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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2012-45

11 **MANUEL EDUARDO LERMA**
12 **8939 South Sepulveda Boulevard, Unit 110-**
224
13 **Westchester, CA 90045**
14 **Operator's License No. OPR 11228**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

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17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. William H. Douglas (Complainant) is the Interim Registrar/Executive Officer of the
21 Structural Pest Control Board. He brought this action solely in his official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Gregory J. Salute, Supervising Deputy Attorney General.

24 2. Respondent Manuel Eduardo Lerma (Respondent) is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about December 15, 2005, the Structural Pest Control Board issued Operator's
27 License No. OPR 11228 to Manuel Eduardo Lerma (Respondent). The Operator's License was in
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1 full force and effect at all times relevant to the charges brought in Accusation No. 2012-45 and
2 will expire on June 30, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-45 was filed before the Structural Pest Control Board (Board),
5 Department of Pesticide Regulation, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 April 10, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-45 is attached as Exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 2012-45. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

14 7. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

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

23 CULPABILITY

24 9. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 2012-45.

26 10. Respondent agrees that his Operator's License is subject to discipline and he agrees to
27 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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CIRCUMSTANCES IN MITIGATION

11. Respondent Manuel Eduardo Lerma 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.

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:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Operator's License No. OPR 11228 issued to Respondent
3 Manuel Eduardo Lerma (Respondent) is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for three (3) years on the following terms and conditions:

5 1. **Obey All Laws.** Respondent shall obey all laws and rules relating to the practice of
6 Structural Pest Control.

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

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

12 4. **Notice to Employers.** Respondent shall notify all present and prospective employers
13 of the decision in Case no. 2012-45 and the terms, conditions and restriction imposed on
14 Respondent by said decision.

15 Within 30 days of the effective date of this decision, and within 15 days of Respondent
16 undertaking new employment, Respondent shall cause his/her employer to report to the Board in
17 writing acknowledging the employer has read the decision in Case No. 2012-45.

18 5. **Notice to Employees.** Respondent shall, upon or before the effective date of this
19 decision, post or circulate a notice to all employees involved in structural pest control operations
20 which accurately recite the terms and conditions of probation. Respondent shall be responsible
21 for said notice being immediately available to said employees. "Employees" as used in this
22 provision includes all full-time, part-time, temporary and relief employees and independent
23 contractors employed or hired at any time during probation.

24 6. **Completion of Probation.** Upon successful completion of probation, Respondent's
25 license/certificate will be fully restored.

26 7. **Violation of Probation.** Should Respondent violate probation in any respect, the
27 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and
28 carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against

1 Respondent during probation, the Board shall have continuing jurisdiction until the matter is final,
2 and the period of probation shall be extended until the matter is final.

3 8. **Continuing Education.** Within six months of the effective date of this decision,
4 Respondent shall successfully complete continuing education courses approved by the Board
5 which shall consist of eight (8) hours of Rules and Regulations, four (4) hours of Technical in
6 Branch 2, four (4) hours of Technical in Branch 3, two (2) hours of IPM, and two (2) hours
7 General. Completion of these courses are in addition to and cannot be used to satisfy continuing
8 education license renewal requirements.

9 9. **Random Inspections.** Respondent shall reimburse the Board for random inspections
10 by Board specialists during the period of probation not to exceed \$125 per inspection.

11 10. **Inspection Fees.** Respondent shall pay to the registrar, or designee, an inspection fee
12 within thirty (30) days from the effective date of this decision.

13 11. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying**
14 **Manager.** Respondent is prohibited from serving as an officer, director, associate, partner,
15 qualifying manager or branch office manager of any registered company other than Tanler
16 Termite and Pest Control (PR 6399) during the period that discipline is imposed on Operator's
17 License No. OPR 11228.

18 12. **No Interest In Any Registered Company.** Respondent shall not have any legal or
19 beneficial interest in any company currently or hereinafter registered by the Board other than
20 Tanler Termite and Pest Control (PR 6399) during the period that discipline is imposed on
21 Operator's License No. OPR 11228.

