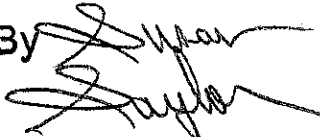


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FILED

Date 9/6/13 By 

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

12 In the Matter of the Accusation Against:

Case No. 2014-13

13 **PRUDENT TERMITE CONTROL, INC.,**
14 **RUTH PEREZ, PRESIDENT**
15 **3728 W Park Balboa Avenue**
16 **Orange, CA 92868**
Company Registration Certificate No. PR

ACCUSATION

17 **11100 Wright Road**
18 **Lynwood, CA 90262**
19 **Branch Office Registration No. BR 5347,**
Branches 2 and 3

20 **OSCAR MAGANA, QUALIFYING**
21 **MANAGER/ BRANCHES 2 AND 3 for**
22 **PRUDENT TERMITE CONTROL, INC.,**
23 **8843 Marshall St.**
24 **Rosemead, CA 91770**
Operator License No. OPR 12322,
Branches 2 and 3

25 **ERNESTO LARA PEREZ**
26 **3728 W. Park Balboa Ave.**
27 **Orange, CA 92868**
Operator License No. OPR 11128, Branch 1
Field Representative License No. FR 43416,
28 **Branch 3**

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**HECTOR P. LARA
AKA HECTOR LARA PEREZ
3728 W. Park Balboa Ave.
Orange, CA 92868
Applicator License No. RA 46446, Branches
2 and 3
and**

**HECTOR PEREZ AKA
HECTOR PEREZ JR.
3728 W. Park Balboa Ave.
Orange, CA 92868**

**1556 Edmon Way
Riverside, CA 92501
Field Representative License No. FR 46315,
Branches 2 and 3,**

Respondents.

Complainant alleges:

PARTIES

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

2. On or about September 10, 2007, the Structural Pest Control Board issued Company Registration Certificate No. PR 5422 in Branch 3 to Respondent Prudent Termite Control, Inc. (Respondent Prudent), with Respondent Ruth Perez as President, Respondent Hector Lara as Vice President, and Edward Roach as Qualifying Manager (Respondent). The Company Registration Certificate was in full force and effect at all times relevant to the charges brought herein, except as alleged below:

a) On April 6, 2009, Respondent Prudent's Company Registration Certificate No. PR 5422 paid a \$100 fine levied by the Riverside County Agricultural Commissioner for violation of section 8505.17(c) of the Business and Professions Code.

- 1 b) On September 24, 2009, Respondent Prudent's Company Registration Certificate
2 No. PR 5422 reflected a change of address to 1556 Edmon Way, Riverside,
3 California 92501.
- 4 c) On September 25, 2009, Respondent Prudent's Company Registration Certificate
5 No. PR 5422 was suspended for failure to maintain the general liability insurance
6 as required by section 8690 of the Business and Professions Code.
- 7 d) On September 29, 2009, Respondent Prudent's Company Registration Certificate
8 No. PR 5422 was reinstated after posting the general liability insurance.
- 9 e) On October 14, 2009, Respondent Prudent's Company Registration Certificate No.
10 PR 5422 paid a \$250 fine levied by the Riverside County Agricultural
11 Commissioner for violation of section 8505.17(c) of the Business and Professions
12 Code.
- 13 f) On June 24, 2010, Respondent Prudent's Company Registration Certificate No.
14 PR 5422 paid a \$300 fine levied by the Riverside County Agricultural
15 Commissioner for violation of section 8505.17(c) of the Business and Professions
16 Code.
- 17 g) On April 4, 2011, Respondent Prudent's Company Registration Certificate No. PR
18 5422 paid a \$125 fine levied by the Riverside County Agricultural Commissioner
19 for violation of section 8505.17(c) of the Business and Professions Code.
- 20 h) On November 16, 2011, Respondent Prudent's Company Registration Certificate
21 No. PR 5422 reflected the disassociation of Edward Roach III as the Qualifying
22 Manager.
- 23 i) On November 28, 2011, Respondent Prudent's Company Registration Certificate
24 No. PR 5422 was suspended for no Qualifying Manager.
- 25 j) On December 19, 2011, Respondent Prudent's Company Registration Certificate
26 No. PR 5422 was suspended for failure to maintain the general liability insurance
27 as required by section 8690 of the Business and Professions Code.
- 28 k) On February 23, 2012, Respondent Prudent's Company Registration Certificate
No. PR 5422 was upgraded to include Branch 2 and 3 and reflected a change of
Qualifying Manager to Oscar Magana.
- l) On May 3, 2012, Respondent Prudent's Company Registration Certificate No. PR
5422 was reinstated after posting the general liability insurance.
- m) On January 17, 2013, Respondent Prudent's Company Registration Certificate No.
PR 5422 reflected a change of address to 3728 West Park Balboa Avenue, Orange,
California 92868.

