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FILED

Date 3/20/14 By



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

12 In the Matter of the Accusation Against:

Case No. 2014-23

13 **BENJAMIN A. MENDOZA**
14 **900 Courtney Street**
Hemet, CA 92543

FIRST AMENDED
ACCUSATION

15 **Field Representative License No. FR 22492**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 18, 1993, the Structural Pest Control Board issued Field
24 Representative License Number FR 22492 in Branch 2, to Benjamin A. Mendoza (Respondent).
25 The Field Representative License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on June 30, 2014, unless renewed.

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JURISDICTION

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

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

10 5. Section 8625 of the Code states:

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

STATUTORY PROVISIONS

17 6. Section 482 of the Code states:

18 Each board under the provisions of this code shall develop criteria to evaluate
19 the rehabilitation of a person when:

20 (a) Considering the denial of a license by the board under Section 480; or

21 (b) Considering suspension or revocation of a license under Section 490.

22 Each board shall take into account all competent evidence of rehabilitation
23 furnished by the applicant or licensee.

24 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
25 revoke a license on the ground that the licensee has been convicted of a crime substantially
26 related to the qualifications, functions, or duties of the business or profession for which the
27 license was issued.

28 8. Section 493 of the Code states:

 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

1 licensee in question, the record of conviction of the crime shall be conclusive
2 evidence of the fact that the conviction occurred, but only of that fact, and the board
3 may inquire into the circumstances surrounding the commission of the crime in order
4 to fix the degree of discipline or to determine if the conviction is substantially related
5 to the qualifications, functions, and duties of the licensee in question.

6 As used in this section, "license" includes "certificate," "permit," "authority,"
7 and "registration."

8 9. Section 8624 of the Code states:

9 If the board suspends or revokes an operator's license and one or more branch
10 offices are registered under the name of the operator, the suspension or revocation
11 may be applied to each branch office.

12 If the operator is the qualifying manager, a partner, responsible officer, or
13 owner of a registered structural pest control company, the suspension or revocation
14 may be applied to the company registration.

15 The performance by any partnership, corporation, firm, association, or
16 registered company of any act or omission constituting a cause for disciplinary action,
17 likewise constitutes a cause for disciplinary action against any licensee who, at the
18 time the act or omission occurred, was the qualifying manager, a partner, responsible
19 officer, or owner of the partnership, corporation, firm, association, or registered
20 company whether or not he or she had knowledge of, or participated in, the prohibited
21 act or omission.

22 10. Section 8637 of the Code states: "Misrepresentation of a material fact by the
23 applicant in obtaining a license or company registration is a ground for disciplinary action."

24 11. Section 8649 of the Code states:

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

12. Section 8654 of the Code 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

1 the employment, election or association of such person by a registered company is a
2 ground for disciplinary action.

3 13. Section 8655 of the Code states:

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

16 REGULATORY PROVISIONS

17 14. California Code of Regulations, title 16, section 1937.1 states:

18 For the purposes of denial, suspension or revocation of a license or company
19 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a
20 crime or act shall be considered to be substantially related to the qualifications,
21 functions or duties of a licensee or registered company under Chapter 14 of Division
22 3 of the code if to a substantial degree it evidences present or potential unfitness of
23 such licensee or registered company to perform the functions authorized by the
24 license or company registration in a manner consistent with the public health, safety,
25 or welfare. Such crimes or acts shall include, but not be limited to, the following:

26 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

27 (b) Commission of any of the following in connection with the practice of
28 structural pest control:

(1) Fiscal dishonesty

(2) Fraud

(3) Theft

(4) Violations relating to the misuse of pesticides.

15. California Code of Regulations, title 16, section 1937.2 states:

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(b) When considering the suspension or revocation of a structural pest control
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
such person or company and his or her or its present eligibility for a license or
company registration will consider the following:

1 (1) Nature and severity of the act(s) or offense(s).

2 (2) Total criminal record.

3 (3) The time that has elapsed since commission of the act(s) or offense(s).

4 (4) Whether the licensee or registered company has complied with any terms of
5 parole, probation, restitution or any other sanctions lawfully imposed against the
6 licensee or registered company.

7 (5) If applicable, evidence of expungement proceedings pursuant to Section
8 1203.4 of the Penal Code.

9 (6) Evidence, if any of rehabilitation submitted by the licensee or registered
10 company.

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12 COST RECOVERY

13 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
17 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
18 included in a stipulated settlement.

19 FIRST CAUSE FOR DISCIPLINE

20 (May 25, 2012 Criminal Convictions for Domestic Violence on May 23, 2012)

21 17. Respondent has subjected his license to disciplinary action under sections 490 and
22 8649 of the Code in that he was convicted of crimes that are substantially related to the
23 qualifications, functions, and duties of a Field Representative. The circumstances are as follows:

24 a. On or about May 25, 2012, in a criminal proceeding entitled *People of the*
25 *State of California v. Benjamin Arnie Mendoza, aka Hector Ozuna Mendoza, aka Hector Ozuna,*
26 in Riverside County Superior Court, case number SWM1203390, Respondent was convicted on
27 his plea of guilty of violating Penal Code sections 243, subdivision (e)(1), spousal battery, and
28 273d, subdivision (a), corporal punishment/injury of a child, misdemeanors. Pursuant to a plea
agreement, the court dismissed an additional count of violating Penal Code section 242, battery.

