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FILED

Date 1/22/09 By Kelli Okuma

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

12 In the Matter of the First Amended Accusation Against:

Case No. 2008-67

13 **ARISTON TERMITE**
14 14913 Gwen Chris Court
Paramount, California 90723
15 **JERRY WALKER, Qualifying Manager**
(Disassociated on 12/27/05)
16 **DONALD LEVELL QUINN SR., Qualifying Manager, Br. 3**
(Disassociated on 3/3/08)
17 **WILFREDO PINEDA, Qualifying Manager, Br. 3**
CARLOS MONCADA, Partner
MAYRA LEON, Partner
18 Company Registration Certificate No. PR 4476, Br. 3
Operator License No. OPR 11110, Br. 3
19
20 **JEFFREY MATTHEW EBEL**
8526 10th Street
Downey, California 90241
21 Field Representative's License No. FR 35090, Br. 3
22 **JOSE CARRILLO**
205 North Santa Fe Avenue
23 Compton, California 90221
Field Representative's License No. FR 17136, Br. 3

**FIRST AMENDED
ACCUSATION**

24 Respondents.
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1 COAST 2 COAST FUMIGATION COMPANY
14913 Gwen Chris Court
2 Paramount, California 90723
DONALD LEVELL QUINN SR., Qualifying Manager, Br. 1
3 (Disassociated on 3/3/08)
CARLOS MONCADA, Partner
4 MAYRA LEON, Partner
Company Registration Certificate No. PR 4917, Br. 1
5 Operator License No. OPR 11110, Br. 3

Affiliated License.

6
7 Kelli Okuma ("Complainant") alleges:

8 PARTIES

9 1. Complainant brings this First Amended Accusation solely in her official
10 capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of
11 Consumer Affairs.

12 LICENSE HISTORY

13 Ariston Termite

14 Company Registration Certificate No. PR 4476, Br. 3

15 2. The following is the license history of Company Registration Certificate
16 No. PR 4476, Br. 3 ("company registration") issued to Ariston Termite:

17 February 6, 2004	The Board issued Company Registration Certificate No. PR 4476 in Branch 3 to Ariston Termite ("Respondent Ariston"), with Mayra Leon and Carlos Moncada as Partners, and Jerry Walker as the Qualifying Manager.
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19 December 27, 2005	Jerry Walker disassociated as the Qualifying Manager.
20 January 9, 2006	Donald Levell Quinn Sr. became the Qualifying Manager.
21 November 26, 2007	The company registration was suspended for failing to maintain general liability insurance, pursuant to Business and Professions Code ("Code") section 8690.
22	
23 November 27, 2007	The company registration was reinstated.
24 December 31, 2007	The company registration was suspended for failing to maintain general liability insurance, pursuant to Code section 8690.
25 January 4, 2008	The company registration was reinstated.
26 March 3, 2008	Donald Levell Quinn Sr. disassociated from Ariston Termite as Qualifying Manager.
27	
28 March 14, 2008	The company registration was suspended for no Qualifying Manager.

1 May 16, 2008 Wilfred Pineda became the Qualifying Manager.
 2 June 6, 2008 The company registration was suspended due to failure to maintain a
 3 surety bond in the amount of \$4,000 as required by Code section 8697.
 4 July 14, 2008 The company registration was reinstated.

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 6 **Coast 2 Coast Fumigation Company**
Company Registration Certificate No. PR 4917, Br. 1

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 8 3. On or about November 17, 2005, the Board issued Company Registration
 9 Certificate No. PR 4917 in Branch 1 to Coast 2 Coast Fumigation Company, with Mayra Leon
 10 and Carlos Moncada as Partners, and Donald Levell Quinn Sr. as the Qualifying Manager. On
 11 or about December 31, 2007, the company registration was suspended for failing to maintain
 12 general liability insurance, pursuant to Code section 8690. On or about January 4, 2008, the
 13 company registration was reinstated. On or about March 3, 2008, Donald Levell Quinn Sr.
 14 disassociated as Qualifying Manager.

15 **Donald Levell Quinn Sr., Qualifying Manager**
Operator's License No. OPR 11110

16 4. The following is the license history of Operator's License No. OPR 11110
 17 issued to Donald Levell Quinn Sr.:

<u>DATE</u>	<u>ACTION</u>
May 26, 2005	The Board issued Operator's License No. OPR 11110 ("license") to Donald Levell Quinn Sr. ("Respondent Quinn") in Branches 1 and 3, as an employee of Quinn's Exterminating Company Inc. The license is in effect and renewed through June 30, 2010.
November 17, 2005	Respondent Quinn became the Qualifying Manager of Coast 2 Coast Fumigation Company in Branch 1.
January 9, 2006	Respondent Quinn became the Qualifying Manager of Ariston Termite in Branch 3.
July 20, 2006	The license was upgraded to include Branch 2.
September 7, 2006	Respondent Quinn became the Qualifying Manager for All Safe Termite Control in Branch 3.
October 13, 2006	Respondent Quinn became the Qualifying Manager for East Bay Pest Control in Branch 2.