3. On or about February 22, 2012, the Structural Pest Control Board issued Operator
License No. OPR 12322 in Branch 2 and 3 to Respondent Oscar Magana (Respondent). The
license was in full force and effect at all times relevant to the charges brought herein, except as
alleged below, and will expire on June 30, 2014:

- 1 a) On February 23, 2012, Respondent Oscar Magana's Operator's License No. OPR
2 12322 became the Qualifying Manager in Branch 2 and 3 for Prudent Termite
3 Control Inc.
4
5 b) On February 23, 2012, Respondent Oscar Magana's Operator's License No. OPR
6 12322 was suspended due to failure to maintain the general liability insurance as
7 required by section 8690 of the Business and Professions Code.
8
9 c) On May 3, 2012, Respondent Oscar Magana's Operator's License No. OPR 12322
10 was reinstated after posting the general liability insurance.
11
12 d) On January 17, 2013, Respondent Oscar Magana's Operator's License No. OPR
13 12322 reflected a change of business address to 3728 West Park Balboa Avenue,
14 Orange, California 92868.

15 4. On or about June 16, 2005, the Structural Pest Control Board issued Operator License
16 No. OPR 11128 in Branch 1 to Respondent Ernesto Lara Perez (Respondent), employee of Ideal
17 Fumigation, Inc. with a mailing address of 2349 East Rio Verde Drive, West Covina, California
18 91791 and a business address of 13540 East Imperial Highway, Santa Fe Springs, California
19 90670. The license was in full force and effect at all times relevant to the charges brought herein,
20 except as alleged below, and will expire on June 30, 2014:

- 21 a) On September 20, 2005, Respondent Ernesto Lara Perez' Operator's License No. OPR
22 11128 reflected a change of address to 11100 Wright Road, Lynwood, California 90262.
23
24 b) On May 19, 2008, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128
25 paid a \$400 fine levied by the Los Angeles County Agricultural Commissioner for
26 violation of section 6600(b) of the California Code of Regulations.
27
28 c) On November 20, 2008, Respondent Ernesto Lara Perez' Operator's License No. OPR
11128 paid a \$250 fine levied by the Los Angeles County Agricultural Commissioner for
violation of section 6600(b) of the California Code of Regulations.
d) On May 14, 2009, Respondent Ernesto Lara Perez' Operator's License No. OPR 11128
paid a \$550 fine levied by the Orange County Agricultural Commissioner for violation of
section 12973 of the California Food and Agricultural Code.
e) On November 24, 2009, Respondent Ernesto Lara Perez' Operator's License No. OPR
11128 paid a \$1000 fine levied by the Los Angeles County Agricultural Commissioner for
violation of section 1973(a) of the California Code of Regulations.
f) On November 10, 2011, Respondent Ernesto Lara Perez' Operator's License No. OPR
11128 paid a \$250 fine levied by the Los Angeles County Agricultural Commissioner for
violation of section 6600(b) of the California Code of Regulations.
g) On October 15, 2012, Respondent Ernesto Lara Perez' Operator's License No. OPR
11128 paid a \$50.00 fine levied by the Orange County Agricultural Commissioner for
violation of section 8505.10 of the Business and Professions Code.

1 h) On December 7, 2012, Respondent Ernesto Lara Perez' Operator's License No. OPR
11128 became the Vice President of Ideal Fumigation, Inc.

2 i) On July 26, 2013, Accusation No. 2014-8 was filed against Respondent Ernesto
3 Lara Perez' Operator's License No. OPR 11128.

4 5. On or about On July 30, 2008, Field Representative's License No. FR 43416 was
5 issued in Branch 3 to Respondent Ernesto L. Perez, employee of Prudent Termite Control, Inc.,
6 with an address of 13433 Pumice Street, Norwalk, CA 90650. The license was in full force and
7 effect at all times relevant to the charges brought herein and will expire on June 30, 2014:

8 a) On October 1, 2009, Respondent Ernesto L. Perez' Field Representative's License No. FR
9 43416 reflected a change of address to 1556 Edmon Way, Riverside, CA 92501.

10 b) On February 5, 2013, Respondent Ernesto L. Perez' Field Representative's License No.
11 FR 43416 reflected a change of address to 3728 West Park Balboa Avenue, Orange, CA
12 92868.

13 c) On February 5, 2013, Respondent Ernesto L. Perez' Field Representative's License No.
14 FR 43416 became the branch office supervisor for Prudent Termite Control, Inc., Branch
15 Office No. BR 5347.

16 d) On July 26, 2013, Accusation No. 2014-8 was filed against Respondent Ernesto L. Perez'
17 Field Representative's License No. FR 43416.

