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

11 In the Matter of the Accusation Against:

12 **SAN LUIS BAY MOTORS INC.**
13 **dba SAN LOUIS BAY MOTORS**
14 **OTTMAR THOMAS, PRES.**
2700 Theatre Drive
Paso Robles, CA 93446

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16 **Automotive Repair Dealer Registration No. ARD 183780**
Smog Check Test Only Station License No. RC 183780

17 Respondents.

Case No. **79/13-39**
ACCUSATION
SMOG CHECK

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19 John Wallauch ("Complainant") alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration No. ARD 183780**

24 2. In 1995, the Bureau issued Automotive Repair Dealer Registration Number ARD
25 183780 to San Luis Bay Motors Inc., doing business as San Luis Bay Motors ("Respondent")
26 with Ottmar Thomas as President. The registration was in full force and effect at all times
27 relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

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1 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may
2 invalidate temporarily or permanently, the registration for all places of business operated in
3 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.

4 6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
5 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
6 against an automotive repair dealer or to render a decision invalidating a registration temporarily
7 or permanently.

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

12 COST RECOVERY

13 8. Code section 125.3 provides, in pertinent part, that a Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 UNDERCOVER OPERATION No. 1 – FEBRUARY 1, 2011

18 9. On or about February 1, 2011, a Bureau undercover operator ("operator") drove a
19 Bureau documented 2005 Honda Accord to Respondent's facility and requested an engine oil and
20 filter change. When the operator arrived at Respondent's facility, she met with a male named
21 Chris Krull ("Krull"). Krull recommended a free multi-point inspection, which the operator
22 authorized. Krull informed the operator that the vehicle needed a front brake job, a brake system
23 flush and power steering system flush, which the operator declined. When the vehicle was
24 completed, the operator paid \$22.92 and was provided with Invoice No. 86449.

25 10. On or about March 18, 2011, the operator drove the Bureau documented 2005 Honda
26 Accord back to Respondent's facility and asked if the vehicle still needed the services previously
27 recommended. The operator was met by a female named Michelle Allen ("Allen"). Allen told
28 the operator that she still needed the recommended services. The operator asked Allen why the

1 vehicle needed a power steering system flush. Allen told the operator that when the fluid is dirty
2 it deteriorates from the inside out. The operator was provided with an estimate in the amount of
3 \$539 to replace the front brakes, turn the rotors, and flush the brake fluid and power steering
4 fluid. The operator authorized the services. Krull approached the operator and told her that the
5 vehicle needed two new brake rotors because the ones on the vehicle would be undersized if they
6 were machined. The operator authorized the additional \$80 to replace the brake rotors. The
7 operator paid \$621.76 for the repairs/services and received a copy of Invoice No. 87667.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 11. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
11 that on or about March 18, 2011, regarding the 2005 Honda Accord, it made statements which it
12 knew or which by exercise of reasonable care it should have known to be untrue or misleading, in
13 that Respondent misrepresented to the operator that the vehicle needed new front brake pads and
14 rotors and that the brake fluid and power steering fluid needed to be flushed when, in fact, those
15 repairs were not necessary.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 12. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
19 that on or about March 18, 2011, regarding the 2005 Honda Accord, it committed acts
20 constituting fraud, in that it charged for and received payment from the operator for the following
21 repairs/services that were not necessary:

- 22 a. Front brake pads and rotors.
23 b. Brake fluid flush.
24 c. Power steering fluid flush.

25 **UNDERCOVER OPERATION No. 2 – JUNE 15, 2011**

26 13. On or about June 15, 2011, a Bureau undercover operator ("operator") drove a
27 Bureau documented 2000 Toyota Solara to Respondent's facility and requested an engine oil and
28 filter change. When the operator arrived at Respondent's facility, she met with a male named

1 Lennie. Lennie told the operator that a free multi-point inspection was included in the oil change.
2 Lennie told the operator that the vehicle needed a fuel induction cleaning service for \$142.90 to
3 improve the fuel mileage, and that this service needed to be done every 15,000 to 30,000 miles
4 depending on the type of gas she used. The operator authorized the service. When the service
5 was completed the operator paid \$169.38, and received a copy of Invoice No. 90045, and an
6 inspection sheet. The operator reviewed the invoice and noticed it stated "customer requested
7 fuel induction service," when, in fact, the operator did not request that service.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 14. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
11 that on or about June 15, 2011, regarding the 2000 Toyota Solara, it made statements which it
12 knew or which by exercise of reasonable care it should have known to be untrue or misleading, in
13 that Respondent misrepresented to the operator that the vehicle needed a fuel induction service to
14 improve fuel mileage and that this service should be done every 15,000 to 30,000 miles,
15 depending on the type of gas she used when, in fact, Toyota does not list a fuel induction service
16 as a scheduled maintenance item. In addition, Respondent stated on Invoice No. 90045 that the
17 operator requested the fuel induction service when, in fact, she did not.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 15. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
21 that on or about June 15, 2011, regarding the 2000 Toyota Solara, it committed acts constituting
22 fraud, in that it charged for and received payment from the operator for a fuel induction cleaning
23 service, when, in fact, that service was not necessary.

