BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR. HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: ROBERT SERVANTES AKA ROBERT CERVANTES AKA ROBERTO CERVANTES AKA ROBERTO SERVANTES 2323 East Norwich Fresno, CA 93726 Respondent.	Case No. AN 2012-306 OAH No. 2013050120

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Director of Consumer Affairs as the Decision and Order in the above entitled matter.

This Decision shall become effective on APR 25 2014.

IT IS SO ORDERED MAR 26 2014.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **ROBERT SERVANTES AKA ROBERT CERVANTES AKA ROBERTO CERVANTES AKA ROBERTO SERVANTES** **2323 East Norwich** **Fresno, CA 93726** Respondent.	Case No. AN 2012-306 OAH No. 2013050120 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Tonya Blood ("Complainant") is the Chief of the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau). She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney General.

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2. Respondent Robert Servantes aka Robert Cervantes aka Roberto Cervantes aka Roberto Servantes ("Respondent") is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about April 5, 2012, Respondent filed an application dated March 14, 2012, with the Director of Consumer Affairs to obtain an Appliance Service Dealer Registration.

JURISDICTION

4. Statement of Issues No. AN 2012-306 was filed before the Director of Consumer Affairs (Director), for the Bureau, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on April 19, 2013. A copy of Statement of Issues No. AN 2012-306 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. AN 2012-306. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. AN 2012-306.

9. Respondent agrees that his Appliance Service Dealer Registration is subject to denial and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Director of Consumer Affairs or the Director's designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Appliance Service Dealer Registration will be issued to Respondent Robert Servantes aka Robert Cervantes aka Roberto Cervantes aka Roberto Servantes by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation and immediately revoked. The revocation will be stayed and Respondent placed on three (3) years probation on the following terms and conditions.

1. **Obey All Laws.** During the period of probation, Respondent(s) shall comply with all statutes, regulations and rules governing electronic and appliance repair.

2. **Comply with Probation Program.** Respondent shall fully comply with the probation established by the Bureau and shall cooperate with the representatives of the Bureau.

3. **Submit Quarterly Reports.** Respondent shall submit quarterly reports, under penalty of perjury. The reports shall certify and document compliance with all the conditions of probation.

4. **Maintain Valid Registration.** Respondent shall, at all times while on probation, maintain an active current registration with the Bureau, including any period during which suspension or probation is tolled.

Should Respondent's registration, by operation of law or otherwise, expire, upon renewal or reinstatement Respondent's registration shall be subject to any and all terms of this probation not previously satisfied.

5. **Personal Appearance at Bureau Office.** Report, by personal appearance of Respondent or Respondent's authorized representative, to the Bureau office on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

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6. **Cooperation with Bureau Inspections.** Provide Bureau representatives unrestricted access to inspect all business locations, including business records required to be maintained in accordance with Section 9847 and 9847.5 of the Business and Professions Code.

7. **Violation of Probation.** If a Respondent violates the conditions of his probation, the Bureau, after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline revocation of the Respondent's registration.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's registration or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's registration, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Bureau. Upon successful completion of probation, the Respondent's registration will be fully restored.

8. **Surrender of License.** During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Bureau. The Bureau reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Bureau. A licensee who surrenders his license may petition the Board for reinstatement no sooner than one (1) year from the effective date of the disciplinary decision for the surrender.

9. **Tolling of Probation.** Respondent's probationary period is tolled, if and when he fails to own and operate a Bureau-licensed business in California. Respondent must provide written notice to the Bureau within fifteen (15) days of any such change of license status.

10. **Abstain From Use of Psychotropic (Mood Altering) Drugs.** Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Bureau, in writing and within fourteen (14) days, by a prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

11. **Submit to Tests and Samples.** Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Bureau approves. The length of time and frequency will be subject to approval by the Bureau. Respondent is responsible for keeping the Bureau informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Bureau, as directed. Any confirmed positive finding shall be reported immediately to the Bureau by the program and Respondent shall be considered in violation of probation.

In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Bureau or any of its representatives, and shall, when requested, submit to such tests and samples as the Bureau or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If Respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, Respondent shall immediately cease operating his business and shall not resume operating his business until notified by the Bureau. After taking into account documented evidence of mitigation, if the Bureau files a petition to revoke probation or an accusation, the Bureau may suspend Respondent from operating his business pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Appliance Service Dealer Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 11/20/13

ROBERT SERVANTES AKA ROBERT CERVANTES AKA ROBERTO CERVANTES AKA ROBERTO SERVANTES

Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs

Dated: 11/21/2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

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BEFORE THE
BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
HOME FURNISHINGS AND THERMAL INSULATION
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **ROBERT SERVANTES, AKA** **ROBERT CERVANTES, AKA** **ROBERTO CERVANTES, AKA** **ROBERTO SERVANTES** **Applicant/Respondent.**	Case No. AN 2012-306 **STATEMENT OF ISSUES**

Tonya Blood ("Complainant") alleges:

PARTIES

1. Complainant brings this Statement of Issues solely in her official capacity as the Chief of the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation ("Bureau"), Department of Consumer Affairs.

