

FILED

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

12 In the Matter of the Accusation Against:

Case No. 2012-56

13 **APPLE TERMITE INC.**
14 **DAVE DANIEL CHAVEZ, QM**
15 15859 Edna Place, #207
16 Irwindale, California 91706

ACCUSATION

17 -and-

18 30130 Cove View,
19 Canyon Lake, Ca. 92587

20 -and-

21 9459 Slauson Avenue,
22 Pico Rivera, Ca. 90660

23 **Company Registration License No. PR 5934, Br. 3**
24 **Branch Office Registration No. BR 5280**
25 **Operator License No. OPR 11588, Br. 3**

26 **WENDELL T. POLK, Jr.**
27 P.O. Box 1909
28 South Gate, California 90208

Field Representative License No. FR 21710, Br. 3

Respondents.

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

2 **PARTIES**

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

6 **Company Registration Certificate No. PR 5934**

7 2. On or about October 1, 2009, the Board issued Company Registration Certificate
8 Number PR 5934 ("registration") to Apple Termite Inc. ("Respondent or Respondents") in
9 Branch 3, with Jenhnsen Lopez as President and Dave Daniel Chávez ("Respondent Chavez or
10 Respondents") as Qualifying Manager.

11 **Branch Office BR 5280**

12 3. On or about September 1, 2011, Branch Office Registration No. Br. 5280 was issued
13 to Respondent, with Dave Daniel Chavez as Branch Office Supervisor.

14 **Operator's License No. OPR 11588**

15 4. On or about October 4, 2007, the Board issued Operator's License Number OPR
16 11588 ("license") in Branch 3 to Respondent Chavez. On or about October 1, 2009, Respondent
17 Chavez became the Qualifying Manager of Apple Termite Inc. The Operator's license will expire
18 on June 30, 2013, unless renewed.

19 **Field Representative's License No. FR 21710, Br. 3**

20 5. On or about May 2, 1993, the Board issued Field Representative's License Number
21 FR 21710 ("license") in Branch 3 to Wendell T. Polk, Jr. ("Respondent Polk or Respondents").
22 The license will expire on June 30, 2013, unless renewed.

23 **JURISDICTION**

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

28 7. Code section 8624 states:

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

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

5 The performance by any partnership, corporation, firm, association, or registered
6 company of any act or omission constituting a cause for disciplinary action, likewise
7 constitutes a cause for disciplinary action against any licensee who, at the time the act or
8 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.

9
10 8. Code section 8625 states:

11 The lapsing or suspension of a license or company registration by operation of law or
12 by order or decision of the board or a court of law, or the voluntary surrender of a license or
13 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.

14 9. Code section 8622 states:

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

27 The notice sent to the registered company shall inform the registered company that if
28 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.

STATUTORY PROVISIONS

10. Code section 8516 states, in pertinent part:

1 (b) No registered company or licensee shall commence work on a contract, or sign,
2 issue, or deliver any documents expressing an opinion or statement relating to the absence
3 or presence of wood destroying pests or organisms until an inspection has been made by a
4 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.

5 Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section
6 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section
8674.

7 Failure of a registered company to report and file with the board the address of any
8 property inspected or work completed pursuant to Section 8516.1, Section 8518, or this
9 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).

10 A written inspection report conforming to this section and on a form approved by the
11 board shall be prepared and delivered to the person requesting the inspection or to the
12 person's designated agent within 10 business days of the inspection, except that an
13 inspection report prepared for use by an attorney for litigation purposes is not required to be
14 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.

15 Reports shall be made available for inspection and reproduction to the executive
16 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:

17 (6) A foundation diagram or sketch of the structure or structures or portions of the
18 structure or structures inspected, indicating thereon the approximate location of any infested
19 or infested 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.

20 (7) Information regarding the substructure, foundation walls and footings, porches,
21 patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves,
22 rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other
23 parts subject to attack by wood destroying pests or organisms. Conditions usually deemed
24 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.

25 (9) Indication or description of any areas that are inaccessible or not inspected with
26 recommendation for further inspection if practicable. If, after the report has been made in
27 compliance with this section, authority is given later to open inaccessible areas, a
supplemental report on conditions in these areas shall be made.

28 (10) Recommendations for corrective measures.

1 11. Code section 8514 states, in pertinent part, that no registered company shall
2 commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or
3 statement relating to the control of household pests, or wood destroying pests or organisms until
4 an inspection has been made.

