BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ERICK ESCOBAR** **45465 25th Street East, Sutie 180** **Lancaster, CA 93535** **Field Representative's License No. FR 45122** **Applicator License No. RA 50577** Respondent.	Case No. 2011-74 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 21, 2011, Complainant William H. Douglas, in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2011-74 against Erick Escobar (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about January 14, 2010, the Structural Pest Control Board (Board) issued Field Representative's License No. FR 45122 to Respondent. The Field Representative's License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-74 and will expire on June 30, 2012, unless renewed.

3. On or about January 13, 2010, the Structural Pest Control Board issued Applicator License No. RA 50577 to Respondent. The Applicator License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-74 and will expire on January 13, 2013, unless renewed.

4. On or about June 29, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2011-74, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136, is required to be reported and maintained with the Board, which was and is: 45465 25th Street East, Suite 180, Lancaster, CA 93535.

5. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

6. On or about July 1, 2011, the aforementioned documents were delivered to Respondent's address of record by the U.S. Postal Service. A signed Domestic Return Receipt was sent back to the Attorney General's office acknowledging receipt of the aformentioned documents by Respondent.

7. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2011-74.

9. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on

file at the Board's offices regarding the allegations contained in Accusation No. 2011-74, finds that the charges and allegations in Accusation No. 2011-74, are separately and severally, found to be true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $2520.00 as of August 25, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Erick Escobar has subjected his Field Representative's License No. FR 45122 and Applicator License No. RA 50577 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Structural Pest Control Board is authorized to revoke Respondent's Field Representative's License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

Criminal Convictions

a. Respondent is subject to disciplinary action pursuant to Code sections 8649 and 490, subdivision (a), in that he was convicted of crimes which are substantially related to the qualifications, functions, and duties of a field representative and applicator, as follows:

1. On or about May 13, 2009, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Los Angeles County, 2009, Case No. 8AV12197), Respondent pled nolo contendere to violating Penal Code section 273.5, subdivision (a) (corporal injury to spouse, cohabitant, etc., a misdemeanor). The imposition of Respondent's sentence was suspended and Respondent was placed on summary probation for 36 months under terms and conditions, including that Respondent complete a 52 week domestic violence counseling program and obey the protective order issued in the case. The circumstances of the crime are as follows: On or about October 13, 2008, Respondent willfully and unlawfully inflicted corporal injury resulting in a traumatic condition upon his spouse, P. R.

2. On or about October 14, 2010, in the criminal proceeding titled *People v. Erick Escobar and Miguel Escobar* (Super. Ct. Los Angeles County, 2010, Case No. MA050525),

Respondent pled nolo contendere to violating Penal Code section 273.5, subdivision (a) (corporal injury to spouse, cohabitant, etc., a felony). On or about November 3, 2010, Respondent was sentenced to serve 2 years in state prison. The circumstances of the crime are as follows: On or about September 25, 2010, officers with the Los Angeles County Sheriff's Department responded to a residence located in Lancaster regarding a domestic violence in progress call. The officers made contact with the victim, P. R., who related the following. P. R. and her husband, Respondent, were lying in their bed when Respondent began shoving P. R. on her back. P. R. got off of the bed. Respondent got out of the bed, walked behind P. R., and kicked her on the buttocks. P. R. lost her balance and fell forward, then stood up and attempted to walk to the restroom. Respondent stood in front of P. R. and began shoving her on the upper chest. Respondent grabbed P. R. with his hands, began shaking her violently, and pushed her against the dresser. Respondent yelled at P. R. that he was going to hit her. P. R. grabbed a knife from the top of the dresser and stabbed Respondent on his left upper back. Respondent immediately released P. R. and she ran out of the room. As P. R. was near the rear door of the house, Respondent caught up to her and dragged her back into the room. P. R. attempted to dial 9-1-1- using her cell phone, but Respondent forcibly took the phone from her hands and slammed it on the ground. P. R. ran out of the room and out the front door of the house. Respondent followed P. R. out of the house, grabbed her from behind and began choking her, then dragged her back inside the house. Once they were inside, P. R. broke free from Respondent's hold and attempted to run out the front door. As P. R. ran towards the front door, Respondent's father, Miguel Escobar ("Miguel"), stood in front of her and blocked her from exiting the door by grabbing her with both of his arms around her body. P. R. pled with Miguel to release her, but he refused. At that point, the officers had arrived on scene. The above incident occurred while Respondent was on probation for his conviction of May 13, 2009.

Misrepresentations on Respondent's Applications for Licensure

b. On or about July 20, 2009, Respondent submitted an application for an applicator license to the Board. On or about July 10, 2009, Respondent certified under penalty of perjury to the truth and accuracy of all statements and representations made in the application, including all

statements attached thereto, and acknowledged that falsifying information on the application may result in denial of the application or revocation of the license.

c. On or about December 1, 2009, Respondent submitted an application for a field representative's license to the Board. On or about November 9, 2009, Respondent certified under penalty of perjury to the truth and accuracy of all statements and representations made in the application, including all statements attached thereto, and acknowledged that falsifying information on the application may result in denial of the application.

