FILED

Date 9/28/12 By Susan Taylor

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General
ZACHARY T. FANSELOW
Deputy Attorney General
State Bar No. 274129
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2562
Facsimile: (213) 897-2804
*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**APPLE TERMITE INC.**<br>**JENHNSEN LOPEZ, PRESIDENT**<br>**DAVE DANIEL CHAVEZ, QM**<br>15859 Edna Place, #207<br>Irwindale, California 91706<br><br>-and-<br><br>30130 Cove View,<br>Canyon Lake, Ca. 92587<br><br>-and-<br><br>9459 Slauson Avenue,<br>Pico Rivera, Ca. 90660<br><br>**Company Registration No. PR 5934, Br. 3**<br>**Branch Office Registration No. BR 5280, Br. 3**<br>**Operator License No. OPR 11588, Br. 3**<br>**Field Representative License No. FR 32146, Br. 2**<br><br>**WENDELL T. POLK, Jr.**<br>P.O. Box 1909<br>South Gate, California 90208<br><br>**Field Representative License No. FR 21710, Br. 2 and 3**<br><br>Respondents. | Case No. 2012-56<br><br>**FIRST SUPPLEMENTAL ACCUSATION** |

Complainant further alleges:

## PARTIES

47. Complainant Susan Saylor ("Complainant") brings this First Supplemental Accusation solely in her official capacity as the Assistant Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

48. Paragraphs two (2) through forty-six (46), inclusive, of the Accusation are incorporated herein by reference as if fully set forth.

**Field Representative License No. FR 32146, Br. 2**

49. On or about April 11, 2000, the Board issued Field Representative License Number FR 32146 to Dave Daniel Chavez. On or about October 1, 2009, Dave Daniel Chavez became the Qualifying Manager of Apple Termite Inc. The Field Representative License will expire on June 30, 2014, unless renewed.

## STATUTORY PROVISIONS

50. Code section 8516.5[1] states:

> Any registered company that makes an inspection of any property relating to the absence or presence of wood destroying pests or organisms on such property and makes a report of such inspection shall furnish a copy of the report either to the owner of the property or to the agent of the owner, within 10 working days after the date the inspection is commenced, except an inspection report prepared for use by an attorney for litigation is not required to be furnished.

51. Code section 8518 states, in pertinent part:

> When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.
>
> The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work.

///

[1] All statutory references are to the Business and Professions Code, unless otherwise indicated.

## REGULATORY PROVISIONS

52. California Code of Regulations, title 16, section 1937.14 states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24 of the California Code of Regulations.

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

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

....

(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.

....

(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.

54. 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 and filed with the board with stamps affixed.

....

(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 conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

55. California Code of Regulations, title 16, section 1999.5, states, in pertinent part:

(a) It is unlawful for any licensee, or any employee thereof, directly or indirectly to make, disseminate, represent, claim, state or advertise, or cause to be made, disseminated, represented, claimed, stated or advertised by any manner or means whatever, any statement or representation concerning structural pest control, as defined in Business and Professions Code section 8505, which is unfair, deceptive, untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be unfair, deceptive, untrue or misleading.

**MA PROPERTY**

**SIXTH CAUSE FOR DISCIPLINE**

56. The grounds for disciplinary action against Dave Daniel Chavez's Operator License as stated in Paragraphs 28-32 of the Accusation are also grounds for disciplinary action against Dave Daniel Chavez's Field Representative License No. FR 32146, Br. 2. Complainant refers to, and by this reference incorporates fully, the allegations as set forth in Paragraphs 28-32 of the Accusation.

