

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LEA AUTO REPAIR
LEANDRA ELIZABETH TEJADA, Owner
7601 Broadway
Los Angeles, CA 90003

Automotive Repair Dealer Registration
No. AB 187495
Smog Check Station License
No. RB 187495

and

TITO HUGO SORIANO CARBAJAL
aka TITO H. SORIANO
43827 Adler Avenue
Lancaster, CA 93534

Advanced Emission Specialist Technician
License No. EA 145691

Respondents.

Case No. 79/07-52

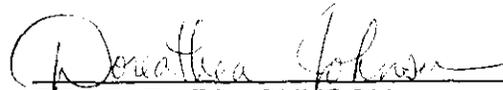
OAH No. 2007040897

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter only as to respondent Lea Auto Repair, Leandra Elizabeth Tejada, Owner, Automotive Repair Dealer Registration No. 187495 and Smog Check Station License No. RB 187495.

This Decision shall become effective 5-28-09.

IT IS SO ORDERED this 15th day of April, 2009.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
Against:

LEA AUTO REPAIR
LEANDRA ELIZABETH TEJADA, Owner
Los Angeles, CA 90003

Automotive Repair Dealer Reg. No. 187495
Smog Check Station License No. RB 187495.

Respondent.

Case No. 79/07-52

OAH No. L2007040897

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 17-20, 2008, February 2-5, 2009, and February 9-10, 2009, in Los Angeles.

Gregory J. Salute, S.D.A.G., represented Sherry Mehl (Complainant).

Orlando J. Castaño, Jr., Esq., represented Leandra Elizabeth Tejada, owner of Lea Auto Repair. Mrs. Tejada was present each day of the hearing.

The record was closed and the matter was deemed submitted for decision at the conclusion of the hearing on February 10, 2009.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the First Amended Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau), which is within the California Department of Consumer Affairs (Department).

2. Respondent previously submitted a Notice of Defense, which requested a hearing to contest the charges asserted in the initial Accusation filed in this case. By operation of Government Code section 11507, Respondent was not required to submit a new Notice of Defense in response to the subsequently filed First Amended Accusation.

3. On February 21, 1996, the Director of the Department (Director) issued Automotive Repair Dealer (ARD) Registration Number 187495 to Leandra Elizabeth Tejada, as owner of Lea Auto Repair (Respondent). As of the hearing in this matter, Respondent's ARD registration was scheduled to expire on February 28, 2009, unless renewed.

4. On April 30, 1996, the Director issued Smog Check Station License Number RB 187495 to Respondent. As of the hearing in this matter, Respondent's smog check station license was scheduled to expire on February 28, 2009, unless renewed.

5. At all times relevant, Respondent employed Tito Hugo Soriano Carbajal, a.k.a. Tito H. Soriano (Mr. Soriano). On August 21, 2002, the Director issued Advanced Emission Specialist Technician License Number EA 145691 to Mr. Soriano. As of the hearing in this matter, Mr. Soriano's license was scheduled to expire on January 31, 2009, unless renewed.¹

Respondent's Prior License History

6. Respondent's business was established in 1996. The business moved to its present location in Los Angeles on a date not established. Mrs. Tejada's husband, Mr. Jorge Tejada, is the manager of Respondent's business. He is at the facility daily and makes all of the usual business decisions. Mrs. Tejada is generally not at the facility, except when Mr. Tejada cannot be there. Neither of the Tejadas is qualified or licensed to conduct smog inspections. Although Mr. Tejada has more automotive knowledge and experience than Mrs. Tejada, the couple decided to have the ARD registration issued in her name because she speaks better English and has a more flexible schedule than Mr. Tejada.

7. Respondent has no prior record of discipline by the Bureau and has not been the subject of a citation issued by the Bureau.

8. In early 2005, Bureau staff became suspicious that Respondent may have been conducting multiple smog inspections on the same cars. During the spring of 2005, Bureau staff conducted an undercover operation at Respondent's facility, which did not establish that Respondent had engaged in any misconduct.

9. On September 22, 2005, Bureau staff conducted an office conference at Respondent's facility. Mr. Tejada identified himself to Bureau staff as the manager of the business and he represented Respondent during the meeting. During the office conference, Bureau staff gave Mr. Tejada and employee Wilfredo Tobar routine advice and documentation about how to properly conduct smog inspections. No findings of misconduct were made by Bureau staff as a result of the office conference.

¹ Mr. Soriano was also named as a respondent in this matter. However, after the hearing commenced, Mr. Soriano entered into a settlement agreement with Complainant, subject to subsequent approval by the Director. Pursuant to the settlement, Mr. Soriano's license is to be placed on probation for three years, under terms including a seven day suspension and 16 hours of relevant course work.

10. On February 24, 2006, Bureau staff conducted a routine station inspection of Respondent's facility. No violations or findings of misconduct were made as a result of the inspection. In fact, Carl Schooss of the Bureau, who conducted the inspection, left the facility without concern whether Respondent was following Bureau guidelines for conducting smog inspections. However, Mr. Tejada and Mr. Soriano (who was by then employed by Respondent) were given routine warnings and advice about how to properly conduct smog inspections in the future, including that only a licensed smog technician could perform a smog inspection.

11. Despite the above interactions, some Bureau representatives were still concerned that Respondent may have been conducting multiple smog inspections on the same cars and/or was not performing proper repairs on cars that failed smog inspections. Therefore, Bureau staff decided to conduct a series of undercover operations.

Undercover Vehicle Operation #1: April 7, 2006

12. On April 7, 2006, an undercover operator with the Bureau (undercover operator) took the Bureau's 1997 Honda Accord, California license #3UNL341, to Respondent's facility. The catalytic converter on the vehicle had been modified by a Bureau representative so that the vehicle would be unable to lawfully pass a California Smog Check Vehicle Inspection BAR-97 Acceleration Simulation Mode (ASM) test. In particular, the vehicle as modified would emit elevated levels of nitric oxide (NOX) that would exceed allowable limits. The vehicle was also equipped with a hidden videotape recording device. Upon arrival at the facility, the undercover operator was greeted by an individual named "David." The undercover operator requested a smog inspection on the vehicle. The vehicle was taken into the smog inspection area. Subsequently, Mr. Tejada had the undercover operator complete a work order and sign the work order. The undercover operator did not receive a copy of the work order.

13. While the vehicle was in the smog inspection area, the undercover operator noticed four individuals near the hood of the vehicle, including an individual named "Manuel" and Mr. Soriano. It was not established whether Mr. Tejada was one of those individuals. Mr. Soriano determined that the vehicle was emitting elevated levels of NOX and would fail the smog inspection. As revealed by later review of the undercover videotape, Manuel was observed during the smog inspection of the vehicle to be loosening the mounting bolts on the distributor base and manually rotating the distributor back and forth. Manuel was also observed re-tightening the mounting bolts on the distributor, as well as disconnecting the PCV vacuum hose from the valve and spraying an unknown substance into the PCV vacuum hose. Those actions were an attempt to manipulate the vehicle so it would emit fewer NOX levels and pass the smog inspection. As such, those actions were improper and should not have been conducted during an official smog inspection. After those efforts proved unsuccessful, Mr. Soriano concluded that the vehicle's catalytic converter was not operating properly and needed to be replaced in order for the vehicle to pass a smog inspection, which was the correct diagnosis of the problem.

14. At some point during this inspection process, Manuel told the undercover operator that the Bureau's 1997 Honda had failed the smog inspection twice and that he was going to adjust the timing to get the vehicle to pass. Manuel later told the undercover operator that the catalytic converter on the vehicle needed to be replaced. Mr. Tejada later reiterated the need to replace the catalytic converter. The undercover operator told Mr. Tejada that he wanted the 1997 Honda repaired so that it would pass a smog inspection and asked Mr. Tejada what repairs were necessary. Both Mr. Tejada and another employee told the undercover operator that a "universal catalytic converter" would be installed in the vehicle and that a hole would be drilled into this catalytic converter so that an oxygen sensor could be installed. The undercover operator asked Mr. Tejada if the catalytic converter was needed and he replied that it was. Mr. Tejada further told the undercover operator that the cost of the repairs would be "about \$200.00," which included the smog inspection. Mr. Tejada also told the undercover operator that he would have to leave the vehicle at the shop for a few hours for those repairs. The undercover operator authorized that repair and left the vehicle at Respondent's facility.

15. Since the vehicle was manufactured after 1996, it had an On Board Diagnostics II (OBDII) compliant catalytic converter approved for use in this state by the California Air Resources Board. For that reason, any replacement catalytic converter also had to be OBDII compliant. Respondent used an "after market" catalytic converter that was not OBDII compliant. Mr. Soriano and Mr. Tejada both knew that the replacement catalytic converter was non-compliant, but they used it because it was much less expensive than an OBDII compliant version approved for use on the vehicle. After replacing the catalytic converter, the vehicle passed a smog inspection, including the emissions portion.

16. When the undercover operator returned to Respondent's facility, he spoke with Mr. Soriano (who was known to the undercover operator as "Hugo") and was told that the catalytic converter that was installed on the vehicle was not like the original factory installed unit and that the new catalytic converter would have to be replaced in two years. The undercover operator was not told that the catalytic converter was non-OBDII-compliant. The undercover operator paid Mr. Tejada \$200.00 and received a copy of an invoice in the amount of "\$206.60," a vehicle inspection report (VIR) and a business card.

17. The invoice given to the undercover operator was different than the one he had completed earlier, in that the version he then received was completely filled out. The invoice contained the incorrect business name for Respondent of "Lea Smog Check & Auto Repair." The VIR given to the undercover operator indicated that Mr. Soriano tested and inspected the vehicle and issued electronic Smog Certificate of Compliance #GC999765. Mr. Soriano certified under penalty of perjury on the VIR that the smog inspection on the Bureau's 1997 Honda was performed in accordance with all Bureau requirements.

18. In fact, Respondent, through its employees Mr. Tejada and Mr. Soriano, was aware that the installation of a non-approved replacement catalytic converter would cause the vehicle's emission control system not to be OBDII compliant.²

Undercover Operation #2: August 3, 2006

19. On August 3, 2006, another Bureau undercover operator took the Bureau's 1988 Toyota pick-up truck, California license #3K66245, to Respondent's smog check facility. A Bureau representative had previously installed a defective #2 vacuum switch on the vehicle, rendering the vehicle incapable of passing an official smog inspection because the induced defect caused the vehicle to emit excessive hydrocarbons (HC) and carbon monoxide (CO) emissions above California's gross polluter standards. The only proper repair for this induced defect would be to repair or replace the defective #2 vacuum switch. After arriving at Respondent's facility, the undercover operator requested a smog inspection on the vehicle and signed a copy of a work order for the inspection. The undercover operator was not provided with a copy of the work order before the inspection.

