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

In the Matter of the Accusation Against: **ANTONIO MORENO** FR 44315, Branch 2 RA 49554, Branches 2 & 3 Respondent.	Case No. 2010-70 OAH No. 2010060880

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

The Decision shall become effective on February 24, 2011.

IT IS SO ORDERED January 25, 2011.

FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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

In the Matter of the Accusation Against:	Case No.: 2010-70
ANTONIO M. MORENO, aka ANTONIO MANI MORENO, aka TONY M. MORENO 223½ North Pitman Avenue Los Angeles, CA 90063 Field Representative License No. FR 44315 Branch 2 Registered Applicator's License No. RA 49554 Branches 2 and 3, Respondent.	OAH No.: 2010060880

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on December 3, 2010.

Michelle McCarron, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The record was held open to December 17, 2010 to allow Respondent to file additional documentary evidence and to allow Complainant to submit proposed conditions of probation should a probationary license issue. Respondent timely filed a letter from his probation officer which was marked and received as Exhibit D in evidence as administrative hearsay. Complainant timely filed proposed conditions of probation which were incorporated into Exhibit 1. The case was deemed submitted on December 18, 2010.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Kelli Okuma, Complainant herein, brought the Accusation in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Pesticide Regulation.

2. On April 27, 2009, the Board issued Field Representative License Number FR 44315, Branch 2, to Antonio M. Moreno, aka Antonio Mani Moreno, aka Tony M. Moreno, Respondent herein. The license was in full force and effect at all times herein and will expire on June 30, 2011, unless renewed.

3. On December 22, 2008, the Board issued Registered Applicator's License Number RA 49554, Branches 2 and 3, to Respondent. The license was in full force and effect at all times herein and will expire on December 22, 2011, unless renewed.

Criminal Convictions

4. On July 5, 2008, Respondent and two other people were involved in a traffic accident. Respondent fled the scene. A warrant was issued for Respondent's arrest in connection with the traffic accident. On July 24, 2008, Respondent was taken into custody by the Los Angeles County Sheriff's Department and charged with violating Health and Safety Code section 11351.5 [Possession for Sale of Cocaine Base] and Penal Code section 12316, subdivision (b)(1) [Possession of Ammunition]. Respondent was, therefore, subjected to criminal proceedings. Thereafter, on April 16, 2009, in the case entitled, *People of the State of California v. Antonio Mani Moreno* (Super. Ct. Los Angeles County, 2008, Case No. BA344057), Respondent was convicted on his plea of nolo contendere of violating Health and Safety Code section 11351.5 [Possession for Sale of Cocaine Base]; a felony. Respondent was ordered to serve four years in prison with an enhanced term of six years pursuant to Health and Safety Code section 11370.2, subdivision (a) [Enhancement of Punishment for Prior Felony Convictions Related to Controlled Substances]. The prison sentence was suspended and Respondent was ordered to serve 365 days in County jail.

5. The crime set forth in Finding 5 is a felony and a crime of moral turpitude. Accordingly, the crime is substantially related to the qualifications, functions or duties of a structural pest control applicator.

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Aggravation

6. On March 7, 2001, in the case entitled *People v. Antonio Mani Moreno,* (Super. Ct. Los Angeles County, 2001, Case No. BA168035), Respondent pled nolo contendere to felony convictions of Health and Safety Code sections 11351.1 [Possession for Sale of Cocaine Base] and 11370.1, subdivision (a) [Unlawful possession of specified controlled substance while armed with firearm]. Respondent was ordered to serve 231 days in County jail. The circumstances surrounding this condition are as follows: on or about April 3, 1998, Respondent was arrested for possession for sale of cocaine base and possession of a firearm.

7. On March 7, 2001, in the case entitled *People v. Antonio Mani Moreno,* (Super. Ct. Los Angeles County, 2001, Case No. BA208003), Respondent pled nolo contendere to a felony conviction of Health and Safety Code section 11351.1 [Possession for Sale of Cocaine Base]. Probation was denied and Respondent was sentenced to four years in state prison. The circumstances surrounding this conviction are as follows: on or about October 4, 2000, Respondent was arrested for possession for sale of cocaine base.

8. On February 1, 1999, in the case entitled *People v. Antonio Mani Moreno,* (Super. Ct. Los Angeles County, 1999, Case No. BA176255), Respondent pled guilty to a felony violation of Health and Safety Code section 11351.1 [Possession for Sale of Cocaine Base]. Respondent was ordered to serve three years in prison, the sentence was suspended and Respondent was placed on formal probation for a period of three years under terms and conditions; his driver's license was suspended for six months. Respondent's probation was revoked twice and formally terminated on March 7, 2001. The circumstances surrounding this conviction are as follows: on or about October 24, 1998, Respondent was arrested for possession for sale of cocaine base.