**FENG PROPERTY**

57. On or about February 23, 2011, Wendell T. Polk, Jr. ("Respondent Polk" or "Respondents"), an employee of Apple Termite Inc. ("Respondent Apple Termite" or "Respondents"), inspected the property located at 4855 Halifax Road, Temple City, California ("Feng property"), for wood destroying pests and organisms for escrow purposes and thereafter issued Wood Destroying Pests and Organisms Inspection Report No. W 10041 ("Inspection Report No. 10041"). The report indicated it was ordered by, and provided to, Carmen Spennato of Citrus Edge Realty. The inspection report made findings of the following: evidence of drywood termites, subterranean termites and surface fungus in the substructure, evidence of drywood termites in the attic and garage, and evidence of drywood termites, drywood termite damage and dry rot at the exterior framing. The inspection report made recommendations to chemically treat the visible and accessible drywood termite infestations, to remove or cover accessible termite pellets, replace damaged wood as necessary, to pressure "rod" treat, trench application or low

pressure spot spray as necessary, to break the accessible evidence of infestation, to scrape and treat the decay fungi and patch any minor surface damage.

58. On Inspection Report No. 10041, Respondent Polk failed to make proper findings regarding the excessive moisture condition responsible for the fungal infections and failed to include a recommendation to correct the excessive moisture condition responsible for the infections. Inspection Report No. 10041 failed to include the address of the individual or firm ordering the report and of any person who is a party of interest and the address where the report was to be sent. Additionally, the address listed for Respondent Apple Termite on the inspection report is not the address that is registered with the Board.

59. On or about March 28, 2011, Respondent Apple Termite issued a Standard Notice of Work Completed and Not Completed for the Feng Property. The completion notice certified that all of Respondent Polk's recommendations in Inspection Report No. 10041 had been completed. The completion notice failed to include the address for Respondent Apple Termite that is registered with the Board, providing an unregistered address instead.

60. On or about December 28, 2011, the Board received a written complaint from Mr. Feng. Mr. Feng wrote that Respondents failed to complete the recommended work prior to the close of escrow on May 11, 2011. Mr. Feng wrote that following the close of escrow Respondent Apple Termite would schedule appointments and promise to continue with repair work, but would either fail to show for the appointments or leave before the work was completed, repeatedly citing a lack of materials. Mr. Feng requested that Respondent Apple Termite complete the work in a professional manner.

61. On or about February 1, 2012, Dave Daniel Chavez ("Respondent Chavez" or "Respondents") performed an additional inspection of the Feng property at the request of Mr. Feng, and thereafter issued Wood Destroying Pests and Organisms Inspection Report No. W 8490. The inspection report made one finding: decay fungi damage at the exterior wood members and recommended replacing the decay fungi damaged wood members. The report failed to identify the excessive moisture conditions responsible for the infections and failed to

include a recommendation to correct the excessive moisture conditions. The inspection report also failed to identify numerous other conditions and sources of damage at the Feng property.

62. On or about February 28, 2012, Board Specialist Steven Smith examined the Feng property and determined that Respondents committed multiple violations of the Board's rules and regulations. Board Specialist Steven Smith performed a Wood Destroying Organisms Activity Search on the Feng property and also determined that Respondents failed to file with the Board the February 23, 2011, inspection report, the March 28, 2011, completion notice and an additional inspection report and completion notice for work completed on February 17, 2012.

63. On or about March 5, 2012, Board Specialist Steven Smith prepared a Report of Findings to Respondent Apple Termite, indicating twenty-one (21) violations of the Business and Professions Code and California Code of Regulations, which he mailed to Respondent Apple Termite's address of record.

64. On or about April 3, 2012, Board Specialist Steven Smith spoke with an employee of Respondent Apple Termite. The employee stated that no Report of Findings had been received. Specialist Steven Smith faxed the Report of Findings to the number given by the employee of Respondent Apple Termite. The Report of Findings requires the company to bring the property into compliance within 30 days upon receipt of the Report of Findings. To date, Respondent has not complied with Board Specialist Steven Smith's Report of Findings.

