KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
KATHERINE M. MESSANA
Deputy Attorney General
State Bar No. 272953
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2554
Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

Date 8/9/11 By William H. Douglas

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

In the Matter of the Accusation Against: **RAIDEN EXTERMINATING COMPANY** **5007 Heleo Avenue** **Temple City, CA 91780** **KAM LUN SITO, QUALIFYING MANAGER** **Company Registration Certificate No. PR 5623, Branches 2 and 3** **Operator's License No. OPR 11678, Branches 2 and 3** Respondents.	Case No. 2011-63 **FIRST AMENDED** **ACCUSATION**

Complainant alleges:

PARTIES

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

Company Registration Certificate

2. On or about May 30, 2008, the Board issued Company Registration Certificate Number PR 5623 in Branch 3 ("registration") to Raiden Exterminating Company with Kam Lun Sito ("Respondent") as the Owner and Qualifying Manager. On July 18, 2008, the registration

was upgraded to include Branches 2 and 3, reflecting Kam Lun Sito as the Branch 2 Qualifying Manager.

Operator's License

3. On or about April 11, 2008, the Board issued Operator's License Number OPR 11678 in Branch 3 ("license") to Respondent. On May 30, 2008, Respondent became the Owner and Qualifying Manager of Raiden Exterminating Company. On June 17, 2008, the license was upgraded to include Branches 2 and 3. On July 18, 2008, Respondent became the Branch 2 Qualifying Manager for Raiden Exterminating Company. The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

JURISDICTION

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

5. Code section 8624 states:

> If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.
>
> If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.
>
> The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

6. Code section 8625 states:

> The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any

investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

STATUTORY PROVISIONS

7. Code section 8516 states, in pertinent part:

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

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section 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 8516.1, Section 8518, or this section are 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 inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, filed notes, and activity forms.

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

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

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

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

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

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

///

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

(10) Recommendations for corrective measures.

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.

9. Code section 8519 states, in pertinent part:

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

10. Code section 8622 states:

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

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

11. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

12. Code section 8641 states:

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

13. Code section 8642 states:

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

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1990, states, in pertinent part:

(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information 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:

(3) Infestations, infections or evidence thereof.

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

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

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

///

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

(4) Earth-wood contacts.

(5) Commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork.

(e) Information regarding all accessible areas of the structure including but not limited to the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or other parts of a structure normally subject to attack by wood-destroying pests or organisms.

15. California Code of Regulations, title 16, section 1991, states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall 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 of Regulations and any other applicable local building code, and shall accomplish the following:

(2) Remove from the subarea all excessive cellulose debris in earth contact. This excludes shavings or other cellulose too small to be raked or stored goods not in earth contact. Stumps and wood imbedded in footings in earth contact shall be treated if removal is impractical.

(5) Structure members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

16. California Code of Regulations, title 16, section 1992, states:

In addition to the recommendations required in section 1991, the report may suggest secondary recommendations. When secondary recommendations are made, they shall be labeled as secondary recommendations and included as part of the inspection report with a full explanation of why they are made, with the notation that they are below standard measures. If secondary recommendations are performed, any letter of completion, billing or other document referring to the work completed, must state specifically the name of the person or agency requesting completion of the secondary recommendations.

///

///

17. California Code of Regulations, title 16, section 1993, states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the Board.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed contractor or field representative shall refer to the original report in such a manner to identify it clearly.

(e) A reinspection report is the report on the inspections of item(s) completed as recommended on an original report or subsequent report(s). The areas reinspected can be limited to the items requested by the person ordering the original inspection report. A licensed contractor or field representative shall refer to the original report in such a manner to identify it clearly.

18. California Code of Regulations, title 16, section 1996.3, subdivision (a) states:

(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, subdivision (b) and 8518.

COST RECOVERY/RESTITUTION

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

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

IOWA STREET PROPERTY

21. On or about June 7, 2010, Steven R. Smith, a Specialist with the Board, went to Respondent's office to follow up on a Compliance Inspection. The Specialist reviewed reports regarding a property located at 4654 Iowa Street, San Diego, California ("Iowa Property") and found a Wood Destroying Pests and Organisms Inspection Report No. W8034 ("Report No.