5 12. Code section 8519 states, in pertinent part:

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

13 Any registered company which makes an inspection report pursuant to Section 8516,
14 shall, if requested by the person ordering the inspection report, prepare and deliver to that
15 person or his or her designated agent, a certification, to provide:

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

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

28 13. Code section 8525 states:

 The board, subject to the approval of the director, may, in accordance with Chapter
3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government
Code, adopt, amend, repeal, and enforce reasonably necessary rules and regulations relating
to the practice of pest control and its various branches as established by Section 8560 and
the administration of this chapter.

 14. 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

1 pursuant to Section 8518 by the registered company to determine compliance with the
2 provisions of this chapter and the rules and regulations issued thereunder. If the board
3 determines the property or properties are not in compliance, a notice shall be sent to the
4 registered company so stating. The registered company shall have 30 days from the receipt
5 of the notice to bring such property into compliance, and it shall submit a new original
6 report or completion notice or both and an inspection fee of not more than one hundred
7 twenty-five dollars (\$125) for each property inspected. If a subsequent reinspection is
8 necessary, pursuant to the board's review of the new original report or notice or both, a
9 commensurate reinspection fee shall also be charged. If the board's authorized
10 representative makes no determination or determines the property is in compliance, no
11 inspection fee shall be charged.

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

18 15. Code section 8638 states:

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

22 16. Code section 8641 states:

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

28 REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1920 subsection (d), states, in
pertinent part:

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

1 18. California Code of Regulations, title 16, section 1990, states, in pertinent
2 part:

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

6 (3) Infestations, infections or evidence thereof.

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

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

10 (1) Faulty Grade Level. A faulty grade level exists when the top of any foundation is even
11 with or below the adjacent earth. The existing earth level shall be considered grade.

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

14 (4) Earth-wood contacts.

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

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

20 (3) When evidence of moisture, infestations or infections exists as a result of faulty
21 grade levels, earth fill planters or loose stucco, a recommendation shall be made to correct
22 the condition. Any method of controlling infestations arising from these conditions is
23 considered adequate if the infestation is controlled.

23 (4) Comply with the provisions of section 2516(c)(6.1) of Title 24 of the California
24 Code of Regulations (Effective July 1992).

25 (5) Structural members which appear to be structurally weakened by wood-destroying
26 pests to the point where they no longer serve their intended purpose shall be replaced or
27 reinforced. Structural members which are structurally weakened by fungus to the point
28 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

1 which appear to have only surface fungus damage may be chemically treated and/or left as
2 is if, in the opinion of the inspector, the structural member will continue to perform its
3 originally intended function and if correcting the excessive moisture condition will stop the
4 further expansion of the fungus.

5 (6) Comply with the provisions of section 2516(c)(6) of Title 24 of the California
6 Code of Regulations.

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

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

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

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

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

17 2. removing the infested wood,

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

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

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

(11) Correct any excessive moisture condition that is commonly controllable. When
there is reasonable evidence to believe a fungus infection exists in a concealed wall or area,
recommendations shall be made to open the wall or area.

20. Regulations, Title 16, section 1996.3, 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.
5/03) at the end of this section. This form shall be prepared by each registered
company and shall comply with all of the requirements pursuant to Section 8516(b),
and 8518.

1 (b) The form shall contain the following information for each property
inspected and/or upon which work was completed.

2 (1) Company Name

3 (2) Company registration number

4 (3) Branch office registration number (when a branch office issues an
inspection report or notice of work completed

5 (4) Date of Activity

6 (5) Address of property inspected or upon which work was
7 completed, including zip code

8 (6) Activity Code

9 (7) License number of licensee performing the inspection

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

13 COST RECOVERY/RESTITUTION

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

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

21 MA PROPERTY

22 23. On or about June 24, 2010, Respondent Chavez inspected the property located at 522
23 N. Orange Avenue, La Puente, California ("MA property"), for wood destroying pests and
24 organisms for escrow purposes and thereafter issued a Wood Destroying Pests and Organisms
25 Inspection Report No. W 9195 ("Inspection Report No. 9195"). The report indicated it was
26 ordered by, and provided to Trien Tan of Homesales Express, 9391 Bolsa Avenue, Westminster,
27 Ca. 92683. The report certified that the property was free of active infestation or infection in all
28 visible and accessible areas.

1 24. On or about June 14, 2011, Respondent Polk, an employee of Respondent Apple
2 Termite Inc., performed a complete inspection of the property. The inspection was ordered by
3 Leo Ma ("Ma"), the owner of the property. The inspection reported evidence of drywood termite
4 infestations, drywood termite damage and dryrot damage at wood members of the property. The
5 complete inspection recommended to utilize local chemical treatment to exterminate drywood
6 termites and to replace termite and dryrot damaged wood.