## FIRST CAUSE FOR DISCIPLINE

### (Failure to Complete the Work in a Quality and Workmanlike Manner)

65. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Code section 8641, in that on or about February 1, 2012, concerning the Feng property, Respondents failed to comply with California Code of Regulations, title 16, section 1937.14 as follows:

a. Respondents failed to complete the work in a quality and workmanlike manner regarding the replacement of the reported termite and decay fungi damage at the carport, the replacement and/or reinforcement of the unreported damage at the garage, the replacement of the reported termite damage at the front porch, the replacement of the unreported damage at the

house eaves, and the replacement of the reported termite and decay fungi damages at the rear port.

## SECOND CAUSE FOR DISCIPLINE

**(Failure to Comply with the Code - Improper Inspection Report)**

66. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Code section 8641, in that on or about February 1, 2012, concerning the Feng property, Respondents failed to comply with California Code of Regulations, title 16, section 1937.14 as follows:

**Section 8516 and Section 8518:**

a. Respondents Apple Termite and Chavez failed to prepare and deliver an inspection report and completion notice for the repair work completed at the house and garage eaves, and for the additional repair work completed on February 17, 2012, at the carport, garage eaves, front and rear porches and the house eaves.

**Section 8516.5:**

b. Respondents Apple Termite and Chavez failed to prepare and deliver a copy of the April 25, 2012, inspection report to the owner of the Feng property within 10 business days following the date of the inspection. As of May 11, 2012, Mr. Feng indicated that he had not received a copy of the report.

**Section 8516(b)(2) and Section 8516(b)(3):**

c. Respondents Apple Termite and Chavez failed to include the correct name of the person or firm ordering the report, or of any person who is a party of interest on the February 1, 2012, inspection report. The inspection report indicated Mr. Feng's name as Mr. Lee instead of Li Feng.

**Section 8641:**

d. Respondents Apple Termite and Chavez prepared an inspection report without making a bona fide inspection of the premises. The April 25, 2012, inspection report contained findings and recommendations regarding the attic and substructure, even though Respondents did

not physically inspect those areas. The majority of findings depicted on the inspection report diagram prepared by Respondents simply do not exist.

## THIRD CAUSE FOR DISCIPLINE

**(Failure to Comply with the Code - Improper Inspection)**

67. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Code section 8641, in that on or about February 2, 2012, concerning the Feng property, Respondents failed to comply with the following Code sections:

**Section 8516(b)(6), Section 8516(b)(7) and Section 8516(b)(10):**

a. Respondents Apple Termite and Chavez failed to make a proper finding and recommendation regarding the reported decay fungi and decay fungi damage in that Respondents failed to identify the excessive moisture conditions responsible for the infections and Respondents failed to include a recommendation to correct the excessive moisture conditions on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, sections 1990(b)(5) and 1991(a)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

b. Respondents Apple Termite and Chavez failed to report the cellulose debris in the substructure of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

c. Respondents Apple Termite and Chavez failed to report the evidence of subterranean termites in the substructure of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

d. Respondents Apple Termite and Chavez failed to report the evidence of drywood termites in the substructure of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

///

**Section 8516(b)(6) and Section 8516(b)(7):**

e. Respondents Apple Termite and Chavez failed to report the drywood termite damage in the substructure of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

f. Respondents Apple Termite and Chavez failed to report the evidence of drywood termites in the attic of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

g. Respondents Apple Termite and Chavez failed to report the evidence of an excessive moisture condition, water stains, in the attic of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

h. Respondents Apple Termite and Chavez failed to report the evidence of drywood termites at the carport of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

i. Respondents Apple Termite and Chavez failed to report drywood termite damage at the carport of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

j. Respondents Apple Termite and Chavez failed to report the full extent of the decay fungi damage at the carport of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

k. Respondents Apple Termite and Chavez failed to report the earth-to-wood contact at the carport load posts of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

l. Respondents Apple Termite and Chavez failed to report the evidence of an excessive moisture condition at the carport framing of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

m. Respondents Apple Termite and Chavez failed to report the inaccessible attic area at the garage of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(e).

