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FILED

Date 1/6/15 By *Susan Taylor*

7
8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2015-33

13 **SOUTHLAND PEST CONTROL;**
14 **MARCELO D. GALLO-ROSERO,**
15 **SHAMIRAN K. GALLO**
2900 Adams Street, Suite A-14
Riverside, CA 92504
Company Registration Certificate No. PR
6434, Branch 2 and Branch 3

A C C U S A T I O N

16 **Mailing:**
17 **P.O. Box 5206**
18 **Riverside, CA 92517;**

19 **SOUTHLAND PEST CONTROL**
20 **MARCELO D. GALLO-ROSERO,**
21 **PARTNER/FIELD REPRESENTATIVE**
2900 Adams Street, Suite A-14
Riverside, CA 92504
Field Representative No. FR 43039, Branch
2 and Branch 3

22 **Mailing:**
23 **P.O. BOX 5206**
24 **Riverside, CA 92517;**

25 **SOUTHLAND PEST CONTROL;**
26 **SHAMIRAN K. GALLO, PARTNER/**
27 **APPLICATOR**
2900 Adams Street, Suite A-14
Riverside, CA 92504
Applicator License No. RA 52115, Branch 2
and Branch 3

1 Mailing:
2 P.O. BOX 5206
3 Riverside, CA 92517;

4 PATRICK SULLIVAN MILLER
5 SOUTHLAND PEST CONTROL,
6 QUALIFYING MANAGER
7 2900 Adams Street, Suite A-14
8 Riverside, CA 92504
9 Operator License No. OPR 11816, Branch 2
10 Field Representative License No. FR 47727,
11 Branch 3

12 Mailing:
13 750 Via Pueblo, Unit #208
14 Riverside, CA 92507;

15 EFREM THOMAS ALVAREZ
16 SOUTHLAND PEST CONTROL,
17 QUALIFYING MANAGER
18 2900 Adams Street, Suite A-14
19 Riverside, CA 92504
20 Operator License No. OPR 12669, Branch 3

21 Mailing:
22 750 Breeze Hill Road, Unit #75
23 Vista, CA 92081;

24 and

25 ROBERT FRANK ELLETT
26 6263 Cosmos Street
27 Corona, CA 92880
28 Operator License No. OPR 10599, Branch 3

Respondents.

Complainant alleges:

PARTIES

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

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1 Southland Pest Control

2 2. On or about January 19, 2012, the Structural Pest Control Board issued Company
3 Registration Certificate Number PR 6434 to Southland Pest Control; Marcelo D. Gallo-Rosero,
4 Shamiran K. Gallo (Respondent Southland). The Company Registration Certificate was in full
5 force and effect at all times relevant to the charges brought herein.

6 Marcelo D. Gallo-Rosero

7 3. On or about April 25, 2008, the Structural Pest Control Board issued Field
8 Representative's License No. FR 43039 in Branch 2 to Marcelo D. Gallo-Rosero (Respondent
9 Gallo-Rosero). On or about June 6, 2012, Field Representative's License No. FR 43039 was
10 upgraded to include Branches 2 and 3. Field Representative's License No. FR 43039 was in full
11 force and effect at all times relevant to the charges brought herein and will expire on June 30,
12 2016, unless renewed.

13 4. On or about December 31, 2007, the Structural Pest Control Board issued
14 Applicator's License No. RA 48373 in Branches 2 and 3 to Respondent Gallo-Rosero. On or
15 about April 25, 2008, Applicator's License No. RA 48373 was downgraded to Branch 3 only, due
16 to the issuance of a Branch 2 Field Representative's license, and was placed on inactive status.
17 Applicator's License No. RA 48373 was cancelled on December 31, 2010.

18 Shamiran K. Gallo

19 5. On or about June 7, 2011, the Structural Pest Control Board issued Applicator's
20 License No. RA 52115 in Branches 2 and 3 to Shamiran K. Gallo (Respondent Gallo).
21 Applicator's License No. RA 52115 was in full force and effect at all times relevant to the
22 charges brought herein and will expire on June 7, 2017, unless renewed.

23 Patrick Sullivan Miller

24 6. On or about March 19, 2009, the Structural Pest Control Board issued Operator's
25 License No. OPR 11816 in Branch 2 to Patrick Sullivan Miller (Respondent Miller). Operator's
26 License No. OPR 11816 was in full force and effect at all times relevant to the charges brought
27 herein and will expire on June 30, 2017, unless renewed.

1 7. On or about May 29, 2012, the Structural Pest Control Board issued Field
2 Representative's License No. FR 47727 in Branch 3 to Respondent Miller. Field
3 Representative's License No. FR 47727 was in full force and effect at all times relevant to the
4 charges brought herein and will expire on June 30, 2017, unless renewed.

5 8. On or about July 3, 2003, the Structural Pest Control Board issued Field
6 Representative License No. FR 36143 in Branch 2 to Respondent Miller. Field Representative
7 License No. FR 36143 was cancelled on March 19, 2009 due to the issuance of an Operator's
8 license.

9 9. On or about April 2, 2001, the Structural Pest Control Board issued Applicator's
10 License No. RA 17478 in Branch 2 to Respondent Miller. Applicator's License No. RA 17478
11 was cancelled on July 3, 2003 due to the issuance of a Field Representative license.

12 Efrem Thomas Alvarez

13 10. On or about March 14, 2014, the Structural Pest Control Board issued Operator's
14 License No. OPR 12669 in Branch 3 to Efrem Thomas Alvarez (Respondent Alvarez) as an
15 employee of Respondent Southland. On or about May 8, 2014, Operator's License No. OPR
16 12669 became the Branch 3 Qualifying Manager (QM) of Respondent Southland. Operator's
17 License No. OPR 12669 was in full force and effect at all times relevant to the charges brought
18 herein and will expire on June 30, 2016, unless renewed.

19 11. On or about June 9, 2005, the Structural Pest Control Board issued Operator's
20 License No. OPR 11122 in Branch 3 to Respondent Alvarez. Operator's License No. OPR 11122
21 was cancelled on June 30, 2010.

22 12. On or about February 17, 2000, the Structural Pest Control Board issued Field
23 Representative License No. FR 31913 in Branch 3 to Respondent Alvarez. On or around June 18,
24 2004, Field Representative License No. FR 31913 was upgraded to include Branches 2 and 3. On
25 or around June 9, 2005, Field Representative License No. FR 31913 was downgraded to Branch 2
26 only due to the issuance of a Branch 3 Operator's license. Field Representative License No. FR
27 31913 was cancelled on March 6, 2008 due to the issuance of a Branch 2 Operator's license.