20. Mr. Tejada later told the undercover operator that the vehicle had not passed the smog inspection. Mr. Tejada went on to state that the Bureau's Toyota could pass an inspection after a necessary adjustment was made to the vehicle. The undercover operator authorized that repair. After the repairs were reportedly completed, Mr. Tejada told the undercover operator that the vehicle had passed the smog inspection. The undercover operator paid Mr. Tejada \$125.00, and received an invoice dated August 3, 2006, in the amount of \$125.00, as well as a VIR dated August 3, 2006, with certificate of compliance #HB575048 printed on it. Mr. Soriano certified under penalty of perjury on the VIR that the vehicle passed the BAR 97 ASM test. The invoice contained the incorrect business name for Respondent of "Lea Smog Check & Auto Repair." The invoice included a charge for an adjustment to the carburetor.

21. In fact, Mr. Soriano conducted the smog inspection, but he was assisted by Mr. Tejada and Manuel during the process. It was not established that any of those individuals actually adjusted the vehicle's carburetor. In any event, and as established by the persuasive testimony of the Bureau employee who set-up the vehicle for the undercover operation, Mr. Hamlet Shamirian, adjustments to the carburetor would not have cured the defect induced in the vehicle. The vehicle's defective #2 vacuum switch had not been repaired or replaced by Respondent. Therefore, when the vehicle left Respondent's facility, it was not in a condition to pass a BAR 97 ASM test, due to the fact that the vehicle still had a defective #2 vacuum switch. When the vehicle was returned to the Bureau's facility, the vehicle still failed an official smog inspection as a gross polluter. Mr. Soriano persuasively testified that he commonly manipulated vehicles in order for them to pass the emissions portion of smog inspections. Mr. Soriano and Mr. Tejada both testified that they did not remember the smog

² A licensee in an administrative matter is responsible for the misconduct and regulatory violations of its employees. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.)

inspection of this vehicle. Under these circumstances, it was established that the vehicle passed the official smog inspection performed by Mr. Soriano due to improper manipulations of the vehicle during the testing process.

Undercover Operation #3: 1987 Buick

22. On August 8, 2006, another Bureau undercover operator took the Bureau's 1987 Buick, California license #2GQF763, to Respondent's facility. A Bureau representative had previously mis-adjusted the throttle position sensor (TPS) on the vehicle, rendering the vehicle incapable of passing a smog inspection because the induced defect caused the engine to run too fast and use a richer mixture of gas, which, in turn, caused the vehicle to emit excessive HC and CO emissions above California's gross polluter standards. After arriving at Respondent's facility, the undercover operator requested a smog inspection on the vehicle and signed a copy of a work order for the inspection. The undercover operator was not provided with a copy of the work order.

23. Mr. Soriano conducted the smog inspection with assistance from Mr. Tejada. During the inspection process, Mr. Tejada asked Mr. Soriano to pause the smog inspection machine so he could speak with the undercover operator. During this break, Mr. Tejada told the undercover operator that the vehicle had not passed the smog inspection because the carburetor was running too high and the vehicle needed an adjustment. When the smog inspection resumed, Mr. Tejada manipulated the vehicle in a manner not established by the evidence. A few minutes later, Mr. Tejada told the undercover operator that the vehicle was ready and had passed the smog inspection. The undercover operator paid Mr. Tejada \$90.00 for the inspection and received a VIR dated August 8, 2006, with certificate of compliance #HB643837 printed on it. Mr. Soriano certified under penalty of perjury on the VIR that the Bureau's 1987 Buick passed the smog inspection. The undercover operator did not receive a copy of the work order that she had completed earlier nor any invoice for services rendered by Respondent.

24. The only repair necessary for this vehicle was to adjust the TPS back to the manufacturer's specification and to install a TPS retention plug or apply some screw thread locking compound to keep the TPS in the proper position. Neither of those repairs was performed. Likewise, despite the representation by Respondent's employee that an adjustment had been made to the vehicle, the engine ignition timing had not been properly checked, as evidenced by an unbroken Electronic Spark Timing (EST) tamper indicator. When the vehicle left Respondent's facility, it was not in a condition to pass a smog inspection due to the fact that the vehicle still emitted excessive HC and CO emissions above California's gross polluter standards. When the vehicle was returned to the Bureau's facility, the vehicle failed an official smog inspection as a gross polluter. Mr. Soriano persuasively testified that the vehicle was manipulated during the emissions portion of the smog inspection. Mr. Tejada testified that he did not remember the smog inspection of this vehicle. Under these circumstances, it was established that the vehicle passed the official smog inspection performed by Respondent due to improper manipulations of the vehicle during the testing process.

Other Relevant Evidence

25. Respondent's employees, Mr. Soriano and Mr. Tejada, were not candid with a Bureau representative about the smog inspections of the Bureau's vehicles used in undercover operation numbers 1 and 2 described above (the Honda and the Toyota) during a Bureau inspection of Respondent's facility on September 7, 2006.

26. Respondent's employees, namely Mr. Tejada and Manuel, were commonly involved in smog inspections conducted by Mr. Soriano, which was improper because those individuals did not have smog technician licenses that allowed them to do so. In addition, it was established that Mr. Tejada commonly entered information into the Emission Inspection system (E.I.S.) machine during smog inspections, which was similarly improper for one who does not hold a smog technician license.

27. Mrs. Tejada was an absentee owner of Respondent's facility and business, exercising essentially no supervision over the conduct of the business when the misconduct in question occurred. The manager of Respondent's business, Mr. Tejada, was actively involved in the misconduct proven in this case. It was not established that Mr. and Mrs. Tejada have taken measures to remedy the past misconduct or prevent future occurrences. Although Mr. Soriano is no longer employed by Respondent, that situation is apparently because Mr. Soriano left the business as opposed to being fired.

28. Respondent's contention was not persuasive that mitigation exists in the fact that no misconduct subsequent to the three undercover operations described above was proven. The Bureau's Guidelines generally state that the absence of post-accusation misconduct "shall not be regarded as evidence of mitigation."³

29. Respondent contends that most, if not all, of the proven misconduct is attributable solely to Mr. Soriano. Complainant contends the opposite. Neither contention is persuasive. To the contrary, the evidence established that both Mr. Soriano and Mr. Tejada were equally culpable for the proven misconduct. Although Mr. Soriano testified that it was Mr. Tejada who conceived of and ordered him to conform to a practice of manipulating all vehicles that did not pass smog inspections, and that he (Mr. Soriano) went along with that practice only for fear of losing his job and being black-balled from the smog inspection industry, his testimony was not persuasive, for various reasons. For example, Mr. Soriano's testimony was given only after entering into a settlement agreement with Complainant that was contingent upon his cooperation with the Bureau, which gave him an incentive to testify in favor of Complainant. Mr. Soriano's credibility was also undercut by the facts that he had not been candid with Bureau representatives in the past, and that he had never mentioned such a practice to his friend Wilfredo Tobar, who also had worked for Respondent. Based on the above, Mr. Soriano's testimony is accepted as reliable only in the presence of corroborating evidence from other sources, as discussed below.

³ Bureau Guidelines for Disciplinary Penalties and Terms of Probation [rev. May 1997] (Guidelines), page 3.

30. Due to the lack of evidence corroborating Mr. Soriano's testimony, it was not established that Mr. Tejada frequently conducted smog inspections entirely on his own. For the same reason, it was not established by Mr. Soriano's testimony that as many as half of the vehicles given smog inspections at Respondent's facility passed due to improper manipulations. However, based on the results of the three undercover operations and the testimony of both Mr. Soriano and Mr. Tejada, it was established that good faith efforts were made during the initial smog inspections of vehicles to determine whether they could pass, and that the diagnoses for the vehicles that failed inspections were generally correct. For the same reason, it was also established that the motivations of Respondent's employees in performing deficient repairs to vehicles that failed smog inspections was not to overcharge customers for work not performed or for unnecessary work, but rather to keep the costs of the repairs to a minimum, in light of the fact that Respondent served a poor neighborhood.

31. Respondent's contention was not persuasive that the Bureau induced defects in the three involved undercover vehicles that could not be reasonably discovered during an official smog inspection. It is true that the induced defects were not immediately ascertainable and posed somewhat of a challenge to identify. This is particular so regarding the Bureau's Honda and Buick, which had the technology to signal problems and diagnoses to an EIS machine, but did not in this case because the vehicles were towed to the proximity of Respondent's facility and therefore did not log enough mileage to trigger those signals. However, as established by the credible testimony of the Bureau representatives that prepared the three undercover vehicles, the induced deficiencies would ultimately have been discovered by a reasonable smog inspection, regardless of whether the signals were triggered. In fact, Respondent's employees were able to determine during the smog inspections that the three undercover vehicles would not pass, and Respondent's employees were able to detect the general source of the problems. As such, they knew the vehicles should not have passed an official inspection. Moreover, Respondent's expert witness, Michael Murray, was not persuasive in his testimony attempting to undermine the credibility of the Bureau's preparation of the three undercover vehicles. For example, Mr. Murray's own credibility is in question due to his current involvement in litigation with the Bureau over his termination as an employee. Mr. Murray also admitted to doing some of the same things when he was a Bureau employee for which he critiqued the Bureau representatives involved in this case. Mr. Murray's opinions regarding the Bureau's Toyota were also impeached when it was discovered in the midst of the hearing that it did not have a "check engine" light, the existence of which he relied upon in his opinions for that vehicle.

32. Complainant incurred reasonable costs in the amount of \$28,344.46 for the investigation and enforcement of this matter, comprised of the following:

A. Bureau Investigative Services	\$ 6,846.46
B. Undercover Vehicle Preparation	\$ 225.00
C. Prosecution Costs Billed to the Bureau	\$21,273.00
	=====
Total	\$28,344.46

LEGAL CONCLUSIONS

1. **FIRST CAUSE FOR DISCIPLINE (Untrue or Misleading Statements).** Respondent's ARD registration is subject to disciplinary action pursuant to Business and Professions Code⁴ section 9884.7, subdivision (a)(1), in that on April 7, 2006, Respondent made or authorized statements which it knew, or in the exercise of reasonable care, should have known to be untrue or misleading. Specifically, the undercover operator was led to believe that the replacement catalytic converter was approved for use with the vehicle and compliant with the laws of this state, when, in fact, it was not. (Factual Findings 12-18.)

2. **SECOND CAUSE FOR DISCIPLINE (Fraud).** Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent, through its employee Mr. Soriano, committed an act which constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1997 Honda, when the use of a non-approved catalytic converter rendered the repair of the vehicle not to be in compliance with the laws and regulations pertaining to California emissions standards, and thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 12-18.)