22 13. **Cost Recovery.** Respondent is hereby ordered to reimburse the Board the amount of
23 \$995.00 within ninety (90) calendar days from the effective date of this decision for its
24 investigative and prosecution costs up to the date of the hearing. Failure to reimburse the Board's
25 cost of its investigation and prosecution shall constitute a violation of the probationary order,
26 unless the Board or its designee agrees in writing to payment by an installment plan because of
27 financial hardship. Any and all requests for a payment plan shall be submitted in writing by
28 Respondent to the Board. However, full payment of any and all costs required by this condition

1 must be received by the Board no later than one (1) year prior to the scheduled termination of
2 probation.

3 ACCEPTANCE

4 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
5 stipulation and the effect it will have on my Operator's License. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the Structural Pest Control Board.

8
9 DATED:

5-24-12


10 MANUEL EDUARDO LERMA
11 Respondent

12 ENDORSEMENT

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

16 Dated: 6-4-2012

17 Respectfully submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 KAREN B. CHAPPELLE
21 Supervising Deputy Attorney General


22 GREGORY J. SALUTE
23 Supervising Deputy Attorney General
24 *Attorneys for Complainant*

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EXHIBIT A

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
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6 Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

Date 3/28/12

By William H. Douglas

7
8 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
9 **DEPARTMENT OF PESTICIDE REGULATION**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2012-45

11 **Manuel Eduardo Lerma**
12 **8939 S. Sepulveda Blvd., #110-224,**
13 **Westchester, CA 90045**

ACCUSATION

14 -and-

15 **10016 Pioneer Blvd., Ste. #102,**
Santa Fe Springs, Ca. 90670

16 **Operator's License No. OPR 11228, Branch 2**
17 **and 3**

18 Respondent

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about December 15, 2005, the Board issued Operator's License Number OPR
25 11228 in Branch 3 (termite) to Manuel Eduardo Lerma ("Respondent"). Respondent's operator's
26 license will expire on June 30, 2014, unless renewed.

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STATUTORY AND REGULATORY PROVISIONS

3. 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.

4. 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.

5. 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.

6. Code section 8593 states:

The board shall require as a condition to the renewal of each operator's and field representative's license that the holder submit proof satisfactory to the board that he or she has informed himself or herself of developments in the field of pest control either by completion of courses of continuing education in pest control approved by the board or equivalent activity approved by the board.

In lieu of submitting that proof, the licenseholder, if he or she so desires, may take and successfully complete an examination given by the board, designed to test his or her knowledge of developments in the field of pest control since the issuance of his or her license.

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

1 The board may charge a fee for the taking of an examination in each
2 branch of pest control pursuant to this section in an amount sufficient to cover the
3 cost of administering each examination, provided, however, that in no event shall the
4 fee exceed fifty dollars (\$ 50) for each examination.

5 7. California Code of Regulations, title 16, section ("Regulation") 1950 states, in
6 pertinent part:

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

13 (b) Each licensee is required to gain a certain number of continuing
14 education hours during the three year renewal period. The number of hours required
15 depends on the number of branches of pest control in which licenses are held. The
16 subject matter covered by each activity shall be designated as "technical" or "general"
17 by the Board when the activity is approved. Hour values shall be assigned by the
18 Board to each approved educational activity, in accordance with the provisions of
19 section 1950.5.

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21 (d) Field representatives licensed in one branch of pest control shall have
22 completed 16 continuing education hours, field representatives licensed in two
23 branches of pest control shall have completed 20 continuing education hours, field
24 representatives licensed in three branches of pest control shall have completed 24
25 continuing education hours during each three year renewal period. In each case, a
26 minimum of four continuing education hours in a technical subject directly related to
27 each branch of pest control held by the licensee must be gained for each branch of
28 pest control licensed and a minimum of eight hours must be gained from Board
approved courses on the Structural Pest Control Act, the Rules and Regulations, or
structural pest control related agencies' rules and regulations . . .

COST RECOVERY

8. 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

(Failure to Verify Completion of Continuing Education)

10. On or about May 12, 2011, Respondent submitted a license renewal
application to the Board wherein Respondent certified under penalty of perjury that he
successfully completed twenty (20) hours of continuing education during his last renewal period.

