

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
4 State Bar No. 274129
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

Date 4/5/17 By

Susan Saylor

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. 2017-57

13 **PRO FUMES,**
14 **DEVLIN J. ADAMS, OWNER,**
15 **TIMOTHY BOWER, QUALIFYING MANAGER**
10035 S. Western Avenue
Los Angeles, CA 90047
16 **Company Registration Certificate No. PR 6771, Br. 1**

A C C U S A T I O N

17 **DEVLIN J. ADAMS**
4363 Candalaria Way
Perris, CA 92571
18 **Operator's License No. OPR 10341, Br. 1 and 3**

19 10035 S. Western Avenue
Los Angeles, CA 90047
20 **Field Representative's License No. FR 37558, Br. 2**

21 **TIMOTHY ALLEN BOWER**
10035 S. Western Avenue
Los Angeles, CA 90047
22 **Operator's License No. OPR 11817, Br. 1**

23 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

6 2. On or about May 17, 2013, the Structural Pest Control Board issued Company
7 Registration Certificate Number PR 6771 in Branch 1 to Pro Fumes, with Devlin Adams as the
8 Owner and Timothy Bower as the Qualifying Manager ("Respondent Pro Fumes"). Respondent
9 Pro Fumes' Company Registration Certificate was in full force and effect at all times relevant to
10 the charges brought herein.

11 3. On or about November 29, 2000, the Structural Pest Control Board issued Operator's
12 License Number OPR 10341 in Branch 3 to Devlin J. Adams ("Respondent Adams"). On or
13 about July 29, 2009, Operator's License Number OPR 10341 was upgraded to include Branches 1
14 and 3. Respondent Adams Operator's License was in full force and effect at all times relevant to
15 the charges brought herein and will expire on June 30, 2018, unless renewed.

16 4. On or about June 30, 2004, the Structural Pest Control Board issued Field
17 Representative's License No. FR 37558 in Branch 2 to Respondent Adams. Respondent Adams
18 Field Representative's License was in full force and effect at all times relevant to the charges
19 brought herein and will expire on June 30, 2018, unless renewed.

20 5. On or about March 24, 1997, the Structural Pest Control Board issued Field
21 Representative's License No. FR 27701 in Branch 3 to Respondent Adams. Respondent Adams
22 Field Representative's License was cancelled due to the issuance of a Branch 3 Operator's
23 License on or about November 29, 2000.

24 6. On or about March 19, 2009, the Structural Pest Control Board issued Operator's
25 License Number OPR 11817 in Branch 1 to Timothy Allen Bower ("Respondent Bower").
26 Respondent Bower's Operator's License was in full force and effect at all times relevant to the
27 charges brought herein and will expire on June 30, 2017, unless renewed.

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7. On or about May 11, 1988, the Structural Pest Control Board issued Field Representative's License No. FR 16216 in Branch 1 to Respondent Bower. Respondent Bower's Field Representative's License was cancelled due to the issuance of a Branch 1 Operator's License on or about March 19, 2009.

JURISDICTION

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

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

10. Section 8624 states:

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

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

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

11. Section 8625 states:

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

1 company registration shall not deprive the board of jurisdiction to proceed with any investigation
2 of or action or disciplinary proceeding against such licensee or company, or to render a decision
3 suspending or revoking such license or registration."

4 **STATUTORY PROVISIONS**

5 12. Section 8505.5 states:

6 "(a) Notice of the date and place of fumigation, and chemicals to be used, shall be given by
7 the fumigator to the fire department serving the area in which fumigation is to be performed not
8 less than two hours prior to the time fumigation begins. The fire department shall not charge any
9 fees for any service related to structural pest control activities except for the costs of an
10 emergency response necessitated by illegal or negligent actions.

11 "(b) Notice of each fumigation to be performed shall be given to the commissioner in the
12 county in which the job is to be performed. The notice, which may be mailed or given by
13 telephone, at the option of the commissioner, shall be given at least 24 hours prior to the time
14 fumigation begins, unless the commissioner determines that less time is sufficient. A fee shall not
15 be assessed for processing this notice."

16 13. Section 8505.13 states:

17 "A registered company shall maintain a log of each fumigation job performed by it in this
18 state. The log shall be in the form required by the regulations of the board and shall be preserved
19 for a period of at least three years, during which time it shall be available at all times during
20 business hours for inspection by the board and its authorized representatives."

21 14. Section 8505.17, subdivision (c), states:

22 "Registered structural pest control companies shall prepare and submit to the county
23 agricultural commissioner a monthly report of all pesticides used in that county. The report shall
24 be on a form approved by the Director of Pesticide Regulation and shall contain the name and
25 registration number of each pesticide and the amount used. The report shall be submitted to the
26 commissioner by the 10th day of the month following the month of application and a copy shall
27 be maintained by the licensee for a period of three years after the report submission date. Each
28 pesticide use report or combination of use reports representing a registered structural pest control

1 company's total county pesticide use for the month shall require a pesticide use stamp or stamp
2 number issued by the board in the denomination fixed by the board in accordance with Section
3 8674 as the pesticide use report filing fee. The board shall provide for the sale of these stamps and
4 stamp numbers and for the refund of moneys paid for stamps and stamp numbers which are
5 returned to it unused. When a registered structural pest control company performs no pest control
6 during a month in a county in which it has given notice pursuant to Section 15204 of the Food
7 and Agricultural Code, the registered company shall submit a use report stating this fact to the
8 commissioner. A pesticide use stamp or stamp number is not required on negative use reports."