3. **THIRD CAUSE FOR DISCIPLINE (False Promise to Induce a Customer to Authorize Repairs).** Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(8), in that Respondent made a false promise of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of an automobile. Specifically, on April 7, 2006, Respondent, through its employee Mr. Soriano, induced the Bureau's undercover operator to authorize and pay for inappropriate repairs or services on the Bureau's 1997 Honda including, but not limited to, installation of a "universal catalytic converter" that was not approved for use on that vehicle. (Factual Findings 12-18.)

4. **FOURTH CAUSE FOR DISCIPLINE (Statutory and/or Regulatory Violations).** Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent violated the following provisions of the Code and/or California Code of Regulations, title 16 (Regulation):

A. Code section 9884.9, subdivision (a). Respondent failed to give the Bureau's undercover operator a copy of the written estimated price for labor and parts before repairs were made to the Bureau's 1997 Honda. (Factual Findings 12-18.)

B. Regulation section 3340.42. In manipulating the vehicle's distributor and PCV vacuum hose (including spraying into it an unknown substance) during the inspection process, Respondent failed to conduct the required smog test on the Bureau's 1997 Honda in accordance with the Bureau's specifications. Likewise, in issuing an electronic smog

⁴ All further statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

certificate of compliance for the Bureau's 1997 Honda, which was not in compliance with the laws and regulations pertaining to California emissions standards, Respondent failed to perform emission control tests on the Bureau's 1997 Honda in accordance with procedures prescribed by the Department. (Factual Findings 12-18.)

5. FIFTH CAUSE FOR DISCIPLINE (Violations of the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on April 7, 2006, Respondent failed to comply with the following sections of the Health and Safety Code:

A. Section 44012. In manipulating the vehicle's distributor and PCV vacuum hose (including spraying into it an unknown substance) during the inspection process, Respondent failed to conduct the required smog test on the Bureau's 1997 Honda in accordance with the Bureau's specifications. Likewise, in issuing an electronic smog certificate of compliance for the Bureau's 1997 Honda, which was not in compliance with the laws and regulations pertaining to California emissions standards, Respondent failed to perform emission control tests on the Bureau's 1997 Honda in accordance with procedures prescribed by the Department. (Factual Findings 12-18.)

B. Section 44015. Based on the actions described immediately above, Respondent, through Mr. Soriano, issued an electronic smog certificate of compliance for the Bureau's 1997 Honda without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012. (Factual Findings 12-18.)

C. Section 44016. Respondent, through the actions of Mr. Soriano, installed a catalytic converter that was not approved for use on the vehicle in question and was not in accordance with specifications and procedures established by the Bureau. (Factual Findings 12-18.)

D. Section 44059. Respondent, through the actions of Mr. Soriano, willfully made false entries on the VIR, in order to issue an electronic smog certificate of compliance for the Bureau's 1997 Honda, in that Mr. Soriano knew that the vehicle had not been properly inspected and that the replacement catalytic converter was not approved for use on the vehicle in this state. (Factual Findings 12-18.)

6. SIXTH CAUSE FOR DISCIPLINE (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on April 7, 2006, Respondent failed to comply with the following sections of the California Code of Regulations:

A. Regulation section 3340.24, subdivision (c). Mr. Soriano, on behalf of Respondent, falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1997 Honda. (Factual Findings 12-18.)

B. Regulation section 3340.35, subdivision (c). Mr. Soriano, on behalf of Respondent, issued an electronic smog certificate of compliance for the Bureau's 1997 Honda, even though the vehicle was not in compliance with the laws and regulations pertaining to California emissions standards. (Factual Findings 12-18.)

C. Regulation section 3340.42. In manipulating the vehicle's distributor and PCV vacuum hose (including spraying into it an unknown substance) during the inspection process, Respondent failed to conduct the required smog test on the Bureau's 1997 Honda in accordance with the Bureau's specifications. Likewise, in issuing an electronic smog certificate of compliance for the Bureau's 1997 Honda, which was not in compliance with the laws and regulations pertaining to California emissions standards, Respondent failed to perform emission control tests on the Bureau's 1997 Honda in accordance with procedures prescribed by the Department. (Factual Findings 12-18.)

D. Regulation sections 3353, subdivision (a), and 3356, subdivision (a). Respondent's invoice used for this transaction contained an incorrect business name. Further, Respondent failed to provide the Bureau's undercover operator with a written estimate or copy of a signed invoice prior to commencing the smog inspection on the Bureau's 1997 Honda. (Factual Findings 12-18.)

7. SEVENTH CAUSE FOR DISCIPLINE (Dishonesty, Fraud or Deceit). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on April 7, 2006, Respondent, through the actions of its employee Mr. Soriano, committed a dishonest, fraudulent or deceitful act, whereby another was injured, by issuing an electronic smog certificate of compliance for the Bureau's 1997 Honda which was not in compliance with the laws and regulations pertaining to California emissions standards, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 12-18.)

8. ELEVENTH CAUSE FOR DISCIPLINE (Untrue or Misleading Statements).⁵ Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that on August 3, 2006, Respondent made or authorized statements which it knew, or in the exercise of reasonable care, should have known to be untrue or misleading, as follows:

A. Respondent, through the actions of Mr. Tejada, represented to the Bureau's undercover operator that the 1988 Toyota needed "an adjustment" in order to pass the smog inspection. Moreover, Respondent, through its invoice, represented that the vehicle's carburetor had been adjusted. In fact, the vehicle's carburetor had not been adjusted and the only repair necessary for this vehicle to have passed the smog inspection was to repair or replace the vehicle's defective #2 vacuum switch, which were not done. (Factual Findings 19-21.)

⁵ The intervening causes for discipline were alleged against Mr. Soriano.

B. Respondent, through the actions of Mr. Soriano, certified under penalty of perjury on the VIR that the vehicle passed the BAR 97 ASM test when, in fact, the vehicle was not in a condition to pass a BAR 97 ASM test due to the fact that the vehicle continued to emit excessive HC and CO emissions above California's gross polluter standards. (Factual Findings 19-21.)

9. TWELFTH CAUSE FOR DISCIPLINE (Fraud). Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that on August 3, 2006, Respondent, through its employee Mr. Soriano, committed an act which constitutes fraud, by issuing an electronic smog certificate of compliance for the Bureau's 1988 Toyota which he knew was not in compliance with the laws and regulations pertaining to California emissions standards, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 19-21.)

10. THIRTEENTH CAUSE FOR DISCIPLINE (Violations of the Code). Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that it violated section 9884.9 subdivision (a), on August 3, 2006, when it failed to give to the Bureau's undercover operator a copy of the written estimated price for labor and parts necessary for the repairs before making the repairs to the Bureau's 1988 Toyota. (Factual Findings 19-21.)

11. FOURTEENTH CAUSE FOR DISCIPLINE (Violations of the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on August 3, 2006, Mr. Soriano, on behalf of Respondent, failed to comply with the following sections of the Health and Safety Code:

A. Section 44012. Mr. Soriano failed to perform emission control tests on the Bureau's 1988 Toyota in accordance with procedures prescribed by the Department. (Factual Findings 19-21.)

B. Section 44015. Mr. Soriano issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012. (Factual Findings 19-21.)

C. Section 44059. Mr. Soriano willfully made false entries on the VIR, in order to issue an electronic smog certificate of compliance for the Bureau's 1988 Toyota. (Factual Findings 19-21.)

12. FIFTEENTH CAUSE FOR DISCIPLINE (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on August 3, 2006, Mr. Soriano, on behalf of Respondent, failed to comply with the following sections of the California Code of Regulations:

A. Regulation section 3340.24, subdivision (c). Mr. Soriano falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota. (Factual Findings 19-21.)

B. Regulation section 3340.35, subdivision (c). Mr. Soriano issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota even though the vehicle had not been inspected in accordance with Regulation section 3340.42. (Factual Findings 19-21.)

C. Regulation section 3340.42. Mr. Soriano failed to conduct the required smog tests on the Bureau's 1988 Toyota in accordance with the Bureau's specifications. (Factual Findings 19-21.)

D. Regulation sections 3353, subdivision (a), and 3356, subdivision (a). Respondent's invoice given to the Bureau's undercover operator contained the incorrect business name. Respondent also failed to provide the Bureau's undercover operator with an estimate or copy of a signed invoice prior to commencing the smog inspection on the Bureau's 1988 Toyota. (Factual Findings 19-21.)

13. SIXTEENTH CAUSE FOR DISCIPLINE (Dishonesty, Fraud or Deceit). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on August 3, 2006, Respondent, through the actions of its employee Mr. Soriano, committed a dishonest, fraudulent or deceitful act whereby another was injured, by issuing an electronic smog certificate of compliance for the Bureau's 1988 Toyota, which was not in compliance with the laws and regulations pertaining to California emissions standards, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 19-21.)

14. TWENTIETH CAUSE FOR DISCIPLINE (Untrue or Misleading Statements).⁶ Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that on August 8, 2006, Respondent made or authorized statements which it knew, or in the exercise of reasonable care, should have known to be untrue or misleading, as follows:

⁶ The intervening causes for discipline were alleged against Mr. Soriano.

A. Respondent, through the actions of Mr. Tejada, represented to the undercover operator that the Bureau's 1987 Buick needed "an adjustment" in order to pass the smog inspection. In fact, the only repair necessary for this vehicle to have passed the smog inspection was to adjust the TPS setting and install a screw or compound to keep the TPS in place, neither of which was performed. Likewise, despite the representation by Respondent's employee that an adjustment had been made, the engine ignition timing had not been properly checked, and the only manner in which the vehicle could have passed an official smog inspection was by improper manipulation during the inspection process. (Factual Findings 22-24.)

B. Respondent, through the actions of Mr. Soriano, certified under penalty of perjury on the VIR that the Bureau's 1987 Buick passed the BAR 97 ASM test when, in fact, the vehicle was not in a condition to pass a BAR 97 ASM test due to the fact that the vehicle emitted excessive HC and CO emissions above the State of California's gross polluter standards. (Factual Findings 22-24.)

15. TWENTY-FIRST CAUSE FOR DISCIPLINE (Fraud). Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that on August 8, 2006, Mr. Soriano, on behalf of Respondent, committed an act which constitutes fraud, by issuing an electronic smog certificate of compliance for the Bureau's 1987 Buick which was not in compliance with the laws and regulations pertaining to California emissions standards, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 22-24.)