1 11. On or about October 20, 2011, a representative of the Board sent
2 Respondent a letter indicating that he had been selected for the 2011 continuing education (CE)
3 audit. The October 20, 2011 letter to Respondent asked Respondent to submit copies of the
4 certificates of course completion which verified his CE hours for the renewal period of July 1,
5 2008, through, June 30, 2011, to the Board.

6 12. On or about December 9, 2011, a representative of the Board sent
7 Respondent a letter indicating the while the Board had received certificates from Respondent in
8 response to the Board's letter dated October 20, 2011, that Respondent was short eight (8) hours
9 Rules and Regulations, four (4) hours Technical Branch 2, four (4) hours Technical Branch 3, two
10 (2) hours IPM and two (2) hours General.¹ Respondent was asked to submit copies of any
11 additional certificates of course completion that verify his continuing education hours for the
12 renewal period of July 1, 2008 through June 30, 2011, to the Board.

13 13. On or about December 21, 2011, Respondent sent to the Board a letter to
14 the Board indicating that he was not able to produce any more certificates verifying his
15 continuing education hours for the renewal period in question.

16 14. Respondent is subject to disciplinary action pursuant to Code sections
17 8641 and 8593 in that he failed to comply with Regulation 1950 by failing to verify that he
18 completed all of the required courses of continuing education in pest control approved by the
19 Board. Specifically, Respondent failed to produce copies documenting completion of twenty (20)
20 hours of continuing education for the renewal period of July 1, 2008 through June 30, 2011, as
21 requested by the Board's representative.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Misrepresentation of Material Fact)**

24 15. Respondent is subject to disciplinary action pursuant to Code sections
25 8641 and 8637 in that he made a misrepresentation of a material fact to the Board or its designee
26 in that on or about May 12, 2011, Respondent sent back to the Board a completed license renewal

27 ¹ The December 9, 2011 letter indicated that Respondent was short these hours because
28 the certificates he sent in were taken outside of the renewal period.

1 application signed under penalty of perjury that he had completed all twenty (20) hours of
2 continuing education required for renewal of his license when in fact he had not completed the
3 twenty (20) hours required for renewal of his license. Paragraphs 10-14 are hereby incorporated
4 by reference as though alleged herein.

5 **DISCIPLINARY CONSIDERATIONS**

6 16. On or about October 22, 2007, Respondent paid a \$1500 fine levied by
7 the Board for violation of sections 8612, 8613, and 8648 of the Business and Professions Code.

8 **OTHER MATTERS**

9 17. Code section 8620 provides, in pertinent part, that a respondent may
10 request that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of
11 1 to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request
12 must be made at the time of the hearing and must be noted in the proposed decision. The
13 proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

14 18. Pursuant to Code section 8654, if discipline is imposed on Operator's
15 License Number OPR 11228, issued to Manuel Edwardo Lerma, Manuel Edwardo Lerma shall be
16 prohibited from serving as an officer, director, associate, partner, qualifying manager, or
17 responsible managing employee for any registered company during the time the discipline is
18 imposed, and any registered company which employs, elects, or associates Manuel Edwardo
19 Lerma shall be subject to disciplinary action.

20 **PRAYER**

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

23 1. Revoking or suspending Operator's License Number OPR 11228, issued
24 to Manuel Edwardo Lerma;

25 2. Prohibiting Manuel Edwardo Lerma from serving as an officer, director,
26 associate, partner, qualifying manager or responsible managing employee of any registered
27 company during the period that discipline is imposed on Operator's License Number
28 OPR 11228, issued to Manuel Edwardo Lerma;

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3. Ordering Manuel Edwardo Lerma 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: 3/28/12

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

LA2012506436

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

In the Matter of the Accusation Against:

Case No. 2012-45

MANUEL EDUARDO LERMA
8939 South Sepulveda Boulevard, Unit 110-
224
Westchester, CA 90045
Operator's License No. OPR 11228


Respondent.

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 August 17, 2012.

It is so ORDERED July 18, 2012.



FOR THE STRUCTURAL PEST CONTROL
BOARD
DEPARTMENT OF PESTICIDE REGULATION