1	October 24, 2006	Respondent Quinn became the Qualifying Manager for Abba Termite and Pest Control Inc. in Branches 2 and 3.
2	October 25, 2006	Respondent Quinn became the Vice President of Quinn's Exterminating Company Inc.
3		
4	November 14, 2006	Respondent Quinn disassociated as the Qualifying Manager of All Safe Termite Control.
5	November 15, 2006	Respondent Quinn became the Qualifying Manager for Turbo Termite & Repair in Branch 3.
6	November 26, 2006	Respondent Quinn disassociated as the Qualifying Manager of Abba Termite and Pest Control Inc.
7		
8	December 19, 2006	Respondent Quinn became the Branch Office Supervisor for Quinn's Exterminating Company Inc.
9	January 19, 2007	Respondent Quinn became the Qualifying Manager for West Coast Exterminating Inc. in Branches 1, 2, and 3.
10	January 22, 2007	Respondent Quinn became the Qualifying Manager for U S Termite.Com in Branch 3.
11	January 24, 2007	Respondent Quinn became the Qualifying Manager for Dynasty Termite in Branch 3.
12	February 17, 2007	Respondent Quinn disassociated as the Qualifying Manager of Dynasty Termite.
13	February 21, 2007	Respondent Quinn disassociated as the Qualifying Manager for U S Termite.Com in Branch 3.
14	February 21, 2007	Respondent Quinn became the Qualifying Manager for U S Termite.
15	March 1, 2007	Respondent Quinn disassociated as the Qualifying Manager for East Bay Pest Control in Branch 2.
16	March 1, 2007	Respondent Quinn became the Branch Office Supervisor for West Coast Exterminating Inc.
17	May 14, 2007	Respondent Quinn disassociated as the Qualifying Manager, Vice President, and Branch Office Supervisor for Quinn's Exterminating Co. Inc.
18	June 21, 2007	Respondent Quinn became the Qualifying Manager for Unique Termite Control in Branch 3.
19	July 18, 2007	Respondent Quinn became the Qualifying Manager for Parks Pest Control and Termite in Branches 2 and 3.
20	July 23, 2007	Respondent Quinn became the Qualifying Manager for Medina Pest Control in Branch 3.
21	August 7, 2007	Respondent Quinn disassociated as the Qualifying Manager and Branch Office Supervisor of West Coast Exterminating Inc.
22	August 24, 2007	Respondent Quinn became the Qualifying Manager of Medina Pest Control in Branches 1 and 3.
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1	October 25, 2007	Respondent Quinn became the Qualifying Manager for Dependable Pest & Termite in Branches 2 and 3.
2	November 26, 2007	The license was suspended for failing to maintain general liability insurance for Ariston Termite, pursuant to Code section 8690.
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4	November 27, 2007	The license was reinstated.
5	November 29, 2007	Respondent Quinn became the Qualifying Manager for Inspector Termite Control in Branch 1.
6	December 12, 2007	Respondent Quinn became the Qualifying Manager for Quinn's Exterminating Co. Inc. in Branch 2.
7	December 31, 2007	The license was suspended for failing to maintain general liability insurance for Ariston Termite and Coast 2 Coast Fumigation Company, pursuant to Code section 8690.
8		
9	January 4, 2008	The license was reinstated.
10	January 24, 2008	Respondent Quinn disassociated as the Qualifying Manager for Dependable Pest & Termite.
11	January 24, 2008	Respondent Quinn became the Qualifying Manager for Dependable Pest & Termite Inc. in Branches 2 and 3.
12	January 25, 2008	Respondent Quinn disassociated as the Qualifying Manager for Quinn's Exterminating Co. Inc., but remained as an employee.
13	February 19, 2008	Respondent Quinn disassociated as the Qualifying Manager for Dependable Pest & Termite, Inc. in Branches 2 and 3.
14	February 21, 2008	Respondent Quinn disassociated as the Qualifying Manager for U S Termite in Branch 3.
15	February 21, 2008	Respondent Quinn became the Qualifying Manager for U S Termite Inc. dba U S Termite in Branches 2 and 3.
16	March 3, 2008	Respondent Quinn disassociated with Ariston Termite as Qualifying Manager.
17	March 3, 2008	Respondent Quinn disassociated with Coast 2 Coast Fumigation Company as Qualifying Manager.
18	March 17, 2008	Respondent Quinn left the employ of Quinn's Exterminating Co., Inc.
19	April 4, 2008	Respondent Quinn became the Branch 1 Qualifying Manager for U S Termite, Inc. dba U S Termite.
20	October 23, 2008	The license was suspended due to failure to maintain the general liability insurance for Unique Termite Control, pursuant to Code section 8690.
21	October 28, 2008	The license was reinstated.
22	October 28, 2008	Respondent Quinn disassociated as the Qualifying Manager of Inspector Termite Control.
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1 **Jeffrey Mathew Ebel**
2 **Field Representative License No. FR 35090, Br. 3**

3 5. On or about September 3, 2002, the Board issued Field Representative
4 License No. FR 35090 in Branch 3 to Jeffrey Mathew Ebel ("Respondent Ebel"). On or about
5 January 19, 2005, Respondent Ebel became employed with Ariston Termite. On or about
6 February 13, 2007, Respondent Ebel left the employ of Ariston Termite. On or about
7 February 15, 2007, Respondent became employed with Master Termite Inc. The license will
8 expire on June 30, 2008, unless renewed.

