Company Registration Certificate No. PR 1750 was
28 reinstated after posting the general liability insurance required by Code section 8690.

1 19. On December 7, 2009, Company Registration Certificate No. PR 1750 was levied a
2 \$5,585 fine by the Board for violation of Code section 8516. The fine was paid on November 3,
3 2010.

4 20. On February 12, 2010, Company Registration Certificate No. PR 1750 was levied a
5 \$250 fine by the Commissioner for violation of section 15204(a) of the Food and Agricultural
6 Code, which was paid on May 12, 2010.

7 **OPERATOR'S LICENSE NO. OPR 8471**

8 21. On December 6, 1989, Operator's License No. OPR 8471 was issued in Branch 1 to
9 Joseph Anthony Olivarria, Qualifying Manager of Atlas Termite Company with an address of
10 5644 Kearny Mesa Road, Suite Q, San Diego, California 92111.

11 22. On January 7, 1991, Operator's License No. OPR 8471 was upgraded to include
12 Branches 1 and 3 and became the Qualifying Manager in Branch 3 for Atlas Termite Company.

13 23. On January 16, 1992, Operator's License No. OPR 8471 reflected a change of address
14 to 25 2nd Avenue, Chula Vista, California 91910.

15 24. On March 5, 2003, Operator's License No. OPR 8471 was levied a \$300 fine by the
16 Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business and
17 Professions Code, sections 1990(a)(4), 1991(a)(8), and 1996 of the California Code of
18 Regulations, which was paid on March 18, 2003.

19 25. On August 29, 2003, Operator's License No. OPR 8471 was levied a \$100 fine by the
20 Board for violation of section 8516(b)(6)(7) of the Business and Professions Code, which was
21 paid on July 6, 2004.

22 26. On September 2, 2007, Operator's License No. OPR 8471 was levied a \$1,500 fine by
23 the Board for violation of section 8505.10 of the Business and Professions Code and sections
24 1970 and 6600 of the California Code of Regulations, which was paid on May 12, 2010.

25 27. On June 6, 2008, Operator's License No. OPR 8471 was suspended for failure to
26 maintain the general liability insurance required by section 8690 of the Code.

27 28. On September 16, 2008, Operator's License No. OPR 8471 was reinstated after
28 posting the general liability insurance required by section 8690 of the Code.

1 29. On December 7, 2009, Operator's License No. OPR 8471 was levied a \$5,585 fine by
2 the Board for violation of section 8516 of the Business and Professions Code. The fine was paid
3 on November 3, 2010.

4 30. On February 12, 2010, Operator's License No. OPR 8471 was levied a \$250 fine by
5 the Commissioner for violation of section 15204(a) of the Food and Agricultural Code, which
6 was paid on May 12, 2010.

7 31. Operator's License No. OPR 8471 was revoked effective October 29, 2010.

8 **FIELD REPRESENTATIVE'S LICENSE NO. FR 38599**

9 32. On May 14, 2005, Field Representative's License No. FR 38599 was issued in Branch
10 1 to Adrian Paul Olivarria (Adrian Olivarria), employee of Atlas Termite Company and a mailing
11 address of 25 2nd Avenue, Chula Vista, CA 91910.

12 33. On November 27, 2007, Field Representative's License No. FR 38599 was levied a
13 \$625 fine by the San Diego County Agricultural Commissioner for violation of Food and
14 Agriculture Code section 12973, which has been paid.

15 34. Field Representative's License No. FR 38599 was revoked effective October 29, 2010

16 JURISDICTION

17 35. Accusation No. 2010-82 was filed before the Structural Pest Control Board (Board),
18 Department of Pesticide Regulation, and is currently pending against Respondents. The
19 Accusation and all other statutorily required documents were properly served on Respondents on
20 June 16, 2010. Respondents failed to timely file any Notice of Defense contesting the Accusation
21 and their default was therefore entered on September 29, 2010, effective October 29, 2010. On
22 November 16, 2010, Respondents filed a Petition for a Writ of Mandate in the case of *Joseph*
23 *Anthony Ollvarria, dba Atlas Termite Company and Adrian Paul Ollvarria v. Structural Pest*
24 *Control Board, Department Of Pesticide Regulation, State Of California, et al.*, San Diego
25 Superior Court case no. 37-2010-104247-CU-WM-CTL, seeking to vacate that default. As
26 addressed in the accompanying Stipulation and Order for Remand, to be filed in the Superior
27 Court action, the parties have agreed to vacate the default and resolve this Accusation matter as
28 more fully set forth herein. A copy of Accusation No. 2010-82 is attached as exhibit A.

ADVISEMENT AND WAIVERS

1
2 36. Respondents have carefully read, fully discussed with counsel, and understand the
3 charges and allegations in Accusation No. 2010-82. Respondents have also carefully read, fully
4 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
5 Order.

6 37. Respondents are fully aware of their legal rights in this matter, including the right to a
7 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
8 the witnesses against them; the right to present evidence and to testify on their own behalf; the
9 right to the issuance of subpoenas to compel the attendance of witnesses and the production of
10 documents; the right to reconsideration and court review of an adverse decision; and all other
11 rights accorded by the California Administrative Procedure Act and other applicable laws.

12 38. Respondents voluntarily, knowingly, and intelligently waive and give up each and
13 every right set forth above.

CULPABILITY

14
15 39. Respondents understand and agree that the charges and allegations in Accusation No.
16 2010-82, with the exception of those noted in paragraph 11 thereof, as corrected in paragraph 12,
17 above, if proven at a hearing, constitute cause for imposing discipline upon their Company
18 Registration, as well as for their Operator and Field Representative's licenses.

19 40. For the purpose of resolving the Accusation without the expense and uncertainty of
20 further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual
21 basis for the charges in the Accusation, except as limited in paragraph 39 and corrected in
22 paragraph 12, above, and that Respondents hereby give up their right to contest those charges.

23 41. Respondents agree that their Company Registration, Operator and Field
24 Representative's licenses are subject to discipline and they agree to be bound by the Board's
25 probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

26
27 42. This stipulation shall be subject to approval by the Board. Respondents understand
28 and agree that counsel for Complainant and the staff of the Board may communicate directly with

1 the Board regarding this stipulation and settlement, without notice to or participation by
2 Respondent or their counsel. By signing the stipulation, Respondents understand and agree that
3 they may not withdraw their agreement or seek to rescind the stipulation prior to the time the
4 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
5 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
6 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
7 not be disqualified from further action by having considered this matter.

