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7

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. (79/14-58)

13 **CALIFORNIA TIRE**
14 **JACINTO CRUZ, OWNER**
15 **512 E. Pine Street**
16 **Compton, CA 90222-2818**

FIRST AMENDED ACCUSATION

17 **MAILING ADDRESS**
18 **8553 Meadow Road**
19 **Downey, CA 90242**

20 **Automotive Repair Dealer Registration No. ARD**
21 **139447**
22 **Smog Check Station License No. RC 139447**
23 **Lamp Station License No. LS 139447**
24 **Brake Station License No. BS 139447**

25 **JOSE LUIS CRUZ**
26 **8553 Meadow Road**
27 **Downey, CA 90242**

28 **Smog Check Inspector License No. EO 631193**
Smog Check Repair Technician License No. EI
631193 (formerly Advanced Emission Specialist
Technician License No. EA 631193)
Brake Adjuster License No. BA 631193, class C
Lamp Adjuster License No. LA 631193, class A

Respondents.

1 Complainant alleges:

2 **PARTIES**

3 1. Patrick Dorais (“Complainant”) brings this First Amended Accusation solely in his
4 official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer
5 Affairs.

6 **Automotive Repair Dealer Registration ARD 139447**

7 2. On or about May 2, 1988, the Bureau of Automotive Repair issued Automotive
8 Repair Dealer Registration Number ARD 139447 (“Registration”) to California Tire, Jacinto Cruz
9 – Owner (“Respondent California Tire”). The Registration was in full force and effect at all times
10 relevant to the charges brought herein and will expire on April 30, 2015, unless renewed.

11 **Smog Check Station License RC 139447**

12 3. On or about February 9, 2010, the Bureau of Automotive Repair issued Smog Check
13 Station License Number RC 139447 (“Station License”) to Respondent California Tire. The
14 Station License was in full force and effect at all times relevant to the charges brought herein and
15 will expire on April 30, 2015, unless renewed.

16 **Lamp Station License LS 139447**

17 4. On or about June 29, 2010, the Bureau of Automotive Repair issued Lamp Station
18 License Number LS 139447 (“Lamp Station License”) to Respondent California Tire. The Lamp
19 Station License was in full force and effect at all times relevant to the charges brought herein and
20 will expire on April 30, 2015, unless renewed.

21 **Brake Station License BS 139447**

22 5. On or about June 29, 2010, the Bureau of Automotive Repair issued Brake Station
23 License Number BS 139447 (“Brake Station License”) to Respondent California Tire. The Brake
24 Station License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on April 30, 2015, unless renewed.

26 **Smog Check Inspector EO 631193 and Smog Check Repair Technician EI 631193**

27 6. On or about July 20, 2009, the Bureau of Automotive Repair issued Advanced
28 Emission Specialist Technician License Number EA 631193 to Jose Luis Cruz (“Respondent Jose

1 Cruz"). Respondent Jose Cruz' Technician License was due to expire on December 31, 2013.
2 However, the license was cancelled on December 12, 2013, and reissued pursuant to Respondent's
3 election as Smog Check Inspector License No. EO 631193 and Smog Check Repair Technician
4 License No. EI 631193 ("Inspector and Repair Licenses"), effective December 27, 2013.
5 Respondent Jose Cruz' Inspector and Repair Licenses are set to expire on December 31, 2015,
6 unless renewed.¹

7 **Brake Adjuster License BA 631193, class C**

8 7. On or about February 8, 2010, the Bureau of Automotive Repair issued Brake
9 Adjuster License Number BA 631193, class C ("Brake Adjuster License") to Respondent Jose
10 Luis Cruz. The Brake Adjuster License was in full force and effect at all times relevant to the
11 charges brought herein and will expire on December 31, 2017, unless renewed.

12 **Lamp Adjuster License LA 631193, class A**

13 8. On or about May 10, 2010, the Bureau of Automotive Repair issued Lamp Adjuster
14 License Number LA 631193, class A ("Lamp Adjuster License") to Respondent Jose Luis Cruz.
15 The Lamp Adjuster License was in full force and effect at all times relevant to the charges brought
16 herein and will expire on December 31, 2017, unless renewed.