**Section 8516(b)(6) and Section 8516(b)(7):**

n. Respondents Apple Termite and Chavez failed to report the faulty grade condition at the house and garage of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(1).

**Section 8516(b)(6) and Section 8516(b)(7):**

o. Respondents Apple Termite and Chavez failed to report the earth-to-wood contact at the rear porch load post of the Feng property on the February 1, 2012, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(4).

**Section 8516(b)(6):**

p. Respondents Apple Termite and Chavez failed to prepare and deliver an inspection report that contained an accurate diagram of the structure or structures inspected.

## FOURTH CAUSE FOR DISCIPLINE

### (Failure to Comply with the Code - Improper Inspection)

68. Respondent Apple Termite's company registration, Respondent Chavez's Operator License and Field Representative License, and Respondent Polk's Field Representative License are subject to discipline under Code section 8641, in that on or about February 23, 2011, concerning the Feng property, Respondents failed to comply with the following Code sections:

**Section 8516(b)(7) and Section 8516(b)(10):**

a. Respondents Apple Termite, Chavez and Polk failed to make a proper finding and recommendation regarding the reported decay fungi and decay fungi damage in that Respondents

failed to identify the excessive moisture conditions responsible for the infections and Respondents failed to include a recommendation to correct the excessive moisture conditions on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, sections 1990(b)(5) and 1991(a)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

b. Respondents Apple Termite, Chavez and Polk failed to report the cellulose debris in the substructure of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

c. Respondents Apple Termite, Chavez and Polk failed to report the full extent of the evidence of subterranean termites in the substructure of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

d. Respondents Apple Termite, Chavez and Polk failed to report the full extent of the evidence of drywood termites in the substructure of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

e. Respondents Apple Termite, Chavez and Polk failed to report the drywood termite damage in the substructure of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

f. Respondents Apple Termite, Chavez and Polk failed to report the full extent of the evidence of drywood termites in the attic of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

g. Respondents Apple Termite, Chavez and Polk failed to report the evidence of an excessive moisture condition, water stains, in the attic of the Feng property on the February 23,

2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

h. Respondents Apple Termite, Chavez and Polk failed to report the full extent of the evidence of drywood termites at the carport of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(3).

**Section 8516(b)(6) and Section 8516(b)(7):**

i. Respondents Apple Termite, Chavez and Polk failed to report the full extent of the drywood termite damage at the carport of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

j. Respondents Apple Termite, Chavez and Polk failed to report the full extent of the decay fungi damage at the carport of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(a)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

k. Respondents Apple Termite, Chavez and Polk failed to report the earth-to-wood contact at the carport load posts of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(4).

**Section 8516(b)(6) and Section 8516(b)(7):**

l. Respondents Apple Termite, Chavez and Polk failed to report the evidence of an excessive moisture condition at the carport framing of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

m. Respondents Apple Termite, Chavez and Polk failed to report the faulty grade condition at the house and garage of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(1).

///

**Section 8516(b)(6) and Section 8516(b)(7):**

n. Respondents Apple Termite, Chavez and Polk failed to report the earth-to-wood contact at the rear porch load post of the Feng property on the February 23, 2011, inspection report, in violation of California Code of Regulations, title 16, section 1990(b)(4).

**Section 8516(b)(6):**

o. Respondents Apple Termite, Chavez and Polk failed to accurately diagram the structure or structures inspected in the February 23, 2011, inspection report.

**Section 8641:**

p. Respondents Apple Termite, Chavez and Polk prepared the February 23, 2011, inspection report without making a bona fide inspection of the premises. Respondents were unable to find any indication of the evidence of drywood termites, evidence of subterranean termites and decay fungi reported in the substructure, or the evidence of drywood termites in the attic.

