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FILED

Date 1/30/14 By *Susan Taylor*

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

12 In the Matter of the Accusation Against:

Case No. 2014-37

13 **HYDREX TERMITE AND PEST CONTROL**
14 **OF SAN GABRIEL VALLEY**
11104 Rush St., Unit #5
South El Monte, CA 91733
Company Registration Certificate No. PR 4531,
Br. 2 and 3

ACCUSATION

15 **STANLEY KARL SANDERS, President**
16 **ERIC JOSEPH WERNER, Qualifying Manager**
17 **SERGIO ZAMORANO, Qualifying Manager**

18 -and-

19 **ERIC JOSEPH WERNER**
11072-A Mt. Brow Road
Sonora, CA 95370
Operator License No. OPR 11667, Br. 2

20 -and-

21 **SERGIO ZAMORANO**
14408 East Whittier Boulevard #B3
Whittier, CA 90605
Operator License No. OPR 10565, BR. 3

22 Respondents.

1 Complainant alleges:

2 **PARTIES**

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

6 2. On or about May 7, 2004, the Structural Pest Control Board issued Company
7 Registration Certificate Number PR 4531 (“Registration”) to Hydrex Termite and Pest Control of
8 San Gabriel Valley (“Respondent Hydrex”). Stanley Karl Sanders is the current President of
9 Respondent Hydrex.

10 3. On or about March 17, 2008, the Structural Pest Control Board issued Operator’s
11 License No. OPR 11667 to Eric Joseph Werner (“Respondent Werner”). Respondent Werner’s
12 Operator’s License was in full force and effect at all times relevant to the charges brought herein
13 and will expire on June 30, 2016, unless renewed.

14 4. On or about May 10, 2002, the Structural Pest Control Board issued Operator’s
15 License No. OPR 10565 to Sergio Zamorano (“Respondent Zamorano”). Respondent
16 Zamorano’s Operator’s License was in full force and effect at all times relevant to the charges
17 brought herein and will expire on June 30, 2016, unless renewed.

18 **JURISDICTION**

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

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

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1 7. Section 8624 states:

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

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

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

14 8. Section 8625 states:

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

20 **STATUTORY PROVISIONS**

21 9. Section 8516 states, in pertinent part:

22 "(b) No registered company or licensee shall commence work on a contract, or sign, issue,
23 or deliver any documents expressing an opinion or statement relating to the absence or presence of
24 wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field
25 representative or operator. The address of each property inspected or upon which work is
26 completed shall be reported on a form prescribed by the board and shall be filed with the board no
27 later than 10 business days after the commencement of an inspection or upon completed work.
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1 "Every property inspected pursuant to subdivision or Section 8518 shall be assessed a filing
2 fee pursuant to Section 8674.

3 "Failure of a registered company to report and file with the board the address of any
4 property inspected or work completed pursuant to Section 8518 or this section is grounds for
5 disciplinary action and shall subject the registered company to a fine of not more than two
6 thousand five hundred dollars (\$2,500).

7 "A written inspection report conforming to this section and on a form approved by the board
8 shall be prepared and delivered to the person requesting the inspection or to the person's
9 designated agent within 10 business days of the inspection, except that an inspection report
10 prepared for use by an attorney for litigation purposes is not required to be reported to the board.
11 The report shall be delivered before work is commenced on any property. The registered company
12 shall retain for three years all original inspection reports, field notes, and activity forms."

13 10. Section 8518 states:

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

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

22 "Every property upon which work is completed shall be assessed a filing fee pursuant to
23 Section 8674.

24 "Failure of a registered company to report and file with the board the address of any
25 property upon which work was completed pursuant to subdivision (b) of Section 8516 or Section
26 8518 is grounds for disciplinary action and shall subject the registered company to a fine of not
27 more than two thousand five hundred dollars (\$2,500).

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1 "The registered company shall retain for three years all original notices of work completed,
2 work not completed, and activity forms.

3 "Notices of work completed and not completed shall be made available for inspection and
4 reproduction to the executive officer of the board or his or her duly authorized representative
5 during business hours. Original notices of work completed or not completed or copies thereof
6 shall be submitted to the board upon request within two business days."

7 11. Section 8610 states, in pertinent part:

8 "(c) Each registered company shall designate an individual or individuals who hold an
9 operator's license to act as its qualifying manager or managers. The qualifying manager or
10 managers must be licensed in each branch of pest control in which the company engages in
11 business. The designated qualifying manager or managers shall supervise the daily business of the
12 company and shall be available to supervise and assist all employees of the company, in accordance
13 with regulations which the board may establish."

14 12. Section 8613 states:

15 "A registered company which changes the location of its principal office or any branch office
16 or which changes its qualifying manager, branch supervisor, officers, or its bond or insurance shall
17 notify the registrar in writing of such change within 30 days thereafter. A fee for filing such
18 changes shall be charged in accordance with Section 8674."