28

1 13. On or about June 7, 1993, the Structural Pest Control Board issued Field
2 Representative License No. FR 22101 in Branch 3 to Respondent Alvarez. Field Representative
3 License No. FR 22101 was cancelled on June 30, 1998.

4 14. On or about January 10, 2003, the Structural Pest Control Board issued Applicator's
5 License No. RA 22183 in Branch 2 to Respondent Alvarez. Applicator's License No. RA 22183
6 was cancelled on June 18, 2004 due to the issuance of a Branch 2 Field Representative license.

7 15. On or about November 5, 1999, the Structural Pest Control Board issued Applicator's
8 License No. RA 13587 in Branch 3 to Respondent Alvarez. Applicator's License No. RA 13587
9 was cancelled on February 17, 2000 due to the issuance of a Branch 3 Field Representative
10 license.

11 16. On or about February 5, 1996, the Structural Pest Control Board issued Applicator's
12 License No. RA 2899 in Branch 2 to Respondent Alvarez. Applicator's License No. RA 2899
13 was cancelled on February 5, 1999.

14 Robert Frank Ellett

15 17. On or about July 24, 2002, the Structural Pest Control Board issued Operator's
16 License No. OPR 10599 in Branch 2 to Robert Frank Ellett (Respondent Ellett). On or about
17 October 10, 2011, Operator's License No. OPR 10599 was upgraded to include Branches 2 and 3.
18 Operator's License No. OPR 10599 was in full force and effect at all times relevant to the charges
19 brought herein and will expire on June 30, 2017, unless renewed.

20 18. On or about April 22, 2005, the Structural Pest Control Board issued Field
21 Representative License No. FR 38541 in Branch 3 to Respondent Ellett. Field Representative
22 License No. FR 38541 was cancelled on October 10, 2011 due to upgrading the Operator's
23 License to include Branch 3.

24 19. On or about September 9, 1998, the Structural Pest Control Board issued Field
25 Representative License No. FR 30043 in Branch 2 to Respondent Ellett. Field Representative
26 License No. FR 30043 was cancelled on July 24, 2002 due to the issuance of an Operator's
27 License.

28

1 20. On or about April 10, 1996, the Structural Pest Control Board issued Applicator's
2 License No. RA 3434 in Branch 2 to Respondent Ellett. Applicator's License No. RA 3434 was
3 cancelled on September 9, 1998 due to the issuance of a Field Representative license.

4 5 JURISDICTION

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

9 10 STATUTORY PROVISIONS

11 22. Section 8516, subdivision (b) of the Code states, in pertinent part:

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

18 Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a
19 filing fee pursuant to Section 8674.

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

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

28

1 The report shall be delivered before work is commenced on any property. The registered
2 company shall retain for three years all original inspection reports, field notes, and activity forms.

3 Reports shall be made available for inspection and reproduction to the executive officer of
4 the board or his or her duly authorized representative during business hours. Original inspection
5 reports or copies thereof shall be submitted to the board upon request within two business days.”

6 23. Section 8516, subdivision (b)(2) of the Code states, in pertinent part, that an
7 inspection report shall include the name and address of the person or firm ordering the report.

8 24. Section 8516, subdivision (b)(3) of the Code states, in pertinent part, that an
9 inspection report shall include the name and address of any person who is a party in interest.

10 25. Section 8516, subdivision (b)(4) of the Code states, in pertinent part, that an
11 inspection report shall include the address or location of the property.

12 26. Section 8516, subdivision (b)(6) of the Code states, in pertinent part, that an
13 inspection report shall include a foundation diagram or sketch of the structure or structures or
14 portions of the structure or structures inspected, indicating thereon the approximate location of
15 any infested or infected areas evident, and the parts of the structure where conditions that would
16 ordinarily subject those parts to attack by wood destroying pests or organisms exist.

17 27. Section 8516, subdivision (b)(7) of the Code states, in pertinent part, that an
18 inspection report shall contain information regarding the substructure, foundation walls and
19 footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes
20 the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or
21 other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed
22 likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris,
23 faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient
24 ventilation are to be reported.

25 28. Section 8516, subdivision (b)(10) of the Code states, in pertinent part, that an
26 inspection report shall contain recommendations for corrective measures.

27 29. Section 8516, subdivision (c) of the Code states:

28 “...

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

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

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

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

12 30. Section 8518 of the Code states:

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

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

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

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

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

1 31. Section 8619 of the Code states:

2 “(a) An inspection tag shall be posted whenever an inspection for wood destroying pests or
3 organisms is made.

4 (b) If the registered company completes any work with respect to wood destroying pests or
5 organisms, it shall post a completion tag next to the inspection tag.”

6 32. Section 8622 of the Code states:

7 “When a complaint is accepted for investigation of a registered company, the board,
8 through an authorized representative, may inspect any or all properties on which a report has been
9 issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section
10 8518 by the registered company to determine compliance with the provisions of this chapter and
11 the rules and regulations issued thereunder. If the board determines the property or properties are
12 not in compliance, a notice shall be sent to the registered company so stating. The registered
13 company shall have 30 days from the receipt of the notice to bring such property into compliance,
14 and it shall submit a new original report or completion notice or both and an inspection fee of not
15 more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent
16 reinspection is necessary, pursuant to the board's review of the new original report or notice or
17 both, a commensurate reinspection fee shall also be charged. If the board's authorized
18 representative makes no determination or determines the property is in compliance, no inspection
19 fee shall be charged.

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

25 33. Section 8638 of the Code states, in pertinent part, that failure on the part of a
26 registered company to complete any operation or construction repairs for the price stated in the
27 contract for such operation or construction repairs or in any modification of such contract is a
28 ground for disciplinary action.

1 34. Section 8642 of the Code states, in pertinent part, that the commission of any grossly
2 negligent or fraudulent act by the licensee as a pest control operator, field representative, or
3 applicator or by a registered company is a ground for disciplinary action.

4
5 **REGULATORY PROVISIONS**

6 35. California Code of Regulations, Title 16, section 1990, subdivision (a) states, in
7 pertinent part:

8 “(a) All reports shall be completed as prescribed by the board. Copies filed with the board
9 shall be clear and legible. All reports must supply the information required by Section 8516 of
10 the Code and the information regarding the pesticide or pesticides used as set forth in Section
11 8538 of the Code, and shall contain or describe the following:

12 ...