9 **Jose Carrillo**
10 **Field Representative License No. FR 17136, Br. 3**

11 6. On or about March 8, 1989, the Board issued Field Representative License
12 No. FR 17136, in Branch 3 to Jose Carrillo ("Respondent Carrillo"). On or about February 19,
13 2007, Respondent Carrillo became employed with Ariston Termite. On or about May 25, 2007,
14 Respondent Carrillo left the employ of Respondent Ariston. On or about October 31, 2007,
15 Respondent became employed with El Redondo Termite Control, Inc. On or about July 9, 2008,
16 Respondent Carrillo became employed with Unique Termite Control. The license will expire on
17 June 30, 2009, unless renewed.

18 **Wilfredo Pineda, Qualifying Manager**
19 **Operator License No. OPR 11474**

20 7. The following is the license history of Operator's License No. OPR
21 11474:

22 March 5, 2007	The Board issued Operator License No. OPR 11474 in Branch 3 to Wilfrdo Pineda ("Respondent Pineda"), as an employee of Commitment Exterminators, Inc., and will expire on June 30, 2009, unless renewed
23 March 9, 2007	Respondent Pineda left the employ of Commitment Exterminators, Inc.
24 March 13, 2007	Respondent Pineda became the Owner and Qualifying Manager for Quality Termite Damage Repair, Inc.
25 May 16, 2008	Respondent Pineda associated with Ariston Termite as its Qualified Manager.

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JURISDICTION

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

6 9. Code section 8624 states:

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

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

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

20 10. Code section 8625 states:

21 The lapsing or suspension of a license or company registration by
22 operation of law or by order or decision of the board or a court of law, or the
23 voluntary surrender of a license or company registration shall not deprive the
24 board of jurisdiction to proceed with any investigation of or action or disciplinary
25 proceeding against such licensee or company, or to render a decision suspending
26 or revoking such license or registration.

27 11. Code section 8622 states:

28 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.

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

5 STATUTORY PROVISIONS

6 12. Code section 8516 states, in pertinent part:

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

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

18 Failure of a registered company to report and file with the board the
19 address of any property inspected or work completed pursuant to Section 8516.1,
20 Section 8518, or this section are grounds for disciplinary action and shall subject
21 the registered company to a fine of not more than two thousand five hundred
22 dollars (\$2,500).

23 A written inspection report conforming to this section and on a form
24 approved by the board shall be prepared and delivered to the person requesting
25 the inspection or to the person's designated agent within 10 business days of the
26 inspection, except that an inspection report prepared for use by an attorney for
27 litigation purposes is not required to be reported to the board. The report shall be
28 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:

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

(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.

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

9 (10) Recommendations for corrective measures.

10 13. Code section 8518 states:

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

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

20 Every property upon which work is completed shall be assessed a filing
21 fee pursuant to Section 8674.

22 Failure of a registered company to report and file with the board the
23 address of any property upon which work was completed pursuant to
24 subdivision(b) of Section 8516, subdivision (b) of Section 8516.1, or Section
25 8518 are grounds for disciplinary action and shall subject the registered company
26 to a fine of not more than two thousand five hundred dollars (\$2,500).

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

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

14. 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.

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1 15. Code section 8641 states:

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

8 16. Code section 8642 states:

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

12 17. Code section 8644 states:

13 Fraud or misrepresentation, after inspection, by any licensee or registered
14 company engaged in pest control work of any infestation or infection of
15 wood-destroying pests or organisms found in property or structures, or respecting
16 any conditions of the structure that would ordinarily subject structures to attack
17 by wood-destroying pests or organisms, whether or not a report was made
18 pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary
19 action.

20 18. Code section 8567 states:

21 Should a field representative or applicator change his or her employment,
22 or should an operator enter the employ of a registered company, or being already
23 employed by a registered company change his or her employment, or being
24 employed by a registered company leave that employment and enter the pest
25 control business on his or her own behalf, he or she shall notify the registrar in
26 writing, on a form prescribed by the board and issued by the registrar in
27 accordance with rules and regulations adopted by the board. Whereupon the
28 registrar shall register the change in his or her records.