17 **JURISDICTION**

18 9. This First Amended Accusation is brought before the Director of Consumer Affairs
19 ("Director") for the Bureau of Automotive Repair, under the authority of the following laws.

20 10. Section 9884.7² provides that the Director may revoke an automotive repair dealer
21 registration

22 11. Section 9884.13 provides, in pertinent part, that the expiration of a valid registration
23 shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding
24

25 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
26 3340.39, and 3340.30 were amended to implement a license restructure from the Advanced
27 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
28 Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

² All section references are to the Business and Professions Code, unless otherwise
indicated.

1 against an automotive repair dealer or to render a decision invalidating a registration temporarily
2 or permanently.

3 12. Section 9889.1 provides, in pertinent part, that the Director may suspend or revoke
4 any license issued under Articles 5 and 6 (commencing with section 9887.1) of the Automotive
5 Repair Act.

6 13. Section 9889.7 provides, in pertinent part, that the expiration or suspension of a
7 license by operation of law or by order or decision of the Director or a court of law, or the
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
9 disciplinary proceedings.

10 14. Health and Safety Code section 44002, provides, in pertinent part, that the Director
11 has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor
12 Vehicle Inspection Program.

13 15. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
14 or suspension of a license by operation of law, or by order or decision of the Director of Consumer
15 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of
16 jurisdiction to proceed with a disciplinary action.

17 16. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
18 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
19 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
20 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

21 STATUTORY PROVISIONS

22 17. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
23 cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to
24 proceed with a disciplinary action during the period within which the license may be renewed,
25 restored, reissued or reinstated.

26 18. Section 477 states, in pertinent part:

27 (a) “Board” includes “bureau,” “commission,” “committee,” “department,”
28 “division,” “examining committee,” “program,” and “agency.”

(b) “License” includes certificate, registration or other means to engage in a

business or profession regulated by the Code.

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19. Section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

....

(4) Any other conduct that constitutes fraud.

....

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

....

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

20. Section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an

1 authorization or consent for an increase in the original estimated price is provided by
2 electronic mail or facsimile transmission. If that consent is oral, the dealer shall make
3 a notation on the work order of the date, time, name of person authorizing the
4 additional repairs and telephone number called, if any, together with a specification of
5 the additional parts and labor and the total additional cost . . .

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21. Section 9887.4 states: “[i]t is unlawful to violate any regulation adopted by the
director pursuant to Articles 5, 6, and 7 of this chapter.”

22. Section 9889.3 states, in pertinent part, that “[t]he director may suspend, revoke, or
take other disciplinary action against a license as provided in this article if the licensee or any
partner, officer, or director thereof:

(a) Violates any section of the Business and Professions Code that relates to his or
her licensed activities.

....

(c) Violates any of the regulations promulgated by the director pursuant to this
chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is
injured.

....

(h) Violates or attempts to violate the provisions of this chapter relating to the
particular activity for which he or she is licensed.

23. Section 9889.16 states:

Whenever a licensed adjuster in a licensed station upon an inspection or after
an adjustment, made in conformity with the instructions of the bureau, determines
that the lamps or the brakes upon any vehicle conform with the requirements of the
Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a
certificate of adjustment on a form prescribed by the director, which certificate shall
contain the date of issuance, the make and registration number of the vehicle, the
name of the owner of the vehicle, and the official license of the station.

REGULATORY PROVISIONS

24. Health and Safety Code section 44072.2 states:

The director may suspend, revoke, or take other disciplinary action against a license
as provided in this article if the licensee, or any partner, officer, or director thereof,
does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program

1 (Health and Safety Code, § 44000, et seq.)] and the regulations adopted pursuant to it,
2 which related to the licensed activities.

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4 (c) Violates any of the regulations adopted by the director pursuant to this chapter.