1. Respondent was asked on both applications (question 11 on the application for applicator license and question 9 on the application for field representative's license) whether he had ever been convicted of a felony or misdemeanor other than minor traffic infractions.

2. Respondent is subject to disciplinary action pursuant to Code section 8637 in that he misrepresented a material fact in obtaining his field representative's license and applicator license, as follows: Respondent certified under penalty of perjury on both applications that he had never been convicted of a felony or misdemeanor. In fact, Respondent had been convicted of corporal injury to a spouse on May 13, 2009, and other convictions as set forth above and in the operative Accusation.

Securing a License through Fraud, Deceit, or Knowing Misrepresentation

d. Respondent is subject to disciplinary action pursuant to Code section 498 in that Respondent secured or obtained his field representative's license and applicator's license by fraud, deceit, or knowing misrepresentation of a material fact, as set forth above.

ORDER

IT IS SO ORDERED that Field Representative's License No. FR 45122, and Applicator License No. RA 50577 heretofore issued to Respondent Erick Escobar, are both revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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This Decision shall become effective on November 18, 2011.

It is so ORDERED October 19, 2011

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

60673136.DOC
DOJ Matter ID:LA2011600006

Attachment:

Exhibit A: Accusation

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FILED

Date 6/21/11 By William H. Douglas

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ERICK ESCOBAR** **45465 25th Street East, Suite 180** **Lancaster, CA 93535** **Field Representative's License No. FR 45122** **Applicator License No. RA 50577** Respondent.	Case No. 2011-74 **ACCUSATION**

Complainant alleges:

PARTIES

1. William H. Douglas ("Complainant") brings this Accusation solely in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

2. On or about January 14, 2010, the Board issued Field Representative's License Number FR 45122 ("license") in Branch 3 (termite) to Erick Escobar ("Respondent"), employee of Jeff Hiatt, Inc. On November 3, 2010, Respondent disassociated as an employee of Jeff Hiatt, Inc. due to the cancellation of the firm's company registration certificate, and Respondent's license was placed on inactive status. Respondent's license will expire on June 30, 2012, unless renewed.

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3. On or about January 13, 2010, the Board issued Applicator License Number RA 50577 in Branch 2 (general pest) to Respondent. Respondent's applicator license will expire on January 13, 2013, unless renewed.

STATUTORY PROVISIONS

4. Business and Professions Code ("Code") 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.

5. Code 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 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.

6. 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.

7. Code section 8637 states that "[m]isrepresentation of a material fact by the applicant in obtaining a license or company registration is a ground for disciplinary action."

8. Code section 8649 states:

> Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof.

9. Code section 8655 states:

> A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article or Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

10. Code section 490, subdivision (a), states:

> In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

11. Code section 498 states that "[a] board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

COST RECOVERY

12. Code section 125.3 states, 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.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

13. Respondent is subject to disciplinary action pursuant to Code sections 8649 and 490, subdivision (a), in that he was convicted of crimes which are substantially related to the qualifications, functions, and duties of a field representative and applicator, as follows:

a. On or about May 13, 2009, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Los Angeles County, 2009, Case No. 8AV12197), Respondent pled nolo contendere to violating Penal Code section 273.5, subdivision (a) (corporal injury to spouse, cohabitant, etc.,

a misdemeanor). The imposition of Respondent's sentence was suspended and Respondent was placed on summary probation for 36 months under terms and conditions, including that Respondent complete a 52 week domestic violence counseling program and obey the protective order issued in the case. The circumstances of the crime are as follows: On or about October 13, 2008, Respondent willfully and unlawfully inflicted corporal injury resulting in a traumatic condition upon his spouse, P. R.

b. On or about October 14, 2010, in the criminal proceeding titled *People v. Erick Escobar and Miguel Escobar* (Super. Ct. Los Angeles County, 2010, Case No. MA050525), Respondent pled nolo contendere to violating Penal Code section 273.5, subdivision (a) (corporal injury to spouse, cohabitant, etc., a felony). On or about November 3, 2010, Respondent was sentenced to serve 2 years in state prison. The circumstances of the crime are as follows: On or about September 25, 2010, officers with the Los Angeles County Sheriff's Department responded to a residence located in Lancaster regarding a domestic violence in progress call. The officers made contact with the victim, P. R., who related the following. P. R. and her husband, Respondent, were lying in their bed when Respondent began shoving P. R. on her back. P. R. got off of the bed. Respondent got out of the bed, walked behind P. R., and kicked her on the buttocks. P. R. lost her balance and fell forward, then stood up and attempted to walk to the restroom. Respondent stood in front of P. R. and began shoving her on the upper chest. Respondent grabbed P. R. with his hands, began shaking her violently, and pushed her against the dresser. Respondent yelled at P. R. that he was going to hit her. P. R. grabbed a knife from the top of the dresser and stabbed Respondent on his left upper back. Respondent immediately released P. R. and she ran out of the room. As P. R. was near the rear door of the house, Respondent caught up to her and dragged her back into the room. P. R. attempted to dial 9-1-1- using her cell phone, but Respondent forcibly took the phone from her hands and slammed it on the ground. P. R. ran out of the room and out the front door of the house. Respondent followed P. R. out of the house, grabbed her from behind and began choking her, then dragged her back inside the house. Once they were inside, P. R. broke free from Respondent's hold and attempted to run out the front door. As P. R. ran towards the front door, Respondent's father, Miguel

Escobar ("Miguel"), stood in front of her and blocked her from exiting the door by grabbing her with both of his arms around her body. P. R. pled with Miguel to release her, but he refused. At that point, the officers had arrived on scene. The above incident occurred while Respondent was on probation for his conviction of May 13, 2009.