## FIFTH CAUSE FOR DISCIPLINE

### (Failure to File and/or Timely File WDO Activities Reports)

69. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to disciplinary action under Section 8516, subdivision (b) and subdivision (a) of Section 1996.3 of title 16 of the California Code of Regulations, in that Respondents failed to file WDO[2] activities reports with the Board, within 10 business days after commencement of inspection or upon completed work. Respondents failed to file WDO activities reports for the Feng property for the February 23, 2011, and April 25, 2012, inspections as well as the March 28, 2011, completion notice.

## SIXTH CAUSE FOR DISCIPLINE

### (Failure to Comply with Report of Findings)

70. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Section 8641,

[2] The abbreviation "WDO" stands for the Wood Destroying Organism Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev. 5/03).

in that Respondents failed to comply with Section 8622, by failing to correct the items described in the March 5, 2012, Report of Findings within thirty calendar days of receipt of the Notice, and by failing to bring the Property into compliance with the Board's March 5, 2012, Notice and Report of Findings. Complainant refers to, and by this reference incorporates fully, the allegations set forth above in Paragraphs 57-64.

## SEVENTH CAUSE FOR DISCIPLINE

**(Failure to Comply with the Board's Rules and Regulations)**

71. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Section 8641, in that Respondents failed to comply with the Board's rules and regulations. Complainant refers to, and by this reference incorporates fully, the allegations set forth above in Paragraphs 65-70. Additionally, Respondents have failed to comply with the following Code sections:

**Section 8636:**

a. Respondents Apple Termite and Chavez failed to comply with building laws in that a building permit was not obtained for repair work completed at the carport, the garage eaves, the front and reach porches and the house eaves.

**Section 8636:**

b. Respondents Apple Termite and Chavez failed to comply with city laws, in that a Temple City Business License was not obtained prior to working in Temple City.

**Section 8648:**

c. Respondents Apple Termite and Chavez advertised under a branch of pest control for which the company is not licensed or registered, Branch 2, in violation of California Code of Regulations, title 16, section 1999.5(a).

**Section 8613:**

d. Respondents Apple Termite and Chavez failed to notify the Board in writing, within 30 days, of a change in the address of its principal office. When Board Specialist Steven Smith visited Respondents Irwindale address of record on April 12, 2012, he found the premises vacant and as of May 16, 2012, Respondents have not updated the Irwindale address with the Board.

**Section 8650(b):**

e. Respondents Apple Termite and Chavez acted in the capacity of a registered company at an address that is not registered to the Board. Respondents February 23, 2011, inspection report and March 28, 2011, completion notice list an address: 9903 Paramount Boulevard, Suite 262 in Paramount, which is not registered with the Board.

**Section 8516(b)(2) and Section 8516(b)(3):**

f. Respondents Apple Termite and Chavez failed to include the address of the person or firm ordering the report, and of any person who is a party in interest on the February 23, 2011, inspection report in violation of California Code of Regulations, title 16, section 1990(a).

**MORAGNE PROPERTY**

72. On or about September 2, 2011, Respondent Polk inspected the property located at 6277 Anita Street, Chino, California ("Moragne property"), for wood destroying pests and organisms for escrow purposes and thereafter issued Wood Destroying Pests and Organisms Inspection Report No. W 12854 ("Inspection Report No. 12854"). The report indicated it was ordered by, and provided to, Jessie White of Coldwell Banker First Premier, 537 North Euclid Avenue, Ontario, CA 91762. The report made findings of the following: evidence of subterranean termites in the garage and evidence of drywood termites, termite damage, surface fungus and dry rot at the exterior framing. The inspection report made recommendations to chemically treat the visible and accessible termite infestations, to remove or cover accessible termite pellets, replace damaged wood as necessary, to pressure "rod" treat, trench application or low pressure spot spray as necessary, to scrape and treat the decay fungi and patch any minor surface damage. On the inspection report, Respondent Polk failed to make proper findings regarding the excessive moisture condition responsible for the fungal infections and failed to include a recommendation to correct the excessive moisture condition responsible for the infections.

