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

10
11 In the Matter of the Supplemental Accusation
and Petition to Revoke Probation Against:

Case No. 79/13-51

12 **A AFFORDABLE SMOG TEST ONLY**

13 Michael Luis Legarreta, Owner
18737 Hwy. 18, Suite 12
14 Apple Valley, CA 92307

**SUPPLEMENTAL ACCUSATION AND
PETITION TO REVOKE PROBATION**

15 Automotive Repair Dealer Registration No.
ARD 243351
16 Smog Check Test Only Station License No.
TC 243351

(SMOG CHECK)

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Patrick Dorais ("Complainant") brings this Supplemental Accusation and Petition to
22 Revoke Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair
23 ("Bureau"), Department of Consumer Affairs.

24 **LICENSE INFORMATION**

25 **Automotive Repair Dealer Registration No. ARD 243351**

26 2. On a date uncertain in 2006, the Bureau issued Automotive Repair Dealer
27 Registration No. ARD 243351 ("registration") to Michael Lewis Legarreta ("Respondent"), doing
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1 business as A Affordable Smog Test Only. The registration was in full force and effect at all
2 times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

3 **Smog Check Test Only Station License No. TC 243351**

4 3. On or about February 16, 2006, the Bureau issued A Affordable Smog Test Only
5 Station License No. TC 243351 ("station license") to Respondent. The station license was in full
6 force and effect at all times relevant to the charges brought herein and will expire on January 31,
7 2015, unless renewed.

8 **PRIOR DICIPLINARY ACTION**

9 4. In a disciplinary action entitled "*In the Matter of the Accusation Against: A*
10 *Affordable Smog Test Only*," Case No. 79/11-64, the Bureau of Automotive Repair issued a
11 Decision in the Stipulated Settlement and Disciplinary Order, attached hereto as "**Exhibit A**" and
12 incorporated herein as reference, in that, effective August 7, 2012, Respondent's Automotive
13 Repair Dealer Registration No. ARD 243351 and Smog Check Test Only Station License No. TC
14 243351 were revoked. However, the revocation of Automotive Repair Dealer Registration No.
15 ARD 243351 and Smog Check Test Only Station License No. TC 243351 was stayed and
16 Respondent's automotive repair dealer registration and smog check test only station license were
17 each placed on probation for three (3) years with certain terms and conditions, including Term 2,
18 set forth as follows:

19 **Term 2 – "Obey All Laws.** Comply with statutes, regulations and rules governing
20 automotive inspections, estimates and repairs."

21 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

22 5. This Petition to Revoke Probation is brought before the Director of Consumer
23 Affairs for the Bureau of Automotive Repair pursuant to Probation Term and Condition Number
24 8 of the Stipulated Settlement and Disciplinary Order "*In the Matter of the Accusation Against A*
25 *Affordable Smog Test Only Case No. 79/11-64*". That term and condition states:

26 **"Violation of Probation.** Should the Director of Consumer Affairs determine that
27 Respondent has failed to comply with the terms and conditions of probation, the Department may,
28 after giving notice and opportunity to be heard permanently invalidate the registration and

1 suspend or revoke the license”.

2 **JURISDICTION**

3 6. This Accusation and Petition to Revoke Probation is brought before the Director of
4 Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the
5 following laws. All section references are to the Business and Professions Code unless otherwise
6 indicated.

7 7. Business and Professions Code (Code) section 9884.7 provides that the Director may
8 revoke an automotive repair dealer registration.

9 8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
10 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
11 proceeding against an automotive repair dealer or to render a decision invalidating a registration
12 temporarily or permanently.

13 9. Health and Safety Code (“H&S Code”) section 44002 provides, in pertinent part, that
14 the Director has all the powers and authority granted under the Automotive Repair Act for
15 enforcing the Motor Vehicle Inspection Program.

