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7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against,

Case No. **79/15-94**

13 **BILL'S FAST LUBE & SMOG**
14 **FRANCISCO LULE, PARTNER**
15 **MELVIN NELSON, PARTNER**
16 **305 High Street**
Delano, CA 93215
Automotive Repair Dealer Registration No.
ARD 248438
Smog Check Station License No. RC 248438

PETITION TO REVOKE PROBATION

17 Respondent.

18
19 Complainant alleges:

20 PARTIES

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

24 2. On or about January 4, 2007, the Bureau of Automotive Repair issued Automotive
25 Repair Dealer Registration Number ARD 248438 to Respondent Bill's Fast Lube & Smog
26 (Respondent) with Francisco Lule and Melvin Nelson as Partners. The Automotive Repair Dealer
27 Registration was in effect at all times relevant to the charges brought herein and will expire on
28 December 31, 2015, unless renewed.

1 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
2 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
3 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
4 statement indicating whether any crash parts are original equipment manufacturer crash parts or
5 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
6 given to the customer and one copy shall be retained by the automotive repair dealer.”

7 7. Code section 9884.9 states, in pertinent part:

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

22 “(1) Make a notation on the invoice of the same facts set forth in the notation on the work
23 order.

24 “(2) Upon completion of the repairs, obtain the customer’s signature or initials to an
25 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
26 repairs, in the following language:

27 “I acknowledge notice and oral approval of an increase in the original estimated price.

28 “(signature or initials)”.

1 “Nothing in this section shall be construed as requiring an automotive repair dealer to give a
2 written estimated price if the dealer does not agree to perform the requested repair.”

3 **REGULATORY PROVISIONS**

4 8. California Code of Regulations, title 16 (CCR), section 3353 states, in pertinent part:

5 “No work for compensation shall be commenced and no charges shall accrue without
6 specific authorization from the customer in accordance with the following requirements:

7 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
8 estimated price for parts and labor for a specific job.

9 “. . .

10 “(c) Additional Authorization. Except as provided in subsection (f), the dealer shall obtain
11 the customer's authorization before any additional work not estimated is done or parts not
12 estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall
13 describe the additional repairs, parts, labor and the total additional cost.”

14 9. CCR section 3356 states, in pertinent part:

15 “(a) All invoices for service and repair work performed, and parts supplied, as provided for
16 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

17 “. . .

18 “(2) The invoice shall separately list, describe and identify all of the following:

19 “(A) All service and repair work performed, including all diagnostic and warranty work,
20 and the price for each described service and repair.

21 “(B) Each part supplied, in such a manner that the customer can understand what was
22 purchased, and the price for each described part. The description of each part shall state whether
23 the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket
24 crash part.

25 “(C) The subtotal price for all service and repair work performed.

26 “(D) The subtotal price for all parts supplied, not including sales tax.

27 “(E) The applicable sales tax, if any.”

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1 10. CCR section 3366 states, in pertinent part:

2 “(a) Except as provided in subsection (b) of this section, any automotive repair dealer that
3 advertises or performs, directly or through a sublet contractor, automotive air conditioning work
4 and uses the words service, inspection, diagnosis, top off, performance check or any expression or
5 term of like meaning in any form of advertising or on a written estimate or invoice shall include
6 and perform all of the following procedures as part of that air conditioning work:

7 “(1) Exposed hoses, tubing and connections are examined for damage or leaks;

8 “(2) The compressor and clutch, when accessible, are examined for damage, missing bolts,
9 missing hardware, broken housing and leaks;

10 “(3) The compressor is rotated to determine if it is seized or locked up;

11 “(4) Service ports are examined for missing caps, damaged threads and conformance with
12 labeling;

13 “(5) The condenser coil is examined for damage, restrictions or leaks;

14 “(6) The expansion device, if accessible, is examined for physical damage or leaks;

15 “(7) The accumulator receiver dryer and in-line filter have been checked for damage,
16 missing or loose hardware or leaks;

17 “(8) The drive belt system has been checked for damaged or missing pulleys or tensioners
18 and for proper belt routing, tension, alignment, excessive wear or cracking;

19 “(9) The fan clutch has been examined for leakage, bearing wear and proper operation;

20 “(10) The cooling fan has been checked for bent or missing blades;

21 “(11) Accessible electrical connections have been examined for loose, burnt, broken or
22 corroded parts;

23 “(12) The refrigerant in use has been identified and checked for contamination;

24 “(13) The system has been checked for leakage at a minimum of 50-PSI system pressure;

25 “(14) The compressor clutch, blower motor and air control doors have been checked for
26 proper operation;

27 “(15) High and low side system operating pressures, as applicable, have been measured and
28 recorded on the final invoice; and,

1 c. **Code section 9884.8 and CCR section 3356(a)**: Respondent failed to describe parts
2 and labor in repair order numbers 169161, 169164, 169134, 169136, and 169138, in a manner in
3 which a customer could understand what service work was performed and which parts were
4 supplied.