73. On or about October 4, 2011, Respondent Apple Termite issued a Standard Notice of Work Completed and Not Completed for the Moragne Property. The completion notice certified

that all of Respondent Polk's recommendations in Inspection Report No. 12854 had been completed.

74. On or about October 8, 2011, Richard Pinon, an employee of Antimite Termite and Pest Control, inspected the Moragne property. The inspection report contained seven findings and corresponding recommendations.

75. On or about November 9, 2011, Jerry Chung, an employee of K-One Termite Incorporated, inspected the Moragne property. The inspection report contained five findings and corresponding recommendations along with several notes.

76. On or about January 20, 2012, the Board received a written complaint from Ms. Moragne. Ms. Moragne wrote that Respondents failed to complete the work agreed upon and failed to show up for several scheduled work appointments.

77. On or about March 20, 2012, Respondent Chavez performed an additional inspection of the Moragne property at the request of Ms. Moragne, and thereafter issued Wood Destroying Pests and Organisms Inspection Report No. W 8491 ("Inspection Report No. 8491"). The inspection report made the following findings: evidence of drywood termites at the interior ceiling joist and decay fungi and decay fungi damage at the exterior fascia boards. The report made recommendations to chemically treat the evidence of drywood termites, to remove or cover accessible pellets, to replace the decay fungi damage, to scrape and treat the decay fungi, and to patch any minor surface damage. The report failed to identify the excessive moisture conditions responsible for the infections and failed to include a recommendation to correct the excessive moisture conditions.

78. On or about March 26, 2012, the Board received a Standard Notice of Work Completed and Not Completed issued by Respondent Apple Termite for the Moragne Property. The completion notice certified that all of Respondent Chavez's recommendations in Inspection Report No. 8491 had been completed.

79. On or about April 27, 2012, Board Specialist Steven Smith performed a Wood Destroying Organisms Activity Search on the Moragne property and determined that Respondents

had failed to file the September 2, 2011, inspection report and the October 4, 2011, completion notice with the board.

80. On or about May 3, 2012, Board Specialist Steven Smith examined the Moragne property and determined that Respondent committed multiple violations of the Board's rules and regulations.

81. On or about May 7, 2012, Board Specialist Steven Smith prepared a Report of Findings to Respondent Apple Termite indicating eight (8) violations of the Business and Professions Code and California Code of Regulations. The Report of Findings requires the company to bring the property into compliance within thirty (30) days of receipt of the Report of Findings. To date, Respondent has not complied with Board Specialist Steven Smith's Report of Findings.

82. On or about June 18, 2012, Ms. Moragne informed Board Specialist Steven Smith that representatives of Respondent Apple Termite stated that the company would perform an inspection of her property on June 21, 2012, between 9:00 a.m. and 12:00 p.m.

83. On or about June 21, 2012, Board Specialist Steven Smith arrived at the Moragne property at 8:00 a.m. By 12:00 p.m. no representative from Respondent Apple Termite had arrived at the Moragne property. Board Specialist Steven Smith spoke to Ms. Moragne who stated that no representative from Respondent Apple Termite informed her that no one would be coming.

## FIRST CAUSE FOR DISCIPLINE

### (Failure to Complete the Work in a Quality and Workmanlike Manner)

84. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Code section 8641, in that on or about February 1, 2012, concerning the Moragne property, Respondents failed to comply with California Code of Regulations, title 16, section 1937.14 as follows:

a. Respondents Apple Termite and Chavez failed to complete the work in a quality and workmanlike manner regarding the unreported reinforcement of the ceiling joist in the attic and

the replacement of the cabinet shelf below the kitchen sink. The reinforcement was not properly nailed or supported and instead of a solid piece, 1x6 boards were installed.

## SECOND CAUSE FOR DISCIPLINE

**(Failure to Comply with the Code – Failure to Issue Proper Inspection Report)**

85. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Code sections 8516(b)(2) and 8516(b)(3) in that, with regards to the March 20, 2012, inspection report for the Moragne property, Respondents Apple Termite and Chavez failed to include the address of the person or firm ordering the inspection report, or of any person who is a party of interest in violation of California Code of Regulations, title 16, section 1990(a).

