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

In the Matter of the Accusation Against: **GUILLERMO J. GONZALEZ** **Clark's Pest Control** **8316 Miramar Mall Road** **San Diego, CA 92121** **Field Representative License No. FR 45385, Branch 3,** **Applicator License No. RA 49679, Branch 2,** Respondent.	Case No. 2011-15 OAH No. 2011020660

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on January 11, 2012.

It is so ORDERED December 12, 2011.

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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

In the Matter of the Accusation Against: **GUILLERMO J. GONZALEZ** **Clark's Pest Control** **8316 Miramar Mall Road** **San Diego, CA 92121** **Field Representative License No. FR 45385, Branch 3,** **Applicator License No. RA 49679, Branch 2,** Respondent.	Case No. 2011-15 OAH No. 2011020660 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Structural Pest Control Board of the Department of Pesticide Regulation, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. William H. Douglas (Complainant) is the Interim Registrar/Executive Officer of the Structural Pest Control Board. He brought this action solely in his official capacity and is

represented in this matter by Kamala D. Harris, Attorney General of the State of California, by William A. Buess, Deputy Attorney General.

2. Respondent Guillermo J. Gonzalez (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about April 13, 2010, the Structural Pest Control Board issued Field Representative License No. FR 45385, in Branch 3 to Guillermo J. Gonzalez (Respondent). The Field Representative License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-15 and will expire on June 30, 2012, unless renewed.

4. On or about February 18, 2009, the Structural Pest Control Board issued Applicator License No. RA 49679, in Branch 2 to Guillermo J. Gonzalez (Respondent). The Applicator License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-15 and will expire on February 18, 2012, unless renewed.

JURISDICTION

5. Accusation No. 2011-15 was filed before the Structural Pest Control Board (Board), Department of Pesticide Regulation, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 23, 2010. Respondent timely filed his Notice of Defense contesting the Accusation.

A copy of Accusation No. 2011-15 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2011-15. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and

court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 2011-15.

10. Respondent agrees that his Field Representative License and Applicator License are subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

11. Respondent Guillermo J. Gonzalez has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

12. This stipulation shall be subject to approval by the Structural Pest Control Board. Respondent understands and agrees that counsel for Complainant and the staff of the Structural Pest Control Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Field Representative License No. FR 45385 and Applicator License No. RA 49679 of Respondent Guillermo J. Gonzalez (Respondent) are revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all laws and rules relating to the practice of structural pest control.

2. **Quarterly Reports.** Respondent shall file quarterly reports with the Board during the period of probation.

3. **Tolling of Probation.** Should Respondent leave California to reside outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

4. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case no. 2011-15 and the terms, conditions and restrictions imposed on Respondent by said decision.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2011-15.

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5. **Completion of Probation.** Upon successful completion of probation, Respondent's licenses/certificates will be fully restored.

6. **Violation of Probation.** Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. **Reimbursement of Investigative and Enforcement Costs.** Respondent shall pay to the Board costs associated with the investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3 in the amount of $2,085.00, which may be paid in monthly installment payments set by the Board and which is to be paid in full by three months prior to the end of the probationary period.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Field Representative License and Applicator License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Structural Pest Control Board.

DATED: 9/24/11

GUILLERMO J. GONZALEZ
Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Structural Pest Control Board of the Department of Pesticide Regulation.

Dated: October 4, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

WILLIAM A. BUESS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2011-15

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FILED

Date 11/18/10 By Kelli Okuma

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

In the Matter of the Accusation Against: **GUILLERMO J. GONZALEZ** **Clark's Pest Control** **8316 Miramar Mall Road** **San Diego, CA 92121** **Field Representative License No. FR 45385** **Registered Applicator License No. RA 49679** Respondent.	Case No. 2011-15 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.

2. On or about April 13, 2010, the Structural Pest Control Board issued Field Representative License (Branch 3) Number FR 45385 to Guillermo J. Gonzalez (Respondent). The Field Representative License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

3. On or about February 18, 2009, the Structural Pest Control Board issued Registered Applicator License (Branch 2) Number RA 49679 to Respondent. The Registered Applicator

License was in full force and effect at all times relevant to the charges brought herein and will expire on February 18, 2012, unless renewed.

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 (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. Section 490 of the Code states, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime.

8. Section 493 of the Code states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
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> As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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9. Section 8649 of the Code 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.

10. Section 8655 of the Code 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.

REGULATORY PROVISIONS

11. California Code of Regulations, Title 16, section 1937.1, states:

For the purposes of denial, suspension or revocation of a license or company registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company under Chapter 14 of Division 3 of the code if to a substantial degree it evidences present or potential unfitness of such licensee or registered company to perform the functions authorized by the license or company registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

(a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

(b) Commission of any of the following in connection with the practice of structural pest control:

(1) Fiscal dishonesty

(2) Fraud

(3) Theft

(4) Violations relating to the misuse of pesticides.

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12. California Code of Regulations, Title 16, section 1937.2, states:

. . .

(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee or registered company.

(c) When considering a petition for reinstatement of a structural pest control license or company registration, the board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).

COSTS

13. Section 125.3 of the Code 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.

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CAUSE FOR DISCIPLINE

(September 13, 2010 Criminal Conviction for Petty Theft on September 3, 2010)

14. Respondent has subjected his licenses to disciplinary action under sections 490 and 8649 of the Code, in conjunction with California Code of Regulations, Title 16, section 1937.1, subdivision (b)(3), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a Registered Applicator and Field Representative. The circumstances are as follows:

a. On or about September 13, 2010, in a criminal proceeding entitled *People of the State of California v. Guillermo Javier Gonzalez,* in San Diego County Superior Court (East County Division), case number C303347, Respondent was convicted on his plea of guilty of violating Penal Code section 484, petty theft, a misdemeanor.

b. As a result of the conviction, on or about September 13, 2010, Respondent was sentenced to three (3) years summary probation, ordered to serve two (2) days in jail (with credit for two days), and pay fees and fines in the amount of $305. Respondent was further ordered to submit to a Fourth Amendment Waiver to expire on September 12, 2013.

c. The facts that led to the conviction are that on or about the afternoon of September 3, 2010, Respondent entered a Rite-Aid drug store in Spring Valley, selected a $70 memory card, removed it from its packaging, and concealed it in his pocket. Respondent exited the store without paying for the memory card and was intercepted by the store's loss prevention officer who observed Respondent's actions. Respondent denied stealing the item and quickly re-entered the store. Respondent tossed the memory card on the floor and then charged at the loss prevention officer who was blocking the store's exit to prevent Respondent from leaving. Respondent hit and kicked the loss prevention officer but he was successfully detained until the San Diego County Sheriff's Department arrived and took Respondent into custody. The entire incident was captured on the store's closed circuit surveillance system.

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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 45385, issued to Guillermo J. Gonzalez;

2. Revoking or suspending Registered Applicator License Number RA 49679, issued to Guillermo J. Gonzalez ;

3. Ordering Guillermo J. Gonzalez 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;

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

DATED: 11/18/10

Kelli Okuma

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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