19 13. Section 8617 states, in pertinent part:

20 "(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of
21 assessment or to comply with the order of suspension, unless the citation is being appealed, may
22 result in disciplinary action being taken by the board."

23 14. Section 8641 states:

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

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1 15. Section 8654 states:

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

15 16. Section 8691 states:

16 "A registered company shall not engage in the practices for which it is required to be
17 registered by this chapter unless it maintains an insurance policy as specified in this article."

18 17. Section 8695 states:

19 "The violation of any provision of this article is a misdemeanor and shall be grounds for the
20 suspension or revocation by the board of the operator's license of the owner or qualifying manager
21 or managers of the registered company and of the company registration."

22 **REGULATORY PROVISIONS**

23 18. California Code of Regulations, title 16, section 1920 states, in pertinent part:

24 "(a) Authority to Issue Citations and Fines:

25 "(1) The Registrar or Deputy Registrar of the Board is authorized to issue citations which
26 may contain an order of abatement or an administrative fine ("fine") for violations of the statutes
27 contained in the Structural Pest Control Act (commencing with Business and Professions Code
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1 Section 8500) or the regulations adopted by the Board.

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

8 19. California Code of Regulations, title 16, section 1996.3 states, in pertinent part:

9 “(a) The address of each property inspected and/or upon which work was completed shall be
10 reported on a form prescribed by the Board and designated as the WDO Inspection and
11 Completion Activity Report Form (see Form No. 43M-52 Rev. 5/09) at the end of this section.
12 This form shall be prepared by each registered company and shall comply with all of the
13 requirements pursuant to Section 8516(b), and 8518.

14

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

19 **COST RECOVERY**

20 20. Section 125.3 states, in pertinent part, that a Board may request the administrative law
21 judge to direct a licensee found to have committed a violation or violations of the licensing act to
22 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Engaging in the Practice of Structural Pest Control without a Required Insurance Policy)**

25 21. Respondent Hydrex, Respondent Werner and Respondent Zamorano are subject to
26 disciplinary action under sections 8691 and 8695 in that Respondent Hydrex engaged in the
27 practice of structural pest control without an insurance policy that provided the minimum limits as
28 required by law. The circumstances are as follows:

1 a. On or about May 25, 2012, Respondent Hydrex's insurance policy was cancelled due
2 to a nonpayment of the policy and its endorsements.

3 b. On or about August 17, 2012, Respondent Hydrex obtained requisite insurance.

4 c. On or about March 22, 2013, a Specialist for the Board traveled to Respondent
5 Hydrex's office and found wood destroying pest and organism reports, standard notices of work
6 completed and not completed and pest control daily detail reports dated and performed during the
7 period of time in which Respondent Hydrex's insurance policy had lapsed.

8 d. On or about June 17, 2013, the Board specialist identified 73 wood destroying pest
9 and organism activities that occurred during the insurance lapse from May 25, 2012, to August 17,
10 2012.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Report and File with the Board Addresses of Inspected Properties)**

13 22. Respondent Hydrex and Respondent Zamorano are subject to disciplinary action under
14 section 8516, subdivision (b), section 8518 and California Code of Regulations, title 16, section
15 1996.3 for failing to report and file with the Board the addresses of the properties inspected or
16 upon which work was completed on a form prescribed by the Board no later than 10 business days
17 after the commencement of an inspection or upon completion of work. The circumstances are as
18 follows:

19 a. On or about March 25, 2013, a Specialist for the Board traveled to Respondent
20 Hydrex's office. Following that visit sixty-nine (69) wood destroying pest and organism activities
21 were filed with the Board by Respondent Hydrex. These activities were filed 161 to 213 days late
22 and only after the Board Specialist visited Respondent Hydrex's office.

23 b. On or about June 18, 2013, a Specialist for the Board found an additional one hundred
24 and twenty (120) wood destroying pest and organism activity inspection reports and completion
25 reports for activities occurring between February 1, 2013, and June 18, 2013, that were not
26 properly reported to the Board.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Notify Registrar of Change to Corporate Officers)**

3 23. Respondent Hydrex is subject to disciplinary action under section 8613 for failing to
4 notify the registrar of changes to the corporate officers of Respondent Hydrex within 30 days.
5 The circumstances are that the prior CEO had been deceased for over two years, and the new
6 President and CEO had been operating for over two years without notifying the registrar.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Citation)**

