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**FILED**

Date 6/27/11 By Susan Sayler

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

12 In the Matter of the Accusation Against:

Case No. 2010-81

13 **PINNACLE PEST CONTROL INC.**  
14 **JAIME LOPEZ, President and Qualifying Manager**  
15 600 Broadway, Suite E  
16 Sacramento, California 95818

**SECOND AMENDED  
ACCUSATION**

16 **Company Registration License No. PR 4379, Br. 2 and 3**  
17 **Operator License No. OPR 9872**

18 Respondents.

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20 Complainant William H. Douglas ("Complainant") alleges:

21 **PARTIES**

22 1. On June 3, 2010, Complainant Kelli Okuma brought an Accusation, and later brought  
23 an Amended Accusation, solely in her official capacity as the Registrar of the Structural Pest  
24 Control Board ("Board"), Department of Consumer Affairs. Complainant William H. Douglas,  
25 solely in his official capacity as Interim Executive Officer and Registrar of the Board, now brings  
26 this Second Amended Accusation.

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1 omission occurred, was the qualifying manager, a partner, responsible officer, or owner of  
2 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.

3 6. Code section 8625 states:

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

9 7. Code section 8622 states:

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

24 The notice sent to the registered company shall inform the registered company that if  
25 it desires a hearing to contest the finding of noncompliance, the hearing shall be requested  
26 by written notice to the board within 20 days of receipt of the notice of noncompliance from  
27 the board. Where a hearing is not requested pursuant to this section, payment of any  
28 assessment shall not constitute an admission of any noncompliance charged.

### STATUTORY PROVISIONS

8. Code section 8518 states, in pertinent part:

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

The address of each property inspected or upon which work was completed shall be  
reported on a form prescribed by the board and shall be filed with the board no later than 10  
working days after completed work.

1 9. Code section 8519 states, in pertinent part:

2 Certification as used in this section means a written statement by the registered  
3 company attesting to the statement contained therein relating to the absence or presence of  
4 wood-destroying pests or organisms and listing such recommendations, if any, which  
5 appear on an inspection report prepared pursuant to Code section 8516, and which relate to  
6 (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of  
7 structurally weakened members caused by such infestation or infection, and which  
8 recommendations have not been completed at the time of certification.

9 (b) When the inspection report prepared pursuant to Section 8516 discloses infestation or  
10 infection and the notice of work completed prepared pursuant to Section 8518 indicates that  
11 all recommendations to remove that infestation or infection and to repair damaged caused  
12 by that infestation or infection have been completed: "This is to certify that the property  
13 described herein is now free of evidence of active infestation or infection in the visible and  
14 accessible areas."

15 10. Code section 8610(c) states:

16 Each registered company shall designate an individual or individuals who hold an  
17 operator's license to act as its qualifying manager or managers. The qualifying manager or  
18 managers must be licensed in each branch of pest control in which the company engages in  
19 business. The designated qualifying manager or managers shall supervise the daily  
20 business of the company and shall be available to supervise and assist all employees of the  
21 company, in accordance with regulations which the board may establish.

22 11. Code section 8641 states:

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

28 12. Code section 8644 states:

Fraud or misrepresentation, after inspection, by any licensee or registered company  
engaged in pest control work of any infestation or infection of wood-destroying pests or  
organisms found in property or structures, or respecting any conditions of the structure that  
would ordinarily subject structures to attack by wood-destroying pests or organisms,  
whether or not a report was made pursuant to Sections 8516 and 8517 of this code, is a  
ground for disciplinary action.

13. Code section 8652 states:

Failure of a registered company to make and keep all inspection reports, contracts,  
documents, and records, other than financial records, for a period of not less than three

1 years after completion of any work or operation for the control of structural pests or  
2 organisms, is a ground for disciplinary action. These records shall be made available to the  
3 registrar during business hours.

3 **REGULATORY PROVISIONS**

4 14. California Code of Regulations, title 16, section 1991, states, in pertinent  
5 part:

6 (c) If in the opinion of the inspector a building permit is required, it must be noted on  
7 the wood destroying pests and organisms inspection report.

7 **COST RECOVERY/RESTITUTION**

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

12 16. Government Code section 11519(d) provides, in pertinent part, that the Board may  
13 require restitution of damages suffered as a condition of probation in the event probation is  
14 ordered.

15 **27th STREET PROPERTY**

16 17. On or about May 26, 2009, Mark Sanders ("Sanders"), a field representative  
17 representing Respondent Pinnacle, inspected the property located at 2813 27th Street,  
18 Sacramento, California ("27th Street property"), for wood destroying pests and organisms.  
19 Sanders issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 6544  
20 ("Inspection Report No. 6544"). Sanders' findings involved wood decay fungi damage and  
21 subterranean termite damage to the structure, including wood decay fungi damage and termite  
22 damage under the front porch, beneath the concrete cap. Sanders recommended replacing the  
23 damaged wood members under the front porch with new materials and re-supporting the concrete  
24 cap as needed. Sanders included a Work Authorization Contract totaling \$8,853 to perform the  
25 recommended repairs.

