

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

In the Matter of the Accusation Against:

LUPE'S AUTOMOTIVE REPAIR, INC.,
dba QUALITY TUNE-UP #51
ROBERTO G. ALCARAZ,
PRES./SECTY/TREAS.
10801 Folsom Blvd.
Rancho Cordova, CA 95670

Automotive Repair Dealer Reg. No.
ARD 271650
Smog Check Station License No.
RC 271650

and

LUPE'S AUTO REPAIR, INC.,
dba QUALITY TUNE-UP #41
ROBERTO G. ALCARAZ,
PRES./SECTY/TREAS.
2545 Arden Way
Sacramento, CA 95825

Automotive Repair Dealer Reg. No. ARD
271897
Smog Check Station License No. RC
271897

Respondents.

Case No. 77/16-24

OAH No. 2015120141

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

June 15, 2016

DATED:

May 23, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STANTON W. LEE
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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 77/16-24

13 **LUPE'S AUTOMOTIVE REPAIR, INC.,**
dba QUALITY TUNE-UP #51
14 **ROBERTO G. ALCARAZ,**
PRES./SECTY/TREAS.
15 **10801 Folsom Blvd.**
Rancho Cordova, CA 95670

OAH No. 2015120141
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Automotive Repair Dealer Reg. No. ARD**
17 **271650**
Smog Check Station License No. RC 271650

18 **and**

19 **LUPE'S AUTO REPAIR, INC.,**
20 **dba QUALITY TUNE-UP #41**
21 **ROBERTO G. ALCARAZ,**
PRES./SECTY/TREAS.
22 **2545 Arden Way**
Sacramento, CA 95825

23 **Automotive Repair Dealer Reg. No. ARD**
24 **271897**
Smog Check Station License No. RC 271897

25 Respondents.
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1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Stanton W. Lee, Deputy Attorney General.

7 2. Respondent Lupe's Automotive Repair, Inc. (also known as "Lupe's Auto Repair,
8 Inc.")¹ dba Quality Tune - Up #51 and Lupe's Auto Repair, Inc. dba Quality Tune-Up #41, and
9 Roberto G. Alcaraz, President ("Respondents") are represented in this proceeding by attorney
10 Michael Levin, whose address is: 3727 Camino del Rio South, Ste. 200, San Diego, CA 92108,
11 (619) 272-6114.

12 3. On or about February 5, 2013, the Bureau of Automotive Repair issued Automotive
13 Repair Dealer Registration No. ARD 271650 to Lupe's Automotive Repair, Inc. (also known as
14 "Lupe's Auto Repair, Inc.") dba Quality Tune-Up #51; Roberto G. Alcaraz, President, Secretary,
15 Treasurer. The Automotive Repair Dealer Registration was in full force and effect at all times
16 relevant to the charges brought in Accusation No. 77/16-24 and will expire on February 29, 2016,
17 unless renewed. On or about February 26, 2013, the Director issued Automotive Repair Dealer
18 Registration Number ARD 271897 ("registration") to Lupe's Auto Repair, Inc. dba Quality Tune-
19 Up #41, with Alcaraz as president, secretary, and treasurer. The registration was in full force and
20 effect at all times relevant to the charges brought herein and will expire on February 28, 2017,
21 unless renewed.

22 4. On or about March 1, 2013, the Bureau of Automotive Repair issued Smog Check
23 Station License No. RC 271650 to Lupe's Automotive Repair, Inc. (also known as "Lupe's Auto
24 Repair, Inc.") dba Quality Tune-Up #51. The Smog Check Station License was in full force and
25 effect at all times relevant to the charges brought in Accusation No. 77/16-24 and will expire on
26 February 29, 2016, unless renewed. On or about March 27, 2013, the Director issued Smog

27 ¹ On December 2, 2015, the corporate name, "Lupe's Automotive Repair, Inc." was
28 changed to "Lupe's Auto Repair, Inc."

1 Check Station License Number RC 271897 to Lupe's Auto Repair, Inc. dba Quality Tune-Up
2 #41. The smog check station license was in full force and effect at all times relevant to the
3 charges brought herein and will expire on February 28, 2017, unless renewed.

4 **JURISDICTION**

5 5. Accusation No. 77/16-24 was filed before the Director of Consumer Affairs
6 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
7 Respondent. The Accusation and all other statutorily required documents were properly served
8 on Respondent on November 19, 2015. Respondent timely filed its Notice of Defense contesting
9 the Accusation.

10 6. A copy of Accusation No. 77/16-24 is attached as exhibit A and incorporated herein
11 by reference.

12 **ADVISEMENT AND WAIVERS**

13 7. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 77/16-24. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

17 8. Respondent is fully aware of its legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 its own expense; the right to confront and cross-examine the witnesses against them; the right to
20 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

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1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 77/16-24.

4 11. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check
5 Station Licenses for Quality Tune-Up #51 and Quality Tune-Up #41 are subject to discipline and
6 they agree to be bound by the Director's probationary terms as set forth in the Disciplinary Order
7 below.