18 6. On or about October 5, 2006, the Structural Pest Control Board issued Applicator
19 License No. RA 46446 in Branches 2 and 3 to Respondent Hector P. Lara also known as Hector
20 Lara Perez (Respondent), as an employee of Prudent Termite Control, with an address of 13433
21 Pumice Street, Norwalk, California 90650. On September 24, 2009, Respondent's Applicator
22 License No. RA 46446 reflected a change of address to 1556 Edmon Way, Riverside, California
23 92501. The license was in full force and effect at all times relevant to the charges brought herein
24 and expired on October 5, 2012, and has not been renewed.

25 7. On or about December 29, 2010, the Structural Pest Control Board issued Field
26 Representative License No. FR 46315 in Branches 2 and 3 to Hector Perez AKA Hector Perez Jr.
27 (Respondent). On February 5, 2013, Field Representative's License No. FR 46315 reflected a
28 change of address to 3728 West Park Balboa Avenue, Orange, CA 92868. The license was in
full force and effect at all times relevant to the charges brought herein and will expire on June 30,
2016.

1 **JURISDICTION**

2 8. This Accusation is brought before the Structural Pest Control Board (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 9. Section 118, subdivision (b), of the Code states:

6 The suspension, expiration, or forfeiture by operation of law of a license
7 issued by a board in the department, or its suspension, forfeiture, or cancellation
8 by order of the board or by order of a court of law, or its surrender without the
9 written consent of the board, shall not, during any period in which it may be
10 renewed, restored, reissued, or reinstated, deprive the board of its authority to
11 institute or continue a disciplinary proceeding against the licensee upon any
12 ground provided by law or to enter an order suspending or revoking the license or
13 otherwise taking disciplinary action against the licensee on any such ground.

14 10. Section 8625 of the Code provides:

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

21 **STATUTES**

22 11. Section 8516 of the Code states:

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

25 (b) No registered company or licensee shall commence work on a contract,
26 or sign, issue, or deliver any documents expressing an opinion or statement
27 relating to the absence or presence of wood destroying pests or organisms until an
28 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
approved by the board shall be prepared and delivered to the person requesting the

1 inspection or to the person's designated agent within 10 business days of the
2 inspection, except that an inspection report prepared for use by an attorney for
3 litigation purposes is not required to be reported to the board. The report shall be
4 delivered before work is commenced on any property. The registered company
5 shall retain for three years all original inspection reports, field notes, and activity
6 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
10 the board upon request within two business days. The following shall be set forth
11 in the 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 portions
19 of the structure or structures inspected, indicating thereon the approximate location
20 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 footings,
24 porches, patios and steps, air vents, abutments, attic spaces, roof framing that
25 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,
28 such as earth-wood contacts, excessive cellulose debris, faulty grade levels,
excessive moisture conditions, evidence of roof leaks, and insufficient ventilation
are to be reported.

(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.

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

2 (12) The inspection report shall clearly disclose that if requested by the
3 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
4 inspection report, or thereafter.

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

6 "NOTICE: Reports on this structure prepared by various registered
7 companies should list the same findings (i.e. termite infestations, termite damage,
fungus damage, etc.). However, recommendations to correct these findings may
8 vary from company to company. You have a right to seek a second opinion from
another company." An estimate or bid for repairs shall be given separately
9 allocating the costs to perform each and every recommendation for corrective
measures as specified in subdivision (c) with the original inspection report if the
10 person who ordered the original inspection report so requests, and if the registered
company is regularly in the business of performing corrective measures.

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

13 A reinspection shall be an inspection of those items previously listed on an
14 original report to determine if the recommendations have been completed. Each
reinspection shall be reported on an original inspection report form and shall be
15 labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each
reinspection shall also identify the original report by date.

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

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

20 (c) At the time a report is ordered, the registered company or licensee shall
inform the person or entity ordering the report, that a separated report is available
21 pursuant to this subdivision. If a separated report is requested at the time the
inspection report is ordered, the registered company or licensee shall separately
22 identify on the report each recommendation for corrective measures as follows:

23 (1) The infestation or infection that is evident.

24 (2) The conditions that are present that are deemed likely to lead to
infestation or infection.

25 If a registered company or licensee fails to inform as required by this
26 subdivision and a dispute arises, or if any other dispute arises as to whether this
subdivision has been complied with, a separated report shall be provided within 24
27 hours of the request but, in no event, later than the next business day, and at no
additional cost.

1 (d) When a corrective condition is identified, either as paragraph (1) or (2)
2 of subdivision (c), and the responsible party, as negotiated between the buyer and
3 the seller, chooses not to correct those conditions, the registered company or
4 licensee shall not be liable for damages resulting from a failure to correct those
5 conditions or subject to any disciplinary action by the board. Nothing in this
6 subdivision, however, shall relieve a registered company or a licensee of any
7 liability resulting from negligence, fraud, dishonest dealing, other violations
8 pursuant to this chapter, or contractual obligations between the registered company
9 or licensee and the responsible parties.