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

14 (3) Infestations, infections or evidence thereof.

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

16 36. California Code of Regulations, Title 16, section 1990, subdivision (b) states, in
17 pertinent part:

18 “...

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

21 ...

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

24 (4) Earth-wood contacts.

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

27 37. California Code of Regulations, Title 16, section 1990, subdivision (e) states, in
28 pertinent part that all reports must supply information regarding all accessible areas of the

1 structure including but not limited to the substructure, foundation walls and footings, porches,
2 patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or
3 other parts of a structure normally subject to attack by wood-destroying pests or organisms.

4 38. California Code of Regulations, Title 16, section 1990, subdivision (f) states:

5 “...

6 (f) The following language shall appear just prior to the first finding/recommendation on
7 each separated report:

8 “This is a separated report which is defined as Section I/Section II conditions evident on the
9 date of the inspection. Section I contains items where there is visible evidence of active
10 infestation, infection or conditions that have resulted in or from infestation of infection. Section II
11 items are conditions deemed likely to lead to infestation or infection but where no visible
12 evidence of such was found. Further inspection items are defined as recommendations to inspect
13 area(s) which during the original inspection did not allow the inspector access to complete the
14 inspection and cannot be defined as Section I or Section II.”

15 39. California Code of Regulations, Title 16, section 1991, subdivision (a) states in
16 pertinent part:

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

21 ...

22 (5) Structural members which appear to be structurally weakened by wood-destroying
23 pests to the point where they no longer serve their intended purpose shall be replaced or
24 reinforced. Structural members which are structurally weakened by fungus to the point where
25 they no longer serve their intended purpose shall be removed or, if feasible, may remain in place
26 if another structural member is installed adjacent to it to perform the same function, if both
27 members are dry (below 20% moisture content), and if the excessive moisture condition
28 responsible for the fungus damage is corrected. Structural members which appear to have only

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

4 ...

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

8 40. California Code of Regulations, Title 16, section 1993, subdivision (d) states in
9 pertinent part:

10 “...

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

17 41. California Code of Regulations, Title 16, section 1996.1, subdivision (c) states, in
18 pertinent part:

19 “...

20 (c) The inspection report shall indicate the location of the inspection tag. The inspection
21 report must also indicate the presence of any other inspection or fumigation tag that is less than
22 two years old and any similar completion tag. A registered company shall not remove any tag.”

23 42. California Code of Regulations, Title 16, section 1996.2 states:

24 “A written standard notice of work completed and not completed form conforming to
25 section 8518 of the code and Form No. 43M-44 (Rev. 10/01, required use effective July 1, 2003)
26 found at the end of this section shall be prepared and filed with the board.”

27 43. California Code of Regulations, Title 16, section 1996.3, subdivision (a) states:

28

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

6
7 **COST RECOVERY**

8 44. Section 125.3 of Code states in pertinent part:

9 “(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
10 proceeding before any board within the department ... upon request of the entity bringing the
11 proceeding may request the administrative law judge to direct a licentiate found to have
12 committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable
13 costs of the investigation and enforcement of the case.

14 (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may
15 be made against the licensed corporate entity or licensed partnership.

16 (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs
17 are not available, signed by the entity bringing the proceeding or its designated representative
18 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The
19 costs shall include the amount of investigative and enforcement costs up to the date of the
20 hearing, including, but not limited to, charges imposed by the Attorney General.

21 (d) The administrative law judge shall make a proposed finding of the amount of reasonable
22 costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The
23 finding of the administrative law judge with regard to costs shall not be reviewable by the board
24 to increase the cost award. The board may reduce or eliminate the cost award, or remand to the
25 administrative law judge where the proposed decision fails to make a finding on costs requested
26 pursuant to subdivision (a).

27 (e) Where an order for recovery of costs is made and timely payment is not made as
28 directed in the board’s decision, the board may enforce the order for repayment in any appropriate

1 court. This right of enforcement shall be in addition to any other rights the board may have as to
2 any licentiate to pay costs.

3 (f) In any action for recovery of costs, proof of the board's decision shall be conclusive
4 proof of the validity of the order of payment and the terms for payment.

5 (g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license
6 of any licentiate who has failed to pay all of the costs ordered under this section.

7 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
8 reinstate for a maximum of one year the license of any licentiate who demonstrates financial
9 hardship and who enters into a formal agreement with the board to reimburse the board within
10 that one-year period for the unpaid costs.

11 (h) All costs recovered under this section shall be considered a reimbursement for costs
12 incurred and shall be deposited in the fund of the board recovering the costs to be available upon
13 appropriation by the Legislature.

14 (i) Nothing in this section shall preclude a board from including the recovery of the costs of
15 investigation and enforcement of a case in any stipulated settlement.

16 (j) This section does not apply to any board if a specific statutory provision in that board's
17 licensing act provides for recovery of costs in an administrative disciplinary proceeding.

18 45. 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 BACKGROUND FACTS

22 *11/11/13 Inspection Report*

23 46. On or around 11/11/13, Respondent Southland performed a wood destroying
24 organism (WDO) inspection and issued a "complete", "separated" wood destroying organism
25 (WDO) Inspection Report (11/11/13 Report) on the property located at 9344 A and 9344 B Deer
26 Haven Drive, Phelan, CA 92371 (incident property or incident address). Field Representative
27
28

1 Respondent Miller performed the WDO inspection and prepared the inspection report, containing
2 three (3) findings and recommendations.

3 47. Section I findings¹ identified evidence of subterranean termites in the substructure,
4 and a surface fungus condition (decay fungi) in the substructure around the bathroom plumbing.

5 48. The findings failed to identify the excessive moisture condition responsible for the
6 infection.

7 49. The findings also failed to include a recommendation to correct the excessive
8 moisture condition responsible for the infection.

9 50. The findings recommended patching minor surface damage found during treatment
10 however the law does not allow the patching of decay fungi damage.

11 51. Section II findings² identified earth-to-wood contacts at the front patio posts and
12 recommended breaking the earth-to-wood contacts and/or to heavily treat the wood members
13 where conditions are deemed likely to lead to infestation.

14 52. The 11/11/13 Report failed to include the correct address or location of the incident
15 property. The 11/11/13 Report incorrectly identified the incident property street address as
16 "Deerhaven", the city as "Pinon Hills" and the zip code as "92372".³

17 53. On or around 11/18/13, Respondents issued a Standard Notice of Work Completed
18 and Not Completed (11/18/13 Completion Notice) for the incident address. The 11/18/13
19 Completion Notice certified that all recommendations made on the 11/11/13 Report had been
20 completed for a total cost of \$530.00, which included a \$120.00 inspection fee.