 19. Code section 8571 states:

 If the licensed operator who is designated as the qualifying manager for a
registered company ceases for any reason whatsoever to be connected with the
company, the company shall notify the registrar in writing within 10 days from
such cessation. If the notice is given the registration shall remain in force for a
reasonable length of time, to be determined by rules of the board, during which
period the company must submit to the registrar in writing the name of another
qualified, or to be qualified, qualifying manager to replace the qualifying manager
who has ceased to be connected with it, and who shall qualify as such within the
time allowed by rules and regulations of the board.

 If the company fails to notify the registrar within the 10-day period, or
fails to replace with a qualifying manager within the period fixed by the
regulations of the board, at the end of the period the registration shall be ipso
facto suspended. The registration shall be reinstated upon the filing of an
affidavit, executed by a representative of the company, and filed with the
registrar, to the effect that the qualifying manager who ceased to be connected
with the company has been replaced by another operator who is authorized by this

1 chapter to act in such capacity, and that such operator has not had his or her
2 license suspended or revoked or that he or she has not been connected with a
company which has had its registration suspended or revoked.

3 20. Code section 8505.17 states, in part:

4 (c) Registered structural pest control companies shall prepare and submit
5 to the county agricultural commissioner a monthly report of all pesticides used in
6 that county. The report shall be on a form approved by the Director of Pesticide
7 Regulation and shall contain the name and registration number of each pesticide,
8 the amount used, and the number of applications made. The report shall be
9 submitted to the commissioner by the 10th day of the month following the month
10 of application. Each pesticide use report or combination of use reports
11 representing a registered structural pest control company's total county pesticide
12 use for the month shall have affixed thereto a pesticide use stamp issued by the
board in the denomination fixed by the board in accordance with Section 8674 as
the pesticide use report filing fee. The board shall provide for the sale of these
13 stamps and for the refund of moneys paid for stamps which are returned to it
14 unused. When a registered structural pest control company performs no pest
15 control during a month in a county in which it has given notice pursuant to
16 Section 15204 of the Food and Agricultural Code, the registered company shall
17 submit a use report stating this fact to the commissioner. No pesticide use stamp
18 is required on negative use reports.

13 REGULATORY PROVISIONS

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

15 part:

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

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

19 (3) Infestations, infections or evidence thereof.

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

21 22. California Code of Regulations, title 16, section 1991, states, in pertinent

22 part:

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

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

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

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

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

- 10 1. exposing the infested area(s) for local treatment,
- 11 2. removing the infested wood,
- 12 3. using another method of treatment which exterminates the infestation.

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

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

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

25 23. California Code of Regulations, title 16, section § 1996.3, states, in part:

26 (a) The address of each property inspected and/or upon which work was
27 completed shall be reported on a form prescribed by the Board and designated as
28 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.

29 24. California Code of Regulations, title 16, section 1970(b), states:

30 The report for each pest control operation, other than fumigation, in which
31 a pesticide is used shall contain the following information:

- 32 Date of treatment.
- 33 Name of owner or his or her agent.
- 34 Address of property.
- 35 Description of area treated.
- 36 Target pest(s).
- 37 Pesticide and amount used.
- 38 Identity of person or persons who applied the pesticide.

1 31. Respondent Ebel's recommendations were to repair, replace or fill the
2 evidence of drywood termites and drywood termite damage at the patio framing, chemically treat
3 the evidence of drywood termites at the exterior framing, repair, replace or fill the drywood
4 termite damage at the exterior framing, and scrape and treat the decay fungi at the exterior
5 framing. In addition, Respondent Ebel recommended removing the toilet and replacing the wax
6 ring.

7 32. On or about February 14, 2006, Respondent Ariston issued a Standard
8 Notice of Work Completed and Not Completed ("Completion Notice"), certifying that all
9 recommendations made in Inspection Report No. 95, had been completed.

10 33. In or about March 2006, escrow closed.

11 34. In or about March 2006, Eric and Danielle Flores ("homeowners"),
12 noticed evidence of termites and termite damage that was supposed to have been repaired by
13 Respondent Ariston.

14 35. On or about March 3, 2006, Respondent Ariston returned to the Flores
15 project and made several repairs.

16 36. In or about January 2007, the homeowners again noticed evidence of
17 termites.

18 37. On or about May 1, 2007, the homeowners contacted Respondent Ariston
19 regarding evidence of termites.

20 38. On or about May 2, 2007, Respondent Carrillo inspected the Flores project
21 for wood destroying pests and organisms and thereafter issued a Complete Wood Destroying
22 Pests and Organisms Inspection Report No. 10541 ("Inspection Report No. 10541").

23 39. Respondent Carrillo's findings involved evidence of drywood termites at
24 the garage door, decay fungi at the garage, evidence of drywood termites at the interior and
25 exterior of the house, and evidence of drywood termite damage at the exterior of the house.

26 40. Respondent Carrillo's recommendations were to repair or replace the
27 drywood termite damage, scrape and treat the decay fungi, fumigate the structure for drywood
28 termites, and cover or remove the old termite evidence.

