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٥	BEFORE THE
9	STRUCTURAL PEST CONTROL BOARD DEPARTMENT OF PESTICIDE REGULATION STATE OF CALIFORNIA
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13	In the Matter of the Accusation Against:  Case No. 2010–84
14	DANIEL RAY SMITH 2239 Country Club Boulevard
15	Stockton, CA 95204 ACCUSATION
16	Field Representative's License
. 17	Number FR 35981, Branch 2
18	Respondent.
19	Complainant alleges:
20	<u>PARTIES</u>
21	1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
22	the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
23	Regulation.
24	2. On or about May 20, 2003, The Structural Pest Control Board issued Field
25	Representative's License Number FR 35981, Branch 2, to Daniel Ray Smith (Respondent). The
26	license was in full force and effect at all times relevant to the charges brought herein and will
27	expire on June 30, 2011, unless renewed.
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- 3. This Accusation is brought before the Structural Pest Control Board (Board),
  Department of Pesticide Regulation, under the authority of the following laws. All section
  references are to the Business and Professions Code (Code), unless otherwise indicated.
- 4. Code section 8620 states, 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 suspension may assess a civil penalty.
- 5. Code section 8624 states, [i]f the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.
  - 6. 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registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate,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 the employment, election or association of such person by a registered company is a ground for disciplinary action.

#### 7. Code section 8625 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.

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#### STATUTORY PROVISIONS

8. Code section 8637 states:

Misrepresentation of a material fact by the applicant in obtaining a license . . . is a ground for disciplinary action.

9. Code section 8641 states, in pertinent part:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, . . . is a ground for disciplinary action.

10. Code section 8649 states, in pertinent part:

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 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 repre-sentative, applicator, of 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 aside the verdict of guilty, or dismissing the accusation, information or indictment.

#### COST RECOVERY

12. Code section 125.3 states, in pertinent part, that a 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.

#### BACKGROUND

13. On the dates of the Board's issuance of Registered Applicator's License Number RA 19467 and Field Representative's License Number FR 35981 to Respondent, the Board was unaware of Respondent's numerous criminal pre-licensure convictions as set forth hereinbelow. Respondent did not disclose them on his application forms.

14. On or about January 2010, the Board became aware of Respondent's numerous criminal convictions by subsequent arrest notifications from the Department of Justice.

#### CAUSE FOR DISCIPLINE

## (Criminal Convictions)

- 15. Respondent is subject to disciplinary action under section Code sections 8620 and 8649, in that Respondent has been convicted of crimes substantially related to the functions, qualifications, and duties of a licensee, as follows:
- a. On or about January 12, 2010, in the Superior Court of California, County of Sacramento, in the case entitled, *People of the State of California v. Daniel Ray Smith* (Super. Ct. Sacramento County, 2009, Case No. 10M00310), Respondent was convicted on his plea of nolo contendere of violating Penal Code section 496, subdivision (a) [receiving stolen property], a misdemeanor.

The circumstances of the crime are that on January 9, 2010, a Galt Police Officer was on patrol when he noticed a vehicle without registration stickers. After dispatch checked the plates, it was determined the plates were stolen. Respondent, the driver, consented to a search of the vehicle and himself, which revealed a Vicodin tablet in his trousers, a screwdriver, a cordless combo kit, a CD, a clear plastic straw with a white residue that was inside the vehicle, and two stolen license plates in the trunk of the car. The white residue was tested and was determined to be Methamphetamine, a controlled substance.

- b. On or about December 2, 2009, Superior Court of California, County of San Joaquin, in the case entitled, *People of the State of California v. Daniel Ray Smith* (Super. Ct. San Joaquin County, 2009, Case No. SF113284A), Respondent was convicted on his plea of nolo contendere of violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance, to wit, Methamphetamine], a felony.
- c. On or about September 5, 2000, Superior Court of California, County of San Joaquin, in the case entitled, *People of the State of California v. Daniel Ray Smith* (Super. Ct. San Joaquin County, 2000, Case No. SF079915), Respondent was convicted on his plea of nolo contendere of violating Health and Safety Code section 11379.6, subdivision (a) [manufacturing a controlled

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substance, to wit, Methamphetaminel with enhancement pursuant to Health and Safety Code section 11370.2 for prior, a felony.

- On or about September 5, 2000, Superior Court of California, County of San Joaquin, in the case entitled, People of the State of California v. Daniel Ray Smith (Super. Ct. San Joaquin County, 2000, Case No. SM201337A), Respondent was convicted on his plea of no contest of violating Penal Code section 243, subdivision (e) [battery on non-cohabiting former spouse, fiancée, or person with whom he had a dating relationship], a misdemeanor.
- On or about February 23, 1998, Superior Court of California, County of San Joaquin, in the case entitled, People of the State of California v. Daniel Ray Smith (Super. Ct. San Joaquin County, 1997, Case No. SC62571), Respondent was convicted on his plea of no contest of violating Health and Safety Code section 11378 [possession of controlled substance for sale, to wit, Methamphetamine], a felony.
- On or about January 7, 1998, Municipal Court of California, County of San Joaquin, f. in the case entitled, People of the State of California v. Daniel Ray Smith (Muni. Ct. San Joaquin County, 1997, Case No. SM197591A), Respondent was convicted on his plea of no contest of violating Penal Code section 242 [battery], a misdemeanor.
- On or about November 12, 1997, in the Municipal Court of California, County of San g. Joaquin, in the case entitled, People of the State of California v. Daniel Ray Smith (Muni. Ct. San Joaquin County, 1997, Case No. SF72296A), Respondent was convicted on his plea of no contest of violating Health and Safety Code section 11357, subdivision (b) [possession of a controlled substance, to wit, Marijuanal, a misdemeanor.
- On or about December 22, 1994, in the Municipal Court of California, County of San Joaquin, in the case entitled, People of the State of California v. Daniel Ray Smith (Muni. Ct. San Joaquin County, 1994, Case No. ST013340A), Respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 2800 [failing to obey a police officer], a misdemeanor.

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#### SECOND CAUSE FOR DISCIPLINE

### (Misrepresentation of a Material Fact)

Respondent's license is subject to denial under Code section 8637, in that in Respondent misrepresented a material when in his Application for Field Representative's License, dated May 13, 2003, and his Application for Structural Pest Control Field Representative Examination, dated February 20, 2003. Respondent executed both forms under penalty of perjury as to the truth and accuracy of the statements and answers. On each form, Respondent checked the box "No" to the following question: "Have you ever been convicted of a felony or of a misdemeanor other than a violation of traffic laws?" The truth and facts are Respondent has been convicted of crimes, as set forth in paragraph 10, subparagraphs c through h, above.

## **OTHER MATTERS**

17. Pursuant to Code section 8654, if discipline is imposed on Field Representative License Number FR 35981, Branch 2, issued to Respondent, then 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 with 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 Field Representative's License Number FR 35981, Branch 2, issued to Daniel Ray Smith;
- 2. Prohibiting Daniel Ray Smith from serving as an officer, director, associate, partner, or qualifying individual of any licensee;
- 3. Ordering Daniel Ray Smith to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

Taking such other and further action as deemed necessary and proper. DATED: 6/10/10 Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California Complainant 1.5 SA2010100841/10573327.docx