KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KENT D. HARRIS
Deputy Attorney General
State Bar No. 144804
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-7859
Facsimile: (916) 327-8643
Attorneys for Complainant

FILED

Date 4/11/12 By William H. Douglas

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

In the Matter of the First Amended Accusation and Statement of Issues Against: **ISAAC MANUEL CRUZ** **17802 Hurley Street** **LaPuente, California 91744** **Applicator License No. RA 50408, Br. 2 and 3** Respondent/Applicant.	Case No. 2011-72(e) (First Amended Accusation) **FIRST AMENDED ACCUSATION AND STATEMENT OF ISSUES** Case No. 2012-50 (Statement of Issues)

William H. Douglas ("Complainant") alleges:

PARTIES

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

Application Information

2. On or about July 28, 2010, the Board received an Application for Field Representative's License in Branch 2, from Isaac Manuel Cruz ("Respondent"). On or about May 1, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 29, 2011.

License History

3. On or about October 21, 2009, the Board issued Applicator License Number RA 50408 in Branches 2 and 3 to Respondent as an employee of Eagleshield Pest Control, L.P. The license will expire on October 21, 2012, 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 8641 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.

7. Code section 8568 provides, in pertinent part, that the Board may deny a license or registration if the applicant, while unlicensed or not registered, knowingly committed or aided or abetted the commission of any act for which a license or company registration is required, or has committed any act or omissions constituting grounds for discipline under section 480 of that Code.

8. Code section 8654 states, in pertinent part, that any individual who has been denied a license for any of the reasons specified in Code section 8568, 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.

9. Code section 8651 states:

> The performing or soliciting of structural pest control work, the inspecting for structural or household pests, or the applying of any pesticide, chemical, or allied substance for the purpose of eliminating, exterminating, controlling, or preventing structural pests in branches of pest control other than those for which the operator, field representative, or applicator is licensed or the company is registered is a ground for disciplinary action.

10. Code section 480 states, in pertinent part:

> (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
>
> (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
>
> (3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that the 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 1999.5 states, in pertinent part:

> It is the purpose of this regulation to protect the public from false, misleading, deceptive, or unfair representations or claims concerning structural pest control while enabling the public to receive truthful and legitimate information about those structural pest control products and services and the potential of these products and services to reduce impact to health or the environment.
>
> (f) Examples of direct or indirect statements or representations which are unfair, deceptive, untrue or misleading include, but are not limited to, the following:
>
> (10) any unfair, deceptive, untrue or misleading comparison of pest control services, methods, products, pesticides or devices.

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FIRST AMENDED ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Unlicensed Activity)

13. Respondent's applicator license is subject to discipline under Code section 8651, in that in or about 2010, he performed field representative work without holding a valid license.

SECOND CAUSE FOR DISCIPLINE

(False and Misleading Advertisements)

14. Respondent's applicator license is subject to discipline under Code section 8641, in that he violated California Code of Regulations, title 16, section 1999.5(f)(10), in that he advertised on Craigslist to perform services of a field representative without holding a valid license.

STATEMENT OF ISSUES

FIRST CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Which If Done By A Licentiate Would Be Grounds For Discipline)

15. Respondent's application is subject to denial under Code sections 8568 and 480(a)(3)(A), in that he committed acts which if done by a licentiate of the profession would constitute grounds for discipline under Code section 8651 (unlicensed activity), and California Code of Regulations, title 16, section 1999.5(f)(10) (false and misleading advertisement), as more particularly set forth above in paragraphs 13 and 14.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonesty, Fraud or Deceit)

16. Respondent's application is subject to denial under Code sections 8568 and 480(a)(2), in that he committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another, by performing field representative work without holding a valid license, and advertising on Craigslist to perform field representative work without holding a valid license.

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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 Respondent's application is denied, then Respondent 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 grounds for 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. Denying the application of Isaac M. Cruz for a Field Representative's License;

2. Revoking or suspending Registered Applicator's License Number RA 50408, issued to Isaac M. Cruz;

3. Revoking or suspending any other license for which Isaac M. Cruz is furnishing the qualifying experience or appearance;

4. Prohibiting Isaac M. Cruz 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 Registered Applicator's License Number RA 50408, issued to Isaac M. Cruz;

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5. Ordering Isaac M. Cruz 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; and,

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

DATED: 4/11/12

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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