8 CONTINGENCY

9 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or
10 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
11 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
12 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
13 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
14 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the
15 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
16 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
17 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
18 and the Director shall not be disqualified from further action by having considered this matter.

19 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
20 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
21 signatures thereto, shall have the same force and effect as the originals.

22 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
27 writing executed by an authorized representative of each of the parties.
28

1 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
2 and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

3
4 DATED: 3-01-2016 Roberto G. Alcaraz
5 LUPE'S AUTOMOTIVE REPAIR, INC. (also known
6 as "LUPE'S AUTO REPAIR.") DBA QUALITY
7 TUNE - UP #51 and #41; ROBERTO G. ALCARAZ,
8 PRESIDENT
9 Respondents

8 I have read and fully discussed with Respondent Lupe's Automotive Repair, Inc. (also
9 known as "Lupe's Auto Repair, Inc.") dba Quality Tune - Up #51 and #41; Roberto G. Alcaraz,
10 President the terms and conditions and other matters contained in the above Stipulated Settlement
11 and Disciplinary Order. I approve its form and content.

12 DATED: 3/1/2016 Michael Levin
13 Michael Levin
14 Attorney for Respondent

15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the Director of Consumer Affairs

18 Dated: 3/1/16 Respectfully submitted,
19 KAMALA D. HARRIS
20 Attorney General of California
21 KENT D. HARRIS
22 Supervising Deputy Attorney General
23 Stanton W. Lee
24 STANTON W. LEE
25 Deputy Attorney General
26 Attorneys for Complainant

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Exhibit A

Accusation No. 77/16-24

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Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STANTON W. LEE
Deputy Attorney General
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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**

12 In the Matter of the Accusation Against:

Case No. 77/16-24

13 LUPE'S AUTOMOTIVE REPAIR, INC.,
dba QUALITY TUNE-UP #51
14 ROBERTO G. ALCARAZ, PRES./SECTY/TREAS.
10801 Folsom Blvd.
15 Rancho Cordova, CA 95670

ACCUSATION

16 Automotive Repair Dealer Reg. No. ARD 271650
Smog Check Station License No. RC 271650

17 and

18 LUPE'S AUTO REPAIR, INC.,
dba QUALITY TUNE-UP #41
19 ROBERTO G. ALCARAZ, PRES./SECTY/TREAS.
2545 Arden Way
20 Sacramento, CA 95825

21 Automotive Repair Dealer Reg. No. ARD 271897
Smog Check Station License No. RC 271897

22 Respondents.

24 Complainant alleges:

25 PARTIES

26 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
27 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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

4 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
5 suspension of a license by operation of law, or by order or decision of the Director of Consumer
6 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
7 of jurisdiction to proceed with disciplinary action.

8 **STATUTORY AND REGULATORY PROVISIONS**

9 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

19 (4) Any other conduct which constitutes fraud.

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

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

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

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1 11. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

2 The automotive repair dealer shall give to the customer a written
3 estimated price for labor and parts necessary for a specific job. No work shall be done
4 and no charges shall accrue before authorization to proceed is obtained from the
5 customer. No charge shall be made for work done or parts supplied in excess of the
6 estimated price without the oral or written consent of the customer that shall be
7 obtained at some time after it is determined that the estimated price is insufficient and
8 before the work not estimated is done or the parts not estimated are supplied . . .

9 12. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
10 "bureau," "commission," "committee," "department," "division," "examining committee,"
11 "program," and "agency."

12 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
13 "license" includes "registration" and "certificate."

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

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

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

21

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

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

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

16. California Code of Regulations, title 16, section ("Regulation") 3353 states, in
pertinent part:

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

. . . .

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1 (d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For
2 purposes of this article, to tear down" shall mean to disassemble, and teardown" shall
3 mean the act of disassembly. If it is necessary to tear down a vehicle component in
4 order to prepare a written estimated price for required repair, the dealer shall first give
5 the customer a written estimated price for the teardown. This price shall include the
6 cost of reassembly of the component. The estimated price shall also include the cost
7 of parts and necessary labor to replace items such as gaskets, seals and O rings that
8 are normally destroyed by teardown of the component. If the act of teardown might
9 prevent the restoration of the component to its former condition, the dealer shall write
10 that information on the work order containing the teardown estimate before the work
11 order is signed by the customer.

12 The repair dealer shall notify the customer orally and conspicuously in
13 writing on the teardown estimate the maximum time it will take the repair dealer to
14 reassemble the vehicle or the vehicle component in the event the customer elects not
15 to proceed with the repair or maintenance of the vehicle and shall reassemble the
16 vehicle within that time period if the customer elects not to proceed with the repair or
17 maintenance . . .