5 Probation Conference #3 on April 25, 2013

6 14. During a probation conference with Francisco Lule on April 25, 2013, Bureau
7 Representatives James Smith and Albert Copeland performed an invoice review which revealed
8 the following violations:

9 a. **Code section 9884.9(a) and CCR section 3353(c)**: Respondent failed to properly
10 document additional authorization when estimates were exceeded in that repair order numbers
11 176089, 176214, 176514, and 175976 do not include required information for additional
12 authorization.

13 b. **Code section 9884.9(a) and CCR section 3353(a)**: Respondent failed to provide
14 customers with a written estimate for parts and labor for specific jobs in that repair order numbers
15 176207, 176784, 176785, 176766, and 176802 fail to list an estimate amount or specifics for the
16 labor performed.

17 c. **Code section 9884.8 and CCR section 3356(a)**: Respondent failed to describe parts
18 and labor in repair order numbers 176214, 176215, 176777, 176771, and 176817, in a manner in
19 which a customer could understand what service work was performed and which parts were
20 supplied.

21 d. **Code section 9884.8**: Respondent failed to list proper subtotals in repair order
22 number 17261.

23 e. **Code section 9884.8 and CCR section 3366(a)(15)**: Respondent failed to record
24 final high and low pressure readings on final invoice numbers 176784, 176785, and 176802.

25 f. **Code section 9884.8 and CCR section 3366(a)(16)**: Respondent failed to record the
26 center vent outlet temperature on final invoice numbers 176784, 176785, and 176802.

27 g. **Code section 9884.7(a)(1)**: Respondent made untrue and misleading statements in
28 that invoice numbers 176568 and 176704 list the smog certificate in the labor totals.

1 Probation Conference #4 on January 8, 2014

2 15. During a probation conference with Melvin Nelson on January 8, 2014, Bureau
3 Representatives James Smith and Albert Copeland performed an invoice review which revealed
4 the following violations:

5 a. **Code section 9884.9(a) and CCR section 3353(c):** Respondent failed to properly
6 document additional authorization when estimates were exceeded in that repair order numbers
7 184074, 183681, 183710, 183333, 183240, 183022, 183237, and 183231 do not include required
8 information for additional authorization.

9 b. **Code section 9884.9(a) and CCR section 3353(a):** Respondent failed to provide
10 customers with a written estimate for parts and labor for specific jobs in that repair order numbers
11 183237, 183335, 183716, 183231, 183679, 183262, 183253, and 184037 fail to list an estimate
12 amount or specifics for the labor performed.

13 c. **Code section 9884.8 and CCR section 3356(a):** Respondent failed to describe parts
14 and labor in repair order numbers 183335, 183241, 183250, 183254, 183342, 183344, 184037,
15 183260, and 183739, in a manner in which a customer could understand what service work was
16 performed and which parts were supplied. Specifically, repair order numbers 183335, 183241,
17 183250, 183254, 183342, and 183344 failed to list the price for the oil change labor.

18 d. **Code section 9884.7(a)(1):** Respondent made untrue and misleading statements in
19 that invoice number 183710 lists gas cap in the “Gas Oil and Grease” box instead of the “Total
20 Parts” box.

21 e. **Code section 9884.7(a)(2):** Respondent failed to record the odometer reading on a
22 signed document in that invoice number 183257 does not list the vehicle’s odometer readings.

23 Undercover Operation on April 9, 2014

24 16. On April 9, 2014, the Bureau conducted an undercover operation in which it sent a
25 2003 Dodge to Respondent with a Fuel Evaporation System leak and an Illuminated Malfunction
26 Indicator Lamp and requested repair. Respondent diagnosed and repaired the vehicle correctly
27 and performed a smog check inspection but the documents provided by Respondent contained the
28 following estimate and invoice violations:

1 a. **Code section 9884.7(a)(2):** Respondent failed to record the odometer reading on a
2 signed document in that estimate number 186632 does not list the vehicle's odometer reading.