5 (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

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7 (h) Violates or attempts to violate the provisions of this chapter relating to the
8 particular activity for which he or she is licensed.

9 25. Health and Safety Code section 44072.8 states that “[w]hen a license has been
10 revoked or suspended following a hearing under this article, any additional license issued under
11 this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

12 26. California Code of Regulations, title 16, section 3305, subdivision (a), states: “All
13 adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose
14 of issuing any certificate of compliance or adjustment shall be performed in official stations, by
15 official adjusters, in accordance with the following, in descending order of precedence, as
16 applicable:

17 “(1) Vehicle Manufacturers' current standards, specifications and recommended procedures,
18 as published in the manufacturers' vehicle service and repair manuals.

19 “(2) Current standards, specifications, procedures, directives, manuals, bulletins and
20 instructions issued by vehicle and equipment or device manufacturers.

21 “(3) Standards, specifications and recommended procedures found in current industry-
22 standard reference manuals and periodicals published by nationally recognized repair information
23 providers.

24 “(4) The bureau's Handbook for Brake Adjusters and Stations, February 2003, which is
25 hereby incorporated by reference.

26 “(5) The bureau's Handbook for Lamp Adjusters and Stations, February 2003, which is
27 hereby incorporated by reference.”

28 27. California Code of Regulations, title 16, section 3316, subdivision (d), states:
“Effective April 1, 1999, licensed stations shall purchase certificates of adjustment from the bureau

1 for a fee of three dollars and fifty cents (\$ 3.50) each and shall not purchase or otherwise obtain
2 such certificates from any other source. Full payment is required at the time certificates are
3 ordered. Certificates are not exchangeable following delivery. A licensed station shall not sell or
4 otherwise transfer unused certificates of adjustment. Issuance of a lamp adjustment certificate shall
5 be in accordance with the following provisions:

6 “(1) When a lamp adjustment certificate is issued to an applicant for an authorized
7 emergency vehicle permit, the certificate shall certify that the vehicle has been inspected, that all
8 lamps and related electrical systems meet all requirements of the Vehicle Code and bureau
9 regulations, and that all lamps capable of adjustment are properly adjusted.

10 “(2) Where all of the lamps, lighting equipment, and related electrical systems on a vehicle
11 have been inspected and found to be in compliance with all requirements of the Vehicle Code and
12 bureau regulations, the certificate shall certify that the entire system meets all of those
13 requirements.”

14 28. California Code of Regulations, title 16, section 3321, subdivision (c), states, in
15 pertinent part: “Effective April 1, 1999, licensed stations shall purchase certificates of adjustment
16 from the bureau for a fee of three dollars and fifty cents (\$ 3.50) and shall not purchase or
17 otherwise obtain such certificates from any other source. A licensed station shall not sell or
18 otherwise transfer unused certificates of adjustment. Full payment is required at the time
19 certificates are ordered. Certificates are not exchangeable following delivery. Issuance of a brake
20 adjustment certificate shall be in accordance with the following provisions:

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22 “(2) Where the entire brake system on any vehicle has been inspected or tested and found to
23 be in compliance with all requirements of the Vehicle Code and bureau regulations, and the vehicle
24 has been road-tested, the certificate shall certify that the entire system meets all such
25 requirements.”

26 COST RECOVERY

27 29. Section 125.3 provides, in pertinent part, that a Board may request the administrative
28 law judge to direct a licentiate found to have committed a violation or violations of the licensing

1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 **UNDERCOVER OPERATION #1: MAY 15, 2012**

4 30. On or about May 15, 2012, a Bureau undercover operator drove a Bureau
5 documented 1987 Chevrolet to Respondent California Tire's facility and requested a brake and
6 lamp inspection. The right headlamp was out of adjustment, the rear brake drums were oversized
7 and exceeded the manufacturer's discard specification and the license plate lights were non-
8 operational. Respondent Jose Cruz instructed the operator to sign a work order but the operator
9 was not given a copy of the estimate.