8 43. The parties understand and agree that facsimile copies of this Stipulated Settlement
9 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
10 effect as the originals.

11 44. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
14 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
16 writing executed by an authorized representative of each of the parties.

17 45. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Board may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that Company Registration No. PR 1750 issued December 6,
22 1989, in Branch 1 to Atlas Termite Company with Joseph Anthony Olivarria as Owner and
23 Qualifying Manager, and subsequently upgraded to include Branches 1 and 3; Operator's License
24 No. OPR 8471, issued December 6, 1989, issued in Branch 1 to Joseph Anthony Olivarria,
25 Qualifying Manager of Atlas Termite Company, and subsequently upgraded to include Branches
26 1 and 3; and Field Representative License No. FR 38599 issued May 14, 2005, in Branch 1 to
27 Adrian Paul Olivarria, employee of Atlas Termite Company are revoked. However, the
28

1 revocations are stayed and Respondents are placed on probation for three years on the following
2 terms and conditions.

3 1. **Obey All Laws.** Respondents shall obey all laws and rules relating to the practice of
4 structural pest control.

5 2. **Quarterly Reports.** Respondents shall file quarterly reports with the Board during
6 the period of probation.

7 3. **Tolling of Probation.** Should any Respondent leave California to reside outside this
8 state, such Respondent must notify the Board in writing of the dates of departure and return.
9 Periods of residency or practice outside the state shall not apply to reduction of the probationary
10 period.

11 4. **Notice to Employers.** Respondents shall notify all present and prospective
12 employers of the decision in case no. 2010-82 and the terms, conditions and restrictions imposed
13 on Respondents by said decision.

14 Within 30 days of the effective date of this decision, and within 15 days of any
15 Respondent's undertaking new employment, Respondents shall cause their employer to report to
16 the Board in writing acknowledging the employer has read the decision in case No. 2010-82.

17 5. **Notice to Employees.** Respondents shall, upon or before the effective date of this
18 decision, post or circulate a notice to all employees involved in structural pest control operations
19 which accurately recite the terms and conditions of probation. Respondents shall be responsible
20 for said notice being immediately available to said employees. "Employees" as used in this
21 provision include all full-time, part-time, temporary and relief employees and independent
22 contractors employed or hired at any time during probation.

23 6. **Completion of Probation.** Upon successful completion of probation, Respondents'
24 licenses and certificate will be fully restored.

25 7. **Violation of Probation.** Should any Respondent violate probation in any respect, the
26 Board, after giving such Respondent notice and an opportunity to be heard, may revoke probation
27 and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed
28 against any Respondent during probation, the Board shall have continuing jurisdiction until the

1 matter is final, and the period of probation shall be extended until the matter is final.

2 8. **Cost Recovery.** Respondents shall pay to the Board, jointly and severally, costs
3 associated with its investigation and enforcement pursuant to Business and Professions Code
4 section 125.3 in the amount of \$11,055.97. Respondents shall be permitted to pay these costs in a
5 payment plan approved by the Board, with payments to be completed no later than six months
6 prior to the end of the probation term.

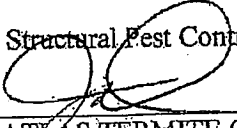
7 If Respondents have not complied with this condition during the probationary term,
8 and Respondents have presented sufficient documentation of their good faith efforts to comply
9 with this condition, and if no other conditions have been violated, the Board, in its discretion,
10 may grant an extension of Respondents' probation period up to one year without further hearing
11 in order to comply with this condition. During the one year extension, all original conditions of
12 probation will apply.

13 9. Respondent Joseph Anthony Olivarría will not seek to reactivate his Company
14 Registration Certificate No. PR 1750 in Br. 1 or his Operator's License No. OPR 8471 in Br. 1
15 during the period of probation.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
18 discussed it with my attorney, Mark Stender. I understand the stipulation and the effect it will
19 have on my Company Registration and Operator's Licenses. I enter into this Stipulated
20 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
21 bound by the Decision and Order of the Structural Pest Control Board.

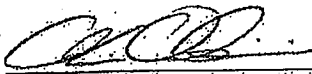
22 DATED: 12/15/10


23 ATLAS TERMITE COMPANY; JOSEPH ANTHONY
24 OLIVARRIA, OWNER & QUALIFYING MANAGER
Respondent

25 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
26 discussed it with my attorney, Mark Stender. I understand the stipulation and the effect it will
27 have on my Field Representative License. I enter into this Stipulated Settlement and Disciplinary
28

1 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
2 of the Structural Pest Control Board.

3 DATED: 12-15-2010

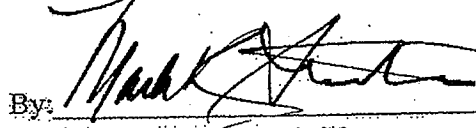


ADRIAN PAUL OLIVARRIA
Respondent

6 I have read and fully discussed with Respondents Atlas Termite Company; Joseph Anthony
7 Olivarría, Owner and Qualifying Manager; and Adrian Paul Olivarría the terms and conditions
8 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
9 its form and content.

10 DATED: 12/15/10

HIGGS, FLETCHER & MACK LLP



By: MARK K. STENDER, ESQ.
Attorneys for all Respondents

15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the Structural Pest Control Board of the Department of Pesticide
18 Regulation.

19 DATED: 12-16-10

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General



G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

25 SD2010800975

Exhibit A

Accusation No. 2010-82

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
Attorneys for Complainant

FILED

Date 6/9/10 By Kelli Okuma

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF PESTICIDE REGULATION**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-82

12 **ATLAS TERMITE COMPANY**
25 Second Avenue
13 Chula Vista, CA 91910
14 **JOSEPH ANTHONY OLIVARRIA,**
Owner and Qualifying Manager
Company Registration Certificate No.
15 PR 1750 in Br. 1 and 3

ACCUSATION

16 **JOSEPH ANTHONY OLIVARRIA,**
25 Second Avenue
17 Chula Vista, CA 91910
Operator's License No. OPR 8471
18 in Br. 1 and 3

19 **ADRIAN PAUL OLIVARRIA**
25 Second Avenue
20 Chula Vista, CA 91910
Field Representative No. FR 38599 in Br. 1.

21 Respondents.

22
23
24 Complainant alleges:

25 **PARTIES**

26 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
27 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
28 Regulation (Board).

