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

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

Case No. AN 2016-242

15 **JOHN RODRIGUEZ,**
16 **d.b.a., CALIFORNIA HOME**

STATEMENT OF ISSUES

17 Furniture Retailer License Applicant

Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 1. Justin Paddock (Complainant) brings this Statement of Issues solely in his 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 November 12, 2015, the Bureau of Electronic and Appliance Repair,
24 Home Furnishings, and Thermal Insulation (Bureau) received an application for a Furniture
25 Retailer License from John Rodriguez, doing business as California Home (Respondent). In or
26 about early November, 2015, John Rodriguez certified under penalty of perjury to the truthfulness
27 of all statements, answers, and representations in the application. The Bureau denied the
28 application on June 21, 2016.

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:

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 time
12 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
13 order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 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 is
20 substantially related to the qualifications, functions, or duties of the business or profession for
21 which application is made.

22 “(b) Notwithstanding any other provision of this code, a person shall not be denied a
23 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
24 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
25 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
26 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
27 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
28 Section 482.

1 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a
2 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
3 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
4 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
5 of the dismissal.

6 "(d) A board may deny a license regulated by this code on the ground that the applicant
7 knowingly made a false statement of fact that is required to be revealed in the application for the
8 license."

9 5. Section 490 states, in pertinent part:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

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

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

24 6. Section 493 states, in pertinent part:

25 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
26 the department pursuant to law to deny an application for a license or to suspend or revoke a
27 license or otherwise take disciplinary action against a person who holds a license, upon the
28 ground that the applicant or the licensee has been convicted of a crime substantially related to the

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of the crime in
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the
5 qualifications, functions, and duties of the licensee in question.”

6 7. Section 9841 states, in pertinent part:

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

11 . . .

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

13

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

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

21 8. Section 9853 states, in pertinent part:

22 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
23 charge substantially related to the qualifications, functions, and duties of a service dealer or
24 service contractor is deemed to be a conviction within the meaning of this article. The director
25 may suspend, revoke, or place on probation a registration, or may deny registration, when the time
26 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
27 order granting probation is made suspending the imposition of sentence, irrespective of a
28 subsequent order under Section 1203.4 of the Penal Code, allowing that person to withdraw his or

1 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment."

3 **REGULATORY PROVISIONS**

4 9. California Code of Regulations, title 16, section 2767 states, in pertinent part:

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

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(Substantially Related Criminal Convictions)**

13 10. Respondent's application is subject to denial under sections 9841, subdivision (a)(7)
14 and 480, subdivision (a)(1), in that Respondent was convicted of crimes substantially related to
15 the qualifications, functions, or duties of a furniture retailer, as follows:

16 a. On or about December 6, 2012, Respondent was convicted of one misdemeanor
17 count of violating Business and Professions Code section 7159.5, subdivision (a)(3) [contractor in
18 violation of home improvement contract] in the criminal proceeding entitled *The People of the*
19 *State of California v. John David Rodriguez* (Super. Ct. L.A. County, 2012, No. 1CA01160). The
20 court ordered Respondent to pay victim restitution in the amount \$2,000.00. The circumstances
21 surrounding the conviction are that on or August 12, 2009, Respondent entered into a home
22 improvement contract with the victim and charged the victim a down payment exceeding
23 \$1,000.00 or 10% of the contract.

24 b. On or about July 17, 2009, Respondent was convicted of one misdemeanor count of
25 violating Penal Code section 242 [battery] in the criminal proceeding entitled *The People of the*
26 *State of California v. John David Rodriguez* (Super. Ct. L.A. County, 2009, No. 9WW02147).
27 The court placed Respondent on 3 years probation, with terms and conditions. The circumstances

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1 surrounding the conviction are that on or about January 23, 2009, Respondent willfully and
2 unlawfully used force or violence upon another.

3 c. On or about June 8, 2009, Respondent was convicted of one misdemeanor count of
4 violating Vehicle Code section 14601.1, subdivision (a) [driving while driving privilege is
5 suspended or revoked] and one misdemeanor count of Vehicle Code section 12500 [driving
6 without a valid driver's license] in the criminal proceeding entitled *The People of the State of*
7 *California v. John David Rodriguez* (Super. Ct. L.A. County, 2008, No. 9RI00285). The court
8 placed Respondent on 18 month probation, with terms and conditions. The circumstances
9 surrounding the conviction are that on or about December 11, 2008, Respondent drove a motor
10 vehicle while his driving privilege was suspended or revoked and without a valid driver's license.

11 d. On or about June 14, 2006, Respondent was convicted of three felony counts of
12 violating Penal Code section 487, subdivision (a) [grand theft: money/labor/property] in the
13 criminal proceeding entitled *The People of the State of California v. John D. Rodriguez* (Super.
14 Ct. L.A. County, 2006, No. BA296454). The court sentenced Respondent to serve 25 days in jail,
15 ordered him to pay victim restitution in the amount of \$131,725.00 (jointly and severally with co-
16 defendant), and placed him on 5 years formal probation, with terms and conditions. The
17 circumstances surrounding the conviction are that on or about December 3, 2004, Respondent
18 stole, took, and carried away the real or personal property of another.

19 e. On or about May 25, 2000, Respondent was convicted of one misdemeanor count of
20 violating Vehicle Code section 14601.2, subdivision (a) [driving while driving privilege is
21 suspended or revoked, with knowledge] in the criminal proceeding entitled *The People of the*
22 *State of California v. John D. Rodriguez* (Super. Ct. L.A. County, 2000, No. 9WH02294). The
23 court sentenced Respondent to serve 30 days on house arrest and placed him on 3 years probation,
24 with terms and conditions. The circumstances surrounding the conviction are that on or about
25 March 10, 1999, Respondent drove a motor vehicle while his driving privilege was suspended or
26 revoked and with knowledge.

