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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,**
11 **HOME FURNISHINGS AND THERMAL INSULATION**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Statement of Issues
Against:

Case No. AN 2010-712

14 **RAFAEL AGUIRRE**
15 **d.b.a., RALPH'S APPLIANCES SERVICE**
15 15635 Mayall Street
16 North Hills, CA 91343

STATEMENT OF ISSUES

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Joanne Mikami (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Operations Manager of the Bureau of Electronic and Appliance Repair, Home
22 Furnishings and Thermal Insulation, Department of Consumer Affairs.

23 2. On or about May 25, 2010, the Bureau of Electronic and Appliance Repair (Bureau)
24 received an application for registration as an Appliance Service Dealer from Rafael Aguirre,
25 doing business as Ralph's Appliances Service (Respondent). On or about May 18, 2010,
26 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Bureau denied the application on or about June 28, 2010.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Bureau under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

7 "(a) A board may deny a license regulated by this code on the grounds that the applicant
8 has one of the following:

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

15 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
16 benefit himself or herself or another, or substantially injure another.

17 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
18 would be grounds for suspension or revocation of license.

19 (B)The board may deny a license pursuant to this subdivision only if the crime or act
20 is substantially related to the qualifications, functions, or duties of the business or profession for
21 which application is made.

22

23 "(c) A board may deny a license regulated by this code on the ground that the applicant
24 knowingly made a false statement of fact required to be revealed in the application for the
25 license."

26 5. Section 490 states, in pertinent part:

27 "(a) In addition to any other action that a board is permitted to take against a licensee, a
28 board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or
8 a conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code."

13 6. Section 9841 states, in pertinent part:

14 "(a) The director may deny, suspend, revoke, or place on probation the registration of a
15 service dealer for any of the following acts or omissions done by himself or herself or any
16 employee, partner, officer, or member of the service dealer and related to the conduct of his or her
17 business:

18 . . .

19 "(3) Any other conduct that constitutes fraud or dishonest dealing.

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21 "(5) Failure to comply with the provisions of this chapter or any regulation, rule, or
22 standard established pursuant to this chapter.

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24 "(7) Conviction of a crime that has a substantial relationship to the qualifications,
25 functions and duties of a registrant under this chapter, in which event the record of the conviction
26 shall be conclusive evidence thereof.

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1 "(b) The director may also deny, or may suspend, revoke, or place on probation, the
2 registration of a service dealer if the applicant or registrant, as the case may be, has committed
3 acts or crimes constituting grounds for denial of licensure under Section 480."

4 7. Section 9853 states, in pertinent part:

5 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
6 charge substantially related to the qualifications, functions, and duties of a service dealer or
7 service contractor is deemed to be a conviction within the meaning of this article. The director
8 may suspend, revoke, or place on probation a registration, or may deny registration, when the
9 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
10 an order granting probation is made suspending the imposition of sentence, irrespective of a
11 subsequent order under Section 1203.4 of the Penal Code, allowing that person to withdraw his or
12 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
13 dismissing the accusation, information, or indictment."

14 **REGULATORY PROVISIONS**

15 8. California Code of Regulations, title 16, section 2767 provides, in pertinent part:

16 "For the purposes of denial, suspension, or revocation of the registration of a repair service
17 dealer pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
18 Code, a crime or act shall be considered to be substantially related to the qualifications, functions
19 or duties of a service dealer if to a substantial degree it evidences present or potential unfitness of
20 a service dealer to perform the functions authorized by his registration in a manner consistent
21 with the public health, safety, or welfare. "

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 **(Criminal Convictions)**

24 9. Respondent's application is subject to denial under sections 9841, subdivision (a)(7)
25 and 480, subdivision (a)(1), in that Respondent was convicted of crimes, as follows:

26 a. On or about April 30, 2007, after pleading nolo contendere, Respondent was
27 convicted of one felony count of violating Penal Code section 459 [burglary: second degree] in
28 the criminal proceeding entitled *The People of the State of California v. Rafael Aguirre* (Super.

1 Ct. Los Angeles County, 2007, No. GA068846). The court sentenced Respondent to serve 4
2 years in State Prison and denied probation. The circumstances surrounding the conviction are
3 that on or about February 21, 2007, Respondent entered an inhabited dwelling house of another,
4 with the intent to commit a felony therein.

5 b. On or about March 20, 2003, Respondent was convicted of one misdemeanor count
6 of violating Penal Code section 647, subdivision (b) [disorderly conduct: prostitution] in the
7 criminal proceeding entitled *The People of the State of California v. Rafael Aguirre* (Super. Ct.
8 Los Angeles County, 2003, No. 3PN01253). The court sentenced Respondent to serve 1 day in
9 Los Angeles County Jail and placed him on 12 months probation, with terms and conditions. The
10 circumstances surrounding the conviction are that on or about February 27, 2003, Respondent
11 solicited or agreed to engage in acts of prostitution.

12 c. On or about August 4, 1997, Respondent was convicted of one felony count of
13 violating Penal Code section 211 [robbery] in the criminal proceeding entitled *The People of the*
14 *State of California v. Rafael Aguirre* (Super. Ct. Los Angeles County, 1997, No. BA151458).
15 The court sentenced Respondent to serve 365 days in Los Angeles County Jail and placed him on
16 36 months probation, with terms and conditions. The circumstances surrounding the conviction
17 are that on or about June 14, 1997, Respondent took the personal property in the possession of
18 another, from his person and against his will, by force or fear.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Acts Involving Dishonesty, Fraud, or Deceit)**

21 10. Respondent's application is subject to denial under sections 9841, subdivision (a)(3)
22 and 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, fraud or
23 deceit with the intent to substantially benefit himself, or substantially injure another.

24 Complainant refers to, and by this reference incorporates, the allegations set forth above, in
25 paragraph 8, subparagraphs (a) and (c), inclusive, as though set forth fully.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Knowingly Made a False Statement of Fact)

11. Respondent's application is subject to denial under sections 9841, subdivision (a)(5) and 480, subdivision (c), in that on or about May 18, 2010, Respondent knowingly made a false statement of fact by failing to disclose two additional convictions, on his application for licensure. In addition, Respondent signed under penalty of perjury, under the law of the State of California, that the foregoing was true and correct, on his application for licensure. Complaint refers to, and by this reference incorporates, the allegations set forth in paragraph 8, subparagraphs (b) and (c), inclusive, as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

12. Respondent's application is subject to denial under sections 9841, subdivision (b) and 480, subdivisions (a)(3)(A) and (a)(3)(B), in n that Respondent committed acts which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of his license. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a licensed vocational nurse which to a substantial degree evidences his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of sections 9841, subdivision (a)(7) and 490, in conjunction with California Code of Regulations, title 16, section 2767. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 8, as though set forth fully.

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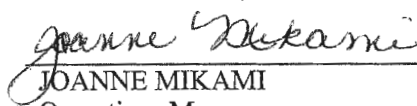
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Bureau issue a decision:

1. Denying the application of respondent for registration as an Appliance Service Dealer; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/1/12


JOANNE MIKAMI
Operations Manager
Bureau of Electronic and Appliance Repair, Home
Furnishings and Thermal Insulation
Department of Consumer Affairs
State of California
Complainant

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