W8034") and that on or about May 28, 2010, Respondent issued Standard Notice of Work Completed and Not Completed No. W8034 ("Completion Notice No. W8034"), for the Iowa property. Report No. W8034 disclosed that Respondent made findings, which included evidence of drywood termite infestations at the exterior siding, door trimming, and at the fence/gate. Respondent made primary a recommendation to fumigate the property and a secondary recommendation to chemically treat visible and accessible infestations. Respondent documented evidence of subterranean termite infestation at the fence/gate with recommendations to pressure "ROD" treat trench application or low pressure spot spray. Respondent also made findings of excessive moisture at the fence/gate and at the window trimming. Respondent recommended contacting a proper tradesman to correct the moisture conditions.

22. The secondary recommendations made by Respondent failed to include a full explanation of why they were made and that those recommendations were below standard measures. The Standard Notice of Work Completed and Not Completed No. W8034 ("Report W8034") failed to state that the primary recommendation of fumigation was not completed, failed to include an estimated cost of the work not completed, and that the buyer was the one who requested that Respondent perform the secondary recommendations stated in Report No. W8034. The Specialist informed Respondent that performing secondary recommendations on a freestanding single-family residence during an escrow transaction is typically not allowed because the lender will not allow it. The Specialist also informed Respondent that because the reports were not in compliance, the lenders and others who read the reports did not have a clear understanding of the findings and recommendations and the work performed. The Specialist told Respondent to return to the Iowa Property and clarify his findings and recommendations, then provide him with new inspection report and completion notice.

23. On or about June 17, 2010, Respondent reinspected the Iowa Property and issued Wood Destroying Pests and Organisms Inspection Report-Supplemental No. W8038 ("Report No. W8038"), with findings and recommendations. Respondent reported evidence of drywood termite infestations at the exterior siding and door trimming and recommended fumigating the structure. A cover letter that accompanied Report No. W8038 informed the Specialist that both

the seller and buyer were made aware of the mistake on the initial inspection report regarding the secondary treatment option and both decided not to fumigate the property. The property subsequently closed escrow in early June 2010.

24. On August 25, 2010, the Board Specialist inspected and photographed the Iowa Property and made the following findings:

a. Cellulose debris in the substructure.

b. Form boards in the substructure.

c. Evidence of drywood termites and drywood termite damage in the substructure.

d. Insufficient substructure ventilation.

e. Decay fungus and dry rot at the substructure framing.

f. Earth-to-wood contacts in the substructure and at all sides of the detached storeroom.

g. Substandard substructure supports

h. Evidence of live drywood termites and drywood termite damage in the attic.

i. Inaccessible attic areas and below the floor of the detached storeroom.

j. Decay fungi and decay fungi damage at the carport framing.

k. Decay fungi damage at the balustrade framing.

l. Decay fungi damage at the second floor corbel.

25. On or about September 8, 2010, the Board Specialist prepared a Report of Findings ("ROF") outlining numerous violations of the Code, based on his inspection of August 25, 2010. That same day, the Board sent a notice with a copy of the ROF report to Respondent directing him to bring the Iowa Property into compliance by correcting the items described in the ROF and to submit a corrected inspection report and a completion notice to the Board within thirty (30) calendar days from the receipt of the notice.

26. On or about September 24, 2010, Respondent reinspected the Iowa Property and issued Wood Destroying Pests and Organisms Inspection Report No. W8047 ("Report No. W8047"), dated October 13, 2010. Respondent made the following findings:

///

///

Structure

a. Evidence of drywood termite infestation at the wood member and floor joist (Item 1A). Respondent recommended fumigation.

b. Evidence of termite damaged wood members noted at the time of inspection at crawl area and floor joist (Item 1B). Respondent recommended replacing or repairing the termite damaged wood members as necessary.

c. Dry-rot wood members (Item 1C). Respondent recommended replacing the dry-rot damaged wood members as necessary.

d. Cellulose debris in the sub area (Item 1D). Respondent recommended cleaning and removing the cellulose debris from the premises.

e. Earth-to-wood contacts were visible at form board (Item 1E). Respondent recommended breaking the earth-to-wood contact and/or heavily treat wood members where conditions are deemed likely to lead to infestation.

f. Inaccessible areas at the storeroom due to construction and/or storage, or other conditions preventing inspection (Item 1F). Respondent recommended that the owner make the areas accessible for further inspection.

Attic Spaces

g. Evidence of drywood termite infestations at attic framing (Item 7A). Respondent recommended fumigation.

h. Inaccessible areas at attic due to construction and/or storage, or other conditions preventing inspection (Item 7B). Respondent recommended that the owner make the areas accessible for further inspection.

Garages

i. Dry-rot wood members at the carport (Item 8A). Respondent recommended replacing or repairing the dry-rot damaged wood members as necessary.