18 17. Regulation 3356 states, in pertinent part:

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

22 (2) The invoice shall separately list, describe and identify all of the
23 following;

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

26 **COST RECOVERY**

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

31 **RESPONDENTS' APPLICATIONS FOR REGISTRATION**

32 19. Complainant is informed and believes and herein alleges that on or about January 3,
33 2012, Lupe's Auto Repairs was incorporated in the State of California and was assigned
34 Corporation Number 3439280 by the California Secretary of State. The corporation is currently
35 suspended.

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1 authorized a statement which it knew or in the exercise of reasonable care should have known to
2 be untrue or misleading, as follows: On or about February 13, 2013, Respondent's president,
3 Alcaraz, certified on the application in his response to Question 8 (c) that he did not have a
4 current automotive repair dealer registration. In fact, Automotive Repair Dealer Registration
5 Number ARD 271650 had been issued to Lupe's Automotive Repair, Inc., doing business as
6 Quality Tune-Up #51, with Alcaraz as president, secretary, and treasurer, on February 5, 2013, as
7 set forth in paragraph 2 above.

8 **FOURTH CAUSE FOR DISCIPLINE**

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

10 25. Respondent Lupe's Auto Repair's smog check station license is subject to
11 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
12 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set
13 forth in paragraph 24 above.

14 **CONSUMER COMPLAINT (F. N.); 2003 TOYOTA COROLLA**

15 26. On or about September 23, 2013, the Bureau received a complaint from F. N.,
16 alleging that Respondent Lupe's Automotive Repair's facility removed the transmission from his
17 vehicle without his permission.

18 27. On or about October 1, 2013, Bureau Representative T. W. contacted F. N., who
19 stated as follows: On or about September 21, 2013, F. N. took his 2003 Toyota Corolla to
20 Respondent's facility because the clutch would not release and signed a written estimate
21 authorizing a diagnosis of the vehicle for \$140. That same day, F. N. returned to the facility and
22 found that the transmission had been removed. The facility's service writer advised F. N. that
23 there was an internal problem in the transmission and that the problem was not in the clutch
24 assembly. The service writer told F. N. that he could take the vehicle as is or pay another \$110 to
25 have the transmission reinstalled. F. N. authorized the facility to reinstall the transmission. The
26 representative reviewed the facility's repair records on the vehicle, Estimate/Work Order Nos.
27 50891 and 50891-B and Invoice No. 51-50891. Estimate/Work Order No. 50891-B showed that

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1 F. N. had approved a revised estimate price of \$280 for the work on the vehicle, including the
2 reinstallation of the transmission, and had paid the facility a total of \$250.

3 28. On or about October 3, 2013, T. W. met with Respondent's president, Alcaraz, and
4 discussed the complaint. At the conclusion of his investigation, T. W. found that the facility had
5 failed to provide F. N. with a teardown estimate or obtain his approval before removing the
6 transmission from the vehicle.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 (Violations of the Bus. & Prof. Code)

9 29. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
11 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:
12 Respondent removed the transmission from F. N.'s 2003 Toyota Corolla without his oral or
13 written consent.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 (Violations of Regulations)

16 30. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
17 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
18 comply with Regulation 3353, subdivision (d), in a material respect, as follows: Respondent
19 failed to include on the estimates/work orders the cost to re-install the transmission in F. N.'s
20 2003 Toyota Corolla.

21 **CONSUMER COMPLAINT (J. P.): 1993 GEO PRIZM**

22 31. On or about November 22, 2013, the Bureau received a complaint from J. P., alleging
23 that Respondent Lupe's Automotive Repair's facility input the wrong engine size while
24 performing a smog test on his 1993 Geo Prizm, causing the vehicle to fail the test. J. P. provided
25 the Bureau with copies of documents he received from the facility, including a vehicle inspection
26 report ("VIR") dated October 2, 2013.

27 32. On or about December 2, 2013, Bureau Representative T. W. contacted J. P. and
28 discussed the complaint. J. P. stated that on or about October 2, 2013, he took his vehicle to

1 Respondent's facility for a smog inspection. According to the VIR given to J. P., the vehicle
2 failed the inspection due to excessive tailpipe emissions. J. P. paid the facility \$50.90 for the test.
3 Later, J. P. looked at the VIR and noted that Respondent's smog check technician, Domingo
4 Johnson ("Johnson"), had entered the engine size as 1.8 liter when, in fact, the vehicle was
5 equipped with a 1.6 liter engine. On or about October 5, 2013, J. P. took the vehicle to another
6 facility and requested a smog inspection. The vehicle passed the test. The VIR provided by the
7 facility showed that the engine size had been properly input as 1.6 liter. J. P. contacted his credit
8 card company and had the \$50.90 charge paid to Respondent's facility reversed.

