1	EDMUND G. BROWN JR.
2	Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General
3	RITA M. LANE
4	RITA M. LANE Deputy Attorney General State Bar No. 171352 110 West "A" Street, Suite 1100
5	San Diego, CA 92101 P.O. Box 85266
6	San Diego, CA 92186-5266
7	Telephone: (619) 645-2614 Facsimile: (619) 645-2061
8	Attorneys for Complainant
9	BEFORE THE STRUCTURAL PEST CONTROL BOARD
10	DEPARTMENT OF PESTICIDE REGULATION STATE OF CALIFORNIA
	STATE OF CADIFORNIA
11	In the Matter of the Accusation Against: Case No. 2010-55
. 12	BOBBY K. KUALII
13	c/o Bugmasters of Orange County 935 North Harbor, Unit #150 A C C U S A T I O N
14	La Habra, CA 90631
15	Operator's License No. OPR 11013
16	Field Representative's License No. FR 38252
17	Respondent.
1,	
18	
	Complainant alleges:
18	Complainant alleges: PARTIES
18 19	
18 19 20	PARTIES
18 19 20 21	PARTIES 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as
18 19 20 21 22	PARTIES 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
18 19 20 21 22 23	PARTIES 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.
18 19 20 21 22 23 24	PARTIES 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation. 2. On or about December 31, 2004, the Structural Pest Control Board issued Operator's
18 19 20 21 22 23 24 25	PARTIES 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation. 2. On or about December 31, 2004, the Structural Pest Control Board issued Operator's License Number OPR 11013 to Bobby K. Kualii. The Operator's License was in full force and
18 19 20 21 22 23 24 25 26	PARTIES 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation. 2. On or about December 31, 2004, the Structural Pest Control Board issued Operator's License Number OPR 11013 to Bobby K. Kualii. The Operator's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless

Accusation

3. On or about February 17, 2005, the Structural Pest Control Board issued Field Representative's License Number FR 38252 to Bobby K. Kualii (Respondent). The Field Representative's License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

JURISDICTION

- 4. 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.
- 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 6. Section 496 of the Code states: "A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to the subversion-of-licensing-examinations."
- 7. 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.
 - 8. 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.

///

///

| ///

27 | ///

9.

(a)

6 7.

8

9 10

11

12

13

14 -15

16

17

18

19

20

21

2223

24

25

2627

28

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

Section 123 of the Code states:

- Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distribution, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.
- (b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

10. Section 8641 of the Code states in pertinent part, that failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, . . . is a ground for disciplinary action.

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.

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

REGULATIONS

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

For the purposes of denial, suspension or revocation of a license or company 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, 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 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:

- (a) Any violation of the provisions of Chapter 14, of Division 3 of the code.
- (b) Commission of any of the following in connection with the practice of structural pest control:
 - (1) Fiscal dishonesty.
 - (2) Fraud.
 - (3) Theft.
 - (4) Violations relating to misuse of pesticides.
- 17. California Code of Regulations, title 16, section 1937.2 states:
 - (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) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.

- (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.

COSTS

18. Section 125.3 of the Code 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.

FIRST CAUSE FOR DISCIPLINE

(July 27, 2009 Criminal Conviction for Arrest on September 12, 2008)

- 19. Respondent is subject to disciplinary action under Code sections 490 and 8649 in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a structural pest control operator and field representative. The circumstances are as follows:
- 20. On or about July 27, 2009, in a criminal proceeding entitled *People of the State of California v. Bobby Kanani Kualii*, in Orange County Superior Court, Case No. 09WM05583, Respondent was convicted on his plea of guilty to violating Penal Code section 529.5(c) (possession of a false government document), a misdemeanor; Code section 123(b) (unauthorized communication with another examinee), a misdemeanor; Penal Code section 472 (forgery of official seal), a misdemeanor, Penal Code section 470(b) (forgery), a misdemeanor; and Penal Code section 529(a) (manufacturer and sell false government document), a misdemeanor.
- 21. On or about July 27, 2009, imposition of the sentence was suspended and Respondent was placed on three years informal probation, and ordered to complete 20 days of community service; to pay court costs in the amount of \$280, pay \$100 in restitution fines and pay security fees of \$60.

The circumstances that led to the conviction were that on or about September 12, 22. 2008. Respondent was pulled over by a police officer for a routine traffic stop. A records check showed that Respondent had a suspended driver's license. While searching Respondent's wallet, the police officer found a fictitious California State driver's license with the name of Peter Carson, with a date of birth of April 19, 1968 and an address in Fullerton, California. The information listed on the fictitious driver's license was incorrect, however the picture on the license was of Respondent. The officer found that the fictitious driver's license contained valid information of four separate individuals that Respondent was portraying. Respondent told the officer that he was a licensed contractor and had the fictitious driver's license so he could go around to different state board examinations and take tests. Respondent stated that he purposely failed the examinations so he could take as many examinations as possible. Respondent told the officer that he memorizes as many questions on the examinations as he can and then supplies the questions to his employees so they can pass the tests when they take it. Respondent further admitted to the officer that when he goes to the test sites he tells the proctors that he is Peter Carson and that he is a student.

SECOND CAUSE FOR DISCIPLINE

(Subversion of Licensing Examinations)

- 23. Respondent is subject to disciplinary action under Code sections 496 and 8641 in that he used multiple names in order to take state licensing examinations for the sole purpose of memorizing the questions to help others pass Board licensing examinations. The circumstances are as follows:
- 24. On January 26, 2005, Respondent posing as Peter Carson took the Applicator examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545, Buena Park, CA 90621, the same employer who employs Respondent.
- 25. On January 28, 2005, Respondent posing as Peter Carson took the Applicator examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545, Buena Park, CA 90621, the same employer who employs Respondent.

| | ///

28

- 26. On December 2, 2005, Respondent posing as Peter Carson took the Applicator examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545, Buena Park, CA 90621, the same employer who employs Respondent.
- 27. On June 15, 2007, Respondent posing as Peter Carson took the Applicator examination and failed. Respondent listed Peter Carson's employer as Bugmaster, P.O. Box 545, Buena Park, CA 90621, the same employer who employs Respondent.
- 28. Respondent submitted an application dated September 22, 2007, to the Board to take the Field Representative examination under the name of Peter Carson. The application listed Peter Carson's employer as Bugmasters of Buena Park, P.O. Box 545, Buena Park, CA 90621, the same employer who employs Respondent. In October 2007, Respondent took the Field Representative examination under the name of Peter Carson and failed.
- 29. Respondent submitted an application dated July 1, 2008, to the Board to take the Field Representative examination under the name of Peter Carson. The application listed Peter Carson's employer as Bugmasters of Buena Park, P.O. Box 545, Buena Park, CA 90621, the same employer who employs Respondent. In June 2008, Respondent was scheduled to take the Field Representative examination under the name of Peter Carson, but he failed to appear for the examination.
- 30. On September 12, 2008, Respondent admitted to a police officer, he was using multiple names in order to take state licensing examinations for the sole purpose of memorizing the questions, as more specifically set forth in paragraph 22 above and incorporated herein as though fully set forth.

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 Operator's License Number OPR 11013, issued to Bobby K. Kualii;
- 2. Revoking or suspending Field Representative's License Number FR 38252, issued to Bobby K. Kualii;

- 3. Ordering Bobby K. Kualii 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; and
 - 4. Taking such other and further action as deemed necessary and proper.

DATED: 2/11/10

Melle Okus KELLI OKUMA

Registrar/Executive Officer Structural Pest Control Board Department of Pesticide Regulation State of California Complainant

SD2009804899 80428506.doc