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

11 In the Matter of the Accusation Against:

Case No. 2021-31

12 **ACCURATE TERMITE & PEST**
SOLUTIONS, MICHAEL WADE DECK,
13 **Owner and Qualifying Manager**
14 **703 Main Street**
Fortuna, CA 95540
15 **Company Registration Certificate**
No. PR 5516, Branches 2 & 3

ACCUSATION

16 **and**

17 **MICHAEL WADE DECK**
18 **703 Main Street**
19 **Fortuna, CA 95540**
20 **Operator's License No. OPR 11610,**
Branches 2 and 3

21 **and**

22 **BRETT T. MILLER**
23 **703 Main Street**
24 **Fortuna, CA 95540**
25 **Field Representative's License No.**
FR 51076, Branches 2 and 3

26 Respondents.
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1 **PARTIES**

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

5 **Accurate Termite and Pest Solutions – Company Registration Certificate No. PR 5516**

6 2. On or about January 28, 2008, the Board issued Company Registration Certificate
7 Number PR 5516 in Branches 2 and 3 to Accurate Termite and Pest Solutions, with Michael
8 Wade Deck as Owner and Qualifying Manager (Respondent ATPS). The Company Registration
9 Certificate was in full force and effect at all times relevant to the charges brought in this
10 Accusation.

11 **Michael Wade Deck – Operator’s License No. OPR 11610**

12 3. On or about November 20, 2007, the Board issued Operator's License Number OPR
13 11610 in Branches 2 and 3 to Respondent Michael Wade Deck (Respondent Deck). The
14 Operator’s License was in full force and effect at all times relevant to the charges brought in this
15 Accusation, and will expire on June 30, 2022, unless renewed.

16 4. On or about October 16, 2001, the Board issued Field Representative’s License No.
17 FR 33933 in Branch 2 to Respondent Deck. On May 23, 2002, the Field Representative’s License
18 was upgraded to include Branches 2 and 3. The Board cancelled the Field Representative’s
19 License No. FR 33933 on November 20, 2007, due to the issuance of a Branch 2 and 3 Operator’s
20 License.

21 5. On or about November 6, 2000, the Board issued Applicator’s License Number RA
22 16430 in Branches 2 and 3 to Respondent Deck. On October 16, 2001, the Board downgraded
23 the Applicator’s License No. RA 16430 to include Branch 3 only, due to the issuance of a Branch
24 2 Field Representative’s License. The Board cancelled the Applicator’s License on November 6,
25 2003, due to non-renewal.

26 **Brett T. Miller – Field Representative License No. FR 51076**

27 6. On or about January 20, 2016, the Board issued Field Representative’s License No.
28 FR 51076 in Branch 3 to Respondent Brett T. Miller (Respondent Miller). On May 16, 2016, the

1 Board upgraded the license to include Branch 2. On March 1, 2018, Field Representative's
2 License No. FR 51076 became affiliated with Accurate Termite & Pest Solutions when
3 Respondent Miller became an employee (ATPS). Field Representative's License No. FR 51076
4 was in full force and effect at all times relevant to the charges brought in this Accusation and will
5 expire on June 30, 2021, unless renewed.

6 **JURISDICTION**

7 7. This Accusation is brought before the Board under the authority of the following
8 laws. All section references are to the Business and Professions Code (Code) unless otherwise
9 indicated.

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

14 9. Code section 8624 states:

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

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

19 The performance by any partnership, corporation, firm,
20 association, or registered company of any act or omission constituting a
cause for disciplinary action, likewise constitutes a cause for
21 disciplinary action against any licensee who, at the time the act or
22 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.

23 10. Code section 8625 states:

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

11. Code section 8654 states:

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

STATUTORY PROVISIONS

12. Code section 8506.2 states:

“A ‘qualifying manager’ is the licensed operator or operators designated by a registered company to supervise the daily business of the company and to be physically present at the principal office or branch office location for a minimum of nine days every three consecutive calendar months to supervise and assist the company's employees. These days shall be documented and provided to the board upon request.”