21 //

22 //

23 //

24 //

25 ¹ Section I includes items where there is visible evidence of active infestation, infection or conditions that
26 have resulted in or from infestation or infection.

27 ² Section II includes conditions deemed likely to lead to infestation or infection but where no visible
28 evidence of such was found.

³ The incident property consists of two units, 9344 A and 9344 B. The street names consist of two words,
"Deer Haven" and is located in Phelan, not Pinon Hills and the zip code is 92371, not 92372.

1 *12/19/13 Supplemental Report*

2 54. On or around 12/19/13, Respondent Southland performed a WDO inspection and
3 issued a “supplemental,” “separated” inspection report (12/19/13 Supp. Report) on the incident
4 address.

5 55. Section I findings of the 12/19/13 Supp. Report identified evidence of subterranean
6 termites in the substructure, decay fungi in the substructure around the bathroom plumbing and
7 dry rot (decay fungi damage) at the washroom doorframe and floor.

8 56. The 12/19/13 Supp. Report failed to include a recommendation to correct the
9 excessive moisture condition responsible for the infection.

10 57. The findings recommended patching minor surface damage found during treatment
11 however the law does not allow the patching of decay fungi damage.

12 58. Section II findings of the 12/19/13 Supp. Report identified earth-to-wood contacts at
13 the front patio posts, cellulose debris in the substructure, water stains at an interior ceiling, and
14 excessive moisture at the kitchen piping and shower fixture.

15 59. The 12/19/13 Supp. Report failed to include the correct address or location of the
16 incident property. Complainant incorporates paragraph 51, above.

17 60. The 12/19/13 Supp. Report failed to indicate where the inspection tag was posted.

18 61. The 12/19/13 Supp. Report failed to contain a compliant “supplemental” report
19 statement, by failing to refer to the original report in such a manner to clearly identify it.

20
21 *Complaint*

22 62. On or around 1/9/14, the Board received a complaint from L.P.⁴ alleging that
23 Respondent Southland failed to perform a proper WDO inspection prior to the close of escrow.

24 63. On or around 4/16/14, the Board visited the incident property to perform an
25 inspection. The following was observed and identified for unit A:

26 a. Cellulose debris in the substructure.

27
28 ⁴ Initials are used to protect confidentiality.

- 1 b. Evidence of subterranean termites in the substructure soil and cellulose debris.
- 2 c. Decay fungi damage at the substructure framing.
- 3 d. Evidence of an excessive moisture condition (water stains) on the substructure
- 4 framing.
- 5 e. Evidence of an excessive moisture condition (wet soil) in the substructure.
- 6 f. Earth-to-wood contact at the support jacks in the substructure.
- 7 g. A prefabricated stall shower in the back bathroom.
- 8 h. Plumbing leaks at the prefabricated stall shower, visible from the bathroom and
- 9 substructure.
- 10 i. Decay fungi and damage below the rear deck, visible from the substructure.
- 11 j. Evidence of an excessive moisture condition (water damage) at the back bathroom
- 12 cabinet, adjacent to the prefabricated stall shower.
- 13 k. Evidence of an excessive moisture condition (water damage) at the back door.
- 14 l. Evidence of an excessive moisture condition (water damage) at the dining room
- 15 window.
- 16 m. Evidence of an excessive moisture condition (water stains) at the living room, dining
- 17 room, kitchen bedroom closet and back bathroom ceilings.
- 18 n. Evidence of an excessive moisture condition (missing caulking) at the front bathroom
- 19 wall, adjacent to the bathtub.
- 20 o. Evidence of an excessive moisture condition (water damage) at the front bathroom
- 21 window.
- 22 p. Evidence of an excessive moisture condition (standing water) on the front bathroom
- 23 floor.
- 24 q. Decay fungi damage at the wall framing, adjacent to the kitchen, visible from the
- 25 exterior.
- 26 r. Decay fungi damage at the exterior siding and wall framing, adjacent to the rear deck.
- 27 s. Decay fungi damage at the front porch railing.
- 28

1 t. Evidence of subterranean termites, subterranean termite damage, decay fungi damage
2 and earth-to-wood contacts at the front porch load posts.

3 u. Evidence of an excessive moisture condition (cracked, separated and damaged
4 concrete veneers), around the exterior of the unit.

5 v. Evidence of an excessive moisture condition (openings in the framing), around the
6 exterior of the unit.

7 w. An inaccessible area below the front porch.

8 x. A subject company inspection (11/11/13) and completion (11/18/13) tag in the water
9 heater cabinet.

10 64. The following was observed and identified for unit B:

11 a. Cellulose debris in the substructure.

12 b. Evidence of subterranean termites in the substructure soil and cellulose debris.

13 c. Evidence of subterranean termites and subterranean termite damage in the
14 substructure framing.

15 d. Decay fungi damage at the substructure framing.

16 e. Evidence of an excessive moisture condition (water stains) on the substructure
17 framing.

18 f. Evidence of an excessive moisture condition (plumbing leaks) in the substructure.

19 g. Evidence of an excessive moisture condition (water damage) at the substructure
20 framing and insulation.

21 h. Earth-to-wood contact at the support jacks and some bracing in the substructure.

22 i. A prefabricated stall shower in the master bathroom.

23 j. Decay fungi at the kitchen ceiling.

24 k. Evidence of an excessive moisture condition (water damage) at the kitchen ceiling.

25 l. Evidence of an excessive moisture condition (standing water) on the bathroom floor,
26 adjacent to the bathtub.

27 m. Repair work completed in the water heater cabinet.

28 n. Decay fungi damage at the water heater cabinet flooring and framing.

1 o. Decay fungi damage and earth-to-wood contacts at the front porch load posts.

2 p. Evidence of an excessive moisture condition (cracked, separated and damaged
3 concrete veneers), around the exterior of the unit.

4 q. Evidence of an excessive moisture condition (openings in the framing), around the
5 exterior of the unit.

6 65. On or around 4/24/14, a Board Inspector prepared a Report of Findings (ROF) which
7 contained 34 separate violations based on the 4/16/14 inspection of the incident property.

8 66. After being provided with notification of the violations, Respondent prepared and
9 submitted by email, a 6/9/14 "complete," "separated" inspection report (6/9/14 Report).