16. TWENTY-SECOND CAUSE FOR DISCIPLINE (Violations of the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on August 8, 2006, Mr. Soriano, on behalf of Respondent, failed to comply with the following sections of the Health and Safety Code:

A. Section 44012. Respondent, through the actions of Mr. Soriano, failed to perform emission control tests on the Bureau's 1987 Buick in accordance with procedures prescribed by the Department. (Factual Findings 22-24.)

B. Section 44015. Respondent, through the actions of Mr. Soriano, issued an electronic smog certificate of compliance for the Bureau's 1987 Buick without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012. (Factual Findings 22-24.)

C. Section 44059. Respondent, through the actions of Mr. Soriano, willfully made false entries on the vehicle inspection report in order to issue an electronic smog certificate of compliance for the Bureau's 1987 Buick. (Factual Findings 22-24.)

17. TWENTY-THIRD CAUSE FOR DISCIPLINE (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on August 8, 2006, Mr. Soriano, on behalf of Respondent, failed to comply with the following sections of the California Code of Regulations:

A. Regulation section 3340.24, subdivision (c). Respondent, through the actions of Mr. Soriano, falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1987 Buick. (Factual Findings 22-24.)

B. Regulation section 3340.35, subdivision (c). Respondent, through the actions of Mr. Soriano, issued an electronic smog certificate of compliance for the Bureau's 1987 Buick even though the vehicle had not been inspected in accordance with Regulation section 3340.42. (Factual Findings 22-24.)

C. Regulation section 3340.42. Respondent, through the actions of Mr. Soriano, failed to conduct the required smog tests on the Bureau's 1987 Buick in accordance with the Bureau's specifications. (Factual Findings 22-24.)

D. Regulation sections 3353, subdivision (a), and 3356, subdivision (a). Respondent failed to provide the Bureau's undercover operator with an estimate or copy of a signed invoice prior to commencing the smog inspection on the Bureau's 1987 Buick. (Factual Findings 22-24.)

18. TWENTY-FOURTH CAUSE FOR DISCIPLINE (Dishonesty, Fraud or Deceit). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on August 8, 2006, Mr. Soriano, on behalf of Respondent, committed a dishonest, fraudulent or deceitful act, whereby another was injured, by issuing an electronic smog certificate of compliance for the Bureau's 1987 Buick which was not in compliance with the laws and regulations pertaining to California emissions standards, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 22-24.)

19. OTHER DISCIPLINE. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Leandra Elizabeth Tejada, owner of Lea Auto Repair, upon a finding that she has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

20. OTHER DISCIPLINE. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License Number RB 187495, issued to Leandra Elizabeth Tejada, owner of Lea Auto Repair, is revoked or suspended, any additional license issued under this chapter in her name may likewise be revoked or suspended by the Director.

21. COSTS. Code section 125.3 provides, in pertinent part, that a board or bureau may request the administrative law judge hearing a matter to direct a licentiate found to have committed a violation or violations of that entity's governing licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In this matter, it was established that Respondent has violated various provisions of the Bureau's governing statutes and regulations and that the Bureau has incurred reasonable costs in the amount of \$28,344.46 from the investigation and prosecution of this matter. (Factual Finding 32.)

22A. DISPOSITION. The Administrative Law Judge has reviewed and considered the Bureau's Guidelines in arriving at the disposition for this case, including the various factors to be considered and the recommended discipline for the various types of misconduct established in this case.

22B. The Guidelines describe a number of aggravating factors that should be considered in determining discipline. In this case, a few of those factors apply against Respondent. Respondent was the subject of an office conference and had received a prior warning from the Bureau, albeit that action was routine and no specific findings of misconduct were made (factors 1 A & C). The misconduct proven in this case was part of a pattern and practice of illegal behavior at Respondent's facility (factor 1 L). Each of the three undercover operations involved fraudulent acts by Respondent's employees (factor 1 R). Other aggravating evidence was presented, including that unlicensed individuals were allowed to conduct parts of smog inspections and enter information into the E.I.S. machine, Respondent's employees were not candid with a Bureau representative during a subsequent office inspection, and Mrs. Tejada was essentially an absentee owner with little or no supervision or control over Respondent's facility or business.

22C. The Guidelines also describe a number of mitigating factors that should be considered in determining discipline. In this case, it was not established that Respondent caused any damage to the undercover vehicles (factor 2 C). Other evidence of mitigation was presented. Respondent has no prior disciplinary history with the Bureau or findings of misconduct against it. In addition, Respondent's motivation for committing the misconduct was to provide a service at a reduced price to the economically distressed community it serves. While that motivation provides no justification for the misconduct, it does temper the level of discipline warranted in this case.

22D. The misconduct established in this case is serious and revocation could be justified. However, the unique circumstances of this case indicate that discipline less than revocation is warranted. Those circumstances include the fact that the aggravating facts are tempered by the presence of some mitigation. Respondent's lack of prior disciplinary history with the Bureau is significant in that weighing process. Also, it does not escape the Administrative Law Judge that Mr. Soriano, who is equally culpable for the misconduct established in this case, will not have his license revoked, but instead will receive moderate discipline. Since Respondent is the owner of the facility and has a higher level of responsibility, the discipline against Respondent should be greater than that against Mr.

Soriano. But in these circumstances, outright revocation would be punitive and overly harsh. The discipline contained in the order below is intended to protect the public from continued illegal behavior and to facilitate the rehabilitation of the probationer without being unduly burdensome or anti-competitive (Guidelines, p. 1). (Factual Findings 1-31.)

ORDER

1. Automotive Repair Dealer Registration Number AB 187495, issued to Leandra Elizabeth Tejada, owner of Lea Auto Repair, is permanently invalidated; that invalidation is stayed, and Respondent is placed on probation for a period of five years, under the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau, 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.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the Respondent facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

e. If an accusation is filed against Respondent during the term of probation, the Director shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

f. Should the Director determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, permanently invalidate the registration.

g. Respondent shall be suspended for 60 days, beginning from the effective date of this decision, and shall post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

///

///

h. Leandra Elizabeth Tejada shall be physically present at Respondent's facility at least 20 hours per week, and on a quarterly basis she shall document to the Bureau in writing, under penalty of perjury, her presence at the facility. Mrs. Tejada shall also on a quarterly basis document to the Bureau in writing, under penalty of perjury, her efforts to exercise supervision and control of Respondent's facility and business.

2. Smog Check Station License Number RB 187495, issued to Leandra Elizabeth Tejada, owner of Lea Auto Repair, is revoked; that revocation is stayed, and Respondent is placed on probation for a period of five years, under the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau, 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.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the Respondent facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

e. If an accusation is filed against Respondent during the term of probation, the Director shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

f. Should the Director determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, revoke the license.

g. Respondent shall be suspended for 60 days, beginning from the effective date of this decision, and shall post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

///

///

h. Leandra Elizabeth Tejada shall be physically present at Respondent's facility at least 20 hours per week, and on a quarterly basis she shall document to the Bureau in writing, under penalty of perjury, her presence at the facility. Mrs. Tejada shall also on a quarterly basis document to the Bureau in writing, under penalty of perjury, her efforts to exercise supervision and control of Respondent's facility and business.

3. Any other automotive repair dealer registration issued to Leandra Elizabeth Tejada shall be subject to the same discipline set forth in order number 1 above.

4. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Leandra Elizabeth Tejada shall be subject to the same discipline set forth in order number 2 above.

5. Respondent Leandra Elizabeth Tejada, individually and as owner of Lea Auto Repair, shall pay to the Director the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3, in the amount of \$28,344.46, by the end of the fourth year of the probationary period described above, in monthly or quarterly installments as agreed to by the Bureau.

DATED: March 30, 2009



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **LEA AUTO REPAIR**
13 **LEANDRA ELIZABETH TEJADA, Owner**
7601 Broadway
Los Angeles, Ca. 90003

15 Automotive Repair Dealer Reg. No. AB 187495
Smog Check Station License No. RB 187495

16 and

18 **TITO HUGO SORIANO CARBAJAL a.k.a.**
19 **TITO H. SORIANO**
43827 Adler Avenue,
Lancaster, Ca. 93534

21 Advanced Emission Specialist Technician
License No. EA 145691

23 Respondents.

Case No. 79/07-52

OAH No. 2007040897

FIRST AMENDED ACCUSATION

[SMOG CHECK]

25 Complainant alleges:

26 **PARTIES**

27 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official
28 capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer

1 Affairs.

2 **Automotive Repair Dealer Reg. No. AB 187495**

3 2. On or about February 21, 1996, the Director of Consumer Affairs
4 (Director) issued Automotive Repair Dealer (ARD) Registration Number AB 187495 to Leandra
5 Elizabeth Tejada, owner of Lea Auto Repair (Respondent or Respondent Lea Auto Repair).
6 Respondent Lea Auto Repair's ARD registration will expire on February 28, 2009, unless
7 renewed.

8 **Smog Check Station License No. RB 187495**

9 3. On or about April 30, 1996, the Director issued Smog Check Station
10 License Number RB 187495 to Respondent Lea Auto Repair. Respondent Lea Auto Repair's
11 smog check station license will expire on February 28, 2009, unless renewed.

12 **Advanced Emission Specialist Technician License No. EA 145691**

13 4. On or about August 29, 2002, the Director issued Advanced Emission
14 Specialist Technician License Number EA 145691 to Tito Hugo Soriano Carbajal a.k.a. Tito H.
15 Soriano (Respondent Soriano). Respondent Soriano's advanced emission specialist technician
16 license was in full force and effect at all times relevant to the charges brought herein and will
17 expire on January 31, 2009, unless renewed.

18 **JURISDICTION**

19 5. Business and Professions Code ("Code") section 9884.7 provides that the
20 Director may invalidate an automotive repair dealer registration.

21 6. Code section 9884.13 states, in pertinent part, that the expiration of a valid
22 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
23 proceeding against an automotive repair dealer or to render a decision invalidating a registration
24 temporarily or permanently.

25 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in
26 pertinent part, that the Director has all the powers and authority granted under the Automotive
27 Repair Act for enforcing the Motor Vehicle Inspection Program.

28 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the

1 expiration or suspension of a license by operation of law, or by order or decision of the Director
2 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
3 the Director of jurisdiction to proceed with disciplinary action.

4 STATUTORY AND REGULATORY PROVISIONS

5 Statutory Provisions

6 9. Code section 9884.7 states, in pertinent part:

7 “(a) The director, where the automotive repair dealer cannot show there was
8 a bona fide error, may refuse to validate, or may invalidate temporarily or
9 permanently, the registration of an automotive repair dealer for any of the following
10 acts or omissions related to the conduct of the business of the automotive repair
11 dealer, which are done by the automotive repair dealer or any automotive technician,
12 employee, partner, officer, or member of the automotive repair dealer.

