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FILED

Date 4/11/12 By

William H. Douglas

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF PESTICIDE REGULATION**
11 **STATE OF CALIFORNIA**

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

Case No. 2011-72(d)

13 **DAVID H. BERTRAM**
14 **9119 Dulene Drive**
Lakeside, CA 92040
15 **Field Representative's License No. FR 45266, Br. 2**
Applicator License No. RA 49653, Br. 3

FIRST AMENDED
ACCUSATION

16 Respondent.

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18 William H. Douglas ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this First Amended Accusation solely in his official capacity as
21 the Interim Registrar/Executive Officer of the Structural Pest Control Board ("Board"),
22 Department of Pesticide Regulation.

23 **Field Representative License**

24 2. On or about March 4, 2010, the Board issued Field Representative's License Number
25 FR 45266, in Branch 2, to David H. Bertram ("Respondent"), as an employee of Eagleshield Pest
26 Control, L.P. The license was in full force and effect at all times relevant to the charges brought
27 herein and will expire on June 30, 2012, unless renewed.

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1 of a bona fide inspection of the premises for wood-destroying pests or organisms, or
2 furnishing a notice of work completed prior to the completion of the work specified in
3 the contract, is a ground for disciplinary action.

4 REGULATORY PROVISIONS

5 8. California Code of Regulations, title 16, section 1999.5 states, in pertinent part:

6 It is the purpose of this regulation to protect the public from false, misleading,
7 deceptive, or unfair representations or claims concerning structural pest control while
8 enabling the public to receive truthful and legitimate information about those
9 structural pest control products and services and the potential of these products and
10 services to reduce impact to health or the environment.

11 (f) Examples of direct or indirect statements or representations which are
12 unfair, deceptive, untrue or misleading include, but are not limited to, the following:

13 (13) claims that a pesticide application, a pesticide or pesticide ingredients are
14 safe, including statements such as "safe," "nonpoisonous," "non-injurious,"
15 "harmless" or "nontoxic to humans and pets" with or without such a qualifying
16 phrase as "when used as directed."

17 COST RECOVERY

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

22 FIRST CAUSE FOR DISCIPLINE

23 (False and Misleading Advertisement)

24 10. Respondent's applicator's license and field representative license are subject to
25 discipline under Code section 8641, in that in or about 2010, he violated California Code of
26 Regulations, title 16, section 1999.5(f)(13), by presenting false, misleading, unfair
27 representations, or deceptive advertisements on Craigslist by making claims as to the safety of the
28 pesticide applications.

OTHER MATTERS

11. 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

1 at the time of the hearing and must be noted in the proposed decision. The proposed decision
2 shall not provide that a civil penalty shall be imposed in lieu of a suspension.

3 12. Pursuant to Code section 8654, if discipline is imposed on Field Representative's
4 License No. FR 45266 and/or Registered Applicator's License No. RA 49653, issued to
5 Respondent, then Respondent shall be prohibited from serving as an officer, director, associate,
6 partner or responsible managing employee of a registered company, and any licensee which
7 employs, elects, or associates Respondent shall be subject to disciplinary action.

8 **PRAYER**

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

11 1. Revoking or suspending Field Representative's License Number FR 45266, issued to
12 David H. Bertram;

13 2. Revoking or suspending Registered Applicator's License Number RA 49653, issued
14 to David H. Bertram;

15 3. Revoking or suspending any other license for which David H. Bertram is furnishing
16 the qualifying experience or appearance;

17 4. Prohibiting David H. Bertram from serving as an officer, director, associate, partner,
18 qualifying manager or responsible managing employee of any registered company during the
19 period that discipline is imposed on Field Representative's License Number FR 45266, issued to
20 David H. Bertram;

21 5. Prohibiting David H. Bertram from serving as an officer, director, associate, partner,
22 qualifying manager or responsible managing employee of any registered company during the
23 period that discipline is imposed on Registered Applicator's License Number RA 49653, issued
24 to David H. Bertram;

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1 6. Ordering David H. Bertram to pay the Structural Pest Control Board the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3; and,

4 7. Taking such other and further action as deemed necessary and proper.

5 DATED: 4/1/12

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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