KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
State Bar No. 101336
AMANDA DODDS
Senior Legal Analyst
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2141
Facsimile: (619) 645-2061
Attorneys for Complainant

FILED
Date 2/20/13 By Susan Saylor

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

In the Matter of the Accusation Against: **DANIEL PATRICK BUDDIN** **1029 Mockingbird Lane** **San Marcos, CA 92078** **Applicator License No. RA 42550** **Field Representative License No. 45104** Respondent.	Case No. 2013-36 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 17, 2004, the Structural Pest Control Board issued Applicator License Number RA 42550 to Daniel Patrick Buddin (Respondent). The Applicator License will expire on September 17, 2013, unless renewed. On or about January 7, 2010, the Structural Pest Control Board issued Field Representative License Number FR 45104 to Respondent. The Field Representative License expired on June 30, 2012, and has not been renewed.

JURISDICTION

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. 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.

5. 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.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

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

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."

9. Section 8649 of the Code 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.

10. 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.

11. Section 8655 of the Code 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 representative, applicator, or 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.

///

///

REGULATORY PROVISIONS

12. 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 the misuse of pesticides.

13. 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.

. . . .

///

COST RECOVERY

14. 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

(March 28, 2012 Criminal Conviction for Petty Theft on March 20, 2012)

15. Respondent has subjected his licenses 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, functions, and duties of a licensee. The circumstances are as follows:

a. On or about March 28, 2012, in a criminal proceeding entitled *People of the State of California v. Daniel Patrick Buddin,* in San Diego County Superior Court, case number CN303727, Respondent was convicted on his plea of guilty of violating Penal Code section 484, petty theft, a misdemeanor. The court dismissed an additional count of violating Penal Code section 21310, carrying a concealed dirk or dagger, pursuant to a plea agreement.

b. As a result of the conviction, on or about March 28, 2012, Respondent was granted three years summary probation, and sentenced to one day in jail, with credit for one day. Respondent was ordered to stay away from all Nordstom stores, pay fees, fines, and restitution, and comply with probation terms, including a Fourth Amendment waiver.

c. The circumstances that led to the conviction are that on or about the afternoon of March 20, 2012, loss prevention officers for a San Marcos Nordstrom department store observed Respondent as he selected two boxes of cologne and used a concealed knife to cut open packaging and conceal the merchandise in his pants pockets. Respondent then went to the shoe department and concealed a pair of tennis shoes in his pants pockets. Respondent was intercepted by loss prevention officers outside of the store after he left without paying for the merchandise. Respondent was detained and $227.28 in merchandise was recovered, along with a switchblade knife. A deputy with the San Diego County Sheriff's Department arrived to conduct an investigation. Respondent admitted to the deputy that he had stolen the items.

SECOND CAUSE FOR DISCIPLINE

(August 31, 2012 Criminal Convictions for Burglary & Petty Theft on April 28, 2012)

16. Respondent has subjected his licenses to disciplinary action under sections 490 and 8649 of the Code in that he was convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensee. The circumstances are as follows:

a. On or about June 25, 2012, in a criminal proceeding entitled *People of the State of California v. Daniel Patrick Buddin,* in San Diego County Superior Court, case number SCN305130, Respondent was convicted on his plea of guilty of violating Penal Code section 459, burglary, a felony, and Penal Code section 484/490.5, petty theft, a misdemeanor. The court dismissed additional counts of possessing a controlled substance (Health & Saf. Code, § 11350, subd. (a)), possession of controlled substance paraphernalia (Health & Saf. Code, § 11364.1), and possession of a switchblade knife (Pen. Code, § 21510, subd. (b)), pursuant to a plea agreement.

b. As a result of the convictions, on or about August 31, 2012, Respondent was granted three years formal probation, and given credit for time served.

c. The circumstances that led to the convictions are that on or about April 28, 2012, Respondent was arrested after he was caught stealing approximately $80 worth of merchandise from a Wal-Mart store. In a search of Respondent's vehicle, deputies located 0.3 grams of heroin, a soda can and cotton balls covered in black, tarry residue, and a glass drug pipe containing 0.039 grams of methamphetamine.