LICENSE HISTORIES

COMPANY REGISTRATION CERTIFICATE NO. PR 1750

1
2
3 2. On December 6, 1989, Company Registration Certificate No. PR 1750 was issued in
4 Branch 1 to Atlas Termite Company with Joseph Anthony Olivarria (Olivarria) as Owner and
5 Qualifying Manager with an address of 5644 Kearny Mesa Road, Suite Q, San Diego, California
6 92111.

7 3. On January 2, 1990, Company Registration Certificate No. PR 1750 was upgraded to
8 include Branches 1 and 3 and reflected Diane Marie Collard as Branch 3 Qualifying Manager.

9 4. On January 7, 1991, Company Registration Certificate No. PR 1750 reflected a
10 change of Branch 3 Qualifying Manager to Joseph Anthony Olivarria.

11 5. On January 16, 1992, Company Registration Certificate No. PR 1750 reflected a
12 change of address to 25 2nd Avenue, Chula Vista, California 91910.

13 6. On June 1, 1995, Company Registration Certificate No. PR 1750 was levied a \$150
14 fine by the San Diego County Agricultural Commissioner (Commissioner) for violation of section
15 12973 of the Food and Agricultural Code, which was paid on November 8, 1995.

16 7. On April 10, 1996, Company Registration Certificate No. PR 1750 was levied a \$700
17 fine by the Commissioner for violation of sections 1970.3 and 604 of the California Code of
18 Regulations, section 12973 of the Food and Agricultural Code, and section 8505.9 of the Business
19 and Professions Code, which was paid on June 21, 1996.

20 8. On September 10, 1996, Company Registration Certificate No. PR 1750 was levied a
21 \$100 fine by the Commissioner for violation of section 6724 of the California Code of
22 Regulations, which was paid on October 10, 1996.

23 9. On August 20, 1999, Company Registration Certificate No. PR 1750 was levied a
24 \$151 fine by the Commissioner for violation of section 6724 of the California Code of
25 Regulations, which was paid on September 29, 1999.

26 10. On March 5, 2003, Company Registration Certificate No. PR 1750 was levied a \$300
27 fine by the Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business
28

1 and Professions Code, sections 1990(a)(4), 1991 (a)(8), and 1996 of the California Code of
2 Regulations, which was paid on March 18, 2003.

3 11. On May 30, 2003, Company Registration Certificate No. PR 1750 was levied a \$251
4 fine by the Orange County Agricultural Commissioner for violation of section 8505.5 of the
5 Business and Professions Code and section 12973 of the Food and Agricultural Code, which was
6 paid on June 15, 2004.

7 12. On April 28, 2003, Company Registration Certificate No. PR 1750 was levied a \$804
8 fine by the Commissioner for violation of section 12973 of the Food and Agricultural Code and
9 section 6780(c) of the California Code of Regulations, which was paid on June 15, 2004.

10 13. On August 29, 2003, Company Registration Certificate No. PR 1750 was levied a
11 \$100 fine by the Board for violation of section 8516(b)(6)(7) of the Business and Professions
12 Code, which was paid on July 6, 2004.

13 14. On March 30, 2006, Company Registration Certificate No. PR 1750 was levied a
14 \$250 fine by the Commissioner for violation of section 8538 of the Business and Professions
15 Code, which was paid on April 17, 2006.

16 15. On September 2, 2007, Company Registration Certificate No. PR 1750 was levied a
17 \$1,500 fine by the Board for violation of section 8505.10 of the Business and Professions Code
18 and sections 1970 and 6600 of the California Code of Regulations, which was paid on May 12,
19 2010.

20 16. On June 6, 2008, Company Registration Certificate No. PR 1750 was suspended for
21 failure to maintain the general liability insurance required by Code section 8690.

22 17. On September 16, 2008, Company Registration Certificate No. PR 1750 was
23 reinstated after posting the general liability insurance required by Code section 8690.

24 18. On December 7, 2009, Company Registration Certificate No. PR 1750 was levied a
25 \$5,585 fine by the Board for violation of Code section 8516. The fine has not been paid.

26 19. On February 12, 2010, Company Registration Certificate No. PR 1750 was levied a
27 \$250 fine by the Commissioner for violation of section 15204(a) of the Food and Agricultural
28 Code, which was paid on May 12, 2010.

1 OPERATOR'S LICENSE NO. OPR 8471

2 20. On December 6, 1989, Operator's License No. OPR 8471 was issued in Branch 1 to
3 Joseph Anthony Olivarria, Qualifying Manager of Atlas Termite Company with an address of
4 5644 Kearny Mesa Road, Suite Q, San Diego, California 92111.

5 21. On January 7, 1991, Operator's License No. OPR 8471 was upgraded to include
6 Branches 1 and 3 and became the Qualifying Manager in Branch 3 for Atlas Termite Company.

7 22. On January 16, 1992, Operator's License No. OPR 8471 reflected a change of address
8 to 25 2nd Avenue, Chula Vista, California 91910.

9 23. On March 5, 2003, Operator's License No. OPR 8471 was levied a \$300 fine by the
10 Board for violation of sections 8516(b)(6), (10), 8518, 8635, and 8638 of the Business and
11 Professions Code, sections 1990(a)(4), 1991(a)(8), and 1996 of the California Code of
12 Regulations, which was paid on March 18, 2003.

13 24. On August 29, 2003, Operator's License No. OPR 8471 was levied a \$100 fine by the
14 Board for violation of section 8516(b)(6)(7) of the Business and Professions Code, which was
15 paid on July 6, 2004.

16 25. On September 2, 2007, Operator's License No. OPR 8471 was levied a \$1,500 fine by
17 the Board for violation of section 8505.10 of the Business and Professions Code and sections
18 1970 and 6600 of the California Code of Regulations, which was paid on May 12, 2010.

19 26. On June 6, 2008, Operator's License No. OPR 8471 was suspended for failure to
20 maintain the general liability insurance required by section 8690 of the Code.

21 27. On September 16, 2008, Operator's License No. OPR 8471 was reinstated after
22 posting the general liability insurance required by section 8690 of the Code.

23 28. On December 7, 2009, Operator's License No. OPR 8471 was levied a \$5,585 fine by
24 the Board for violation of section 8516 of the Business and Professions Code. The fine has not
25 been paid.

26 29. On February 12, 2010, Operator's License No. OPR 8471 was levied a \$250 fine by
27 the Commissioner for violation of section 15204(a) of the Food and Agricultural Code, which
28 was paid on May 12, 2010.