10 67. The 6/9/14 Report regarding units A and B failed to comply with the several of the
11 Board's rules and regulations, amounting to 44 separate violations.

12 68. On or around 7/2/14, a Board Inspector contacted Respondent Gallo-Rosero to
13 discuss noncompliance of the 6/9/14 Report. Respondent Gallo-Rosero represented that he would
14 "handle the matter".

15 69. On or around 7/10/14, Respondent Gallo-Rosero and the Board Inspector met at the
16 incident address to inspect the units and discuss the violations indicated in the ROF.

17 70. On or around 8/4/14, Respondents prepared and submitted by email, a 7/10/14
18 "complete," "reinspection," "separated" inspection report (7/10/14 Report). Respondent Gallo-
19 Rosero performed the WDO inspection and 7/10/14 Report containing 19 findings and
20 recommendations, along with a note.

21 71. The 7/10/14 Report regarding units A and B failed to comply with several Board rules
22 and regulations, amounting to 22 separate violations.

23 72. On or around 8/7/14, Respondent Gallo-Rosero met with a Board Inspector for more
24 than an hour to discuss the compliance issues with the 7/10/14 Report. Respondent Gallo-Rosero
25 represented that he would prepare another inspection report which would be in compliance with
26 the Board's rules and regulations.

27 73. On or around 8/12/14 Respondent Gallo-Rosero prepared and submitted by email, a
28 copy of its 7/10/14 "supplemental" inspection report on unit A and a copy of its 7/10/14

1 “supplemental,” “separated” inspection report on unit B (7/10/14 Supp. Reports). Respondent
2 Gallo-Rosero’s 7/10/14 Supp. Reports contained 29 findings and recommendations.

3 74. The 7/10/14 Supp. Reports failed to comply with Board rules and regulations.

4 75. On or around 8/14/14, Respondent Gallo-Rosero was contacted to discuss the
5 compliance issues with the 7/10/14 Supp. Reports.

6 76. On or around 8/27/14 Respondent Gallo-Rosero prepared and submitted by email, a
7 *revised* copy of its 7/10/14 Supp. Report for unit A (*revised* 7/10/14 Supp. Report unit A).

8 77. The *revised* 7/10/14 Supp. Report for unit A failed to comply with Board rules and
9 regulations.

10 78. On or around 8/28/14, Respondent Gallo-Rosero prepared and submitted by email, a
11 *revised* 7/10/14 Supp. Report for unit B (*revised* 7/10/14 Supp. Report unit B).

12 79. The *revised* 7/10/14 Supp. Report for unit B failed to comply with Board rules and
13 regulations.

14 80. On or around 9/5/14, a Board Inspector met with Respondent Gallo-Rosero for more
15 than two hours to discuss the compliance issues regarding the *revised* 7/10/14 Supp. Reports.

16 81. Soon thereafter, Respondent Gallo-Rosero prepared and submitted by email a *second*
17 *revised* 7/10/14 Supp. Report for units A and B.

18 82. The *second revised* 7/10/14 Supp. Report for unit A failed to indicate the incident
19 property’s correct address, a violation of Board rules and regulations.

20 83. On or around 9/15/14, a WDO Activity Search revealed that Respondents failed to
21 file its 6/9/14 Report, its 7/10/14 Report, its 7/10/14 Supp. Reports or its 7/10/14 Supp. Report for
22 unit A, for a total of five (5) WDO Activities.

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1 **SOUTHLAND PEST CONTROL, PR 6434, MARCELO D. GALLO-ROSERO, Partner,**
2 **SHAMIRAN K. GALLO, Partner and**
3 **ROBERT ELLETT, OPR 10599, Qualifying Manager**
4

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Incorrect Address of Property Inspected)

7 84. Respondents are subject to disciplinary action under §§ 8516(b)(4) and 8518 in
8 conjunction with Cal. Code of Regs. Title 16 § 1990(a) and 1996.2 in that Respondents failed to
9 include the correct address or location of the property inspected on the 11/11/13 Report, the
10 11/18/13 Completion Notice and 12/19/13 Supp. Report. Specifically, Respondents failed to
11 identify the incident address as “Deer Haven.” Respondent incorrectly identified the incident
12 address as “Phelan” and not “Pinon Hills.” Finally, the incident address zip code was incorrectly
13 identified as “92371.”
14

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Failure to Complete the Work in a Workmanlike Manner)

17 85. Respondents are subject to disciplinary action under § 8638 for failing to complete
18 work in a workmanlike manner as follows:

19 a. Respondents failed to complete the work, regarding the reported decay fungi in the
20 substructure of unit 9344 A. The decay fungi was reported on the 11/11/13 Report and was
21 certified as having been completed on the 11/18/13 Completion Notice. Decay fungi remains at
22 the reported area and was once again reported on the 12/19/13 Supp. Report.

23 b. Respondent failed to complete the work regarding the reported earth-to-wood contact
24 at the front porch posts on units 9344 A and 9344 B. The earth-to-wood contact was reported on
25 the 11/11/13 Report and was certified as having been completed on the 11/18/13 Completion
26 Notice. Earth-to-wood contact remains at the reported areas and was once again reported on the
27 12/19/13 Supp. Report.
28

1 condition responsible for the infections, and the decay fungi recommendations failed to include a
2 recommendation to correct the excessive moisture condition responsible for the infections. In
3 addition, the 12/19/13 Supp. Report failed to make a finding and recommendation for the water
4 stains observed.

5
6 **NINTH CAUSE FOR DISCIPLINE**

7 (Failure to Make Recommendations for Corrective Measures)

8 92. Respondents are subject to disciplinary action under § 8516(b)(10) and Cal. Code of
9 Regs. Title 16 § 1991(a)(5) in that Respondents failed to make a proper recommendation,
10 regarding the reported decay fungi on the 11/11/13 Report, 6/19/14 Report and 12/19/13 Supp.
11 Report.

12
13 **TENTH CAUSE FOR DISCIPLINE**

14 (Failure to Identify Location of Inspection Tag)

15 93. Respondents are subject to disciplinary action under § 8619 and Cal. Code of Regs.
16 Title 16 § 1996.1(c) in that Respondents failed to indicate where the inspection tag was posted at
17 the incident property in the 12/19/13 Supp. Report.

18
19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 (Failure to Make Proper Findings Regarding Infestations)

21 94. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
22 conjunction with Cal. Code of Regs. Title 16 §§ 1990(b)(3) and 1990(e) in that Respondents
23 failed to report the following:

24 a. The cellulose debris in the substructure of units 9344 A and 9344 B on the 11/11/13
25 Report.

