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7

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. 77/22-1714

13 **ARMANDO BARAJAS, DBA**
14 **ARMANDOS SMOG**
1801 Whitson
15 Selma, CA 93662

ACCUSATION

16 **Automotive Repair Dealer Registration**
No. ARD 196224
17 **Smog Check Station License No. RC 196224**
Lamp Station License No. LS 196224, Class A
18 **Brake Station License No. BS 196224, Class C**

19 **and**

20 **ARMANDO BARAJAS**
7365 W. Menlo Ave.
21 Fresno, CA 93723

22 **Smog Check Inspector License No. EO 37558**
Smog Check Repair Technician License
23 **No. EI 37558**
Brake Adjuster License No. BA 37558, Class C
24 **Lamp Adjuster License No. LA 37558, Class A**

25 Respondent.

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1 **PARTIES**

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

4 **Automotive Repair Dealer Registration**

5 2. On a date uncertain in 1997, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 196224 to Armando Barajas, doing business as Armandos Smog
7 (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all
8 times relevant to the charges brought herein and will expire on September 30, 2023, unless
9 renewed.

10 **Smog Check Station License**

11 3. On or about September 16, 1997, the Bureau issued Smog Check Station License
12 Number RC 196224 to Respondent. The Smog Check Station License was in full force and effect
13 at all times relevant to the charges brought herein and will expire on September 30, 2023, unless
14 renewed.

15 **Lamp Station License**

16 4. On or about October 12, 2004, the Bureau issued Lamp Station License Number
17 LS 196224, Class A, to Respondent. The Lamp Station License was in full force and effect at all
18 times relevant to the charges brought herein and will expire on September 30, 2023, unless
19 renewed.

20 **Brake Station License**

21 5. On or about October 12, 2004, the Bureau issued Brake Station License Number
22 BS 196224, Class C, to Respondent. The Brake Station License was in full force and effect at all
23 times relevant to the charges brought herein and will expire on September 30, 2023, unless
24 renewed.

25 **Smog Check Inspector and Smog Check Repair Technician Licenses**

26 6. On a date uncertain in 1999, the Bureau issued Advanced Emission Specialist
27 Technician License No. EA 37558 to Respondent. Pursuant to California Code of Regulations,
28 title 16 ("CCR"), section 3340.28, subdivision (e), upon Respondent's election, effective July 12,

2013, said license was renewed by the Bureau as Smog Check Inspector License Number EO 37558 and Smog Check Repair Technician License Number EI 37558. The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2023, unless renewed. The Smog Check Repair Technician License will expire on July 31, 2023, unless renewed.

Brake Adjuster License

7. On a date uncertain in 2004, the Bureau issued Brake Adjuster License Number BA 37558, Class C, to Respondent. The Brake Adjuster License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2023, unless renewed.

Lamp Adjuster License

8. On a date uncertain in 2004, the Bureau issued Lamp Adjuster License Number LA 37558, Class A, to Respondent. The Lamp Adjuster License expired on July 31, 2020, and has not been renewed.

JURISDICTION

9. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

10. Code section 9884.7 provides, in pertinent part, that the Director may revoke an automotive repair dealer registration.

11. Code section 9884.13 states, "The expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with any investigation or disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently."

12. Code section 9889.1 provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the Automotive Repair Act.

13. Code section 9889.7 states: "The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a

1 license by a licensee shall not deprive the director of jurisdiction to proceed with any
2 investigation of or action or disciplinary proceedings against such licensee, or to render a decision
3 suspending or revoking such license.”

4 14. Code section 118, subdivision (b), states:

5 The suspension, expiration, or forfeiture by operation of law of a license issued
6 by a board in the department, or its suspension, forfeiture, or cancellation by order of
7 the board or by order of a court of law, or its surrender without the written consent of
8 the board, shall not, during any period in which it may be renewed, restored, reissued,
9 or reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground.

10 **STATUTORY AND REGULATORY PROVISIONS**

11 15. Code section 9884.7 states, in pertinent part:

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

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

21 (2) Causing or allowing a customer to sign any work order that does not state
22 the repairs requested by the customer or the automobile's odometer reading at the
23 time of repair.

24 . . .

25 (4) Any other conduct that constitutes fraud.

26 . . .

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

. . .

(b) Except as provided for in subdivision (c), if an automotive repair dealer
operates more than one place of business in this state, the director pursuant to
subdivision (a) shall only suspend, revoke, or place on probation the registration of
the specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate the automotive repair dealer's other places of
business.