3 b. **Code section 9884.9(a) and CCR section 3353(a):** Respondent failed to provide a
4 customer with a written estimate for parts and labor for a specific job in that estimate number
5 186632 fails to list a specific job and does not list the diagnosis or the smog inspection performed.

6 Probation Conference #5 on June 4, 2014

7 17. During a probation conference with Francisco Lule on June 4, 2014, Bureau
8 Representatives James Smith and Albert Copeland performed an invoice review which revealed
9 the following violations:

10 a. **Code section 9884.9(a) and CCR section 3353(a):** Respondent failed to provide
11 customers with a written estimate for parts and labor for specific jobs in that repair order numbers
12 187882 and 187726 fail to describe the service work to be performed.

13 b. **Code section 9884.9(a) and CCR section 3353(c):** Respondent failed to properly
14 document additional authorization when estimates were exceeded in that repair order numbers
15 187812 and 187869 do not include all required information for additional authorization.

16 c. **Code section 9884.8 and CCR section 3356(a):** Respondent failed to describe all
17 service work and parts in such a manner that the customer can understand what was purchased in
18 that repair order number 187446 lists in the labor column that 1.5 lbs. of Freon was installed
19 when the parts description lists 1 lb. of Freon was sold.

20 d. **Code section 9884.7(a)(1):** Respondent made untrue and misleading statements in
21 that invoice number 187621 has an estimate for a smog inspection and the smog check price was
22 later eliminated even though the smog check was performed. Respondent also made untrue and
23 misleading statements in that repair order number 187446 lists in the labor column that 1.5 lbs. of
24 Freon was installed when the parts description lists 1 lb. of Freon was sold.

25 e. **Code section 9884.7(a)(2):** Respondent failed to record the odometer reading on a
26 signed document in that invoice numbers 187665 and 187556 do not list the vehicles' odometer
27 readings.

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1 f. **Code section 9884.8 and CCR section 3366:** Respondent failed to follow Air
2 Conditioning trade standards in that invoice number 187446 fails to list the air conditioning
3 service work performed.

4 Probation Conference #6 on December 16, 2014

5 18. During a probation conference with Melvin Nelson on December 16, 2014, Bureau
6 Representatives James Smith and Albert Copeland performed an invoice review which revealed
7 the following violations:

8 a. **Code section 9884.7(a)(2):** Respondent failed to record the odometer reading on a
9 signed document in that invoice numbers 190720, 190736, 190760, 190880, and 191311 do not
10 list the vehicles' odometer readings.

11 b. **Code section 9884.9(a) and CCR section 3353:** Respondent performed work and
12 charged customers without first obtaining authorization to proceed from the customer in that
13 repair invoice numbers 190809, 191185, 191000, 191074, 191206, and 191207 do not have
14 customer authorization in the form of a signature.

15 c. **Code section 9884.9(a) and CCR section 3353(a):** Respondent failed to provide
16 customers with a written estimate for parts and labor for specific jobs in that:

17 i. Repair invoice numbers 190637, 190648, 190651, 190662, 190709, 191134,
18 191213, 191214, 191303, and 191311 fail to describe the service work to be performed.

19 ii. Repair invoice numbers 190714, 191127, and 191322 fail to describe the service
20 work to be performed. These repair invoices bear the term "Tune-up", which is not enough of a
21 description to understand what service work was to be performed.

22 iii. Repair invoice number 191117 fails to list a logical starting point. The invoice
23 lists "N/C" in the "original estimate" box but fails to list a service to be performed at no charge.

24 iv. Repair invoice number 191245 does not list a price for the Smog Check along
25 with the original estimate for the Brake Check. The original estimate amount should have read
26 \$130.00.

27 v. Repair invoice number 191215 fails to list a description of the labor to be
28 performed at no charge. The repair order only lists the customers concern.

1 vi. Repair invoice number 191210 fails to list a specific price in the “original
2 estimate” box.

3 vii. Repair invoice number 191208 lists the original estimate amount of \$343.34,
4 which is the same amount as the final total, when the labor descriptions indicate a diagnosis was
5 needed. This indicates there was no original estimate.