1 30. Operator's License No. OPR 8471 is currently in effect and renewed through June 30,
2 2010.

3 **FIELD REPRESENTATIVE'S LICENSE NO. FR 38599**

4 31. On May 14, 2005, Field Representative's License No. FR 38599 was issued in Branch
5 1 to Adrian Paul Olivarria (Adrian Olivarria), employee of Atlas Termite Company and a mailing
6 address of 25 2nd Avenue, Chula Vista, CA 91910.

7 32. On November 27, 2007, Field Representative's License No. FR 38599 was levied a
8 \$625 fine by the San Diego County Agricultural Commissioner for violation of Food and
9 Agriculture Code section 12973, which has been paid.

10 33. Field Representative's License No. FR 38599 is currently in effect and renewed
11 through June 30, 2010.

12 **JURISDICTION**

13 34. This Accusation is brought before the Structural Pest Control Board (Board),
14 Department of Pesticide Regulation, under the authority of the following laws. All section
15 references are to the Business and Professions Code unless otherwise indicated.

16 35. Section 8620 of the Business and Professions Code (Code) states:

17 The board may upon its own motion, and shall upon verified complaint in
18 writing of any person, investigate the actions of any individual acting as a licensee, or
making application for a license.

19 After a hearing, the board may temporarily suspend or permanently
20 revoke a license issued under this chapter if the holder, while a licensee or applicant,
is guilty of or commits any one or more of the acts or omissions constituting grounds
21 for disciplinary action. In addition to its authority to suspend or revoke a license, the
board may assess a civil penalty as follows:

22 (a) Upon the conclusion of a hearing held pursuant to Chapter 5
23 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code, if the proposed decision of the hearing officer is that the licensee
24 is guilty of or has committed any one of the acts or omissions constituting grounds for
disciplinary action, the proposed decision shall provide for the imposition of a
25 suspension or for the revocation of the license. In this case, the board may impose the
suspension or revocation. The board may also, in lieu of a suspension, assess a civil
26 penalty. The licensee may express a preference for a form of discipline, but the board
shall not be bound by any expression of preference.

27 If a licensee elects to stipulate to a disciplinary action prior to an
28 administrative hearing, the board may impose a civil penalty, in accordance with this
section, in lieu of suspension.

1 If a proposed stipulation is rejected by the board, it is null and void and
2 does not constitute an admission of any violation charged.

3 (b) The civil penalty shall not be more than five thousand dollars (\$5,000)
4 for an actual suspension of one to 19 days.

5 (c) The civil penalty shall not be more than ten thousand dollars
6 (\$10,000) for an actual suspension of 20 to 45 days.

7 (d) If a licensee is assessed the civil penalty in lieu of an actual
8 suspension, the penalty shall be paid before the effective date of the decision.

9 (e) If the civil penalty is not paid before the effective date of the
10 suspension, the license shall be suspended until the penalty is paid or until the actual
11 suspension is served.

12 No civil penalty shall be assessed in lieu of any suspension which
13 exceeds 45 days. With the exception of the proceedings on suspensions undertaken or
14 on fines levied pursuant to Section 8617, the proceedings under this article shall be
15 conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1
16 of Division 3 of Title 2 of the Government Code, and the board shall have all the
17 powers granted therein.

18 In any order of suspension or revocation, the board may authorize the
19 completion of any contract or work contracted for under terms and conditions set
20 forth in the order.

21 36. Section 8624 of the Code states:

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

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

28 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.

37. Section 8625 of the Code 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.

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STATUTORY PROVISIONS

38. Section 8505.5 of the Code states:

Notice of the date and place of fumigation, and chemicals to be used, shall be given by the fumigator to the fire department serving the area in which fumigation is to be performed not less than two hours prior to the time fumigation begins. The fire department shall not charge any fees for any service related to structural pest control activities except for the costs of an emergency response necessitated by illegal or negligent actions.

If requested by the county agricultural commissioner, notice of each fumigation to be performed shall be given to the commissioner in the county in which the job is to be performed. The notice, which may be mailed or given by telephone, at the option of the commissioner, shall be given at least 24 hours prior to the time fumigation begins, unless the commissioner determines that less time is sufficient. No fee shall be assessed for processing the notice which may be requested by the commissioner.

39. Section 8505.11 of the Code states:

If the structure which has been fumigated has an attic or if the area underneath such structure is accessible to inspection for purposes of structural pest control, the registered company which performed the fumigation shall, immediately upon completion, post in the attic, immediately adjacent to the entrance thereto, or in the area underneath the structure, immediately adjacent to the main entrance vent thereof, or in both of such places if the structure has an attic and an accessible underarea, a durable sign not less than five inches by seven inches in size stating the name of the registered company, the date of fumigation, and the type of fumigant used.

40. Section 8516 of the Code states:

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

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision 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 on a form

1 approved by the board shall be prepared and delivered to the person requesting the
2 inspection or to the person's designated agent within 10 business days of the
3 inspection, except that an inspection report prepared for use by an attorney for
4 litigation purposes is not required to be reported to the board. The report shall be
5 delivered before work is commenced on any property. The registered company shall
6 retain for three years all original inspection reports, field notes, and activity forms.

7 Reports shall be made available for inspection and reproduction to the
8 executive officer of the board or his or her duly authorized representative during
9 business hours. Original inspection reports or copies thereof shall be submitted to the
10 board upon request within two business days. The following shall be set forth in the
11 report:

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

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

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

16 (4) The address or location of the property.

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

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

23 (7) Information regarding the substructure, foundation walls and
24 footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing
25 that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling
26 joists, and attic walls, or other parts subject to attack by wood destroying pests or
27 organisms. Conditions usually deemed likely to lead to infestation or infection, such
28 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 organisms are present.**

(9) Indication or description of any areas that are inaccessible or not
inspected with recommendation for further inspection if practicable. If, after the
report has been made in compliance with this section, authority is given later to open
inaccessible areas, a supplemental report on conditions in these areas shall be made.

(10) Recommendations for corrective measures.

(11) Information regarding the pesticide or pesticides to be used for their
control as set forth in subdivision (a) of Section 8538.

1 (12) The inspection report shall clearly disclose that if requested by the
2 person ordering the original report, a reinspection of the structure will be performed if
an estimate or bid for making repairs was given with the original inspection report, or
thereafter.

