

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

In the Matter of the Accusation Against:

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

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

and

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

Advanced Emission Specialist Technician
License No. EA 145691

Respondents.

Case No. 79/07-52

OAH No. 2007040897

DECISION

The attached Stipulated Settlement and Disciplinary Order Only As To Respondent Tito Hugo Soriano Carbajal is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Tito Hugo Soriano Carbajal, Advanced Emission Specialist Technician License No. EA 145691.

The suspension of Advanced Emission Specialist Technician License No. EA 145691 shall commence on the effective date of this Decision.

This Decision shall become effective 5/8/09.

DATED: March 30, 2009


DORÉATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GREGORY J. SALUTE, State Bar No. 164015
Supervising Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2520
Facsimile: (213) 897-2804
6

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 TITO HUGO SORIANO CARBAJAL
43827 Adler Avenue
13 Lancaster, CA 93534
Advanced Emission Specialist License No. EA
14 145691

15 Respondent.

Case No. 79/07-52

OAH No. L-2007040897

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER ONLY AS
TO RESPONDENT TITO HUGO
SORIANO CARBAJAL**

16
17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive
22 Repair. She brought this action solely in her official capacity and is represented in this matter by
23 Edmund G. Brown Jr., Attorney General of the State of California, by Gregory J. Salute,
24 Supervising Deputy Attorney General.

25 2. Respondent Tito Hugo Soriano Carbajal (Respondent) is represented in
26 this proceeding by attorney Jeffrey T. Osborn, Esq., whose address is 16152 Beach Blvd., Ste.
27 250, Huntington Beach, CA 92647.

28 3. On or about August 29, 2002, the Director issued Advanced Emission

1 Specialist Technician License Number EA 145691 to Tito Hugo Soriano Carbajal a.k.a. Tito H.
2 Soriano (Respondent). Respondent's advanced emission specialist technician license was in full
3 force and effect at all times relevant to the charges brought herein and will expire on January 31,
4 2011, unless renewed.

5 JURISDICTION

6 4. Accusation No. 79/07-52 was filed before the Director of Consumer
7 Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending
8 against Respondent. The Accusation and all other statutorily required documents were properly
9 served on Respondent on March 26, 2007. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. 79/07-52 is attached as exhibit A and
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. 79/07-52. Respondent has also
15 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
16 Settlement and Disciplinary Order.

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

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

26 CULPABILITY

27 8. Respondent admits the truth of each and every charge and allegation in
28 Accusation No. 79/07-52.

1 following terms and conditions:

2 1. **Actual Suspension.** Advanced Emission Specialist License No. EA
3 145691 issued to Respondent Tito Hugo Soriano Carbajal is suspended for seven (7) days.

4 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
5 automotive inspections, estimates and repairs.

6 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the
7 beginning and ending dates of the suspension and indicating the reason for the suspension. The
8 sign shall be conspicuously displayed in a location open to and frequented by customers and shall
9 remain posted during the entire period of actual suspension.

10 4. **Reporting.** Respondent or Respondent's authorized representative must
11 report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule
12 set by the Bureau, but no more frequently than each quarter, on the methods used and success
13 achieved in maintaining compliance with the terms and conditions of probation.

14 5. **Report Financial Interest.** Within 30 days of the effective date of this
15 action, report any financial interest which any partners, officers, or owners of the Respondent
16 facility may have in any other business required to be registered pursuant to Section 9884.6 of the
17 Business and Professions Code.

18 6. **Random Inspections.** Provide Bureau representatives unrestricted access
19 to inspect all vehicles (including parts) undergoing repairs, up to and including the point of
20 completion.

21 7. **Jurisdiction.** If an accusation is filed against Respondent during the term
22 of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
23 until the final decision on the accusation, and the period of probation shall be extended until such
24 decision.

25 8. **Violation of Probation.** Should the Director of Consumer Affairs
26 determine that Respondent has failed to comply with the terms and conditions of probation, the
27 Department may, after giving notice and opportunity to be heard suspend or revoke the license.

28 9. **Continuing Education Courses.** During the period of probation,

1 Respondent shall attend and successfully complete a Bureau certified 16 hour clean air course,
 2 applicable to the class of license held by the Respondent. Said course shall be completed and
 3 proof of completion submitted to the Bureau within 60 days of the effective date of this decision
 4 and order. If proof of completion of the course is not furnished to the Bureau within the 60-day
 5 period, Respondents' license shall be immediately suspended until such proof is received.

