

FILED

Date 9/12/12 By

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9 **BEFORE THE**
10 **STRUCTURAL PEST CONTROL BOARD**
11 **DEPARTMENT OF PESTICIDE REGULATION**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 **HUMBERTO SAENZ, JR.**
14 **1277 Pacific Oaks Place, Suite 101**
Escondido, CA 92029
15 **Applicator License No. RA 46669**
16 Respondent.

Case No. 2013-14
ACCUSATION

18 Complainant alleges:

19 **PARTIES**

- 20 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity
21 as the Assistant Executive Officer of the Structural Pest Control Board, Department of Pesticide
22 Regulation.
- 23 2. On or about November 30, 2006, the Structural Pest Control Board issued
24 Applicator License Number RA 46669 to Humberto Saenz, Jr. (Respondent). The Applicator
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on November 30, 2012, unless renewed.

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9. 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registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate,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.

10. 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

11. 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:

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- (1) Fiscal dishonesty
- (2) Fraud
- (3) Theft
- (4) Violations relating to the misuse of pesticides.

12. 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.

(c) When considering a petition for reinstatement of a structural pest control license or company registration, the board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).

COST RECOVERY

13. 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.

CAUSE FOR DISCIPLINE

(September 16, 2011 Conviction for Petty Theft on March 11, 2011)

14. Respondent has subjected his license to disciplinary action under Code sections 490 and 8649 in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a licensed applicator. The circumstances are as follows:

1 a. On or about September 16, 2011, in a criminal proceeding entitled *The*
2 *People of the State of California v. Humberto Saenz, Jr.*, in San Diego County Superior Court,
3 North County Division, Case Number CN293745, Respondent was convicted of violating Penal
4 Code (PC) sections 484 and 490.5, petty theft of retail merchandise, a misdemeanor.

5 b. As a result of the conviction, Respondent was granted three years
6 summary probation and sentenced to serve one day in the Vista Detention Facility. Respondent
7 was also ordered to pay fines and fees and to stay away from all Target Stores.

8 c. The circumstances that led to the conviction are that on or about March
9 11, 2011, Respondent and a female, who was pushing a baby stroller, entered a Target Store in
10 Escondido, California. While in the store, Respondent removed two flash drives valued at \$99.98
11 from their packaging and concealed them on his person. The female companion took a breast
12 pump valued at \$42.99 off the shelf and placed it on the floor. Respondent later placed the breast
13 pump in their baby stroller. Respondent purchased other items at the cash register with a credit
14 card and then left the store without paying for the concealed flash drives and breast pump.

15 OTHER MATTERS

16 15. Pursuant to section 8654 of the Code, if discipline is imposed on Applicator
17 License Number RA 46669 issued to Respondent, Humberto Saenz, Jr. shall be prohibited from
18 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
19 employee for any registered company during the time the discipline is imposed, and any
20 registered company which employs, elects, or associates Humberto Saenz, Jr. shall be subject to
21 disciplinary action.

22 PRAYER

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

25 1. Revoking or suspending Applicator License Number RA 46669, issued to
26 Humberto Saenz, Jr.;

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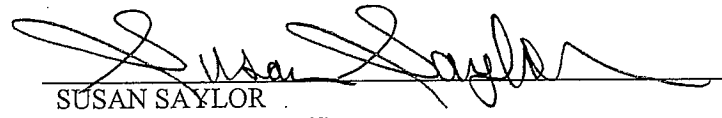
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2. Ordering Humberto Saenz, Jr. to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/12/12



SUSAN SAYLOR
Assistant Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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