3 (13) The inspection report shall contain the following statement, printed
4 in boldface type:

5 NOTICE: Reports on this structure prepared by various registered
6 companies should list the same findings (i.e. termite infestations, termite damage,
7 fungus damage, etc.). However, recommendations to correct these findings may vary
8 from company to company. You have a right to seek a second opinion from another
9 company." An estimate or 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.

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

12 A reinspection shall be an inspection of those items previously listed on
13 an original report to determine if the recommendations have been completed. Each
14 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.

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

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

18

19 41. Section 8550 of the Code states:

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

22 (b) Notwithstanding subdivision (a), an unlicensed individual may solicit
23 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
24 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
25 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
26 behalf of a licensed operator or field representative.

27 (c) It is unlawful for an unlicensed individual, soliciting pest control
28 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

1 pest control evaluations or inspections, pest identification, making any claims of pest
2 control safety or pest control efficacy, or to offer price quotes other than what is
3 provided and printed on the company advertising or literature, or both.

4 (d) It is also unlawful for any unlicensed individual to offer any opinion,
5 or to make any recommendations, concerning the need for structural pest control
6 work in general, or in connection with a particular structure.

7 (e) It is unlawful for any firm, sole proprietorship, partnership,
8 corporation, association, or other organization or combination thereof to engage or
9 offer to engage in the practice of structural pest control, unless registered in
10 accordance with Article 6 (commencing with Section 8610).

11 42. Section 8552 of the Code states:

12 It is unlawful for any person to advertise or represent in any manner that
13 any pest control work, in whole or in part, has been done upon any structure, unless
14 the work has been performed by a company registered under this chapter.

15 43. Section 8636 of the Code states:

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

20 44. Section 8641 of the Code states:

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

26 45. Section 8642 of the Code states:

27 The commission of any grossly negligent or fraudulent act by the licensee
28 as a pest control operator, field representative, or applicator or by a registered
company is a ground for disciplinary action.

46. Section 8644 of the Code 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.

47. Section 8654 of the Code 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

1 suspension, or who has been a member, officer, director, associate, qualifying
2 manager, or responsible managing employee of any partnership, corporation, firm, or
3 association whose application for a company registration has been denied for any of
4 the reasons specified in Section 8568, or whose company registration has been
5 revoked as a result of disciplinary action, or whose company registration is under
6 suspension, and while acting as such member, officer, director, associate, qualifying
7 manager, or responsible managing employee had knowledge of or participated in any
8 of the prohibited acts for which the license or registration was denied, suspended or
9 revoked, shall be prohibited from serving as an officer, director, associate, partner,
10 qualifying manager, or responsible managing employee of a registered company, and
11 the employment, election or association of such person by a registered company is a
12 ground for disciplinary action.

13 48. Section 8697 of the Code states, "Each company registered under the provisions of
14 this chapter shall maintain a bond executed by an admitted surety insurer in the amount of four
15 thousand dollars (\$4,000)."

16 49. Section 12973 of the Food & Agricultural Code states:

17 The use of any pesticide shall not conflict with labeling registered
18 pursuant to this chapter which is delivered with the pesticide or with any additional
19 limitations applicable to the conditions of any permit issued by the director or
20 commissioner.

21 REGULATIONS

22 50. California Code of Regulations, Title 3, section 6780 states in pertinent part:

23 (b) Whenever an employee may be exposed above an exposure standard
24 to methyl bromide, sulfuryl fluoride, or any other fumigant for which only
25 air-supplied respirator equipment is approved, the employer shall either:

- 26 (1) require the use of air-supplied respirator equipment,
27 (2) employ continuous monitoring to warn employees before the PEL is
28 reached or
(3) operate under the provisions of (c) below.

(c) Upon written application by an employer, the director will review and
may accept a Fumigation Safety Program that described methods, work practices,
devices, or processes which the director determines will ensure that employees will
not be exposed to concentrations of fumigants in excess of the PEL.

29 51. Regulations, Title 16, section 1970 states:

For the purpose of maintaining proper standards of safety and the
establishment of responsibility in handling the dangerous gases used in fumigation
and the pesticides used in other pest control operations, a registered company shall
compile and retain for a period of at least three years, a log for each fumigation job
and for each pesticide control operation in which a pesticide is used by the registered

1 company or the registered company's employee. If the fumigation is to be performed
2 by a fumigation subcontractor, the subcontractor shall complete the fumigation log
3 and forward a copy of the log to the primary contractor within ten business days.

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

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

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

10 Address of property.

11 Date of fumigation.

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

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

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

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

22 Cubic feet fumigated.

23 Target pest(s).

24 Kind of fumigant(s) used.

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

27 Name of warning agent and amount used.

28 Type of sealing method used.

Weather conditions as to temperature and wind.

Date and hour fumigant introduced.

Cylinder number of each fumigant used.

Weight of each fumigant cylinder before introduction of gas.

Pounds of fumigant used from each cylinder.

Total pounds of fumigant used.

List of any extraordinary safety precautions taken.

1 Name, signature and license number of operator or field representative
2 releasing fumigant.

3 First name and surname of crew when fumigant was released, when
4 aeration commenced and when the property was released for occupancy.

5 Indication of whether or not safety equipment was available at the
6 fumigation site at the time the fumigant was introduced, when ventilation commenced
7 and when the property was released for occupancy.

8 Date and hour aeration commenced.

9 Conditions of tarp and seal.

10 Name, signature and license number of operator or field representative
11 commencing ventilation.

12 Type of device(s) used to test for re-entry.

13 Date and hour ready for occupancy.

14 Name, signature and license number of operator or field representative
15 releasing property for occupancy.

16 Method used to calculate amount of fumigant used.

17 Factors used in calculation of fumigant.

18 Special notes or comments pertinent to fumigation.

19 (b) The report for each pest control operation, other than fumigation, in
20 which a pesticide is used shall contain the following information:

21 Date of treatment.

22 Name of owner or his or her agent.

23 Address of property.

24 Description of area treated.

25 Target pest(s).

26 Pesticide and amount used.

27 Identity of person or persons who applied the pesticide.

28 (c) The term "fraudulent act" as used in Section 8642 includes but is not
limited to the falsification of any records pertaining to fumigation jobs or other pest
control operations in which a pesticide other than a fumigant is used.

52. Regulations, Title 16, section 1996.3, states:

(a) The address of each property inspected and/or upon which work was

1 completed shall be reported on a form prescribed by the Board and designated as the
2 WDO Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev.
3 5/03) at the end of this section. This form shall be prepared by each registered
4 company and shall comply with all of the requirements pursuant to Section 8516(b),
5 and 8518.