16 **STATUTORY PROVISIONS**

17 10. Code section 9884.7 states, in pertinent part:

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

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

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

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

3 11. Code section 9884.9 states, in pertinent part:

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

17 12. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

28 13. Section 44072.6 of the Health and Safety Code 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 14. Section 44072.8 of the Health and Safety Code states:

5 "When a license has been revoked or suspended following a hearing under this
6 article, any additional license issued under this chapter in the name of the licensee may be
7 likewise revoked or suspended by the director."

8 15. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
9 "commission," "committee," "department," "division," "examining committee," "program," and
10 "agency." "License" includes certificate, registration or other means to engage in a business or
11 profession regulated by the Code.

12 **FIRST UNDERCOVER OPERATION – October 22, 2012**

13 16. On or about October 22, 2012, a Bureau undercover operator ("operator") drove a
14 Bureau documented 1994 Toyota pickup to A Affordable Smog Test Only and requested a smog
15 inspection. The Pulse Air Injection System had been removed from the pickup, causing the
16 vehicle to be incapable of passing a properly performed smog inspection. The operator was not
17 provided with a written estimate prior to the smog inspection. After the smog inspection was
18 completed the operator paid the facility \$30 and received a copy of Invoice No. [REDACTED] and a
19 Vehicle Inspection Report. The Vehicle Inspection Report indicated that the smog inspection was
20 performed by Respondent's smog check technician, Robert Gutierrez Jr., resulting in the issuance
21 of electronic Certificate of Compliance No. [REDACTED], certifying that the vehicle had been tested
22 and inspected and that it was in compliance with applicable laws and regulations when, in fact,
23 the vehicle could not have passed the visual portion of the smog inspection because the vehicle's
24 Pulse Air Injection System had been removed.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 17. Respondent's registration is subject to discipline pursuant to Code section
28 9884.7(a)(1), in that on or about October 22, 2012, he made statements which he knew or which

1 by exercise of reasonable care should have known to be untrue or misleading by issuing
2 electronic Certificate of Compliance No. [REDACTED] for the 1994 Toyota pickup, certifying that
3 the vehicle was in compliance with applicable laws and regulations when, in fact, it could not
4 have passed the visual portion of the smog inspection because the vehicle's Pulse Air Injection
5 System had been removed.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 18. Respondent's registration is subject to discipline pursuant to Code section
9 9884.7(a)(4), in that on or about October 22, 2012, he committed acts constituting fraud by
10 issuing electronic Certificate of Compliance No. [REDACTED] for the 1994 Toyota pickup without
11 performing a bona fide inspection of the emission control devices and systems on the vehicle,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Code)**

16 19. Respondent has subjected his registration to discipline pursuant to Code section
17 9884.7, subdivision (a)(6), in that on or about October 22, 2012, Respondent failed to comply
18 with the following section of that code:

19 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with
20 a written estimated price for parts and labor for a specific job.

21 **FOURTH CAUSE FOR DISCIPLINE**

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

23 20. Respondent's station license is subject to discipline pursuant to Health & Safety
24 Code section 44072.2, subdivision (a), in that on or about October 22, 2012, regarding the 1994
25 Toyota pickup, he failed to comply with the following sections of that Code:

26 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control
27 inspections on the vehicle in accordance with procedures prescribed by the department.

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1 been removed from the car, causing the vehicle to be incapable of passing a properly performed
2 smog inspection. The operator was not provided with a written estimate prior to the smog
3 inspection. After the smog inspection was completed the operator paid the facility \$49.75 and
4 received a copy of Invoice No. [REDACTED] and a Vehicle Inspection Report. The Vehicle Inspection
5 Report indicated that the smog inspection was once again performed by Respondent's smog
6 check technician, Robert Gutierrez Jr., resulting in the issuance of electronic Certificate of
7 Compliance No. [REDACTED], certifying that the vehicle had been tested and inspected and that it
8 was in compliance with applicable laws and regulations when, in fact, the vehicle could not have
9 passed the visual portion of the smog inspection because the vehicle's Secondary Air Injection
10 System (AIR) had been removed.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 24. Respondent's registration is subject to discipline pursuant to Code section
14 9884.7(a)(1), in that on or about January 28, 2014, he made statements which he knew or which
15 by exercise of reasonable care should have known to be untrue or misleading by issuing
16 electronic Certificate of Compliance No. [REDACTED] for the 1997 Pontiac, certifying that the
17 vehicle was in compliance with applicable laws and regulations when, in fact, it could not have
18 passed the visual portion of the smog inspection because the vehicle's Secondary Air Injection
19 System had been removed.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 25. Respondent's registration is subject to discipline pursuant to Code section
23 9884.7(a)(4), in that on or about January 28, 2014, he committed acts constituting fraud by
24 issuing electronic Certificate of Compliance No. [REDACTED] for the 1997 Pontiac without
25 performing a bona fide inspection of the emission control devices and systems on the vehicle,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Code)**

