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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 Accusation Against:

Case No. A1 2013-1007

13 **VLADIMIR PUSTILNIKOV,**
14 **DBA B & E APPLIANCE HEATING**
& AIR CONDITIONING,
15 **82-687 Lordsburg Drive**
Indio, CA 92203

A C C U S A T I O N

16 **Appliance Service Dealer**
17 **Registration No. A-44629**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

24 2. On March 3, 2006, the Bureau issued Appliance Service Dealer Registration
25 Number A-44629 to Vladimir Pustilnikov, doing business as B & E Appliance Heating & Air
26 Conditioning (Respondent). The Appliance Service Dealer Registration was in full force and
27 effect at all times relevant to the charges brought herein and will expire on March 31, 2014,
28 unless renewed.

JURISDICTION

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2 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
3 Bureau under the authority of the following laws. All section references are to the Business and
4 Professions Code (Code) unless otherwise indicated.

5 4. Code section 118, subdivision (b), provides that the expiration of a license shall not
6 deprive the Bureau of jurisdiction to proceed with a disciplinary action during the period within
7 which the license may be renewed, restored, reissued, or reinstated.

8 5. Code section 9841(a) provides that the Director may refuse to validate, or may
9 invalidate temporarily or permanently, the registration of a service dealer if he, or any employee,
10 partner, officer, or member of the service dealer, has violated provisions of the Electronic and
11 Appliance Repair Act.

12 6. Code section 9849 provides that the expiration of a valid registration shall not deprive
13 the Bureau of jurisdiction to render a decision invalidating a registration temporarily or
14 permanently.

STATUTORY PROVISIONS

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16 7. Code section 477 states:

17 As used in this division:

18 (a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
19 'examining committee,' 'program,' and 'agency.'

20 (b) 'License' includes certificate, registration or other means to engage in a
21 business or profession regulated by this code.

22 8. Code section 480 states:

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

25 (1) Been convicted of a crime. A conviction within the
26 meaning of this section means a plea or verdict of guilty or a conviction following
27 a plea of *nolo contendere*. Any action that a board is permitted to take following
28 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.

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

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

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

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

9 9. Code section 482 states:

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

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

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

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

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16 10. Code section 490 provides that a board may suspend or revoke a license on the
17 ground that the licensee has been convicted of a crime substantially related to the qualifications,
18 functions, or duties of the business or profession for which the license was issued.

19 11. Code section 493 states:

20 Notwithstanding any other provision of law, in a proceeding conducted by a
21 board within the department pursuant to law to deny an application for a license or to
22 suspend or revoke a license or otherwise take disciplinary action against a person who
23 holds a license, upon the ground that the applicant or the licensee has been convicted
24 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.

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26 12. Code section 498 states:

27 A board may revoke, suspend, or otherwise restrict a license on the ground that
28 the licensee secured the license by fraud, deceit, or knowing misrepresentation of a
material fact or by knowingly omitting to state a material fact.

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13. Code section 9841 states, in pertinent part:

(a) The director may deny, suspend, revoke, or place on probation 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:

(1) Making or authorizing any statement or advertisement that is untrue or misleading, and that is known, or by the exercise of reasonable care should be known, to be untrue or misleading.

....

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

....

(5) Failure in any material respect to comply with the provisions of this chapter or regulations thereunder.

....

(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.

....

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

....

REGULATORY PROVISIONS

14. California Code of Regulations, Title 16 (Regulations), section 2767, states:

For the purpose 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 repair dealer if to a substantial degree it evidence 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:

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1 15. Regulations section 2768, states:

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

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

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

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

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

15 (3) Total criminal record when considering a person pursuant to sections
16 (a) (2) and (a) (3) of this section.

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

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

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

27 16. Regulations section 2775, states:

28 In reaching a decision on a disciplinary action under the Administrative
Procedure Act (Government Code Section 11400 et seq.), the bureau shall
consider the disciplinary guidelines entitled "Bureau of Electronic and
Appliance Repair Disciplinary Guidelines (June 1997)" which are hereby
incorporated by reference. Deviation from these guidelines and orders,
including the standard terms of probation, is appropriate where the bureau in its
sole discretion determines that the facts of the particular case warrant such
deviation - for example: the presence of mitigating factors; the age of the case;
evidentiary problems.