6 (b) The form shall contain the following information for each property
7 inspected and/or upon which work was completed.

8 (1) Company Name

9 (2) Company registration number

10 (3) Branch office registration number (when a branch office issues an
11 inspection report or notice of work completed

12 (4) Date of Activity

13 (5) Address of property inspected or upon which work was
14 completed, including zip code

15 (6) Activity Code

16 (7) License number of licensee performing the inspection

17 (c) Failure of a registered company to report and file with the Board the
18 address of any property inspected or upon which work was completed pursuant to
19 Section 8516(b) or 8518 are grounds for disciplinary action and subject to a fine of
20 not more than two thousand five hundred dollars (\$2,500).

21 COST RECOVERY

22 53. 125.3 of the Code states, in pertinent part, that a Board may request the administrative
23 law judge to direct a licentiate found to have committed a violation or violations of the licensing
24 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
25 case.

26 FACTS

27 54. On July 17, 2009, the San Diego County Department of Agriculture, Weights and
28 Measures (County) referred violations by Respondent Atlas Termite Company to Complainant for
consideration of enforcement action. The referral was largely due to Atlas' continuing to engage
in pest control while its registration with the Board was suspended, and its pattern of failing to
give notice of the date and place of fumigations. Complainant received the referral on July 22,
2009.

1 55. Complainant's investigation of the County's referral revealed that between March
2 2008 and May 2009, Respondents had violated the laws and regulations of the Board as follows:

3 a. No Surety Bond: Respondents failed to maintain a surety bond in the amount of
4 \$4,000, for which its company registration was suspended on June 6, 2008. However,
5 Respondents continued to engage in pest control between June 6 and September 16, 2008,
6 without the required surety bond.

7 b. Proctor Valley Rd. Property: In July and August 2008, Respondents conducted a
8 Branch I fumigation at 13518 Proctor Valley Road, Jamul, California. On August 25 and 26,
9 2008, the County performed and recorded a video surveillance of the fumigation, and
10 photographed the treated structure. Respondent Olivarria submitted the fumigation log and three
11 written Notices of Intent (NOI) to the County for the Proctor Valley job, but claimed that his wife
12 verbally submitted a NOI to the County for the August 25, 2008 work the day before the actual
13 fumigation by telephone, when, in fact, no such telephonic NOI was submitted.

14 c. Eighth St. Property: On October 21, 2008, the County received an illness complaint
15 from a dentist located at 2340 East 8th Street, National City, California, whose office
16 Respondents had fumigated three days earlier on October 18, 2008. The office workers'
17 symptoms included watery, itchy eyes; headaches; vomiting; and respiratory irritation. The
18 County's investigation concluded that Respondents had:

19 1. failed to use the proper amount of chloropicrin in one of three chloropicrin pans
20 placed in the structure at the property. Respondent Olivarria, the licensee in charge of the
21 fumigation, exceeded the maximum amount of chloropicrin allowed for use in a single pan by
22 using it more than allowed by fumigant label directions;

23 2. failed to remove water bottles from coolers within the structure prior to
24 introducing the fumigant at the property. Respondent Olivarria did not remove open water bottles
25 as required by fumigant label directions;

26 3. failed to accurately record the dates of aeration and occupancy on the
27 fumigation log for the property;

28

1 4. failed to file a NOI for the property within 24 hours of the commencement of
2 fumigation; and

3 5. failed to file a Wood Destroying Pests and Organisms report and Notice of
4 Work Completed and Not Completed at the property within 10 days after inspection was made or
5 work was completed.

6 d. Inconsistent Structural Pest Control Records: On November 17, 2008, the County
7 conducted a records inspection at Respondents' company, with Respondent Olivarria present.
8 Inspection of fumigation logs for fumigations performed in San Diego County in April and May
9 of 2008 revealed that cylinder weights during the course of use were sometimes logged as having
10 more weight after fumigation than after fumigation on a previous date; starting weights in some
11 instances did not reflect the amount of stated weight after the previous day's use.

12 e. Missing Notices of Intent: On December 18, 2008, the County reviewed NOIs
13 submitted for April through October 2008, but found that Respondents failed to submit any NOIs
14 for the months of July and August, even though Respondents' Monthly Summary Pesticide Use
15 Reports (MSPURs) reported 19 applications of Vikane fumigant in July 2008, and 14 applications
16 of Vikane fumigant in August 2008. In all, Respondents' company failed to submit NOIs for
17 fumigations completed from April through August 2008.

18 f. Tricia S. Property:

19 1. On May 19, 2009 the County performed a fumigation compliance inspection at
20 14117 Tricia St, Poway, California. However, Respondents failed to submit an NOI to the
21 County for the May 18, 2009 fumigation within the 24-hour limit of doing so, since the NOI
22 Respondents submitted on May 13, 2009, was premature.

23 2. On May 20, 2009, the County observed the aeration phase of the fumigation at
24 the Tricia St. property. Respondents' personnel present at the property were Respondents Adrian
25 Olivarria and his father Joseph Anthony Olivarria, who failed to don Self Contained Breathing
26 Apparatus (SCBA), to install equipment to facilitate the required Tarpaulin Aeration Removal
27 Plan (TARP), and to remove the chloropicrin pan (pic-pan) as required by the fumigant's label
28 directions.

1 3. On May 21, 2009, County Inspectors met with Respondent Olivarria at the
2 Tricia St. property to verify that the treated areas of the structure did not exceed a fumigant level
3 of 1 part per million. The Inspectors observed that the structure had been posted with a Notice of
4 Re-Entry, and the County's gas analyzer did not detect readable levels of sulfuryl fluoride
5 fumigant. A fumigation completion sign had not been posted in the attic as required, and
6 Respondent Olivarria ascended into the attic and confirmed that no completion sign was present.
7 Though Respondent Olivarria noted that a completion sign had been placed on the garage wall, it
8 measured only 3" x 5", which is less than the 5" x 7" required. A check of Respondents'
9 company's Interscan device for its most recent calibration date showed a sticker on its top panel
10 identifying a calibration date of August 18, 2008 by UNIVAR. Respondent Olivarria said that
11 particular device was not used to check the structure on Tricia St., but that his company had two
12 such devices and the other had been used to test the structure.