6 (e) The inspection report form prescribed by the board shall separately
7 identify the infestation or infection that is evident and the conditions that are
8 present that are deemed likely to lead to infestation or infection. If a separated
9 form is requested, the form shall explain the infestation or infection that is evident
10 and the conditions that are present that are deemed likely to lead to infestation or
11 infection and the difference between those conditions. In no event, however, shall
12 conditions deemed likely to lead to infestation or infection be characterized as
13 actual "defects" or as actual "active" infestations or infections or in need of
14 correction as a precondition to issuing a certification pursuant to Section 8519.

11 (f) The report and any contract entered into shall also state specifically
12 when any guarantee for the work is made, and if so, the specific terms of the
13 guarantee and the period of time for which the guarantee shall be in effect.

13 (g) Control service is defined as the regular reinspection of a property after
14 a report has been made in compliance with this section and any corrections as have
15 been agreed upon have been completed. Under a control service agreement a
16 registered company shall refer to the original report and contract in a manner as to
17 identify them clearly, and the report shall be assumed to be a true report of
18 conditions as originally issued, except it may be modified after a control service
19 inspection. A registered company is not required to issue a report as outlined in
20 paragraphs (1) to (11), inclusive, of subdivision (b) after each control service
21 inspection. If after control service inspection, no modification of the original
22 report is made in writing, then it will be assumed that conditions are as originally
23 reported. A control service contract shall state specifically the particular wood
24 destroying pests or organisms and the portions of the buildings or structures
25 covered by the contract.

20 (h) A registered company or licensee may enter into and maintain a control
21 service agreement provided the following requirements are met:

21 (1) The control service agreement shall be in writing, signed by both
22 parties, and shall specifically include the following:

23 (A) The wood destroying pests and organisms that could infest and infect
24 the structure.

24 (B) The wood destroying pests and organisms covered by the control
25 service agreement. Any wood destroying pest or organism that is not covered
26 must be specifically listed.

26 (C) The type and manner of treatment to be used to correct the infestations
27 or infections.

27 (D) The structures or buildings, or portions thereof, covered by the
28 agreement, including a statement specifying whether the coverage for purposes of

1 periodic inspections is limited or full. Any exclusions from those described in the
original report must be specifically listed.

2 (E) A reference to the original inspection report and agreement.

3 (F) The frequency of the inspections to be provided, the fee to be charged
4 for each renewal, and the duration of the agreement.

5 (G) Whether the fee includes structural repairs.

6 (H) If the services provided are guaranteed, and, if so, the terms of the
guarantee.

7 (I) A statement that all corrections of infestations or infections covered by
8 the control service agreement shall be completed within six months of discovery,
unless otherwise agreed to in writing by both parties.

9 (2) Inspections made pursuant to a control service agreement shall be
10 conducted by a Branch 3 licensee. Section 8506.1 does not modify this provision.

11 (3) A full inspection of the property covered by the control service
12 agreement shall be conducted and a report filed pursuant to subdivision (b) at least
13 once every three years from the date that the agreement was entered into, unless
the consumer cancels the contract within three years from the date the agreement
was entered into.

14 (4) A written report shall be required for the correction of any infestation or
infection unless all of the following conditions are met:

15 (A) The infestation or infection has been previously reported.

16 (B) The infestation or infection is covered by the control service agreement.

17 (C) There is no additional charge for correcting the infestation or infection.

18 (D) Correction of the infestation or infection takes place within 45 days of
its discovery.

19 (E) Correction of the infestation or infection does not include fumigation.

20 (5) All notice requirements pursuant to Section 8538 shall apply to all
21 pesticide treatments conducted under control service agreements.

22 (6) For purposes of this section, "control service agreement" means any
23 agreement, including extended warranties, to have a licensee conduct over a period
of time regular inspections and other activities related to the control or eradication
24 of wood destroying pests and organisms.

25 (i) All work recommended by a registered company, where an estimate or
bid for making repairs was given with the original inspection report, or thereafter,
26 shall be recorded on this report or a separate work agreement and shall specify a
price for each recommendation. This information shall be provided to the person
27 requesting the inspection, and shall be retained by the registered company with the
inspection report copy for three years.

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12. Section 8518 of the Code states:

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.

Every property upon which work is completed 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 upon which work was completed pursuant to subdivision(b) of Section 8516, subdivision (b) of Section 8516 or Section 8518 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).

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

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.

13. Section 8519, subdivision (c), of the Code states:

When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that the registered company has not completed all recommendations to remove that infestation or infection or to repair damage caused by it: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas except as follows: _____ (describing infestations, infections, damage or evidence thereof, excepted)."

This certificate shall be accompanied by a copy of the inspection report prepared pursuant to Section 8516, and by a copy of the notice of work completed prepared pursuant to Section 8518, if any notice has been prepared at the time of the certification, or the certification may be endorsed on and made a part of that inspection report or notice of work completed.