9 15. Section 8513, subdivision (a), states:

10 "The board shall prescribe a form entitled "Notice to Owner" that shall describe, in
11 nontechnical language and in a clear and coherent manner using words with common and
12 everyday meaning, the pertinent provisions of this state's mechanics lien laws and the rights and
13 responsibilities of an owner of property and a registered pest control company thereunder. Each
14 company registered under this chapter, prior to entering into a contract with an owner for work
15 for which a company registration is required, shall give a copy of this "Notice to Owner" to the
16 owner, his or her agent, or the payer."

17 16. Section 8538 states, in pertinent part:

18 "(a) A registered structural pest control company shall provide the owner, or owner's agent,
19 and tenant of the premises for which the work is to be done with clear written notice which
20 contains the following statements and information using words with common and everyday
21 meaning:

22 "(1) The pest to be controlled.

23 "(2) The pesticide or pesticides proposed to be used and the active ingredient or ingredients.

24 "(3) 'State law requires that you be given the following information: CAUTION—
25 PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and
26 regulated by the Structural Pest Control Board, and apply pesticides which are registered and
27 approved for use by the Department of Pesticide Regulation and the United States Environmental
28 Protection Agency. Registration is granted when the state finds that, based on existing scientific

evidence, there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

“If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center (telephone number) and your pest control company immediately.” (This statement shall be modified to include any other symptoms of overexposure which are not typical of influenza.)

“For further information, contact any of the following: Your Pest Control Company (telephone number); for Health Questions—the County Health Department (telephone number); for Application Information—the County Agricultural Commissioner (telephone number), and for Regulatory Information—the Structural Pest Control Board (telephone number and address).”

17. Section 8636 states:

“Disregard and violation of the buildings laws of the state, or of any of its political subdivisions, or of the safety laws, labor laws, health laws, or compensation insurance laws of the state relating to the practice of structural pest control is a ground for disciplinary action.”

18. Section 8639 states:

“Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one’s license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.”

19. Section 8641 states:

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

20. Section 8642 states:

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

4 21. Section 8646 states:

5 "Disregard and violation of pesticide use and application, structural pest control device,
6 fumigation, or extermination laws of the state or of any of its political subdivisions, or regulations
7 adopted pursuant to those laws, is a ground for disciplinary action."

8 22. Section 8652 states:

9 "Failure of a registered company to make and keep all inspection reports, field notes,
10 contracts, documents, notices of work completed, and records, other than financial records, for a
11 period of not less than three years after completion of any work or operation for the control of
12 structural pests or organisms, is a ground for disciplinary action. These records shall be made
13 available to the executive officer of the board or his or her duly authorized representative during
14 business hours."

15 23. Section 8654 states:

16 "Any individual who has been denied a license for any of the reasons specified in Section
17 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
18 failed to renew his or her license while it was under suspension, or who has been a member,
19 officer, director, associate, qualifying manager, or responsible managing employee of any
20 partnership, corporation, firm, or association whose application for a company registration has
21 been denied for any of the reasons specified in Section 8568, or whose company registration has
22 been revoked as a result of disciplinary action, or whose company registration is under
23 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
24 responsible managing employee had knowledge of or participated in any of the prohibited acts for
25 which the license or registration was denied, suspended or revoked, shall be prohibited from
26 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
27 employee of a registered company, and the employment, election or association of such person by
28 a registered company is a ground for disciplinary action."

1 24. Section 8698.1 states:

2 “(a) Any company that performs a structural fumigation in Los Angeles County, Orange
3 County, Santa Clara County, or San Diego County shall pay to the county agricultural
4 commissioner a fee of eight dollars (\$8) for each fumigation conducted at a specific location.

5 “(b) The fees shall be submitted by the 10th day of the month following the month in which
6 the structural fumigation was performed. The fees shall be accompanied by report that lists the
7 addresses of all locations in that county at which a structural fumigation was performed during
8 the prior month.”

9 25. Food and Agricultural Code section 15204 states:

10 “(a) Each licensed Branch 2 and Branch 3 structural pest control operator qualifying
11 manager, as defined in Section 8506.2 of the Business and Professions Code, and Structural Pest
12 Control Board registered company, as defined in Section 8506.1 of the Business and Professions
13 Code, shall register with the commissioner prior to operating a structural pest control business in
14 the county. The registration shall cover a calendar year. A fee may also be required at the time of
15 registration. The fee shall be set by the county board of supervisors, except that in no case shall
16 the fee exceed the actual cost of processing the registration or ten dollars (\$10), whichever is less.
17 Payment of the fee shall be due by the date designated by the commissioner.”

18 **REGULATORY PROVISIONS**

19 26. California Code of Regulations title 16, section 1970, states, in pertinent part:

20 “For the purpose of maintaining proper standards of safety and the establishment of
21 responsibility in handling the dangerous gases used in fumigation and the pesticides used in other
22 pest control operations, a registered company shall compile and retain for a period of at least three
23 years, a log for each fumigation job and for each pesticide control operation in which a pesticide
24 is used by the registered company or the registered company's employee. If the fumigation is to
25 be performed by a fumigation subcontractor, the subcontractor shall complete the fumigation log
26 and forward a copy of the log to the primary contractor within ten business days.

27 “(a) The log (See Form 43M-47 (Rev. 5/07) at the end of this section) for each fumigation
28 job shall contain the following information:

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2 "Address of property.

3 "Date of fumigation.

4 "Name and address of owner or his or her agent.

5 "Date and hour fire department was notified pursuant to Business and Professions Code
6 section 8505.5.

7 "Date and hour county agricultural commissioner was notified and method of notification,
8 where required.