9 33. That same day (December 2, 2013), T. W. went to the facility and reviewed various
10 documents with Alcaraz, including the VIR dated October 2, 2013 and the vehicle's test history
11 (prior VIR's) that the Bureau had received from J. P. Alcaraz agreed that the entry of the
12 incorrect engine size during the October 2, 2013, smog test changed the emission cut-points
13 (tailpipe emission pass/fail standards). The VIR also showed that Johnson had entered the results
14 of the functional ignition timing test on the vehicle as "pass" at 23 degrees before top dead center
15 ("BTDC"). T. W. pointed out that the manufacturer's ignition timing specifications on the
16 vehicle are 10 degrees BTDC. Alcaraz agreed that if the ignition timing on the vehicle was truly
17 set at 23 degrees BTDC, the vehicle would have failed the functional portion of the smog
18 inspection.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 34. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
22 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
23 authorized statements which it knew or in the exercise of reasonable care should have known to
24 be untrue or misleading, as follows:

25 a. Respondent's smog check technician, Johnson, certified under penalty of perjury on
26 the VIR dated October 2, 2013, that J. P.'s 1993 Geo Prizm had a 1.8 liter engine. In fact, the
27 vehicle is equipped with a 1.6 liter engine.

28 b. Respondent's smog check technician, Johnson, certified under penalty of perjury on

1 the VIR dated October 2, 2013, that J. P.'s 1993 Geo Prizm had passed the functional ignition
2 timing test at 23 degrees BTDC. In fact, the manufacturer's ignition timing specifications on the
3 vehicle are 10 degrees BTDC (if the vehicle's ignition timing had been set to 23 degrees BTDC,
4 the vehicle would not pass the inspection required by Health & Saf. Code section 44012).

5 **EIGHTH CAUSE FOR DISCIPLINE**

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

7 35. Respondent Lupe's Automotive Repair's smog check station license is subject to
8 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
9 Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:
10 Respondent failed to ensure that the functional ignition timing test was performed on J. P.'s 1993
11 Geo Prizm in accordance with procedures prescribed by the department.

12 **NINTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Regulations Pursuant**
14 **to the Motor Vehicle Inspection Program)**

15 36. Respondent Lupe's Automotive Repair's smog check station license is subject to
16 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
17 Respondent failed to comply with Regulation 3340.42, as follows: Respondent failed to ensure
18 that the required smog tests were conducted on J. P.'s 1993 Geo Prizm in accordance with the
19 Bureau's specifications.

20 **TENTH CAUSE FOR DISCIPLINE**

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

22 37. Respondent Lupe's Automotive Repair's smog check station license is subject to
23 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
24 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
25 forth in paragraph 34 above.

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1 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:
2 Respondent installed a new crank angle sensor in T. F.'s 1999 Chrysler LHS without her oral or
3 written consent.

4 **TWELFTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations)**

6 42. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
7 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
8 comply with Regulation 3356, subdivision (a)(2)(A), in a material respect, as follows:
9 Respondent failed to list, identify or describe on Invoice #51-52308 all repairs performed on the
10 vehicle, the installation of the crank angle sensor.

11 **CONSUMER COMPLAINT (D. D.): 2001 TOYOTA ECHO**

12 43. On or about April 7, 2014, the Bureau received a complaint from D. D., alleging that
13 Respondent Lupe's Automotive Repair's facility performed unnecessary repairs on her 2001
14 Toyota Echo.

15 44. On or about April 9, 2014, Bureau Representative T. S. called D. D. and spoke with
16 her regarding the complaint. D. D. stated that on April 1, 2014, she took her vehicle to Firestone
17 Complete Auto Care ("Firestone") for service. Firestone performed a diagnosis of the on-board
18 computer as the check engine light was on and found that the ignition coil was defective.
19 Firestone replaced the ignition coil, air filter, two accessory belts, and the spark plugs, and
20 performed an oil/filter change, cooling system service, and fuel injection service. That same day,
21 D. D. took the vehicle to Respondent's facility for a smog inspection. The vehicle failed the
22 inspection (the VIR provided to D. D. showed that the vehicle failed the emissions test and the
23 OBD system check). D. D. authorized the facility to perform a diagnosis of the vehicle to
24 determine the cause of the emissions failure. Later, D. D. was advised that the oxygen sensor and
25 catalytic converter needed to be replaced. D. D. authorized the repairs. After the work was
26 completed, the facility contacted D. D. and recommended replacing the valve cover gasket due to
27 a leak and the spark plugs due to oil contamination. D. D. and her brother went to Firestone and
28 discussed the recommended repairs. Firestone advised D. D. that the valve cover gasket was not

1 leaking, the spark plugs were new, and they did not believe the oxygen sensor or the catalytic
2 converter were in need of replacement as there were no fault codes pending or stored in the on-
3 board computer at the time they inspected the vehicle. D. D. and her brother went to
4 Respondent's facility and confronted the manager. Despite a heated discussion, D. D. agreed to
5 have the valve cover replaced, and paid the facility \$1,055.68 for the repairs.

6 45. That same day (April 9, 2014), T. S. made a field visit to Firestone and met with the
7 general manager, J. L. J. L. stated that they replaced the spark plugs on the vehicle, that there
8 were no signs of an internal or external oil leak from the valve cover gasket, and that no oxygen
9 sensor or catalytic converter fault codes were stored in the on-board computer.