Other Exterior

j. Evidence of drywood termite infestations at the rafter tail and attached carport (Item 11A). Respondent recommended fumigation.

k. Evidence of drywood termite infestations at the door jamb (Item 11B). Respondent recommended fumigation.

l. Evidence of termite damaged wood members at the door jamb (Item 11C). Respondent recommended replacing or repairing the termite damaged window. Respondent recommended repairing the door jamb.

m. Dry-rot wood members found at the corbel (Item 11D). Respondent recommended replacing or repairing the dry-rot damaged wood members as necessary.

n. Dry-rot members found at the balustrade (Item 11E). Respondent recommended replacing or repairing the dry-rot damaged wood members as necessary.

o. Dry-rot wood members at the door jamb (Item 11F). Respondent recommended replacing or repairing the dry-rot damaged wood members as necessary.

27. Respondent failed to submit a Standard Notice of Work Completed and Not Completed to the Board for the inspection date of September 24, 2010. Four months after the Board Specialist issued the ROF, Respondent still had not brought the Iowa Property into compliance and had committed additional violations while attempting to do so.

28. On or about June 1, 2011, Respondent reinspected the Iowa Property and issued Wood Destroying Pests and Organisms Inspection Report-Supplemental No. W8064 ("Report No. W8064"). Respondent made the following findings:

Structure

a. Loose and unsecured pier posts and girders (Item 1G). Respondent recommended replacing all loose and unsecured pier posts and girders.

b. Earth-wood contacts visible at time of inspection at substructure. (Item IH). Respondent recommended correction of all the earth-wood contacts.

c. Earth-wood contacts visible at time of inspection at form boards (Item 1J). Respondent recommended treatment of form boards with approved termiticide to prevent future infestation.

d. Inadequacy of opening/venting in substructure resulting in poor ventilation (Item 1K). Respondent recommended increasing more opening/venting according to the city's requirement.

e. Inaccessible areas at detached storeroom due to construction and or, storage, or other condition preventing inspection (Item 1L). Respondent recommended making an opening into the floor to inspect.

f. Earth-wood contacts visible at the time of inspection at detached storeroom (Item 1M). Respondent recommended breaking the earth-wood contacts by evacuating and lowering soil away from the detached storeroom.

g. Evidence of white pocket-rot wood members noted at the time of inspection at substructure (Item 1N). Respondent recommended scraping away all the white pocket-rot in the substructure.

Attic Spaces

h. Evidence of drywood termite infestations at attic framing (Item 7A). Respondent recommended fumigation.

i. Evidence of termite damaged wood members noted at time of inspection at attic wood members (Item 7B). Respondent recommended no further action.

Garages

j. Surface fungus condition visible at time of inspection at carport wood members (Item 8A). Respondent recommended scraping, chemically treating fungus condition and patching any minor surface damage found during treatment.

Other Exterior

k. All the repair/replacement, those are needed to be painted is going to be done by the pest control company.

29. On or about June 1, 2011, Respondent contacted the Board Specialist and informed him that the required work at the property had been completed and signed off by the city. On or about that same day, Respondent issued Standard Notice of Work Completed and Not Completed No. W8064 ("Completion Notice No. W8064"), for the Iowa Property.

///

///

///

30. On June 7, 2011, the Board Specialist inspected and photographed the Iowa Property and made the following findings:

a. Cellulose debris in the substructure.

b. Form boards, which are removable, remain in the substructure.

c. Drywood termite damage remains in the substructure.

d. Fungus (decay fungi) remains in the substructure.

e. Substandard repair work completed in the substructure.

f. A hand-made subject company inspection tag in the substructure, dated 6/1/11.

g. Substandard repair work regarding the installation of the foundation vents.

h. Evidence of drywood termites remains in the attic spaces.

i. Drywood termite damage remains in the attic spaces.

j. A fumigation tag posted in one of the attic spaces, dated 10/22/10.

k. Drywood termite damage remains at the carport framing.

l. Dry rot (decay fungi damage) remains at the carport framing.

m. Substandard repair work completed at the carport

n. Decay fungi and decay fungi damage remains where the carport attaches to the house eaves.

o. Decay fungi damage remains at the roof sheathing in the house eaves.

p. Decay fungi damage remains at the back door doorjamb.

q. Substandard repair work completed at the back door doorjambs.

r. Earth-to-wood contact and faulty grade remains around the exterior of the detached storeroom.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Code - Improper Inspections)

