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7 Attorneys for Complainant

8  
9 **BEFORE THE**  
10 **STRUCTURAL PEST CONTROL BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-32

13 **NELSON HENRY TORRES**  
793 South Tracy Boulevard, #135  
14 Tracy, CA 95376

**DEFAULT DECISION**

[Gov. Code, § 11520]

15 Registered Applicator's License No. RA 45517

16 Respondent.

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18 **FINDINGS OF FACT**

19 1. On or about December 20, 2007, Complainant Kelli Okuma, in her official  
20 capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of  
21 Consumer Affairs, filed Accusation No. 2008-32, against Nelson Henry Torres ("Respondent"),  
22 before the Structural Pest Control Board.

23 2. On or about May 1, 2006, the Board issued Registered Applicator's  
24 License Number RA 45517 in Branches 2 (general household pest) and 3 (termite) to  
25 Respondent. Respondent's registered applicator's license is currently in effect through May 1,  
26 2009.

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1                   3.       On or about April 2, 2008, Cathleen Logan, an employee of the Office of  
2 the Attorney General, served by Certified and First Class Mail a copy of the Accusation No.  
3 2008-32, Statement to Respondent, Notice of Defense, Request for Discovery, and Government  
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,  
5 which was and is 793 South Tracy Boulevard, #135, Tracy, CA 95376. A copy of the  
6 Accusation and the related documents are attached as exhibit A and are incorporated herein by  
7 reference.

8                   4.       Service of the Accusation was effective as a matter of law under the  
9 provisions of Government Code section 11505, subdivision (c).

10                  5.       Business and Professions Code section 118 states, in pertinent part:

11                   (b) The suspension, expiration, or forfeiture by operation of law of a  
12 license issued by a board in the department, or its suspension, forfeiture, or  
13 cancellation by order of the board or by order of a court of law, or its surrender  
14 without the written consent of the board, shall not, during any period in which it  
15 may be renewed, restored, reissued, or reinstated, deprive the board of its  
16 authority to institute or continue a disciplinary proceeding against the licensee  
17 upon any ground provided by law or to enter an order suspending or revoking the  
18 license or otherwise taking disciplinary action against the license on any such  
19 ground.

16                  6.       Government Code section 11506 states, in pertinent part:

17                   (c) The respondent shall be entitled to a hearing on the merits if the  
18 respondent files a notice of defense, and the notice shall be deemed a specific  
19 denial of all parts of the accusation not expressly admitted. Failure to file a notice  
20 of defense shall constitute a waiver of respondent's right to a hearing, but the  
21 agency in its discretion may nevertheless grant a hearing.

20                  7.       Respondent failed to file a Notice of Defense within 15 days after service  
21 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
22 Accusation No. 2008-32.

23                  8.       California Government Code section 11520 states, in pertinent part:

24                   (a) If the respondent either fails to file a notice of defense or to appear at  
25 the hearing, the agency may take action based upon the respondent's express  
26 admissions or upon other evidence and affidavits may be used as evidence without  
27 any notice to respondent.

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**FILED**

Date 12/20/07 By *Kelli Okuma*

7 Attorneys for Complainant  
8

9 **BEFORE THE**  
10 **STRUCTURAL PEST CONTROL BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:  
13 **NELSON HENRY TORRES**  
793 South Tracy Boulevard, #135  
14 Tracy, CA 95376  
15 Registered Applicator's License No. RA 45517  
16 Respondent.

Case No. 2008-32  
**ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

19 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official  
20 capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of  
21 Consumer Affairs.

22 2. On or about May 1, 2006, the Board issued Registered Applicator's  
23 License Number RA 45517 in Branches 2 (general household pest) and 3 (termite) to Nelson  
24 Henry Torres ("Respondent"), employee of Patriot Pest Management. Respondent's registered  
25 applicator's license is currently in effect through May 1, 2009.

