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

11 In the Matter of the Accusation Against:

Case No. 2012-38

12 **BUG WISER, JUAN JIMENEZ**  
13 **OWNER/QUALIFYING MANAGER**  
13608 Dunrobin Avenue  
14 Bellflower, California 90706  
**Company Registration Certificate**  
15 **No. PR 3191**

**ACCUSATION**

16 and

17 **JUAN JIMENEZ**  
13608 Dunrobin Avenue  
18 Bellflower, California 90706  
**Operator's License No. OPR 9791**

19 Respondents.  
20

21 Complainant alleges:

22 **PARTIES**

23 1. William H. Douglas ("Complainant") brings this Accusation solely in his official  
24 capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board  
25 ("Board"), Department of Pesticide Regulation.

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**Bug Wiser**

2. On or about December 10, 1997, the Board issued Company Registration Certificate Number PR 3191 in Branch 3 (termite) to Bug Wiser ("Respondents") with Juan Jimenez ("Respondents or Respondent Jimenez"), as owner and qualifying manager.

**Juan Jimenez**

3. On or about November 24, 1997, the Board issued Operator's License Number OPR 9791 in Branch 3 to Respondent Jimenez, owner and qualifying manager of Bug Wiser. Respondent's operator's license is currently in effect and renewed through June 30, 2012.

**JURISDICTION**

4. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

5. Code section 8625 states:

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

6. Code section 8624 states, in pertinent part:

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

The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

7. Code section 8654 states:

Any individual who has been denied a license for any of the reasons

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

## 8 STATUTORY AND REGULATORY PROVISIONS

### 9 (Statutory Provisions)

10 8. Code section 125.9 states, in pertinent part:

11 (a) Except with respect to persons regulated under Chapter 11 (commencing with  
12 Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board,  
13 bureau, or commission within the department, the board created by the Chiropractic Initiative  
14 Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for  
15 the issuance to a licensee of a citation which may contain an order of abatement or an order to pay  
16 an administrative fine assessed by the board, bureau, or commission where the licensee is in  
17 violation of the applicable licensing act or any regulation adopted pursuant thereto.

18 (b) The system shall contain the following provisions:

19 .....

20 (2) Whenever appropriate, the citation shall contain an order of abatement fixing a  
21 reasonable time for abatement of the violation.

22 .....

23 (5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the  
24 citation is being appealed, may result in disciplinary action being taken by the board, bureau, or  
25 commission. Where a citation is not contested and a fine is not paid, the full amount of the  
26 assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed  
27 without payment of the renewal fee and fine.

28 9. Code section 8516 states, in pertinent part:

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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

1 inspection has been made by a licensed Branch 3 field representative or operator.  
2 The address of each property inspected or upon which work is completed shall be  
3 reported on a form prescribed by the board and shall be filed with the board no later  
4 than 10 business days after the commencement of an inspection or upon completed  
5 work.

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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:

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

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-to-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

(10) Recommendations for corrective measures . . .

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10. Code section 8518 states, in pertinent part:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

....

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 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 two business days.

11. Code section 8622 states, in pertinent part:

When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty five dollars (\$125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged . . .

12. Code section 8641 states:

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

13. Code section 8691 states:

No registered company shall engage in any of the practices for which it is required to be registered by this chapter unless it maintains such insurance policy or bond as specified in this article.

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1 Regulatory Provisions

2 14. California Code of Regulations, title 16, section ("Regulation") 1920 states, in  
3 pertinent part:

4 (d) Compliance with Orders of Abatement: When a citation is not contested or if the  
5 citation is appealed and the person cited does not prevail, failure to comply with the order  
6 of abatement or to pay the fine in the citation within the time allowed by a licensee may  
7 result in disciplinary action being taken by the Board against the person cited, or where  
the cited person is unlicensed in appropriate judicial relief being taken against the person  
cited.

