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**FILED**

Date 12/20/10 By *Kelli Okuma*

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

11 In the Matter of the Accusation Against:

Case No. 2011-20

12 **JOSE F. ESCALANTE,**  
13 **a.k.a. JOSE FERNANDO ESCALANTE**  
14 **10670 White Rock Road, Suite 200**  
15 **Rancho Cordova, California 95670**  
16 **Applicator's License No. RA 48537**  
17 **Field Representative's License No. FR 43912**

**A C C U S A T I O N**

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 **Applicator's License No. RA 48537**

23 2. On or about February 28, 2008, the Board issued Applicator's License Number  
24 RA 48537 in Branches 2 (general pest) and 3 (termite) to Jose F. Escalante, also known as Jose  
25 Fernando Escalante ("Respondent"), employee of Ecolab, Inc. On December 23, 2008,  
26 Respondent's applicator's license was downgraded to Branch 3 due to the issuance of his Branch  
27 2 field's representative's license, set forth below. Respondent's applicator's license will expire  
28 on February 28, 2011, unless renewed.

1 **Field Representative's License No. FR 43912**

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

5 **STATUTORY PROVISIONS**

6 4. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that  
7 the Board may suspend or revoke a license when it finds that the holder, while a licensee or  
8 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu  
9 of a suspension may assess a civil penalty.

10 5. Code section 8625 states:

11 The lapsing or suspension of a license or company registration by  
12 operation of law or by order or decision of the board or a court of law, or the  
13 voluntary surrender of a license or company registration shall not deprive the board of  
14 jurisdiction to proceed with any investigation of or action or disciplinary proceeding  
15 against such licensee or company, or to render a decision suspending or revoking  
16 such license or registration.

17 6. Code section 8654 states:

18 Any individual who has been denied a license for any of the reasons  
19 specified in Section 8568, or who has had his or her license revoked, or whose license  
20 is under suspension, or who has failed to renew his or her license while it was under  
21 suspension, or who has been a member, officer, director, associate, qualifying  
22 manager, or responsible managing employee of any partnership, corporation, firm, or  
23 association whose application for a company registration has been denied for any of  
24 the reasons specified in Section 8568, or whose company registration has been  
25 revoked as a result of disciplinary action, or whose company registration is under  
26 suspension, and while acting as such member, officer, director, associate, qualifying  
27 manager, or responsible managing employee had knowledge of or participated in any  
28 of the prohibited acts for which the license or registration was denied, suspended or  
29 revoked, shall be prohibited from serving as an officer, director, associate, partner,  
30 qualifying manager, or responsible managing employee of a registered company, and  
31 the employment, election or association of such person by a registered company is a  
32 ground for disciplinary action.

33 7. Code section 8649 states:

34 Conviction of a crime substantially related to the qualifications, functions,  
35 and duties of a structural pest control operator, field representative, applicator, or  
36 registered company is a ground for disciplinary action. The certified record of  
37 conviction shall be conclusive evidence thereof.

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1 8. Code section 8655 states:

2 A plea or verdict of guilty or a conviction following a plea of nolo  
3 contendere made to a charge substantially related to the qualifications, functions, and  
4 duties of a structural pest control operator, field representative, applicator, or  
5 registered company is deemed to be a conviction within the meaning of this article or  
6 Section 8568 of this chapter. The board may order the license or registration  
7 suspended or revoked, or may decline to issue a license, when the time for appeal has  
8 elapsed, or the judgment of conviction has been affirmed on appeal or when an order  
9 granting probation is made suspending the imposition of sentence, irrespective of a  
10 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing  
11 the individual or registered company to withdraw a plea of guilty and to enter a plea  
12 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
13 information or indictment.

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

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

#### 13 COST RECOVERY

14 10. Code section 125.3 states, in pertinent part, that a Board may request the  
15 administrative law judge to direct a licentiate found to have committed a violation or violations of  
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case.

#### 18 CAUSE FOR DISCIPLINE

##### 19 (Criminal Conviction)

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

1 City Lumber. The circumstances of the crimes are as follows: On and between December 1,  
2 2009, and April 1, 2010, on 3 or 4 occasions, Respondent went into the South City Lumber store  
3 (South San Francisco, California), and purchased several items for his personal use. Respondent  
4 charged his purchases to the La Quinta Hotel which had a charge account with the store and was  
5 billed for the purchases. Respondent wore a La Quinta uniform when he made the purchases and  
6 identified himself as "Richard A." Respondent admitted to investigating officers with the South  
7 San Francisco Police Department that he was an ex-employee of La Quinta and that Richard A.  
8 was a current employee. Only Richard A. had charging privileges at the store. On April 1, 2010,  
9 Respondent returned to the store and attempted to purchase approximately \$150 worth of  
10 merchandise. When store personnel requested his identification, Respondent fled the store.

#### 11 OTHER MATTERS

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

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

#### 24 PRAAYER

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

27 1. Revoking or suspending Field Representative's License Number FR 43912, issued to  
28 Jose F. Escalante, also known as Jose Fernando Escalante;


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

3           3.     Prohibiting Jose F. Escalante, also known as Jose Fernando Escalante, from serving  
4 as an officer, director, associate, partner, qualifying manager or responsible managing employee  
5 of any registered company during the period that discipline is imposed on Field Representative's  
6 License Number FR 43912 and/or Applicator's License Number RA 48537, issued to Jose F.  
7 Escalante, also known as Jose Fernando Escalante;

8           4.     Ordering Jose F. Escalante, also known as Jose Fernando Escalante, to pay the  
9 Structural Pest Control Board the reasonable costs of the investigation and enforcement of this  
10 case, pursuant to Business and Professions Code section 125.3;

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

12  
13 DATED: 12/20/10

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

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