31. Respondent's registration and license are subject to discipline pursuant to Code section 8641, in that concerning the Iowa Property, Respondent failed to comply with the following sections of that Code:

///

April 30, 2010, Inspection

Section 8516, subdivisions (b)(6) and (7):

a. Respondent failed to report the cellulose debris in the substructure, as defined by California Code of Regulations, title 16, section 1990, subdivision (b)(3).

b. Respondent failed to report the form boards in the substructure, as defined by California Code of Regulations, title 16, section 1990, subdivision (b)(3).

c. Respondent failed to report the evidence of drywood termites and drywood damage in the substructure, as defined by California Code of Regulations, title 16, section 1990, subdivision (b)(3).

d. Respondent failed to report the decay fungi and decay fungi damage in the substructure, as defined by California Code of Regulations, title 16, section 1990, subdivisions (a)(3) and (4).

e. Respondent failed to report the earth-to-wood contacts in the substructure, as defined by California Code of Regulations, title 16, section 1990, subdivision (a)(4).

f. Respondent failed to report the substandard support framing (girders and piers) in the substructure, as defined by California Code of Regulations, title 16, section 1990, subdivision (e).

g. Respondent failed to report the inadequate substructure ventilation, as defined by California Code of Regulations, title 16, section 1990, subdivision (b)(5), and section 1990, subdivision (e).

h. Respondent failed to report evidence of drywood termites and drywood termite damage in the attic, as defined by California Code of Regulations, title 16, section 1990, subdivisions (a)(3) and (4).

i. Respondent failed to report the decay fungi and decay fungi damage at the carport framing, as defined in California Code of Regulations, title 16, section 1990, subdivisions (a)(3) and (4).

j. Respondent failed to report the inaccessible area below the detached storeroom, as defined in California Code of Regulations, title 16, section 1990, subdivision (b)(2).

k. Respondent failed to report the earth-to-wood contact at the detached storeroom, as defined in California Code of Regulations, title 16, section 1990, subdivision (b)(4).

l. Respondent failed to report the drywood termite damage at the door jamb, as defined in California Code of Regulations, section 1990, subdivision (b)(4).

m. Respondent failed to report the decay fungi damage at the door jamb, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

n. Respondent failed to report the decay fungi damage at the balustrade, above the front porch, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

o. Respondent failed to report the decay fungi damage at the corbel, above the front porch, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

June 17, 2010, Inspection

Section 8516, subdivisions (b)(6) and (7):

p. Respondent failed to issue a proper "supplemental" inspection report (Report No. W8038). The "supplemental", "separated" inspection report failed to contain a statement that referred to the original inspection report (Report No. W8034) explaining why Supplemental Report No. W8038 was issued, in violation of California Code of Regulations, title 16, section 1993, subdivision (d).

Section 8516, subdivisions (b)(2) and (3):

q. Respondent failed to prepare and deliver an inspection report (Report No. W8038) that contained the proper name and address of the person or firm ordering the report and of the property owner or any person who is a party in interest, in that the June 17, 2010 "supplemental," "separated" inspection report (Report No. W8038) contained the same "ordered by" and "property owner/party in interest" information as stated on the April 30, 2010, "complete" "separated" inspection report (Report No. W8034); however, on June 10, 2010, the escrow closed and the Iowa Property had changed hands.

///

///

///

October 13, 2010, Inspection

Section 8516, subdivisions (b)(2) and (3):

r. Respondent failed to make proper findings and recommendations regarding the loose pier posts and poor ventilation noted on Report No. W8047, as defined in California Code of Regulations, title 16, section 1990, subdivision (b)(5).

s. Respondent failed to identify the source of infections of the decay fungi damage and failed to include recommendations to correct the excessive moisture conditions responsible for the infections, as defined in California Code of Regulations, title 16, section 1991, subdivision (a)(5).

t. Respondent failed to report the decay fungi in the substructure, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(3).

u. Respondent failed to report the full extent of the earth-to-wood contacts in the substructure, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

v. Respondent failed to report the full extent of the evidence of drywood termites and the drywood termite damage in the attic, as defined in California Code of Regulations, section 1990, subdivisions (a)(3) and (4).

w. Respondent failed to report the full extent of the decay fungi damage at the carport, as defined in California Code of Regulations, section 1990, subdivision (a)(4).

x. Respondent failed to report the inaccessible area and the earth-to-wood contacts at the detached storeroom, as defined in California Code of Regulations, title 16, section 1990, subdivisions (b)(2) and (4).

