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10 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-13

13 **SERGIO N. LUNA**
14 **A.K.A. SERGIO LUNA CRUZ**
15 **144 Crestwood Drive, #2**
Daly City, California 94015
16 **Registered Applicator's License No. RA**
48617, Branches 2 & 3

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17
18 Respondent.

19
20 FINDINGS OF FACT

21 1. On or about September 23, 2009, Complainant Kelli Okuma, in her official capacity
22 as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
23 Affairs, filed Accusation No. 2010-13 against Sergio N. Luna (Respondent) before the Structural
24 Pest Control Board.

25 2. On or about March 18, 2008, the Structural Pest Control Board (Board) issued
26 Registered Applicator's License No. RA 48617, Branches 2 & 3, to Sergio N. Luna, also known
27 as Sergio Luna Cruz (Respondent). The Registered Applicator's License was in full force and
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1 effect at all times relevant to the charges brought herein and expired on September 6, 2009, unless
2 renewed.

3 3. On or about September 23, 2009, Carol L. Grays, an employee of the Department of
4 Justice, served by Certified and First Class Mail a copy of Accusation No. 2010-13, Statement to
5 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
6 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 144
7 Crestwood Drive, #2, Daly City, California 94015. A copy of the Accusation is attached as
8 Exhibit A, and is incorporated herein by reference.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c).

11 5. Government Code section 11506 states, in pertinent part:

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

17 6. Respondent failed to file a Notice of Defense within 15 days after service upon
18 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
19 No. 2010-13.

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

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 that Respondent is in default. The Board will take action without further hearing and, based on
27 the evidence on file herein, finds that the allegations in Accusation No. 2010-13 are true.

28 9. The total costs for investigation and enforcement in connection with the Accusation
are \$3,840.25 as of October 21, 2009.

DETERMINATION OF ISSUES

1 1. Based on the foregoing findings of fact, Respondent Sergio N. Luna has subjected his
2 Registered Applicator's License No. RA 48617 to discipline.

3 2. A copy of the Accusation is attached.

4 3. The agency has jurisdiction to adjudicate this case by default.

5 4. The Structural Pest Control Board is authorized to revoke Respondent's Registered
6 Applicator's License based upon the following violations alleged in the Accusation:

7 a. Sections 490 and 8649 of the Business and Professions Code (Code) in that on or
8 about January 29, 2009, in the Superior Court of California, County of San Francisco, Case No.
9 Case No. 2402189, entitled *The People of the State of California vs. Sergio Luna Cruz*,
10 Respondent was convicted by his plea of guilty of violating Section 245(a)(1) of the Penal Code
11 (assault with a deadly weapon, other than a firearm, likely to cause great bodily harm), a
12 misdemeanor. Pursuant to said conviction, the imposition of sentence was suspended and
13 Respondent was placed on probation for three (3) years upon terms and conditions, which
14 included, but were not limited to, the following: serve seventeen (17) days in County Jail, with
15 credit for time served; be subject to warrantless search condition, as to his person, property,
16 premises and vehicle, any time of the day or night, with or without probable cause, by any peace,
17 parole or probation officer; stay away from Arguello Market located at 782 Arguello Boulevard,
18 San Francisco; and not threaten, molest, or have any written, telephonic, personal or third contact
19 with the male victim, C. O. The factual circumstances surrounding the conviction are as follows:

20 On or about January 13, 2009, in San Francisco, California, Respondent's
21 accomplice, Carlos Sanchez, stole two 12-packs of Heineken beer from the Arguello Market, but
22 was temporarily stopped from doing so by Arguello Market employee, C. O., who yelled
23 "Amigo" at Sanchez to prevent him from leaving the store with the beer. Immediately thereafter,
24 Sanchez slipped and fell on the sidewalk at the entrance to the store, and dropped the two 12-
25 packs of beer he was holding, causing one 12-pack to tear open, leaving only four beers in that
26 12-pack. At that point and without warning, Respondent punched C. O. twice in the left side of
27 his head. After punching C. O., Respondent then lifted his shirt in a "threatening manner," which
28 the victim thought implied that he may have a weapon. C. O. sustained two red marks on his

1 face/forehead after being punched by Respondent. After the assault, Respondent picked up the
2 two packs of beer that had been dropped by Sanchez, and they then both drove away in a
3 Chevrolet Mini Van. Respondent and Sanchez were arrested that day after their vehicle was
4 pulled over by a San Francisco Police Officer who had been alerted to the assault and theft at
5 Arguello Market.

