

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 THOMAS L. RINALDI
Supervising Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

FILED

Date 10/26/15 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 Accusation Against:

Case No. 2015-67

12 **MARCO A. TORRES**
13 3463 State Street, #134
Santa Barbara, CA 93105

ACCUSATION

14 Field Representative's License No. FR 46468,
15 Branch 2

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about February 15, 2011, the Board issued Field Representative's License No.
23 FR 46468 to Marco A. Torres (Respondent). The Field Representative's License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on June 30, 2016,
25 unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

6 4. Section 8620 of the Code provides that the Board may suspend or revoke a license
7 when it finds that the holder, while a licensee or applicant, has committed any acts or omissions
8 constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

9 5. Code section 8593 states, in pertinent part:

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

17 "(b) The board shall develop a correspondence course or courses with any educational
18 institution or institutions as it deems appropriate. This course may be used to fulfill the
19 requirements of this section. The institution may charge a reasonable fee for each course.

20 "(c) The board may charge a fee for the taking of an examination in each branch of pest
21 control pursuant to this section in an amount sufficient to cover the reasonable regulatory cost of
22 administering each examination.

23 6. Section 8637 of the Code states, in pertinent part, that "[m]isrepresentation of a
24 material fact by the applicant in obtaining a license or company registration is a ground for
25 disciplinary action."

26 7. Section 8641 of the Code states, in pertinent part:

27 "Failure to comply with the provisions of this chapter, or any rule or regulation adopted by
28 the board, or the furnishing of a report of inspection without the making of a bona fide inspection

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

3 8. Section 8654 of the Code states, in pertinent part:

4 "Any individual who has been denied a license for any of the reasons specified in Section
5 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
6 failed to renew his or her license while it was under suspension, or who has been a member,
7 officer, director, associate, qualifying manager, or responsible managing employee of any
8 partnership, corporation, firm, or association whose application for a company registration has
9 been denied for any of the reasons specified in Section 8568, or whose company registration has
10 been revoked as a result of disciplinary action, or whose company registration is under
11 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
12 responsible managing employee had knowledge of or participated in any of the prohibited acts for
13 which the license or registration was denied, suspended or revoked, shall be prohibited from
14 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
15 employee of a registered company, and the employment, election or association of such person by
16 a registered company is a ground for disciplinary action."

17 **REGULATORY PROVISION**

18 9. California Code of Regulations, title 16, section 1950 states, in pertinent part:

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

24 "(b) Each licensee is required to gain a certain number of continuing education hours
25 during the three year renewal period. The number of hours required depends on the number of
26 branches of pest control in which licenses are held. The subject matter covered by each activity
27 shall be designated as "technical" or "general" by the Board when the activity is approved. Hour
28 values shall be assigned by the Board to each approved educational activity, in accordance with

1 the provisions of section 1950.5.

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3 “(d) Field representatives licensed in one branch of pest control shall have completed 16
4 continuing education hours, field representatives licensed in two branches of pest control shall
5 have completed 20 continuing education hours, field representatives licensed in three branches of
6 pest control shall have completed 24 continuing education hours during each three year renewal
7 period. In each case, a minimum of four continuing education hours in a technical subject directly
8 related to each branch of pest control held by the licensee must be gained for each branch of pest
9 control licensed and a minimum of eight hours must be gained from Board approved courses on
10 the Structural Pest Control Act, the Rules and Regulations, or structural pest control related
11 agencies’ rules and regulations. . . .”

12 **COST RECOVERY**

13 10. Section 125.3 of the Code provides that the Board may request the administrative law
14 judge to direct a licentiate found to have committed a violation or violations of the licensing act
15 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case,
16 with failure of the licentiate to comply subjecting the license to not being renewed or reinstated.
17 If a case settles, recovery of investigation and enforcement costs may be included in a stipulated
18 settlement.

19 **FACTS**

20 11. On or about August 28, 2013, Respondent submitted a Field Representative license
21 renewal application to the Board wherein Respondent certified under penalty of perjury that he
22 successfully completed all required continuing education coursework during his last renewal
23 period. Specifically, Respondent signed a License Renewal Application, which provided in
24 pertinent part:

25 Continuing Education Certification – I have completed “16” hours of
26 continuing education required for renewal of my license. I DECLARE UNDER
27 PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
28 CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

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1 Respondent filled in the "16" for the number of hours, signed his name below the above
2 certification, and dated his signature "08/28/2013."