1 41. On or about May 2, 2007, the homeowners contacted Dewey Pest Control.
2 On that same day, Dewey Pest Control performed an inspection and issued a Complete Wood
3 Destroying Pests and Organisms Inspection report. Dewey Pest Control's findings involved
4 evidence of drywood termites in the attic wood members and drywood termite damage at the
5 exterior siding, trim boards, and rafter tails. Dewey Pest Control recommended fumigating the
6 structure for control of the drywood termites, and to remove or cover the accessible termite
7 evidence.

8 42. On or about May 3, 2007, the Board received a complaint from the
9 homeowners.

10 43. On or about June 1, 2007, the Board sent a letter to Respondent Ariston
11 informing it of the complaint received on the Flores project.

12 44. On or about June 12, 2007, Respondent Ariston responded to the Board's
13 letter dated June 1, 2007, explaining the events that had taken place on the Flores project.

14 45. On or about August 13, 2007, the Board specialist requested a copy of
15 Inspection Report No. 95 from Respondent Ariston. The Board specialist reviewed the report
16 and found that the report contained eight additional findings and recommendations not contained
17 in the original Inspection Report No. 95 provided by the homeowners¹. The findings included
18 evidence of drywood termite damage at the garage door siding, at the exterior of the house and
19 garage, and decay fungi damage at the exterior of the house. The recommendations were to
20 repair, replace or fill the drywood termite damage, and to repair, replace, reinforce or fill the
21 decay fungi damage.

22 46. On or about August 13, 2007, a Board specialist inspected the Flores
23 project and noted violations.

24 47. On or about August 15, 2007, the Board specialist prepared and issued a
25 Report of Findings along with a Notice ordering Respondent Ariston to bring the property into
26 compliance by correcting the items described in the Report of Findings and to submit a corrected

27 _____
28 1. The Board specialist conducted an activity search and found that Respondent Ariston
filed a second Inspection Report No. 95, dated January 27, 2006.

1 inspection report and Notice of Work Completed and Not Completed to the Board within thirty
2 (30) days with respect to the inspections performed on January 27, 2006, and May 2, 2007.

3 48. On or about September 11, 2007, Respondent Quinn re-inspected the
4 Flores project and thereafter issued a Complete Wood Destroying Pests and Organisms
5 Inspection Report No. 10666 ("Inspection Report No. 10666"), consisting of certain findings and
6 recommendations.

7 49. Respondent Quinn's findings involved evidence of drywood termites in
8 and at the garage, the attached patio, and the interior and exterior of the house; drywood termite
9 damage at the exterior wood trim on the garage; drywood termite damage at the wood trim,
10 eaves, back doorframe, and rafter on the house; and decay fungi damage at the attached patio and
11 exterior fence.

12 50. Respondent Quinn's recommendations were to fumigate the structure for
13 drywood termites; to cover or remove the old termite evidence; repair, replace or fill the
14 drywood termite damage; repair, replace, reinforce, or fill the decay fungi damage at the attached
15 patio; and for the owner to contact a licensed contractor to repair the fence. Additionally,
16 Respondent Quinn recommended removal of the storage in the garage to allow for further
17 inspection.

18 51. On or about September 26, 2007, the Board specialist met with
19 Respondent Quinn at the Flores project. The Board specialist found that the property was not in
20 compliance. The Board specialist questioned Respondent Quinn regarding his findings made on
21 Inspection Report No. 10666. Respondent Quinn was unable to show the Board specialist the
22 evidence of drywood termites that he had reported on Inspection Report No. 10666. The Board
23 specialist showed Respondent Quinn the drywood termite and decay fungi damage that
24 Respondent Quinn had failed to report and explained to him what would be required regarding
25 the repair work. Respondent Quinn then informed the Board specialist that his secretary had
26 faxed the wrong inspection report to him, and he would have a new report faxed to him that
27 afternoon.

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1 e. Respondents failed to report the evidence of drywood termites and
2 drywood termite damage at the garage door framing, as defined by California Code of
3 Regulations, title 16, section 1990(a)(3)(4).

4 Section 8516(b)(10):

5 f. Respondents failed to make the proper recommendation regarding the
6 reported evidence of drywood termites as defined by California Code of Regulations, title 16,
7 section 1991(a)(8).

8 MAY 2, 2007, INSPECTION

9 55. Respondent Ariston's registration, Respondent Quinn's operator's license,
10 and Respondent Carrillo's field representative's license are subject to discipline under Code
11 section 8641, in that, concerning the Flores project, Respondents failed to comply with the
12 following Code sections:

13 Section 8516(b):

14 a. Respondents failed to include the signature of the Branch 3 licensee who
15 performed the inspection on Inspection Report No. 10541, as defined by California Code of
16 Regulations, title 16, section 1990(a)(2).

17 Section 8516(b)(6)(7):

18 b. Respondents failed to report the decay fungi damage at the patio framing,
19 as defined by California Code of Regulations, title 16, section 1990(a)(4).