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

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

20

21 “(4) Any other conduct which constitutes fraud.

22 “(5) Conduct constituting gross negligence.

23 “(6) Failure in any material respect to comply with the provisions of this
24 chapter or regulations adopted pursuant to it.

25 “(7) Any willful departure from or disregard of accepted trade standards
26 for good and workmanlike repair in any material respect, which is prejudicial to another
27 without consent of the owner or his or her duly authorized representative.

28 “(8) Making false promises of a character likely to influence, persuade, or
induce a customer to authorize the repair, service, or maintenance of automobiles.

. . . .

“(c) Notwithstanding subdivision (b), the director may refuse to
validate, or may invalidate temporarily or permanently, 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.”

10. Code section 9884.9, subdivision (a), states, in pertinent part:

1 “The automotive repair dealer shall give to the customer a written
2 estimated price for labor and parts necessary for a specific job. No work shall be
3 done and no charges shall accrue before authorization to proceed is obtained from
4 the customer. No charge shall be made for work done or parts supplied in excess
5 of the estimated price without the oral or written consent of the customer that
6 shall be obtained at some time after it is determined that the estimated price is
7 insufficient and before the work not estimated is done or the parts not estimated
8 are supplied. Written consent or authorization for an increase in the original
9 estimated price may be provided by electronic mail or facsimile transmission from
10 the customer. The bureau may specify in regulation the procedures to be followed
11 by an automotive repair dealer when an authorization or consent for an increase in
12 the original estimated price is provided by electronic mail or facsimile
13 transmission. If that consent is oral, the dealer shall make a notation on the work
14 order of the date, time, name of person authorizing the additional repairs and
15 telephone number called, if any, together with a specification of the additional
16 parts and labor . . .”

17 11. Code section 22, subdivision (a), states:

18 “Board” as used in any provision of this Code, refers to the board in
19 which the administration of the provision is vested, and unless otherwise expressly
20 provided, shall include “bureau,” “commission,” “committee,” “department,”
21 “division,” “examining committee,” “program,” and “agency.”

22 12. Code section 23.7, states, in pertinent part, that a “license” includes
23 “registration” and “certificate.”

24 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

28 “(a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

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

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

 14. Health & Saf. Code section 44072.8 states that when a license has been
revoked or suspended following a hearing under this article, any additional license issued under
this chapter in the name of the licensee may be likewise revoked or suspended by the director.

 15. Health & Saf. Code section 44012 states:

1 "The test at the smog check stations shall be performed in accordance with procedures
2 prescribed by the department, pursuant to Section 44103, shall require, at a minimum, loaded
3 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
4 and shall ensure all of the following:

5 "(a) Emission control systems required by state and federal law are reducing
6 excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
7 Section 44103.

8 "(b) Motor vehicles are preconditioned to ensure representative and stabilized
9 operation of the vehicle's emission control system.

10 "(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
11 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or
12 loaded mode are tested in accordance with procedures prescribed by the department. In
13 determining how loaded mode and evaporative emissions testing shall be conducted, the
14 department shall ensure that the emission reduction targets for the enhanced program are met.

15 "(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system
16 and crankcase ventilation system are tested to reduce any non-exhaust sources of volatile organic
17 compound emissions, in accordance with procedures prescribed by the department.

18 "(e) For diesel-powered vehicles, if the department determines that the inclusion
19 of those vehicles is technologically and economically feasible, a visual inspection is made of
20 emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are
21 tested in accordance with procedures prescribed by the department. The test may include testing
22 of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of
23 applicable standards, measurement of emissions of smoke or particulates, or both.

24 "(f) A visual or functional check is made of emission control devices specified by
25 the department, including the catalytic converter in those instances in which the department
26 determines it to be necessary to meet the findings of Section 44001. The visual or functional
27 check shall be performed in accordance with procedures prescribed by the department.

28 "(g) A determination as to whether the motor vehicle complies with the emission
standards for that vehicle's class and model-year as prescribed by the department.

"(h) The test procedures may authorize smog check stations to refuse the testing
of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by
the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or
exempt the vehicle from compliance with all applicable requirements of this chapter."

16. Health & Saf. Code section 44015 states, in pertinent part:

"(a) A licensed smog check station shall not issue a certificate of compliance, except as
authorized by this chapter, to any vehicle that meets the following criteria:

"(1) A vehicle that has been tampered with.

1 “(2) A vehicle that, prior to repairs, has been initially identified by the
2 smog check station as a gross polluter. Certification of a gross polluting vehicle shall be
3 conducted by a designated test-only facility, or a test-and-repair station that is both licensed and
4 certified pursuant to Sections 44014 and 44014.2.

5 “(3) A vehicle described in subdivision (c).

6 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed
7 to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”

8 17. Health & Saf. Code section 44016 states:

9 “The department shall, with the cooperation of the state board and after
10 consultation with the motor vehicle manufacturers and representatives of the service industry,
11 research, establish, and update as necessary, specifications and procedures for motor vehicle
12 maintenance and tuneup procedures and for repair of motor vehicle pollution control devices and
13 systems. Licensed repair stations and qualified mechanics shall perform all repairs in accordance
14 with specifications and procedures so established.”

15 18. Health & Saf. Code section 44059 states:

16 “The willful making of any false statement or entry with regard to a material matter in any
17 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
18 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
19 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

20 Regulatory Provisions

21 19. California Code of Regulations, title 16, (Regulation) section 3340.24
22 subdivision (c) states:

23 “ The bureau may suspend or revoke the license of or pursue other legal action
24 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of
25 compliance or a certificate of noncompliance.”

26 20. Regulation 3340.35, subdivision (c) states, in pertinent part:

27 “(c) A licensed station shall issue a certificate of compliance or noncompliance to
28 the owner or operator of any vehicle that has been inspected in accordance with the procedures
specified in section 3340.42 of this article and has all the required emission control equipment
and devices installed and functioning correctly.”

 21. Regulation 3340.30 subdivision (a) states:

 “A smog check technician shall comply with the following requirements at all
times while licensed:

 “(a) A licensed technician shall inspect, test and repair vehicles in accordance
with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety
Code, and section 3340.42 of this article.”

 22. Regulation 3340.42 states:

1 "Smog check stations and smog check technicians shall conduct tests and
2 inspections in accordance with the bureau's BAR Test Analyzer System Specifications referenced
3 in section 3340.17(a) or the BAR Emissions Inspection System Specifications referenced in
4 section 3340.17(b), whichever is appropriate, and the following:

5 "(a) There shall be two test procedures as follows:

6 "(1) The loaded-mode test method shall be the primary test method used in the
7 enhanced program areas of the state. The loaded-mode test method shall measure hydrocarbon,
8 carbon monoxide, carbon dioxide and oxides of nitrogen emissions. The loaded-mode test
9 equipment shall be Acceleration Simulation Mode (ASM) test equipment, including a chassis
10 dynamometer, certified by the bureau. The loaded-mode test procedures, including the
11 preconditioning procedure, shall only be conducted according to the bureau approved procedures
12 specified in this section and include the following:

13 "(A) Place the vehicle's driving wheels on a chassis dynamometer and properly
14 restrain the vehicle prior to commencing the test.

15 "(B) Exhaust emissions shall be tested and compared to the emission standards set
16 forth in this section and as shown in Table I or Table II, as applicable.

17 "(C) With the vehicle operating, sample the exhaust system in the following
18 sequence:

19 "1. Accelerate the vehicle to the cruise condition as specified by the test
20 procedures.

21 "2. Operate the vehicle long enough to stabilize emission levels.

22 "3. Measure and record emissions (hydrocarbon, carbon monoxide, carbon
23 dioxide, and oxides of nitrogen).

24 "(2) The two-speed idle mode test method shall be used in all program areas of the
25 state, other than the enhanced program areas. The two-speed idle mode test method shall measure
26 hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle
27 RPM, as contained in the bureau's specifications referenced in Section 3340.16.7(a). Exhaust
28 emissions from a vehicle subject to inspection shall be tested and compared to the emission
standards set forth in this section and as shown in Table III.

"(3) All tests shall be performed with the engine at its normal operating
temperature.

"(4) All loaded mode testing shall be conducted in a manner which does not
induce excess emissions to the test.

"(b) There shall be a liquid fuel leak inspection as follows:

"(1) As used in this section, "Liquid fuel leak" means any fuel emanating from a
vehicle's fuel delivery, metering, or evaporation systems in liquid form that has created a visible
drop or more of fuel on a component of a vehicle's fuel delivery, metering, or evaporation system
or has created a fuel puddle on, around, or under a component of a vehicle's fuel delivery,
metering, or evaporation system.

"(2) With the engine running, the smog check technician shall visually inspect the
following components of the vehicle, if they are exposed and visually accessible, for liquid fuel
leaks:

"(A) Gasoline fuel tanks.

- 1 "(B) Gasoline fill pipes, associated hoses and fuel tank connections.
- 2 "(C) Gas caps.
- 3 "(D) External fuel pumps.
- 4 "(E) Fuel delivery and return lines and hoses.
- 5 "(F) Fuel filters.
- 6 "(G) Carburetors.
- 7 "(H) Fuel injectors.
- 8 "(I) Fuel pressure regulators.
- 9 "(J) Charcoal canisters.
- 10 "(K) Fuel vapor hoses.
- 11 "(L) Any valves connected to any other fuel evaporative component.

12 "(3) If a smog check technician detects a liquid fuel leak, the technician shall enter 'F' (Defective) in the 'Fuel Evaporative Controls' category of the visual inspection when prompted by the test analyzer system or emissions inspection system, as appropriate, and the vehicle shall fail the inspection.

13 "(4) Smog check technicians shall indicate on the vehicle inspection report the location of any liquid fuel leak.

14 "(5) The liquid fuel leak inspection required by this section is a visual inspection only. Smog check technicians are not required to perform any disassembly of the vehicle to inspect for liquid fuel leaks. No special tools or equipment, other than a flashlight and mirror, are required and no raising, hoisting or lifting of the vehicle is required.

15 "(6) Expenditures for repairs made at a licensed smog check station to correct liquid fuel leaks detected during a smog check inspection shall be credited toward the repair cost waiver expenditure specified in Section 44017 of the Health and Safety Code, or applied to the repair assistance program co-payment specified in Section 44062.1 of the Health and Safety Code and Section 3394.4 of this chapter.

16 "(7) Nothing in the subsection shall prohibit a technician from refusing to inspect a vehicle or from aborting an inspection if a liquid fuel leak presents a safety hazard.

17 "(8) This subsection shall not apply to vehicles fueled exclusively by compressed natural gas (CNG), liquid natural gas (LNG), or liquid petroleum gas (LPG).