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1 STATUTORY PROVISIONS

2 3. Business and Professions Code ("Code") section 8620 provides, in  
3 pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while  
4 a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary  
5 action or in lieu of a suspension may assess a civil penalty.

6 4. Code section 8625 states:

7 The lapsing or suspension of a license or company registration by  
8 operation of law or by order or decision of the board or a court of law, or the  
9 voluntary surrender of a license or company registration shall not deprive the  
10 board of jurisdiction to proceed with any investigation of or action or disciplinary  
11 proceeding against such licensee or company, or to render a decision suspending  
12 or revoking such license or registration.

13 5. Code section 8649 states:

14 Conviction of a crime substantially related to the qualifications, functions,  
15 and duties of a structural pest control operator, field representative, applicator, or  
16 registered company is a ground for disciplinary action. The certified record of  
17 conviction shall be conclusive evidence thereof.

18 6. Code section 8654 states, in pertinent part:

19 Any individual who has been denied a license for any of the reasons  
20 specified in Section 8568, or who has had his or her license revoked, or whose  
21 license is under suspension, or who has failed to renew his or her license while it  
22 was under suspension . . . shall be prohibited from serving as an officer, director,  
23 associate, partner, qualifying manager, or responsible managing employee of a  
24 registered company, and the employment, election or association of such person  
25 by a registered company is a ground for disciplinary action.

26 7. Code section 8655 states:

27 A plea or verdict of guilty or a conviction following a plea of nolo  
28 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 withing 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 side the  
verdict of guilty, or dismissing the accusation, information or indictment.

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1 8. Code section 125.3 states, in pertinent part, that a Board may request the  
2 administrative law judge to direct a licentiate found to have committed a violation or violations  
3 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
4 enforcement of the case.

5 CAUSE FOR DISCIPLINE

6 (Criminal Conviction)

7 9. Respondent is subject to disciplinary action pursuant to Code section  
8 8649 in that he was convicted of a crime which is substantially related to the qualifications,  
9 functions, and duties of a registered applicator, as follows: On or about March 13, 2007, in the  
10 criminal proceeding titled *People v. Nelson Henry Torres* (Super. Ct. San Joaquin County, 2007,  
11 Case No. TM108285A), Respondent plead nolo contendere to a violation of Penal Code section  
12 487, subdivision (a) (grand theft). Respondent was sentenced to a total of 30 days in jail. The  
13 circumstances of the crime are that on or about March 6, 2005, through June 15, 2005,  
14 Respondent, while employed as a manager in training by the Finish Line store located at 3200

15 Naglee Road in Tracy, California, willfully and unlawfully took money, labor, or real or personal  
16 property of a value exceeding four hundred dollars (\$400).

17 OTHER MATTERS

18 10. Pursuant to Code section 8654, if Registered Applicator's License Number  
19 RA 45517, issued to Respondent Nelson Henry Torres, is revoked or suspended, Nelson Henry  
20 Torres shall be prohibited from serving as an officer, director, associate, partner, qualifying  
21 manager, or responsible managing employee for any registered company during the time the  
22 discipline is imposed, and any registered company which employs, elects, or associates Nelson  
23 Henry Torres shall be subject to disciplinary action.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
26 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

27 1. Revoking or suspending Registered Applicator's License Number  
28 RA 45517, issued to Nelson Henry Torres;

1                   2.       Prohibiting Nelson Henry Torres from serving as an officer, director,  
2 associate, partner, qualifying manager or responsible managing employee of any registered  
3 company;

4                   3.       Ordering Nelson Henry Torres to pay the Structural Pest Control Board the  
5 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
6 Professions Code section 125.3;

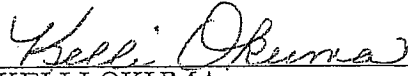
7                   4.       Taking such other and further action as deemed necessary and proper.

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9 DATED: 12/20/07

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KELLI OKUMA  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
Complainant

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