10 31. Respondent Jose Cruz then drove the vehicle into a bay, placed it on a lift, lifted the
11 vehicle off the ground and removed one tire. The tire was reinstalled and the vehicle was lowered
12 to the ground. Respondent Jose Cruz checked the lights and replaced the license plate bulb.
13 Respondent Jose Cruz also opened the hood. After the work was completed, the operator paid
14 Respondent Jose Cruz \$60.00 and received copies of an invoice, Certificate of Brake Adjustment
15 No. [REDACTED] and Certificate of Lamp Adjustment No. [REDACTED]. The operator never
16 observed Respondent Jose Cruz or anyone else at the facility test drive the vehicle.

17 32. On May 16, 2012, the Bureau inspected the vehicle and found that the defective plate
18 lamp bulbs had been replaced; however, the right headlamp was still out of adjustment and the rear
19 brake drums were oversized and exceeded the manufacturer's discard specification. The brake
20 certificate indicated that the vehicle was road tested at 20 mph, and it stopped in fifteen feet. In
21 fact the vehicle was not road tested. The Bureau also found that three of the four wheels had not
22 been removed from the vehicle.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 33. Respondent California Tire's Registration is subject to disciplinary action pursuant to
26 section 9884.7, subdivision (a)(1), in that on or about May 15, 2012, Respondent California Tire
27 made or authorized statements which Respondent California Tire knew or in the exercise of
28 reasonable care should have known to be untrue or misleading, as follows:

1 a. Respondent California Tire certified under penalty of perjury on Brake Certificate No.
2 [REDACTED] that the applicable inspection was performed on the brake system on the Bureau's
3 1987 Chevrolet. In fact, Respondent California Tire failed to completely and properly inspect the
4 brakes on the vehicle.

5 b. Respondent California Tire certified under penalty of perjury on Brake Certificate No.
6 [REDACTED] that the rear brake drums on the Bureau's 1987 Chevrolet were in a satisfactory
7 condition. In fact, the rear brake drums were oversized and exceeded the manufacturer's discard
8 specification.

9 c. Respondent California Tire certified under penalty of perjury on Brake Certificate No.
10 [REDACTED] that the Bureau's 1987 Chevrolet had a stopping distance of 15 feet from a speed of
11 20 miles per hour as a result of a road-test. In fact, Respondent California Tire never road tested
12 the vehicle.

13 d. Respondent California Tire certified under penalty of perjury on Lamp Certificate No.
14 [REDACTED] that the applicable adjustment had been properly performed on the lighting system on
15 the Bureau's 1987 Chevrolet. In fact, the right headlamp was out of adjustment.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 34. Respondent California Tire's Registration is subject to disciplinary action pursuant to
19 section 9884.7, subdivision (a)(4), in that on or about May 15, 2012, Respondent California Tire
20 and Respondent Jose Cruz committed acts constituting fraud, as follows: Respondent California
21 Tire and Respondent Jose Cruz obtained payment from the operator for performing the applicable
22 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 1987
23 Chevrolet as specified by the Bureau and in accordance with the Vehicle Code. In fact,
24 Respondent California Tire and Respondent Jose Cruz failed to perform the necessary inspections,
25 adjustments, and repairs in compliance with Bureau Regulations or the Vehicle Code.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Business and Professions Code)**

3 35. Respondent California Tire's Registration is subject to disciplinary action pursuant to
4 section 9884.7, subdivision (a)(6), in that Respondent California Tire failed to comply with section
5 9889.16 of that Code in the following material respects: Respondent California Tire issued Brake
6 Certificate No. [REDACTED] and Lamp Certificate No. [REDACTED] to the Bureau's 1987 Chevrolet
7 when the vehicle was not in compliance with Bureau Regulations or the requirements of the
8 Vehicle Code.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations)**

11 36. Respondent California Tire's Registration is subject to disciplinary action pursuant to
12 section 9884.7, subdivision (a)(6), in that on or about May 15, 2012, Respondent California Tire
13 failed to comply with provisions of California Code of Regulations, title 16, in the following
14 material respects:

15 a. **Section 3305, subdivision (a):** Respondent California Tire failed to perform the
16 inspection of the brake system and inspection and adjustment of the lighting system on the
17 Bureau's 1987 Chevrolet in accordance with the specifications, instructions, and directives issued
18 by the Bureau and the vehicle manufacturer.