1 **COST RECOVERY**

2 17. Code section 125.3 provides that the Bureau may request the administrative law judge
3 to direct a licentiate found to have committed a violation or violations of the licensing act to pay a
4 sum not to exceed the reasonable costs of the investigation and enforcement of the case. In the
5 event of a settlement, recovery of investigation and enforcement costs may be included in a
6 stipulated settlement.

7 **FACTS**

8 18. On March 11, 2004, in a criminal proceeding entitled *People of the State*
9 *of California v. Vladimir Pustilnikov*, in Los Angeles County Superior Court, San Fernando
10 Courthouse District, case number 3CH04017, Respondent was convicted on his plea of
11 *nolo contendere* of violating Penal Code (PC) section 12031, subdivision (a)(1), unlawfully
12 carrying a loaded firearm on July 24, 2003, a misdemeanor. Pursuant to a plea agreement, the
13 court dismissed an additional count of violating PC section 417, subdivision (a)(2), unlawfully
14 exhibiting a firearm, a misdemeanor.

15 19. As a result of the conviction, on March 11, 2004, Respondent was sentenced to serve
16 45 days in Los Angeles County Jail (LAC Jail), with credit for one day served, or to serve 30 days
17 of graffiti removal work furlough in lieu thereof, and to pay fees, fines, and restitution. The court
18 granted Respondent three years summary probation. The court ordered that Respondent not own,
19 use, possess, buy or sell any dangerous or deadly weapons, not annoy or harass anyone involved
20 in the case, not threaten anyone, and not use force or violence against anyone. The Court also
21 ordered that the weapon and ammunition confiscated from Respondent at the time of his arrest be
22 destroyed by the arresting agency. On January 26, 2006, Respondent's probation was revoked
23 due to his violation of the terms of his probation and a bench warrant was issued for his arrest.
24 On February 17, 2006, as a result of his probation violation, Respondent was sentenced to two
25 additional days of custody in LAC Jail, and his probation was reinstated on the same terms.

26 20. On August 6, 2004, in a criminal proceeding entitled *People of the State of California*
27 *v. Vladimir Pustilnikov*, in Los Angeles County Superior Court, North Central District, case
28 number GA057082, Respondent was convicted on his plea of *nolo contendere* of violating Health

1 and Safety (H & S) Code section 11360, subdivision (a), unlawfully transporting marijuana for
2 personal use on March 16, 2004, a felony. Pursuant to a plea agreement, the court dismissed an
3 additional count of violating H & S Code section 11359, unlawful possession for sale of
4 marijuana, a felony. Respondent's criminal conduct underlying this conviction occurred on
5 March 16, 2004, only five days after he began serving his probation arising from his previous
6 convictions on March 11, 2004.

7 21. As a result of the conviction, on August 6, 2004, the court suspended imposition of
8 the sentence and granted Respondent three years formal probation on all standard terms and
9 conditions including an order to pay fines, fees and restitution. The court ordered Respondent to
10 serve two days in LAC Jail, with credit for two days served. The court also ordered Respondent
11 to register with the local police agency as a narcotics offender.

12 22. On March 3, 2006, the Bureau received an application for an Appliance Service
13 Dealer Registration from Respondent. On March 3, 2006, Respondent signed his application for
14 licensure certifying under penalty of perjury under the laws of the State of California that his
15 answers were true and correct. In response to the question "Have you ever been convicted of a
16 felony or misdemeanor, other than a minor traffic violation?" Respondent replied "No" when, in
17 fact, Respondent had been convicted on March 11, 2004, and convicted again on August 26,
18 2004, as detailed above in paragraphs 18 through 21. Further, Respondent was still on probation
19 for each of his prior convictions at the time he misrepresented on his application that he had not
20 ever been convicted.

21 23. On March 3, 2006, in reliance on Respondent's truthfulness in completing his
22 application for licensure, the Bureau issued Appliance Dealer Registration No. A-44629 to
23 Respondent. The registration has been renewed each year.

24 24. On February 25, 2011, in a criminal proceeding entitled *People of the State of*
25 *California v. Vladimir Pustilnikov*, in Riverside County Superior Court, Desert Courts District,
26 case number INF10002034, Respondent was convicted on his plea of guilty of violating
27 PC section 459, burglary, and PC section 476, forgery, on June 3, 2010, misdemeanors. Pursuant

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1 to a plea agreement, the court dismissed additional counts of violating PC section 459, burglary,
2 and PC section 476, forgery, misdemeanors.