3 26. Respondent has subjected his registration to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that on or about January 28, 2014, Respondent failed to comply
5 with the following section of that code:

6 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a
7 written estimated price for parts and labor for a specific job.

8 **TENTH CAUSE FOR DISCIPLINE**

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

10 27. Respondent's station license is subject to discipline pursuant to Health & Safety Code
11 section 44072.2, subdivision (a), in that on or about January 28, 2014, regarding the 1997 Pontiac,
12 he failed to comply with the following sections of that Code:

13 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control
14 inspections on the vehicle in accordance with procedures prescribed by the department.

15 b. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
16 Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle to determine
17 if it was in compliance with Health & Safety Code section 44012.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

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

20 28. Respondent's station license is subject to discipline pursuant to Health & Safety Code
21 section 44072.2, subdivision (c), in that on or about January 28, 2014, regarding the 1997 Pontiac,
22 he failed to comply with provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
24 Compliance No. [REDACTED] for the vehicle even though the vehicle had not been inspected in
25 accordance with section 3340.42.

26 b. **Section 3340.42:** Respondent failed to perform an emission control inspection on
27 the vehicle in accordance with procedures prescribed by the department.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 29. Respondent's station license is subject to discipline pursuant to Health & Safety Code
4 section 44072.2, subdivision (d), in that on or about January 28, 2014, regarding the 1997
5 Pontiac, he committed dishonest, fraudulent or deceitful acts whereby another is injured by
6 issuing electronic Certificate of Compliance No. [REDACTED] for the vehicle without performing a
7 bona fide inspection of the emission control devices and systems on the vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **OTHER MATTERS**

11 30. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
12 probation the registrations for all places of business operated in this state by Michael Luis
13 Legarreta, upon a finding that he has, or is, engaged in a course of repeated and willful violation
14 of the laws and regulations pertaining to an automotive repair dealer.

15 31. Pursuant to Health and Safety Code section 44072.8, if A Affordable Smog Test
16 Only Station License No. TC 243351, issued to Michael Luis Legarreta, is revoked or suspended,
17 any additional license issued under this chapter in the name of said licensee may be likewise
18 revoked or suspended by the director.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
21 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
22 Consumer Affairs issue a decision:

23 1. Revoking the probation that was granted by the Bureau of Automotive Repair in
24 Case No. 79/11-64 and imposing the disciplinary order that was stayed, thereby revoking
25 Automotive Repair Dealer No. ARD 243351 issued to Michael Luis Legarreta doing business as
26 A Affordable Smog Test Only;

27 2. Revoking or suspending any other automotive repair dealer registration issued to
28 Michael Luis Legarreta;

1 3. Revoking the probation that was granted by the Bureau of Automotive Repair in
2 Case No. 79/11-64 and imposing the disciplinary order that was stayed, thereby revoking A
3 Affordable Smog Test Only Station License No. TC 243351 issued to Michael Luis Legarreta
4 doing business as A Affordable Smog Test Only;

5 5. Revoking or suspending any additional licenses issued to Michael Luis Legarreta
6 under Chapter 5 of the Health and Safety Code, pursuant to Health and Safety Code section
7 44072.8;

8 6. Ordering Michael Luis Legarreta to pay the Director of Consumer Affairs the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
10 125.3; and

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

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13 DATED: May 20, 2014



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

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