7 25. On or about June 22, 2011, the Board received a written complaint from Mr. Ma. He
8 wrote that the Respondent inspected the property on or about June 24, 2010, certified it to be free
9 of active infestations or infections and less than one year later, on or about June 14, 2011,
10 completed another inspection reporting drywood termite infestations, drywood termite damage
11 and dryrot damage at the property. Ma wrote that he expected the Respondent to fumigate the
12 property to exterminate termite infestations and replace termite and dryrot damaged wood.

13 26. On or about July 7, 2011, Roy Edwards, an employee of Western Exterminator
14 Company, inspected the property. The complete inspection reported evidence of drywood
15 termites at various areas of the attic framing, garage framing and garage door extending into
16 inaccessible areas and a partially inaccessible garage due to storage. The complete inspection
17 included a corrective recommendation to fumigate the property to exterminate drywood termites
18 extending into inaccessible areas.

19 27. On or about July 13, 2011, Board Specialist Charles Alsky examined the property and
20 determined that Respondent committed multiple violations of the Board's rules and regulations in
21 his Report of Findings. The Report of Findings requires the company to bring the property into
22 compliance within 30 days upon receipt of the Report of Findings. A Standard Notice of Work
23 Completed and Not Completed has not been filed or submitted to the Board as required. To date,
24 Respondent has not complied with Board Specialist Charles Alsky's Report of Findings.

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 28. Respondent Apple Termite Inc's company registration, Respondent Chavez's
4 Operator License and Respondent Polk's Field Representative License are subject to discipline
5 under Code section 8641, in that on or about June 24, 2010 and June 14, 2011, concerning the
6 MA property, Respondents failed to comply with the following Code sections:

7 **Section 8516:**

8 a. Respondents failed to report evidence of drywood termites in the attic and infestations
9 which appear to extend into inaccessible areas, as required by California Code of Regulations,
10 title 16, section 1990(a)(3).

11 **Section 8516:**

12 b. Respondents failed to make a proper recommendation in regards to local treatment of
13 drywood termites in the attic and garage. Moreover, the infestations appear to extend into
14 inaccessible areas. The recommendation for local treatment does not address infestations that
15 appear to extend into the inaccessible areas in violation of California Code of Regulations, title
16 16, section 1991(a)(8).

17 **SECOND CAUSE FOR DISCIPLINE**

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

19 29. Respondents Apple Termite Inc. and Chavez are subject to disciplinary action under
20 Section 8516, subdivision (b) and subdivision (a) of Section 1996.3 of title 16 of the California
21 Code of Regulations, in that Respondents failed to file WDO¹ activities reports with the Board,
22 within 10 business days after commencement of inspection or upon completed work.
23 Respondents failed to file a WDO activities report for the MA property.

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27 ¹ The abbreviation "WDO" stands for the Wood Destroying Organism Inspection and
28 Completion Activity Report Form (see Form No. 43M-52 Rev. 5/03).

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failed to Comply with Report of Findings)**

3 30. Respondents Apple Termite Inc. and Chavez are subject to discipline under Section
4 8641, in that Respondents failed to comply with Section 8622, by failing to correct the items
5 described in the Report of Findings within thirty calendar days of receipt of the Notice, and by
6 failing to bring the Property into compliance with the Board's Notice and Report of Findings,
7 dated 11/30/11. Complainant refers to, and by this reference incorporates fully, the allegations set
8 forth above in Paragraphs 23-27.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Failure to Address Outstanding Citations and Fines)**

11 31. Respondents Apple Termite Inc. and Chavez are subject to discipline under Section
12 8641, in that Respondents failed to comply with Section 8525, and California Code of
13 Regulations, title 16, section 1920 subsection (d) in that Respondent Chavez has not paid \$13,650
14 in regards to 11 different Citations issued to him for violations of the Structural Pest Control Act.
15 Complainant refers to, and by this reference incorporates fully, the allegations set forth below in
16 Paragraphs 33-43.

17 **FIFTH CAUSE FOR DISCIPLINE**

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

19 32. Respondents Apple Termite Inc. and Chavez are subject to discipline under Section
20 8641, in that Respondents failed to comply with the Board's rules and regulations. Complainant
21 refers to, and by this reference incorporates fully, the allegations set forth above in Paragraphs 23-
22 31.

23 **PRIOR DISCIPLINE**

24 **Company Registration No. PR 5934**

25 33. On or about October 4, 2011, a fine in the amount of \$100 was levied against the
26 registration by the San Bernardino County Agricultural Commissioner for violating Business and
27 Professions Code, section 8505.17. The fine has been paid.