3 25. As a result of the convictions, on February 25, 2011, Respondent was granted three
4 years summary probation and sentenced to serve 30 days in the custody of the Riverside County
5 Sheriff, and ordered to submit to immediate searches by law enforcement with or without cause,
6 stay away from Y&M Market in Coachella, and pay fines, fees and restitution. Respondent's
7 probation is scheduled to expire on February 24, 2014, unless extended.

8 26. On November 16, 2012, in a criminal proceeding entitled *People of the State of*
9 *California v. Vladimir Pustilnikov*, in Los Angeles County Superior Court, Burbank Courthouse,
10 case number GA083682, Respondent was convicted on his plea of *nolo contendere* of four
11 separate felony counts of violating PC section 470, subdivision (d), forgery, and one felony count
12 of violating PC section 487, subdivision (a), grand theft, on April 23, 2011. Respondent's
13 convictions occurred while he was on probation after being convicted of similar crimes detailed
14 above in paragraphs 24 and 25. Further, Respondent's criminal conduct underlying this
15 conviction occurred on April 23, 2011, only two months after he began serving his probation
16 arising from his previous convictions on February 25, 2011.

17 27. As a result of the convictions, on November 16, 2012, the court ordered imposition of
18 sentence suspended and granted Respondent three years formal probation. The court ordered
19 Respondent to serve one day in the custody of LAC Jail with credit for one day served, complete
20 45 days of community service, and pay fines, fees and restitution. Respondent's probation is
21 scheduled to expire on November 15, 2015, unless extended.

22 28. On February 21, 2013, the Bureau received an application for a second Appliance
23 Service Dealer Registration from Respondent to open a second appliance repair dealer doing
24 business as All Desert Appliance Heating & Air Conditioning in Palm Desert, California. On
25 February 21, 2013, Respondent signed his application for licensure certifying under penalty of
26 perjury under the laws of the State of California that his answers were true and correct. In
27 response to the question, "Have you ever been convicted of a felony or misdemeanor, other than a
28 minor traffic violation?" Respondent replied "Yes." Question No. 13 on the application for

1 licensure states, in pertinent part: "If you answered YES to having ever been convicted of a
2 felony or misdemeanor in Items 10 or 11, give the particulars of each, including Penal Code
3 numbers or criminal case numbers. . . . (Attach additional sheets if necessary.)" Respondent
4 provided a false and misleading answer to Question No. 13 in that he provided information
5 regarding only one of his four prior convictions. Respondent's entire response to Question
6 No. 13 provides only the following information regarding a single conviction: "Received a check
7 from a homeowner that was stolen and the check holder take me to court case is close and check
8 holder was repaid in full, but the court system give me a Felony [sic]." Respondent did not
9 disclose any information about, or the existence of, his three other prior criminal convictions that
10 occurred in March 2004, August 2004, and February 2011, as detailed above in paragraphs 18-19,
11 20-21, and 24-25, respectively. Respondent's response to Question No. 13 was misleading in that
12 it misrepresented the extensive nature of his prior criminal history.

13 29. In March 2013, the Bureau sent Respondent an Applicant Questionnaire regarding his
14 criminal conviction(s). The questionnaire states: "Please disclose the details of **any and all**
15 criminal conviction(s). You may use a separate sheet of paper if needed." [emphasis in original.]
16 In March 2013, Respondent responded to the Applicant Questionnaire as detailed below, certified
17 under penalty of perjury under the laws of the State of California, that his foregoing responses to
18 the Applicant Questionnaire were true and correct, and submitted his responses to the Bureau for
19 consideration in granting his application for licensure.

20 30. Question No. 2 on the questionnaire states: "Date of Conviction(s)" and then, "Felony
21 or Misdemeanor?" In response to Question No. 2, Respondent's entire response states
22 "November 16, 2012" and he circled the word "Felony." Respondent's response did not include
23 or make any reference to his additional felony conviction that occurred in August 2004 as
24 described above in paragraph 20. Respondent's response did not include any information or
25 reference to his two additional misdemeanor criminal convictions that occurred in March 2004
26 and February 2011 as detailed above in paragraphs 18-19 and 24-25, respectively. Respondent's
27 response to Question No. 2 was false in that it disclosed only one prior conviction as if it were

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1 his sole conviction and it was misleading in that it misrepresented the extensive nature of
2 Respondent's prior criminal history.

