KAMALA D. HARRIS Attorney General of California JOSHUA A. ROOM Supervising Deputy Attorney General NICHOLAS TSUKAMAKI Deputy Attorney General State Bar No. 253959 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1188 Facsimile: (415) 703-5480 E-mail: Nicholas. Tsukamaki@doj.ca.gov Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES Applicant for Pharmacy Technician License	
Nicholas Tsukamaki Deputy Attorney General State Bar No. 253959 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1188 Facsimile: (415) 703-5480 E-mail: Nicholas.Tsukamaki@doj.ca.gov Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA In the Matter of the Statement of Issues Case No. 5150 Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1188 Facsimile: (415) 703-5480 E-mail: Nicholas.Tsukamaki@doj.ca.gov Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1188 Facsimile: (415) 703-5480 E-mail: Nicholas.Tsukamaki@doj.ca.gov Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
Telephone: (415) 703-1188 Facsimile: (415) 703-5480 E-mail: Nicholas.Tsukamaki@doj.ca.gov Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
E-mail: Nicholas.Tsukamaki@doj.ca.gov Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 11 In the Matter of the Statement of Issues Against: 12 MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
STATE OF CALIFORNIA In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
In the Matter of the Statement of Issues Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
Against: MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
13 MARCELO MONELA aka MARCELO OBIANO MUNILA II STATEMENT OF ISSUES	
14 Applicant for Pharmacy Technician License	
* *	
15 Respondent.	
16	
17	
Complainant alleges:	
19 PARTIES	
20 1. Virginia Herold (Complainant) brings this Statement of Issues sole	ly in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Co	nsumer Affairs.
22 2. On or about August 2, 2013, the Board of Pharmacy, Department o	f Consumer
Affairs, received an application for registration as a pharmacy technician from 1	Marcelo Monela
24 aka Marcelo Obiano Munila II (Respondent). On or about July 29, 2013, Respondent	ondent certified
under penalty of perjury the truthfulness of all statements, answers, and represe	entations in the
application. The Board denied the application on January 7, 2014.	
27 ///	
28 ///	
1	l l

STATEMENT OF ISSUES (Case No. 5150)

JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY AND REGULATORY PROVISIONS

- 4. Section 4300, subdivision (c) of the Code states in pertinent part:
- "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy"
- 5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be limited to, any of the following:
- "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- "(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter."
 - 6. Section 480 of the Code 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.

. . . **

7. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

FACTUAL BACKGROUND

- 8. On or about December 9, 2004, in a military proceeding entitled *United States v. Marcelo Monela*, before a general court-martial of the United States Marine Corps, Respondent was convicted by his plea of guilty of the following violations of the Uniform Code of Military Justice (UCMJ):
- a. Article 121 (larceny), in that on or about August 30, 2003, in Okinawa, Japan, Respondent stole a Yahama receiver valued at \$799.99 belonging to the Army Air Force Exchange Service (AAFES). Also, on various occasions between March 2000 and October 2003, in Okinawa, Japan, Respondent stole various electronic merchandise of a value greater than and less than \$500 belonging to the AAFES.
- b. Article 81 (conspiracy), in that on various occasions between June 2002 and October 2003, in Okinawa, Japan, Respondent conspired with another individual to commit the following offense under the UCMJ: larceny of various electronic merchandise of a value greater than and less than \$500 belonging to the AAFES.

c. Article 92 (violation of a lawful general order), in that on various occasions between November 2000 and October 2003, in Okinawa, Japan, Respondent violated a lawful general order by operating a private business from his assigned bachelor enlisted quarters without proper authorization.

d. Article 134 in that:

- i. In or around October 2003, in Okinawa, Japan, Respondent wrongfully endeavored to impede an investigation by influencing the testimony of another individual during an investigation of the case *United States v. Marcelo Monela* by offering that individual the sum of \$3,000 if the individual would testify falsely by accepting full blame for the theft of electronic merchandise stolen by Respondent from the AAFES.
- ii. Between August and September 2003, in Okinawa, Japan, Respondent wrongfully solicited an individual to receive and conceal stolen electronic merchandise of a value greater than \$500 belonging to the AAFES.
- iii. On various occasions between March 2000 and October 2003, in Okinawa, Japan, Respondent wrongfully solicited numerous individuals to buy and receive stolen electronic merchandise of a value greater than and less than \$500 belonging to the AAFES by offering to sell those individuals the stolen merchandise at a discounted rate.

Respondent was ordered to be confined for six (6) years and ordered to pay a \$50,000 fine.

- 9. On or about December 3, 2007, in a criminal proceeding entitled *People v. Marcelo Monela*, Case Number 531357, in Alameda County Superior Court, Respondent was convicted by his plea of nolo contendere of violating Penal Code section 487, subdivision (a) (grand theft of personal property), a felony. Imposition of sentence was suspended and Respondent was ordered to serve three (3) years probation and pay a fine and fees. The circumstances of Respondent's conviction are as follows:
- a. On seven separate occasions between June 30, 2007, and July 12, 2007, Respondent, while employed at a Target store in Albany, California, engaged in the following conduct:
 (1) Respondent stole various items from the store; and (2) Respondent took various items from the store and then returned those items for cash using receipts for the same products that

Respondent had previously purchased. The total loss to Target as a result of Respondent's theft and fraudulent returns was \$3,932.51. 2 FIRST CAUSE FOR DENIAL OF APPLICATION 3 (Conviction of Substantially Related Crime(s)) 4 10. Respondent's application is subject to denial under the following section(s) of the 5 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(f) and 6 California Code of Regulations, title 16, section 1770, for conviction of a substantially related 7 crime or crimes, in that on or about December 9, 2004, and/or on or about December 3, 2007, as 8 described above in paragraphs 8 and 9, Respondent suffered substantially related conviction(s). 9 SECOND CAUSE FOR DENIAL OF APPLICATION 10 (Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud, and/or Deceit) 11 Respondent's application is subject to denial under the following section(s) of the 11. 12 Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f) and 13 California Code of Regulations, title 16, section 1770, in that between March 2000 and October 14 2003, and between June 30, 2007, and July 12, 2007, as described above in paragraphs 8 and 9, 15 Respondent committed acts involving moral turpitude, dishonesty, fraud, and/or deceit. 16 THIRD CAUSE FOR DENIAL OF APPLICATION 17 (Unprofessional Conduct) 18 Respondent's application is subject to denial under the following section(s) of the 12. 19 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described 20 above in paragraphs 8 and 9, Respondent engaged in unprofessional conduct. 21 22 177 111 23 24 111 25 111 1// 26 27 III111 28 5

PRAYER WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision: Denying the application of Marcelo Monela aka Marcelo Obiano Munila II to be a 1. pharmacy technician; 2. Taking such other and further action as is deemed necessary and proper. DATED: Board of Pharmacy Department of Consumer Affairs State of California Complainant SF2014407793 40976428.docx