13. Code section 8516, subdivision (b) states, in relevant part:

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

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

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

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1 A written inspection report conforming to this section and on a
2 form approved by the board shall be prepared and delivered to the
3 person requesting the inspection or to the person's designated agent
4 within 10 business days of the inspection, except that an inspection
5 report prepared for use by an attorney for litigation purposes is not
6 required to be reported to the board. The report shall be delivered
7 before work is commenced on any property. The registered company
8 shall retain for three years all original inspection reports, field notes,
9 and activity forms.

10 Reports shall be made available for inspection and reproduction
11 to the executive officer of the board or his or her duly authorized
12 representative during business hours. Original inspection reports or
13 copies thereof shall be submitted to the board upon request within
14 two business days.

15 . . .

16 (5) A general description of the building or premises inspected.

17 (6) A foundation diagram or sketch of the structure or structures or
18 portions of the structure or structures inspected, including the approximate
19 location of any infested or infected areas evident, and the parts of the
20 structure where conditions that would ordinarily subject those parts to attack
21 by wood destroying pests or organisms exist. Reporting of the infested or
22 infected wood members, or parts of the structure identified, shall be listed in
23 the inspection report to clearly identify them, as is typical in standard
24 construction components, including, but not limited to, siding, studs, rafters,
25 floor joists, fascia, subfloor, sheathing, and trim boards.

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

. . .

(10) Recommendations for corrective measures.

14. Code section 8519 states:

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

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1 Any licensee who makes an inspection report pursuant to Section 8516,
2 shall, if requested by the person ordering such inspection report, prepare and
deliver to such person or his designated agent, a certification, to provide:

3 (a) When the inspection report prepared pursuant to Section 8516 has
4 disclosed no infestation or infection: 'This is to certify that the above property
was inspected on _____ (date) in accordance with the
5 Structural Pest Control Act and rules and regulations adopted pursuant
thereto, and that no evidence of active infestation or infection was found.'

6 (b) When the inspection report prepared pursuant to Section 8516
7 discloses infestation or infection and the notice of work completed prepared
pursuant to Section 8518 indicates that all recommendations to remove that
8 infestation or infection and to repair damage caused by that infestation or
infection have been completed: 'This is to certify that the property described
9 herein is now free of evidence of active infestation or infection.'

10 (c) When the inspection report prepared pursuant to Section 8516
discloses infestation or infection and the notice of work completed prepared
11 pursuant to Section 8518 indicates that the licensee has not completed all
recommendations to remove that infestation or infection or to repair damage
12 caused by it: 'This is to certify that the property described herein is now free
of evidence of active infestation or infection except as follows:
13 _____ (describing infestations, infections, damage or
evidence thereof, excepted).'

14 Such certificate shall be accompanied by a copy of the inspection report
15 prepared pursuant to Section 8516, and by a copy of the notice of work
completed pursuant to Section 8518, if any such notice has been
16 prepared at the time of the certification, or such certification may be endorsed
on and made a part of that inspection report or notice of work completed.

17 15. Code section 8610, subdivision (c) states:

18 “(c) Each registered company shall designate an individual or individuals who hold an
19 operator’s license to act as its qualifying manager or managers. The qualifying manager or
20 managers must be licensed in each branch of pest control in which the company engages in
21 business. The designated qualifying manager or managers shall supervise the daily business of
22 the company and shall be available to supervise and assist all employees of the company, in
23 accordance with regulations which the board may establish.”

24 16. Code section 8636 states:

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

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1 17. Code section 8638 states:

2 “Failure on the part of a registered company to complete any operation or construction
3 repairs for the price stated in the contract for such operation or construction repairs or in any
4 modification of such contract is a ground for disciplinary action.”

5 18. Code section 8641 states:

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

10 19. Code section 8646 states:

11 “Disregard and violation of pesticide use and application, structural pest control device,
12 fumigation, or extermination laws of the state or of any of its political subdivisions, or regulations
13 adopted pursuant to those laws, is a ground for disciplinary action.”

14 20. Code section 8647 states:

15 “Failure to comply in the sale or use of pesticides with the provisions of Chapter 2
16 (commencing with Section 12751) of Division 7 of the Food and Agricultural Code is a ground
17 for disciplinary action.”

