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

In the Matter of the Accusation Against: **DAVID BILLY MISA** **4907 Roja Drive** **Oceanside, CA 92057** **Field Representative License No. FR 44922** **Applicator License No. RA 45402** Respondent.	Case No. 2011-55 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 4, 2011, Complainant William H. Douglas, in his official capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, filed Accusation No. 2011-55 against David Billy Misa (Respondent) before the Structural Pest Control Board. (Accusation attached as Exhibit A.)

2. On or about November 9, 2009, the Structural Pest Control Board (Board) issued Field Representative License No. FR 44922 to 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 April 11, 2006, the Structural Pest Control Board issued Applicator License No. RA 45402 to Respondent. The Applicator License was in full force and effect at all times relevant to the charges brought herein and will expire on April 11, 2012, unless renewed.

4. On or about May 20, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2011-55, Statement to Respondent, Notice of Defense, Request for

Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136 and California Code of Regulations, title 16, section 1911, is required to be reported and maintained with the Board, which was and is:

4907 Roja Drive
Oceanside, CA 92057

Respondent was also served at his last known business address which was and is:

Dewey Pest Services
1370 Grand Avenue
San Marcos, CA 92069

5. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

6. On or about May 27, 2011, the aforementioned documents served to Respondent at his address of record were returned by the U.S. Postal Service marked "Returned to Sender." On or about May 26 and May 31, 2011, the aforementioned documents served to Respondent at his last known business address were returned by the U.S. Postal Service marked "Not at this Address." The addresses on the documents were the same as the addresses on file with the Board. Respondent failed to maintain an updated address with the Board and the Board has made attempts to serve the Respondent at the addresses on file. Respondent has not made himself available for service and therefore, has not availed himself of his right to file a notice of defense and appear at hearing.

7. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2011-55.

9. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-55, finds that the charges and allegations in Accusation No. 2011-55, are separately and severally, found to be true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $1,825.00 as of June 14, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent David Billy Misa has subjected his Field Representative License No. FR 44922 and Applicator License No. RA 45402 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Structural Pest Control Board is authorized to revoke Respondent's Field Representative and Applicator Licenses based upon the following violations alleged in the Accusation which are supported by Default Decision Investigatory Evidence Packet in this case:

a. Respondent is subject to disciplinary action under sections 490 and 8649 of the Business and Professions Code in that on or about January 13, 2011, Respondent pled guilty to the felony violation of Penal Code section 459, burglary, a crime substantially related to the qualifications, duties and functions of a licensed field representative or applicator.

///

///

ORDER

IT IS SO ORDERED that Field Representative License No. FR 44922 and Applicator License No. RA 45402, heretofore issued to Respondent David Billy Misa, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on September 1, 2011.

It is so ORDERED August 2, 2011

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

DOJ Matter ID:SD2011800316

Attachment:
Exhibit A: Accusation

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
DAVID E. HAUSFELD
Deputy Attorney General
State Bar No. 110639
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2025
Facsimile: (619) 645-2061
Attorneys for Complainant

FILED

Date 5/4/11 By William H. Douglas

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

In the Matter of the Accusation Against: **DAVID BILLY MISA** **4907 Roja Drive** **Oceanside, CA 92057** **Field Representative License No. FR 44922** **Applicator License No. RA 45402** Respondent.	Case No. 2011-55 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 11, 2006, the Structural Pest Control Board issued Applicator License Number RA 45402 to David Billy Misa (Respondent). The Applicator License was in full force and effect at all times relevant to the charges brought herein and will expire on April 11, 2012, unless renewed.

3. On or about November 9, 2009, the Structural Pest Control Board issued Field Representative License Number FR 44922 to David Billy Misa (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.

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 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 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."

9. 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

10. 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.

11. California Code of Regulations, title 16, section 1937.2 states, in pertinent part:

. . . .

(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.

. . . .

COST RECOVERY

12. Section 125.3 of the Code 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.

CAUSE FOR DISCIPLINE

(January 13, 2011 Criminal Conviction for Burglary)

13. Respondent is subject to disciplinary action under sections 490 and 8649, in that he was convicted of a crime substantially related to the qualifications, duties and functions of a licensed field representative or applicator. The circumstances are as follows.

14. On or about December 29, 2010, Respondent was detained by loss prevention personnel at the Kohl's Department Store in San Marcos, California. He was subsequently arrested by the San Diego County Sheriff's Department and charged with various shoplifting related offenses.

15. On or about January 3, 2011 felony criminal complaint number CN 286325 was filed in the San Diego Superior Court, North County Division. Respondent was charged with the following violations: Penal Code section 211, robbery, a felony; Penal Code section 459, burglary, a felony; Penal Code section 496 (a), receiving stolen property, a felony; Penal Code section 466, possession of burglary tools, a misdemeanor.

16. On January 13, 2011, Respondent entered a plea of guilty to the felony violation of Penal Code Sec. 459, burglary. The other charges were dismissed as a result of a plea agreement. As part of his criminal sentencing, Respondent was placed on three years of formal probation, sentenced to 180 days in the County jail, and ordered to pay fees, fines, and restitution.

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 44922, issued to David Billy Misa;

2. Revoking or suspending Applicator License Number RA 45402, issued to David Billy Misa;

///

3. Ordering David Billy Misa 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: 5/4/11

William H. Douglas

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

SD2011800316
80496325.doc