6 10. **Cooperation.** Respondent shall fully cooperate (including providing
 7 testimony as required) in connection with the Los Angeles City Attorney's Office and the
 8 California Attorney General's Office prosecution of criminal proceedings and/or administrative
 9 proceedings against co-Respondent Lea Auto Repair and/or its principals or employees.

10 ACCEPTANCE

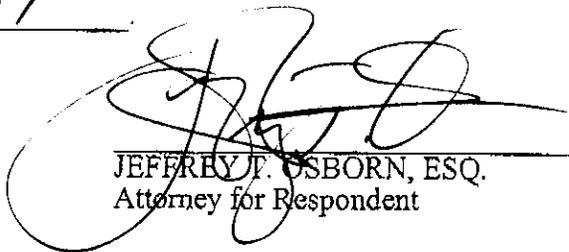
11 I have carefully read the above Stipulated Settlement and Disciplinary Order and
 12 have fully discussed it with my attorney, Jeffrey T. Osborn, Esq. I understand the stipulation and
 13 the effect it will have on my Advanced Emission Specialist License. I enter into this Stipulated
 14 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
 15 bound by the Decision and Order of the Director of Consumer Affairs.

16 DATED: 3/11/09

17
 18 
 19 _____
 20 TITO HUGO SORIANO CARBAJAL (Respondent)

21 I have read and fully discussed with Respondent Tito Hugo Soriano Carbajal the
 22 terms and conditions and other matters contained in the above Stipulated Settlement and
 23 Disciplinary Order. I approve its form and content.

24 DATED: 3-14-09

25
 26 
 27 _____
 28 JEFFREY T. OSBORN, ESQ.
 Attorney for Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

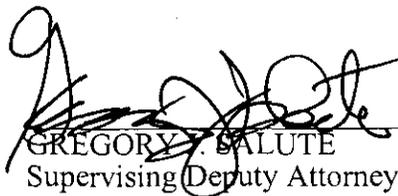
ENDORSEMENT

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

DATED: 3-20-09

EDMUND G. BROWN JR., Attorney General
of the State of California

KAREN B. CHAPPELLE
Supervising Deputy Attorney General



GREGORY J. SALUTE
Supervising Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2006601811

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A
Accusation No. 79/07-52

1 EDMUND G. BROWN, JR., Attorney General
of the State of California
2 KAREN CHAPPELLE,
Supervising Deputy Attorney General
3 GREGORY J. SALUTE, State Bar No. 164015
Supervising Deputy Attorney General
4 California Department of Justice
300 South Spring Street, Suite 1702
5 Los Angeles, California 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

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

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

16 and

17
18 **TITO HUGO SORIANO CARBAJAL a.k.a.**
19 **TITO H. SORIANO**
43827 Adler Avenue,
Lancaster, Ca. 93534

20
21 Advanced Emission Specialist Technician
License No. EA 145691

22
23 Respondents.

Case No. 79/07-52

OAH No. 2007040897

FIRST AMENDED ACCUSATION

[SMOG CHECK]

24
25 Complainant alleges:

26 **PARTIES**

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

1 Affairs.

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

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

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

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

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

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

18 **JURISDICTION**

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

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

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

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

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

4 STATUTORY AND REGULATORY PROVISIONS

5 Statutory Provisions

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

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

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

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

20

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

22 “(5) Conduct constituting gross negligence.

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

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

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

. . . .

“(c) Notwithstanding subdivision (b), the director may refuse to
validate, or may invalidate temporarily or permanently, the registration
for all places of business operated in this state by an automotive repair
dealer upon a finding that the automotive repair dealer has, or is, engaged
in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.”

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

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

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

12 "Board" as used in any provision of this Code, refers to the board in
13 which the administration of the provision is vested, and unless otherwise expressly
14 provided, shall include "bureau," "commission," "committee," "department,"
15 "division," "examining committee," "program," and "agency."

14 12. Code section 23.7, states, in pertinent part, that a "license" includes
15 "registration" and "certificate."