19 b. **Section 3316, subdivision (d)(2):** Respondent California Tire issued Lamp
20 Certificate No. [REDACTED] to the Bureau's 1987 Chevrolet when all of the lamps, lighting
21 equipment, and/or related electrical systems on the vehicle were not in compliance with Bureau
22 regulations.

23 c. **Section 3321, subdivision (c)(2):** Respondent California Tire issued Brake
24 Certificate No. [REDACTED] to the Bureau's 1987 Chevrolet when the brake system on the vehicle
25 had not been completely tested or inspected.

26 **FIFTH CAUSE FOR DISCIPLINE**

27 **(Failure to Comply with the Business and Professions Code)**

28 37. Respondent California Tire's Brake Station License and Lamp Station License as well

1 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
2 disciplinary action pursuant to section 9889.3, subdivisions (a) and (h), in that Respondent
3 California Tire and Respondent Jose Cruz violated section 9889.16 relating to their licensed
4 activities, as set forth in paragraph 35 above.

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Regulations)**

7 38. Respondent California Tire's Brake Station License and Lamp Station License as well
8 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
9 disciplinary action pursuant to section 9889.3, subdivision (c), in that Respondent California Tire
10 and Respondent Jose Cruz failed to comply with the provisions of California Code of Regulations,
11 title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and
12 3356, subdivisions (a)(2)(A) and (a)(2)(B), as set forth in paragraph 36 above.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud, or Deceit)**

15 39. Respondent California Tire's Brake Station License and Lamp Station License as well
16 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
17 disciplinary action pursuant to section 9889.3, subdivision (d), in that Respondent California Tire
18 and Respondent Jose Cruz committed acts involving dishonesty, fraud, or deceit whereby another
19 was injured, as set forth in paragraph 34 above.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Business and Professions Code)**

22 40. Respondent California Tire's Brake Station License and Lamp Station License as well
23 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
24 disciplinary action pursuant to section 9889.3, subdivisions (a) and (h), in that Respondent
25 California Tire and Respondent Jose Cruz violated section 9889.16 relating to their licensed
26 activities, as set forth in paragraph 35 above.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 41. Respondent California Tire's Brake Station License and Lamp Station License as well
4 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
5 disciplinary action pursuant to section 9889.3, subdivision (c), in that Respondent California Tire
6 and Respondent Jose Cruz failed to comply with the provisions of California Code of Regulations,
7 title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and
8 3356, subdivisions (a)(2)(A) and (a)(2)(B), as set forth in paragraph 36 above.

9 **TENTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit)**

11 42. Respondent California Tire's Station License and Respondent Jose Cruz' Inspector
12 and Repair Licenses are subject to disciplinary action pursuant to Health and Safety Code section
13 44072.2, subdivision (d), in that Respondent California Tire and Respondent Jose Cruz committed
14 dishonest, fraudulent, or deceitful acts whereby another is injured, as set forth in paragraph 34
15 above.

16 **UNDERCOVER OPERATION #2: October 26, 2012**

17 43. On or about October 26, 2012, a Bureau undercover operator drove a Bureau
18 documented 2000 Toyota to Respondent California Tire's facility and requested a brake and lamp
19 inspection. The left headlamp was out of adjustment, the rear brake drums were oversized and not
20 within the manufacturer's specifications and the back-up lights were non-operational. Respondent
21 Jose Cruz instructed the operator to sign a work order but the operator was not given a copy of
22 the estimate.