9 "Property description including type of structure as to details of roofing, walls, and the
10 presence of construction elements, conduits, drains, air ducts, or vacuum systems that could allow
11 the passage of fumigant from the structure to be fumigated to any adjacent or adjoining
12 structure(s), thereby connecting them, and method(s) used to prevent passage of the fumigant.

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14 "Target pest(s).

15 "Kind of fumigant(s) used.

16 "United States Environmental Protection Agency registration number(s) of fumigant(s).

17 "Name of warning agent and amount used."

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19 "(c) The term 'fraudulent act' as used in Section 8642 includes but is not limited to the
20 falsification of any records pertaining to fumigation jobs or other pest control operations in which
21 a pesticide other than a fumigant is used."

22 27. California Code of Regulations title 16, section 1970.4, subdivision (a), states:

23 "The primary contractor for fumigation shall have in his or her possession and shall provide
24 to any subcontractor for fumigation a form (See Form 43M-48 (Rev. 5/07) at the end of this
25 section) signed by the occupants or designated agent of a structure. The primary contractor for
26 fumigation and the subcontractor for fumigation shall retain a copy of the occupants fumigation
27 notice for a period of at least three years. In case of multiple-family dwellings, the owner,
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1 manager or designated agent of the building may obtain signatures and/or verify the notification
2 of the occupants.

3 "The form shall state the name of the pest to be controlled, the pesticide(s)/fumigant(s)
4 proposed to be used, the active ingredient(s) and the health cautionary statement as required under
5 section 8538 of the code. The form shall also state that a lethal gas (poison) will be used in the
6 building on indicated dates and that it is unsafe to return to the building until a certification notice
7 for reentry is posted by the licensed fumigator. The form shall also indicate that the occupant has
8 received the prime contractor's information regarding the procedures for leaving the structure.
9 The properly signed form or a copy, written or electronic, thereof shall be in the possession of the
10 licensed fumigator when the fumigant is released. Such form shall be attached to and become a
11 permanent part of the fumigation log upon completion of the fumigation."

12 **COST RECOVERY**

13 28. Section 125.3 states, in pertinent part, that a Board may request the administrative law
14 judge to direct a licensee found to have committed a violation or violations of the licensing act to
15 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16 **INVESTIGATION NO. 16-536-13-143-16: FUMIGATION LOG REVIEW**

17 29. On or about May 24, 2016, Board Specialist Donald Graves ("Specialist Graves")
18 traveled to Respondent Pro Fumes' address of record to review Respondent Pro Fumes'
19 fumigation logs. After reviewing the fumigation logs, speaking to Respondent Adams, and
20 following-up on information uncovered during the investigation, Specialist Graves discovered a
21 number of violations for several different properties or incidents involving Respondent Pro
22 Fumes.

23 30. **W. 66th Street Property**

24 a. Respondent Pro Fumes' fumigation log for a property on W. 66th street identified
25 S.O. as the prime contractor and Respondent Pro Fumes as the subcontractor. Specialist Graves
26 contacted S.O. and discovered that she is a realtor and does not have a Board issued branch 3
27 license, which was required to be the prime contractor on the project.

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1 b. The notice of intent to fumigate the property on W. 66th street was submitted to the
2 Los Angeles County Agricultural Commissioner ("LA CAC") on October 22, 2016, after
3 fumigation had already taken place on October 21, 2016. The notice of intent is required to be
4 given prior to commencing fumigation.

5 c. Respondent Pro Fumes' fumigation log failed to include information pertaining to
6 when notice of the date and hour of fumigation was given to the local fire department.

7 31. **S. Van Ness Property.** After a request from Specialist Graves, Respondent Pro
8 Fumes failed to turn over the fumigation log, notice of intent to fumigate, Wood Destroying Pest
9 and Organisms inspection report, and notice of completed and not completed work, for a property
10 Respondent Pro Fumes fumigated on S. Van Ness avenue.

11 32. **Denker Avenue Property.** After a request from Specialist Graves, Respondent Pro
12 Fumes failed to turn over the notice of intent to fumigate and Wood Destroying Pest and
13 Organisms report, for a property Respondent Pro Fumes fumigated on Denker avenue.

14 33. **Brook Avenue Property**

15 a. After a request from Specialist Graves, Respondent Pro Fumes failed to turn over the
16 notice of intent to fumigate and Wood Destroying Pest and Organisms report, for a property
17 Respondent Pro Fumes fumigated on Brook avenue.

18 b. Respondent Pro Fumes' fumigation log failed to include information pertaining to
19 when notice of the date and hour of fumigation was given to the local fire department.

20 c. Respondent Pro Fumes' fumigation log did not include information relating to the
21 prime contractor's registration number, the Fumigant / EPA registration number, the fumigant
22 cylinder serial number and the pounds of fumigant applied.

23 34. **Via Quivera Property**

24 a. After a request from Specialist Graves, Respondent Pro Fumes failed to turn over the
25 notice of intent to fumigate for a property Respondent Pro Fumes fumigated on Via Quivera.

26 b. Respondent Pro Fumes' fumigation log failed to include information pertaining to
27 when notice of the date and hour of fumigation was given to the local fire department.

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1 c. Respondent Pro Fumes' fumigation log did not include information relating to the
2 prime contractor's registration number, the Fumigant / EPA registration number, the fumigant
3 cylinder serial number, the pounds of fumigant applied, the warning agent ounces used, the wind
4 miles per hour, the air temperature, the calculator type, and licensee signatures or license
5 numbers.

6 **35. Carp Circle Property**

7 a. After a request from Specialist Graves, Respondent Pro Fumes failed to turn over the
8 notice of intent to fumigate for a property Respondent Pro Fumes fumigated on Carp circle.