18 "(c) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

19 "(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in TABLES I, II or III.

20 "(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, 44017 and 44081 of the Health and Safety Code.

21 "(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle as indicated in TABLES I, II, or III. However, the provisions

1 described in section 44017 of the Health and Safety Code may apply.

2 "(4) This subsection applies in all program areas statewide to vehicles requiring
3 inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

4 "(5) The gross polluter emission standards in TABLE III shall be used to
5 determine if a vehicle shall be designated as a gross polluter.

6 "(d)(1) In the enhanced program areas, heavy-duty vehicles shall be tested using
7 the loaded-mode testing method as provided in subsection (a)(1), unless:

8 "(A) The vehicle has a drive axle weight that exceeds 5,000 pounds when the
9 vehicle is unloaded, or

10 "(B) The vehicle is classified by the Department of Motor Vehicles as a
11 motorhome, or

12 "(C) The vehicle has a body and/or chassis configuration or modification made for
13 business purposes that renders the vehicle incompatible with loaded-mode testing, or

14 "(D) The emission inspection system prompts the technician to perform the two-
15 speed idle test.

16 "(2) For the purposes of this subsection, the term 'unloaded' shall mean that the
17 vehicle is not currently transporting loads for delivery or is not carrying items of a temporary
18 nature, but excludes items that have been welded, bolted or otherwise permanently affixed to the
19 vehicle, and tools, supplies, parts, hardware, equipment or devices of a similar nature that are
20 routinely carried in or on the vehicle in the performance of the work for, which the vehicle is
21 primarily used.

22 "(3) For the purposes of this subsection, modifications that render a vehicle
23 incompatible with loaded-mode testing shall not include any tire, wheel, body or chassis
24 modifications made for other than business purposes.

25 "(4) If it is determined that a heavy-duty vehicle cannot be subjected to a loaded-
26 mode test for any of the reasons set forth in paragraphs (A) through (D) of subsection (d)(1), the
27 technician shall perform a two-speed idle test. The technician shall also note on the final invoice
28 the justification for the performance of a two-speed idle test."

23. Regulation 3353 subdivision (a) states:

24 "No work for compensation shall be commenced and no charges shall accrue
25 without specific authorization from the customer in accordance with the following
26 requirements:

27 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a
28 written estimated price for parts and labor for a specific job."

24. Regulation 3356, subdivision (a), states:

25 "The invoice shall show the dealer's registration number and the
26 corresponding business name and address. If the dealer's telephone number is
27 shown, it shall comply with the requirements of Subsection 3371(b) of this

1 chapter. In addition, the invoice shall describe all service work done, including all
2 warranty work, and shall separately identify each part in such a manner that the
3 customer can understand what was purchased, also stating whether the part was
4 new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM
5 aftermarket crash part. The dealer shall give the customer a legible copy of the
6 invoice and shall retain a legible copy as part of the dealer's records.”

7 25. Regulation 3373 states:

8 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
9 invoice, or work order, or record required to be maintained by section 3340.15(f) of this
10 chapter, withhold therefrom or insert therein any statement or information which will
11 cause any such document to be false or misleading, or where the tendency or effect
12 thereby would be to mislead or deceive customers, prospective customers, or the public.”

13 **Cost Recovery**

14 26. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board
15 may request the administrative law judge to direct a licentiate found to have committed a
16 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
17 investigation and enforcement of the case.

18 **UNDERCOVER VEHICLE OPERATION #1: APRIL 7, 2006**

19 27. On or about April 7, 2006, an undercover operator with the Bureau
20 (undercover operator) took the Bureau's 1997 Honda Accord, California License #3UNL341 to
21 Respondent Lea Auto Repair's smog check facility, Lea Auto Repair, located in Los Angeles,
22 California. The catalytic converter on the vehicle had been modified by the Bureau so that the
23 vehicle would be unable to lawfully pass a California Smog Check Vehicle Inspection BAR-97
24 Acceleration Simulation Mode (ASM) test. The vehicle was also equipped with a hidden
25 videotape recording device. The undercover operator requested a smog inspection on the vehicle.
26 Jorge Tejada, (Tejada) manager of Respondent Lea Auto Repair's facility, had the undercover
27 operator complete a work order and sign the work order while the vehicle was in the smog
28 inspection area. The undercover operator did not receive a copy of the work order. An individual
employed by Respondent named "Manuel" (Manuel) told the undercover operator that the
Bureau's 1997 Honda Accord had failed the smog inspection twice and that the catalytic
converter on the vehicle needed to be replaced. The undercover operator told Tejada that he
wanted the 1997 Honda repaired so that it would pass a smog inspection and asked Tejada what

1 repairs were necessary. Tejada told the undercover operator that a "universal catalytic converter"
2 would be installed in the vehicle and that a hole would be drilled into this catalytic converter so
3 that an oxygen sensor could be installed. The undercover operator asked Tejada if the catalytic
4 converter was needed and he replied that it was.

5 Tejada further told the undercover operator that the cost of the repairs would be \$200.00
6 which included the smog inspection. Tejada also told the undercover operator that he would
7 have to leave the vehicle at the shop for two hours to be repaired. The Bureau undercover
8 operator told Tejada to repair the vehicle. The Bureau undercover operator then left the vehicle at
9 Respondent Lea Auto Repair's facility and returned to Respondent Lea Auto Repair later that
10 day.

11 28. When the Bureau undercover operator returned to Respondent's facility,
12 he was informed by an employee named "Hugo" (Hugo) that the catalytic converter that was
13 installed on the 1997 Honda was not like the original factory installed unit and that the catalytic
14 converter would have to be replaced in two years. The Bureau undercover operator paid Tejada
15 \$200.00 and received from Tejada a copy of an invoice dated "4/7/06" in the amount of
16 "\$206.60", a vehicle inspection report (VIR) and a business card. The invoice given to the
17 undercover operator was different than the one he had completed earlier and he never received a
18 copy of the earlier work order that he had completed. The VIR given to the undercover operator
19 indicated that Respondent Soriano tested and inspected the vehicle and issued electronic Smog
20 Certificate of Compliance #GC999765.

21 29. A review of the undercover videotape revealed that during an official
22 smog inspection of the 1997 Honda, employees of Respondent were observed manipulating the
23 vehicle's distributor by loosening the mounting bolts on the distributor base and manually
24 rotating the distributor back and forth. During this test, Respondent's employees were also
25 observed to be re-tightening the mounting bolts on the distributor. Moreover, an employee of
26 Respondent was also observed during the same official smog inspection disconnecting the PCV
27 vacuum hose from the valve and spraying an unknown substance into the PCV vacuum hose.

28

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 30. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
4 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that on or about April
5 7, 2006, Respondent Lea Auto Repair made or authorized statements which it knew, or in the
6 exercise of reasonable care, should have known to be untrue or misleading, as follows:

7 a. Respondent Lea Auto Repair through the actions of Respondent Soriano
8 certified under penalty of perjury on the vehicle inspection report that the smog inspection on the
9 Bureau's 1997 Honda Accord was performed in accordance with all Bureau requirements. In
10 fact, Respondent Lea Auto Repair through the actions of Respondent Tejada and/or Respondent
11 Soriano was aware of, or should have known in the exercise of reasonable care, that the
12 installation of a non-approved replacement catalytic converter would cause the 1997 Honda
13 Accord's vehicle emission control system to be modified and the vehicle to not be On Board
14 Diagnostic II (OBD II)¹ compliant for the State of California.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 31. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
18 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent Lea
19 Auto Repair through its employee Respondent Soriano committed an act which constitutes fraud
20 by issuing an electronic smog certificate of compliance for the Bureau's 1997 Honda Accord
21 which was not in compliance with the laws and regulations pertaining to California emissions
22 standards, thereby depriving the People of the State of California of the protection afforded by
23 the Motor Vehicle Inspection Program.

24
25 1. The On Board Diagnostics (OBDII) functional test is an automated function of the BAR-97
26 analyzer. During the OBDII functional test, the technician is required to connect an interface cable from
27 the BAR 97-analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle.
28 Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board
computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator
light). If the vehicle fails the OBDII functional test, it will fail the overall inspection.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(False Promise to Induce a Customer to Authorize Repairs)**

3 32. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
4 action pursuant to Code section 9884.7, subdivision (a)(8), in that it made a false promise of a
5 character likely to influence, persuade, or induce a customer to authorize the repair, service, or
6 maintenance of an automobile in that on or about April 7, 2006, Respondent Lea Auto Repair
7 through its employee Respondent Soriano fraudulently induced the Bureau's undercover operator
8 to authorize and pay for inappropriate repairs or services on the Bureau's 1997 Honda Accord
9 including, but not limited to, installation of a "universal catalytic converter" that is not approved
10 for use on the 1997 Honda Accord.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Violations of the Code and/or Regulations)**

13 33. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
14 action pursuant to Code section 9884.7, subdivision (a)(6), in that it violated the provisions of the
15 Code and/or regulations, as follows:

16 a. **Section 9884.9 subdivision (a)**: Respondent Lea Auto Repair failed to
17 give to the Bureau's undercover operator a copy of the written estimated price for
18 labor and parts necessary for the repairs made to the Bureau's 1997 Honda Accord
19 on or about April 7, 2006.

20 b. **Title 16, Cal.Code of Regs, Section 3340.42**: In manipulating the
21 vehicle's distributor by loosening the mounting bolts on the distributor base and
22 manually rotating the distributor back and forth Respondent Lea Auto Repair
23 failed to conduct the required smog test on the Bureau's 1997 Honda Accord in
24 accordance with the Bureau's specifications. Likewise, Respondent Lea Auto
25 Repair failed to conduct the required smog test on the Bureau's 1997 Honda
26 Accord in accordance with the Bureau's specifications by disconnecting the PCV
27 vacuum hose from the valve and spraying an unknown substance into the PCV
28 vacuum hose. Moreover, Respondent Lea Auto Repair in issuing an electronic

1 smog certificate of compliance for the Bureau's 1997 Honda Accord which was
2 not in compliance with the laws and regulations pertaining to California emissions
3 standards, failed to perform emission control tests on the Bureau's 1997 Honda
4 Accord in accordance with procedures prescribed by the department.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Violations of the Motor Vehicle Inspection Program)**

7 34. Respondent Lea Auto Repair's smog check station license is subject to
8 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that on or
9 about April 7, 2006, Respondent Lea Auto Repair failed to comply with the following sections of
10 that Code:

11 a. **Section 44012:** In manipulating the vehicle's distributor by loosening the
12 mounting bolts on the distributor base and manually rotating the distributor back
13 and forth Respondent Lea Auto Repair failed to conduct the required smog test on
14 the Bureau's 1997 Honda Accord in accordance with the Bureau's specifications.
15 Likewise, Respondent Lea Auto Repair failed to conduct the required smog test
16 on the Bureau's 1997 Honda Accord in accordance with the Bureau's
17 specifications by disconnecting the PCV vacuum hose from the valve and
18 spraying an unknown substance into the PCV vacuum hose. Moreover,
19 Respondent Lea Auto Repair in issuing an electronic smog certificate of
20 compliance for the Bureau's 1997 Honda Accord which was not in compliance
21 with the laws and regulations pertaining to California emissions standards, failed
22 to perform emission control tests on the Bureau's 1997 Honda Accord in
23 accordance with procedures prescribed by the department.

