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

In the Matter of the	Statement	of Issues
Against:		

KHAMPHANH THEPHAVONG, dba AMERITECH BUSINESS SYTEMS 1561 Coventry Fresno, California 93727

Respondent.

Case No. AN-2009-1630

OAH No. 2011060878

DECISION

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

OREATHEA JOHNSON
Deputy Director, Legal Affairs

Department of Consumer Affairs

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1	KAMALA D. HARRIS Attorney General of California	
2	JANICE K. LACHMAN Supervising Deputy Attorney General	
3	Lorrie M. Yost	
4	Deputy Attorney General State Bar No. 119088	
5	1300 I Street, Suite 125 P.O. Box 944255	
6	Sacramento, CA 94244-2550 Telephone: (916) 445-2271	
7	Facsimile: (916) 327-8643 Attorneys for Complainant	
8	BEFORE	
9	DEPARTMENT OF CON FOR THE BUREAU OF ELECTRONIC	AND APPLIANCE REPAIR, HOME
10	FURNISHING AND THEI STATE OF CAI	RMAL INSULATION
11		
12	In the Matter of the Statement of Issues Against:	Case No. AN-2009-1630
13	KHAMPHANH THEPHAVONG,	
14	dba AMERITECH BUSINESS SYSTEMS 1561 Coventry	OAH No. 2011060878
15	Fresno, California 93727	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER
16	Respondent.	:
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18	IT IS HEREBY STIPULATED AND AGRE	ED by and between the parties to the above-
19	entitled proceedings that the following matters are t	• '
20	<u>PARTI</u>	<u>ES</u>
21	Rick Fong was the Acting Bureau Chie	f of the Bureau of Electronic and Appliance
22	Repair at the time the Matter of the Statement of iss	
23	dba Ameritech Business Systems was filed, and bro	
24	Currently Joanne Mikami, Operational Program Ma	
25	Chief. She is represented in this matter by Kamala	
26	California, by Lorrie M. Yost, Deputy Attorney Ge	
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- 2. Respondent Khamphanh Thephavong dba Ameritech Business Systems (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 12, 2010, Respondent filed an application with the Director of Consumer Affairs to obtain an Electronic Service Dealer Registration.

JURISDICTION

4. Statement of Issues No. AN-2009-1630 was filed before the Director of Consumer Affairs (Director), for the Bureau of Electronic and Appliance Repair, Home Furnishing and Thermal Insulation (Bureau), and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on January 24, 2011. A copy of Statement of Issues No. AN-2009-1630 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-2009-1630. 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-2009-1630.

9. Respondent agrees that his Electronic Service Dealer Registration application 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 his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Electronic and Appliance Repair 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 facsimile copies of this Stipulated Settlement and Disciplinary Order, including 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 Respondent Ameritech Business Systems; Khamphanh Thephavong that Electronic Service Dealer Registration 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(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. 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.
- 6. Criminal Checks. Respondent shall furnish to the Bureau a full set of electronic fingerprints for purposes of conducting criminal history record checks through the Department of Justice and the United States Federal Bureau of Investigation. Respondent shall not engage in electronic repair until he has been notified by the Bureau, in writing, that he has cleared the criminal history background check.
- 7. Place of Practice. Respondent shall not enter nor engage in electronic repair in a consumer's place of residence

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- Interviews with Bureau. Respondent shall be available in person upon request for 8: interviews either at Respondent's place of business, Bureau offices, or other such location as may be designated by the Bureau, with or without prior notice, throughout the term of probation.
- Notification to Consumers. Before providing a written estimate for repair. 9. Respondent shall notify consumers in writing that his electronic repair dealer's registration has been placed on probation, and that a copy of the Order and Statement of Issues may be obtained from the Bureau by contacting (916) 999-2041, or by visiting the Bureau's website at http://www.bearhfti.ca.gov, if the Bureau posts these documents online.
- **Violation of Probation.** If a Respondent violates the conditions of his probation, the 10. 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.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Electronic 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.

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DATED:

3-21-13

AMERITECH BUSINESS SYSTEMS: KHAMPHANH THEPHAVONG

Respondent

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ENDORSEMENT

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

Dated: 12.20-12

Respectfully submitted.

