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

In the Matter of the Accusation Against:

Case No. 2010-83

MICHAEL E. LANE 1600 West 9th Avenue, 15-C Escondido, CA 92029

Field Representative License No. FR 16222

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

This Decision shall become effective on November 30, 2010

It is so ORDERED

November 1, 2010 .

FOR THE STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF PESTICIDE REGULATION

1	EDMUND G. BROWN JR. Attorney General of California
2	LINDA K. SCHNEIDER Supervising Deputy Attorney General
3	DESIREE I. KELLOGG Deputy Attorney General
. 4	110 West "A" Street, Suite 1100
5	San Diego, CA 92101 P.O. Box 85266
6	Telephone: (619) 645-2996
7	Facsimile: (619) 645-2061 Attorneys for Complainant
8	BEFORE THE
9 10	DEPARTMENT OF PESTICIDE REGULATION
11	
12	In the Matter of the Accusation Against: Case No. 2010-83
12	MICHAEL E. LANE
12	Escondido, CA 92029 STIPULATED SURRENDER OF
14	Field Representative License No. FR 16222
16	Respondent.
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19	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
2	proceeding that the following matters are true:
2	1 PARTIES
2	1. Kelli Okuma (Complainant) is the Registrar/Executive Officer of the Structural Pest
2	Control Board. She brought this action solely in her official capacity and is represented in this
2	4 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Desiree I.
2	5 Kellogg, Deputy Attorney General.
2	6 2. Michael E. Lane (Respondent) is representing himself in this proceeding and has
2	7 chosen not to exercise his right to be represented by counsel.
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	Stipulated Surrender of License (Case No. 2010-83)

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3. On or about May 11, 1988, the Structural Pest Control Board issued Field Representative License No. FR 16222 to Michael E. Lane (Respondent). The was in full force and effect at all times relevant to the charges brought in Accusation No. 2010-83 and will expire on June 30, 2011, unless renewed.

JURISDICTION

4. Accusation No. 2010-83 was filed before the Structural Pest Control Board (Board)
Department of Pesticide Regulation, and is currently pending against Respondent. The
Accusation and all other statutorily required documents were properly served on Respondent on
June 22, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy
of Accusation No. 2010-83 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in
 Accusation No. 2010-83. Respondent also has carefully read, and understands the effects of this
 Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a
hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
his own expense; the right to confront and cross-examine the witnesses against him; the right to
present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
the attendance of witnesses and the production of documents; the right to reconsideration and
court review of an adverse decision; and all other rights accorded by the California
Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and

every right set forth above.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation
 No. 2010-83, agrees that cause exists for discipline and hereby surrenders his Field
 Representative License No. FR 16222 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Field Representative License without further process.

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<u>CONTINGENCY</u>

This stipulation shall be subject to approval by the Structural Pest Control Board. 10. 4 Respondent understands and agrees that counsel for Complainant and the staff of the Structural 5 Pest Control Board may communicate directly with the Board regarding this stipulation and 6 surrender, without notice to or participation by Respondent. By signing the stipulation, 7 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the 8 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this 9 stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of 10 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between 11 the parties, and the Board shall not be disqualified from further action by having considered this 12 matter. 13

14 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
15 License and Order, including facsimile signatures thereto, shall have the same force and effect as
16 the originals.

This Stipulated Surrender of License and Order is intended by the parties to be an
 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order

may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that
the (Board) may, without further notice or formal proceeding, issue and enter the following
Order:

<u>ORDER</u>

IT IS HEREBY ORDERED that Field Representative License No. FR 16222, issued to Respondent Michael E. Lane, is surrendered and accepted by the Structural Pest Control Board.

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Stipulated Surrender of License (Case No. 2010-83)

14. The surrender of Respondent's Field Representative License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

15. Respondent shall lose all rights and privileges as a field representative in California as of the effective date of the Board's Decision and Order.

7 16. Respondent shall cause to be delivered to the Board both his wall license certificate
8 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

9 17. If Respondent ever files an application for licensure or a petition for reinstatement in 10 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must 11 comply with all the laws, regulations and procedures for reinstatement of a revoked license in 12 effect at the time the petition is filed, and all of the charges and allegations contained in 13 Accusation No. 2010-83 shall be deemed to be true, correct and admitted by Respondent when 14 the Board determines whether to grant or deny the petition.

18. Respondent shall pay the Board its costs of investigation and enforcement in the
amount of \$1462.50 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the
stipulation and the effect it will have on my Field Representative License. I enter into this
Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
be bound by the Decision and Order of the Structural Pest Control Board.