18 **REGULATORY PROVISIONS**

19 21. California Code of Regulations, title 16, section 1918, states:

20 “‘Supervise’ as used in Business and Professions Code Sections 8506.2, 8610 and 8611
21 means the oversight, direction, control, and inspection of the daily business of the company and
22 its employees, and the availability to observe, assist, and instruct company employees, as needed
23 to secure full compliance with all laws and regulations governing structural pest control.

24 “In cases of ownership of more than one registered company by the same sole owner,
25 corporation or partnership where the qualifying manager or managers cannot supervise each
26 registered company because of the location of the companies, the qualifying manager or
27 managers may designate an individual or individuals licensed as an operator or as a field
28 representative in the branch or branches of business being conducted to supervise the company.

1 This designated supervisor or supervisors must be under the direct supervision of the qualifying
2 manager or managers. Any such designation of supervisors does not relieve the qualifying
3 manager or managers of responsibility to supervise as required in sections 8506.2 and 8610.”

4 22. California Code of Regulations, title 16, section 1990, states, in relevant part:

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

9 . . .

10 “(3) Infestations, infections or evidence thereof.

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

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

14 . . .

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

17 . . .

18 “(5) Commonly controllable moisture conditions which would foster the growth of a
19 fungus infection materially damaging to woodwork.

20 . . .

21 “(e) Information regarding all accessible areas of the structure including but not limited to
22 the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents,
23 abutments, stucco walls, columns, attached structures or other parts of a structure normally
24 subject to attack by wood-destroying pests or organisms.

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

27 ““This is a separated report which is defined as Section I/Section II conditions evident on
28 the date of the inspection. Section I contains items where there is visible evidence of active

1 infestation, infection or conditions that have resulted in or from infestation of infection. Section II
2 items are conditions deemed likely to lead to infestation or infection but where no visible
3 evidence of such was found. Further inspection items are defined as recommendations to inspect
4 area(s) which during the original inspection did not allow the inspector access to complete the
5 inspection and cannot be defined as Section I or Section II.”

6 23. California Code of Regulations, title 16, section 1991, states, in relevant part:

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

11 “(1) Comply with the provisions of section 2516(c)(1) of Title 24 of the California Code of
12 Regulations.

13 . . .

14 “(5) Structural members which appear to be structurally weakened by wood-destroying
15 pests to the point where they no longer serve their intended purpose shall be replaced or
16 reinforced. Structural members which are structurally weakened by fungus to the point where
17 they no longer serve their intended purpose shall be removed or, if feasible, may remain in place
18 if another structural member is installed adjacent to it to perform the same function, if both
19 members are dry (below 20% moisture content), and if the excessive moisture condition
20 responsible for the fungus damage is corrected. Structural members which appear to have only
21 surface fungus damage may be chemically treated and/or left as is if, in the opinion of the
22 inspector, the structural member will continue to perform its originally intended function and if
23 correcting the excessive moisture condition will stop the further expansion of the fungus.

24 . . .

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

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

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

recommendation is made for local treatment, the report must contain the following statement:

ALocal treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.)

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

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

“(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible, except where a licensee is using an above ground termite bait station that requires the use of the termite tubes to be effective. Where a licensee is using an above ground termite bait station that requires the use of termite tubes to be effective, subterranean termite tubes can remain in place for the duration of the licensee=s use of the termite bait stations. At the conclusion of the treatment, the subterranean termite tubes shall be removed.

...

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

FACTUAL ALLEGATIONS

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2 28. On August 29, 2019, Respondent Miller, a Field Representative employed by
3 Respondent Accurate Termite & Pest Solutions (ATPS), inspected a property located in Samoa,
4 California (Samoa property). After completing the inspection, Respondent Miller prepared a
5 Wood Destroying Pests and Organisms Inspection Report (WDO report). On September 27,
6 2019, buyer H.G. used the WDO report to close escrow on the Samoa property. In order to
7 finalize the sale, H.G. had 60 days to have the repairs identified in the WDO report completed,
8 including providing the escrow company with a Section 1 certification of the repairs.

9 29. Respondent Miller recommended unlicensed handyperson K.N. to facilitate the
10 required repairs for \$1,872. In the process of completing the repairs, K.N. discovered damage to
11 the Samoa property that far exceeded the identified issues in Respondent Miller’s WDO report.
12 In particular, Respondent Miller’s WDO report failed to identify extensive framing-related
13 damage due to fungus, termite, and beetle damage, among other issues. K.N. alerted Respondent
14 Miller and H.G. about her findings.