20 SEPTEMBER 11, 2007, INSPECTION

21 56. Respondent Ariston's registration and Respondent Quinn's operator's
22 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
23 Respondents failed to comply with the following Code sections:

24 Section 8516(b):

25 a. Respondents failed to include the signature of the Branch 3 licensee who
26 made the inspection on Inspection Report No. 10666, as defined by California Code of
27 Regulations, title 16, section 1990(a)(2).

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1 Section 8516(b)(6)(7):

2 b. Respondents failed to report drywood termite damage at the garage brick
3 molding; failed to report the full extent of the decay fungi damage at the attached patio; and
4 failed to report the full extent of the drywood termite damage at the wood trim on the house, as
5 defined by California Code of Regulations, title 16, section 1990(a)(4).

6 SEPTEMBER 26, 2007, INSPECTION

7 57. Respondent Ariston's registration and Respondent Quinn's operator's
8 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
9 Respondents failed to comply with the following Code sections:

10 Section 8516(b):

11 a. Respondents failed to include the signature of the Branch 3 licensee who
12 performed the inspection on Supplemental Inspection Report No. 10666, as defined by California
13 Code of Regulations, title 16, section 1990(a)(2).

14 SECOND CAUSE FOR DISCIPLINE

15 (Violation of Contract)

16 58. Respondent Ariston's registration, Respondent Quinn's operator's license,
17 and Respondent Ebel's field representative's license are subject to discipline under Code section
18 8638, in that, concerning the Flores project, Respondents failed to complete the following
19 repairs, which had been reported as having been completed on the Standard Notice of Work
20 Completed and Not Completed, dated February 14, 2006:

21 a. Respondents failed to exterminate the reported evidence of drywood
22 termites through the use of a localized Timbor chemical treatment, as reported in Inspection
23 Report No. 95.

24 THIRD CAUSE FOR DISCIPLINE

25 (Fraud or Misrepresentation After Inspection)

26 59. Respondent Ariston's registration and Respondent Quinn's operator's
27 license are subject to discipline under Code section 8644, in that, concerning the Flores project,
28 Respondent Quinn reported evidence of drywood termites at the attached patio and at the interior

1 of the house in the area of the dining room, and evidence of drywood termites and drywood
2 termite damage at the back doorframe in Inspection Report No. 10666, when in fact, the
3 infestations and damage did not exist.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 60. Respondent Ariston's registration and Respondent Quinn's operator's
7 license are subject to discipline under Code section 8641, in that they failed to comply with Code
8 section 8622, by failing to correct the items described in the Report of Findings within thirty (30)
9 calendar days of receipt of the Notice, bringing the Flores project into compliance with the
10 Board's Notice and Report of Findings, dated August 15, 2007.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Failure to File Work Activity Reports with the Board)**

13 61. Respondent Ariston's registration, Respondent Quinn's operator's license,
14 and Respondent Carrillo's field representative's license are subject to discipline under Code
15 section 8518, in that, concerning the Flores project, Respondents failed to prepare and deliver a
16 supplemental inspection report and completion notice for the inspection performed and work
17 completed on or about March 3, 2006, to the Board within ten (10) business days following the
18 commencement of an inspection or upon completed work.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Laws Adopted by the Board -
21 Failure to File Reports with the Board)**

22 62. Respondent Ariston's registration and Respondent Quinn's operator's
23 license are subject to discipline under Code section 8641, in that, concerning the Flores project,
24 Respondents failed to comply with Code section 8516(b), by failing to file with the Board the
25 completion notices (2) dated February 14, 2006, and Inspection Report No. 10541, dated
26 May 2, 2007, no later than 10 business days after the commencement of an inspection or upon
27 completed work.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Laws Adopted by the Board -
3 Failure to File Reports with the Board)

4 66. Respondent Ariston's registration and Respondent Quinn's operator's
5 license are subject to discipline under Code section 8641, in that Respondents failed to comply
6 with the following sections:

7 a. Section 8516(b). Respondents failed to file Wood Destroying Pests and
8 Organisms Inspection and Completion Activity Reports with the Board no later than 10 business
9 days after the commencement of an inspection or upon completed work, in violation of
10 California Code of Regulations, title 16, section 1996.3(a). On November 26, 2008, the Board
11 obtained copies of Respondent Ariston's Pesticide Use Reports (PURs) from Los Angeles
12 County Agricultural Department (LA County Ag.) for the period of November 2007 through
13 November 2008, which disclosed that at least four (4) chemical applications were performed in
14 the county prior to May 16, 2008 (including three (3) chemical applications prior to March 3,
15 2008), and that the corresponding inspection reports and completion notices were not filed with
16 the Board. Furthermore, a list of approximately 73 Wood Destroying Pests and Organisms
17 activities, along with a copy of six (6) inspection reports, for said period but prior to May 16,
18 2008, were obtained from Respondent Ariston on November 26, 2008, which were not filed with
19 the Board.

20 b. Section 8505.17(c). Respondents failed to submit its PURs to LA County
21 Ag. for February 2008 and March 2008.