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DATED:

07-15-2010

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MICHAEL E. LANE Respondent

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Stipulated Surrender of License (Case No. 2010-83)

1	ENDORSEMENT	
2	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted	
3	for consideration by the Structural Pest Control Board of the Department of Pesticide Regulation.	
4	Dated: July 2, 2010 Respectfully submitted,	
5	EDMUND G. BROWN JR.	
6	Attorney General of California LINDA K. SCHNEIDER	
7	Supervising Deputy Attorney General	
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9	DESIREE KELLOGG Deputy Attorney General Attorneys for Complainant	
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	Stipulated Surrender of License (Case No. 2010-83)	+

Exhibit A

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Accusation No. 2010-83

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* c	<i>*</i> .	11	
		1 E	DMUND G. BROWN JR. ttorney General of California
		2 11 1	INDA K. SCHNEIDER
		3 I	upervising Deputy Attorney General DESIREE I. KELLOGG Deputy Attorney General State Bar No. 126461 110 West "A" Street, Suite 1100
		4	Deputy Attorney General State Bar No. 126461
			110 West "A" Street, Suite 1100 San Diego, CA 92101
		5	P.O. Box 85266
	. .	6	San Diego, CA 92186-5266 Telephone: (619) 645-2996
		7	Facsimile: (619) 645-2061 Attorneys for Complainant
		8	BEFORE THE
		9	STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF PESTICIDE REGULATION
		10	STATE OF CALIFORNIA
		11	
		12	In the Matter of the Accusation Against: Case No. 2010–83
			MICHAEL E. LANE
		13	11418 Monticook Court San Diego, CA 92127A C C U S A T I O N
		. 14	
	•	15	Field Representative License No. FR 16222
		16	Respondent.
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		19	Complainant alleges:
		20	PARTIES
		21	1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
		22	the Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.
		23	2. On or about May 11, 1988, the Structural Pest Control Board issued Field
	<i>a</i> .	24	Representative License Number FR 16222 to Michael E. Lane (Respondent). The Field
		25	Representative License was in full force and effect at all times relevant to the charges brought
	,	26	herein and will expire on June 30, 2010, unless renewed.
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			1 Accusation

1	JURISDICTION				
2	3. This Accusation is brought before the Structural Pest Control Board (Board),				
3	Department of Pesticide Regulation, under the authority of the following laws. All section				
4	references are to the Business and Professions Code unless otherwise indicated.				
5	4. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or				
6	revoke a license when it finds that the holder, while a licensee or applicant, has committed any				
7	acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a				
8	civil penalty.				
9	5. Section 8625 of the Code states:				
10 The lapsing or suspension of a license or company registration by operal law or by order or decision of the board or a court of law, or the voluntary sum of a license or company registration shall not deprive the board of jurisdiction proceed with any investigation of or action or disciplinary proceeding against licensee or company, or to render a decision suspending or revoking such licen registration.					
13	STATUTORY AND REGULATORY PROVISIONS				
14	6. Section 482 of the Code states:				
15 16	Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:				
17	(a) Considering the denial of a license by the board under Section 480; or				
18	(b) Considering suspension or revocation of a license under Section 490.				
19	Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.				
20	7. Section 490 of the Code provides, in pertinent part, that a board may subpoind of				
21	revoke a license on the ground that the licensee has been convicted of a crime substantiany				
. 22	related to the qualifications, functions, or duties of the busiless of profession for which the				
23	license was issued.				
24	8. Section 493 of the Code states:				
25	I have the standing any other provision of law in a proceeding conducted by a				
20	board within the department pursuant to law to deny an application for a needse of to				
2 [*] 2	holds a license, upon the ground that the applicant of the ficensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the				
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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 1 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. 2 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 3 'registration.' 4 Section 8637 of the Code states that "[m]isrepresentation of a material fact by the 9 5 applicant in obtaining a license or company registration is a ground for disciplinary action." 6 Section 8649 of the Code states: 10. 7 Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or 8 registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof. 9 Title 16, California Code of Regulations, section 1937.1 states: 11. 10 For the purposes of denial, suspension or revocation of a license or company 11 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, 12 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 13 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, 14 or welfare. Such crimes or acts shall include, but not be limited to, the following: 15 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code. 16 (b) Commission of any of the following in connection with the practice of structural pest control: 17 (1) Fiscal dishonesty. 18 19 (2) Fraud. 20 (3) Theft. (4) Violations relating to the misuse of pesticides. 21 Title 16, California Code of Regulations, section 1937.2 states, in part: 22 12. 23 (b) When considering the suspension or revocation of a structural pest control 24 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 2.5such person or company and his or her or its present eligibility for a license or company registration will consider the following: 26 (1) Nature and severity of the act(s) or offense(s). 27 (2) Total criminal record. 28 3 Accusation (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

Section 125.3 of the Code provides, in pertinent part, that the Board may request the 13. 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.