9 b. Respondent Pro Fumes' fumigation log failed to include information pertaining to
10 when notice of the date and hour of fumigation was given to the local fire department.

11 c. Respondent Pro Fumes' fumigation log did not include information relating to the
12 prime contractor's registration number, the Fumigant / EPA registration number, the fumigant
13 cylinder serial number and the weight of the cylinder before introduction of fumigant.

14 **36. N. K Street Property**

15 a. After a request from Specialist Graves, Respondent Pro Fumes failed to turn over the
16 notice of intent to fumigate for a property Respondent Pro Fumes fumigated on N. K. street.

17 b. Respondent Pro Fumes' fumigation log failed to include information pertaining to
18 when notice of the date and hour of fumigation was given to the local fire department.

19 c. Respondent Pro Fumes' fumigation log did not include information relating to the
20 prime contractor's registration number, the Fumigant / EPA registration number, the fumigant
21 cylinder serial number and the weight of the cylinder before introduction of fumigant.

22 **37. Elva Avenue Property**

23 a. After a request from Specialist Graves, Respondent Pro Fumes failed to turn over the
24 notice of intent to fumigate for a property Respondent Pro Fumes fumigated on Elva avenue.

25 b. Respondent Pro Fumes' fumigation log failed to include information pertaining to
26 when notice of the date and hour of fumigation was given to the local fire department.

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1 c. Respondent Pro Fumes' fumigation log also did not include information relating to
2 the prime contractor's registration number, the Fumigant / EPA registration number, the fumigant
3 cylinder serial number and the weight of the cylinder before introduction of fumigant.

4 38. **Zythor Fumigant Cylinder No. 305417.** Respondent Pro Fumes used Zythor
5 fumigant cylinder number 305417 on five different fumigations. After being used for five
6 different fumigations, the fumigant cylinder weight actually increased from 97 pounds to 200
7 pounds. Specialist Graves spoke with the distributor of Zythor fumigant who stated that empty
8 cylinders are shipped to China for refill and repair prior to returning to the United States and
9 redistributed to different companies.

10 39. **June 15, 2016, Fumigation Logs**

11 a. On or about June 15, 2016, Specialist Graves requested additional fumigation logs for
12 Respondent Pro Fumes from Respondent Adams. When Respondent Adams transmitted
13 additional fumigation logs to Specialist Graves, many of these fumigation logs were different
14 versions than Specialist Graves had received and reviewed during his May 24, 2016, office
15 inspection. These changes included altered fumigation logs for properties at W. 63rd Street, E.
16 Hyde Park Avenue, Burwood Avenue, Olympiad Drive, and E. 66th Street.

17 b. Many of the new or altered fumigation logs Specialist Graves received following his
18 June 15, 2016, request showed that Respondent Pro Fumes reported using an incorrect dosage of
19 fumigation for properties at Fernwood Drive, E. Hyde Park Avenue, Olympiad Drive, and
20 Timberland Avenue.

21 c. Respondent Pro Fumes prepared a fumigation log for a property at Magee road in San
22 Diego County despite not being registered to perform structural pest control work in San Diego
23 County. Specialist Graves also obtained an occupants notice from the prime contractor on the
24 Magee road property which was different from the one Specialist Graves obtained from Pro
25 Fumes. The version Specialist Graves obtained from Pro Fumes was missing a variety of
26 information, including the date of fumigation, occupant information, owner notification, and
27 listed a different owner/agent signature.

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1 40. **Los Angeles County Agricultural Commissioner Fees.** On or about June 23, 2016,
2 Specialist Graves requested and received a running balance from the LA CAC of fees owed by
3 Respondent Pro Fumes for 2014 through 2016. Any company that performs structural fumigation
4 in Los Angeles County must pay the LA CAC a fee of eight dollars for each fumigation.
5 Respondent Pro Fumes owed LA CAC \$1,696 in unpaid past due fees.

6 41. **Los Angeles County Agricultural Commissioner Inspection.** On or about June 29,
7 2016, an inspector from the LA CAC conducted a pest control headquarters inspection which
8 found that Respondent Pro Fumes was not submitting required monthly pesticide use reports,
9 fumigation logs were not being maintained for three years, pesticide use records were not being
10 maintained for three years, fumigation cylinders were not properly stored and storage did not
11 have a required "warning/danger" sign.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Failure to Give Notice to Fire Department and County Commissioner)**

14 42. Respondent Pro Fumes, Respondent Adams and Respondent Bower (collectively,
15 "Respondents") are subject to disciplinary action under section 8641 and 8646 in conjunction
16 with section 8505.5, subdivisions (a) and (b), and California Code of Regulations title 16, section
17 1970, in that Respondents failed to give notice of the date and place of fumigations and notice of
18 the chemicals to be used to the local fire department and county commissioner where fumigation
19 was performed. Complainant refers to, and by this reference incorporates, the allegations set
20 forth in paragraphs 30 through 37, inclusive, as well as paragraph 39, as though set forth fully.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Failure to Maintain Fumigation Logs)**

23 43. Respondents are subject to disciplinary action under section 8505.13 in conjunction
24 with section 8652, in that Respondents failed to properly maintain fumigation logs for each
25 fumigation job performed and failed to maintain the logs and make the logs open to Board
26 inspection for a period of three years. Complainant refers to, and by this reference incorporates,
27 the allegations set forth in paragraphs 30 through 37, inclusive, as well as paragraphs 39 and 41,
28 as though set forth fully.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence or Fraudulent Acts)**