10 46. On or about April 16, 2014, T. S. went to Respondent's facility and discussed the
11 complaint with the manager, Lorena Rodriguez ("Rodriguez"). Rodriguez claimed that D. D. was
12 shown the oil on the spark plugs from the leaking valve cover gasket and that their recommended
13 repairs were legitimate. T. S. obtained copies of Respondent's repair records on the vehicle,
14 including Invoice #51-53589. The invoice indicated that a #P0420 catalyst efficiency fault code
15 was found during the facility's diagnosis of the vehicle.

16 47. T. S. reviewed information from the Bureau's vehicle information database showing
17 that a P0420 fault code was not stored or pending in the vehicle's computer memory. T. S. found
18 that Respondent's facility failed to follow recommended procedures in diagnosing the emissions
19 failure on the vehicle and made an untrue or misleading statement on the invoice.

20 **THIRTEENTH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 48. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
23 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
24 authorized a statement which it knew or in the exercise of reasonable care should have known to
25 be untrue or misleading, as follows: Respondent represented on the invoice that a pending P0420
26 catalyst efficiency fault code was found during the facility's emissions failure diagnosis of D.
27 D.'s 2001 Toyota Echo. In fact, that fault code was not stored or pending in the vehicle's
28 computer memory.

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 49. Respondent Lupe's Automotive Repair's smog check station license is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
5 Respondent failed to comply with section 44016 of that Code, as follows: Respondent failed to
6 diagnose the cause of the emissions failure on D. D.'s 2001 Toyota Echo in accordance with
7 established specifications and procedures; specifically, Respondent performed an oxygen sensor
8 rise time test which was not applicable to that make or model vehicle since it is equipped with an
9 On Board Diagnostic II (OBDII) operating system.

10 **FIFTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**
12 **to the Motor Vehicle Inspection Program)**

13 50. Respondent Lupe's Automotive Repair's smog check station license is subject to
14 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
15 Respondent failed to comply with Regulation 3340.41, subdivision (d), as follows: Respondent
16 failed to follow applicable specifications and procedures when diagnosing the cause of the
17 emissions failure on D. D.'s 2001 Toyota Echo.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

20 51. Respondent Lupe's Automotive Repair's smog check station license is subject to
21 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
22 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set
23 forth in paragraph 48 above.

24 **CONSUMER COMPLAINT (A. B.): 1991 MITSUBISHI ECLIPSE**

25 52. On or about October 9, 2014, the Bureau received a complaint from A. B., alleging
26 that Respondent Lupe's Automotive Repair's facility failed to return the original starter on her
27 1991 Mitsubishi Eclipse after replacing the part on the vehicle.

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1 EIGHTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 57. Respondent Lupe's Automotive Repair's smog check station license is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
5 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set
6 forth in paragraph 56 above.

7 CONSUMER COMPLAINT (F. B.): 1996 NISSAN MAXIMA

8 58. On or about November 13, 2014, the Bureau received a complaint from F. B.,
9 alleging that Respondent Lupe's Automotive Repair's facility damaged the radiator in his 1996
10 Nissan Maxima during their diagnosis of the vehicle.

11 59. On or about November 21, 2014, Bureau Representative T. W. spoke with F. B.
12 regarding the complaint. F. B. stated that the vehicle's malfunction indicator lamp ("MIL")
13 illuminated soon after he was involved in a rear-end collision. On or about November 11, 2014,
14 F. B. took the vehicle to the facility and requested a diagnosis of the MIL. After the diagnosis
15 was completed, F. B. paid the facility \$80 and received a copy of Invoice #51-56503. The
16 invoice indicated that 3 fuel evaporative system ("EVAP") fault codes had been stored in the on-
17 board computer and that the EVAP canister had a large leak. The facility recommended replacing
18 the EVAP canister, an EVAP purge valve and a fuel cap, which F. B. declined. F. B. decided to
19 repair the vehicle himself and went to a local auto parts store. When F. B. raised the hood to
20 verify the engine size, he found a wooden stick lying on top of the engine close to the radiator.
21 The next day, F. B. discovered that the vehicle was leaking coolant. On or about November 13,
22 2014, F. B. returned the vehicle to the facility. F. B. was advised that the wooden stick was used
23 to hold the hood open during the facility's prior diagnosis of the vehicle. The facility inspected
24 the vehicle and found that the radiator was defective and was leaking coolant at the top tank pinch
25 point. F. B. contends that the facility caused the coolant leak by placing the stick on top of the
26 radiator and slamming the hood.

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1 65. At approximately 1535 hours, the service advisor contacted the operator and told her
2 that the brakes on the vehicle were "metal to metal", that the vehicle needed new brakes and one
3 rotor, and that the power steering and transmission fluids should be changed. The operator asked
4 about the diagnosis of the sensor problem and service light. The service advisor told the operator
5 that the vehicle needed a new sensor, but recommended that the brakes be repaired first. The
6 operator stated that she needed to get the smog and registration paid for first. The service advisor
7 told the operator that she would call her back with a price to replace the sensor.