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FIRST CAUSE FOR DISCIPLINE

(August 13, 1984 Conviction for Committing Lewd Act Upon Child Under Age of 14 on

June 15, 1984)...

Respondent subjected his license to discipline under sections 490 and 8649 of the 14. Code in that he was convicted of a crime substantially related to the qualifications, duties and functions of a field representative. The circumstances are as follows:

a. On or about August 13, 1984, in a criminal proceeding entitled People of the State of California v. Michael Eugene Lane, in San Diego County Superior Court, case number CR69818, Respondent was convicted on his plea of guilty for violating Penal Code section 288(a), a felony, committing a lewd and lascivious act upon a child under the age of fourteen 22 years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual 23 desires of the defendant and the victim. As part of his plea agreement, Respondent admitted to 24 "touching the body of [Jane Doe] with the intent to arouse the lust, etc. of himself or [Jane Doe]." 25 b. As a result of the conviction, on or about August 13, 1984, Respondent was 26 sentenced to five years formal probation and to pay all required fines, restitution and fees. 27

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Accusation

SECOND CAUSE FOR DISCIPLINE

(August 22, 1997 Conviction for Failure to Re-Register as Sex Offender) 15. Respondent is subject to disciplinary action under sections 490 and 8649 of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties and functions of a field representative. The circumstances are as follows:

a. On or about August 22, 1997, in a criminal proceeding entitled *People of the State*of California v. Michael Eugene Lane, in San Diego County Superior Court, case number CN
064296, Respondent was convicted on his plea of guilty for violating Penal Code section
290(a)(g)(2), a misdemeanor, failure to re-register as a sex offender within ten days of his
birthday.

b. As a result of the conviction, on or about August 22, 1997, Respondent was
sentenced to two years probation and to pay all required fees, fines and restitution. The Court
further ordered that the count would be dismissed after one year of successful probation. On or
about September 2, 1998, the Court dismissed the case after Respondent successfully completed
one year of his probation.

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THIRD CAUSE FOR DISCIPLINE

(December 14, 2009 Conviction for Failure to Register as Sex Offender Residing in Second

Residence)

16. Respondent is subject to disciplinary action under sections 490 and 8649 of the Code
in that Respondent was convicted of a crime that his substantially related to the qualifications,
duties and functions of a field representative. The circumstances are as follows:

a. On or about December 14, 2009, in a criminal proceeding entitled *People of the State of California v. Michael Eugene Lane*, in San Diego County Superior Court, case number
SCD223646, Respondent was convicted on his plea of guilty for violating Penal Code section
290(g)(2)/290.018(b)/290.010, a felony, failure to register fully as a sex offender. Specifically,
Respondent failed to register his second residence located at Corte Cierna as required by law.
b. As a result of the conviction, on or about December 14, 2009, Respondent was
sentenced to three years formal probation and to pay all required fines, restitution and fees.

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FOURTH CAUSE FOR DISCIPLINE

(Misrepresented Facts on Application for Licensure)

Respondent subjected his license to discipline under section 8637 of the Code in that 17. Respondent misrepresented facts on his application for licensure. On or about May 4, 1988, Respondent signed his application for field representative license under penalty of perjury under the laws of the State of California. Question 8 of the Application stated "[h]ave you been convicted of a felony within the previous five years or misdemeanor other an violation of traffic laws? If YES, attach a signed, detailed statement" Respondent checked the box marked "yes" and wrote as an explanation, "[c]ontempt of court in child support and custody case." Respondent did not disclose his August 13, 1984 conviction under Penal Code section 288(a) in his application. Additionally, in his March 1988 application for the structural pest control field representative 12 examination, Respondent answered "yes" to the question, "[h]ave you ever been convicted of a 13 felony within the last five years or of a misdemeanor other than a violation of traffic laws? If 14 YES, explain" and provided the following explanation, "contempt of court in child support and 1.5 custody, probation granted in 1984 eligible for espongement [sic]." 16

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 18 and that following the hearing, the Structural Pest Control Board issue a decision: 19

Revoking or suspending Field Representative License Number FR 16222, issued to 1. 20 Michael E. Lane; 21

Ordering Michael E. Lane to pay the Structural Pest Control Board the reasonable 2. 22 costs of the investigation and enforcement of this case, pursuant to Business and Professions 23 Code section 125.3; 24

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Accusation

Taking such other and further action as deemed necessary and proper. 3. DATED: 6/10/10 Ġ J OKUMA K₽ Registrar/Executive Officer Structural Pest Control Board Department of Pesticide Regulation State of California Complainant . 9 SD2010800495 80464475.doc . •

Accusation