## THIRD CAUSE FOR DISCIPLINE

**(Failure to File and/or Timely File WDO Activities Reports)**

86. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to disciplinary action under Section 8516, subdivision (b) and subdivision (a) of Section 1996.3 of title 16 of the California Code of Regulations, in that Respondents Apple Termite and Chavez failed to file WDO activities reports with the Board, within 10 business days after commencement of inspection or upon completed work. Respondents failed to file WDO activities reports for the Moragne property for the September 2, 2011, inspection report and the October 4, 2011, completion notice.

## FOURTH CAUSE FOR DISCIPLINE

**(Failure to Issue Inspection Report and Completion Notice)**

87. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Code sections 8516 and 8518 in that Respondents Apple Termite and Chavez failed to issue an inspection report and completion notice for repair work completed in the attic, under the kitchen sink or for fumigation performed on February 18, 2012.

///

///

## FIFTH CAUSE FOR DISCIPLINE

**(Failure to Comply with Report of Findings)**

88. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Section 8641, in that Respondents Apple Termite and Chavez failed to comply with Section 8622, by failing to correct the items described in the May 7, 2012, Report of Findings within thirty calendar days of receipt of the Notice, and failing to bring the Property into compliance with the Board's May 7, 2012, Notice and Report of Findings. Complainant refers to, and by this reference incorporates fully, the allegations set forth above in Paragraphs 72-83.

## SIXTH CAUSE FOR DISCIPLINE

**(Failure to Comply with the Code - Improper Inspection)**

89. Respondent Apple Termite's company registration and Respondent Chavez's Operator License and Field Representative License are subject to discipline under Code section 8641, in that on or about March 20, 2012, concerning the Moragne property, Respondents failed to comply with the following Code sections:

**Section 8516(b)(6), Section 8516(b)(7) and Section 8516(b)(10):**

a. Respondents Apple Termite and Chavez failed to make proper findings and recommendations regarding the reported decay fungi and decay fungi damage on the March 20, 2012, inspection report in that Respondents failed to identify the excessive moisture conditions responsible for the infections and Respondents failed to include a recommendation to correct the excessive moisture conditions, in violation of California Code of Regulations, title 16, sections 1990(b)(5), 1990(e), and 1991(a)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

b. Respondents Apple Termite and Chavez failed to report the drywood termite damage in the attic of the Moragne property on the March 20, 2012, inspection report in violation of California Code of Regulations, title 16, sections 1990(a)(3), 1990(a)(4) and 1990(e).

///

///

**Section 8516(b)(6) and Section 8516(b)(7):**

c. Respondents Apple Termite and Chavez failed to report the evidence of drywood termites in the garage of the Moragne property on the March 20, 2012, inspection report, in violation of California Code of Regulations, title 16, sections 1990(a)(3) and 1990(e).

**Section 8516(b)(6) and Section 8516(b)(7):**

d. Respondents Apple Termite and Chavez failed to report the decay fungi damage at the northeast corner of the garage eaves of the Moragne property on the March 20, 2012, inspection report, in violation of California Code of Regulations, title 16, sections 1990(a)(4) and 1990(e).

**Section 8516(b)(6) and Section 8516(b)(7):**

e. Respondents Apple Termite and Chavez failed to report the inaccessible areas at the house and garage eaves of the Moragne property and make recommendations for further inspection and issuance of a supplemental inspection report on the March 20, 2012, inspection report, in violation of California Code of Regulations, title 16, sections 1990(e) and 1993(d).

**Section 8516(b)(6):**

f. Respondents Apple Termite and Chavez failed to indicate on the March 20, 2012, inspection report diagram, the correct location of some of the decay fungi damage and decay fungi findings. The inspection report diagram indicates that some findings exist at an enclosed metal patio.