Mitigation

9. Respondent's history of drug abuse (cocaine) began at age 16 and continued until his sobriety (Findings 12 and 13). His youth does not excuse his criminal conduct but does mitigate same. He is now 33 and has achieved maturity.

Rehabilitation

10. Respondent has completed all court ordered sanctions imposed upon him by reason of the crimes set forth in Findings 6, 7and 8. With regard to the crime set forth in Finding 4 Respondent served 90 days jail time and was released on good behavior to serve a three year period of formal probation. He has suffered no other conviction and he is, presently, in conformity to society's norms and rules of civil behavior.

11. Respondent is presently in full compliance with probation as is demonstrated by the following written commentary from his probation officer:

> At this point in time, Antonio Moreno, appears to be in compliance with all of his terms and conditions of probation. Specifically, he must report to probation, maintain his residence, maintain employment, make payments towards his fines and fees, register as a narcotics offender, and abstain from any criminal activity.

12. Respondent's history of laboratory tests dating from his incarceration demonstrate that he is, at present, clean and sober.

13. To sustain his sobriety Respondent – on his own initiative – has enrolled in the Circle of Help Foundation Substance Abuse program. While in the program Respondent has been an active and willing participant as is demonstrated by the following report from Respondent's program case manager Montana Ogata:

> The curriculum at Circle of Help Foundation provides the client with education and information to assist in improved Decision Making and overall Life Style Rehabilitation. Moreno, Tony has been attending group and individual sessions which covers all but are not limited to the following topics: Substance Abuse Education, Relapse Prevention, Coping Skills and Parenting.
>
> Client has been attending consistently. Client has shown improvement in treatment.
>
> Per program requirements, client has agreed to random urinalysis testing on the monthly basis. All of clients drug screens have had negative results.
>
> Moreno, Tony is required to participate for duration of six months to one year, with regular progress letters provided upon request.

14. Subsequent to his conviction Respondent has performed as a competent and qualified field representative and applicator for Stanley Pest Control as is demonstrated by customer comments on Stanley's customer survey of its workers. The following customer comments are representative of Respondent's work ethic.

- Very good worker need more like him
- Tony is very good. Give him a raise.

- Very impressed with your Employees – you should be proud it's not that often you find this type of service.

- Tony is exceptionally professional and dependable. We are very pleased with his work.

- Tony has done very, very awesome job and never complains or refuses my opinion or request.

- Tony is been doing a great job he already put 4 rats to sleep.

Additionally, Respondent receives uniformity high marks from Stanley's customers for prompt and courteous service, courteous telephone manner and performance of work in a neat and safe manner.

15. Respondent's competence and fealty to duty and to the public is corroborated by the following credible evaluation of Respondent by Phillip Muniz, a Branch Manager of Stanley:

> Tony Moreno has been employed by Stanley Pest Control (SPC) since October 2nd 2009 thru present.
>
> Mr. Moreno was given an opportunity to work for SPC on a trial basis, as his past had to be taken into account. SPC is glad that we have taken the time to allow Mr. Moreno to work for us. His customer service, dependability and outgoing strive to become a leader in his field have allowed him to become an asset to SPC. Mr. Moreno took over an area that was in disarray and provided stability to a customer base that at time had become dissatisfied with the service that were bring provided by SPC.
>
> Mr. Moreno took the time to study and pass his California State Branch II Field Representative license in less than 1 year. This license is requires that a technician know and understand all the bylaws of the Structural Pest Control Board and is a 4 hour exam given by the Department of Consumer Affairs.
>
> The presence of Mr. Moreno as an employee of SPC can only be regarded as an outstanding employee that services and understands the needs of the company and his customers. SPC monitors its customers through a Quality Assurance Program and Mr. Moreno has always received high marks on his evaluations, from his customers.

> I am the direct supervisor of Mr. Moreno and can say that Mr. Moreno is an outstanding employee of SPC and hope that he will continue to be an employee of SPC for years to come. I have been a loyal employee of SPC since 1987 and understand what it takes to be an outstanding employee. I hope that this letter will help to shed some light on Mr. Moreno as he too is well on his way to becoming an long term outstanding example of an employee.

16. Respondent is separated from his wife and provides the financial support to three children of the marriage; a son aged 14 and two daughters aged 10 and seven. Respondent has parenting time with his children and fulfills all parental duties and responsibilities. He sees his parents on a weekly basis and fulfills familial duties and responsibilities.

17. Respondent was open, honest and candid in his testimony and was cooperative with the Board during the pendency of this proceeding. He has a change in attitude since the time of the crime set forth in Finding 4. That change was brought about by a number of factors including Respondent's responsibilities as a father; work which he enjoys and in which he is productive; his continuing sobriety, and his desire to be a good citizen. That change was demonstrated by the credible testimony of Respondent and the credible documentary evidence from his employer and his probation officer.