8 66. At approximately 1550 hours, the service advisor called the operator and told her that
9 it would cost \$355.94 to replace the MAF sensor and that the computer monitors would have to
10 be reset. The service advisor also recommended that the brakes be replaced. The operator
11 authorized the replacement of the MAF sensor, but declined the brake repairs.

12 67. On or about August 28, 2014, the operator went to the facility to retrieve the vehicle
13 and was informed that the technician had taken it on a road test. The technician, later identified
14 as Alcaraz, returned with the vehicle. The operator asked Alcaraz to show her the defective
15 sensor that he had replaced on the vehicle. Alcaraz reached into a box on a nearby shelf and
16 showed the operator a sensor. The operator asked Alcaraz if she could keep the part. Alcaraz
17 consulted with the service advisor, then told the operator that she would have to pay a \$95 "core
18 charge" for the part. Alcaraz stated that he found a broken wire on the vehicle and had fixed it
19 free of charge. The operator authorized the \$95 core charge, paid the facility \$693 for the repairs,
20 and was given copies of Invoice [REDACTED], a VIR, a Multi-Point Courtesy Checklist, and the
21 original MAF sensor. The invoice indicated that a "gray wire" to the MAF sensor had been
22 repaired and that the sensor was not sending a signal back to the computer.

23 68. On and between August 28, 2014, and September 2, 2014, the Bureau inspected the
24 vehicle and found that the broken wire to the MAF sensor had been repaired as set forth on the
25 invoice. The Bureau also found that Respondent's facility had performed unnecessary repairs on
26 the vehicle and had damaged the original MAF sensor on the vehicle. The total estimated value
27 of the repairs Respondent failed to perform on the vehicle is approximately \$365.94.

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1 TWENTIETH CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

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

7 a. Respondent's service writer represented to the operator that the Bureau's 2002 Ford
8 failed the smog inspection, that the vehicle had a sensor problem, and that the MAF sensor was in
9 need of replacement. In fact, the only repair needed on the vehicle to resolve the problem with
10 the illuminated MIL was the repair of the open circuit (broken wire) to the MAF sensor. Further,
11 the MAF sensor was in good working condition and was not in need of replacement at the time
12 the vehicle was taken to Respondent's facility.

13 b. Respondent's service writer represented to the operator that the brakes (rear brakes)
14 on the Bureau's 2002 Ford were "metal to metal", that the vehicle needed new brakes and one
15 rotor, and that the power steering and transmission fluids should be changed. In fact, the rear
16 brakes were not in need of replacement, and the power steering and transmission fluids were in
17 good condition, met manufacturer's specifications, and were not in need of replacement at the
18 time the vehicle was taken to Respondent's facility.

19 c. Respondent represented on the Multi-Point Courtesy Checklist that the rear brake
20 pads and rotor and transmission, brake, power steering, and differential fluids should be replaced
21 on the Bureau's 2002 Ford. In fact, none of those repairs or services were needed on the vehicle.

22 TWENTY-FIRST CAUSE FOR DISCIPLINE

23 (Fraud)

24 70. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
25 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
26 acts constituting fraud, as follows: Respondent's service writer made a false or misleading
27 representation to the operator regarding the Bureau's 2002 Ford, as set forth in subparagraph 69
28 (a) above, in order to induce the operator to authorize and pay for an unnecessary repair on the

1 vehicle, then sold the operator an unnecessary repair, the replacement of the MAF sensor.
2 Further, Respondent's facility damaged the original MAF sensor.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

4 **(Departure from Trade Standards)**

5 71. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
6 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully
7 departed from or disregarded accepted trade standards for good and workmanlike repair without
8 the consent of the owner or the owner's duly authorized representative in a material respect, as
9 follows: Respondent failed to properly diagnose the cause of the illuminated MIL on the
10 Bureau's 2002 Ford in that Respondent determined that the MAF sensor was defective. In fact,
11 the MAF sensor was in good working condition and was not in need of replacement at the time
12 the vehicle was taken to Respondent's facility.

13 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

14 **(Violations of the Bus. & Prof. Code)**

15 72. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
17 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:
18 Respondent repaired the broken wire (open circuit) to the MAF sensor on the Bureau's 2002 Ford
19 without the operator's oral or written consent.

20 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

22 73. Respondent Lupe's Automotive Repair's smog check station license is subject to
23 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
24 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
25 forth in paragraphs 69 and 70 above.

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UNDERCOVER OPERATION #2: 2001 DODGE

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2 74. On or about November 18, 2014, an undercover operator of the Bureau ("operator")
3 took the Bureau's 2001 Dodge to Respondent Lupe's Automotive Repair's facility and requested
4 an oil change. A defective oxygen sensor heater relay was installed in the Bureau-documented
5 vehicle, causing the MIL to illuminate on the dashboard. Alcaraz recommended a "high mileage"
6 oil change service on the vehicle due to its age and mileage. The operator authorized the work
7 and signed and received a copy of a written estimate in the amount of \$52.90. The estimate
8 indicated that the oil change service would include a tire rotation, brake inspection, and courtesy
9 inspection. The operator left the facility.