3 47. Respondents are subject to disciplinary action under section 8642 in conjunction with
4 California Code of Regulations, title 16, section 1970, subdivisions (a) and (c), in that
5 Respondents committed grossly negligent or fraudulent acts. Complainant refers to, and by this
6 reference incorporates, the allegations set forth in paragraphs 30 through 41, inclusive, as though
7 set forth fully.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Pay Agricultural Fees)**

10 48. Respondents are subject to disciplinary action under section 8636 and 8646 in
11 conjunction with, section 8698.1, subdivisions (a) and (b), in that Respondents failed to pay the
12 County Agricultural Commissioner in Los Angeles County the required \$8.00 fee for each
13 fumigation performed. Between the years 2014 through 2016, Respondents accumulated \$1,696
14 in overdue and unpaid fees. Complainant refers to, and by this reference incorporates, the
15 allegations set forth in paragraph 40 as though set forth fully.

16 **INVESTIGATION NO. 17-120-13-27-17: PPM COMPLAINT**

17 49. On or about August 29, 2016, the Board received a complaint from Paul Duncan, the
18 owner of Professional Pest Management ("PPM"), alleging that Respondents acted as the
19 fumigation company subcontractor for PPM during the project for a property at Monterey avenue
20 in Coronado, California, (the "Monterey Project") and that Respondent's actions failed to comply
21 with the Structural Pest Control Act. Aeration began on the Monterey Project on June 11, 2016,
22 and the property was certified for re-entry on June 12, 2016.

23 **50. Monterey Project**

24 a. On or about November 3, 2016, Specialist Graves received the structural fumigation
25 log, the occupants fumigation notice and pesticide disclosure, the itemization of repairs labeled
26 "Termite Debacle" and various invoices for the Monterey Project. Respondents' fumigation log
27 described the structure as "1 story," when the property is 2 stories. The boxes for Respondents'
28 required notifications to the fire department and county agricultural commissioner were blank.

1 Respondents' occupants fumigation notice and pesticide disclosure did not disclose the active
2 ingredient for the pesticide used, failed to include Respondent Pro Fumes telephone number and
3 listed the wrong telephone number for the San Diego County Agricultural Commissioner.

4 b Respondent Pro Fumes' Occupants' Notice showed the fumigant Zythor, but failed to
5 show the active ingredient for Zythor. Respondent Pro Fumes' Occupant's Notice also failed to
6 show Respondent Pro Fumes' telephone number and included the wrong telephone number for
7 the San Diego County Agricultural Commissioner.

8 c. Specialist Graves contacted the San Diego County Agricultural Commissioners'
9 office, which confirmed that Respondent Pro Fumes was not registered to perform structural pest
10 control work in San Diego County.

11 **51. Flora Verde Court Property**

12 a. On or about November 22, 2016, Specialist Graves discovered another property
13 Respondent Pro Fumes fumigated for PPM at Flora Verde court in Santee, California. The
14 structural fumigation log for the project had an inaccurate property description, stating that the
15 property was one story with no garage when the property was two stories with an attached garage,
16 the structural fumigation log also failed to include required information regarding notice given to
17 the fire department and county agricultural commission.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 **(Failure to Give Notice to Fire Department and County Commissioner)**

20 52. Respondents are subject to disciplinary action under section 8641 and 8646 in
21 conjunction with section 8505.5, subdivisions (a) and (b), and California Code of Regulations
22 title 16, section 1970, in that Respondents failed to give notice of the date and place of
23 fumigations and notice of the chemicals to be used to the local fire department and county
24 commissioner where fumigation was performed. Complainant refers to, and by this reference
25 incorporates, the allegations set forth in paragraphs 50 through 51, inclusive, as though set forth
26 fully.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Pay Agricultural Fees)**

3 56. Respondents are subject to disciplinary action under section 8636 and 8646 in
4 conjunction with, section 8698.1, subdivisions (a) and (b), in that Respondents failed to pay the
5 County Agricultural Commissioner in San Diego County the required \$8.00 fee for each
6 fumigation performed. The circumstances include that Respondents failed to pay required fees to
7 the San Diego County Agricultural Commissioner prior to performing fumigation work on the
8 Monterey Project and Flora Verde Property.

9 **DISCIPLINARY CONSIDERATIONS**

10 57. To determine the degree of discipline, if any, to be imposed on Respondents,
11 Complainant alleges the following:

12 **Prior Citations Against Respondent Pro Fumes**

13 a. On or about December 3, 2014, in File No. 36-14-080S, the San Bernardino County
14 Agricultural Commissioner issued a fine in the amount of \$300.00 to Respondent Pro Fumes for
15 violating California Code of Regulations, title 3, section 6604, by failing to assure that an
16 accurate device was used to measure fumigation chemicals while performing structural
17 fumigation work on June 12, 2014. The citation is now final, has been paid, and is incorporated
18 by reference as if set forth fully.

19 b. On or about December 9, 2014, in File No. 13142232, the Los Angeles County
20 Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Pro Fumes for
21 violating California Code of Regulations, title 3, section 6780, subdivisions (b) and (c), by failing
22 to keep inlet devices at least four (4) feet above the ground. The citation is now final, has been
23 paid, and is incorporated by reference as if set forth fully.