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1 f. On or about August 17, 1999, Respondent was convicted of one misdemeanor count
2 of violating Vehicle Code section 23152, subdivision (a) [driving while under the influence of
3 alcohol or drugs] and one misdemeanor count of Vehicle Code section 23152, subdivision (b)
4 [driving while having 0.08% or more, by weight of alcohol, in his blood] in the criminal
5 proceeding entitled *The People of the State of California v. John David Rodriguez* (Super. Ct.
6 L.A. County, 1999, No. 9EL01864). The court sentenced Respondent to serve 30 days in jail and
7 placed him on 5 years probation, with terms and conditions. The circumstances surrounding the
8 conviction are that on or about January 31, 1999, Respondent drove a motor vehicle while under
9 the influence of alcohol or drugs and while having 0.08% or more, by weight of alcohol, in his
10 blood.

11 g. On or about August 17, 1999, Respondent was convicted of one misdemeanor count
12 of violating Vehicle Code section 14601.1, subdivision (a) [driving while driving privilege is
13 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
14 *John David Rodriguez* (Super. Ct. L.A. County, 1999, No. 6EL00288). The court sentenced
15 Respondent to serve 11 days in jail and placed him on 12 months probation, with terms and
16 conditions. The circumstances surrounding the conviction are that on or about December 15,
17 1995, Respondent drove a motor vehicle while his driving privilege was suspended or revoked.

18 h. On or about August 17, 1999, Respondent was convicted of one misdemeanor count
19 of violating Vehicle Code section 12500 [driving without a valid driver's license] in the criminal
20 proceeding entitled *The People of the State of California v. John David Rodriguez* (Super. Ct.
21 L.A. County, 1999, No. 95M11687). The court sentenced Respondent to serve 3 days in jail and
22 placed him on 12 month probation, with terms and conditions. The circumstances surrounding
23 the conviction are that in or about early 1999, Respondent drove a motor vehicle without a valid
24 driver's license.

25 i. On or about April 29, 1994, Respondent was convicted of one misdemeanor count of
26 violating Penal Code section 148.9, subdivision (a) [false identification to specific peace officer]
27 and one count misdemeanor count of Vehicle Code section 14601.1, subdivision (a) [driving
28 while driving privilege is suspended or revoked] in the criminal proceeding entitled *The People of*

1 *the State of California v. John David Rodriguez* (Super. Ct. L.A. County, 1994, No. 94M01304).

2 The court placed Respondent on 12 months probations, with terms and conditions. The
3 circumstances surrounding the conviction are that on or about February 13, 1994, Respondent
4 falsely represented or identified himself as another person or as a fictitious person to a peace
5 officer upon a lawful detention or arrest and drove a motor vehicle while his driving privilege was
6 suspended or revoked.

7 j. On or about June 29, 1992, Respondent was convicted of one misdemeanor count of
8 violating Vehicle Code section 14601.1, subdivision (a) [driving while driving privilege is
9 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
10 *John David Rodriguez* (Super. Ct. L.A. County, 1992, No. 89M06959). The court placed
11 Respondent on 18 months probation, with terms and conditions. The circumstances surrounding
12 the conviction are that on or about November 9, 1989, Respondent drove a motor vehicle while
13 his driving privilege was suspended or revoked.

14 k. On or about March 3, 1992, Respondent was convicted of one misdemeanor count of
15 violating Vehicle Code section 14601.1, subdivision (a) [driving while driving privilege is
16 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
17 *John David Rodriguez* (Super. Ct. L.A. County, 1992, No. 91M04799). The court placed
18 Respondent on 1 year probation, with terms and conditions. The circumstances surrounding the
19 conviction are that on or about March 4, 1991, Respondent drove a motor vehicle while his
20 driving privilege was suspended or revoked.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

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

26 Complainant refers to, and by this reference incorporates, the allegations set forth above, in
27 paragraph 10, subparagraphs (a), (d), and (i), inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Knowingly Made a False Statement of Fact)**

3 12. Respondent's application is subject to denial under sections 9841, subdivision (a) and
4 480, subdivision (d), in that Respondent knowingly made a false statement of fact by failing to
5 disclose his criminal convictions, on his application for licensure. In addition, Respondent signed
6 under penalty of perjury, under the law of the State of California, that the foregoing was true and
7 correct, on his application for licensure. Complaint refers to, and by this reference incorporates,
8 the allegations set forth in paragraph 10, subparagraphs (a) through (k), inclusive, as though set
9 forth fully.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

11 **(Acts Warranting Denial of Licensure)**

12 13. Respondent's application is subject to denial under sections 9841, subdivision (b) and
13 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
14 licentiate of the business and profession in question, would be grounds for suspension or
15 revocation of his license. Respondent was convicted of crimes substantially related to the
16 qualifications, functions, or duties of a licensed furniture retailer which to a substantial degree
17 evidences his present or potential unfitness to perform the functions authorized by his license in a
18 manner consistent with the public health, safety, or welfare, in violation of sections 9841,
19 subdivision (a)(7) and 490, in conjunction with California Code of Regulations, title 16, section
20 2767. Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraph 10, subparagraphs (a) through (k), as though set forth fully.

22 **PRAYER**

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

25 1. Denying the application of John Rodriguez, doing business as California Home for a
26 Furniture Retailer License; and

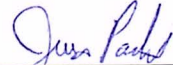
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2. Taking such other and further action as deemed necessary and proper.

DATED: SEP 14 2016


JUSTIN PADDOCK
Bureau Chief
Bureau of Electronic and Appliance Repair, Home
Furnishings and Thermal Insulation
Department of Consumer Affairs
State of California
Complainant

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