10 75. At approximately 1208 hours that same day, the operator received a call from
11 Alcaraz, informing her that the service light was on in the vehicle. Alcaraz gave the operator a
12 verbal estimate of \$80 to perform a diagnosis on the vehicle, which the operator authorized.

13 76. At approximately 1354 hours, Alcaraz called the operator and told her that one of the
14 rear oxygen sensors on the vehicle was bad and the other one was lazy. Alcaraz recommended
15 that the operator replace both rear oxygen sensors, but, when asked by the operator,
16 acknowledged that only one of the sensors had caused the MIL to illuminate. The operator asked
17 Alcaraz to replace just the bad sensor at an additional cost of \$247.

18 77. At approximately 1535 hours, the operator went to the facility to pick up the vehicle.
19 A technician came into the office while the operator was paying the bill and stated that the MIL
20 had come back on in the vehicle. Alcaraz asked the operator to leave the vehicle overnight. The
21 operator left the facility.

22 78. On November 19, 2014, at approximately 1129 hours, the operator returned to the
23 facility, paid \$412.76 for the repairs, and received a copy of Invoice [REDACTED].

24 79. On or about November 19 and 20, 2014, the Bureau inspected the vehicle and found
25 that the defective oxygen sensor heater relay had been replaced as invoiced. The Bureau also
26 found that Respondent's facility failed to rotate the tires or inspect the brakes and replaced the
27 downstream oxygen sensor when it was in good working condition and not in need of
28 replacement. The total estimated value of the unnecessary repairs that were performed on the

1 vehicle is approximately \$244.88.

2 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

3 **(Untrue or Misleading Statements)**

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

8 a. Respondent's president, Alcaraz, represented to the operator that one of the rear
9 oxygen sensors on the Bureau's 2001 Dodge was bad causing the MIL to illuminate on the
10 dashboard and that the part should be replaced. In fact, the only repair needed on the vehicle to
11 resolve the problem with the illuminated MIL was the replacement of the defective oxygen sensor
12 heater relay. Further, the bank 1, sensor 2, oxygen sensor was new, was in good working
13 condition, and was not in need of replacement at the time the vehicle was taken to the facility.

14 b. Respondent represented on the invoice that the heater resistance for the bank 1, sensor
15 2, oxygen sensor on the Bureau's 2001 Dodge was infinity ohms when, in the fact, the heater
16 resistance of the sensor was 4.6 ohms and was within manufacturer's specifications at the time
17 the vehicle was taken to Respondent's facility.

18 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 81. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
21 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
22 acts constituting fraud, as follows:

23 a. Respondent's president, Alcaraz, made a false or misleading representation to the
24 operator regarding the Bureau's 2001 Dodge, as set forth in subparagraph 80 (a) above, in order
25 to induce the operator to authorize and pay for an unnecessary repair on the vehicle, then sold the
26 operator an unnecessary repair, the replacement of the bank 1, sensor 2, oxygen sensor.

27 b. Respondent obtained payment from the operator for performing a high mileage oil
28 change service on the Bureau's 2001 Dodge, including a tire rotation, brake inspection, and

1 courtesy inspection. In fact, Respondent failed to rotate the tires or inspect the brakes.

2 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

3 **(Violations of the Bus. & Prof. Code)**

4 82. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
5 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
6 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:
7 Respondent replaced the oxygen sensor heater relay on the Bureau's 2001 Dodge without the
8 operator's oral or written consent.

9 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

11 83. Respondent Lupe's Automotive Repair's smog check station license is subject to
12 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
13 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
14 forth in paragraphs 80 and 81 above.

15 **UNDERCOVER OPERATION #3: 1999 CHEVROLET**

16 84. On or about December 10, 2014, an undercover operator of the Bureau ("operator")
17 had the Bureau's 1999 Chevrolet towed to Respondent Lupe's Automotive Repair's facility. A
18 defective fuel pump relay had been installed in the Bureau-documented vehicle, preventing the
19 engine from starting. The operator rode in the tow truck during the transport of the vehicle and
20 met with Lorena upon arrival at the facility. The operator told Lorena that the vehicle would not
21 start and requested a diagnosis. The operator signed and received a copy of a written estimate in
22 the amount of \$80 for the diagnosis, then left the facility.

23 85. At approximately 1340 hours that same day, Lorena called the operator and told him
24 that the fuel pump relay was bad, the fuel filter was clogged, and the fuel system was dirty.
25 Lorena stated that a dirty fuel system was bad and that the vehicle needed a fuel injection flush.
26 Loreno then told the operator that the engine oil was low and asked him when it was last changed
27 on the vehicle. The operator stated that he did not know. Lorena told the operator that the power
28 steering fluid looked dark and that dark fluid was bad for the power steering system. Lorena

1 recommended that the power steering system be flushed. Loreno also recommended that a tune
2 up be performed for maintenance, and gave the operator an estimate of \$319 to replace the spark
3 plugs. The operator authorized the replacement of the fuel pump and fuel filter service, the oil
4 change, and the power steering flush at a total cost of \$469.57.