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1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place
2 on probation the registration for all places of business operated in this state by an
3 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 16. Code section 9884.8 states:

5 All work done by an automotive repair dealer, including all warranty work,
6 shall be recorded on an invoice and shall describe all service work done and parts
supplied. Service work and parts shall be listed separately on the invoice, which shall
7 also state separately the subtotal prices for service work and for parts, not including
sales tax, and shall state separately the sales tax, if any, applicable to each. If any
8 used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that
fact. If a part of a component system is composed of new and used, rebuilt or
9 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
a statement indicating whether any crash parts are original equipment manufacturer
10 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
of the invoice shall be given to the customer and one copy shall be retained by the
11 automotive repair dealer.

12 17. Code section 9884.9, subdivision (a), states, in pertinent part, that “the automotive
13 repair dealer shall give to the customer a written estimated price for labor and parts necessary for
14 a specific job. . . . No work shall be done and no charges shall accrue before authorization to
15 proceed is obtained from the customer.”

16 18. Code section 9887.1 states:

17 The director shall have the authority to issue licenses for official lamp and
18 brake adjusting stations and shall license lamp and brake adjusters. The licenses shall
be issued in accordance with this chapter and regulations adopted by the director
19 pursuant thereto. The director shall establish by regulation the terms of adjusters'
licenses as are necessary for the practical administration of the provisions relating to
20 adjusters, but those terms shall not be for less than one nor more than four years.
Licenses may be renewed upon application and payment of the renewal fees if the
21 application for renewal is made within the 30-day period prior to the date of
expiration. Persons whose licenses have expired shall immediately cease the activity
22 requiring a license . . .

23 19. Code section 9889.3 states, in pertinent part:

24 The director may suspend, revoke, or take other disciplinary action against a
25 license as provided in this article [Article 7 (commencing with section 9889.1) of the
Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

26 (a) Violates any section of the Business and Professions Code which relates to
27 his or her licensed activities.
28 . . .

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1 (c) Violates any of the regulations promulgated by the director pursuant to this
2 chapter.

3 (d) Commits any act involving dishonesty, fraud, or deceit whereby another is
4 injured

5 . . .

6 (h) Violates or attempts to violate the provisions of this chapter relating to the
7 particular activity for which he or she is licensed.

8 20. Code section 9889.9 states, "When any license has been revoked or suspended
9 following a hearing under the provisions of this article, any additional license issued under
10 Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended
11 by the director."

12 21. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
13 "commission," "committee," "department," "division," "examining committee," "program," and
14 "agency." "License" includes certificate, registration or other means to engage in a business or
15 profession regulated by the Code.

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

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

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

23 . . .

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

26 24. Health & Saf. Code section 44072.6 states, "The expiration or suspension of a license
27 by operation of law or by order or decision of the director or a court of law, or the voluntary
28 surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with
any investigation of, or action or disciplinary proceedings against, the licensee, or to render a
decision suspending or revoking the license."

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25. Health & Saf. Code section 44033, subdivision (c) states:

If a motor vehicle, including a commercial vehicle, is tested at a facility licensed to perform tests and repairs pursuant to this chapter, the facility shall provide the customer with a written estimate pursuant to Section 9884.9 of the Business and Professions Code. The written estimate shall contain a notice to the customer stating that the customer may choose another smog check station to perform needed repairs, installations, adjustments, or subsequent tests.

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

COST RECOVERY

27. Code section 125.3 provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

UNDERCOVER OPERATION

28. Between on or about November 29, 2021, through January 10, 2022, a Bureau representative inspected the Bureau's 2007 Chevrolet (2007 Chevrolet) and documented that the spark plugs were replaced, the spark plug wires and the #3 ignition coil were in good working condition and did not need replacement. The #3 fuel injector was defective. The defective fuel injector caused the engine to misfire, illuminated the check engine light and caused diagnostic trouble codes (DTCs) to be scored in the engine control unit memory. The only repair necessary was replacement of the defective #3 fuel injector.

29. On or about February 2, 2022, a Bureau undercover operator using an alias (the operator) took the Bureau's 2007 Chevrolet to Respondent's facility and asked Respondent's employee, "A.R." to diagnose the cause of the illuminated check engine light and rough running condition. A.R. did not provide the operator with an estimate. The operator left the car at Respondent's facility.

30. A short while later that same day, Respondent telephoned the operator and told him that the 2007 Chevrolet needed spark plugs, spark plug wires, and one ignition coil on cylinder #3, which would cost \$500. Respondent also said the diagnostic fee would be \$60. The operator authorized the repairs. On or about February 4, 2022, Respondent contacted the operator by telephone again and told him the vehicle was running smoothly and one coil and an injector had needed to be replaced.