23 44. Respondent Jose Cruz then drove the vehicle into a bay, placed it on a lift, lifted the
24 vehicle off the ground and removed one wheel. Respondent Jose Cruz checked the lights,
25 reinstalled the wheel and lowered the vehicle to the ground. Respondent Jose Cruz informed the
26 operator that the vehicle failed the inspection because the reverse lights were not working and the
27 headlamps were misadjusted. Respondent Jose Cruz asked the operator if he wanted the repairs
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1 performed. The operator declined the repairs, paid Respondent Jose Cruz \$53.00 and received the
2 final invoice.

3 45. That same day, the operator returned to the facility and requested the necessary
4 repairs. The operator did not fill out or sign another work order and did not receive a written
5 estimate. Respondent Jose Cruz replaced the reverse lights. The operator paid Respondent Jose
6 Cruz \$27.00 and received of copies of Certificate of Brake Adjustment No. [REDACTED] and
7 Certificate of Lamp Adjustment No. [REDACTED] but no final receipt. The operator never
8 observed Respondent Jose Cruz or anyone else at the facility test drive the vehicle.

9 46. On November 1, 2012, the Bureau inspected the vehicle and found that the defective
10 back-up lights had been replaced; however, while the left headlamp had been adjusted it was still
11 out of adjustment specification and the rear brake drums were oversized and exceeded the
12 manufacturer's discard specification. The brake certificate indicated that the vehicle was road
13 tested at twenty (20) mph, and it stopped in 10 (ten) feet. In fact the vehicle was not road tested.
14 The Bureau also found that three of the four wheels had not been removed from the vehicle.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 47. Respondent California Tire's Registration is subject to disciplinary action pursuant to
18 section 9884.7, subdivision (a)(1), in that on or about October 26, 2012, Respondent California
19 Tire made or authorized statements which Respondent California Tire knew or in the exercise of
20 reasonable care should have known to be untrue or misleading, as follows:

21 a. Respondent California Tire certified under penalty of perjury on Brake Certificate No.
22 [REDACTED] that the applicable inspection was performed on the brake system on the Bureau's
23 2000 Toyota. In fact, Respondent California Tire failed to properly inspect the brakes on the
24 vehicle.

25 b. Respondent California Tire certified under penalty of perjury on Brake Certificate No.
26 [REDACTED] that the rear brake drums on the Bureau's 2000 Toyota were in a satisfactory
27 condition. In fact, the rear brake drums were oversized and exceeded the manufacturer's discard
28 specification.

1 c. Respondent California Tire certified under penalty of perjury on Brake Certificate No.
2 [REDACTED] that the Bureau's 2000 Toyota had a stopping distance of 10 feet from a speed of 20
3 miles per hour as a result of a road-test. In fact, Respondent California Tire never road tested the
4 vehicle.

5 d. Respondent California Tire certified under penalty of perjury on Lamp Certificate No.
6 [REDACTED] that the applicable adjustment had been properly performed on the lighting system on
7 the Bureau's 2000 Toyota. In fact, the left headlamp was out of adjustment.

8 **TWELFTH CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 48. Respondent California Tire's Registration is subject to disciplinary action pursuant to
11 section 9884.7, subdivision (a)(4), in that on or about October 26, 2012, Respondent California
12 Tire and Respondent Jose Cruz committed acts constituting fraud, as follows: Respondent
13 California Tire and Respondent Jose Cruz obtained payment from the operator for performing the
14 applicable inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's
15 2000 Toyota as specified by the Bureau and in accordance with the Vehicle Code. In fact,
16 Respondent California Tire and Respondent Jose Cruz failed to perform the necessary inspections,
17 adjustments, and repairs in compliance with Bureau Regulations or the Vehicle Code.

18 **THIRTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with the Business and Professions Code)**

20 49. Respondent California Tire's Registration is subject to disciplinary action pursuant to
21 section 9884.7, subdivision (a)(6), in that Respondent California Tire failed to comply with section
22 9889.16 of the Business and Professions Code in the following material respects: Respondent
23 California Tire issued Brake Certificate No. [REDACTED] and Lamp Certificate No. [REDACTED] to
24 the Bureau's 2000 Toyota when the vehicle was not in compliance with Bureau Regulations or the
25 requirements of the Vehicle Code.