13 4. On May 22, 2009, the County asked Respondent Olivarria to bring to the
14 County the Interscan device that was used to clear the Tricia St. property for examination, but
15 Respondent Olivarria brought in the same Interscan device that was present at the Tricia St.
16 property the previous day. Though Respondent Olivarria claimed that there were additional
17 stickers indicating calibration dates on the side panel of the device, there was only a calibration
18 date on the sticker of January 19, 2009, and that sticker showed a serial number different from
19 that of the device to which it was attached, which Respondent was unable to explain. The Vikane
20 fumigant label requires that the Interscan be calibrated according to the manufacturer
21 recommendations within one-month prior to use as a clearance device.

22 5. On May 29, 2009, the County provided the Board with a copy of Respondent's
23 fumigation log for the Tricia St. property indicating May 20, 2009, 12:45 p.m. as the date and
24 time of commencement of aeration. However, County Inspectors were on-site from 8:07 a.m. to
25 2:00 p.m., and did not observe commencement of aeration at 12:45 PM as indicated on
26 Respondent's fumigation log. The Vikane fumigant label requires that the structure aerate with
27 all operable windows and doors open.

28 g. Rob Roy Place Property:

1 1. On May 19, 2009, a County Inspector observed a fumigation truck belonging to
2 Respondent company parked in the driveway of 3412 Rob Roy Place, San Diego, California. The
3 Inspector noted that the date on the NOI for the fumigation that Respondents had submitted to the
4 County was May 15, 2009, beyond the 24-hour limit. When the Inspector left and returned
5 approximately two hours later, she found the truck gone but observed that a shed on the property
6 had been tented and had fumigation warning signs posted on it, indicating that the fumigant had
7 been released into the structure on May 19, 2008 at 10:30 a.m.

8 2. On May 20, 2009, County Inspectors conducted an undercover use-monitoring
9 inspection at the Rob Roy Place property. Respondents' personnel present at the property were
10 Adrian Olivarría and Joseph Anthony Olivarría. Respondents' personnel failed to don the SCBA
11 as required, to install equipment to facilitate the required Tarpaulin Aeration Removal Plan
12 (TARP), and to remove the chloropicrin pan (pic-pan) as required by the fumigant's label
13 directions.

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Fraud & Misrepresentation)

16 56. Respondents Atlas Termite Company, and its Company Registration Certificate No.
17 PR 1750, Branch 1 and 3; Joseph Anthony Olivarría, Owner and Qualifying Manager, and his
18 Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarría, and his Field
19 Representative's License No. FR 38599, Branch 1, (together, Respondents), are subject to
20 discipline under Code sections 8641, 8642, and 8644, in that, as more fully set forth in paragraph
21 55(f)(5), above, Respondents misrepresented and fraudulently prepared and delivered to the
22 County a fumigation log for the Tricia S. property indicating May 20, 2009, 12:45 p.m. as the
23 date and time of aeration commencement, when in fact, Respondents did not commence aeration
24 at that time.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Engaging in Pest Control Without Proper Registration)

27 57. Respondents Atlas Termite Company, and its Company Registration Certificate No.
28 PR 1750, Branch 1 and 3; and Joseph Anthony Olivarría, Owner and Qualifying Manager, and his

1 Operator's License No. OPR 8471, Branch 1 and 3, are subject to discipline under Code sections
2 8550, 8552, and 8641 in that, as more fully set forth in paragraph 55(a) and (b), above,
3 Respondents advertised for and engaged in the business of pest control while Company
4 Registration Certificate No. PR 1750, Branch 1 and 3, and Operator's License No. OPR 8471,
5 Branch 1 and 3 were suspended for failure to maintain a surety bond.

6 **THIRD CAUSE FOR DISCIPLINE**

7 (Failure to Maintain Surety Bond)

8 58. Respondents Atlas Termite Company, and its Company Registration Certificate No.
9 PR 1750, Branch 1 and 3; and Joseph Anthony Olivarria, Owner and Qualifying Manager, and his
10 Operator's License No. OPR 8471, Branch 1 and 3, are subject to discipline under Code sections
11 8641 and 8697 in that, as more fully set forth in paragraphs 16, 17, 26, 27, and 55(a) and (b),
12 above, Respondents failed to maintain a surety bond while engaging in the business of pest
13 control.

14 **FOURTH CAUSE FOR DISCIPLINE**

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

16 59. Respondents Atlas Termite Company, and its Company Registration Certificate No.
17 PR 1750, Branch 1 and 3; and Joseph Anthony Olivarria, Owner and Qualifying Manager, and his
18 Operator's License No. OPR 8471, Branch 1 and 3, are subject to discipline under Code sections
19 8516, subdivision (b) and 8641, and Regulations section 1996.3, in that, as more fully set forth in
20 paragraph 55(c)(5), above, Respondents failed to file a Wood Destroying Pest and Organisms
21 Report and Notice of Work Completed and Not Completed with the Board in relation to the
22 October 18, 2008 Eighth Street property fumigation.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 (Failure to File Timely Notices of Intent with the County)

25 60. Respondents Atlas Termite Company, and its Company Registration Certificate No.
26 PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his
27 Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field
28 Representative's License No. FR 38599, Branch 1, are subject to discipline under Code sections

1 8505 and 8641, in that, as more fully set forth in paragraphs 55(b), (c)(4), (e), (f)(1), and g(1),
2 above, Respondents failed to file Notices of Intent with the County 24 hours in advance of the
3 fumigations performed for the Proctor Valley Road, Eighth Street, Tricia S., and Rob Roy Place
4 properties, and for the fumigations Respondents performed from April through August 2008,
5 inclusive.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 (Failure to Post Proper Fumigation Completion Sign)

8 61. Respondents Atlas Termite Company, and its Company Registration Certificate No.
9 PR 1750, Branch 1 and 3; Joseph Anthony Olivarría, Owner and Qualifying Manager, and his
10 Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarría, and his Field
11 Representative's License No. FR 38599, Branch 1, are subject to discipline under Code section
12 8505.11 and 8641, in that, as more fully set forth in paragraph 55(f)(3), above, Respondents failed
13 to post a properly-sized fumigation completion sign for the May 18, 2009 fumigation
14 Respondents performed at the Tricia S. property.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 (Failure to Follow Fumigant Label Directions)

17 62. Respondents Atlas Termite Company, and its Company Registration Certificate No.
18 PR 1750, Branch 1 and 3; Joseph Anthony Olivarría, Owner and Qualifying Manager, and his
19 Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarría, and his Field
20 Representative's License No. FR 38599, Branch 1, are subject to discipline under Code section
21 8641, and Food & Agricultural Code section 12973, in that, as more fully set forth in paragraphs
22 55(c)(1) and (2), (f)(5), and g(2), above, Respondents failed to follow the label directions on the
23 fumigants used for the Eighth Street, Tricia S., and Rob Roy Place properties.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 (Failure to Maintain Proper Fumigation Logs)

26 63. Respondents Atlas Termite Company, and its Company Registration Certificate No.
27 PR 1750, Branch 1 and 3; Joseph Anthony Olivarría, Owner and Qualifying Manager, and his
28 Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarría, and his Field

1 Representative's License No. FR 38599, Branch 1, are subject to discipline under Code sections
2 8641 and Regulations section 1970, subdivision (a), in that, as more fully set forth in paragraphs
3 55(c)(3) and (d), above, Respondents failed to maintain proper fumigation logs for the
4 fumigations performed for the Eighth Street property, and for the fumigations Respondents
5 performed during April and May 2008, inclusive.