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1 18. On or about June 9, 2009, the homeowner signed the Work Authorization Contract,  
2 authorizing Respondent Pinnacle to perform the recommended repairs set forth in Inspection  
3 Report No. 6544.

4 19. On or about June 12, 2009, Respondent Pinnacle began the work and assigned  
5 Russell James Osterhoudt ("Osterhoudt") as the lead worker.

6 20. On or about June 15, 2009, Sanders re-inspected the 27th Street property and issued a  
7 Supplemental Wood Destroying Pests and Organisms Inspection Report No. 6721  
8 ("Supplemental Inspection Report No. 6721"). Sanders' findings involved fungus and dryrot.  
9 Sanders provided a Work Authorization Contract totaling \$3,515.00 to perform the recommended  
10 repairs. On that same day, Osterhoudt was underneath the porch cutting out the fungus and  
11 termite-damaged wood framing from under the concrete cap when the porch collapsed on top of  
12 him, crushing him to death. Following the accident, the City of Sacramento Building Department  
13 and the State of California, Division of Occupational Safety and Health (Cal/OSHA), were  
14 notified of the accident. Cal/OSHA performed an investigation and issued Respondent Pinnacle a  
15 citation for violating the following<sup>1</sup>:

16 a. California Code of Regulations, title 8, section 1509 (failure to establish,  
17 implement, and maintain an effective Injury and Illness Prevention Program in accordance  
with section 3203 of the General Industry Safety Orders).

18 b. California Code of Regulations, title 8, section 1734(b)(2) (failure to have a  
19 written survey on the job site that described the condition of the framing and floors and the  
possibility of an unplanned collapse of any portion of the structure).

20 c. California Code of Regulations, title 8, section 1735(d)(1) (prior to the starting the  
21 demolition operations, the structural and hazardous deficiencies were not shored, braced or  
otherwise corrected).

22 d. California Building Code (2007), section 105.1 (failure to obtain a permit).

23 21. On or about June 16, 2009, the City of Sacramento, Code Enforcement, Housing and  
24 Dangerous Building Division (H&DBD), issued a "Stop Work Notice" (red tag) on the 27th  
25 Street property for performing structural repairs without the required permits (violation of the  
26 California Building Law and the City of Sacramento's regulations), and posted the structure as a

27 <sup>1</sup> Respondent Pinnacle appealed the Citation and a hearing is currently scheduled in  
28 October 2010.

1 dangerous building which was unsafe to occupy. In addition, the electrical and gas meters were  
2 pulled, and the structure was boarded up in many areas.

3 22. On or about June 18, 2009, the homeowner signed the Work Authorization Contract,  
4 authorizing Respondent Pinnacle to perform the recommended repairs set forth in Supplemental  
5 Inspection Report No. 6721.

6 23. On or about June 29, 2009, Sanders re-inspected the 27th Street property and issued  
7 Supplemental Wood Destroying Pests and Organisms Inspection Report No. 6821  
8 ("Supplemental Inspection Report No. 6821"). Sanders' findings involved a faulty grade at the  
9 side of the structure at the curb wall, and additional support at the concrete cap. Sanders  
10 recommended removing the existing curb wall and installing a new stem wall, and framing the  
11 concrete cap. Sanders included a Work Authorization Contract totaling \$1,835 to perform the  
12 recommended repairs.

13 24. On or about July 2, 2009, the homeowner signed the Work Authorization Contract,  
14 authorizing Respondent Pinnacle to perform the recommended repairs set forth in Supplemental  
15 Inspection Report No. 6821.

16 25. On or about July 13, 2009, a Standard Notice of Work Completed and Not Completed  
17 ("Completion Notice") was issued, certifying that all of the work recommended in Inspection  
18 Report No. 6544, and Supplemental Inspection Report Nos. 6721 and 6821, had been completed  
19 in accordance with the Board's rules and regulations, and that no visible evidence of active  
20 infestation or infection was found.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Inspection Report Violations)**

23 26. Respondent Pinnacle's registration and Respondent Lopez' operator's license are  
24 subject to discipline pursuant to Code section 8641, in that concerning the 27th Street property,  
25 Respondents failed to use the proper certification statement on the Completion Notice, as required  
26 under Code section 8519(b).

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Inspection Report Violations)**

3 30. Respondent Pinnacle's registration and Respondent Lopez' operator's license are  
4 subject to discipline pursuant to Code section 8641 in that concerning the property located at  
5 1112-1114 V Street, Sacramento, California, Respondents failed to use the proper certification  
6 statement on the Completion Notice, as required under Code section 8519(b).