3 12. On or about January 3, 2014, Respondent was notified that he had been selected for a
4 continuing education (CE) audit by the Board. Respondent was informed that he needed to
5 submit to the Board, copies of his certificates of completion that verify the CE hours for the
6 renewal period July 1, 2010, through June 30, 2013. Respondent was given 14 days to respond to
7 the Board's request or risk disciplinary action being taken against his license. Respondent failed
8 to provide the Board with any certificates of completion of CE requirements for the renewal
9 period indicated.

10 13. On or about March 23, 2014, Respondent was notified by "SECOND NOTICE" that
11 he had been selected for the 2013 CE audit. Again, Respondent was given 14 days to respond to
12 the Board's request or risk disciplinary action being taken against his license. Respondent failed
13 to provide the Board with any certificates of completion of CE requirements for the renewal
14 period indicated.

15 14. On or about August 1, 2014, Respondent was notified by "FINAL NOTICE" that he
16 had been selected for the 2013 CE audit. Again, Respondent was given 14 days to respond to the
17 Board's request or risk disciplinary action being taken against his license.

18 15. On or about August 28, 2014, Respondent called a representative of the Board and
19 advised that he did not have any certificates of completion. The representative requested
20 Respondent to provide a letter of explanation. Respondent failed to provide the Board with a
21 letter of explanation.

22 16. On or about September 17, 2014, a representative of the Board called and left a
23 voicemail reminding Respondent to send in a letter of explanation.

24 17. On or about September 22, 2014, the Board received two certificates of completion,
25 which were both outside the renewal period, July 1, 2010, through June 30, 2013.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Provide Proof of Continuing Education)**

3 18. Respondent is subject to disciplinary action pursuant to Code sections 8641 and 8593
4 in conjunction with California Code of Regulations, title 16, section 1950 subdivision (a), in that
5 Respondent failed to provide the Board with verifiable documentation to demonstrate that he
6 completed all of the continuing education requirements as a condition of renewal of his Field
7 Representative License. Specifically, Respondent failed to produce copies documenting
8 completion of sixteen (16) hours of continuing education for the renewal period of July 1, 2010,
9 through June 30, 2013, as requested by the Board's representative. Complainant refers to and by
10 this reference incorporates, the allegations set forth above in paragraphs 11 through 17, inclusive,
11 as though set forth fully.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Misrepresentation of Material Fact)**

14 19. Respondent is subject to disciplinary action pursuant to Code section 8637, in that on
15 or about August 28, 2013, Respondent misrepresented to the Board that he had completed sixteen
16 (16) hours of continuing education coursework in his license renewal application, when in fact he
17 had failed to do so. Complainant refers to and by this reference incorporates, the allegations set
18 forth above in paragraphs 11 through 17, inclusive, as though set forth fully.

19 **OTHER MATTERS**

20 20. Section 8620 provides, in pertinent part, that a respondent may request that a civil
21 penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not
22 more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the
23 time of the hearing and must be noted in the proposed decision. The proposed decision shall not
24 provide that a civil penalty shall be imposed in lieu of a suspension.

25 21. Pursuant to 8654 of the Code, if discipline is imposed on Field Representative
26 License No. FR 46468 issued to Respondent, Respondent shall be prohibited from serving as an
27 officer, director, associate, partner, qualifying manager, or responsible managing employee for
28 any registered company during the time the discipline is imposed, and any registered company

1 which employs elects, or associate Respondent, shall be subject to disciplinary action.

2 **PRAYER**

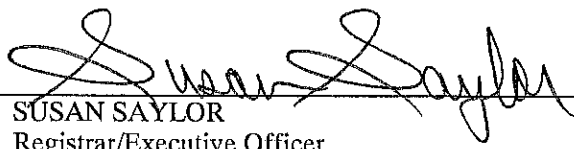
3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Board issue a decision:

5 1. Revoking or suspending Field Representative's License No. FR 46468, issued to
6 Marco A. Torres;

7 2. Ordering Marco A. Torres to pay the Board the reasonable costs of the investigation
8 and enforcement of this case, pursuant to section 125.3 of the Code; and

9 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: 6/26/15



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

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