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 50. Respondent California Tire's Registration is subject to disciplinary action pursuant to
4 section 9884.7, subdivision (a)(6), in that on or about October 26, 2012, Respondent California
5 Tire failed to comply with provisions of California Code of Regulations, title 16, in the following
6 material respects:

7 a. **Section 3305, subdivision (a)**: Respondent California Tire failed to perform the
8 inspection of the brake system and inspection and adjustment of the lighting system on the
9 Bureau's 2000 Toyota in accordance with the specifications, instructions, and directives issued by
10 the Bureau and the vehicle manufacturer.

11 b. **Section 3316, subdivision (d)(2)**: Respondent California Tire issued Lamp
12 Certificate No. [REDACTED] to the Bureau's 2000 Toyota when all of the lamps, lighting
13 equipment, and/or related electrical systems on the vehicle were not in compliance with Bureau
14 regulations.

15 c. **Section 3321, subdivision (c)(2)**: Respondent California Tire issued Brake
16 Certificate No. [REDACTED] to the Bureau's 2000 Toyota when the brake system on the vehicle
17 had not been completely tested or inspected.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with the Business and Professions Code)**

20 51. Respondent California Tire's Brake Station License and Lamp Station License as well
21 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
22 disciplinary action pursuant to section 9889.3, subdivisions (a) and (h), in that Respondent
23 California Tire and Respondent Jose Cruz violated section 9889.16 relating to their licensed
24 activities, as set forth in paragraph 49 above.

25 **SIXTEENTH CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations)**

27 52. Respondent California Tire's Brake Station License and Lamp Station License as well
28 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to

1 disciplinary action pursuant to section 9889.3, subdivision (c), in that Respondent California Tire
2 and Respondent Jose Cruz failed to comply with the provisions of California Code of Regulations,
3 title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and
4 3356, subdivisions (a)(2)(A) and (a)(2)(B), as set forth in paragraph 50 above.

5 **SEVENTEENTH CAUSE FOR DISCIPLINE**

6 **(Dishonesty, Fraud, or Deceit)**

7 53. Respondent California Tire's Brake Station License and Lamp Station License as well
8 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
9 disciplinary action pursuant to section 9889.3, subdivision (d), in that Respondent California Tire
10 and Respondent Jose Cruz committed acts involving dishonesty, fraud, or deceit whereby another
11 was injured, as set forth in paragraph 48 above.

12 **EIGHTEENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with the Business and Professions Code)**

14 54. Respondent California Tire's Brake Station License and Lamp Station License as well
15 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
16 disciplinary action pursuant to section 9889.3, subdivisions (a) and (h), in that Respondent
17 California Tire and Respondent Jose Cruz violated section 9889.16 relating to their licensed
18 activities, as set forth in paragraph 49 above.

19 **NINETEENTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations)**

21 55. Respondent California Tire's Brake Station License and Lamp Station License as well
22 as Respondent Jose Cruz' Brake Adjuster License and Lamp Adjuster License are subject to
23 disciplinary action pursuant to section 9889.3, subdivision (c), in that Respondent California Tire
24 and Respondent Jose Cruz failed to comply with the provisions of California Code of Regulations,
25 title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and
26 3356, subdivisions (a)(2)(A) and (a)(2)(B), as set forth in paragraph 50 above.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

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

3 56. Respondent California Tire's Station License and Respondent Jose Cruz' Inspector
4 and Repair Licenses are subject to disciplinary action pursuant to Health and Safety Code section
5 44072.2, subdivision (d), in that Respondent California Tire and Respondent Jose Cruz committed
6 dishonest, fraudulent, or deceitful acts whereby another is injured, as set forth in paragraph 44
7 above.

8 **OTHER MATTERS**

9 57. Pursuant to section 9884.7, subdivision (c), the Director may suspend, revoke or place
10 on probation the registration for all places of business operated in this state by Respondent
11 California Tire, Jacinto Cruz – Owner, upon a finding that Respondent California Tire has, or is,
12 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
13 automotive repair dealer.