5 86. On or about December 11, 2014, the operator returned to the facility to pick up the
6 vehicle and met with Alcaraz. The operator paid Alcaraz \$469.51 for the repairs and received a
7 copy of Invoice [REDACTED]. The operator asked Alcaraz, "What's with the tune-up Lorena called
8 about." Alcaraz told the operator that the spark plug wires showed high resistance and looked
9 original and made a note to this effect on the operator's copy of the invoice. The operator
10 requested a tune-up of the vehicle at a cost of \$319. Alcaraz told the operator that the vehicle
11 would be ready in 45 minutes. The operator left the facility at approximately 1415 hours and
12 returned at approximately 1550 hours. The operator paid the facility \$334.29 and received a copy
13 of Invoice [REDACTED].

14 87. On or about December 22, 2014, the Bureau inspected the vehicle and found that
15 Respondent's facility performed unnecessary repairs. The total estimated value of the
16 unnecessary repairs that were performed on the vehicle is approximately \$498.90.

17 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 88. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
20 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
21 authorized statements which it knew or in the exercise of reasonable care should have known to
22 be untrue or misleading, as follows:

23 a. Respondent's employee, Lorena, represented to the operator that the fuel filter on the
24 Bureau's 1999 Chevrolet was clogged. In fact, the fuel filter was new, was in good working
25 condition, and was not in need of replacement at the time the vehicle was taken to Respondent's
26 facility. Further, the only repair needed on the vehicle was the replacement of the defective fuel
27 pump relay.

28 b. Respondent's employee, Lorena, represented to the operator that the fuel system on

1 the Bureau's 1999 Chevrolet was dirty, that a dirty fuel system was bad, and that the vehicle
2 needed a fuel injection flush. In fact, the fuel injectors, fuel pump pressure, and fuel pressure
3 regulator were within manufacturer's specifications at the time the vehicle was taken to
4 Respondent's facility and the vehicle was not in need of a fuel injection service.

5 c. Respondent's president, Alcaraz, represented to the operator that the spark plug wires
6 on the Bureau's 1999 Chevrolet showed high resistance and looked original. In fact, the spark
7 plugs and spark plug wires were new, were in good working condition, and were not in need of
8 replacement at the time the vehicle was taken to Respondent's facility.

9 **THIRTIETH CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 89. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action
12 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed
13 acts constituting fraud, as follows: Respondent's employee, Lorena, and president, Alcaraz, made
14 false or misleading representations to the operator regarding the Bureau's 1999 Chevrolet, as set
15 forth in paragraph 88 above, in order to induce the operator to authorize and pay for unnecessary
16 repairs on the vehicle, then sold the operator unnecessary repairs, including the replacement of
17 the fuel filter, spark plugs and spark plug wires and the fuel injection service.

18 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

20 90. Respondent Lupe's Automotive Repair's smog check station license is subject to
21 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
22 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
23 forth in paragraphs 88 and 89 above.

24 **OTHER MATTERS**

25 91. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
26 suspend, revoke, or place on probation the registration for all places of business operated in this
27 state by Respondent Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51,
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1 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations
2 of the laws and regulations pertaining to an automotive repair dealer.

3 92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
4 Number RC 271650, issued to Respondent Lupe's Automotive Repair, Inc., doing business as
5 Quality Tune-Up #51, is revoked or suspended, any additional license issued under this chapter in
6 the name of said licensee may be likewise revoked or suspended by the Director.

7 93. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
8 suspend, revoke, or place on probation the registration for all places of business operated in this
9 state by Respondent Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41, upon a
10 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
11 laws and regulations pertaining to an automotive repair dealer.

12 94. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
13 Number RC 271897, issued to Respondent Lupe's Auto Repair, Inc., doing business as Quality
14 Tune-Up #41, is revoked or suspended, any additional license issued under this chapter in the
15 name of said licensee may be likewise revoked or suspended by the Director.

16 **PRAYER**

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

- 19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 271650, issued to Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51;
- 21 2. Revoking or suspending any other automotive repair dealer registration issued to
22 Lupe's Automotive Repair, Inc.;
- 23 3. Revoking or suspending Smog Check Station License Number RC 271650, issued to
24 Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51;
- 25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 and Safety Code in the name of Lupe's Automotive Repair, Inc.;
- 27 5. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 271897, issued to Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41;

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6. Revoking or suspending any other automotive repair dealer registration issued to Lupe's Auto Repair, Inc.;

7. Revoking or suspending Smog Check Station License Number RC 271897, issued to Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Lupe's Auto Repair, Inc.;

9. Ordering Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51, and Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

10. Taking such other and further action as deemed necessary and proper.

DATED: November 18, 2015 Patrick Dorais

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

SA2015104449