24 c. On or about December 14, 2015, in File No. SCP-LA-14/15-243, the Los Angeles
25 County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Pro
26 Fumes for violating Business and Professions Code section 8505.5, subdivision (b), by failing to
27 submit notices of intent to fumigate to the Los Angeles County Agricultural Commissioner for
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multiple properties Respondent Pro Fumes fumigated between August and September of 2014. The citation is now final, has not been paid, and is incorporated by reference as if set forth fully.

d. On or about December 3, 2014, in File No. SCP-ORA-14/15-062, the Orange County Agricultural Commissioner issued a fine in the amount of \$50.00 to Respondent Pro Fumes for violating Business and Professions Code section 8505.17, subdivision (c), by failing to submit a monthly report of all pesticides used in Orange County in March and December of 2014. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

Prior Citations Against Respondent Pro Fumes and Respondent Bower

e. On or about August 31, 2015, in File No. SCP-LA-14/15-186, the Los Angeles County Agricultural Commissioner issued a fine in the amount of \$700.00 to Respondent Pro Fumes and Respondent Bower for violating California Code of Regulations, title 3, section 6780, subdivisions (b) and (c), by failing to allow a minimum of twelve hours of aeration before removing the tarps on a project in February of 2015. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

f. On or about October 6, 2015, in File No. SCP-LA-14/15-217, the Los Angeles County Agricultural Commissioner issued a fine in the amount of \$500.00 to Respondent Pro Fumes and Respondent Bower for violating California Code of Regulations, title 3, section 6780, subdivisions (b) and (c), by failing to properly install inlet devices in order to draw in fresh air for proper aeration on a project in March of 2015. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

g. On or about November 11, 2015, in File No. 607-SCP-SD-15/16, the San Diego County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Pro Fumes and Respondent Bower for violating California Code of Regulations, title 3, section 6780, subdivisions (b) and (c), by failing to install an aeration fan prior to fumigation on a project in October of 2015. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

h. On or about December 30, 2015, in File No. 36-15-118S, the San Bernardino County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Pro Fumes and

1 Respondent Bower for violating Food and Agricultural Code section 12973, by measuring out a
2 fumigation agent, chloropicrin, without proper protective equipment on a project in August of
3 2015. The citation is now final, has been paid, and is incorporated by reference as if set forth
4 fully.

5 i. On or about February 22, 2016, in File No. 615-SCP-SD-15/16, the San Diego
6 County Agricultural Commissioner issued a fine in the amount of \$400.00 to Respondent Pro
7 Fumes and Respondent Bower for violating Food and Agricultural Code section 12973, by failing
8 to have a complete seal on all edges of the tarpaulin that touch the ground as required by the
9 pesticide product label during a project in December of 2015. The citation is now final, has been
10 paid, and is incorporated by reference as if set forth fully.

11 j. On or about August 29, 2016, in File No. SCP-LA -15/16-260, the Los Angeles
12 County Agricultural Commissioner issued a fine in the amount of \$800.00 to Respondent Pro
13 Fumes and Respondent Bower for violating California Code of Regulations, title 3, section 6780,
14 subdivisions (b) and (c), as well as California Code of Regulations, title 3, section 6600,
15 subdivision (a), by failing to assure that the ducting tube is placed in a manner so that fumigant is
16 discharged vertically and failing to keep its equipment in good repair on a project in May of 2016.
17 The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

18 k. On or about October 11, 2016, in File No. SCP-LA -15/16-295, the Los Angeles
19 County Agricultural Commissioner issued a fine in the amount of \$550.00 to Respondent Pro
20 Fumes and Respondent Bower for violating California Code of Regulations title 3, section 6672,
21 subdivision (b), for failing to store pesticide containers in a locked enclosure; for violating
22 California Code of Regulations title 3, section 6674, by failing to post warning signs on pesticide
23 storage; for violating California Code of Regulations, title 16, section 1970, subdivision (a), by
24 failing to have completed fumigation logs with correct information; and, for violating Food and
25 Agricultural Code section 15204.5, subdivision (d)(4), for failing to submit a notice of intent
26 twenty-four hours prior to commencing fumigation on a project in June of 2016. The citation is
27 now final, has not been paid, and is incorporated by reference as if set forth fully.

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1 **Prior Citations Against Respondent Adams**

2 1. On or about April 18, 2006, in Citation No. CF 06-151, the Board issued a fine in the
3 amount of \$2,500.00 to Respondent Adams for violating Business and Professions Code section
4 8648 and California Code of Regulations title 3, section 1999.5, subdivision (f)(13), by using
5 false and misleading advertising by use of the statement "SAFE & EFFECTIVE." That citation is
6 now final, has been paid, and is incorporated by reference as if set forth fully.

7 m. On or about December 10, 2007, in File No. 07082013, the Los Angeles County
8 Agricultural Commissioner issued a fine in the amount of \$100.00 to Respondent Adams for
9 violating California Code of Regulations title 3, section 6630, for failing to conspicuously and
10 legibly mark each service rig and failing to include the correct name, address, and license number
11 for the prime and subcontractor on the notice of intent to fumigate on a project in August of 2007.
12 The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

13 n. On or about December 9, 2014, in File No. 13142237, the Los Angeles County
14 Agricultural Commissioner issued a fine in the amount of \$50.00 to Respondent Adams for
15 violating Business and Professions Code section 8505.17, subdivision (c) for failing to submit
16 pesticide use reports by the 10th day of the month following pesticide use from July 2013 though
17 April 2014. The citation is now final, has been paid, and is incorporated by reference as if set
18 forth fully.

19 o. On or about November 3, 2016, in File No. SCP-LA-15/16-261, the Los Angeles
20 County Agricultural Commissioner issued a fine in the amount of \$300.00 to Respondent Adams
21 for violating California Code of Regulations title 3, section 6600, subdivision (b), by failing to
22 position the ducting tube in a manner to allow the vertical discharge of fumigant and the top of
23 the tube was partially collapsed, there was also a large tear in the tarp that was covering the front
24 of the structure and the tarp was not properly sealed in the back of the property, causing an
25 opening for fumigant to escape on a project in May of 2016. The citation is now final, has not
26 been paid, and is incorporated by reference as if set forth fully.