3 31. Question No. 6 on the questionnaire states, "Case Number _____." Respondent's
4 response provided one case number, "GA083682", which refers to his most recent conviction that
5 occurred in November, 2012. Respondent did not disclose or provide the case number for any of
6 his other convictions that occurred in March 2004, August 2004, and February 2011.
7 Respondent's response to Question No. 6 was false in that it disclosed only one prior conviction
8 as if it were his sole conviction and it was misleading in that it misrepresented the extensive
9 nature of Respondent's prior criminal history.

10 32. Question No. 7 on the questionnaire states, "Jail-time or prison?" and "Duration of
11 time served?" Respondent's response to both parts of Question No. 7 is "N/A" which falsely
12 indicated that his criminal conviction(s) did not result in any sentenced jail-time. In fact,
13 Respondent was ordered to serve jail-time and received credit for jail-time served as a result of
14 his conviction in November, 2012, which he disclosed on the questionnaire and which is detailed
15 above in paragraphs 26-27, and also as a result of his conviction in August 2004 as detailed above
16 in paragraphs 20-21. Further, Respondent was ordered to serve 30 days jail-time as a result of his
17 conviction in February 26, 2011, as detailed above in paragraphs 24-25.

18 33. Question No. 8 on the questionnaire states, "Was there a probation served? If so, how
19 long and date of release?" Respondent did not provide any response to this question.
20 Respondent's failure to provide any information in response to Question No. 8 was misleading in
21 that it falsely indicated that Respondent's criminal conviction(s) did not result in any sentence
22 that included terms of probation. In fact, Respondent had served sentences including probation
23 on four separate occasions as a result of his prior criminal convictions. Further, Respondent did
24 not disclose that he was currently on probation for convictions, as described above in paragraphs
25 24 through 27.

26 34. On April 25, 2013, the Bureau denied Respondent's application for a second
27 Appliance Repair Dealer Registration to do business as All Desert Appliance Heating & Air
28 Conditioning in Indio, California.

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FIRST CAUSE FOR DISCIPLINE

(Making Untrue or Misleading Statements)

35. Respondent registration is subject to disciplinary action under Code section 9841, subdivision (a)(1), in that in March 2006, in February 2013, and in March 2013, Respondent knowingly made untrue or misleading statements on his applications for licensure as an Appliance Service Dealer. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 18 through 33 as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Making False Statement on License Application)

36. Respondent's registration is subject to disciplinary action under Code sections 498, and 9841, subdivision (b), in conjunction with section 480, subdivision (c), in March 2006, February 2013 and March 2013, Respondent knowingly made false statements of fact and failed to disclose material facts that were required to be disclosed on his applications for licensure. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 18 through 33.

THIRD CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

37. Respondent's registration is subject to disciplinary action under Code sections 490, and 9841, subdivisions (b), in conjunction with section 480, subdivisions (a)(1) and (a)(3)(A), 9841, subdivision (a)(7), and 9855.7, subdivision (b), in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of an appliance service dealer which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 18 through 27.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

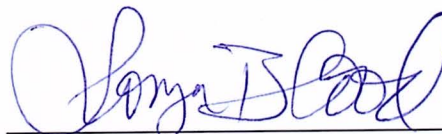
3 38. Respondent's registration is subject to disciplinary action under Code
4 sections 9841, subdivision (b), in conjunction with section 480, subdivision (a)(2), and
5 9841, subdivision (a)(3) in that Respondent made false statements and misrepresentations on his
6 applications for licensure in March 2006, in February and in March 2013. Complainant refers to
7 and by this reference incorporates the allegations set forth above in paragraphs 18 through 33.

8 **PRAYER**

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

- 11 1. Revoking or suspending Appliance Service Dealer Registration Number A-44629,
12 issued to Vladimir Pustilnikov doing business as B & E Appliance Heating & Air Conditioning.
13 2. Ordering Vladimir Pustilnikov to pay the Bureau of Electronic and Appliance Repair,
14 Home Furnishings and Thermal Insulation the reasonable costs of the investigation and
15 enforcement of this case, pursuant to Business and Professions Code section 125.3;
16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: JAN 07 2014



19 TONYA BLOOD
20 Bureau Chief
21 Bureau of Electronic and Appliance Repair, Home
22 Furnishings and Thermal Insulation
23 Department of Consumer Affairs
24 State of California
25 *Complainant*

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28 SD2013705759