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

12 In the Matter of the Statement of Issues
13 Against:

Case No. AN 2013-611

14 **ROBERT W. BIVINS**

STATEMENT OF ISSUES

15 **Electronic Service Dealer Registration**
16 **Applicant**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about April 29, 2013, the Bureau of Electronic and Appliance Repair, Home
24 Furnishings and Thermal Insulation received an application for an Electronic Service Dealer
25 Registration from Robert W. Bivins (Respondent) to do business as "Nerds for Less." On or
26 about April 15, 2013, Robert W. Bivins certified under penalty of perjury to the truthfulness of all
27 statements, answers, and representations in the application. The Bureau denied the application on
28 July 24, 2013.

JURISDICTION

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2 3. This Statement of Issues is brought before the Director of Consumer Affairs
3 (Director) for the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal
4 Insulation (Bureau), under the authority of the following laws. All section references are to the
5 Business and Professions Code (Code) unless otherwise indicated.

6 4. Section 22, subdivision (a) of the Code states ““Board”” as used in any provision of
7 this Code, refers to the board in which the administration of the provision is vested, and unless
8 otherwise expressly provided, shall include ‘bureau,’ ‘commission,’ ‘committee,’ ‘department,’
9 ‘division,’ ‘examining committee,’ ‘program,’ and ‘agency.’”

10 5. Section 9831 of the Code states, in pertinent part, that the Director shall refuse to
11 validate the registration of an electronic appliance repair dealer if the applicant has committed
12 acts or crimes constituting grounds for denial of licensure under section 480 of that code.

STATUTORY PROVISIONS

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14 6. Section 475 of the Code states:

15 (a) Notwithstanding any other provisions of this code, the provisions of this
16 division shall govern the denial of licenses on the grounds of:

17 (1) Knowingly making a false statement of material fact, or knowingly omitting
18 to state a material fact, in an application for a license.

19 (2) Conviction of a crime.

20 (3) Commission of any act involving dishonesty, fraud or deceit with the intent
21 to substantially benefit himself or another, or substantially injure another.

22 (4) Commission of any act which, if done by a licentiate of the business or
23 profession in question, would be grounds for suspension or revocation of license.

24 (b) Notwithstanding any other provisions of this code, the provisions of this
25 division shall govern the suspension and revocation of licenses on grounds specified in
26 paragraphs (1) and (2) of subdivision (a) .

27 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack
28 of good moral character or any similar ground relating to an applicant's character,
reputation, personality, or habits.

7. Section 480 of the Code states:

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

1 (1) Been convicted of a crime. A conviction within the meaning of this section
2 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
3 Any action that a board is permitted to take following the establishment of a conviction
4 may be taken when the time for appeal has elapsed, or the judgment of conviction has
5 been affirmed on appeal, or when an order granting probation is made suspending the
6 imposition of sentence, irrespective of a subsequent order under the provisions of Section
7 1203.4 of the Penal Code.

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

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

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

15 (b) Notwithstanding any other provision of this code, no person shall be denied a
16 license solely on the basis that he or she has been convicted of a felony if he or she has
17 obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section
18 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a
19 misdemeanor if he or she has met all applicable requirements of the criteria of
20 rehabilitation developed by the board to evaluate the rehabilitation of a person when
21 considering the denial of a license under subdivision (a) of Section 482.

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

25 8. Section 482 of the Code states:

26 Each board under the provisions of this code shall develop criteria to evaluate the
27 rehabilitation of a person when:

28 (a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board
within the department pursuant to law to deny an application for a license or to suspend
or revoke a license or otherwise take disciplinary action against a person who holds a
license, upon the ground that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the licensee in
question, the record of conviction of the crime shall be conclusive evidence of the fact
that the conviction occurred, but only of that fact, and the board may inquire into the
circumstances surrounding the commission of the crime in order to fix the degree of
discipline or to determine if the conviction is substantially related to the qualifications,
functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 10. Section 9841 of the Code states:

4 (a) The director may refuse to validate, or may invalidate temporarily or
5 permanently the registration of a service dealer for any of the following acts or omissions
6 done by himself or herself or any employee, partner, officer, or member of the service
7 dealer and related to the conduct of his or her business:

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

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

14 (b) The director may also refuse to validate, or may invalidate temporarily or
15 permanently, the registration of a service dealer if the applicant or registrant, as the case
16 may be, has committed acts or crimes constituting grounds for denial of licensure under
17 Section 480.

18 (c) The director may also refuse to validate, or may invalidate temporarily or
19 permanently, the registration of a service dealer if the applicant or registrant, as the case
20 may be, will be or is holding the registration for the benefit of a former registrant whose
21 registration has been suspended or revoked and who will continue to have some
22 involvement in the applicant's or new registrant's business.