8 COST RECOVERY

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

13 FACTUAL SUMMARY

14 16. On or about December 30, 2009, Respondent Jimenez was issued Citation CF  
15 10-78 for violating Business and Professions Code section 8516 (the failure to file the addresses  
16 of properties with the Board where inspections were made or work was completed), and for  
17 violating Business and Professions Code section 8691 (failure to maintain the required insurance  
18 for fifty days, from on or about August 11, 2009 to on or about September 30, 2009, while  
19 continuing to perform pest control work). The Citation included a fine of \$2500 for violating  
20 Business and Professions Code section 8516 and a fine of \$1500 for violating Business and  
21 Professions Code section 8691. The Citation also included an order of abatement directing  
22 Respondent to file all unfiled addresses where inspection or work was completed by Respondent  
23 within ninety (90) days of the date of receipt of the Citation order.

24 17. On or about April 22, 2011, specialist Gregory Adams of the Board performed  
25 a Wood Destroying Organism Activity Search of the Board's records and found that Respondent  
26 had failed to file with the Board the addresses of 329 properties inspected by Respondent or had  
27 work performed by Respondent since August 1, 2008.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Failure to Comply with Citation and Order of Abatement)

3 18. Respondents Bug Wiser and Jimenez are subject to disciplinary action pursuant to  
4 Code sections 125.9, 8516, 8518, and 8641 and California Code of Regulations, regulation 1920  
5 subsection (d) in that Respondents failed to comply with payment of \$4000 and the order of  
6 abatement contained within Citation No. CF 10-78 in that since August 1, 2008, Respondents  
7 have failed to file with the Board the addresses of 329 properties to whom work was performed on  
8 the property inspected as further set forth in paragraphs 16 and 17 which are incorporated herein  
9 by reference.

10 MATTERS IN AGGRAVATION

11 19. By way of aggravation, the Board alleges the following against Respondent's  
12 Company Registration Certificate No. PR 3191:

- 13 a. On or about April 4, 2002, Respondent's Company Registration Certificate No.  
14 PR 3191 paid a \$50 fine levied by the Los Angeles County Agricultural  
15 Commissioner for violation of section 6630 of the California Code of  
16 Regulations.
- 17 b. On or about November 10, 2009, Respondent's Company Registration Certificate  
18 No. PR 3191 paid a \$50 fine levied by the Los Angeles County Agricultural  
19 Commissioner for violation of section 15204 of the Food and Agriculture Code.
- 20 c. On or about December 30, 2009, Respondent's Company Registration Certificate  
21 No. PR 3191 was levied a fine of \$4000 by the Board for violation of sections  
22 8516 and 8691 of the Business and Professions Code.

23 20. By way of aggravation, the Board alleges the following against Respondent's  
24 Operator License No. OPR 9791:

- 25 a. On or about November 10, 2009, Respondent's Operator License No. OPR  
26 9791 paid a \$50 fine levied by the Los Angeles County Agricultural  
27 Commissioner for violation of section 15204 of the Food and Agriculture Code.

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b. On or about December 30, 2009, Respondent's Operator License No. OPR 9791 was levied a fine of \$4000 by the Board for violation of sections 8516 and 8691 of the Business and Professions Code.

**OTHER MATTERS**

21. Code section 8620 provides, in pertinent part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

22. Pursuant to Code section 8624, the causes for discipline established as to Respondent Bug Wiser likewise constitute causes for discipline against Respondent Juan Jimenez regardless of whether he had knowledge of or participated in the acts or omissions which constitute causes for discipline against Respondent Bug Wiser.

23. Pursuant to Code section 8624, if Operator's License Number OPR 9791, issued to Respondent Juan Jimenez, is suspended or revoked, the Board may suspend or revoke Company Registration Certificate Number PR 3191, issued to Respondent Bug Wiser.

24. Respondent Juan Jimenez, the owner and qualifying manager for Respondent Bug Wiser, had knowledge of and participated in, the acts or omissions which constitute causes for discipline against Respondent Bug Wiser.

25. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 3191, issued to Respondent Bug Wiser, Respondent Juan Jimenez shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Juan Jimenez shall be subject to disciplinary action.

26. Code section 8622 provides, in pertinent part, that Respondents shall submit an inspection fee of not more than \$125. If a reinspection is necessary, a commensurate reinspection fee shall be charged.