24 b. **Section 44015:** Respondent Lea Auto Repair through the actions of
25 Respondent Soriano issued an electronic smog certificate of compliance for the
26 Bureau's 1997 Honda Accord without properly testing and inspecting the vehicle
27 to determine if it was in compliance with Health & Saf. Code section 44012.

28 c. **Section 44016:** Respondent Lea Auto Repair through the actions of Respondent

1 Soriano installed a catalytic converter that is not approved and was not in
2 accordance with specifications and procedures established by the Bureau.
3 d. **Section 44059:** Respondent Lea Auto Repair through the actions of
4 Respondent Soriano willfully made false entries on the vehicle inspection report,
5 as set forth in paragraphs 27-28 above, in order to issue an electronic smog
6 certificate of compliance for the Bureau's 1997 Honda Accord.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations Pursuant
9 to the Motor Vehicle Inspection Program)**

10 35. Respondent Lea Auto Repair's smog check station license is subject to
11 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that on or
12 about April 7, 2006, Respondent Lea Auto Repair failed to comply with the following sections of
13 California Code of Regulations:

14 a. **Title 16, Section 3340.24, subdivision (c):** Respondent Soriano on behalf
15 of Respondent Lea Auto Repair falsely or fraudulently issued an electronic smog
16 certificate of compliance for the Bureau's 1997 Honda Accord.

17 b. **Title 16, Section 3340.35, subdivision (c):** Respondent Soriano on behalf
18 of Respondent Lea Auto Repair issued an electronic smog certificate of
19 compliance for the Bureau's 1997 Honda Accord even though the vehicle was not
20 in compliance with the laws and regulations pertaining to California emissions
21 standards.

22 c. **Title 16, Section 3340.42:** In manipulating the vehicle's distributor by
23 loosening the mounting bolts on the distributor base and manually rotating the
24 distributor back and forth Respondent Lea Auto Repair failed to conduct the
25 required smog test on the Bureau's 1997 Honda Accord in accordance with the
26 Bureau's specifications. Likewise, Respondent Lea Auto Repair failed to conduct
27 the required smog test on the Bureau's 1997 Honda Accord in accordance with the
28 Bureau's specifications by disconnecting the PCV vacuum hose from the valve
and spraying an unknown substance into the PCV vacuum hose. Moreover,

1 Respondent Lea Auto Repair in issuing an electronic smog certificate of
2 compliance for the Bureau's 1997 Honda Accord which was not in compliance
3 with the laws and regulations pertaining to California emissions standards, failed
4 to perform emission control tests on the Bureau's 1997 Honda Accord in
5 accordance with procedures prescribed by the department.

6 d. **Title 16, Sections 3353 subdivision (a) and 3356, subdivision (a):**

7 Respondent Lea Auto Repair's invoices contained the incorrect business name.
8 Further, Respondent Lea Auto Repair failed to provide the Bureau's undercover
9 operator with an estimate or copy of a signed invoice prior to commencing the
10 smog inspection on the Bureau's 1997 Honda Accord.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 36. Respondent Lea Auto Repair's smog check station license is subject to
14 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on or
15 about April 7, 2006, Respondent Lea Auto Repair through the actions of its employee,
16 Respondent Soriano, committed a dishonest, fraudulent or deceitful act whereby another is
17 injured by issuing an electronic smog certificate of compliance for the Bureau's 1997 Honda
18 Accord which was not in compliance with the laws and regulations pertaining to California
19 emissions standards, thereby depriving the People of the State of California of the protection
20 afforded by the Motor Vehicle Inspection Program.

21 **EIGHTH CAUSE FOR DISCIPLINE**

22 **(Violations of the Motor Vehicle Inspection Program)**

23 37. Respondent Soriano's advanced emission specialist technician license is
24 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
25 that on or about April 7, 2006, Respondent Soriano failed to comply with the following sections
26 of that Code:

27 a. **Section 44012:** Respondent Soriano failed to perform emission control
28 tests on the Bureau's 1997 Honda Accord in accordance with procedures

1 prescribed by the department.

2 b. **Section 44059:** Respondent Soriano willfully made false entries on the
3 vehicle inspection report, as set forth in paragraphs 27-28 above, in order to issue
4 an electronic smog certificate of compliance for the Bureau's 1997 Honda Accord.

5 **NINTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Regulations Pursuant
7 to the Motor Vehicle Inspection Program)**

8 38. Respondent Soriano's advanced emission specialist technician license is
9 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
10 that on or about April 7, 2006, Respondent Soriano failed to comply with the following sections
11 of California Code of Regulations:

12 a. **Title 16, Section 3340.24, subdivision (c):** Respondent Soriano falsely
13 or fraudulently issued an electronic smog certificate of compliance for the
14 Bureau's 1997 Honda Accord.

15 b. **Title 16, Section 3340.30, subdivision (a):** Respondent Soriano failed to
16 inspect and test the Bureau's 1997 Honda Accord in accordance with Health &
17 Saf. Code sections 44012 and 44035, and California Code of Regulations, title
18 16, section 3340.42.

19 c. **Title 16, Section 3340.42:** Respondent Soriano failed to conduct the
20 required smog tests on the Bureau's 1997 Honda Accord in accordance with the
21 Bureau's specifications.

22 **TENTH CAUSE FOR DISCIPLINE**

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

24 39. Respondent Soriano's advanced emission specialist technician license is
25 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d),
26 in that on or about April 7, 2006, Respondent Soriano committed a dishonest, fraudulent or
27 deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
28 for the Bureau's 1997 Honda Accord which was not in compliance with the laws and regulations

1 pertaining to California emissions standards, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **UNDERCOVER OPERATION #2: AUGUST 3, 2006**

4 40. On or about August 3, 2006, an undercover operator with the Bureau took
5 the Bureau's 1988 Toyota pick-up truck California license #3K66245 to Respondent Lea Auto
6 Repair's smog check facility located in Los Angeles, California. A Bureau representative had,
7 prior to August 3, 2006, installed a defective #2 vacuum switch on the vehicle causing this
8 vehicle to fail the emissions portion of a smog inspection. The Bureau undercover operator
9 requested a smog inspection on the vehicle and signed a copy of a work order for the inspection.
10 The undercover operator was not provided with a copy of the work order. After the smog
11 inspection was completed, the Bureau operator was told by Mr. Tejada that the vehicle had not
12 passed the smog inspection. The undercover operator was further told by Mr. Tejada that Mr.
13 Tejada could make the Toyota pass the inspection after Mr. Tejada makes an adjustment to the
14 vehicle. Mr. Tejada further told the undercover operator that the adjustment was necessary for
15 the vehicle to pass a smog inspection. After the repairs were complete, the undercover operator
16 paid Mr. Tejada \$125.00 and received an invoice dated August 3, 2006 in the amount of
17 \$125.00 and a Vehicle Inspection Report (VIR) dated August 3, 2006 with certificate of
18 compliance #HB575048 printed on it.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 41. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
22 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that on or about
23 August 3, 2006, Respondent made or authorized statements which he knew, or in the exercise of
24 reasonable care, should have known to be untrue or misleading, as follows:

25 a. Respondent Lea Auto Repair through the actions of employee Tejada
26 represented to the Bureau's undercover operator that the 1988 Toyota Pick-Up truck needed "an
27 adjustment" in order to pass the smog inspection. Moreover, Respondent Lea Auto Repair,
28 through the actions of its employees, represented to the Bureau undercover operator through its

1 invoice that the vehicle's carburetor had been adjusted. In fact, the vehicle's carburetor had not
2 been adjusted and the only repair necessary to have been performed in order for this vehicle to
3 have passed the California ASM Smog Check was to replace the vehicle's defective #2 vacuum
4 switch with a properly functioning one which was not done.

5 b. Respondent Lea Auto Repair, through the actions of Respondent Soriano,
6 certified under penalty of perjury on the vehicle inspection report that the vehicle passed the
7 BAR 97 ASM test when in fact the vehicle was not in a condition to pass a BAR 97 ASM Test
8 due to the fact that the vehicle emits excessive hydrocarbons (HC) and carbon monoxide (CO)
9 emissions above the state of California's gross polluter standards.

10 **TWELFTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 42. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
13 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that on or about
14 August 3, 2006, Respondent Lea Auto Repair through its employee Respondent Soriano
15 committed an act which constitutes fraud by issuing an electronic smog certificate of compliance
16 for the Bureau's 1988 Toyota Pick-Up Truck which was not in compliance with the laws and
17 regulations pertaining to California emissions standards, thereby depriving the People of the
18 State of California of the protection afforded by the Motor Vehicle Inspection Program.

19 **THIRTEENTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Code)**

21 43. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
22 action pursuant to Code section 9884.7, subdivision (a)(6), in that it violated the provisions of
23 the Code, as follows:

24 a. **Section 9884.9 subdivision (a)**: On or about August 3, 2006 Respondent Lea
25 Auto Repair failed to give to the Bureau's undercover operator a copy of the
26 written estimated price for labor and parts necessary for the repairs made to the
27 Bureau's 1997 Honda Accord.
28

1 electronic smog certificate of compliance for the Bureau's 1988 Toyota Pick-Up
2 Truck even though the vehicle had not been inspected in accordance with section
3 3340.42.

4 c. Section 3340.42: Respondent Soriano failed to conduct the required smog
5 tests on the Bureau's 1988 Toyota Pick-Up Truck in accordance with the
6 Bureau's specifications.

7 d. Sections 3353 subdivision (a) and 3356, subdivision (a): Respondent
8 Lea Auto Repair's invoices given to the Bureau's undercover operator on or
9 about August 3, 2006 contain the incorrect business name. Further, Respondent
10 Lea Auto Repair failed to provide the Bureau's undercover operator with an
11 estimate or copy of a signed invoice prior to commencing the smog inspection on
12 the Bureau's 1988 Toyota Pick-Up Truck.