22 c. Section 8505.17(c). Respondents failed to include the number of
23 applications performed and the amount of pesticides used in its December 2007 PUR that it
24 submitted to LA County Ag.

25 d. Section 8516(b)(1). Respondent Ariston failed to prepare and deliver an
26 inspection report that contained the name and license number of the licensee who performed the
27 inspection. Respondent Ariston's April 3, 2008, inspection report, under inspected by, indicated
28 "other."

1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Laws Adopted by the Board -
3 Failure to File Reports with the Board)

4 67. Respondent Ariston's registration and Respondent Pineda's operator's
5 license are subject to discipline under Code section 8641, in that Respondents failed to comply
6 with the following sections:

7 a. Section 8516(b). Respondents failed to file Wood Destroying Pests and
8 Organisms Inspection and Completion Activity Reports with the Board no later than 10 business
9 days after the commencement of an inspection or upon completed work, in violation of
10 California Code of Regulations, title 16, section 1996.3(a). On November 26, 2008, the Board
11 obtained copies of Respondent Ariston's PURs from LA County AG, which disclosed
12 approximately nine (9) chemical applications that were performed in the county after May 16,
13 2008, and that the corresponding inspection reports and completion notices were not filed with
14 the Board.

15 b. Section 8516(b). Respondents failed to prepare and deliver an inspection
16 report that contains the correct address for the Board. The August 22, 2008, inspection report
17 contained a wrong address (1418 Howe Avenue, Suite 18, Sacramento, California 95825-3204).
18 The Board moved on or about March 21, 2008 to its present address, 2005 Evergreen Street, Ste.
19 1500, Sacramento, CA 95815.

20 TWELFTH CAUSE FOR DISCIPLINE

21 (Failure to Notify Board of Severance of
22 Business Relationship with Qualified Manager)

23 68. Respondent Ariston's registration is subject to discipline under Code
24 section 8571, in conjunction with California Code of Regulations, title 16, section 1916, as
25 follows:

26 a. Respondent Ariston failed to notify the Board within 10 days of the
27 disassociation of its Qualifying Manager, Respondent Quinn, who disassociated on March 3,
28 2008.

1 **DONALD LEVELL QUINN SR.**
2 **Operator's License No. OPR 11110**

3 73. On or about April 16, 2007, Respondent Quinn paid a fine in the amount
4 of \$250 levied by the San Diego County Agricultural Commissioner for violating Food and
5 Agriculture Code section 15204.

6 74. On or about May 30, 2007, Respondent Quinn paid a fine in the amount of
7 \$250 levied by the San Diego County Agricultural Commissioner for violating Food and
8 Agriculture Code section 15204.

9 75. On or about November 13, 2008, Respondent Quinn paid a \$1,124 fine
10 levied by the Board for violation of sections 8516 and 8518.

11 **JEFFREY MATTHEW EBEL**
12 **Field Representative License No. FR 35090**

13 76. On or about October 18, 2005, Respondent Ebel paid a fine in the amount
14 of \$75 levied by the Board for violating Code sections 8516(b)(6)(7), and California Code of
15 Regulations, title 16, section 1990.

16 **JOSE CARRILLO**
17 **Field Representative License No. FR 17136**

18 77. On or about January 2, 2009, pursuant to the Decision and Order in
19 Accusation No. 2008-12, Case No. 07-221-9-72-07, Respondent Carrillo's Field Representative
20 License No. FR 17136 was revoked, revocation stayed, and placed on three years probation with
21 certain terms and conditions.

22 78. On or about February 23, 2006, Respondent Carrillo paid a fine in the
23 amount of \$75 levied by the Board for violating Code sections 8516(b)(6) and (7), and California
24 Code of Regulations, title 16, section 1990(a)(4) (in connection with an inspection performed at
25 904 East Michelle Street, West Covina, California).

26 79. On February 23, 2006, Respondent paid a \$100 fine levied by the Board
27 for Respondent's violation of Code section 8516(b)(6), (7), and (9), and California Code of

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1 Regulations, title 16, section 1990(a)(4) (in connection with an inspection performed at 1823
2 East 108th Street, Los Angeles, California).

3 OTHER MATTERS

4 80. Notice is hereby given that section 8620 of the Code provides, in pertinent
5 part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in
6 lieu of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of
7 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the
8 proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed
9 in lieu of a suspension.

10 81. Pursuant to Code section 8624, the causes for discipline established as to
11 Company Registration Certificate Number PR 4476, issued to Ariston Termite, likewise
12 constitute cause for discipline against Operator's License Number OPR 11110, issued to Donald
13 Levell Quinn Sr., who served as the Qualifying Manager of Ariston Termite, regardless of
14 whether Donald Levell Quinn Sr. had knowledge of or participated in the acts or omissions
15 which constitute cause for discipline against Ariston Termite.