Costs

18. It was established that the following reasonable costs for the investigation and enforcement of this case was incurred by the Board.

Office of the Attorney General legal fees and costs: $4,800.00

19. Respondent along with many others has encountered economic hard times during the ongoing Great Recession.[1] At present because of financial constraints he lives at home with his mother. He also provides the financial support of his three children. In sum, he does suffer from economic hardship.

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[1] The financial crisis of year 2007 to the present triggered by a liquidity shortfall in the United States banking system caused by the overvaluation of assets. Some economists claim it has ended. Other economists claim it persists and will continue to persist given the number of citizens unemployed or underemployed.

LEGAL CONCLUSIONS

Violations

1. Respondent's licenses are subject to discipline under Business and Professions Code sections 8649 and 490, subdivision (a) in that he was convicted of a crime that is substantially related to the qualifications, functions or duties of a Board licensee by reason of Finding 4 combined with Finding 5.

Costs

2. Business and Professions Code section 125.3 provides, in pertinent part, that a Board or entity bringing a proceeding for discipline may request the Administrative Law Judge hearing the matter to direct a licentiate found to have committed a violation of the applicable licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the proceeding. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Board must consider Respondent's ability to pay and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct.

3. In this case, the actual costs of investigation and enforcement of this matter are $4,800.00, as set forth in Finding 18. However, taking into account Respondent's financial hardship set forth in Finding 19 and diminished ability to pay a reduction from the actual costs of approximately 90 percent is appropriate. Therefore, the reasonable costs of investigation and enforcement are $480.00. Accordingly, cause exists for an order of costs of $480.00.

Licensing Considerations

4. The purpose of this licensing proceeding is not to punish but to protect the public interest.[2] Respondent's crime is a felony and Respondent is still on probation. Accordingly, in assessing discipline the Board's Guidelines[3] have been read and considered.

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[2] *Fahmy v. MBC* (1995) 38 Cal.App. 4th 810, 817; *Ex Parte Brounsell* (1778) 2 Cowp. 829 Eng.Rep. 1385. *Harrington v. Department of Real Estate* (1995) 214 Cal.App. 3rd, 394.

5. Page 8 of the Guidelines lists factors to be considered. Applying the applicable factors: Respondent caused potential harm to the public but there was no actual or potential harm to any consumer. He committed other crimes in his youth (Findings 6, 7 and 8). The crime – a felony – is a serious crime. He is in full compliance with his probation. He has no prior disciplinary record.

6. Respondent through hard work and perseverance has achieved the record of rehabilitation set forth in Findings 10 through 17. He is a competent licensee. In consideration of Legal Conclusion 5 and his present record of rehabilitation and notwithstanding Legal Conclusion 1 continued licensure of Respondent, on a probationary status, is consistent with the public interest.

ORDER

All licenses and licensing privileges previously issued by the Board to Respondent are revoked, however, the revocation is stayed for a period of two (2) years and Respondent is placed on probation to the Board and a probationary license shall issue under the following terms and conditions:

1. **Obey All Laws.** Respondent shall obey all laws and rules relating to the practice of structural pest control.

2. **Quarterly Reports.** Respondent shall file quarterly reports with the Board during the period of probation.

3. **Tolling of Probation.** Should Respondent leave California to reside outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

4. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in this case and the terms and conditions and restriction imposed on Respondent by said decision. Within 30 days of the effective date of this decision and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in the case.

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[3]The Board's Manual of Disciplinary Guidelines and Model Disciplinary Orders, 2007.

5. **Notice to Employees.** Respondent shall, upon or before the effective date of this decision, post or circulate notice to all employees involved in structural pest control operations which accurately recite the terms and conditions of probation. Respondent shall be responsible for said notice being immediately available to said employees. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.

6. **Completion of Probation.** Upon successful completion of probation, Respondent's license/certificate will be fully restored.

7. **Violation of Probation.** Should Respondent violate probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondent, during probation, the Board shall continuing jurisdiction until the matter is final and the period of probation shall be extended until the matter is final.

8. **Prohibited from Serving as Officer, Director, Associate, Partner or Qualifying Manager.** Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period that discipline is imposed on the Respondent's license.

Dated: January 13, 2011

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

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FILED
Date 4/6/10 By Kelli Okuma

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

In the Matter of the Accusation Against: **ANTONIO M. MORENO, aka** **ANTONIO MANI MORENO, aka** **TONY M. MORENO** **223 1/2 North Pitman Avenue** **Los Angeles, CA 90063** **Field Representative License No. FR 44315** **Branch 2** **Registered Applicator's License No. RA 49554** **Branches 2 and 3** Respondent.	Case No. 2010-70 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kelli Okuma ("Complainant") brings this Accusation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

2. On or about April 27, 2009, the Board issued Field Representative License Number FR 44315, Branch 2, to Antonio M. Moreno, aka Antonio Mani Moreno, aka Tony M.