14. Section 8610, subdivision (c) of the Code states:

Each registered company shall designate an individual or individuals who hold an operator's license to act as its qualifying manager or managers. The qualifying manager or managers must be licensed in each branch of pest control in which the company engages in business. The designated qualifying manager or managers shall supervise the daily business of the company and shall be available

1 to supervise and assist all employees of the company, in accordance with
2 regulations which the board may establish.

3 15. Section 8612 of the Code states:

4 The licenses of qualifying managers and company registrations shall be
5 prominently displayed in the registered company's office, and no registration
6 issued hereunder shall authorize the company to do business except from the
7 location for which the registration was issued. Each registered company having a
8 branch office or more than one branch office shall be required to display its branch
9 office registration prominently in each branch office it maintains.

10 When a registered company opens a branch office it shall notify the
11 registrar in writing on a form prescribed by the board and issued by the registrar in
12 accordance with rules and regulations adopted by the board. The notification shall
13 include the name of the individual designated as the branch supervisor and shall be
14 submitted with the fee for a branch office prescribed by this chapter.

15 16. Section 8613 of the Code states:

16 A registered company which changes the location of its principal office or any
17 branch office or which changes its qualifying manager, branch supervisor, officers,
18 or its bond or insurance shall notify the registrar in writing of such change within
19 30 days thereafter. A fee for filing such changes shall be charged in accordance
20 with Section 8674.

21 17. Section 8624 of the Code provides:

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.

29 18. Section 8641 of the Code provides:

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

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19. Section 8652 of the Code states:

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

20. Section 8654 of the Code states, in pertinent part:

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

21. Section 8691 of the Code 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.

REGULATIONS

22. California Code of Regulations, title 16, section 1911, states:

Each operator, field representative and applicator shall file his or her address of record with the board and shall notify the board of any change in address within ten (10) days of such change. The address of record of a field representative, an operator or an applicator shall be the address of the registered company by which he or she is employed or with which he or she is associated or his or her residence address if he or she is not employed and associated.

Each licensee shall also file his or her address for mailing purposes with the board and shall notify the board of any change in address within ten (10) days of such change.

23. California Code of Regulations, title 16, section 1918, states:

“Supervise” as used in Business and Professions Code Sections 8506.2, 8610 and 8611 means the oversight, direction, control, and inspection of the daily business of the company and its employees, and the availability to observe, assist,

1 and instruct company employees, as needed to secure full compliance with all laws
and regulations governing structural pest control.

2 In cases of ownership of more than one registered company by the same
3 sole owner, corporation or partnership where the qualifying manager or managers
4 cannot supervise each registered company because of the location of the
5 companies, the qualifying manager or managers may designate an individual or
6 individuals licensed as an operator or as a field representative in the branch or
7 branches of business being conducted to supervise the company. This designated
8 supervisor or supervisors must be under the direct supervision of the qualifying
9 manager or managers. Any such designation of supervisors does not relieve the
10 qualifying manager or managers of responsibility to supervise as required in
11 sections 8506.2 and 8610.

12 24. California Code of Regulations, title 16, section 1970, states:

13 For the purpose of maintaining proper standards of safety and the
14 establishment of responsibility in handling the dangerous gases used in fumigation
15 and the pesticides used in other pest control operations, a registered company shall
16 compile and retain for a period of at least three years, a log for each fumigation job
17 and for each pesticide control operation in which a pesticide is used by the
18 registered company or the registered company's employee. If the fumigation is to
19 be performed by a fumigation subcontractor, the subcontractor shall complete the
20 fumigation log and forward a copy of the log to the primary contractor within ten
21 business days.

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

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

25 Name, address and company registration certificate number of subcontractor, if
26 any.

27 Address of property.

28 Date of fumigation.

Name and address of owner or his or her agent.

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

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

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

Cubic feet fumigated.

Target pest(s).

- 1 Kind of fumigant(s) used.
- 2 United States Environmental Protection Agency registration number(s) of
fumigant(s).
- 3 Name of warning agent and amount used.
- 4 Type of sealing method used.
- 5 Weather conditions as to temperature and wind.
- 6 Date and hour fumigant introduced.
- 7 Cylinder number of each fumigant used.
- 8 Weight of each fumigant cylinder before introduction of gas.
- 9 Pounds of fumigant used from each cylinder.
- 10 Total pounds of fumigant used.
- 11 List of any extraordinary safety precautions taken.
- 12 Name, signature and license number of operator or field representative releasing
fumigant.
- 13 First name and surname of crew when fumigant was released, when aeration
14 commenced and when the property was released for occupancy.
- 15 Indication of whether or not safety equipment was available at the fumigation site
16 at the time the fumigant was introduced, when ventilation commenced and when
the property was released for occupancy.
- 17 Date and hour aeration commenced.
- 18 Conditions of tarp and seal.
- 19 Name, signature and license number of operator or field representative
20 commencing ventilation.
- 21 Type of device(s) used to test for re-entry.
- 22 Date and hour ready for occupancy.
- 23 Name, signature and license number of operator or field representative releasing
property for occupancy.
- 24 Method used to calculate amount of fumigant used.
- 25 Factors used in calculation of fumigant.
- 26 Special notes or comments pertinent to fumigation.
- 27 (b) The report for each pest control operation, other than fumigation, in which a
28 pesticide is used shall contain the following information:

1 Date of treatment.

2 Name of owner or his or her agent.

3 Address of property.

4 Description of area treated.

5 Target pest(s).

6 Pesticide and amount used.

7 Identity of person or persons who applied the pesticide.

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

10 [FORM OF STANDARD STRUCTURAL FUMIGATION LOG OMITTED]

11 25. California Code of Regulations, title 16, section 1990, states:

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

15 (1) Structural pest control license number of the person making the
inspection.

16 (2) Signature of the Branch 3 licensee who made the inspection.

17 (3) Infestations, infections or evidence thereof.

18 (4) Wood members found to be damaged by wood destroying pests or
19 organisms.

20 (b) Conditions usually deemed likely to lead to infestation or infection
include, but are not limited to:

21

22 (2) Inaccessible subareas or portions thereof and areas where there is less
23 than 12 inches clear space between the bottom of the floor joists and the
unimproved ground area.

24

25 26. California Code of Regulations, title 16, section 1991, states:

26 (a) Recommendations for corrective measures for the conditions found shall
27 be made as required by paragraph 10 of subdivision (b) of Section 8516 of the
code and shall also conform with the provisions of Title 24 of the California Code
28 of Regulations and any other applicable local building code, and shall accomplish
the following:

.....

1 (8) Exterminate all reported wood-destroying pests. Such extermination
2 shall not be considered repair under section 8516(b)(12) of the code. If evidence
3 indicates that wood-destroying pests extend into an inaccessible area(s),
4 recommendation shall be made to either:

5 (A) enclose the structure for an all encompassing treatment utilizing
6 materials listed in Section 8505.1 of the code, or

7 (B) use another all encompassing method of treatment which exterminates
8 the infestation of the structure, or

9 (C) locally treat by any or all of the following:

10 1. exposing the infested area(s) for local treatment,

11 2. removing the infested wood,

12 3. using another method of treatment which exterminates the infestation. (If
13 any recommendation is made for local treatment, the report must contain the
14 following statement: "Local treatment is not intended to be an entire structure
15 treatment method. If infestations of wood-destroying pests extend or exist beyond
16 the area(s) of local treatment, they may not be exterminated.")

17 When a complete inspection is performed, a recommendation shall be made
18 to remove or cover all accessible pellets and frass of wood-destroying pests.

19 When a limited inspection is performed, the inspection report shall state that
20 the inspection is limited to the area(s) described and diagrammed. A
21 recommendation shall be made to remove or cover all accessible pellets and frass
22 of wood-destroying pests in the limited areas. The limited inspection report shall
23 include a recommendation for further inspection of the entire structure and that all
24 accessible evidence of wood-destroying pests be removed or covered.

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27. California Code of Regulations, title 16, section 1993.1, states:

The following statement must appear on any wood destroying pests and organisms inspection report when an estimate or bid for making repairs is given with the original inspection report, or thereafter:

"This company will reinspect repairs done by others within four months of the original inspection. A charge, if any, can be no greater than the original inspection fee for each reinspection. The reinspection must be done within ten (10) working days of request. The reinspection is a visual inspection and if inspection of concealed areas is desired, inspection of work in progress will be necessary. Any guarantees must be received from parties performing repairs."

28. California Code of Regulations, title 16, section 1996.3, states in part:

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

.....
1
2 (c) Failure of a registered company to report and file with the Board the address of
3 any property inspected or upon which work was completed pursuant to Section
4 8516(b) or 8518 are grounds for disciplinary action and subject to a fine of not
5 more then two thousand five hundred dollars (\$2,500).

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FACTS

29. On November 28, 2011, the Board notified Respondent Prudent that its Qualifying
Manager had disassociated himself from Respondent Prudent, effective November 16, 2011,
causing Respondent Prudent to be without a Qualifying Manager, and therefore Respondent
Prudent's license was suspended and ordered that it "**MUST CEASE ALL WORK
IMMEDIATELY.**" (Original in bold and underlined.)

30. No new Qualifying Manager existed for Respondent Prudent until on or about
February 23, 2012, when Respondent Oscar Magana became its Qualifying Manager. As set
forth above, from November 28, 2011, to May 3, 2012, Respondent Prudent was suspended by
operation of law for failure to have a Qualifying Manager and, starting December 19, 2011, was
suspended for the additional reason of failing to have required insurance or appropriate bond.
Despite his appointment as Qualifying Manager, Respondent Oscar Magana only was visiting
Respondent Prudent two to three times a month according to Respondent Ruth Perez.