15 30. On November 11, 2019, Respondent Miller issued a reinspection WDO report in
16 which he certified that all Section 1 repairs identified in the August 29, 2019 WDO report were
17 completed. The reinspection WDO report partially acknowledged the damage identified by K.N.;
18 however, Respondent Miller characterized the damage as not being visible from the Samoa
19 property’s substructure area. Respondent Miller also contended that because the damage was not
20 visible, ATPS did not have a responsibility to address the damages K.N. identified.

21 31. During the month of December 2019, H.G. obtained property damage repair estimates
22 from three separate licensed contractors. The contractors’ bids ranged from \$64,085.00 to
23 \$68,969.00.

24 32. On January 29, 2020, H.G. hired Strickland Termite Control (Strickland) to complete
25 another WDO inspection of the Samoa property and investigate the framing-related issues
26 identified by K.N. In its January 29, 2020 report, Strickland concluded that the property damage,
27 including subterranean termites, fungus, powderpost beetles, and dryrot, was visible from the
28 Samoa.

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2 property's substructure area. Strickland also identified inaccessible areas to the rear of the
3 Sonoma property that were not identified in Respondent Miller's WDO report.

4 33. On February 18, 2020, H.G. filed a written complaint with the Board, alleging that
5 Respondents ATPS and Miller failed to identify damage and address necessary repairs on the
6 Samoa property prior to the close of escrow. She alleged that Respondents ATPS and Miller
7 overlooked the visible damage K.N., three contractors, and Strickland identified. H.G. also
8 explained that she would not have purchased the Samoa property had Respondents ATPS and
9 Miller advised her of the damage and provided an accurate quote to fix the damage.

10 34. On July 8, 2020, a Board investigator initiated a formal investigation of H.G.'s
11 complaint and visited the Samoa property. The Board investigator concurred with Respondent
12 Strickland's conclusion that the damage was visible from the Samoa property's subarea.

13 35. On July 30, 2020, the Board investigator interviewed Respondents Deck and Miller.
14 He showed them photographs of the damage at the Samoa property, and explained his findings.
15 Respondent Miller admitted that he had not completed a bona fide inspection of the Samoa
16 property and rushed the WDO inspection. Respondent Miller also acknowledged that he did not
17 recommend removing or masking frass from the wood boring beetles at the Samoa property, and
18 that he incorrectly concluded that the product Talstar Pro may be used to combat all beetle
19 infestations. The Talstar Pro product label provides that Talstar Pro "is not intended to be a
20 substitution for...fumigation to control extensive infestations of wood-infesting insects."

21 36. Respondent Deck initially agreed to take responsibility for the flawed report and
22 correct the identified property damage. He agreed to bring the Samoa property into compliance at
23 no charge to H.G. Respondent Deck also agreed with the Board investigator that Respondent
24 Miller did not perform a bona fide inspection on the Samoa property. On August 12, 2020,
25 Respondent Deck emailed the Board investigator to reconfirm his intention to "do whatever it
26 takes to make H.G. happy."

27 37. On September 10, 2020, Respondent Deck withdrew from his commitment to
28 complete the repairs, stating that he could not afford to pay the \$60,000 to \$90,000 required to

1 bring the Samoa property into compliance. He forwarded the complaint to his insurance company
2 and took no further action to rectify H.G.'s circumstances.

3 38. Based on the inspections by the Board investigator, three private companies, and
4 Respondent Deck's own conclusions, it is estimated that H.G. suffered a financial injury of
5 \$68,969.