26 b. The cellulose debris in the substructure of unit 9344 B on the 12/19/13 Supp. Report.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Make Proper Findings Regarding Moisture Conditions)

97. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in conjunction with Cal. Code of Regs. Title 16 §§ 1990(b)(5), 1990(e) and 1991(a)(11) in that Respondents failed to report the following:

- a. Evidence of an excessive moisture condition (water stains) at the substructure framing of units 9344 A and 9344 B on the 11/11/13 Report and 12/19/13 Supp. Report.
- b. Evidence of an excessive moisture condition (water damage) in the substructure of unit 9344 B on the 11/11/13 Report and 12/19/13 Supp. Report.
- c. Evidence of an excessive moisture condition (wet soil) in the substructure of unit 9344 A on the 11/11/13 Report and 12/19/13 Supp. Report.
- d. Evidence of an excessive moisture condition (plumbing leaks) in the substructure of units 9344 A and 9344 B on the 11/11/13 Report and 12/19/13 Supp. Report.

FOURTEENTH CAUSE FOR DISCIPLINE

(Failure to Make Proper Findings Regarding Earth-to-Wood Contacts)

98. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in conjunction with Cal. Code of Regs. Title 16 §§ 1990(b)(4) and 1990(e) in that Respondents failed to report the earth-to-wood contacts at the support jack platforms in the substructure of unit 9344 A and at the support jack platforms and bracing in the substructure of unit 9344 B on the 11/11/13 Report and 12/19/13 Supp. Report.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Recommend Inspection of Inaccessible Areas)

99. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in conjunction with Cal. Code of Regs. Title 16 §§ 1990(a)(2), 1990(e) and 1993(d) in that Respondents failed to report the following:

1 a. Inaccessible areas of the substructure in unit 9344 A and unit 9344 B due to the
2 presence of insulation under the sub-floor. Respondents failed to make a recommendation for
3 further inspection on the 11/11/13 Report and 12/19/13 Supp. Report.

4 b. Inaccessible areas of the substructure in unit 9344 A due to fallen insulation.
5 Respondents failed to make a recommendation for further inspection on the 11/11/13 Report and
6 12/19/13 Supp. Report.

7
8 **SIXTEENTH CAUSE FOR DISCIPLINE**

9 (Failure to Make Proper Findings Regarding Infestations and Damaged Wood Members)

10 100. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
11 conjunction with Cal. Code of Regs. Title 16 §§ 1990(a)(3), 1990(a)(4) and 1990(e) in that
12 Respondents failed to report the following:

13 a. Decay fungi and decay fungi damage at the framing of the rear deck and evidence of
14 subterranean termites in the substructure or rear deck on unit 9344 A on the 11/11/13 Report and
15 12/19/13 Supp. Report.

16 b. The full extent of the decay fungi and decay fungi damage at the rear deck on unit
17 9344 A on the 6/9/14 Report.

18 c. Evidence of subterranean termites, subterranean termite damage and/or decay fungi
19 damage at the front porch posts and/or railings on unit 9344 A and unit 9344 B on the 11/11/13
20 Report, 12/19/13 Supp. Report and 6/9/14 Report.

21 d. The full extent of the evidence of subterranean termites, subterranean termite damage
22 and/or decay fungi damage at the front porch posts and/or railings on unit 9344 A on the 6/9/14
23 Report.

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1 SEVENTEENTH CAUSE FOR DISCIPLINE

2 (Failure to Make Proper Finding and/or Recommendation)

3 101. Respondents are subject to disciplinary action under §§ 8516(b)(6), 8516(b)(7) and
4 8516(b)(10) in conjunction with Cal. Code of Regs. Title 16 §§ 1990(b)(5), 1990(e) and
5 1991(a)(11) in that Respondents failed to report the following:

6 a. Evidence of an excessive moisture condition (water stains) on the interior ceilings of
7 units 9344 A on the 11/11/13 Report.

8 b. The full extent of the evidence of an excessive moisture condition (water stains) on
9 the interior ceilings of unit 9344 A on the 12/19/13 Supp. Report and 6/9/14 Report.

10 c. Evidence of an excessive moisture condition (water damage) in the back bathroom
11 cabinet in unit 9344 A on the 11/11/13 Report and 12/19/13 Supp. Report.

12 d. Evidence of an excessive moisture condition (water damage) at the back door of unit
13 9344 A on the 11/11/13 Report.

14 e. Evidence of an excessive moisture condition (water damage) at the dining room
15 window in unit 9344 A on the 11/11/13 Report and 12/19/13 Supp. Report.

16 f. Evidence of an excessive moisture condition (water damage) adjacent to the bathtub
17 window in unit 9344 A on the 11/11/13 Report and 12/19/13 Supp. Report.

18 g. Evidence of an excessive moisture condition (missing caulking) at the bathtub wall in
19 unit 9344 A on the 11/11/13 Report, 12/19/13 Supp. Report. and 6/9/14 Report.

20 h. Evidence of an excessive moisture condition (water damage) at the kitchen ceiling in
21 unit 9344 B on the 11/11/13 Report and 12/19/13 Supp. Report.

22 i. Evidence of an excessive moisture condition around the exterior of unit 9344 A and
23 unit 9344 B (openings in the framing and separating and damaged concrete veneers) on the
24 11/11/13 Report, 12/19/13 Supp. Report and 6/9/14 Report.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 (Failure to Make Proper Findings Regarding Damaged Wood Members)

3 102. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
4 conjunction with Cal. Code of Regs. Title 16 §§ 1990(a)(4) and 1990(e) in that Respondents
5 failed to report the following:

6 a. Decay fungi damage at the interior flooring in unit 9344 A, adjacent to the front door,
7 on the 11/11/13 Report, 12/19/13 Supp. Report and 6/9/14 Report.

8 b. Decay fungi damage at the interior flooring in unit 9344 A, adjacent to the back door,
9 on the 11/11/13 Report.

10 c. Decay fungi damage at the front porch railing on unit 9344 A on the 11/11/13 Report
11 and 12/19/13 Supp. Report.

12 d. Decay fungi damage at the exterior framing and siding on unit 9344 A on the
13 11/11/13 Report and 12/19/13 Supp. Report. Respondents failed to report the full extent of the
14 decay fungi damage at the exterior siding on unit A on the 6/9/14 Report.

15 e. Decay fungi damage at the water heater cabinet framing on unit 9344 B on the
16 11/11/13 Report and 12/19/13 Supp. Report.