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1 b. As a result of the convictions, on or about May 25, 2012, Respondent was
2 sentenced to 60 days in the custody of the sheriff, with credit for two days, to be served in the
3 Work Release Program. Respondent was granted summary probation for 48 months, and ordered
4 to perform 20 hours of community service, complete a 52-week Domestic Violence Program and
5 child abuse classes, pay fees and fines, and comply with probation terms. A protective order was
6 issued for the victims.

7 c. The facts that led to the convictions are that on or about the evening of
8 May 23, 2012, officers from the Hemet Police Department responded to a call of a domestic
9 disturbance at the residence Respondent shared with his wife and children. Respondent admitted
10 to the officers that during a verbal argument, he lost his temper and physically assaulted his wife
11 and stepdaughter.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(April 17, 2013 Criminal Conviction for Felony Hit & Run on October 9, 2012)**

14 18. Respondent has subjected his license to disciplinary action under sections 490 and
15 8649 of the Code in that he was convicted of a crime that is substantially related to the
16 qualifications, functions, and duties of a Field Representative. The circumstances are as follows:

17 a. On or about April 17, 2013, in a criminal proceeding entitled *People of the*
18 *State of California v. Benjamin Arnie Mendoza, aka Hector Ozuna Mendoza, aka Hector Ozuna*,
19 in Riverside County Superior Court, case number SWF1207002, Respondent was convicted on
20 his plea of guilty of violating Vehicle Code section 20001, subdivision (a), hit and run, a felony.
21 Pursuant to a plea agreement, the court dismissed an additional felony count of violating Penal
22 Code section 245, subdivision (a), assault with a deadly weapon (an automobile).

23 b. As a result of the conviction, on or about April 19, 2013, Respondent was
24 sentenced to the low term of 16 months in state prison, with credit for 16 days.

25 c. The facts that led to the conviction are that on or about the afternoon of
26 October 9, 2012, the Hemet Police Department was dispatched to a gas station/convenience store
27 regarding a fight involving Respondent and two males (brothers). Witnesses stated that they
28 observed the brothers arguing with Respondent as he sat in his truck. The brothers left and while

1 they were walking across the street to return to their trailer park, Respondent exited the gas
2 station at a high rate of speed. Respondent drove directly at the brothers, hit one of them, and left
3 the scene. Respondent turned himself into law enforcement, and he was arrested that afternoon.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Misrepresentation of a Material Fact in Obtaining a License)**

6 19. Respondent has subjected his license to disciplinary action under section 8637 of
7 the Code in that he fraudulently misrepresented a material fact in his application for licensure as a
8 Field Representative, and was subsequently issued a license as a result of his fraud. The
9 circumstances are as follows:

10 a. On or about October 1, 1993, the Board received Respondent's
11 "Application for Field Representative License." Respondent signed the application on September
12 28, 1993, certifying under penalty of perjury under the laws of the State of California to the truth
13 and accuracy of all statements and representations made in the application. Respondent
14 acknowledged that falsifying information could result in the denial of the application.

15 b. On or about August 23, 1991, in a criminal proceeding entitled *People of*
16 *the State of California v. Benjamin Arnie Mendoza*, in Riverside County Superior Court, case
17 number MWV36035, Respondent was convicted on his plea of guilty of violating three counts of
18 Penal Code section 314.1, indecent exposure, and three counts of violating Penal Code section
19 243.4, subdivision (d), sexual battery, misdemeanors. As a result of the convictions, on or about
20 August 23, 1991, Respondent was sentenced to 90 days in jail, with credit for three days, and
21 granted three years summary probation.

22 c. Question 8 of the application asked: "Have you ever been convicted of a felony
23 within the previous five years or misdemeanor other than violation of traffic laws?" In response
24 to the question, Respondent checked the box "No," failing to disclose the August 23, 1991
25 convictions described above even though the convictions met all criteria for disclosure.

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1 **OTHER MATTERS**


2 20. Pursuant to section 8654 of the Code, if discipline is imposed on Field Representative
3 License Number FR 22492 issued to Respondent, Benjamin A. Mendoza shall be prohibited from
4 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
5 employee for any registered company during the time the discipline is imposed, and any
6 registered company which employs, elects, or associates Benjamin A. Mendoza shall be subject
7 to disciplinary action.

8 **PRAYER**

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

- 11 1. Revoking or suspending Field Representative License Number FR 22492, issued to
12 Benjamin A. Mendoza;
- 13 2. Ordering Benjamin A. Mendoza to pay the Structural Pest Control Board the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 3/20/14


19 _____
20 SUSAN SAYLOR
21 Registrar/Executive Officer
22 Structural Pest Control Board
23 Department of Consumer Affairs
24 State of California
25 Complainant

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