9 24. Respondent Hydrex is subject to disciplinary action under section 8617, subdivision
10 (f), and section 8641 in conjunction with California Code of Regulations, title 16, section 1920,
11 subdivision (d), for failing to pay the fine in citation number CF 2007 22 within the time allowed.
12 The circumstances are that on or about August 16, 2006, Respondent Hydrex was issued citation
13 number CF 2007-22 in the amount of \$2,750.00 for violating sections 8550, 8506.2 by doing
14 business without a qualifying manager and section 8653 for failing to pay subcontractors for
15 completed fumigations. As of January 6, 2014, the fine has not been paid.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Failure of Qualifying Managers to Properly Supervise)**

18 25. Respondent Werner and Respondent Zamorano are subject to disciplinary action under
19 section 8610, subdivision (c), in conjunction with section 8641, for failing to supervise the daily
20 operations of the company and make themselves available to supervise and assist all employees of
21 the company. The circumstances are as follows:

22 a. On or about June 12, 2013, in an interview with a Board Specialist, Respondent
23 Zamorano stated that he comes in once a week to view the company's activities.

24 b. On or about June 12, 2013, a Board Specialist found that Respondent Werner lives
25 approximately 6 hours away from Respondent Hydrex's business location. In a telephone
26 interview Respondent Werner admitted that he has never been to Respondent Hydrex's office.

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1 **DISCIPLINARY CONSIDERATIONS**

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

4 **Prior Discipline Against Respondent Zamorano**

5 a. On or about July 8, 2003, the Structural Pest Control Board brought a disciplinary
6 action against Respondent Zamorano entitled In the Matter of the Accusation Against K Force
7 Exterminators in Board case number 2004-1 and OAH number 2003110355. On or about
8 November 14, 2004, Respondent Zamorano's Operator's License No. OPR 10565 was placed on
9 probation for three years for violating section 8610, subdivision (c), by failing to supervise the
10 daily operations of the company where he was serving as the qualifying manager. That decision is
11 now final and is incorporated by reference as if fully set forth.

12 **Prior Citations Against Respondent Hydrex**

13 b. On or about January 25, 2008, in Citation No. CF 08-114, the Board issued a fine in
14 the amount of \$2,500.00 against Respondent Hydrex for violating section 8692 by failing to
15 maintain required insurance between September 27, 2007, and December 1, 2007. The fine has
16 been paid.

17 c. On or about June 10, 2009, in File No. 08092091, the Los Angeles County
18 Agricultural Commissioner issued a fine in the amount of \$50.00 to Respondent Hydrex for
19 violating section 8505.17, subdivision (c), by failing to submit monthly summary pesticide use
20 reports. The fine has been paid.

21 d. On or about December 15, 2010, in File No. 10112030, the Los Angeles County
22 Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Hydrex for
23 violating section 8505.17, subdivision (c), by failing to submit monthly summary pesticide use
24 reports. The fine has been paid.

25 **Prior Citations Against Respondent Hydrex and Respondent Zamorano**

26 e. On or about May 16, 2011, in File No. 10112118, the Los Angeles County
27 Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Hydrex and
28 Respondent Zamorano for violating the Flood and Agricultural Code section 15204, subdivision

1 (a), by failing to register the structural pest control company with the county agricultural
2 commissioner. The fine has been paid.

3 f. On or about August 15, 2011, in File No. 10112180, the Los Angeles County
4 Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Hydrex and
5 Respondent Zamorano for violating section 8505.17, subdivision (c), by failing to submit monthly
6 summary pesticide use reports. The fine has been paid.

7 **Prior Citation Against Respondents Hydrex, Zamorano and Werner**

8 g. On or about August 6, 2012, in File No. 12132014, the Los Angeles County
9 Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Hydrex,
10 Respondent Zamorano and Respondent Werner for violating California Code of Regulations, title
11 3, section 6739, subdivision (d), by failing to provide employees with a respirator medical
12 evaluation. The fine has been paid.

13 **Prior Citations Against Respondent Zamorano**

14 h. On or about March 14, 2003, in File No. 068-SCP-SD-02/03, the San Diego
15 Department of Agriculture, Weights & Measures issued a fine in the amount of \$50.00 to
16 Respondent Zamorano for violating Flood and Agricultural Code section 15204, subdivision (a),
17 by failing to register the structural pest control company with the county agricultural commissioner
18 during the 2002 calendar year. The fine has been paid.

19 i. On or about May 14, 2003, in File No. 070-SCP-SD-02/03, the San Diego
20 Department of Agriculture, Weights & Measures issued a fine in the amount of \$100.00 to
21 Respondent Zamorano for violating Flood and Agricultural Code section 15204, subdivision (a),
22 by failing to register the structural pest control company with the county agricultural commissioner
23 during the 2003 calendar year. The fine has been paid.

24 j. On or about August 15, 2003, in Case No. CF 04-25, the Board issued a fine in the
25 amount of \$10,000.00 to Respondent Zamorano for violating sections 8516, subdivision (b), 8519
26 and 8520 by failing to file wood destroying pest and organism activity reports with the Board from
27 November 25, 2002, through March 18, 2003. Respondent Zamorano appealed the citation and a
28 hearing was held by the Board's Citation and Fine Appeal Panel on September 23, 2003.