6 ORDER

7 IT IS SO ORDERED that Registered Applicator's License No. RA 48617 heretofore issued
8 to Sergio N. Luna, also known as Sergio Luna Cruz (Respondent), is revoked.

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

13 This Decision shall become effective on January 15, 2010.

14 It is so ORDERED December 16, 2009.

15
16 *Clifford L. Nittler*
17 FOR THE STRUCTURAL PEST CONTROL BOARD
18 DEPARTMENT OF CONSUMER AFFAIRS

19
20 Attachment:

21 Exhibit A: Accusation No. 2010-13
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7 Attorneys for Complainant

FILED

Date 9/14/09 By Kelli Okuma

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **SERGIO N. LUNA**
13 **A.K.A. SERGIO LUNA CRUZ**
14 **c/o Terminix International Co. LP**
15 **889 Stanton Road**
16 **Burlingame, California 94010**
17 **Registered Applicator's License No. RA**
18 **48617, Branches 2 & 3**
19 Respondent.

Case No. 2010-13

ACCUSATION

18 Complainant alleges:

19 PARTIES

- 20 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
21 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
22 Affairs.
23 2. On or about March 18, 2008, the Structural Pest Control Board issued Registered
24 Applicator's License Number RA 48617, Branches 2 & 3 to Sergio N. Luna, also known as
25 Sergio Luna Cruz (Respondent). On April 4, 2009, the Registered Applicator's License was
26 placed on a 150 day temporary license status pursuant to Section 17520(e)(1)(A) of the Family
27 Code until September 6, 2009, for non-compliance with a judgment or an order for support.

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1 FIRST CAUSE FOR DISCIPLINARY ACTION

2 (Substantially Related Conviction)

3 9. Respondent has subjected his Registered Applicator's License to disciplinary action
4 under sections 490 and 8649 of the Code in that he was convicted of a crime substantially related
5 to the qualifications, functions or duties of an applicator, in that on or about January 29, 2009, in
6 the Superior Court of California, County of San Francisco, Case No. 2402189, entitled *The*
7 *People of the State of California vs Sergio Luna Cruz*, Respondent was convicted by his plea of
8 guilty of violating Section 245(a)(1) of the Penal Code (assault with a deadly weapon, other than
9 a firearm, likely to cause great bodily harm), a misdemeanor. Pursuant to said conviction, the
10 imposition of sentence was suspended and Respondent was placed on probation for three (3)
11 years upon terms and conditions, which included, but were not limited to, the following: serve
12 seventeen (17) days in County Jail, with credit for time served; be subject to warrantless search
13 condition, as to his person, property, premises and vehicle, any time of the day or night, with or
14 without probable cause, by any peace, parole or probation officer; stay away from Arguello
15 Market located at 782 Arguello Boulevard, San Francisco; and not threaten, molest, or have any
16 written, telephonic, personal or third contact with the male victim, C. O.¹ The factual
17 circumstances surrounding the conviction are as follows:

18 a. On or about January 13, 2009, in San Francisco, California, Respondent's
19 accomplice, Carlos Sanchez, stole two 12-packs of Heineken beer from the Arguello Market, but
20 was temporarily stopped from doing so by Arguello Market employee, C. O., who yelled
21 "Amigo" at Sanchez to prevent him from leaving the store with the beer. Immediately thereafter,
22 Sanchez slipped and fell on the sidewalk at the entrance to the store, and dropped the two 12-
23 packs of beer he was holding, causing one 12-pack to tear open, leaving only four beers in that
24 12-pack. At that point and without warning, Respondent punched C. O. twice in the left side of
25 his head. After punching C. O., Respondent then lifted his shirt in a "threatening manner," which
26 the victim thought implied that he may have a weapon. C. O. sustained two red marks on his

27 _____
28 ¹ The victim will be referred to by initials only in order to preserve confidentiality.

1 face/forehead after being punched by Respondent. After the assault, Respondent picked up the
2 two packs of beer that had been dropped by Sanchez, and they then both drove away in a
3 Chevrolet Mini Van. Respondent and Sanchez were arrested that day after their vehicle was
4 pulled over by a San Francisco Police Officer who had been alerted to the assault and theft at
5 Arguello Market.

6 PRAYER

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

- 9 1. Revoking or suspending Registered Applicator's License Number RA 48617, issued
10 to Sergio N. Luna, also known as Sergio Luna Cruz (Respondent);
- 11 2. Ordering Respondent to pay the Structural Pest Control Board the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 9/14/09

Kelli Okuma
KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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