31. On October 2, 2012, a Board investigator traveled to Respondent Prudent's
address of record at 1156 Edmon Ave. Riverside, CA 92501 to perform a compliance inspection
of Respondent Prudent's office. An individual answered the door and stated that she was a tenant
and had lived at the property for more than a year, indicating that Respondent Prudent no longer
had a business at that address. The Board's investigator then contacted Respondent Prudent at the
phone number found on an Internet advertisement and traveled to a new address, 3728 W. Park
Balboa Orange, CA 92868, and met with Respondents Ruth Perez and Hector L. Perez.

32. The Board's investigator thereby determined that Respondent Prudent's principle
office location of record with the Board, namely 1156 Edmon Ave. Riverside, CA 92501, was
abandoned by Respondents no later than April 18, 2012. On or about January 17, 2013,
Respondent Prudent notified the Board that its new address of record was 3728 West Park Balboa

1 Avenue, Orange, California 92868.

2 33. Neither Respondent Ruth Perez nor Respondent Hector L. Perez had previously
3 notified the Board within 30 days that they had moved Respondent Prudent's operations to this
4 new address. Respondents Ruth Perez and Hector L. Perez also stated to the Board's
5 investigator: "The company records for the last 3 years were lost during the move to Orange."
6 Respondent Ruth Perez provided the investigator computer printouts of Respondent Prudent's
7 2012 records and partial 2011 records and informed the investigator that she would call him to
8 arrange a further appointment. At that appointment, on January 4, 2013, Respondent Ruth Perez
9 signed a declaration indicating that Respondents had no hard copies or original files of
10 Respondent Prudent's work files, and reiterated that they had been "lost in the process of
11 moving." Together, these statements and absence of records showed that Respondents had failed
12 to keep and maintain all Respondent Prudent's records for a period of not less than three years
13 after completion of any work or operation.

14 34. Nevertheless, Respondent Prudent supplied to the Board three (3) termite
15 inspection reports dated February 1, 2012, February 17, 2012, and February 22, 2012, and one (1)
16 completion report dated February 23, 2012, during the period Respondent Prudent was
17 suspended. Furthermore, Respondent Prudent provided the Board with three (3) termite
18 inspection reports dated March 14, 2012, April 10, 2012, and May 1, 2012, and two (2)
19 completion reports dated March 27, 2012, and April 30, 2012, during the period of Respondent
20 Prudent's license was suspended.

21 35. Respondent Prudent produced to the Board's investigator computer data showing
22 that from January 5, 2011, to December 28, 2012, that Respondent Prudent prepared 1,230 Wood
23 Destroying Pest and Organism Inspection Reports (inspection reports) and Standard Notice of
24 Work Completed Not Completed Reports (completion reports) (together, "WDOs").

25 36. A search of the Board's WDO records regarding Respondent Prudent was
26 performed to verify that all WDO activities had been filed with the Board. The Board's records
27 were then compared to the computer printout that Prudent provided to the Board's investigator.
28 The comparison between the Board's records for Respondent Prudent and Respondent Prudent's

1 own records showed the following:

- 2 • Respondent Prudent failed to report WDO activities from January 5, 2011 to
3 December 28, 2012.
- 4 • The WDO report number on January 5, 2011 starts at number 1959 and the report
5 dated December 28, 2012 ends at report number 3189, totaling 1,230 WDO
6 activities; nevertheless, the Board's data shows 161 WDO activities for the same
7 period as being timely reported to the Board after the commencement of an
8 inspection or upon completed work.
- 9 • Subtracting those WDO reports made by Respondent to the Board leaves 1069
10 inspection reports and 94 completion reports that were not made to the Board or,
11 stated differently, Respondent Prudent had 1,163 WDO activity failures to provide
12 reports to the Board within ten (10) days as required by law.

13 37. Of those WDO reports prepared by Respondent Prudent and reviewed by the
14 Board's investigator, several were missing mandatory disclaimers regarding Reinspection
15 language and Separated Report language. Furthermore, WDO inspection reports for the following
16 addresses were also incomplete:

- 17 • 14625 Funston Ave., Norwalk CA 90650: The WDO report submitted to the Board notes
18 that an inspector with license number FR-26758 inspected this property, but the actual
19 inspection report in Respondent Prudent's files notes that an inspector with the license
20 number FR-46315 inspected the subject property. Furthermore, the inspection report
21 misclassified its findings; the completion report certifies all the items were completed but
22 the report recommends contact proper tradesman on items not bid or mentioned on the
23 completion report.
- 24 • 14556 Bellflower Ave. Bellflower, CA 90706: The inspection report is dated January 18,
25 2012, with a completion date of July 24, 2012, but has a handwritten date of June 27,
26 2012. The original report indicates that the property was inspected six months prior to the
27 completion report date (a complete new original report is needed after four months). The
28 completion report dated July 24, 2012, still notes the January 18, 2012, inspection report

1 date.