16 82. Pursuant to Code section 8654, if discipline is imposed on Company
17 Registration Certificate Number PR 4476, issued to Ariston Termite, then Donald Levell Quinn
18 Sr., who served as the Qualifying Manager of Ariston Termite, shall be prohibited from serving
19 as an officer, director, associate, partner, qualifying manager, or responsible managing employee
20 for any registered company during the time the discipline is imposed, and any registered
21 company which employs, elects, or associates him, shall be subject to disciplinary action.

22 83. Pursuant to Code section 8624, the causes for discipline established as to
23 Company Registration Certificate Number PR 4476, issued to Ariston Termite, likewise
24 constitute cause for discipline against Operator's License Number OPR 11474, issued to
25 Wilfredo Pineda, who serves as the Qualifying Manager of Ariston Termite, regardless of
26 whether Donald Levell Quinn Sr. had knowledge of or participated in the acts or omissions
27 which constitute cause for discipline against Ariston Termite.

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1 84. Pursuant to Code section 8654, if discipline is imposed on Company
2 Registration Certificate Number PR 4476, issued to Ariston Termite, then Wilfredo Pineda, who
3 serves as the Qualifying Manager of Ariston Termite, shall be prohibited from serving as an
4 officer, director, associate, partner, qualifying manager, or responsible managing employee for
5 any registered company during the time the discipline is imposed, and any registered company
6 which employs, elects, or associates him, shall be subject to disciplinary action.

7 85. Jeffrey Matthew Ebel, a field representative employed by Ariston Termite
8 had knowledge of and participated in the acts or omissions which constitute cause for discipline
9 against Ariston Termite.

10 86. Pursuant to Code section 8654, if discipline is imposed on Company
11 Registration Certificate Number PR 4476, issued to Ariston Termite, then Jeffrey Matthew Ebel,
12 a field representative employed by Ariston Termite, shall be prohibited from serving as an
13 officer, director, associate, partner, qualifying manager, or responsible managing employee of a
14 registered company, and the employment, election or association of him by a registered company
15 is a ground for disciplinary action.

16 87. Jose Carrillo, a field representative employed by Ariston Termite had
17 knowledge of and participated in the acts or omissions which constitute cause for discipline
18 against Ariston Termite.

19 88. Pursuant to Code section 8654, if discipline is imposed on Company
20 Registration Certificate Number PR 4476, issued to Ariston Termite, then Jose Carrillo, a field
21 representative employed by Ariston Termite, shall be prohibited from serving as an officer,
22 director, associate, partner, qualifying manager, or responsible managing employee of a
23 registered company, and the employment, election or association of him by a registered company
24 is a ground for disciplinary action.

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PRAYER

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

- 4 1. Revoking or suspending Company Registration Certificate Number PR
5 4476, issued to Ariston Termite;
- 6 2. Revoking or suspending Operator's License Number OPR 11110, issued
7 to Donald Levell Quinn Sr.;
- 8 3. Revoking or suspending any other license for which Donald Levell Quinn
9 Sr. is furnishing the qualifying experience or appearance;
- 10 4. Revoking or suspending Operator's License Number OPR 11474, issued
11 to Wilfredo Pineda;
- 12 5. Revoking or suspending any other license for which Wilfredo Pineda is
13 furnishing the qualifying experience or appearance;
- 14 6. Revoking or suspending Field Representative License Number FR 35090,
15 issued to Jeffrey Matthew Ebel;
- 16 7. Revoking or suspending Field Representative License Number FR 17136,
17 issued to Jose Carrillo;
- 18 8. Prohibiting Donald Levell Quinn Sr. from serving as an officer, director,
19 associate, partner, qualifying manager or responsible managing employee of any registered
20 company during the period that discipline is imposed on Company Registration Certificate
21 Number PR 4476, issued to Ariston Termite;
- 22 9. Prohibiting Wilfredo Pineda from serving as an officer, director, associate,
23 partner, qualifying manager or responsible managing employee of any registered company
24 during the period that discipline is imposed on Company Registration Certificate Number PR
25 4476, issued to Ariston Termite;
- 26 10. Prohibiting Jeffrey Matthew Ebel from serving as an officer, director,
27 associate, partner, qualifying manager or responsible managing employee of any registered

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1 company during the period that discipline is imposed on Company Registration Certificate
2 Number PR 4476, issued to Ariston Termite;

3 11. Prohibiting Jose Carrillo from serving as an officer, director, associate,
4 partner, qualifying manager or responsible managing employee of any registered company
5 during the period that discipline is imposed on Company Registration Certificate Number PR
6 4476, issued to Ariston Termite;

7 12. Ordering Ariston Termite, Donald Levell Quinn Sr., Wilfredo Pineda,
8 Jeffrey Matthew Ebel, and Jose Carrillo to pay the Structural Pest Control Board the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3; and,

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

12 DATED: 1/22/09

13 
14 KELLI OKUMA
15 Registrar
16 Structural Pest Control Board
17 Department of Consumer Affairs
18 State of California
19 Complainant

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