1 Following the hearing, the citation was upheld but the fine was reduced to \$6,000.00. The fine has
2 been paid.

3 k. On or about April 7, 2004, in Case No. CF 04-204, the Board issued a citation and
4 fine in the amount of \$1,050.00 to Respondent Zamorano for violating section 8622 by failing to
5 comply with a report of findings within 30 days and California Code of Regulations section
6 1937.14 for failing to complete work in a quality and workmanlike manner. Respondent
7 Zamorano requested an informal office conference and a conference was held on June 17, 2004.
8 Respondent Zamorano failed to appear at the informal office conference and the citation and fine
9 were upheld in full. The fine has been paid.

10 OTHER MATTERS

11 27. Notice is hereby given that section 8620 of the Code provides, in pertinent part, that a
12 respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual
13 suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days.

14 Such request must be made at the time of the hearing and must be noted in the proposed decision.

15 The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a
16 suspension.

17 28. Pursuant to Code section 8624, the causes for discipline established as to Company
18 Registration Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San
19 Gabriel Valley, likewise constitute cause for discipline against Operator's License Number OPR
20 11667, issued to Eric Joseph Werner, who served as the Qualifying Manager of Hydrex Termite
21 and Pest Control of San Gabriel Valley, regardless of whether Eric Joseph Werner had knowledge
22 of or participated in the acts or omissions which constitute cause for discipline against Hydrex
23 Termite and Pest Control of San Gabriel Valley.

24 29. Pursuant to Code section 8654, if discipline is imposed on Company Registration
25 Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley,
26 then Eric Joseph Werner, who served as the Qualifying Manager of Hydrex Termite and Pest
27 Control of San Gabriel Valley, shall be prohibited from serving as an officer, director, associate,
28 partner, qualifying manager, or responsible managing employee for any registered company during

1 the time the discipline is imposed, and any registered company which employs, elects, or associates
2 him, shall be subject to disciplinary action.

3 30. Pursuant to Code section 8624, the causes for discipline established as to Company
4 Registration Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San
5 Gabriel Valley, likewise constitute cause for discipline against Operator's License Number OPR
6 10565, issued to Sergio Zamorano, who served as the Qualifying Manager of Hydrex Termite and
7 Pest Control of San Gabriel Valley, regardless of whether Sergio Zamorano had knowledge of or
8 participated in the acts or omissions which constitute cause for discipline against Hydrex Termite
9 and Pest Control of San Gabriel Valley.

10 31. Pursuant to Code section 8654, if discipline is imposed on Company Registration
11 Certificate Number PR 4531, issued to Hydrex Termite and Pest Control of San Gabriel Valley,
12 then Sergio Zamorano, who served as the Qualifying Manager of Hydrex Termite and Pest Control
13 of San Gabriel Valley, shall be prohibited from serving as an officer, director, associate, partner,
14 qualifying manager, or responsible managing employee for any registered company during the time
15 the discipline is imposed, and any registered company which employs, elects, or associates him,
16 shall be subject to disciplinary action.

17 **PRAYER**

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

- 20 1. Revoking or suspending Company Registration Certificate Number PR 4531, issued to
21 Hydrex Termite and Pest Control of San Gabriel Valley, Stanley Karl Sanders as President;
- 22 2. Revoking or suspending Operator's License Number OPR 11667, issued to Eric
23 Joseph Werner;
- 24 3. Revoking or suspending Operator's License Number OPR 10565, issued to Sergio
25 Zamorano;
- 26 4. Prohibiting Eric Joseph Werner from serving as an officer, director, associate, partner,
27 qualifying manager or responsible managing employee of any registered company during the
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1 period that discipline is imposed on Company Registration Certificate number PR 4531, issued to
2 Hydrex Termite and Pest Control of San Gabriel Valley;

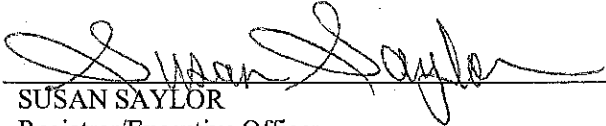
3 5. Prohibiting Sergio Zamorano from serving as an officer, director, associate, partner,
4 qualifying manager or responsible managing employee of any registered company during the
5 period that discipline is imposed on Company Registration Certificate number PR 4531, issued to
6 Hydrex Termite and Pest Control of San Gabriel Valley;

7 6. Ordering Hydrex Termite and Pest Control of San Gabriel Valley, Stanley Karl
8 Sanders, Eric Joseph Werner, and Sergio Zamorano to pay the Structural Pest Control Board the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3; and,

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

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DATED: 1/30/14



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

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