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FILED

Date 6/15/18 By Susan Saylor

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 2018-31

13 **XTREME PEST ELIMINATION, JOHN**
14 **VAN NGUYEN, OWNER AND**
15 **QUALIFYING MANAGER**
16 **P.O. Box 23174**
17 **San Jose, CA 95153**

FIRST AMENDED ACCUSATION

18 **Company Registration Certificate No. PR**
19 **6365**

20 **JOHN VAN NGUYEN**
21 **165 Blossom Hill Road, Space 146**
22 **San Jose, CA 95123**

23 **Operator License No. OPR 11924**

24 Respondent.

25 Complainant alleges:

26 PARTIES

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

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SCOPE OF DISCIPLINARY AUTHORITY

7. Code section 8624 provides, in pertinent part, that 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.

8. 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registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate,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

9. 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.”

10. Code section 8550, subdivision (a), states:

“(a) It is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.”

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1 11. Code section 8610, subdivision (a), states:

2 “(a) Every company that engages in the practice of structural pest control, as a sole
3 proprietorship, partnership, corporation, or other organization or any combination thereof, shall
4 be registered with the Structural Pest Control Board. Each application for a company registration
5 shall include the name of the company's owner if it is a sole proprietorship, the names of the
6 partners, if it is a partnership, or the names of its officers and shareholders with 10 percent or
7 more ownership interest, if it is a corporation, and the address of the company's principal office in
8 this state.”

9 12. Code section 8613 states:

10 “A registered company which changes the location of its principal office or any branch
11 office or which changes its qualifying manager, branch supervisor, officers, or its bond or
12 insurance shall notify the registrar on a form prescribed by the board of that change within 30
13 days thereafter. A fee for filing those changes shall be charged in accordance with Section 8674.”

14 13. Code section 8639 states:

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

21 14. Code section 8641 states:

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

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1 20. On April 18, 2016, the Board received a Request for Approval of Registered
2 Company form from Respondent Nguyen. The form requested that Respondent Xtreme's name
3 be changed to Antab & SP Pest Elimination (Antab). On May 19, 2016, Board staff sent
4 Respondent Nguyen a notification letter informing him that the requested name style of Antab &
5 SP Pest Elimination had been approved, and that the name style would be reserved for 60 days.
6 The letter included instructions on fees and documents that needed to be submitted to complete
7 Respondent Nguyen's request for a name change. The letter included bold face type advising
8 Respondent Nguyen that if all of the requested documents were not timely received, there would
9 be a delay in the approval process.

10 21. On July 11, 2016, the Board received a Request for Change of Registered Company
11 Name form from Respondent Nguyen, requesting to change Respondent Xtreme's name to Antab.

12 22. On August 1, 2016, the Board notified Respondent Nguyen by letter that both
13 Respondent Xtreme's company registration and Respondent Nguyen's operator license were
14 suspended due to a lack of the required insurance. The Board's letter warned Respondent
15 Nguyen that any pest control activity performed after July 8, 2016 could result in disciplinary
16 action by the Board.

17 23. On or about September 1, 2016, the Board sent Respondent Nguyen a letter informing
18 him that to proceed with the requested name change, Nguyen would need to submit several
19 documents, including a new certificate of insurance for the new company name on a specified
20 form. On or about September 21, 2016, the Board received all of the requested documents with
21 the exception of the certificate of insurance. On or about October 14, 2016, the Board sent
22 Respondent Nguyen another letter requesting the new insurance certificate made out in the new
23 name style of Antab, in order to proceed with the name change request.

24 24. On or about November 7, 2017, the Board received a second Request for Change of
25 Registered Company Name form from Respondent Nguyen requesting the approval of the name
26 style Antab and SP Pest Eliminates. On or about December 14, 2017, the Board received a third
27 Request for Change of Registered Company Name form from Respondent Nguyen, requesting
28 approval of the name style ES & Antab Pest Eliminate. On or about December 20, 2017, the

1 Board received a letter from Respondent Nguyen, dated December 16, 2017, stating that
2 Respondent Xtreme closed for business on December 15, 2017.

3 25. On January 10, 2018, the Board sent Respondent Nguyen a letter informing him of
4 the approval of the name style Antab & SP Pest Eliminates, and requesting various documents
5 and forms. The letter informed Respondent Nguyen that failure to complete all requirements
6 would guarantee a delay in the issuance of the company registration certificate. Respondent
7 Nguyen failed to submit the requested documents.