Section 8516, Subdivision (b)(1):

y. Respondent failed to issue an inspection report that contained the correct date of inspection. The subject performed the wood destroying pests and organisms inspection on September 24, 2010; however, the inspection report (Report No. W8047) was dated October 13, 2010.

///

Section 8516, Subdivision (b):

z. Failed to prepare and deliver an inspection report (Report No. W8047) to the Board Specialist prior to commencement of the work. The Board Specialist received Respondent's October 13, 2010, "complete," "separated" inspection report (Report W8047) on October 18, 2010. The cover letter that accompanied the inspection report stated the corrections were completed the prior week.

aa. Respondent failed to file the completion notice dated May 28, 2010, (Report No. W8034) with the Board, as defined in California Code of Regulations, title 16, section 1996.3, subdivision (a).

bb. Respondent failed to issue a "reinspection" report for the work completed as stated on the completion notice (Report No. W8034) that reported said work as being completed by others, as defined in California Code of Regulations, title 16, section 1993, subdivision (e).

June 1, 2011, Inspection

Section 8516, Subdivisions (b)(6) and (7):

cc. Respondent failed to report the additional drywood termite damage in the substructure, on Report No. 8064, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

dd. Respondent failed to make a proper finding and recommendation regarding the reported white pocket rot in the substructure on Report No. 8064, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(3) and section 1991, subdivision (a)(5).

ee. Respondent failed to report the drywood termite damage at the carport framing in Report No. 8064, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

ff. Respondent failed to report the full extent of the decay fungi damage at the carport in Report No. 8064, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

///

///

gg. Respondent failed to report the decay fungi and decay fungi damage, where the carport attaches to the house eaves, in Report No. 8064, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(4).

Section 8516, Subdivisions (b)(5):

hh. Respondent failed to include a proper general description of the property in Report No. 8064.

Section 8516:

ii. Respondent failed to include a "supplemental" report statement on Report No. 8064, as defined in California Code of Regulations, title 16, section 1993, subdivision (d).

Section 8516, Subdivision (b):

jj. Respondent failed to prepare and deliver an inspection report to the person requesting the inspection, prior to commencement of the work.

Section 8516, Subdivisions (b)(2) and (3):

kk. Respondent failed to include the address of the person or firm ordering the inspection report and of the property owner and/or party in interest, on Report No. 8064.

Section 8516, Subdivisions (b) (10)

ll. Respondent failed to make proper recommendation, regarding the reported earth-to-wood contact at the form boards, as reported in Report No. W8064, as defined in California Code of Regulations, title 16, section 1991, subdivision (a)(2).

mm. Respondent failed to make a proper finding and recommendation regarding the reported white pocket rot in the substructure on Report No. 8064, as defined in California Code of Regulations, title 16, section 1990, subdivision (a)(3) and section 1991, subdivision (a)(5).

nn. Respondent failed to make proper recommendation, regarding the reported drywood termite damage in the attic, as defined in California Code of Regulations, title 16, section 1991, subdivision (a)(5).

oo. Respondent failed to make a proper finding and recommendations regarding the reported white pocket rot in the substructure and the decay fungi at the carport in Report No. W8064, as defined in California Code of Regulations, title 16, section 1991, subdivision (a)(5).

SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Code – Completion Notices)

32. Respondent's registration and license are subject to discipline pursuant to Code section 8641, in that as to the Iowa Property:

a. Respondent failed to comply with Code section 8518 by failing to issue a reinspection report for the work regarding the excessive moisture conditions at the fence/gate and window trimming as noted on the completion notice (Report No. W8034), which was reported as being completed by others.

b. Respondent failed to comply with Code section 8518 by failing to issue a proper completion notice. Completion Notice No. W8064 reports that specific recommendations were completed even though Report No. W8064 does not contain findings and recommendations for those items.

c. Respondent failed to comply with Code section 8518 by failing to issue a proper completion notice. Completion Notice No. W8064 indicates that recommendation 7B was completed even though Report No. W8064 does not recommend for any work to be performed.

d. Respondent failed to comply with Code section 8518 because Completion Notice No. W8064 fails to contain an estimated cost of the work not completed.

e. Respondent failed to comply with Code section 8518, in conjunction with California Code of Regulations title 16, section 1993, subdivision (e), because Respondent improperly referred to and failed to issue a "reinspection" inspection report for the repair work completed by others at the balustrade.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Notice Issued by the Board)

