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: Case No. AN 2012-36

JOHN FOTO; SANTA FE SECONDS OAH No. 2013100586
8615 LONG Beach Blvd
South Gate, CA 90280

Furniture and Bedding Retailer License

Respondent,

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.

[Signature]
DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs
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:

JOHN FOTO; SANTA FE SECONDS
8615 Long Beach Blvd
South Gate, CA 90280
Furniture and Bedding Retailer License

Respondent.

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 Bureau 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 Linda L. Sun, Deputy Attorney General.

2. Respondent John Foto; Santa Fe Seconds ("Respondent") is represented in this
proceeding by attorney Fredrick M. Ray, whose address is: 1100 West Town & Country Road,
10th Floor, Suite 1010, Orange, CA 92868.
3. On or about September 28, 2012 Respondent filed an application dated September 18, 2012 with the Director of Consumer Affairs ("Director") to obtain a Furniture and Bedding Retailer License.

**JURISDICTION**

4. Statement of Issues No. AN 2012-436 was filed before the 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 October 1, 2013.

5. A copy of Statement of Issues No. AN 2012-436 is attached as Exhibit A and incorporated herein by reference.

**ADVISEMENT AND WAIVERS**

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. AN 2012-436. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. 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.

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

**CULPABILITY**

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. AN 2012-436.
10. Respondent agrees that his Furniture and Bedding Retailer License 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**

11. 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 of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation 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.

12. 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.

13. 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.

14. 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 Respondent’s Furniture and Bedding Retailer License will be issued and immediately revoked. The revocation will be stayed and the Respondent placed on three (3) years probation on the following terms and conditions.

1. **Obey All Laws.** During the period of probation, Respondent 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.** Respondent shall report, by personal appearance of Respondent or Respondent’s authorized representative, to the designated location 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.

6. **Cooperation with Bureau Inspections.** Respondent shall provide Bureau representatives unrestricted access to inspect all business locations, including business records required to be maintained in accordance with sections 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. **Tolling.** Respondent’s probation 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 15 days of any such change of license status.

9. **Surrender of License.** During Respondent’s term of probation, if he ceases operating or owning a Bureau-licensed business, 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, or to take any other action deemed appropriate and reasonable under the circumstances, 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.
ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Fredrick M. Ray. I understand the stipulation and the effect it will have on my Furniture and Bedding Retailer License. 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: 1/29/14

John Foto; Santa Fe Seconds
Respondent

I have read and fully discussed with Respondent John Foto; Santa Fe Seconds the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/29/14

Fredrick M. Ray
Attorney for Respondent

ENDORSEMENT

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

Dated: 1-30-14

Respectfully submitted,

Kamala D. Harris
Attorney General of California
Armando Zambrano
Supervising Deputy Attorney General

Linda L. Sun
Deputy Attorney General
Attorneys for Complainant

LA2013508922
Exhibit A

Statement of Issues No. AN 2012-436
Complainant alleges:

PARTIES

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

2. On or about September 28, 2012, the Bureau received an application for a Furniture and Bedding Retailer from John Foto; Santa Fe Seconds (Respondent). On or about September 18, 2012, John Foto; Santa Fe Seconds certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on January 28, 2012.

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JURISDICTION

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

STATUTORY PROVISIONS

4. 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.

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

..."

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

5. Section 9841 states in pertinent part:

"(a) The director may deny ... the registration of a service dealer for any of the following acts or omissions done by himself ... and related to the conduct of his ... business:

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

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

...(7) Conviction of a crime that 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.

...(8)(b) The director may also deny, ... 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.”

6. Section 19211 states in pertinent part:

Any person who has been denied a license, ... shall be prohibited from serving as a member of any licensed partnership, or as an officer or director of any licensed corporation, or as an officer or person acting in a managerial capacity of any licensed firm or association, and the employment, election, or association of a person in this capacity by a licensee shall constitute grounds for disciplinary action against the licensee.

REGULATORY PROVISIONS

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

“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. 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.”
FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Convictions)

8. Respondent's application is subject to denial pursuant to Code sections 480, subdivision (a)(1), 9841 subdivision (a)(7) and (8)(b), in conjunction with California Code of Regulations, title 16, section 2767, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a Furniture and Bedding Retailer, as follows:

a. On or about May 25, 2012, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 350, subdivision (a)(2) [manufacture/sell/possess counterfeit goods, 1,000 + articles], in the criminal proceeding entitled The People of the State of California v. John Philip Foto I (Super. Ct. Los Angeles County, 2009, No. 2DY00332). The court placed Respondent on probation for a period of 36 months and fined him. The circumstances surrounding the conviction are that in or about 2009, Respondent knowingly possessed for sale counterfeit Ed Hardy brand named clothing at his store in Santa Fe Outlets.

b. On or about April 15, 2002, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 242 [battery], in the criminal proceeding entitled The People of the State of California v. John Philip Foto II (Super. Ct. Los Angeles County, 2001, No. 2SG00095). The court placed Respondent on probation for a period of 36 months and fined him. The circumstances surrounding the conviction are that on or about December 21, 2001, the Respondent used force and violence on a customer over a pricing dispute on a piece of clothing item.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Fraud or Dishonest Dealing)

9. Respondent's application is subject to denial pursuant to Code sections 480, subdivision (a)(2) and 9841 subdivision (a)(3), in conjunction with California Code of Regulations, title 16, section 2767, subdivision (b), in that Respondent was convicted of a crime that constitutes fraud or dishonest dealing. Complainant refers to, and this reference incorporates, the allegations set forth above to paragraph 8 (a) inclusive, as though set forth fully.
THIRD CAUSE FOR DENIAL OF APPLICATION
(Untrue or Misleading Statement)

10. Respondent's application is subject to denial pursuant to Code sections 480, subdivision (c) and 9841, subdivision (a)(1), in that on or about September 18, 2012, in his application for a Furniture and Bedding Retailer, Respondent failed to disclose his April 15, 2002 conviction. Complainant refers to, and this reference incorporates, the allegations set forth above to paragraph 8 (b) inclusive, as though set forth fully.

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 John Foto; Santa Fe Seconds for a Furniture and Bedding Retailer License;
2. Prohibiting John Foto; Santa Fe Seconds from serving as a member of any licensed partnership, or as an officer or director of any licensed corporation, or as an officer or person acting in a managerial capacity of any licensed firm or association; and
3. Taking such other and further action as deemed necessary and proper.

DATED: SEP 25 2013

TONYA BLOOD
Bureau Chief
Bureau of Electronic and Appliance Repair
Department of Consumer Affairs
State of California
Complainant

LA2013508922