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Prior Citations Against Respondent Bower

p. On or about December 13, 2010, in File No. 09102142, the Los Angeles County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Bower for violating Business and Professions Code section 8505.7, by failing to secure all entrances to a fumigated structure. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

q. On or about July 3, 2014, in File No. 13142062, the Los Angeles County Agricultural Commissioner issued a fine in the amount of \$2,500.00 to Respondent Bower for violating California Code of Regulations, title 16, section 1974 by failing to post clearly visible warning signs; for violating Food and Agricultural Code section 12973 for failing to remove or double bag food left in the home being fumigated; and for violating Business and Professions Code section 8505.7, by failing to secure all entrances to a fumigated structure. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

r. On or about October 6, 2014, in File No. 13142063, the Los Angeles County Agricultural Commissioner issued a fine in the amount of \$1,000.00 to Respondent Bower for violating California Code of Regulations, title 3, section 6739, subdivision (e)(1), by failing to assure that employees are using a tight-fitting face piece respirator that is tested annually. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

s. On or about July 3, 2014, in File No. 13142074, the Los Angeles County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Bower for violating California Code of Regulations, title 3, section 6780, subdivisions (b) and (c), by failing to correctly install an aeration tube. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

t. On or about February 25, 2014, in File No. 13142073, the Los Angeles County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Bower for violating California Code of Regulations, title 3, section 6600, subdivision (b), by failing to correctly install an aeration tube. The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

1 u. On or about October 28, 2014, in File No. 34-14-008S, the San Bernardino County
2 Agricultural Commissioner issued a fine in the amount of \$300.00 to Respondent Bower for
3 violating California Code of Regulations, title 3, section 6780, subdivision (c), by failing to
4 following aeration requirements for sulfuryl fluoride gas fumigant on a project on September 30,
5 2013. The citation is now final, has been paid, and is incorporated by reference as if set forth
6 fully.

7 v. On or about December 9, 2014, in File No. 13142233, the Los Angeles County
8 Agricultural Commissioner issued a fine in the amount of \$500.00 to Respondent Bower for
9 violating California Code of Regulations, title 3, section 6600, subdivision (b), by failing to
10 install inlet devices that met the minimum required height of 48 inches on a project on May 22,
11 2014. The citation is now final, has been paid, and is incorporated by reference as if set forth
12 fully.

13 w. On or about September 9, 2015, in File No. SCP-LA-14/15-187, the Los Angeles
14 County Agricultural Commissioner issued a fine in the amount of \$700.00 to Respondent Bower
15 for violating California Code of Regulations, title 3, section 6600, subdivision (b), by failing to
16 complete required aeration prior to tarp removal on a project on February 12, 2015. The citation
17 is now final, has been paid, and is incorporated by reference as if set forth fully.

18 x. On or about October 6, 2015, in File No. SCP-LA-14/15-218, the Los Angeles
19 County Agricultural Commissioner issued a fine in the amount of \$1,150.00 to Respondent
20 Bower for violating Business and Professions Code section 8505.10 for failing to post the correct
21 time and date fumigant was injected; for violating California Code of Regulations, title 3, section
22 6600, subdivision (a), by failing to use equipment in good repair; and, for violating California
23 Code of Regulations, title 3, section 6600, subdivision (b), by failing to properly install inlet
24 devices. The citation is now final, has been paid, and is incorporated by reference as if set forth
25 fully.

26 y. On or about December 1, 2015, in File No. SCP-LA-14/15-282, the Los Angeles
27 County Agricultural Commissioner issued a fine in the amount of \$500.00 to Respondent Bower
28 for violating California Code of Regulations, title 3, section 6600, subdivision (b), by failing to

1 perform pest control in a careful and effective matter on a project on June 17, 2015. The citation
2 is now final, has been paid, and is incorporated by reference as if set forth fully.

3 z. On or about June 25, 1998, in File No. 173-SCP-LA-97/98-324, the Los Angeles
4 County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Bower
5 for violating Food and Agricultural Code section 12973, by failing to aerate a home with all the
6 doors and windows open for one hour, at a project on June 9, 1998. The citation is now final, has
7 been paid, and is incorporated by reference as if set forth fully.

8 aa. On or about March 4, 1999, in File No. 022-SCP-LA-98/99-047, the Los Angeles
9 County Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Bower
10 for violating Food and Agricultural Code section 12973, by failing to aerate a home with all the
11 doors and windows open for one hour, at a project on July 21, 1998. The citation is now final, has
12 been paid, and is incorporated by reference as if set forth fully.

13 ab. On or about December 2, 1998, in File No. 041-SCP-LA-98/99-081, the Los Angeles
14 County Agricultural Commissioner issued a fine in the amount of \$400.00 to Respondent Bower
15 for violating Food and Agricultural Code section 12973, by failing to comply with fumigant
16 warning labels by not wearing a self contained breathing apparatus; and, by violating California
17 Code of Regulations, title 3, section 6600, subdivision (a), by failing to perform pest control in a
18 careful and effective manner, at a project on August 4, 1998. The citation is now final, has been
19 paid, and is incorporated by reference as if set forth fully.

