EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
PATRICK M. KENADY
Deputy Attorney General
State Bar No. 050882
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5377
Facsimile: (916) 327-8643
Attorneys for Complainant

FILED

Date 12/20/10 By Kelli Okuma

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

In the Matter of the Accusation Against: **JOSE F. ESCALANTE,** **a.k.a. JOSE FERNANDO ESCALANTE** **10670 White Rock Road, Suite 200** **Rancho Cordova, California 95670** **Applicator's License No. RA 48537** **Field Representative's License No. FR 43912** Respondent.	Case No. 2011-20 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kelli Okuma ("Complainant") brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

Applicator's License No. RA 48537

2. On or about February 28, 2008, the Board issued Applicator's License Number RA 48537 in Branches 2 (general pest) and 3 (termite) to Jose F. Escalante, also known as Jose Fernando Escalante ("Respondent"), employee of Ecolab, Inc. On December 23, 2008, Respondent's applicator's license was downgraded to Branch 3 due to the issuance of his Branch 2 field's representative's license, set forth below. Respondent's applicator's license will expire on February 28, 2011, unless renewed.

Field Representative's License No. FR 43912

3. On or about December 23, 2008, the Board issued Field Representative's License Number FR 43912 in Branch 2 to Respondent, employee of Ecolab, Inc. Respondent's field representative's license will expire on June 30, 2011, 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 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.

7. Code section 8649 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.

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8. Code section 8655 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.

9. Code section 490, subdivision (a), states:

> In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

COST RECOVERY

10. 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.

CAUSE FOR DISCIPLINE

(Criminal Conviction)

11. Respondent is subject to disciplinary action pursuant to Code sections 8649 and 490, subdivision (a), in that on or about June 30, 2010, in the criminal proceeding titled *People v. Jose Fernando Escalante* (Super. Ct. San Mateo County, 2010, Case No. NM393469A), Respondent was convicted by the court on his plea of nolo contendere to violating Penal Code sections 530.5 (using another person's identity to obtain, or attempt to obtain, credit, goods, or services, a misdemeanor) and 487, subdivision (a) (grand theft, a misdemeanor), crimes substantially related to the qualifications, functions, and duties of a field representative and applicator. The imposition of Respondent's sentence was suspended and Respondent was placed on probation for two years on terms and conditions, including that Respondent pay $716.69 in restitution to the victim, South

City Lumber. The circumstances of the crimes are as follows: On and between December 1, 2009, and April 1, 2010, on 3 or 4 occasions, Respondent went into the South City Lumber store (South San Francisco, California), and purchased several items for his personal use. Respondent charged his purchases to the La Quinta Hotel which had a charge account with the store and was billed for the purchases. Respondent wore a La Quinta uniform when he made the purchases and identified himself as "Richard A." Respondent admitted to investigating officers with the South San Francisco Police Department that he was an ex-employee of La Quinta and that Richard A. was a current employee. Only Richard A. had charging privileges at the store. On April 1, 2010, Respondent returned to the store and attempted to purchase approximately $150 worth of merchandise. When store personnel requested his identification, Respondent fled the store.

OTHER MATTERS

12. 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.

13. Pursuant to Code section 8654, if discipline is imposed on Field Representative's License Number FR 43912 and/or Applicator's License Number RA 48537, issued to Jose F. Escalante, also known as Jose Fernando Escalante, Jose F. Escalante, also known as Jose Fernando Escalante, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Jose F. Escalante, also known as Jose Fernando Escalante, shall be subject to 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. Revoking or suspending Field Representative's License Number FR 43912, issued to Jose F. Escalante, also known as Jose Fernando Escalante;

2. Revoking or suspending Applicator's License Number RA 48537, issued to Jose F. Escalante, also known as Jose Fernando Escalante;

3. Prohibiting Jose F. Escalante, also known as Jose Fernando Escalante, 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 Field Representative's License Number FR 43912 and/or Applicator's License Number RA 48537, issued to Jose F. Escalante, also known as Jose Fernando Escalante;

4. Ordering Jose F. Escalante, also known as Jose Fernando Escalante, 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;

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

DATED: 12/20/10

Kelli Okuma

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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