6 d. **Code section 9884.9(a) and CCR section 3353(c):** Respondent failed to:

7 i. Properly document additional authorization when estimates were exceeded in that
8 repair order numbers 190639, 190665, 190720, 190736, 190746, 190752, 190757, 190760,
9 190771, 190791, 190809, 190830, 190855, 191044, 191057, 191073, 191085, 191087, 191089,
10 191096, 191117, 191127, 191134, 191135, 191177, 191178, 191207, 191208, 191210, 191213,
11 191214, 191215, 191221, 191245, 191303, 191304, 191311, 191316 and 191222 do not include
12 all required information for additional authorization.

13 ii. List the revision notes on work order / estimate numbers 47, 72, 76, 82, 85, 92,
14 104, 112, 134, 135, 138, 145, 155, 162, and 173.

15 iii. Prepare an authorized designee form in that repair invoice number 190399 fails to
16 list a designee when the document shows the authorization to exceed the original estimate was
17 obtained from someone other than the customer.

18 e. **Code section 9884.8 and CCR section 3356(a):** Respondent failed to describe all
19 service work and parts in such a manner that the customer can understand what was purchased in
20 that:

21 i. Repair invoice number 190709 lists in the labor column that 1.54 lbs. of Freon and
22 2 oz. of PAG oil was installed when the parts column does not list Freon or oil as being sold.

23 ii. Repair invoice number 190791 lists \$207.95 in the parts column with no
24 description of a part or quantity. There is also no description of labor for installing any parts.

25 iii. Repair invoice number 190830 fails to list any parts when the labor column lists a
26 speed sensor as having been installed.

27 iv. Repair invoice number 191177 lists” install missing bolt”, which is not enough of
28 a description to understand what repair was performed.

1 v. Repair invoice number 191316 fails to list in the parts column the Freon and the
2 PAG oil which the invoice indicates were installed.

3 vi. Repair invoice number 191304 fails to list a price for the installation of brake
4 pads.

5 vii. Repair invoice number 191303 fails to list the service work performed for the
6 "Check Engine Light" diagnosis.

7 viii. Repair invoice number 191222 fails to list the parts descriptions.

8 ix. Repair invoice number 191210 fails to list the labor for the installation of brakes
9 and fails to list a specific price.

10 f. **Code section 9884.8 and CCR section 3366:** Respondent failed to follow Air
11 Conditioning trade standards in that invoice numbers 190709, 190757, 190855, and 191316 fail to
12 list the air conditioning service work performed.

13 g. **Code section 9884.8 and CCR section 3366(a)(15):** Invoice numbers 190709,
14 190757, 190855, and 191316 fail to list the air conditioning high and low pressure readings.

15 h. **Code section 9884.8 and CCR section 3366(a)(16):** Invoice numbers 190709,
16 190757, 190855, and 191316 fail to list the air conditioning center vent temperature readings.

17 i. **Code section 9884.8 and CCR section 3356(a)(2)(C):** Respondent failed to list the
18 subtotal price for all service work performed in that invoice numbers 190709 and 191210 fail to
19 list the subtotal for labor.

20 j. **Code section 9884.8 and CCR section 3356(a)(2)(D):** Respondent failed to list the
21 subtotal price for all parts supplied in that invoice number 191316 fails to list a parts subtotal
22 despite showing that Freon and PAG oil was installed.

23 **SECOND CAUSE TO REVOKE PROBATION**

24 **(Violation of Probation)**

25 19. At all times after the effective date of Respondent's probation, Condition 6 stated:

26 "6. **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 temporarily or permanently invalidate its ARD

1 registration and suspend or revoke the Smog Check Station license.”

2 20. Respondent's probation is subject to revocation because he failed to comply with
3 Probation Condition 6, referenced above. Complainant hereby incorporates paragraphs 13
4 through 18 above, inclusive, as though set forth fully.

5 **PRAYER**

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

8 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
9 No. 79/11-48 and imposing the disciplinary order that was stayed thereby revoking Automotive
10 Repair Dealer Registration No. ARD 248438 issued to Bill’s Fast Lube & Smog with Francisco
11 Lule and Melvin Nelson as Partners;

12 2. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
13 No. 79/11-48 and imposing the disciplinary order that was stayed thereby revoking Smog Check
14 Station License No. RC 248438, issued to Bill’s Fast Lube & Smog with Francisco Lule and
15 Melvin Nelson as Partners; and

16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 2-5-15

19 Patrick Dorais by Doug Balatti
20 PATRICK DORAIS
21 Chief
22 Bureau of Automotive Repair
23 Department of Consumer Affairs
24 State of California
25 Complainant

DOUG BALATTI
Assist. Chief

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/11-48