- 2 • 1551 W. 66th St. Los Angeles, CA 90047: The completion report certifies the entire
3 structure, but there are items of repair that recommend contacting a licensed tradesman
4 with no mention of the items on the Completion report. Item 6A and 6B of the inspection
5 report present findings noting inaccessible areas with no recommendations for correction.
6 For inaccessible areas, recommendations should have provided.
- 7 • 12423 Camilla St. Whittier, CA 90601: The inspection report is not signed by the
8 inspector and drywood termite recommendations do not include the required statement to
9 cover or remove accessible pellets.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Failure to Notify Board of Change in Location of Office)

12 38. Respondents Prudent, Oscar Magana, and Hector Perez are subject to disciplinary
13 action under Code sections 8613, 8641 and California Code of Regulations, title 16, section 1911
14 in that Respondents failed to file his or its address of record with the Board with ten (10) days (for
15 Respondents Oscar Magana, Ernesto Lara Perez, and Hector Perez) or thirty (30) days (for
16 Respondent Prudent), as required by law.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Failure to Maintain All Records)

19 39. Respondents Prudent, Oscar Magana, Ruth Perez and Hector L. Perez are subject to
20 disciplinary action under Code section 8612, 8624, 8641 and 8652 and California Code of
21 Regulations, title 16, section 1970 in that Respondents failed to maintain all records regarding
22 structural pest control activities performed for three years and make such records available for
23 inspection, and failed to prominently display their licenses in the registered company's office as
24 required by law.

25 **THIRD CAUSE FOR DISCIPLINE**

26 (Failure to Designate Qualifying Manager)

27 40. Respondents Prudent, Ruth Perez and Hector L. Perez are subject to disciplinary
28 action under Code section 8610, subdivision (c), 8624, and 8641 and California Code of

1 Regulations, title 16, section 1918 in that Respondents failed to designate a qualifying manager to
2 supervise the daily business of Respondent Prudent and to be able to supervise and assist all
3 employees for the period of November 28, 2011 to February 23, 2012.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 (Failure to Maintain Insurance Policy or Bond)

6 41. Respondents Prudent, Oscar Magana, Ruth Perez and Hector L. Perez are subject to
7 disciplinary action under Code sections 8624, 8641 and 8691 in that Respondents failed to
8 maintain an insurance policy or bond as required by the Board for the period of December 19,
9 2011 to May 3, 2012.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 (Failure to Report WDO Activities)

12 42. Respondents Prudent, Oscar Magana, Ruth Perez and Hector L. Perez are subject to
13 disciplinary action under Code sections 8516, subdivision (b), 8518, and 8641 and California
14 Code of Regulations, title 16, section 1996.3, in that Respondents failed to timely notify
15 Respondent Prudent's WDO activities to the Board for the period of January 5, 2011 to December
16 28, 2012.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 (Failure to Make Proper Findings and Required Disclaimers)

19 43. Respondents Prudent, Oscar Magana, and Hector Perez are subject to disciplinary
20 action under Code sections 8516 (9)(10), 8516 (13), 8516 (e), 8519 (c), and 8641 and
21 California Code of Regulations, title 16, sections 1990 subdivisions (a) and (b)(2), 1991
22 subdivision (a)(8)(C)(3), and 1993.1, in that Respondents failed to make proper findings and
23 required disclaimers in Respondent Prudent's WDO reports to the Board for the period of January
24 5, 2011 to December 28, 2012.

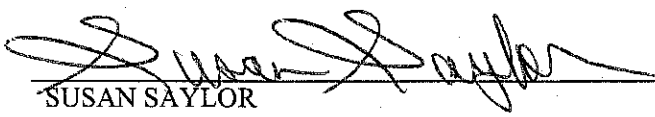
25 **DISCIPLINE CONSIDERATIONS**

26 44. To determine the degree of discipline, if any, to be imposed, Complainant
27 incorporates herein those allegations pertaining to those fines imposed on Respondents as alleged
28 above.

- 1 6. Revoking or suspending Applicator License No. RA 46446, issued to Hector P. Lara
- 2 AKA Hector Lara Perez;
- 3 7. Revoking or suspending Field Representative License No. FR 46315, issued to
- 4 Hector P. Lara AKA Hector Lara Perez;
- 5 8. Ordering Prudent Termite Control, Inc., Ruth Perez, Oscar Magana, Ernesto Lara
- 6 Perez, Hector Lara Perez and Hector Perez AKA Hector Perez Jr., and each of them, to pay the
- 7 Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
- 8 case, pursuant to Business and Professions Code section 125.3; and
- 9 9. Taking such other and further action as deemed necessary and proper.

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DATED: 9/6/13



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

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