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

15 46. Respondent Lea Auto Repair's smog check station license is subject to
16 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on or
17 about August 3, 2006, Respondent Lea Auto Repair through the actions of its employee,
18 Respondent Soriano, committed a dishonest, fraudulent or deceitful act whereby another is
19 injured by issuing an electronic smog certificate of compliance for the Bureau's 1988 Toyota
20 Pick-Up Truck which was not in compliance with the laws and regulations pertaining to
21 California emissions standards, thereby depriving the People of the State of California of the
22 protection afforded by the Motor Vehicle Inspection Program.

23 **SEVENTEENTH CAUSE FOR DISCIPLINE**

24 **(Violations of the Motor Vehicle Inspection Program)**

25 47. Respondent Soriano's advanced emission specialist technician license is
26 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
27 that on or about August 3, 2006, Respondent Soriano failed to comply with the following
28 sections of that Code:

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- a. **Section 44012:** Respondent Soriano failed to perform emission control tests on the Bureau's 1988 Toyota Pick-Up Truck in accordance with procedures prescribed by the department.
- b. **Section 44059:** Respondent Soriano willfully made false entries on the vehicle inspection report, as set forth in paragraph 39 above, in order to issue an electronic smog certificate of compliance for the Bureau's 1988 Toyota Pick-Up Truck.

EIGHTEENTH CAUSE FOR DISCIPLINE
(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

48. Respondent Soriano's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that on or about August 3, 2006, Respondent failed to comply with the following sections of California Code of Regulations, title 16:

- a. **Section 3340.24, subdivision (c):** Respondent Soriano falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1988 Toyota Pick-Up Truck.
- b. **Section 3340.30, subdivision (a):** Respondent Soriano failed to inspect and test the Bureau's 1988 Toyota Pick-Up Truck in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- c. **Section 3340.42:** Respondent Soriano failed to conduct the required smog tests on the Bureau's 1988 Toyota Pick-Up Truck in accordance with the Bureau's specifications.

NINETEENTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud or Deceit)

49. Respondent Soriano's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d).

1 in that on or about August 3, 2006, Respondent Soriano committed a dishonest, fraudulent or
2 deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
3 for the Bureau's 1988 Toyota Pick-Up Truck which was not in compliance with the laws and
4 regulations pertaining to California emissions standards, thereby depriving the People of the
5 State of California of the protection afforded by the Motor Vehicle Inspection Program.

6 **UNDERCOVER OPERATION #3: 1987 BUICK**

7 50. On or about August 8, 2006, an undercover operator with the Bureau took
8 the Bureau's 1987 Buick California license #2GQF763 to Respondent Lea Auto Repair's facility
9 located in Los Angeles, California. As part of its documentation, the Bureau mis-adjusted the
10 throttle position sensor (TPS) on the vehicle, rendering the vehicle incapable of passing a smog
11 inspection. The Bureau undercover operator requested a smog inspection on the vehicle and
12 signed a copy of a work order for the inspection. The undercover operator was not provided
13 with a copy of the work order. After the smog inspection was completed, the Bureau operator
14 was told by Mr. Tejada that the vehicle had not passed the smog inspection because "the carb
15 was giving out too much gas and the idle was too high." The undercover operator was told by
16 Mr. Tejada that the 1987 Buick needed an adjustment and that he (Mr. Tejada) was almost
17 finished with the adjustment. Approximately five minutes later, the undercover operator was
18 told by Mr. Tejada that the vehicle was ready and had passed the smog inspection. The
19 undercover operator paid Mr. Tejada \$90.00 for the inspection and received a VIR dated August
20 8, 2006 with certificate of compliance #HB643837 printed on it. She did not receive a copy of
21 the work order that she had completed earlier nor any invoice for services rendered by
22 Respondent Lea Auto Repair.

23 **TWENTIETH CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 51. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
26 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that on or about
27 August 8, 2006, Respondent made or authorized statements which he knew, or in the exercise of
28 reasonable care, should have known to be untrue or misleading, as follows:

1 a. Respondent Lea Auto Repair through the actions of employee Tejada
2 represented to the Bureau's undercover operator that the 1987 Buick needed "an adjustment" in
3 order to pass the smog inspection. In fact, the only repair necessary to have been performed in
4 order for this vehicle to have passed the California ASM Smog Check was to adjust the throttle
5 position sensor voltage from 2.20 volts to the manufacturer's specification of .46 volts and
6 installation of a TPS adjusting screw retention plug or screw thread locking compound which
7 was not performed. Likewise, despite the representation by Respondent Lea Auto Repair's
8 employee that an adjustment had been made, as evidenced by an unbroken Electronic Spark
9 Timing (EST) four wire connector tamper indicator, the engine ignition timing was not properly
10 checked.

11 b. Respondent Lea Auto Repair, through the actions of Respondent Soriano,
12 certified under penalty of perjury on the vehicle inspection report that the 1987 Buick passed the
13 BAR 97 ASM test when in fact the vehicle was not in a condition to pass a BAR 97 ASM Test
14 due to the fact that the vehicle emitted excessive hydrocarbons (HC) and carbon monoxide (CO)
15 emissions above the State of California's gross polluter standards.

16 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 52. Respondent Lea Auto Repair's ARD registration is subject to disciplinary
19 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that on or about
20 August 8, 2006, Respondent Soriano on behalf of Respondent Lea Auto Repair committed an
21 act which constitutes fraud by issuing an electronic smog certificate of compliance for the
22 Bureau's 1987 Buick which was not in compliance with the laws and regulations pertaining to
23 California emissions standards, thereby depriving the People of the State of California of the
24 protection afforded by the Motor Vehicle Inspection Program.

25 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

26 **(Violations of the Motor Vehicle Inspection Program)**

27 53. Respondent Lea Auto Repair's smog check station license is subject to
28 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that on or

1 about August 8, 2006, Respondent Soriano on behalf of Respondent Lea Auto Repair failed to
2 comply with the following sections of that Code:

3 a. **Section 44012:** Respondent Lea Auto Repair through the actions of
4 Respondent Soriano failed to perform emission control tests on the Bureau's
5 1987 Buick in accordance with procedures prescribed by the department.

6 b. **Section 44015:** Respondent Lea Auto Repair through the actions of
7 Respondent Soriano issued an electronic smog certificate of compliance for the
8 Bureau's 1987 Buick without properly testing and inspecting the vehicle to
9 determine if it was in compliance with Health & Saf. Code section 44012.

10 c. **Section 44059:** Respondent Lea Auto Repair through the actions of
11 Respondent Soriano willfully made false entries on the vehicle inspection report,
12 as set forth in paragraph 49 above, in order to issue an electronic smog certificate
13 of compliance for the Bureau's 1987 Buick.

14 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations Pursuant
16 to the Motor Vehicle Inspection Program)**

17 54. Respondent Lea Auto Repair's smog check station license is subject to
18 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that on or
19 about August 8, 2006, Respondent Soriano on behalf of Respondent Lea Auto Repair failed to
20 comply with the following sections of California Code of Regulations, title 16:

21 a. **Section 3340.24, subdivision (c):** Respondent Lea Auto Repair through
22 the actions of Respondent Soriano falsely or fraudulently issued an electronic
23 smog certificate of compliance for the Bureau's 1987 Buick.

24 b. **Section 3340.35, subdivision (c):** Respondent Lea Auto Repair through
25 the actions of Respondent Soriano issued an electronic smog certificate of
26 compliance for the Bureau's 1987 Buick even though the vehicle had not been
27 inspected in accordance with section 3340.42.

28 c. **Section 3340.42:** Respondent Lea Auto Repair through the actions of

1 Respondent Soriano failed to conduct the required smog tests on the Bureau's
2 1987 Buick in accordance with the Bureau's specifications.

3 d. Sections 3353 subdivision (a) and 3356, subdivision (a): Respondent
4 Lea Auto Repair failed to provide the Bureau's undercover operator with an
5 estimate or copy of a signed invoice prior to commencing the smog inspection on
6 the Bureau's 1987 Buick.

7 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

9 55. Respondent Lea Auto Repair's smog check station license is subject to
10 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on or
11 about August 8, 2006, Respondent Soriano on behalf of Respondent Lea Auto Repair committed
12 a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
13 certificate of compliance for the Bureau's 1987 Buick which was not in compliance with the
14 laws and regulations pertaining to California emissions standards, thereby depriving the People
15 of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

16 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

17 **(Violations of the Motor Vehicle Inspection Program)**

18 56. Respondent Soriano's advanced emission specialist technician license is
19 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
20 that on or about August 8, 2006, Respondent Soriano failed to comply with the following
21 sections of that Code:

22 a. Section 44012: Respondent Soriano failed to perform emission control
23 tests on the Bureau's 1987 Buick in accordance with procedures
24 prescribed by the department.

25 b. Section 44059: Respondent Soriano willfully made false entries on the
26 vehicle inspection report, as set forth in paragraph above, in order to
27 issue an electronic smog certificate of compliance for the Bureau's 1987
28 Buick.

1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 57. Respondent Soriano's advanced emission specialist technician license is
5 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
6 that on or about August 8, 2006, Respondent failed to comply with the following sections of
7 California Code of Regulations, title 16:

8 a. **Section 3340.24, subdivision (c)**: Respondent Soriano falsely or
9 fraudulently issued an electronic smog certificate of compliance for the Bureau's
10 1987 Buick.

11 b. **Section 3340.30, subdivision (a)**: Respondent Soriano failed to inspect
12 and test the Bureau's 1987 Buick in accordance with Health & Saf. Code sections
13 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

14 c. **Section 3340.42**: Respondent Soriano failed to conduct the required smog
15 tests on the Bureau's 1987 Buick in accordance with the Bureau's specifications.

16 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

18 58. Respondent Soriano's advanced emission specialist technician license is
19 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d),
20 in that on or about August 8, 2006, Respondent Soriano committed a dishonest, fraudulent or
21 deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
22 for the Bureau's 1987 Buick which was not in compliance with the laws and regulations
23 pertaining to California emissions standards, thereby depriving the People of the State of
24 California of the protection afforded by the Motor Vehicle Inspection Program.

25
26 **OTHER MATTERS**

27 59. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
28 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations

1 Carbajal a.k.a. Tito H. Soriano;

2 6. Ordering Respondent Leandra Elizabeth Tejada, individually and as
3 owner of owner of Lea Auto Repair, and Tito Hugo Soriano Carbajal a.k.a. Tito H. Soriano, to
4 pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement
5 of this case, pursuant to Business and Professions Code section 125.3;

6 7. Taking such other and further action as deemed necessary and proper.

7 DATED: 4/28/08

8 
9 SHERRY MEHL
10 Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California

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Complainant