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1 2	KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General KAREN L. GORDON Deputy Attorney General State Bar No. 137969 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2073 Facsimile: (619) 645-2061 Attorneys for Complainant		
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8	BEFORE THE		
9	STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF PESTICIDE REGULATION		
10	STATE OF CALIFORNIA		
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12	In the Matter of the Accusation Against: Case No. 2011-52		
13	JOSE CERVANTES A C C U S A T I O N 12710 Magnolia Avenue		
14	Riverside, CA 92503		
15	Field Representative License No. FR 40628 Branch 2		
16	Respondent.		
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19	Complainant alleges:		
20	PARTIES		
21	1. William Douglas (Complainant) brings this Accusation solely in his official capacity		
22	as the Interim Executive Officer of the Structural Pest Control Board, Department of Pesticide		
23	Regulation.		
24	2. On or about August 18, 2006, the Structural Pest Control Board issued Field		
25	Representative License Number FR 40628 in Branch 2 to Jose Cervantes (Respondent). The		
26	Field Representative License was in full force and effect at all times relevant to the charges		
27	brought herein and will expire on June 30, 2012, unless renewed.		
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Accusation

3. On or about December 7, 2004, the Structural Pest Control Board issued Applicator License Number RA 42998 to Jose Cervantes (Respondent). The Applicator License was canceled on December 7, 2007.

### JURISDICTION

- 4. This Accusation is brought before the Structural Pest Control Board (Board),
  Department of Pesticide Regulation, under the authority of the following laws. All section
  references are to the Business and Professions Code unless otherwise indicated.
- 5. Section 8620 of the Code 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.
  - 6. Section 8625 of the Code 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 company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

# STATUTORY PROVISIONS

7. Code section 8593 states, in pertinent part:

The board shall require as a condition to the renewal of each operator's and field representative's license that the holder submit proof satisfactory to the board that he or she has informed himself or herself of developments in the field of pest control either by completion of courses of continuing education in pest control approved by the board or equivalent activity approved by the board. In lieu of submitting that proof, the license holder, if he or she so desires, may take and successfully complete an examination given by the board, designed to test his or her knowledge of developments in the field of pest control since the issuance of his or her license.

8. Section 8637 of the Code states:

Misrepresentation of a material fact by the applicant in obtaining a license or company registration is a ground for disciplinary action.

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9. Section 8641 of the Code 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.

10. Section 8654 of the Code 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 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.

#### COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### REGULATORY PROVISIONS

12. California Code of Regulations, Title 16, section 1950(a), states:

Except as provided in section 1951, every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements set forth in this article. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

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#### **FACTS**

- 13. On or about May 15, 2009, Respondent submitted a License Renewal Application to the Board. Respondent certified under penalty of perjury on the form that he had completed the continuing education hours required to renew his license in accordance with regulations.
- 14. On or about December 8, 2009, February 8, 2010, May 11, 2010, and October 5, 2010, the Board sent Respondent written requests instructing him to submit copies of his continuing education certificates for the renewal period to the Board within fourteen (14) days. Respondent was advised that if he failed to comply with the requests, his license would be subject to disciplinary action. Respondent was unable to provide the Board with any continuing education certificates for the renewal period of July 1, 2006 through June 30, 2009.

# FIRST CAUSE FOR DISCIPLINE (Failure to Verify Completion of Continuing Education)

15. Respondent is subject to discipline under section 8641 of the Code on the grounds that Respondent failed to comply with California Code of Regulation, Title 16, section 1950(a), by failing to submit verification of completing continuing education courses by producing certificates of completion for the renewal period of July 1, 2006 through June 30, 2009, as requested by the Board on December 8, 2009, February 8, 2010, May 11, 2010, and October 5, 2010.

# SECOND CAUSE FOR DISCIPLINE (Misrepresentation in Renewing License)

16. Respondent is subject to discipline under section 8637 of the Code for misrepresentation of a material fact on his May 15, 2009 License Renewal Application by stating that he had completed the required continuing education hours to renew his license, when in fact he had not done so.

#### OTHER MATTERS

- 17. Code section 8620 provides, in pertinent part, that a respondent may request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.
- 18. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 40628, issued to Respondent, then Respondent shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Respondent shall be subject to disciplinary action.

## PRAYER

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

- 1. Revoking or suspending Field Representative License Number FR 40628, issued to Jose Cervantes
- 2. Ordering Jose Cervantes 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;

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1	3. Taking such other and further action as deemed necessary and proper.		
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4		Milliam Cauglas	
5	DATED: 4/15/11	WILLIAM DOUGLAS Interim Executive Officer	
6		Structural Pest Control Board	
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