8 26. On or about February 16, 2018, the Board received information from the Santa Clara
9 County Department of Food and Agriculture (SCDFA), indicating that Xtreme was known to
10 SCDFA as Xtreme Pest Services and Antab, and both entities had filed pesticide use reports
11 (PUR) with SCDFA. The PURs filed by both entities were filed under the registration number for
12 Respondent Xtreme, PR 6365.

13 27. On or about February 28, 2018, a Board investigator met Respondent Nguyen at a
14 storage facility in San Jose, California. Respondent Nguyen claimed to be storing his business
15 records, pesticides, and equipment at the facility, however the facility has not been registered with
16 the Board as a branch office or principal office. Respondent Nguyen admitted that he was
17 performing pest control services during a time when his operator license and Respondent
18 Xtreme's company registration were suspended due to a lack of insurance.

19 28. During the February 28, 2018, meeting with Respondent Nguyen, the Board
20 investigator found Service Order Invoices indicating that Respondent Nguyen performed pest
21 control services throughout 2017.

22 FIRST CAUSE FOR DISCIPLINE
23 (Substantially Related Conviction)
24 (Bus. & Prof. Code § 8649)

25 29. Respondent Xtreme has subjected its Company Registration Certificate to discipline,
26 and Respondent Nguyen has subjected his Operator License to discipline because Respondent
27 Nguyen was convicted of a crime substantially related to the qualifications, functions, and duties
28 of a structural pest control operator, field representative, applicator, or registered company. (Bus.
& Prof. Code § 8649.) The circumstances are set forth in paragraph 19, above.

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SECOND CAUSE FOR DISCIPLINE

(Engaging in Pest Control Without a Valid License)
(Bus. & Prof. Code, §§ 8641, 8550, subd. (a), 8691)

30. Respondent Xtreme has subjected its Company Registration Certificate to discipline, and Respondent Nguyen has subjected his Operator License to discipline in that they engaged in pest control services while their licenses were suspended. (Bus. & Prof. Code, §§ 8641, 8550, subd. (a), 8691.) The circumstances are set forth in paragraphs 20 through 28, above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Notify Board of Change in Principal Office Location)
(Bus. & Prof. Code, § 8613)

31. Respondent Xtreme has subjected its Company Registration Certificate to discipline, and Respondent Nguyen has subjected his Operator License to discipline in that they failed to notify the Board of a change in their principal office location. (Bus. & Prof. Code, § 8613.) The circumstances are set forth in paragraphs 20 through 28, above.

FOURTH CAUSE FOR DISCIPLINE

(Operating Beyond Scope of License)
(Bus. & Prof. Code, § 8651)

32. Respondent Xtreme has subjected its Company Registration Certificate to discipline, and Respondent Nguyen has subjected his Operator License to discipline in that they operated beyond the scope of their licenses. (Bus. & Prof. Code, § 8651.) Specifically, on December 9, 2017, during an inspection and treatment for rodent infestation at a residential property, Respondent Nguyen identified a termite infestation in the attic. Respondent Nguyen's Branch 2 Operator's License does not allow him to identify wood destroying pests and organisms.

FIFTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Unregistered Pest Control Company)
(Bus. & Prof. Code, § 8639)

33. Respondent Nguyen has subjected his Operator License to discipline in that he aided and abetted an unregistered pest control company in performing pest control services when he performed pest control services under the name of an unregistered company, Antab & SP Pest Elimination. (Bus. & Prof. Code, § 8639.) The circumstances are set forth in paragraphs 20 through 28, above.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Failing to Properly Register a Pest Control Service Prior to Commencing Business)
3 (Bus. & Prof. Code, § 8610, subd. (a))


4 34. Respondent Nguyen has subjected his Operator License to discipline in that he failed
5 to properly register the structural pest control company Antab & SP Pest Elimination before
6 commencing business under that name. (Bus. & Prof. Code, § 8610, subd. (a).) The
7 circumstances are set forth in paragraphs 20 through 28, above.

8 PRAYER

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

- 12 1. Revoking or suspending Operator License Number OPR 11924, issued to John Van
13 Nguyen;
- 14 2. Revoking or suspending Company Registration Certificate Number PR 6365, issued
15 to Xtreme Pest Elimination, John Van Nguyen Owner and Qualifying Manager;
- 16 3. Prohibiting John Van Nguyen from serving as an officer, director, associate, partner,
17 qualifying manager, or responsible managing employee of any registered company during the
18 period that discipline is imposed on Operator License No. OPR 11924, issued to John Van
19 Nguyen;
- 20 4. Ordering John Van Nguyen to pay the Structural Pest Control Board the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3; and,
- 23 5. Taking such other and further action as deemed necessary and proper.

24 DATED: 6/15/18



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

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