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

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

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

21

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

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

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

28 15. Health & Saf. Code section 44012 states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **Regulatory Provisions**

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

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

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

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

29 21. Regulation 3340.30 subdivision (a) states:

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

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

35 22. Regulation 3340.42 states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(A) Gasoline fuel tanks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Regulation 3353 subdivision (a) states:

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

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

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

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

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

7
8
9
10 25. Regulation 3373 states:

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

16 Cost Recovery

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

21 UNDERCOVER VEHICLE OPERATION #1: APRIL 7, 2006

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

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

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

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

21 29. A review of the undercover videotape revealed that during an official
22 smog inspection of the 1997 Honda, employees of Respondent were observed manipulating the
23 vehicle's distributor by loosening the mounting bolts on the distributor base and manually
24 rotating the distributor back and forth. During this test, Respondent's employees were also
25 observed to be re-tightening the mounting bolts on the distributor. Moreover, an employee of
26 Respondent was also observed during the same official smog inspection disconnecting the PCV
27 vacuum hose from the valve and spraying an unknown substance into the PCV vacuum hose.
28

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

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

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

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

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

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

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

5 **FIFTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

7 **SIXTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

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

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

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

21 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

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

1 prescribed by the department.

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

5 **NINTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

22 **TENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

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

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

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 44. Respondent Lea Auto Repair's smog check station license is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that on or
5 about August 3, 2006, Respondent Soriano on behalf of Respondent Lea Auto Repair failed to
6 comply with the following sections of that Code:

- 7 a. **Section 44012:** Respondent Soriano failed to perform emission control
8 tests on the Bureau's 1988 Toyota Pick-Up Truck in accordance with
9 procedures prescribed by the department.
- 10 b. **Section 44015:** Respondent Soriano issued an electronic smog certificate
11 of compliance for the Bureau's 1988 Toyota Pick-Up Truck without
12 properly testing and inspecting the vehicle to determine if it was in
13 compliance with Health & Saf. Code section 44012.
- 14 c. **Section 44059:** Respondent Soriano willfully made false entries on the
15 vehicle inspection report, as set forth in paragraph 39 above, in order to
16 issue an electronic smog certificate of compliance for the Bureau's 1988
17 Toyota Pick-Up Truck.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant
20 to the Motor Vehicle Inspection Program)**

21 45. Respondent Lea Auto Repair's smog check station license is subject to
22 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that on or
23 about August 3, 2006, Respondent Soriano on behalf of Respondent Lea Auto Repair failed to
24 comply with the following sections of California Code of Regulations, title 16:

- 25 a. **Section 3340.24, subdivision (c):** Respondent Soriano falsely or
26 fraudulently issued an electronic smog certificate of compliance for the Bureau's
27 1988 Toyota Pick-Up Truck.
- 28 b. **Section 3340.35, subdivision (c):** Respondent Soriano issued an

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

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

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

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

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

23 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

NINETEENTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud or Deceit)

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

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

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

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

23 **TWENTIETH CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

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

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

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

16 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

17 **(Fraud)**

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

25 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

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

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

- 3 a. **Section 44012:** Respondent Lea Auto Repair through the actions of
4 Respondent Soriano failed to perform emission control tests on the Bureau's
5 1987 Buick in accordance with procedures prescribed by the department.
- 6 b. **Section 44015:** Respondent Lea Auto Repair through the actions of
7 Respondent Soriano issued an electronic smog certificate of compliance for the
8 Bureau's 1987 Buick without properly testing and inspecting the vehicle to
9 determine if it was in compliance with Health & Saf. Code section 44012.
- 10 c. **Section 44059:** Respondent Lea Auto Repair through the actions of
11 Respondent Soriano willfully made false entries on the vehicle inspection report,
12 as set forth in paragraph 49 above, in order to issue an electronic smog certificate
13 of compliance for the Bureau's 1987 Buick.

14 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

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

- 21 a. **Section 3340.24, subdivision (c):** Respondent Lea Auto Repair through
22 the actions of Respondent Soriano falsely or fraudulently issued an electronic
23 smog certificate of compliance for the Bureau's 1987 Buick.
- 24 b. **Section 3340.35, subdivision (c):** Respondent Lea Auto Repair through
25 the actions of Respondent Soriano issued an electronic smog certificate of
26 compliance for the Bureau's 1987 Buick even though the vehicle had not been
27 inspected in accordance with section 3340.42.
- 28 c. **Section 3340.42:** Respondent Lea Auto Repair through the actions of

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

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

7 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

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

16 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

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

7 DATED: 4/28/08

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

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Complainant