THIRD CAUSE FOR DISCIPLINE

(August 31, 2012 Criminal Convictions for Possession of a Controlled Substance & Possession of a Concealed Dirk/Dagger on May 25, 2012)

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

a. On or about August 31, 2012, in a criminal proceeding entitled *People of the State of California v. Daniel Patrick Buddin,* in San Diego County Superior Court, case number SCN306109, Respondent was convicted on his plea of guilty of violating Health and

Safety Code section 11350, subdivision (a), possession of a narcotic controlled substance, a felony; and Penal Code section 21310, possession of a concealed dirk or dagger, a misdemeanor. The court dismissed additional counts of possessing a controlled substance (Health & Saf. Code, § 11377, subd. (a)), possession of controlled substance paraphernalia (Health & Saf. Code, § 11364.1) pursuant to a plea agreement.

b. As a result of the convictions, on or about August 31, 2012, Respondent was granted three years formal probation, and given credit for time served.

c. The circumstances that led to the convictions are that on or about May 25, 2012, deputies from the San Diego County Sheriff's Department found Respondent and a female asleep in the cab of a truck parked at the gas pumps of a San Marcos gas station. In search incident to arrest, Respondent was found in possession of .59 grams of heroin and .40 grams of methamphetamine, and a butterfly knife.

FOURTH CAUSE FOR DISCIPLINE

(August 31, 2012 Criminal Conviction for Smuggling Narcotics into Jail on June 4, 2012)

18. Respondent has subjected his licenses 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, functions, and duties of a licensee. The circumstances are as follows:

a. On or about August 31, 2012, in a criminal proceeding entitled *People of the State of California v. Daniel Patrick Buddin,* in San Diego County Superior Court, case number SCN307968, Respondent was convicted on his plea of guilty of violating Penal Code section 4573, smuggle narcotics into jail, a felony.

b. As a result of the conviction, on or about August 31, 2012, Respondent was ordered to serve 180 days in jail, and granted three years formal probation.

c. The circumstances that led to the conviction are that on or about June 4, 2012, during a strip search of Respondent as part of his booking into jail, deputies found .62 grams of heroin concealed in Respondent's rectum.

///

///

FIFTH CAUSE FOR DISCIPLINE

(December 3, 2012 Criminal Conviction for First Degree Burglary)

19. Respondent has subjected his licenses 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, functions, and duties of a licensee. The circumstances are as follows:

a. On or about December 3, 2012, in a criminal proceeding entitled *People of the State of California v. Daniel Patrick Buddin,* in San Diego County Superior Court, case number CN312798, Respondent was convicted on his plea of guilty of violating Penal Code section 459, first degree burglary, a felony. Respondent admitted and the court found true the enhancements that the burglary was of an inhabited dwelling, within the meaning of Penal Code section 460, and that the residence was occupied at the time of the burglary, within the meaning of Penal Code section 667.5(c)(21). The court dismissed additional counts of receiving stolen property (Pen. Code, § 496, subd. (a)), possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)), and possession of controlled substance paraphernalia (Health & Saf. Code, § 11364.1, subd. (a)) pursuant to a plea agreement.

b. As a result of the conviction, on or about January 23, 2013, Respondent was sentenced to the low term of two years in state prison, with credit for 78 days.

c. The circumstances that led to the conviction are that on or about the afternoon of November 15, 2012, a homeowner returned to her residence to find Respondent and an accomplice, who were wearing ski masks, running towards the rear of the residence carrying one of her pillow cases and her husband's duffel bag. One of the burglars threw himself against the screen door and ripped it open in order to escape. The homeowner's husband, who was in a detached workshop, heard his wife scream and saw Respondent and his accomplice flee in a dark truck. A neighbor wrote down the license plate number of the truck. Respondent dropped his wallet at the scene of the burglary. San Diego County Sheriff's deputies tracked the vehicle and Respondent to his parents' residence in San Marcos. Respondent attempted to flee the residence, but was quickly apprehended. In a search of Respondent's bedroom, the deputies found items stolen during the burglary, and a glass pipe used for smoking methamphetamine.

OTHER MATTERS

20. Pursuant to section 8654 of the Code, if discipline is imposed on Applicator License Number RA 42550, and/or Field Representative License Number FR 45104 issued to Respondent, Daniel Patrick Buddin 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 Daniel Patrick Buddin 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 Applicator License Number RA 42550 issued to Daniel Patrick Buddin;

2. Revoking or suspending Field Representative License Number FR 45104 issued to Daniel Patrick Buddin;

3. Ordering Daniel Patrick Buddin 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;

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

DATED: 2/20/13

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

SD2012704617