7 **OTHER PROPERTY VIOLATIONS**

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Inspection Report Violations)**

10 31. Respondent Pinnacle's registration and Respondent Lopez' operator's license are  
11 subject to discipline pursuant to Code section 8641, in that between November 13, 2007, and  
12 June 5, 2009, Respondents failed to comply with California Code of Regulations, title 16, section  
13 1991(c), in that they failed to include in the wood destroying pests and organisms inspection  
14 reports that a building permit was required, including, but not limited to, the following properties:

- 15 a. 1225 42<sup>nd</sup> Street, Sacramento, California;  
16 b. 1112-1114 V Street, Sacramento, California; and  
17 c. 2443-2445 36<sup>th</sup> Street, Sacramento, California.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to File Addresses of Completed Work with the Board)**

20 32. Respondent Pinnacle's registration and Respondent Lopez' operator's license are  
21 subject to discipline pursuant to Code section 8518, in that Respondents failed to file with the  
22 Board, the address of each property inspected or upon which work was completed within ten (10)  
23 working days after completing the work, including, but not limited to, the following addresses:

- 24 a. 2443-2445 36th Street, Sacramento, California;  
25 b. 1201 46th Street, Sacramento, California; and  
26 c. 1557 Santa Ynez Way, Sacramento, California.

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**EIGHTH CAUSE FOR DISCIPLINE**

**(Failure to Comply with Laws Adopted by the Board -  
No Supervision by Qualifying Manager)**

33. Complainant incorporates the allegations of Paragraphs 17 through 32, inclusive. Respondent Pinnacle's registration and Respondent Lopez' operator's license are subject to discipline pursuant to Code section 8641, in that Jamie Lopez, who was serving as the Qualifying Manager of Pinnacle Pest Control Inc., failed to comply with Code section 8610(c), by failing to supervise the daily operations, business, and employees in the respects alleged, including but not limited to supervision of Respondent Pinnacle's employees working at the 27th Street property.

**PRIOR DISCIPLINE**

**Company Registration No. PR 4379**

34. On or about February 4, 2004, the company registration paid a fine in the amount of \$50 levied by the Placer County Agricultural Commissioner for violating Food and Agricultural Code section 15204.

35. On or about November 6, 2007, the company registration paid a fine in the amount of \$300 levied by the Sacramento County Agricultural Commissioner for violating Code section 8505.17.

36. On or about November 3, 2008, the company registration paid a fine in the amount of \$750 levied by the Board for violating Code sections 8648 and 8651.

37. On or about January 6, 2009, the company registration paid a fine in the amount of \$300 levied by the Sacramento County Agricultural Commissioner for violating Code section 8505.17.

38. On or about March 11, 2010, the company registration paid a fine in the amount of \$250 levied by the Sacramento County Agricultural Commissioner for violating Code section 8538.

**Operator License No. OPR 9872**

39. On or about November 3, 2008, Respondent paid a fine in the amount of \$750 levied by the Board for violating Code sections 8648 and 8651.

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**OTHER MATTERS**

20. Notice is hereby given that section 8620 of the Code 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.

41. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 4379, issued to Pinnacle Pest Control Inc., likewise constitute cause for discipline against Operator's License Number OPR 9872, issued to Jaime Lopez, who serves as the President and Qualifying Manager of Pinnacle Pest Control Inc., regardless of whether Jaime Lopez had knowledge of or participated in the acts or omissions which constitute cause for discipline against Pinnacle Pest Control Inc.

42. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 4379, issued to Pinnacle Pest Control Inc., then Jaime Lopez, who serves as the President and Qualifying Manager of Pinnacle Pest Control Inc., 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 him, shall be subject to disciplinary action.

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**PRAYER**

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

1. Revoking or suspending Company Registration Certificate No. PR 4379, issued to Pinnacle Pest Control Inc.;
2. Revoking or suspending Operator's License No. OPR 9872, issued to Jaime Lopez;
3. Revoking or suspending any other license for which Jaime Lopez is furnishing the qualifying experience or appearance;

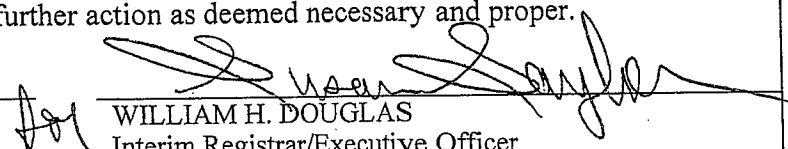
1           4.    Ordering restitution of all damages according to proof suffered as a condition of  
2 probation in the event probation is ordered;

3           5.    Prohibiting Jaime Lopez from serving as an officer, director, associate, partner,  
4 qualifying manager or responsible managing employee of any registered company during the  
5 period that discipline is imposed on Company Registration Certificate Number PR 4379, issued to  
6 Pinnacle Pest Control Inc.;

7           6.    Ordering Jaime Lopez and Pinnacle Pest Control Inc. to pay the Structural Pest  
8 Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to  
9 Business and Professions Code section 125.3; and,

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

11 DATED: 6/27/11



WILLIAM H. DOUGLAS  
Interim Registrar/Executive Officer  
Structural Pest Control Board  
Department of Pesticide Regulation  
State of California  
*Complainant*

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