## SEVENTH CAUSE FOR DISCIPLINE

**(Failure to Comply with the Code - Improper Inspection)**

90. Respondent Apple Termite's company registration, Respondent Chavez's Operator License and Field Representative License, and Respondent Polk's Field Representative License are subject to discipline under Code section 8641, in that on or about September 2, 2011, concerning the Moragne property, Respondents failed to comply with the following Code sections:

///

///

**Section 8516(b)(6) Section 8516(b)(7) and Section 8516(b)(10):**

a. Respondents Apple Termite, Chavez and Polk failed to make proper findings and recommendations regarding the reported decay fungi and decay fungi damage at the Moragne property on the September 2, 2011, inspection report in that Respondents failed to identify the excessive moisture conditions responsible for the infections and Respondents failed to include a recommendation to correct the excessive moisture conditions, in violation of California Code of Regulations, title 16, sections 1990(b)(5), 1990(e), and 1991(a)(5).

**Section 8516(b)(6) and Section 8516(b)(7):**

b. Respondents Apple Termite, Chavez and Polk failed to report the evidence of drywood termites and drywood termite damage in the attic of the Moragne property on the September 2, 2011, inspection report, in violation of California Code of Regulations, title 16, sections 1990(a)(3), 1990(a)(4) and 1990(e).

**Section 8516(b)(6) and Section 8516(b)(7):**

c. Respondents Apple Termite, Chavez and Polk failed to report the evidence of drywood termites in the garage of the Moragne property on the September 2, 2011, inspection report, in violation of California Code of Regulations, title 16, sections 1990(a)(3) and 1990(e).

**Section 8516(b)(6) and Section 8516(b)(7):**

d. Respondents Apple Termite, Chavez and Polk failed to report the decay fungi damage at the northeast corner of the garage eaves of the Moragne property on the September 2, 2011, inspection report, in violation of California Code of Regulations, title 16, sections 1990(a)(4) and 1990(e).

**Section 8516(b)(6) and Section 8516(b)(7):**

e. Respondents Apple Termite, Chavez and Polk failed to report the inaccessible areas at the house and garage eaves of the Moragne property and make recommendations for further inspection and issuance of a supplemental inspection report on the September 2, 2011, inspection report, in violation of California Code of Regulations, title 16, sections 1990(e) and 1993(d).

///

///

**Section 8516(b)(6):**

f. Respondents Apple Termite, Chavez and Polk failed to indicate on the September 2, 2011, inspection report diagram, the correct location of some of the decay fungi damage and decay fungi findings. The inspection report diagram indicates that some findings exist at an enclosed metal patio.

## 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 5934 and Branch Office Registration Number BR 5280, issued to Apple Termite Inc.;

2. Revoking or suspending Operator's License Number OPR 11588, issued to Dave Daniel Chavez;

3. Revoking or suspending Field Representative License Number FR 32146, issued to Dave Daniel Chavez;

4. Revoking or suspending any other license for which Dave Daniel Chavez is furnishing the qualifying experience or appearance;

5. Revoking or suspending Field Representative License Number FR 21710, issued to Wendell T. Polk, Jr.;

6. Ordering restitution of all damages according to proof suffered by Leo Ma as a condition of probation in the event probation is ordered;

7. Ordering restitution of all damages according to proof suffered by Li Feng as a condition of probation in the event probation is ordered;

8. Ordering restitution of all damages according to proof suffered by Noemi Moragne as a condition of probation in the event probation is ordered;

9. Prohibiting Dave Daniel Chavez 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 5934,

issued to Apple Termite Inc., and/or Operator's License Number OPR 11588, issued to Dave Daniel Chavez;

10. Ordering Dave Daniel Chavez, Apple Termite Inc. and Wendell T. Polk, Jr. 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,

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

DATED: 9/28/12

Susan Saylor
Assistant Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
*Complainant*

51161630.docx