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FILED

Date 12/20/12 By Susan Taylor

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

In the Matter of the Accusation Against: **SURE DEFENSE PEST SOLUTIONS, INC.** **HENRY PATRICK VILLAIRE, QM** **RYAN J. FREDERICK, PRES.** **KEVIN MICHAEL BORGES, VP** **P. O. Box 831** **Tracy, CA 95378** **Company Registration Certificate No. PR 6103** **HENRY P. VILLAIRE** **3008 Queens Gate Court** **Modesto, CA 95355** **Operator License No. 9198** **KEVIN MICHAEL BORGES** **P. O. Box 831** **Tracy, CA 95378** **Field Representative's License No. FR 36184** **and** **RYAN J. FREDERICK** **P. O. Box 831** **Tracy, CA 95378** **Registered Applicator License No. RA 51186** Respondents.	Case No. 2013-27 **ACCUSATION**

Susan Saylor ("Complainant") alleges:

PARTIES

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

Company Registration Certificate No. PR 6103

2. On or about August 3, 2010, the Board issued Company Registration Certificate Number PR 6103 ("registration") to Sure Defense Pest Solutions, Inc. ("Respondent Sure Defense"), in Branch 2, with Ryan J. Frederick as President, Kevin M. Borges as Vice President, and Jonathan Taylor Olson as the Qualifying Manager. On or about May 10, 2011, Jonathan Taylor Olson disassociated as the Qualifying Manager. On or about June 3, 2011, the registration was suspended for not having a Qualifying Manager. On or about June 8, 2011, Henry Patrick Villaire ("Respondent Villaire") became the Qualifying Manager. On or about September 8, 2011, the registration was suspended pursuant to Business and Professions Code ("Code") section 8697 (failure to maintain surety bond). On or about September 9, 2011, the registration was reinstated. On or about December 30, 2011, the registration was suspended for failing to have a Qualifying Manager, resulting from Respondent Villaire's failure to maintain general liability insurance on Company Registration No. 6306 (Hampton Pest Management), another registration he holds. On or about January 3, 2012, Respondent Villaire disassociated as the Qualifying Manager. On or about January 9, 2012, Howard Francis Hatzfeld became the Qualifying Manager.

Operator's License No. OPR 9198

3. On or about November 5, 1993, the Board issued Operator's License Number OPR 9198 ("license") in Branch 2 to Respondent Villaire as owner and Qualifying Manager of Provision Pest Control. On or about December 10, 1996, Respondent Villaire disassociated as the Qualifying Manager of Provision Pest Control. On or about May 24, 2011, Respondent Villaire became the owner and Qualifying Manager of Hampton Pest Management. On or about

June 8, 2011, Respondent Villaire was dually employed and became the Qualifying Manager of Sure Defense Pest Solutions, Inc. On or about December 14, 2011, the license was suspended pursuant to Code section 8690 (failure to maintain general liability insurance). On or about January 1, 2012, Respondent Villaire became employed with The Pied Piper Exterminators, Inc. On or about January 3, 2012, Respondent Villaire disassociated as the Qualifying Manager of Sure Defense Pest Solutions, Inc. On or about January 4, 2012, the license was reinstated. On or about March 30, 2012, Respondent Villaire left the employ of The Pied Piper Exterminators, Inc. and the license was placed on inactive status. The license will expire on June 30, 2014, unless renewed.

Field Representative License No. FR 36184

4. On or about July 17, 2003, the Board issued Field Representative' License No. FR 36184, in Branch 2, to Kevin M. Borges ("Respondent Borges"). On or about May 11, 2007, the license was upgraded to include Branch 3. On or about August 3, 2010, Respondent Borges became employed by and Vice President of Sure Defense Pest Solutions, Inc. The license will expire on June 30, 2015, unless renewed.

Applicator License No. RA 51186

5. On or about July 26, 2010, the Board issued Applicator License No. RA 51186, in Branch 2 and 3, to Ryan J. Frederick ("Respondent Frederick"). On or about August 3, 2010, Respondent Frederick became employed by and President of Sure Defense Pest Solutions, Inc. The license will expire on July 26, 2013, unless renewed.