17
18 **NINETEENTH CAUSE FOR DISCIPLINE**

19 (Failure to Provide Information Regarding All Accessible Areas)

20 103. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
21 conjunction with Cal. Code of Regs. Title 16 § 1990(e) in that Respondents failed to make a
22 proper finding regarding the reported decay fungi damage at the washroom doorframe and floor
23 of the 12/19/13 Supp. Report for unit 9344 A. These areas were not reported as being
24 inaccessible on the 11/11/13 Report.

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1 e. The reported inaccessible area in the substructure of unit 9344 A and 9344 B was
2 improperly categorized as a Section II finding and recommendation on the 6/9/14 Report rather
3 than as a "Further Inspection" finding and recommendation.

4 f. The reported in accessible area below the front porch was improperly categorized as a
5 Section II finding and recommendation on the 6/9/14 Report rather than as a "Further Inspection"
6 finding and recommendation.

7
8 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

9 (Failure to Issue a Proper WDO Inspection Report)

10 106. Respondents are subject to disciplinary action under §§ 8516(b)(6), 8516(b)(7) and
11 8516(b)(10) in that Respondents failed to make a proper finding regarding the following:

12 a. Reported termite damaged wood members at unit 9344 A and unit 9344 B on the
13 6/9/14 Report. The findings failed to identify the species of termite responsible for the damage
14 and/or recommendations for corrective measures.

15 b. Possible plumbing leak at the master bedroom shower head in unit 9344 A on the
16 6/9/14 Report.

17
18 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

19 (Failure to Make Proper WDO Recommendations)

20 107. Respondents are subject to disciplinary action under § 8516(b)(10) in that
21 Respondents failed to make recommendations regarding the following:

22 a. Reported termite damaged wood members at unit 9344 A and unit 9344 B on the
23 6/9/14 Report.

24 b. Reported excessive moisture and water stains in the substructure, the water stains on
25 the interior ceilings, and moisture damage at the interior of unit 9433 A.

26 c. Reported excessive moisture conditions and water stains at unit 9344 B on the 6/9/14
27 Report.

1 d. Reported inaccessible areas in the substructure of unit 9344 A and unit 9344 B, due to
2 insulation, on the 6/9/14 Report; Respondent failed to make these areas accessible for inspection
3 and to replace the insulation.

4
5 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

6 (Failure to Make Proper Findings Regarding Damaged Wood Members)

7 108. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
8 conjunction with Cal. Code of Regs. Title 16 § 1990(a)(4) in that Respondents failed to make
9 proper findings regarding moisture damage at the laundry room flooring and the cabinet adjacent
10 to the stall shower in unit 9344 A on the 6/9/14 Report.

11
12 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

13 (Failure to Make Proper Findings)

14 109. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
15 that Respondents failed to make a proper finding regarding the reported termite damaged wood at
16 a front porch post on unit 9344 B on the 6/9/14 Report. The damage is decay fungi damage, *not*
17 termite damage.

18
19 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

20 (Failure to Include a Proper Supplemental Report Statement)

21 110. Respondents are subject to disciplinary action under §§ 8516 in conjunction with Cal.
22 Code of Regs. Title 16 § 1993(d) in that Respondents failed to include a proper “supplemental”
23 report statement on the 12/19/13 Supp. Report. Specifically, the statement failed to refer to the
24 original inspection report in such a manner as to clearly identify it.

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1 MARCELO D. GALLO-ROSERO, Co-Partner and FR 43039,
2 ROBERT FRANK ELLETT, OPR 10599 (former BR 3 QM) and
3 EFREM THOMAS ALVAREZ, OPR 12669 (current BR 3 QM)
4

5 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

6 (Failure to Make Proper Finding and/or Recommendation)

7 111. Respondents are subject to disciplinary action under §§ 8516(b)(6), 8516(b)(7) and
8 8516(b)(10) in conjunction with Cal. Code of Regs. Title 16 §§ 1990(b)(5), 1990(e), and
9 1991(a)(5) in that Respondents failed to make a proper finding and/or recommendation regarding
10 the reported decay fungi and/or decay fungi damage on the 7/10/14 Report, 7/10/14 Supp. Report,
11 and *revised* 7/10/14 Supp. Report. The findings failed to identify the excessive moisture condition
12 responsible for the infections, and/or failed to include a recommendation to correct the excessive
13 moisture condition responsible for the infections.
14

15 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

16 (Failure to Make Proper Recommendation For Corrective Measures)

17 112. Respondents are subject to disciplinary action under §§ 8516(b)(10) in conjunction
18 with Cal. Code of Regs. Title 16 § 1991(a)(5) in that Respondents failed to make a proper
19 recommendation regarding the reported decay fungi and/or decay fungi damage on the 7/10/14
20 Report and 7/10/14 Supp. Report.
21

22 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

23 (Failure to Make Proper Findings Regarding Infestations)

24 113. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
25 conjunction with Cal. Code of Regs. Title 16 §§ 1990(a)(3) and 1990(e) in that Respondents
26 failed to report the full extent of the evidence of subterranean termites in the substructure of unit
27 9344 A and 9344 B on the 7/10/14 Report.
28

1 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

2 (Failure to Issue a Proper Inspection Report)

3 118. Respondents are subject to disciplinary action under § 8516(c) in conjunction with
4 Cal. Code of Regs. Title 16 § 1990(f) based on the following:

5 a. Respondents failed to issue a proper “separated” inspection report. On the 7/10/14
6 Report for unit 9344 A, the reported excessive moisture condition was improperly categorized as
7 a Section II finding and recommendation. The excessive moisture condition caused decay fungi
8 damage, which would it a Section I finding and recommendation.

9 b. Respondents failed to issued a proper “separated” inspection report. On the 7/10/14
10 Report for units 9344 A and unit 9344 B, the reported cellulose debris was improperly
11 categorized as a Section II finding and recommendation. Evidence of subterranean termites
12 found in the cellulose debris would make it a Section I finding and recommendation.

13
14 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

15 (Failure to Include a Proper Supplemental Report Statement)

16 119. Respondents are subject to disciplinary action under §§ 8516 in conjunction with Cal.
17 Code of Regs. Title 16 § 1993(d) in that Respondents corrected, added or modified information in
18 a previous inspection report. Accordingly, the 7/10/14 Report should have been identified as a
19 “supplemental” report.