23 REGULATORY PROVISIONS

24 11. California Code of Regulations, title 16, section 2767 states:

25 For the purposes of denial, suspension, or revocation of the registration of a repair
26 service dealer pursuant to Division 1.5 (commencing with Section 475) of the Business
27 and Professions Code, a crime or act shall be considered to be substantially related to the
28 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. Such crimes or acts shall include but not be limited to those involving the
following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or
abetting the violation of, or conspiring to violate any provision or term of Chapter 20,
Division 3 of the Business and Professions Code.

(b) Conviction of a crime involving fiscal dishonesty.

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1 12. California Code of Regulations, title 16, section 2768 states:

2 (a) The Bureau shall evaluate the rehabilitation of the applicant, registrant, or
3 petitioner and his or her present eligibility for a registration:

4 (1) When considering the denial of a registration under the provisions of
5 Section 480 of the Code;

6 (2) When considering the suspension or revocation of a registration on the
7 grounds that a service dealer has been convicted of a crime;

8 (3) When considering a petition for reinstatement of a registration under the
9 provisions of Section 11522 of the Government Code.

10 (b) In evaluating the rehabilitation of the applicant, registrant, or petitioner, the
11 Bureau shall consider the following criteria:

12 (1) The nature and the severity of the act(s) or crime(s) under consideration.

13 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
14 under consideration as grounds for denial which also could be considered as grounds for
15 denial under Section 480 of the Business and Professions Code when considering an
16 applicant pursuant to subsection (a)(1) of this section.

17 (3) Total criminal record when considering a person pursuant to subsections
18 (a)(2) and (a)(3) of this section.

19 (4) The time that has elapsed since commission of the act(s) or crime(s)
20 under consideration.

21 (5) The extent to which the applicant, registrant, or petitioner has complied
22 with any terms of parole, probation, restitution, or any other sanctions lawfully imposed
23 against the applicant, registrant, or petitioner.

24 (6) Evidence, if any, of rehabilitation submitted by the applicant, registrant,
25 or petitioner. Such evidence may include, but is not limited to, proof of additional
26 training or education, evidence of service to the community, and, if applicable, evidence
27 of expungement proceedings, pursuant to Section 1203.4 of the Penal Code.

28 **FIRST CAUSE FOR DENIAL OF APPLICATION**

**(September 11, 2012 Criminal Convictions for Misappropriation of Lost Property
& Grand Theft on March 6, 2012)**

13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
and 9841, subdivision (a)(3) of the Code in Respondent was convicted of crimes that are
substantially related to the qualifications, duties, and functions of an Electronic Service Dealer.

The circumstances are as follows:

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1 a. On or about September 11, 2012, in a criminal proceeding entitled *People of*
2 *the State of California v. Robert Walter Bivins, aka R.W. Bivins*, in Riverside County Superior
3 Court, case number RIF1201653, Respondent was convicted on his plea of guilty to violating
4 Penal Code section 485, appropriation of lost property to his own use; and Penal Code section
5 487, subdivision (a), grand theft, felonies reduced to misdemeanors by the court under Penal
6 Code section 17b.

7 b. As a result of the convictions, on or about September 11, 2012, Respondent
8 was sentenced to 120 days in the custody of the Riverside County Sheriff, with credit for one day,
9 to be served in the Work Release Program. Three years summary probation was granted.
10 Respondent was ordered to pay restitution to the victim, plus fees and fines, submit to a Fourth
11 Amendment waiver, and to stay away from the victim. Respondent's probation was revoked and
12 reinstated three times for failure to report for work release. At a hearing on January 25, 2013, the
13 court reinstated Respondent's probation and converted the term requiring 119 days in the Work
14 Release Program to 952 hours of community service

15 c. The facts that lead to the convictions are that on or about the afternoon of
16 March 14, 2012, the victim contacted the Moreno Valley Police Department. The victim stated
17 that he had ordered three laptop computers from Dell for \$2,500 to be shipped via FedEx. When
18 the victim contacted FedEx to find out when the computers were going to be delivered, he was
19 told they had been delivered to Respondent's business, "Nerds for Less," across the street from
20 the victim's business. The victim stated that when he contacted Respondent, Respondent told
21 him that he had received the laptops, but an unknown black male had stolen them. The victim
22 filed a claim with FedEx. The Moreno Valley Police Department conducted an investigation and
23 learned from Respondent's employee that he witnessed Respondent sign for the laptops. After
24 interviewing Respondent at his residence, Respondent admitted he had possession of one of the
25 laptops, and had given the other two to friends. Investigators contacted the friends and learned
26 that one laptop had been sold for \$520, and the other was taken in trade for another computer.
27 All three laptops were retrieved as evidence, and then turned over to investigators for FedEx.
28 Respondent was subsequently charged with grand theft and misappropriation of lost property.

