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FILED
Date 3/9/15 By [signature]

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

In the Matter of the Accusation Against: **VICTOR MANUEL SANTIESTEBAN,** **AKA VICTOR SANTIESTEBAN,** **AKA VICTOR MANUEL RANGEL** **2352 1/2 East El Segundo Blvd.** **Compton, CA 90222** **Applicator License No. RA 49995** Respondent.	Case No. 2015-44 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs.

2. On or about June 11, 2009, the Structural Pest Control Board issued Applicator's License No. RA 49995 in Branches 2 and 3 to Victor Manuel Santiesteban (Respondent). Applicator's License No. RA 49995 was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

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3. On or about January 19, 2006, the Structural Pest Control Board issued Applicator's License No. RA 45045 to Victor Manuel Santiesteban (Respondent). The Applicator's License expired on January 19, 2009, and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Structural Pest Control Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. 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.

STATUTORY PROVISIONS

7. Section 490 of the Code states:

> (a) 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.
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> (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
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> (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken 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.
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> (d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm

to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

8. Section 493 of the Code states, in pertinent part:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
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> . . .

9. 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.

10. 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.

11. 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.

12. 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 side the verdict of guilty, or dismissing the accusation, information or indictment.

COST RECOVERY

13. Code section 125.3 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1937.1, states, in pertinent part:

> For the purposes of denial, suspension or revocation of a license or company registration . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company . . . 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:
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> (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.
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> (b) Commission of any of the following in connection with the practice of structural pest control:
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> (1) Fiscal dishonesty
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> (2) Fraud
>
> (3) Theft
>
> (4) Violations relating to the misuse of pesticides.

FIRST CAUSE FOR DISCIPLINE

(March 6, 2014 Criminal Conviction – Making a Fraudulent Statement and Attempted Perjury Under Oath on January 25, 2010)

15. Respondent is subject to disciplinary action pursuant to Code sections 490, 493, and 8649 in that on or about March 6, 2014, in the criminal proceeding entitled *People v. Victor Manuel Santiesteban aka Victor Santiesteban aka Victor Manuel Rangel*, Superior Court, County of Orange, Central Justice Center, Case No. 12CF2930, a jury found Respondent guilty of making a fraudulent statement under Penal Code section 1871.4 (a)(1) and attempted perjury under oath under Penal Code sections 664(a) and 118 (a), crimes which are substantially related to the qualifications, functions, and duties of an applicator. The circumstances of the crimes are as follows:

16. Respondent was employed by American City Pest and Termite (American) as a service technician until American learned he was simultaneously working for another pest control company in violation of his agreement with American. Respondent's last day of work for American was October 26, 2009.

On or about January 25, 2010, Respondent filed a workers' compensation claim for an injury he allegedly suffered on October 1, 2009. Respondent claimed that he had been rear-ended while in a truck owned by American and suffered injuries. Respondent's claim was denied by the Workers' Compensation Appeals Board. Although no award was made to Respondent, investigation fees, copy service fees, and defense attorney fees were paid out.

Respondent was deposed in connection with his workers compensation claim. Prior to testifying, Respondent was administered an oath. At the deposition, Respondent testified he had suffered injuries in an accident in October 2009 while driving his assigned American truck. Respondent described the circumstances of the accident in great detail. Respondent indicated that he realized the night of the accident that he had been injured. Respondent described going to Harbor UCLA Hospital a few days after the accident and receiving treatment for his injuries. Respondent described the limitations that resulted from the injuries he suffered in the accident.

At trial, American's general manager, AM testified that she handled accident reports for American and that Respondent attended a meeting on August 12, 2009 during which accident reports were discussed. Respondent never notified AM about the accident or his injuries during his employment.

Respondent's direct supervisor at American, GB, testified that Respondent signed American's written vehicle policy on April 21, 2009 which included procedures for accidents. Respondent attended a class on August 12, 2009 on how to fill out accident reports taught by GB. According to GB, Respondent never reported the accident to anyone at American.

CZ was American's president and oversaw its daily operations. Respondent did not inform CZ about the accident or his injuries. CZ first learned of the accident through a January 28, 2010 letter from Respondent's attorney.

EM, an insurance fraud investigator for the Orange County District Attorney's Office testified that he reviewed a Teletrac global positioning report from Respondent's vehicle to determine the vehicle's movement and locations from September 30 through October 2, 2009. The movements of Respondent's vehicle were inconsistent with Respondent's testimony.

EM also reviewed Respondent's medical records from UCLA which contained no mention of an October 1, 2009 accident or resulting injuries. The records reflected no doctor visits by Respondent during September and October of 2009.

HH, a Senior claims Examiner for Athens Administrators (Athens) reviewed Respondent's workers' compensation claim and testified that Athens incurred $31,793.80 to investigate the claim.

17. On or about October 21, 2014, Respondent was sentenced to three (3) years formal supervised probation and 360 days in Orange County jail.

18. On or about April 11, 2014, an appeal was filed for a determination as to whether the court erred at sentencing when it failed to impose a sentence on count two. On or about February 19, 2015, an Appellate opinion was issued by the California Court of Appeal, Fourth Appellate District, Division Three in *People v. Victor Manuel Santiesteban,* Case No. GD 049970, affirming the judgment. The Appellate Court ruled that there was no reasonably arguable appellate issue as

the trial court intended to impose judgment on both counts. The case was remanded to the trial court with directions to amend the sentencing order to reflect the jail sentence was imposed on both counts. In all other respects, the judgment was affirmed.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

19. Respondent is subject to disciplinary action pursuant to Code section 8620 in that Respondent committed acts of dishonesty when he knowingly filed a false and fraudulent Workers' Compensation claim and attempted perjury under oath during a deposition as set out more fully in paragraph 16 above.

OTHER MATTERS

20. 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 one 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.

20. Pursuant to Code section 8654, if discipline is imposed on Applicator's License Number RA 49995, issued to Respondent Victor Manuel Santiesteban, Respondent 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 Respondent 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 Applicator License Number RA 49995, issued to Victor Manuel Santiesteban.

2. Ordering Victor Manuel Santiesteban 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;

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

DATED: 3/9/15

SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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