20
21 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

22 (Failure to Provide Description of Inspected Premises)

23 120. Respondents are subject to disciplinary action under § 8516(b)(5) in conjunction with
24 Cal. Code of Regs. Title 16 § 1990(a) in that Respondents failed to include a proper general
25 description of the building or premises inspected on the 7/10/14 Report. The incident properties
26 consist of two mobile homes, *not one*.

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FORTIETH CAUSE FOR DISCIPLINE

(Failure to Make a Proper Finding and Recommendation)

124. Respondents are subject to disciplinary action under §§ 8516(b)(6), 8516(b)(7) and 8516(b)(10) in conjunction with Cal. Code of Regs. Title 16 § 1990(e) based on the following:

a. Respondents failed to make a proper finding and recommendation regarding the reported surface fungus damage on the 7/10/14 Supp. Reports. The findings should have reported decay fungi damage, not just surface fungus damage and the recommendations should have recommended removing and replacing the damage, not just scraping and treating it.

b. Respondents failed to make a proper finding and recommendation regarding the inaccessible areas in the substructure of unit 9344 B on the 7/10/14 Supp. Report. It was not reported that some of the insulation would have to be replaced by Respondents in order to complete the required work.

FORTY-FIRST CAUSE FOR DISCIPLINE

(Failure to Make Proper WDO Recommendations)

125. Respondents are subject to disciplinary action under § 8516(b)(10) in that Respondents failed to make recommendations regarding the following:

a. Reported water stains at the interior ceilings on the 7/10/14 Supp. Report and the *revised* 7/10/14 Supp. Report. The recommendations failed to include a recommendation to prime and re-paint the stains.

b. Reported earth-to-wood contact at the front porch posts on unit 9344 A and 9344 B on the 7/10/14 Supp. Reports and *revised* 7/10/14 Supp. Reports. The recommendations give the option of heavily treating the earth-to-wood contacts, which have to be broken, not just treated.

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1 **FORTY-SECOND CAUSE FOR DISCIPLINE**

2 (Failure to Provide Information Regarding All Accessible Areas)

3 126. Respondents are subject to disciplinary action under §§ 8516(b)(6) and 8516(b)(7) in
4 conjunction with Cal. Code of Regs. Title 16 § 1990(e) in that Respondents failed to make a
5 proper finding on the 7/10/14 Supp. Report. Specifically, the finding fails to identify the water
6 damage described in the recommendation.

7
8 **FORTY-THIRD CAUSE FOR DISCIPLINE**

9 (Failure to Issue a Proper Inspection Report)

10 127. Respondents are subject to disciplinary action under § 8516(c) in conjunction with
11 Cal. Code of Regs. Title 16 § 1990(f) in that Respondents failed to make a proper finding
12 regarding the following:

13 a. Reported earth-to-wood contact at the front porch posts at unit 9344 B on the 7/10/14
14 Supp. Report. Since the earth-to-wood contact resulted in decay fungi damage, it should have
15 been a Section I finding and recommendation, *not* a Section II finding and recommendation.

16 b. Reported plumbing leaks in the substructure at unit 9344 B on the 7/10/14 Supp.
17 Report. The leaks were improperly categorized as a Section I finding and recommendation. Since
18 some of the plumbing leaks resulted in decay fungi damage, and some did not, there should have
19 also been a plumbing leak finding and recommendation categorized as Section II.

20
21 **FORTY-FOURTH CAUSE FOR DISCIPLINE**

22 (Failure to Make Proper Finding and/or Recommendation)

23 128. Respondents are subject to disciplinary action under §§ 8516(b)(6), 8516(b)(7) and
24 8516(b)(10) in conjunction with Cal. Code of Regs. Title 16 §§ 1990(b)(5) and 1990(e) in that
25 Respondents failed to make a proper finding and/or recommendation regarding the reported
26 excessive moisture condition (water damage) at the kitchen ceiling in unit 9344 B. The
27 recommendation failed to include a recommendation to have the excessive moisture condition
28 responsible for the damage corrected.

1 **DISCIPLINARY CONSIDERATIONS**

2 *Robert Frank Ellett*

3 129. On or around November 25, 2009, the Respondent Robert Frank Ellett's Field
4 Representative License FR 38541, Branch 3, was revoked and revocation stayed for three (3)
5 years with terms and conditions. Respondent Ellett was ordered to pay cost recovery to the Board
6 in the amount of \$1,230.00. The underlying circumstances are that Respondent Ellett failed to
7 provide the Board with verifiable documentation demonstrating that he completed the continuing
8 education requirements as a condition of renewal of his license.

9
10 **PRAYER**

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

13 1. Revoking or suspending Company Registration Certificate Number PR 6434, issued
14 to Southland Pest Control; Marcelo D. Gallo-Rosero, Shamiran K. Gallo;

15 2. Revoking or suspending Field Representative Number FR 43039, Branches 2 and 3
16 issued to Marcelo D. Gallo-Rosero.;

17 3. Revoking or suspending Applicator License Number RA 52115, Branches 2 and 3
18 issued to Shamiran K. Gallo;

19 4. Revoking or suspending Operator License Number OPR 11816, Branch 2 issued to
20 Patrick Sullivan Miller, Southland Pest Control.;

21 5. Revoking or suspending Field Representative License Number FR 47727, Branch 3
22 issued to Patrick Sullivan Miller, Southland Pest Control;

23 6. Revoking or suspending Operator License Number OPR 12669, Branch 3 issued to
24 Efre Thomas Alvarez;

25 7. Revoking or suspending Operator License Number OPR 10599, Branches 2 and 3
26 issued to Robert Frank Ellett, Southland Pest Control.;

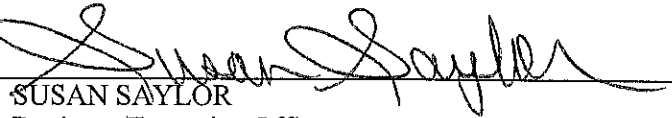
27 8. Ordering Marcelo D. Gallo-Rosero, Shamiran K. Gallo, Patrick Sullivan Miller,
28 Efre Thomas Alvarez and Robert Frank Ellett to pay the Structural Pest Control Board the

1 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
2 Professions Code section 125.3;

3 9. Ordering restitution of all damages according to proof suffered by L.P.⁵, as a
4 condition of probation in the event probation is ordered pursuant to Govt. Code § 11519(d);

5 10. Taking such other and further action as deemed necessary and proper.
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9 DATED: 1/16/15



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

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28 ⁵ Initials used to protect consumer complainant confidentiality.