Moreno ("Respondent"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

3. On or about December 22, 2008, the Board issued Registered Applicator's License Number RA 49554, Branches 2 and 3, to Respondent. The license was in full force and effect at all times relevant to the charges brought herein and will expire on December 22, 2011, unless renewed.

JURISDICTION

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

5. Code section 8620 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 suspension may assess a civil penalty.

STATUTORY PROVISIONS

6. Code section 490 states in pertinent part:

"(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.

"(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.

"(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. Any 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."

7. Code section 8649 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."

8. Code section 8654 states in pertinent part:

"Any individual . . . 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 . . . 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."

9. Code section 8655 states in pertinent part:

"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 ... The board may order the license or registration suspended or revoked . . . 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 provided 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.

CAUSE FOR DISCIPLINE

(Criminal Convictions)

13. Respondent is subject to disciplinary action pursuant to Code sections 490 (a), and 8649, in that on or about April 16, 2009, in the case entitled, *People of the State of California v. Antonio Mani Moreno* (Super. Ct. Los Angeles County, 2008, Case No. BA344057), Respondent was convicted on his plea of nolo contendere of violating Health and Safety Code section 11351.5 [Possession for Sale of Cocaine Base], a felony. Respondent was ordered to serve 4 years in prison with an enhanced term of 6 years pursuant to Health and Safety Code section 11370.2(A) [Enhancement of Punishment for Prior Felony Convictions Related to Controlled Substances]. The prison sentence was suspended and Respondent was ordered to serve 365 days in County jail.

14. The circumstances of the crime are that on or about July 5, 2008, Respondent and two other persons were involved in a traffic accident. Respondent fled the scene. A warrant was issued for Respondent's arrest in connection with the traffic accident. On or about July 24, 2008, Respondent was taken into custody by the Los Angeles County Sherriff's Department and charged with violating Health and Safety Code section 11351.5 [Possession for Sale of Cocaine Base] and Penal Code section 12316 (B)(1) [Possession of Ammunition].

DISCIPLINARY CONSIDERATIONS

14. On or about March 7, 2001, in the case entitled (*People v. Antonio Mani Moreno*, Super. Ct. Los Angeles County, 2001, Case No. BA168035), Respondent pled nolo contendere to felony violations of Health and Saf. Code sections 11351.1 [Possession for Sale of Cocaine Base] and 11370.1(A) [Unlawful possession of specified controlled substance while armed with firearm]. Respondent was ordered to serve 231 days in County jail. The circumstances surrounding this condition are as follows: on or about April 3, 1998, Respondent was arrested for possession for sale of cocaine base and possession of a firearm.

15. On or about February 1, 1999, in the case entitled (*People v. Antonio Mani Moreno*, Super. Ct. Los Angeles County, 1999, Case No. BA176255), Respondent pled guilty to a felony

violation of Health and Saf. Code 11351.1 [Possession for Sale of Cocaine Base]. Respondent was ordered to serve three (3) years in prison, the sentence was suspended and Respondent was placed on formal probation for a period of (3) years under terms and conditions; his drivers license was suspended for six (6) months. Respondent's probation was revoked twice and formally terminated on March 7, 2001. The circumstances surrounding this conviction are as follows: on or about October 24, 1998, Respondent was arrested for possession for sale of cocaine base.

16. On or about March 7, 2001, in the case entitled (*People v. Antonio Mani Moreno*, Super. Ct. Los Angeles County, 2001, Case No. BA208003), Respondent pled nolo contendere to a felony violation of Health and Saf. Code section 11351.1 [Possession for Sale of Cocaine Base]. Probation was denied and Respondent was sentenced to four (4) years in state prison. The circumstances surrounding this conviction are as follows: on or about October 4, 2000, Respondent was arrested for possession for sale of cocaine base.

OTHER MATTERS

17. Pursuant to Code section 8654, if discipline is imposed on Field Representative License No. FR 44315 and Registered Applicator's License No. RA 49554 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.

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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 License Number FR 44315 issued to Antonio M. Moreno, aka Antonio Mani Moreno, aka Tony M. Moreno;

2. Revoking or suspending Registered Applicator's License Number RA 49554 issued to Antonio M. Moreno, aka Antonio Mani Moreno, aka Tony M. Moreno;

3. Prohibiting Antonio M. Moreno, aka Antonio Mani Moreno, aka Tony M. Moreno from serving as an officer, director, associate, partner, or qualifying individual of any licensee;

4. Ordering Antonio M. Moreno, aka Antonio Mani Moreno, aka Tony M Moreno to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 4/6/10

Kelli Okuma

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

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