33. Respondent's registration and license are subject to discipline pursuant to Code section 8641, in that Respondent failed to comply with Code section 8622. Respondent failed to bring the Iowa Property into compliance by failing to correct all of the items described in the Report of Findings and submit a corrected inspection report to the Board within thirty (30) calendar days from receipt of the Board's notice dated September 8, 2010.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations – Proper Secondary Recommendations)

34. Respondent's registration and license are subject to discipline pursuant to Code section 8641, in that Respondent failed to comply with California Code of Regulations, title 16, section 1992. Respondent failed to make proper secondary recommendations on Inspection Report No. W8034. The secondary recommendations failed to include a full explanation as to why they were made, and failed to indicate that they were below standard measures.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Contract)

35. Respondent's registration and license are subject to discipline pursuant to Code section 8638, in that concerning the Iowa Property in that Respondent failed to chemically treat the drywood termites at the doorjamb, as stated in the Standard Notice of Work Completed and Not Completed, dated May 28, 2010 ("Completion Notice No. W8034").

a. Respondent's registration and license are subject to discipline pursuant to Code section 8638 in that Respondent failed to remove the cellulose debris from the substructure, as stated in Completion Notice No. W8064, dated June 1, 2011.

b. Respondent's registration and license are subject to discipline pursuant to Code section 8638 in that Respondent failed to complete the work regarding the white pocket rot, as stated in Completion Notice No. W8064, dated June 1, 2011.

c. Respondent's registration and license are subject to discipline pursuant to Code section 8638 in that Respondent failed to complete the work regarding the replacement of the reported loose and unsecured pier posts and girders in the substructure, as stated in Completion Notice No. W8064.

d. Respondent's registration and license are subject to discipline pursuant to Code section 8638, in conjunction with California Code of Regulations title 16, section 1937.14, because Respondent failed to properly install vents to allow for cross ventilation, as stated in Completion Notice No. W8064.

e. Respondent's registration and license are subject to discipline pursuant to Code section 8638 in that Respondent failed to remove or cover the reported evidence of drywood termites in the attic spaces, as stated in Completion Notice No. W8064.

f. Respondent's registration and license are subject to discipline pursuant to Code section 8638, in conjunction with California Code of Regulations title 16, section 1937.14, because Respondent failed to repair the reported decay fungi and decay fungi damage at the carport, as stated in Completion Notice No. W8064.

g. Respondent's registration and license are subject to discipline pursuant to Code section 8638, in conjunction with California Code of Regulations title 16, section 1937.14, because Respondent failed to repair the reported drywood termite and decay fungi damage at the back door doorjambs, as stated in Completion Notice No. W8064.

h. Respondent's registration and license are subject to discipline pursuant to Code section 8638, because Respondent was required to complete the inaccessible area and earth-to-wood contacts and informed the investigator that the homeowner did not want the work performed but failed to provide the investigator with a copy of the waiver.

SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence or Fraud)

36. Respondent's registration and license are subject to discipline pursuant to Code section 8642, in that on the Iowa Property, Respondent committed grossly negligent or fraudulent acts, as follows:

a. Respondent falsified the completion notice dated May 28, 2010 (Report No. W8034) by stating that the buyer had requested the secondary recommendation performed when, in fact, he did not.

b. Respondent failed to document the primary recommendation for fumigation on the completion notice dated May 28, 2010 (Report No. W8034).

c. Respondent failed to include an estimated cost for the work not completed on the completion notice dated May 28, 2010 (Report No. W8034).

///

OTHER MATTERS

37. 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.

38. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 5623, issued to Raiden Exterminating Company, likewise constitute cause for discipline against Operator's License Number OPR 11678, issued to Kam Lun Sito, who serves as the Qualifying Manager of Raiden Exterminating Company, regardless of whether Kam Lun Sito had knowledge of or participated in the acts or omissions which constitute cause for discipline against Raiden Exterminating Company.

39. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 5623, issued to Raiden Exterminating Company, then Kam Lun Sito, who serves as the Qualifying Manager of Raiden Exterminating Company, 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.

///

///

///

///

///

///

///

///

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 Number PR 5623, issued to Raiden Exterminating Company;

2. Revoking or suspending Operator's License Number OPR 11678, issued to Kam Lun Sito;

3. Revoking or suspending any other license for which Kam Lun Sito is furnishing the qualifying experience or appearance;

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

5. Prohibiting Kam Lun Sito from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Company Registration Certificate Number PR 5623, issued to Raiden Exterminating Company;

6. Ordering Kam Lun Sito and Raiden Exterminating Company to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 8/9/11

William H. Douglas

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

LA2011501867
10699399.doc