28

1 34. On or about October 4, 2011, a fine in the amount of \$500 was levied against the
2 registration by the Los Angeles County Agricultural Commissioner for violating California Code
3 of Regulations, title 16, section 6739. The fine has been paid.

4 35. On or about October 11, 2011, a fine in the amount of \$750 was levied against the
5 registration by the Board for violating section 8653 of the Business and Professions Code. The
6 fine has not been paid.

7 36. On or about November 9, 2011, a fine in the amount of \$2200 was levied against the
8 registration by the Los Angeles County Agricultural Commissioner for violating section 15204 of
9 the Food and Agriculture Code and section 8550 (e) of the Business and Professions Code. The
10 fine has not been paid.

11 **Operator License No. OPR 11588**

12 37. On or about July 6, 2010, a fine in the amount of \$2750 was levied against the
13 Operator license by the Board for violating Business and Professions Code sections 8622 and
14 8638. The fine was affirmed after an informal conference on October 5, 2010 and has not been
15 paid.

16 38. On or about July 30, 2010, a fine in the amount of \$2750 was levied against the
17 Operator license by the Board for violating Business and Professions Code section 8622. The
18 fine was modified to \$500 after an informal conference on October 5, 2010. The fine has not been
19 paid.

20 39. On or about October 4, 2011, a fine in the amount of \$100 was levied against the
21 Operator license by the San Bernardino County Agricultural Commissioner for violating Business
22 and Professions Code section 8505.17.

23 40. On or about October 4, 2011, a fine in the amount of \$500 was levied against the
24 Operator license by the Los Angeles County Agricultural Commissioner for violating section
25 section 6739 of the California Code of Regulations.

26 41. On or about October 11, 2011, a fine in the amount of \$750 was levied against the
27 Operator license by the Board for violating section 8653 of the Business and Professions Code.
28 The fine has not been paid.

1 42. On or about November 9, 2011, a fine in the amount of \$2200 was levied against the
2 Operator license by the Los Angeles County Agricultural Commissioner for violating section
3 15204 of the Food and Agriculture Code and section 8550 (e) of the Business and Professions
4 Code. The fine has not been paid.

5 **Field Representative License No. FR 21710**

6 43. On or about February 14, 2011, a fine in the amount of \$200 was levied against the
7 Field Representative license by the Board for violating California Code of Regulations, title 16,
8 section 1950 and section 8593 of the Business and Professions Code. The fine has been paid but
9 there has been no compliance with the Order of Abatement.

10 **OTHER MATTERS**

11 44. Notice is hereby given that section 8620 of the Code provides, in pertinent part, that a
12 respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an
13 actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45
14 days. Such request must be made at the time of the hearing and must be noted in the proposed
15 decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a
16 suspension.

17 45. Pursuant to Code section 8624, the causes for discipline established as to Company
18 Registration Certificate Number PR 5934, issued to Apple Termite Inc., likewise constitute cause
19 for discipline against Operator's License Number OPR 11588, issued to Dave Daniel Chavez,
20 who serves as the Qualifying Manager of Apple Termite Inc., regardless of whether Dave Daniel
21 Chavez had knowledge of or participated in the acts or omissions which constitute cause for
22 discipline against Apple Termite Inc..

23 46. Pursuant to Code section 8654, if discipline is imposed on Company Registration
24 Certificate Number PR 5934, issued to Apple Termite Inc., then Dave Daniel Chavez, who serves
25 as the Qualifying Manager of Apple Termite Inc., shall be prohibited from serving as an officer,
26 director, associate, partner, qualifying manager, or responsible managing employee for any
27 registered company during the time the discipline is imposed, and any registered company which
28 employs, elects, or associates him, shall be subject to disciplinary action.

PRAYER

1
2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Structural Pest Control Board issue a decision:

4 1. Revoking or suspending Company Registration Certificate Number PR 5934, issued
5 to Apple Termite Inc.;

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

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

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

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

14 5. Prohibiting Dave Daniel Chavez from serving as an officer, director, associate,
15 partner, qualifying manager or responsible managing employee of any registered company during
16 the period that discipline is imposed on Company Registration Certificate Number PR 5934,
17 issued to Apple Termite Inc.;

18 6. Ordering Dave Daniel Chavez, Apple Termite Inc. and Wendell T. Polk, Jr. to pay the
19 Structural Pest Control Board the reasonable costs of the investigation and enforcement of this
20 case, pursuant to Business and Professions Code section 125.3; and,

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

22
23 DATED: _____

5/9/12

William H. Douglas

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