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

11 In the Matter of the Accusation Against:
12 **SUPERIOR TIRES AND FLEET SERVICE, INC.**
13 **dba SUPERIOR TIRES & FLEET SERVICE, INC.**
415 W. Emporia St.
14 Ontario, CA 91762
15 **RAFAEL SOTO, President/ Treasurer**
16 Automotive Repair Dealer Registration No.
ARD 272215,
17
18 Respondent.

Case No. 77/15-19

A C C U S A T I O N

19 Complainant alleges:

20 **PARTIES**

- 21 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
22 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
- 23 2. On or about March 18, 2013, the Bureau of Automotive Repair (Bureau) issued
24 Automotive Repair Dealer Registration No. ARD 272215 to Superior Tires and Fleet Service,
25 Inc., doing business as Superior Tires & Fleet Service, Inc., with Rafael Soto as President/
26 Treasurer (Respondent). The Automotive Repair Dealer Registration was in full force and effect
27 at all times relevant to the charges brought herein and will expire on March 31, 2015, unless
28 renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Bureau under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 490 states, in pertinent part:

6 "(a) In addition to any other action that a board is permitted to take against a licensee, a
7 board may suspend or revoke a license on the ground that the licensee has been convicted of a
8 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
9 or profession for which the license was issued.

10 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
11 discipline a licensee for conviction of a crime that is independent of the authority granted under
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
13 of the business or profession for which the licensee's license was issued.

14 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
18 made suspending the imposition of sentence, irrespective of a subsequent order under the
19 provisions of Section 1203.4 of the Penal Code."

20 5. Section 493 states:

21 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
22 the department pursuant to law to deny an application for a license or to suspend or revoke a
23 license or otherwise take disciplinary action against a person who holds a license, upon the
24 ground that the applicant or the licensee has been convicted of a crime substantially related to the
25 qualifications, functions, and duties of the licensee in question, the record of conviction of the
26 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
27 and the board may inquire into the circumstances surrounding the commission of the crime in
28 order to fix the degree of discipline or to determine if the conviction is substantially related to the

1 qualifications, functions, and duties of the licensee in question. "As used in this section, 'license'
2 includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

3 6. Section 9884.7 states, in pertinent part:

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

9

10 "(4) Any other conduct that constitutes fraud."

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

15 8. Section 9889.3 states, in pertinent part:

16 "The director may suspend, revoke, or take other disciplinary action against a license as
17 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division
18 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

19

20 "(b) Is convicted of any crime substantially related to the qualifications, functions and
21 duties of the license holder in question.

22

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

24 **REGULATORY PROVISIONS**

25 9. California Code of Regulations, title 16, section 3395.2 states, in pertinent part:

26 "A crime or act shall be considered to be substantially related to the qualifications,
27 functions, or duties of a registrant if to a substantial degree it shows that the registrant is presently

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1 or potentially unfit to perform the functions authorized by the registration in a manner consistent
2 with the public health, safety, or welfare.”

3 **COST RECOVERY**

4 10. Section 125.3 provides, in pertinent part, that a Board may request the administrative
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Substantially Related Crime)**

10 11. Respondent is subject to disciplinary action under Sections 9889.3, subdivision (b)
11 and 490, in conjunction with California Code of Regulations, title 16, section 3395.2, in that
12 Respondent has been convicted of a crime substantially related to the qualifications, functions or
13 duties of an automotive repair dealer. On or about March 4, 2014, after pleading guilty,
14 Respondent was convicted of one felony count of violating Penal Code section 487, subdivision
15 (a) [grand theft] in the criminal proceeding entitled *The People of the State of California v. Rafael*
16 *Soto* (San Bernardino County Superior Court Case No. FWV1303780). The Court sentenced
17 Respondent to serve 180 days in San Bernardino County Jail, ordered Respondent to pay
18 restitution in the amount of \$3,664.49 plus a 10% administrative fee, and placed him on 36
19 months supervised probation, with terms and conditions. The circumstances surrounding the
20 conviction are that on or about May 1, 2013, Respondent failed to replace a used engine in the
21 victim’s van, as paid for and invoiced during repairs ending in February 2013, for a total amount
22 of loss to the consumer of \$3,664.49.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Acts Involving Dishonesty, Fraud or Deceit)**

25 12. Respondent is subject to disciplinary action under Sections 9889.3, subdivision (d)
26 and 9884.7, subdivision (a)(4), in that Respondent has committed acts involving dishonesty,
27 fraud, or deceit. Complainant refers to, and by this reference incorporates, the allegations set
28 forth above, in paragraph 11, as though set forth fully.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 272215, issued to Superior Tires and Fleet Service, Inc., doing business as Superior Tires & Fleet Service, Inc., with Rafael Soto as President/ Treasurer;
2. Ordering Rafael Soto to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

October 8, 2014



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

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(rev.10/7/14)