24 **UNDERCOVER OPERATION No. 3 – SEPTEMBER 13, 2011**

25 16. On or about September 13, 2011, a Bureau undercover operator ("operator") drove a
26 Bureau documented 1993 Honda Accord to Respondent's facility and requested an engine oil and
27 filter change. When the operator arrived at Respondent's facility, he met with a male named
28 Lennie. Lennie told the operator that a free multi-point inspection was included in the oil change.

1 The operator told Lennie that he was giving the vehicle to his granddaughter. The operator
2 signed estimate number 92676, but there was no cost listed on the estimate. Lennie told the
3 operator that the vehicle needed a timing belt that would cost \$1,233, which included everything.
4 The operator told Lennie that he only had \$1,200. Lennie told the operator that he would give
5 him a discount to keep the cost under \$1,200. Lennie told the operator that the valve cover had
6 never been removed because the valve cover bolts were not turned. Lennie said the timing belt
7 should be done soon to keep his granddaughter safe. The operator authorized the repairs.

8 17. On or about September 14, 2011, the operator returned to Respondent's facility to
9 retrieve the vehicle. The operator met with Lennie who told him that it appeared the timing belt
10 had been previously changed, but since the vehicle was all apart, it would only cost an additional
11 \$40 for the timing belt. The operator received Invoice No. 92676 and paid Respondent
12 \$1,199.96. The operator reviewed Invoice No. 92676 and noticed that the invoice stated that the
13 operator requested a 90,000-mile service when, in fact, he did not.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 18. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
17 that on or about September 13, 2011, regarding the 1993 Honda Accord, it made statements
18 which it knew or which by exercise of reasonable care it should have known to be untrue or
19 misleading, as follows:

20 a. Respondent misrepresented to the operator that the vehicle needed a timing belt
21 when, in fact, it did not.

22 b. Respondent listed on Invoice No. 92676 that the operator requested a 90,000-mile
23 service when, in fact, he did not.

24 c. Respondent falsely represented on Invoice No. 92676 that the cap, rotor, and wires
25 were part of the 90,000-mile service when, in fact, they are not.

26 d. Respondent falsely represented on Invoice No. 92676 that the brakes had 5mm in rear
27 and 3mm in rear when, in fact, they did not.

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1 c. Respondent falsely represented on the Kia Multi-Point Inspection sheet that the
2 vehicle's window washer fluid had been topped off when, in fact, it was not.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 19. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
6 that on or about September 13, 2011, regarding the 1993 Honda Accord, it committed acts
7 constituting fraud, in that it charged for and received payment from the operator to replace the
8 timing belt when, in fact, that repair was not necessary.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Departure from Trade Standards)**

11 20. Respondent's registration is subject to discipline under Code section 9884.7(a)(7),
12 in that on or about September 13, 2011, regarding the 1993 Honda Accord, it willfully departed
13 from or disregarded accepted trade standards for good and workmanlike repair in a material
14 respect without the consent of the owner or the owner's duly authorized representative, in the
15 following respects:

16 a. Respondent failed to correctly adjust the engine valve train, causing the valve train
17 to become excessively noisy.

18 b. Respondent failed to secure the fuel injector resistor.

19 c. Respondent failed to properly connect the cruise control actuator wire loom
20 connector.

21 d. Respondent failed to secure the power steering pump mounting bolt and nut.

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Provisions of the Automotive Repair Act)**

24 21. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
25 in that on or about September 13, 2011, regarding the 1993 Honda Accord, Respondent failed to
26 materially comply with the following provisions of that Code:

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a. **Section 9884.9:**

- i. Respondent failed to provide the operator with a written estimated amount for parts and labor for a specific job.
- ii. Respondent failed to obtain the operator's authorization to perform the 90,000-mile service.

NINTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud or Deceit)

22. Respondent's station license is subject to discipline under Health & Safety Code section 44072.2(d), in that between February 1, 2011, and September 13, 2011, it committed dishonest, fraudulent or deceitful acts whereby another is injured, as more particularly set forth above in paragraphs 12, 15, and 19.

OTHER MATTERS

23. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by San Luis Bay Motors Inc., doing business as San Luis Bay Motors, upon a finding that it has, or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

24. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number RC 183780, issued to San Luis Bay Motors Inc., doing business as San Luis Bay Motors, is revoked or suspended, any additional license issued under this chapter in the name of said licensees may be likewise revoked or suspended by the director.

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, suspending, or placing on probation Automotive Repair Dealer Registration No. ARD 183780, issued to San Luis Bay Motors Inc., doing business as San Luis Bay Motors;

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2. Revoking, suspending, or placing on probation Smog Check Test Only Station License Number RC 183780, issued to San Luis Bay Motors Inc., doing business as San Luis Bay Motors;

3. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to San Luis Bay Motors Inc., doing business as San Luis Bay Motors;

4. Revoking, suspending, or placing on probation any additional license issued under chapter 5, of the Health and Safety Code in the name of San Luis Bay Motors Inc., doing business as San Luis Bay Motors;

5. Ordering San Luis Bay Motors Inc., doing business as San Luis Bay Motors, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: January 2, 2013

John Wallauch by Doug Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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