6 - *Causes for Discipline Applicable to Respondents ATPS and Deck*

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Facilitated Structural Repairs without Obtaining a Building Permit)

9 39. Respondent ATPS' Registration and Respondent Deck's Operator's License are
10 subject to disciplinary action under Code section 8636 and California Code of Regulations 1991,
11 subdivision (c) in that Respondents facilitated structural repairs to the Samoa property without
12 first obtaining a building permit. The circumstances are more specifically set forth in paragraphs
13 29 and 30, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Failure to Complete Operation or Construction Repairs)

16 40. Respondent ATPS' Registration and Respondent Deck's Operator's License are
17 subject to disciplinary action under Code section 8638, in that after acknowledging that the
18 August 29, 2019 inspection of the Samoa property was inadequate and agreeing to bring the
19 property into compliance, Respondents failed to take action. The circumstances are more
20 specifically set forth in paragraphs 35-38, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Failure to Report Evidence of Fungus and Assorted Pests and Provide Recommendations)

23 41. Respondent ATPS' Registration and Respondent Deck's Operator's License are
24 subject to disciplinary action under Code sections 8641, and 8516, subdivision (b)(6), (7) and (10)
25 in conjunction with California Code of Regulations 1990, subdivisions (a)(3) and (4),
26 (b)(2)(5)(e)(f) and 1991, subdivisions (a)(1), (5), (8), (9) and (11), in that Respondents failed to
27 identify subterranean termite, fungus and wood boring beetle damage and make appropriate
28 recommendations to address the resulting damage. Additionally, Respondents failed to provide a

1 recommendation to address the inaccessible areas to the rear of the Samoa property. The
2 circumstances are more specifically set forth in paragraphs 28-38, above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Failure to Perform a Bona Fide Inspection and Identify all Reportable Conditions)

5 42. Respondent ATPS' Registration and Respondent Deck's Operator's License are
6 subject to disciplinary action under Code section 8641 and 8516, subdivision (b)(6), (7) and (10)
7 in conjunction with California Code of Regulations 1990, subdivisions (a)(3) and (4),
8 (b)(2)(5)(e)(f) and 1991, subdivisions (a)(1), (5), (8), (9) and (11), in that Respondents failed to
9 perform a bona fide inspection on August 29, 2019. The circumstances are more specifically set
10 forth in paragraphs 28-38, above.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 (Failed to Comply with Pesticide Label)

13 43. Respondent ATPS' Registration and Respondent Deck's Operator's License are
14 subject to disciplinary action under Code sections 8646 and Food and Agricultural Code section
15 12973, in that the product Talstar Pro was improperly used at the Samoa property to address a
16 beetle infestation. The circumstances are more specifically set forth in paragraph 35, above.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 (Improperly issuing a Certification Pertaining to the Property Being
19 Free of Infestations and Infections)

20 44. Respondent ATPS' Registration and Respondent Deck's Operator's License are
21 subject to disciplinary action under Code sections 8641 and 8519, in that Respondents improperly
22 issued a Certification pertaining to the property being free of infestations and infections. The
23 circumstances are more specifically set forth in paragraphs 28-38, above.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 (Failure to Supervise Employees and Business)

26 45. Respondent ATPS' Registration and Respondent Deck's Operator's License are
27 subject to disciplinary action under Code sections 8506.2, and 8610, subdivision (c), and
28 California Code of Regulations, title 16, section 1918, because as the designated Qualifying

1 Manager for Respondent Accurate Termite & Pest Solutions, Respondent Deck failed to
2 supervise employees, the daily business, and the operations of the company. The circumstances
3 are more specifically set forth in paragraphs 28-38, above.

4 - *Causes for Discipline Applicable to Respondent Miller*

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 (Failure to Report Damage and Give Proper Recommendations)

7 46. Respondent Miller has subjected his Field Representative's License to disciplinary
8 action under Code sections 8641, 8516, subdivision (b)(6), (7) and (10), and California Code of
9 Regulations 1990, subdivisions (a)(3), (4), (b)(2), (5), (e), and (f) and 1991 (a)(1), (5), (8), (9) and
10 (11) in that he failed to report damage and provide proper recommendations in his WDO report.
11 The circumstances are more specifically set forth in paragraphs 28-38, above.

12 **NINTH CAUSE FOR DISCIPLINE**

13 (Failure to Perform a Bona Fide Inspection)

14 47. Respondent Miller has subjected his Field Representative's License to disciplinary
15 action under Code sections 8641 and 8516, subdivision (b)(6), (7) and 10, and California Code of
16 Regulations 1990, subdivisions (a)(3), (4), (b)(2), (5), (e), and (f) and 1991 (a)(1), (5), (8), (9) and
17 (11) in that he acknowledged to the Board investigator that he failed to perform a bona fide
18 inspection of the Samoa property. The circumstances are more specifically set forth in
19 paragraphs 35 and 36, above.