14 58. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
15 Number RC 139447 issued to Respondent California Tire, Jacinto Cruz – Owner, is revoked or
16 suspended, any additional license issued under Chapter 5 of the Health and Safety Code in the
17 name of said licensee may be likewise revoked or suspended by the Director.

18 59. Pursuant to section 9889.9, if Lamp Station License Number LS 139447, issued to
19 Respondent California Tire, Jacinto Cruz – Owner, is revoked or suspended, any additional license
20 issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of
21 said licensee may be likewise revoked or suspended by the Director.

22 60. Pursuant to section 9889.9, if Brake Station License Number BS 139447, issued to
23 Respondent California Tire, Jacinto Cruz – Owner, is revoked or suspended, any additional license
24 issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of
25 said licensee may be likewise revoked or suspended by the Director.

26 61. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
27 License No. EO 631193 (formerly Advanced Emission Specialist Technician License Number EA
28 631193) issued to Respondent Jose Luis Cruz, is revoked or suspended, any additional license

1 issued under Chapter 5 of the Health and Safety Code in the name of said licensee may be likewise
2 revoked or suspended by the Director.

3 62. Pursuant to Health and Safety Code section 44072.8, if Smog Check Repair
4 Technician License No. EI 631193 (formerly Advanced Emission Specialist Technician License
5 Number EA 631193) issued to Respondent Jose Luis Cruz, is revoked or suspended, any
6 additional license issued under Chapter 5 of the Health and Safety Code in the name of said
7 licensee may be likewise revoked or suspended by the Director.

8 63. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 631193,
9 issued to Respondent Jose Luis Cruz, is revoked or suspended, any additional license issued under
10 Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee
11 may be likewise revoked or suspended by the Director.

12 64. Pursuant to section 9889.9, if Lamp Adjuster License Number LA 631193, issued to
13 Respondent Jose Luis Cruz, is revoked or suspended, any additional license issued under Articles 5
14 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
15 likewise revoked or suspended by the Director.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 139447, issued to Respondent California Tire, Jacinto Cruz – Owner;

21 2. Revoking or suspending any other automotive repair dealer registration issued to
22 Jacinto Cruz;

23 3. Revoking or suspending Smog Check Station License Number RC 139447, issued to
24 Respondent California Tire, Jacinto Cruz – Owner;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 and Safety Code in the name of Jacinto Cruz;

27 5. Revoking or suspending Lamp Station License Number LS 139447, issued to
28 Respondent California Tire, Jacinto Cruz – Owner;

1 6. Revoking or suspending Brake Station License Number BS 139447, issued to
2 Respondent California Tire, Jacinto Cruz – Owner;

3 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
4 Chapter 20.3 of the Business and Professions Code in the name of Jacinto Cruz;

5 8. Revoking or suspending Smog Check Inspector License No. EO 631193 (formerly
6 Advanced Emission Specialist Technician License Number EA 631193), issued to Respondent
7 Jose Luis Cruz;

8 9. Revoking or suspending Smog Check Repair Technician License No. EI 631193
9 (formerly Advanced Emission Specialist Technician License Number EA 631193), issued to
10 Respondent Jose Luis Cruz;

11 10. Revoking or suspending any additional license issued under Chapter 5 of the Health
12 and Safety Code in the name of Jose Luis Cruz;

13 11. Revoking or suspending Brake Adjuster License Number BA 631193, issued to
14 Respondent Jose Luis Cruz;

15 12. Revoking or suspending Lamp Adjuster License Number LA 631193, issued to
16 Respondent Jose Luis Cruz;

17 13. Revoking or suspending any additional license issued under Articles 5 and 6 of
18 Chapter 20.3 of the Business and Professions Code in the name of Jose Luis Cruz;

19 14. Ordering Jacinto Cruz and Jose Luis Cruz to pay the Bureau of Automotive Repair the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3; and,

22 15. Taking such other and further action as deemed necessary and proper.

23
24 DATED:

June 6, 2014



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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