KAMALA D. HARRIS Attorney General of California JANICE K. LACHMAN Supervising Deputy Attorney General

Lorrie M. Yost Deputy Attorney General Attorneys for Complainant

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	II.	
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1	EDMUND G. BROWN JR.	
-2	Attorney General of California JANICE K. LACHMAN	
3	Supervising Deputy Attorney General LORRIE M. YOST	
4	Deputy Attorney General State Bar No. 119088	
5	1300 I Street, Suite 125 P.O. Box 944255	
6	Sacramento, CA 94244-2550 Telephone: (916) 445-2271	
7	Facsimile: (916) 327-8643 Attorneys for Complainant	
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12	In the Matter of the Statement of Issues Against:	Case No. AN-2009-1630
13	KHAMPHANH THEPHAVONG,	
14	dba AMERITECH BUSINESS SYSTEMS 1561 Coventry	STATEMENT OF ISSUES
15	Fresno, California 93727	•
16	Respondent.	
17	Complainant alleges:	
18	PARTII	ES
19	1. Rick Fong ("Complainant") brings this S	Statement of Issues solely in his official
20	capacity as the Acting Bureau Chief of the Bureau o	f Electronic and Appliance Repair, Home
21	Furnishings and Thermal Insulation ("Bureau"), Dep	partment of Consumer Affairs.
22	2. On or about April 12, 2010, the Bureau	received an application for an electronic
23	service dealer registration from Khamphanh Thepha	wong ("Respondent"), doing business as
24	Ameritech Business Systems. Respondent certified	
25	all statements, answers, and representations in the ap	
26	on April 16, 2010.	
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STATUTORY PROVISIONS

- 3. Business and Professions Code ("Code") section 9831 provides, in pertinent part, that the director (Director of Consumer Affairs or "Director") shall refuse to issue the registration of a service dealer if the applicant has committed acts or crimes constituting grounds for denial of licensure under section 480 of that code.
 - 4. 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.
 - (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
 - (3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
 - (B) The board may deny a license pursuant to this 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 . . .
 - 5. 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:
 - (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.
 - (b) The director may also deny, or may suspend, revoke, or place on probation, 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...

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6. Code section 9853 states, in pertinent part:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a service dealer or service contractor is deemed to be a conviction within the meaning of this article. The director may suspend, revoke, or place on probation a registration, or may deny registration, 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 Section 1203.4 of the Penal Code, allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment . . .

7. Code section 22, subdivision (a), 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."

8. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

FIRST CAUSE FOR DENIAL

(Criminal Conviction)

- 9. Respondent's application is subject to denial pursuant to Code sections 9831, 9841 subdivisions (a)(7) and (b), and 480 subdivisions (a)(1) and (a)(3)(A), in that Respondent was convicted of crimes, as set forth in subparagraphs (a) and (b) below, which are substantially related to the qualifications, functions and duties of a service contractor.
- a. On or about December 14, 1992 in the criminal proceeding titled *People v. Khamphanh Thepphavong* (Super Ct. Fresno County, 1992, Case No. 476172-2), Respondent pled guilty to violating Vehicle Code section 10851 subdivision (a) (unlawful driving or taking of a vehicle without the owner's consent, a felony) and Penal Code section 459 (second degree burglary, a felony). On January 13, 1993 Respondent was sentenced to serve 2 years in Wasco State Prison. The circumstances of the crime were as follows: On or about November 25, 1992, Respondent willfully and unlawfully entered a locked 1986 Honda Prelude belonging to S.V., with the intent to commit larceny and drove or took the vehicle without S.V.'s consent.

1	b. On or about January 4, 1993 in the criminal proceeding titled <i>People v. Khamphanh</i>
2	Thepphavong (Super Ct. Fresno County, 1993, Case No. 477452-7), Respondent pled guilty to
3	violating Penal Code sections 211 and 212.5 subdivision (b) first degree robbery/robbery of any
4	person while using an automated teller machine, a felony) with an enhancement by virtue of
5	Penal Code section 12022.5 subdivision (a). On January 11, 1993 Respondent was sentenced to
6	serve 6 years in Wasco State Prison concurrent with the sentence in Case No. 476172-2 above.
7	The circumstances of the crime are as follows: On or about November 23, 1992, Respondent
8	willfully, unlawfully and by means of force and fear, took personal property from G.G. Further,
9	Respondent personally used a firearm in the commission of the crime.
10	SECOND CAUSE FOR DENIAL
11	(Dishonesty, fraud or Deceit)
12	10. Respondent's application is subject to denial pursuant to Code section 480
13	subdivision (a)(2) in that he committed acts involving dishonesty, fraud or deceit with the intent
14	to substantially benefit himself or substantially injure another, as set forth in paragraph 9, above.
- 1	
15	PRAYER
15 16	PRAYER WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
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16 17	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:
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16 17 18 19	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 Khamphanh Thephavong, doing business as Ameritech Business Systems for an electronic service dealer registration;
16 17 18 19 20	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 Khamphanh Thephavong, doing business as Ameritech Business Systems for an electronic service dealer registration; 2. Taking such other and further action as deemed necessary and proper.
16 17 18 19 20 21	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 Khamphanh Thephavong, doing business as Ameritech Business Systems for an electronic service dealer registration; 2. Taking such other and further action as deemed necessary and proper. DATED: 1-4-11
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