JURISDICTION

6. Business and Professions Code ("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 a suspension may assess a civil penalty.

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7. Code section 8624 states:

If 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.

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

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

8. 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.

9. Code section 8622 states:

When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars ($125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

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STATUTORY PROVISIONS

10. Code section 8610(c) states:

Each registered company shall designate an individual or individuals who hold an operator's license to act as its qualifying manager or mangers. The qualifying manager or managers must be licensed in each branch of pest control in which the company engages in business. The designated qualifying manager or managers shall supervise the daily business of the company and shall be available to supervise and assist all employees of the company, in accordance with regulations which the board may establish.

11. Code section 8612 states:

The licenses of qualifying managers and company registrations shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except from the location for which the registration was issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains. When a registered company opens a branch office it shall notify the registrar in writing on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

12. Code section 8613 states:

A registered company which changes the location of its principal office or any branch office or which changes its qualifying manager, branch supervisor, officers, or its bond or insurance shall notify the registrar in writing of such change within 30 days thereafter. A fee for filing such changes shall be charged in accordance with Section 8674.

13. Code section 8639 states:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.

14. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

15. Code section 8642 states:

> The commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action.

COST RECOVERY

16. Code section 125.3 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.

BACKGROUND INFORMATION

17. On or about December 13, 2011, the Board received a Notice of Cancellation of Insurance from AFCO Insurance Premium Finance, indicating that an insurance policy for general liability insurance belonging to Respondent Villaire for Hampton Pest Management (PR 6306), had been cancelled. As a result of that cancellation, Respondent Villaire's Operator License No. OPR 9198 was suspended, causing Company Registration No. PR 6103, issued to Sure Defense Pest Solutions, Inc. to also be suspended, in that Respondent Villaire was the Qualifying Manager. The Board notified Respondent Villaire that both company registrations had been suspended and they were to cease business until Operator License No. OPR 9198 was reinstated. As a result of the Notice of Cancellation, an Office Compliance Inspection was initiated, as more particularly set forth below.

OFFICE COMPLIANCE INSPECTION

18. On or about January 3, 2012, a Board representative drove to Respondent Sure Defense's address of record to perform a Compliance Inspection. Upon arrival, the Board representative found that Respondent Sure Defense had moved their principal office. The Board representative was given Respondent Sure Defense's new location by the manager of the complex. When the Board representative arrived at Respondent Sure Defense's new location, he found that business was being conducted. The Board representative asked the secretary to contact the employees and have them return to the office. During the inspection, the Board representative

noticed a framed printout of an operator's license verification from the Board's website hanging on the wall made out in the name of Kevin Michael Borges, the Vice President of Sure Defense. When the Board representative asked Respondent Borges about the license, he stated that he had altered the document, framed it, and hung it on the wall to give the appearance that he had passed the exam and was a licensed operator. Respondent Borges told the Board representative that on or about June 8, 2011, Respondent Villaire agreed to let him use his operator's license (OPR 9198) until Respondent Borges was able to obtain his own operator's license. Respondent Borges told Respondent Villaire that he was in the process of obtaining his own operator's license and should have it within a couple of weeks. However, Respondent Borges never obtained his own operator's license so he altered a printout of an operator's license verification form from the Board's website to make it appear that he had obtained his own operator's license when, in fact, he had not. Respondent Villaire had no involvement in Sure Defense's operations.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Laws Adopted by the Board - No Supervision by Qualifying Manager)

19. Respondent Sure Defense's registration and Respondent Villaire's operator's license are subject to discipline pursuant to Code section 8641, in that between June 8, 2011, and December 30, 2011, Respondent Villaire, who was serving as the Qualifying Manager of Sure Defense, failed to comply with Code section 8610(c), by failing to supervise the daily operations of the registered company.

SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Laws Adopted by the Board - Failure to Notify Board of Address Change)

20. Respondent Sure Defense's registration and Respondent Villaire's operator's license are subject to discipline pursuant to Code section 8641, in that in July 2011, Respondents failed to comply with Code section 8613, by failing to notify the Board of the change of address of record within 30 days of such event.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Laws Adopted by the Board - Failure to Properly Post Wall License)

21. Respondent Sure Defense's registration and Respondent Villaire's operator's license are subject to discipline pursuant to Code section 8641, in that on or about January 3, 2012, Respondents failed to comply with Code section 8612, by failing to post the qualifying manager's license in a conspicuous place.

FOURTH CAUSE FOR DISCIPLINE

(Fraudulent Acts)

22. Respondent Sure Defense's registration and Respondent Villaire's operator's licenses are subject to discipline pursuant to Code section 8642, in that Respondents committed fraud by allowing Respondent Borges to display a fraudulent document in an attempt to deceive the public, as more particularly set forth above in paragraph 18.

FIFTH CAUSE FOR DISCIPLINE

(Aiding and Abetting an Unlicensed Person)

23. Respondent Sure Defense's registration and Respondent Villaire's operator's license are subject to discipline pursuant to Code section 8639, in that between June 8, 2011, and December 30, 2011, Respondent Villaire aided and abetted, knowingly combined or conspired with an unlicensed individual, Respondent Borges, by allowing Respondent Borges to use his operator's license (OPR 9198).

SIXTH CAUSE FOR DISCIPLINE

(Fraudulent Act)

24. Respondent Borges's field representative license is subject to discipline pursuant to Code section 8642, in that he committed a fraudulent act by altering a license verification printout from the Board's website, then framing it, and hanging it on the wall to give the appearance that he had an operator's license when, in fact, he did not.

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OTHER MATTERS

25. Notice is hereby given that section 8620 of the Code provides, in pertinent part, that a respondent may request that a civil penalty of not more than $5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than $10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

26. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 6103, issued to Sure Defense Pest Solutions, Inc., likewise constitute cause for discipline against Operator's License Number OPR 9198, issued to Henry Patrick Villaire, who serves as the Qualifying Manager of Sure Defense Pest Solutions, Inc., regardless of whether he had knowledge of or participated in the acts or omissions which constitute cause for discipline against Sure Defense Pest Solutions, Inc.

27. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 6103, issued to Sure Defense Pest Solutions, Inc., likewise constitute cause for discipline against Kevin Michael Borges, who serves as an Officer (Vice President) of Sure Defense Pest Solutions, Inc., regardless of whether he had knowledge of or participated in the acts or omissions which constitute cause for discipline against Sure Defense Pest Solutions, Inc.

28. Pursuant to Code section 8624, the causes for discipline established as to Company Registration Certificate Number PR 6103, issued to Sure Defense Pest Solutions, Inc., likewise constitute cause for discipline against Ryan J. Frederick, who serves as an Officer (President) of Sure Defense Pest Solutions, Inc., regardless of whether he had knowledge of or participated in the acts or omissions which constitute cause for discipline against Sure Defense Pest Solutions, Inc.

29. Pursuant to Code section 8654, if discipline is imposed on Company Registration Certificate Number PR 6103, issued to Sure Defense Pest Solutions, Inc., then Henry Patrick Villaire, who serves as the Qualifying Manager of Sure Defense Pest Solutions, Inc., 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 him, 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 Company Registration Certificate Number PR 6103, issued to Sure Defense Pest Solutions, Inc.;

2. Revoking or suspending Operator's License Number OPR 9198, issued to Henry Patrick Villaire;

3. Revoking or suspending Field Representative License No. FR 36184, issued to Kevin Michael Borges;

4. Revoking or suspending Applicator License No. RA 51186, issued to Ryan J. Frederick;

5. Revoking or suspending any other license for which Henry Patrick Villaire is furnishing the qualifying experience or appearance;

6. Prohibiting Henry Patrick Villaire, Kevin Michael Borges, and Ryan J. Frederick from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Company Registration Certificate Number PR 6103, issued to Sure Defense Pest Solutions, Inc.;

7. Ordering Henry Patrick Villaire, Kevin Michael Borges, and Ryan J. Frederick 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,

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

DATED: 12/20/12

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

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