2. On or about April 5, 2012, the Bureau received an application for an Appliance Service Dealer Registration from Robert Servantes, also known as Robert Cervantes, Roberto Cervantes, and Roberto Servantes ("Respondent"). On or about March 14, 2012, Robert Servantes certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on October 2, 2012.

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STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 9831 states, in pertinent part, that the Director shall refuse to validate the registration of an electronic appliance repair dealer if the applicant has committed acts or crimes constituting grounds for denial of licensure under section 480 of that code.

4. Code Section 9841 states, in pertinent part:

> (a) The director may refuse to validate, or may invalidate temporarily or permanently the registration of a service dealer for any of the following acts or omissions done by himself or herself or any employee, partner, officer, or member of the service dealer and related to the conduct of his or her business:
>
> (7) Conviction of a crime which has a substantial relationship to the qualifications, functions and duties of a registrant under this chapter, in which event the record of the conviction shall be conclusive evidence thereof.

5. Code section 480, states, in pertinent part:

> (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
>
> (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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.

6. Code section 22 states:

> Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency.

7. Code section 477, subdivision (b), states, "'License' includes certificate, registration or other means to engage in a business or profession regulated by this code."

8. California Code of Regulations, title 16, 2767 states, in pertinent part:

> For the purposes of denial, suspension, or revocation of the registration of a repair service dealer pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a service dealer if to a substantial degree it evidences present or potential unfitness of a service dealer to perform the

functions authorized by his registration in a manner consistent with the public health, safety, or welfare.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Convictions)

9. Respondent's application is subject to denial pursuant to Code section 9841, subdivision (a)(7) and Code section 480 (a)(1), in that Respondent committed crimes that are substantially related to the qualifications, functions or duties of an appliance service dealer, as follows:

a. On or about April 13, 2009, in the case entitled *People v. Robert Servantes* (Fresno County Superior Court (2009), Case No. F09901645), the court convicted Respondent on his plea of no contest of violating Penal Code section 12021, subdivision (a)(1) (felon in possession of a firearm), a felony. The circumstances of the crime are that on or about March 17, 2009, peace officers from the Fresno Police Department went to Respondent's dwelling in response to a report of domestic violence. The officers observed that there were multiple holes in the bedroom door, and Respondent told them that he had damaged it during an altercation with his domestic partner. The officers photographed scratches on Respondent's partner and then searched Respondent's truck. Inside the truck the officers found marijuana, including marijuana inside a plastic cup, where Respondent told them it would be, as well as a .22 caliber rifle without a stock under some power tools. Respondent told them he intended to fix the rifle. Respondent was a convicted felon, as set forth in subparagraph b, below.

b. On or about July 23, 1999, in the case entitled *People v. Robert Servantes* (Fresno County Superior Court (1999), Case No. F99903127-9), the court convicted Respondent on his plea of no contest of violating Health and Safety Code section 11377(a) (unlawful possession of a controlled substance), a felony. Respondent was permitted to participate in the deferred entry of judgment program under Penal Code sections 1000 *et seq*. On or about May 1, 2003, Respondent was terminated from the program due to multiple positive test results for illicit drugs, and on June 7, 2003, was sentenced on his previously deferred no contest plea to felony violation of Health and Safety Code section 11377(a). The circumstances of the crime are on or about March 6, 1999, peace officers from the Fresno Police Department responded to a report that two individuals were

removing the tires from a parked vehicle. The officers found that the vehicle had been stolen. When questioned, Respondent admitted that he and another individual removed the tires, but stated that they had been returned to the vehicle. The peace officers entered Respondent's dwelling and found a car jack, a tire iron, a plastic bag containing a white rocky substance, and a plate with fifteen portions of a white rocky substance near a small scale on the kitchen table. Respondent was searched and two bundles of the white rocky substance were found in his pocket. Respondent was subsequently charged and convicted for possession of amphetamine.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Which If Done By a Licentiate)

10. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in that he committed acts, which if done by a licentiate of the profession would constitute grounds for discipline under the Code as set forth in paragraph 9, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Denying the application of Robert Servantes, also known as Robert Cervantes, Roberto Cervantes, and Roberto Servantes, for an Appliance Service Dealer Registration; and,

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

DATED: APR 1 1 2013

TONYA BLOOD
Chief
BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME FURNISHINGS AND THERMAL INSULATION
Department of Consumer Affairs
State of California
Complainant

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