MARK K. STENDER, ESQ. (Bar No. 106376)
HIGGS, FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
San Diego, California 92101
TEL: (619) 236-1551
FAX: (619) 696-1410

Attorneys for Petitioner
JOSEPH ANTHONY OLIVARRIA

FILED
CIVIL BUSINESS OFFICE 3
CENTRAL DIVISION
2010 NOV 16 PM 2:38
CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION

JOSEPH ANTHONY OLIVARRIA, doing business as Atlas Termite Company and ADRIAN PAUL OLIVARRIA Petitioners, v. STRUCTURAL PEST CONTROL BOARD, DEPARTMENT OF PESTICIDE REGULATION, STATE OF CALIFORNIA and DOES 1 through 10, inclusive, Respondents.	Case No. 37-2010-00104247-CU-WM-CTL **PETITION FOR WRIT OF MANDAMUS**

Petitioners JOSEPH ANTHONY OLIVARRIA and ADRIAN PAUL OLIVARRIA hereby petition this Court for a writ of mandamus under Code of Civil Procedure Section 1085 et seq. directed to the Respondent STRUCTURAL PEST CONTROL BOARD, DEPARTMENT OF PESTICIDE REGULATION, STATE OF CALIFORNIA ("SPCB") requiring the SPCB to set aside the default of Petitioners to Complaint No. 2010-82 and the orders resulting from such default.

1. Venue is proper in this County because (i) Petitioners do business in the

County of San Diego, and (ii) the enforcement proceedings which are the subject of this Petitioner were conducted in the County of San Diego.

2. This Court has jurisdiction of this action for administrative mandamus.

3. Petitioner JOSEPH ANTHONY OLIVARRIA is the owner and operator of Atlas Termite Company. Petitioner ADRIAN PAUL OLIVARRIA is designated as a Field Representative of Atlas Termite Company.

4. Petitioners are informed and believe, and on such information and belief allege that, Respondent SPCB enforces the regulations of the Department of Pesticide Regulation.

5. The true names and capacities of DOES 1 through 10, inclusive, are unknown to Petitioners, who will amend this Petition to name each DOE Respondent and his/her/its capacity when that information becomes known.

6. Petitioners are informed and believe, and on such information and belief allege that, on or about June, 2010 the SPCB initiated Complaint 2010-82 against Petitioners. At the same time, the County of San Diego, which investigates alleged violations for the SPCB, initiated its own enforcement action against Petitioners based on the same alleged regulatory violations. Petitioners mistakenly believed that these enforcement proceedings were one and the same.

7. On or about September 27, 2010, Petitioners paid the full fine assessed by the County of San Diego in the amount of approximately $5,585.00. Petitioners made that payment under the mistaken impression that, by doing so, they would be paying and discharging the SPCB's Complaint No. 2010-82. But for that mistake, Petitioners would not have paid the County of San Diego $5,585 and would not have defaulted on the SPCB's Complaint No. 2010-82.

8. On or about September 29, 2010, Respondent SPCB defaulted Petitioners and ordered, *inter alia,* that Petitioner JOSEPH ANTHONY OLIVARRIA forfeit his license effective as of October 29, 2010. On or about November 8, 2010, SPCB's representative

appeared at Petitioners' office to demand the surrender of such license, at which time Petitioners first became actually aware of the default and the order, which had been disregarded by Petitioners' clerical staff under the mistake belief that the above-described payment had the effect of discharging and terminating all of the SPCB's proceedings as to Complaint 2010-82.

9. On or about November 9, 2010, Petitioners retained counsel, who contacted the Attorney General's office in an attempt to rectify the license forfeiture. On or about November 12, 2010, after intervening communications with the Attorney General's office, Petitioners' counsel were informed that the SPCB had lost jurisdiction of the matter through the passage of time and therefore could not set aside Petitioners' default as to Complaint 2010-82, and that a Superior Court proceeding for writ of mandamus would be necessary to set aside said default. Thus, Petitioners have no administrative remedy.

10. As a result of Petitioners' excusable mistake and the SPCB's revocation of the license of Petitioner JOSEPH ANTHONY OLIVARRIA, four families have lost their livelihood, and are suffering severe financial distress. Thus, in the absence of prompt judicial relief, Petitioners and the other two employees of Atlas Termite Company and their families will continue to suffer severe and irreparable financial harm.

PRAYER FOR RELIEF

Petitioners pray for relief in this matter as follows:

1. A peremptory writ of mandamus (and/or other appropriate relief) ordering Respondent SPBC to set aside the default taken by Respondent SPBC against Petitioners in SPBC Complaint No. 2010-82 or an order of the Court setting aside such default;

2. Such other and further relief as the Court deems just and proper.

DATED: November 16, 2010

HIGGS, FLETCHER & MACK LLP

By: [signature]
MARK K. STENDER, ESQ. Attorneys for Petitioners

VERIFICATION

I, JOSEPH ANTHONY OLIVARRIA, declare:

I am one of the Petitioners in the above-entitled action. I have read the foregoing PETITION FOR WRIT OF MANDAMUS and know the contents thereof; the same is true of my own knowledge except as to matters therein stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at _____, California on November _____, 2010.

SIGNATURE SUBMITTED VIA EMAIL

JOSEPH ANTHONY OLIVARRIA

VERIFICATION

I, JOSEPH ANTHONY OLIVARRIA, declare:

I am one of the Petitioners in the above-entitled action. I have read the foregoing PETITION FOR WRIT OF MANDAMUS and know the contents thereof; the same is true of my own knowledge except as to matters therein stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at SAN DIEGO, California on November 15, 2010.

JOSEPH ANTHONY OLIVARRIA