6 NINTH CAUSE FOR DISCIPLINE

7 (Failure to Comply with Respirator and Exposure Regulations)

8 64. Respondents Atlas Termite Company, and its Company Registration Certificate No.
9 PR 1750, Branch 1 and 3; Joseph Anthony Olivarria, Owner and Qualifying Manager, and his
10 Operator's License No. OPR 8471, Branch 1 and 3; and Adrian Paul Olivarria, and his Field
11 Representative's License No. FR 38599, Branch 1, are subject to discipline under Code sections
12 8636 and 8641, and Regulations, title 3, section 6780 as follows:

13 a. Respirator Violation: As more fully set forth in paragraph 55(f)(2), above,
14 Respondents failed to require the use of, and use, air-supplied respirators while performing the
15 aeration phase of fumigation at the Tricia S. property, in violation of Regulations, title 3, section
16 6780, subdivision (b).

17 b. Exposure Violations: As more fully set forth in paragraphs 55(f)(2), above,
18 Respondents failed to obtain approval of a Fumigation Safety Program in substitution of the
19 requirement that Respondents employ TARPs while performing the aeration phase of fumigation
20 at the Tricia S. and Rob Roy Place properties, in violation of Regulations, title 3, section 6780,
21 subdivision (c).

22 OTHER MATTERS

23 65. Pursuant to Code section 8624, the causes for discipline established as to Respondent
24 Atlas Termite Company likewise constitute cause for discipline against Respondent Joseph
25 Anthony Olivarria, Qualifying Manager in Branch 3 for Atlas Termite Company, regardless of
26 whether he had knowledge of or participated in the acts or omissions which constitute cause for
27 discipline against Atlas Termite Company.

28

1 66. Pursuant to Code section 8654, if discipline is imposed on Atlas Termite Company,
2 with Joseph Anthony Olivarría, as the Qualifying Manager in Branch 3, then he shall be
3 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
4 responsible managing employee for any registered company during the time the discipline is
5 imposed, and any registered company which employs, elects, or associated her shall be subject to
6 disciplinary action.

7 67. Pursuant to Code section 8624, if Operator's License Number OPR 8471, issued to
8 Joseph Anthony Olivarría in Branch 1 and 3, is suspended or revoked, the Board may suspend or
9 revoke the registration of any branch office registered under the name of Joseph Anthony
10 Olivarría.

11 68. Pursuant to Code section 8624, the causes for discipline established as to Respondent
12 Atlas Termite Company likewise constitute cause for discipline against Respondent Joseph
13 Anthony Olivarría, Owner of Atlas Termite Company, regardless of whether he had knowledge of
14 or participated in the acts or omissions which constitute cause for discipline against Atlas Termite
15 Company.

16 69. Pursuant to Code section 8654, if discipline is imposed on Atlas Termite Company,
17 and Joseph Anthony Olivarría, Owner of Atlas Termite Company, then he shall be prohibited
18 from serving as an officer, director, associate, partner, qualifying manager, or responsible
19 managing employee for any registered company during the time the discipline is imposed, and
20 any registered company which employs, elects, or associates him shall be subject to disciplinary
21 action.

22 70. Pursuant to Code section 8624, if Field Representative's License Number FR 38599,
23 issued to Adrian Paul Olivarría in Branch 1, is suspended or revoked, the Board may suspend or
24 revoke the registration of any branch office registered under the name of Adrian Paul Olivarría.

DISCIPLINARY CONSIDERATIONS

25
26 71. For purposes of determining the amount of discipline, if any, proper under the
27 circumstances of this matter, Complainant incorporates by reference Respondents' history of
28

1 prior violations of pest control laws and regulations, as detailed in paragraphs, 6—19, 23—29,
2 and 32, inclusive, above.

3 **PRAYER**

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

6 1. Revoking or suspending Company Registration Number PR 1750, in Branches 1 and
7 3 issued to Atlas Termite Company; Joseph Anthony Olivarria, Owner and Qualifying Manager;

8 2. Revoking or suspending Operator's License Number OPR 8471, in Branches 1 and 3
9 issued to Joseph Anthony Olivarria, Qualifying Manager of Atlas Termite Company;

10 3. Revoking or suspending Field Representative Number FR 38599, in Branch 1 issued
11 to Adrian Paul Olivarria;

12 4. Revoking or suspending any other license for which Respondent Joseph Anthony
13 Olivarria is furnishing the qualifying experience or appearance;

14 5. Prohibiting Respondent Joseph Anthony Olivarria from serving as an officer, director,
15 associate, partner, qualifying manager or responsible managing employee of any registered
16 company during the period that discipline is imposed on Company Registration Certificate
17 Number PR 1750, issued to Respondent Atlas Termite Company;

18 6. Prohibiting Respondent Joseph Anthony Olivarria from serving as an officer, director,
19 associate, partner, qualifying manager or responsible managing employee of any registered
20 company during the period that discipline is imposed on Operator's License No. OPR 8741 in
21 Branches 1 and 3 issued to Respondent Joseph Anthony Olivarria;

22 7. Prohibiting Respondent Adrian Paul Olivarria from serving as an officer, director,
23 associate, partner, qualifying manager or responsible managing employee of any registered
24 company during the period that discipline is imposed on Field Representative's License No.
25 38599 in Branch 1 issued to Respondent Adrian Paul Olivarria;

26 8. Ordering Respondents Atlas Termite Company, Joseph Anthony Olivarria, Adrian
27 Paul Olivarria, jointly and severally, to pay the Structural Pest Control Board, Department of
28

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

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

4
5 DATED: 6/9/10

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

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