20 ac. On or about April 21, 1999, in File No. 98992018, the Los Angeles County
21 Agricultural Commissioner issued a fine in the amount of \$200.00 to Respondent Bower for
22 violating California Code of Regulations, title 16, section 1971, subdivisions (a)(1) and (b), by
23 failing to have two effective gas masks at the job site, at a project on November 25, 1998. The
24 citation is now final, has been paid, and is incorporated by reference as if set forth fully.

25 ad. On or about May 21, 2002, in File No. 01022046, the Los Angeles County
26 Agricultural Commissioner issued a fine in the amount of \$250.00 to Respondent Bower for
27 violating Business and Professions Code section 8505.7, by failing to secure the fumigant
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1 property against reentry, at a project on October 4, 2001. The citation is now final, has been paid,
2 and is incorporated by reference as if set forth fully.

3 ae. On or about November 19, 2002, in Case No. 36-02/03-28, the San Bernardino
4 County Agricultural Commissioner issued a fine in the amount of \$151.00 to Respondent Bower
5 for violating California Code of Regulations, title 3, section 6600, subdivision (b), by failing to
6 perform all pest control in a careful and effective manner, at a project on September 24, 2002.
7 The citation is now final, has been paid, and is incorporated by reference as if set forth fully.

8 af. On or about December 10, 2007, in File No. 07082012, the Los Angeles County
9 Agricultural Commissioner issued a fine in the amount of \$400.00 to Respondent Bower for
10 violating Food and Agricultural Code section 12973, by failing to aerate a fumigated structure for
11 a minimum of one hour. The citation is now final, has been paid, and is incorporated by reference
12 as if set forth fully.

13 **OTHER MATTERS**

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

20 59. Pursuant section 8624, the causes for discipline established as to Company
21 Registration Certificate Number PR 6771, issued to Pro Fumes, with Devlin Adams as the Owner
22 and Timothy Bower as the Qualifying Manager, likewise constitute cause for discipline against
23 Operator's License Number OPR 10341 and Field Representative's License No. FR 37558 issued
24 to Devlin Adams, who served as the Owner of Pro Fumes, during the acts that occurred in this
25 disciplinary action, regardless of whether Devlin Adams had knowledge of or participated in the
26 acts or omissions which constitute cause for discipline against Pro Fumes.

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1 60. Pursuant to Code section 8654, if discipline is imposed on Company Registration
2 Certificate Number PR 6771, issued to Pro Fumes, with Devlin Adams as the Owner and
3 Timothy Bower as the Qualifying Manager, then Devlin Adams, who served as the Owner of Pro
4 Fumes, during the acts that occurred in this disciplinary action, shall be prohibited from serving
5 as an officer, director, associate, partner, qualifying manager, or responsible managing employee
6 for any registered company during the time the discipline is imposed, and any registered company
7 which employs, elects, or associates him, shall be subject to disciplinary action.

8 61. Pursuant section 8624, the causes for discipline established as to Company
9 Registration Certificate Number PR 6771, issued to Pro Fumes, with Devlin Adams as the Owner
10 and Timothy Bower as the Qualifying Manager, likewise constitute cause for discipline against
11 Operator's License Number OPR 11817, issued to Timothy Allen Bower, who served as the
12 Qualifying Manager of Pro Fumes, during the acts that occurred in this disciplinary action,
13 regardless of whether Timothy Allen Bower had knowledge of or participated in the acts or
14 omissions which constitute cause for discipline against Pro Fumes.

15 62. Pursuant to Code section 8654, if discipline is imposed on Company Registration
16 Certificate Number PR 6771, issued to Pro Fumes, with Devlin Adams as the Owner and
17 Timothy Bower as the Qualifying Manager, then Timothy Allen Bower, who served as the
18 Qualifying Manager of Pro Fumes, during the acts that occurred in this disciplinary action, shall
19 be prohibited from serving as an officer, director, associate, partner, qualifying manager, or
20 responsible managing employee for any registered company during the time the discipline is
21 imposed, and any registered company which employs, elects, or associates him, shall be subject
22 to disciplinary action.

23 **PRAYER**

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

26 1. Revoking or suspending Company Registration Certificate Number PR 6771, issued
27 to Pro Fumes, with Devlin Adams as the Owner and Timothy Bower as the Qualifying Manager;

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1 2. Revoking or suspending Operator's License Number OPR 10341, issued to Devlin J.
2 Adams;

3 3. Revoking or suspending Field Representative's License No. FR 37558, issued to
4 Devlin J. Adams;

5 4. Revoking or suspending Operator's License Number OPR 11817, issued to Timothy
6 Allen Bower;

7 5. Prohibiting Devlin J. Adams from serving as an officer, director, associate, partner,
8 qualifying manager or responsible managing employee of any registered company during the
9 period that discipline is imposed on Company Registration Certificate number PR 6771, issued to
10 Pro Fumes, with Devlin Adams as the Owner and Timothy Bower as the Qualifying Manager;

11 6. Prohibiting Timothy Allen Bower from serving as an officer, director, associate,
12 partner, qualifying manager or responsible managing employee of any registered company during
13 the period that discipline is imposed on Company Registration Certificate number PR 6771,
14 issued to Pro Fumes, with Devlin Adams as the Owner and Timothy Bower as the Qualifying
15 Manager;

16 7. Ordering Pro Fumes, with Devlin Adams as the Owner and Timothy Bower as the
17 Qualifying Manager; as well as Devlin J. Adams and Timothy Allen Bower in their individual
18 capacity to pay the Structural Pest Control Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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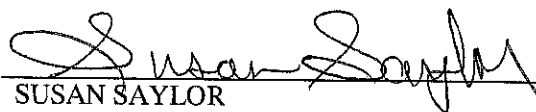
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8. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/17



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

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