20 **TENTH CAUSE FOR DISCIPLINE**

21 (Failure to Comply with a Pesticide Label)

22 48. Respondent Miller has subjected his Field Representative's License to disciplinary
23 action under Code sections 8646 and 8647, as well as section 12973 of the Food and Agriculture
24 Code, in that he improperly used a pesticide for a job for which it was not intended, as specified
25 on the label. The circumstances are more specifically set forth in paragraph 35, above.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 (Improperly Certifying a Property as Free of Infestations and Infections)

3 49. Respondent Miller has subjected his Field Representative's License to disciplinary
4 action under Code sections 8641 and 8519, in that he improperly certified the Samoa property as
5 being free of infestations and infections in visible areas despite another licensed expert, the Board
6 investigator, and three contractors finding otherwise. The circumstances are more specifically set
7 forth in paragraphs 28-38, above.

8 **OTHER MATTERS**

9 50. Code section 8620 provides, in relevant part, that a respondent may request that a
10 civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of one (1) to
11 nineteen (19) days, or not more than \$10,000 for an actual suspension of twenty (20) to forty-five
12 (45) days. Such request must be made at the time of the hearing and must be noted in the
13 proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed
14 in lieu of a suspension.

15 51. Pursuant to Code section 8624, if Operator's License Number OPR 11610, Branches
16 2 and 3, issued to Respondent Michael Wade Deck, is suspended or revoked, the Board may
17 suspend or revoke Company Registration Certificate Number PR 5516, Branches 2 and 3, issued
18 to Respondent Accurate Termite and Pest Solutions.

19 52. Pursuant to Code section 8624, the causes for discipline established as to Respondent
20 Accurate Termite and Pest Solutions, likewise constitute cause for discipline against Qualifying
21 Manager Michael Wade Deck, regardless of whether the Qualifying Manager had knowledge of
22 or participated in the acts or omissions, which constitute cause for discipline against Respondent
23 Accurate Termite and Pest Solutions.

24 53. Pursuant to Code section 8654, if discipline is imposed on Operator's License
25 Number OPR 11610, Branches 2 and 3, issued to Respondent Michael Wade Deck, then
26 Respondent Deck shall be prohibited from serving as an officer, director, associate, partner,
27 qualifying manager, or responsible managing employee for any registered company during the
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1 time the discipline is imposed, and any registered company which employs, elects, or associates
2 Respondent Deck shall be subject to disciplinary action.

3 54. Pursuant to section 8654, if discipline is imposed on Field Representative's License
4 Number FR 51076 issued to Respondent Brett T. Miller, then Respondent Miller shall be
5 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
6 responsible managing employee for any registered company during the time the discipline is
7 imposed, and any registered company which employs, elects, or associates Respondent shall be
8 subject to disciplinary action.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
11 Accusation, and that following the hearing, the Structural Pest Control Board issue a decision:

- 12 1. Revoking or suspending Company Registration Certificate Number PR 5516,
13 Branches 2 and 3, issued to Accurate Termite and Pest Solutions;
- 14 2. Revoking or suspending Operator's License Number OPR 11610, Branches 2 and 3,
15 issued to Michael Wade Deck;
- 16 3. Prohibiting Michael Wade Deck from serving as an officer, director, associate,
17 partner, qualifying manager, or responsible managing employee of any registered company
18 during the period that discipline is imposed on Operator's License Number OPR 11610, Branches
19 2 and 3, issued to Michael Wade Deck.
- 20 4. Revoking or suspending Field Representative's License Number FR 51076, Branches
21 2 and 3, issued to Brett T. Miller;
- 22 5. Ordering restitution of all damages according to proof suffered by H.G. as a condition
23 of probation in the event probation is ordered;
- 24 6. Prohibiting Brett T. Miller from serving as an officer, director, associate, partner,
25 qualifying manager, or responsible managing employee of any registered company during the
26 period that discipline is imposed on Field Representative License Number FR 51076, Branches 2
27 and 3, issued to Brett T. Miller.

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7. Ordering Accurate Termite and Pest Solutions, Michael Wade Deck, and Brett T. Miller to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 03/9/2021

Susan Saylor

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

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