SECOND CAUSE FOR DISCIPLINE

(Misrepresentations on Respondent's Applications for Licensure)

14. On or about July 20, 2009, Respondent submitted an application for an applicator license to the Board. On or about July 10, 2009, Respondent certified under penalty of perjury to the truth and accuracy of all statements and representations made in the application, including all statements attached thereto, and acknowledged that falsifying information on the application may result in denial of the application or revocation of the license.

15. On or about December 1, 2009, Respondent submitted an application for a field representative's license to the Board. On or about November 9, 2009, Respondent certified under penalty of perjury to the truth and accuracy of all statements and representations made in the application, including all statements attached thereto, and acknowledged that falsifying information on the application may result in denial of the application.

16. Respondent was asked on both applications (question 11 on the application for applicator license and question 9 on the application for field representative's license) whether he had ever been convicted of a felony or misdemeanor other than minor traffic infractions.

17. Respondent is subject to disciplinary action pursuant to Code section 8637 in that he misrepresented a material fact in obtaining his field representative's license and applicator license, as follows: Respondent certified under penalty of perjury on both applications that he had never been convicted of a felony or misdemeanor. In fact, Respondent had been convicted of corporal injury to a spouse on May 13, 2009, as set forth in subparagraph 13 (a) above and had suffered the convictions alleged in paragraphs 20-26 as set forth below.

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THIRD CAUSE FOR DISCIPLINE

(Securing a License through Fraud, Deceit, or Knowing Misrepresentation)

18. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraphs 14 through 16 above.

19. Respondent is subject to disciplinary action pursuant to Code section 498 in that Respondent secured or obtained his field representative's license and applicator's license by fraud, deceit, or knowing misrepresentation of a material fact, as set forth in paragraph 17 above.

MATTERS IN AGGRAVATION

20. By way of aggravation, Complainant alleges the following additional convictions which should be considered when imposing discipline in the above-entitled case:

21. On or about March 22, 2004, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Los Angeles County, 2004, Case No. 4AT18501), Respondent was convicted of violating Vehicle Code section 12500, subdivision (a) (driving without a valid driver's license, a misdemeanor). Respondent was placed on summary probation for a period of three years and placed on work program instead of being fined.

22. On or about August 26, 2004, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Kern County, Case No. MM048324A, Respondent pled guilty to violating Vehicle Code section 23152 subdivision (a) (driving under the influence of alcohol). Respondent was sentenced to 120 days in jail, placed on summary probation for a period of five years and fined the amount of $1891.00.

23. On or about July 20, 2005, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Kern County, Case No. MM051367A, Respondent pled guilty to violating Penal Code 245 subdivision (A)(1) (assault with a deadly weapon other than firearm), a misdemeanor. Respondent was sentenced to 1 day in jail, placed on summary probation for a period of five years, and fined the amount of $455.00.

24. On or about July 20, 2005, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Kern County, Case No. MM050690A, Respondent pled nolo contendre to violating

Vehicle Code 14601.2 subdivision (a) (driving while license suspended/revoked for DUI). Respondent was fined the amount of $155.00.

25. On or about October 13, 2005, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Los Angeles County, 2005, Case No. 5AT02294), Respondent pled nolo contendere to violating Vehicle Code section 14601.2, subdivision (a) (driving while license suspended/revoked for DUI, a misdemeanor). Respondent was sentenced to ten days in jail, placed on summary probation for a period of three years and fined $300.00.

26. On or about July 17, 2006, in the criminal proceeding titled *People v. Erick Escobar* (Super. Ct. Kern County, Case No. MM054701A, Respondent pled guilty to violating Vehicle Code section 23152 subdivision (a) (driving under the influence of alcohol) and Vehicle Code 14601.2 subdivision (a) (driving while license suspended/revoked for DUI). Respondent was sentenced to 30 days in jail, placed on summary probation for a period of five years and fined the amount of $1881.00.

OTHER MATTERS

27. 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.

28. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 45122 and/or Applicator License Number RA 50577 issued to Erick Escobar, Erick Escobar 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 Erick Escobar 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's License Number FR 45122, issued to Erick Escobar;

2. Revoking or suspending Applicator License Number RA 50577, issued to Erick Escobar;

3. Prohibiting Erick Escobar from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative's License Number FR 45122 and/or Applicator License Number RA 50577, issued to Erick Escobar;

4. Ordering Erick Escobar 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;

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

DATED: 6/21/11

William H. Douglas

WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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