31. On or about February 7, 2022, the operator met with Respondent at Respondent's facility to retrieve the 2007 Chevrolet. Respondent gave the operator Estimate #77983, dated February 7, 2022 (the Invoice), for \$737.03, which the operator paid in cash. The parts listed on the Invoice were: eight spark plugs and spark plug wires, an ignition Coil, and a fuel injector. The labor description stated, "Diagnose and advice, install spark plugs, install wire set". The Invoice did not document the vehicle's illuminated check engine light, diagnostic code descriptions (DTCs), or describe diagnostic work performed. Respondent's Invoice stated that, in part, "I understand that I can have emission service and/or adjustments done elsewhere. *I hereby waive this right.*" (Emphasis added.) The invoice also represented that Respondent is a "Star-Test Only" smog check station.

32. On or about February 7, 2022, a Bureau representative inspected the 2007 Chevy and determined that Respondent replaced the spark plugs, spark plug wires, #3 ignition coil, and #3 fuel injector. As set forth in paragraph 28 above, the only repair necessary was replacement of the #3 fuel injector.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

33. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that in or around February 2022, regarding the Bureau's 2007 Chevrolet, Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. As set forth above in paragraph 31, Respondent's invoice stated, "I understand that I can have emission service and/or adjustments done elsewhere. I hereby waive this right."

1 In fact, Health & Saf. Code section 44033, subdivision (c), requires that a licensed smog check
2 station provide a notice to customers stating that the customer “may choose another smog check
3 station to perform needed repairs, installations, adjustments, or subsequent tests”.

4 b. As set forth above in paragraph 31, Respondent’s invoice represented that
5 Respondent is a “Star-Test Only” smog check station. In fact, Respondent is a test and repair
6 smog check station.

7 c. On or about February 2, 2022, Respondent verbally represented to the operator
8 that the vehicle needed spark plugs, spark plug wires, and an ignition coil for cylinder number
9 three when, in fact it did not, as set forth above in paragraphs 28, 30, and 32.

10 d. On or about February 4, 2022, Respondent verbally represented to the operator
11 that one coil needed to be replaced when, in fact, it did not, as set forth above in paragraphs 28,
12 30, and 32.

13 e. Respondent’s invoice, dated February 7, 2022, included charges for the
14 replacement of eight spark plugs, spark plug wires, and an ignition Coil when, in fact, those parts
15 did not need replacement, as set forth above in paragraphs 28, 31, and 32.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 34. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,
19 subdivision (a)(4), in that it committed acts that constitute fraud. Specifically, on or about
20 February 7, 2022, as set forth above in paragraph 33, subdivisions (c) through (d), Respondent
21 obtained payment from the operator for replacing parts on the Bureau’s 2007 Chevrolet that did
22 not need to be replaced.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Failure to Provide a Written Estimate)**

25 35. Respondent’s registration is subject to discipline pursuant to section 9884.7,
26 subdivision (a)(6), in that Respondent failed to comply with Code section 9884.9, subdivision (a).
27 Specifically, Respondent failed to provide the operator with a written estimate for work that
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Respondent agreed to perform on the Bureau's 2007 Chevrolet prior to performing such work, as set forth above in paragraphs 29.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Automotive Repair Act)

36. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(6), in that regarding the Bureau's 2007 Chevrolet, Respondent failed to materially comply with provisions of the Automotive Repair Act. Specifically, as set forth above in paragraph 31, Respondent violated Code section 9884.8 when he failed to describe on the Invoice:

- a. the service work performed for "diagnose and advice".
- b. the service work performed to install the fuel injector.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

37. Respondent's brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3, subdivision (d), in that regarding the Bureau's 2007 Chevrolet, Respondent committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth above in paragraphs 33 and 34.

SIXTH CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

38. Respondent's brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3, subdivisions (a) and (h), in that regarding the Bureau's 2007 Chevrolet, Respondent committed acts in violation of the Code relating to its licensed activities, as set forth above in paragraphs 33 through 36.

SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

39. Respondent's brake and lamp adjuster licenses are subject to discipline pursuant to Code section 9889.3, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth above in paragraph 33 through 36.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud, or Deceit Causing Injury to Another)**

3 40. Respondent's smog check station license is subject to discipline pursuant to Health &
4 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
5 or deceitful acts whereby another was injured, as set forth above in paragraphs 33 and 34.

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud, or Deceit Causing Injury to Another)**

8 41. Respondent's smog check inspector and smog check repair technician licenses are
9 subject to discipline pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
10 Respondent committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set
11 forth above in paragraphs 33 and 34.

12 **MATTERS IN AGGRAVATION**

13 42. To determine the degree of discipline, if any, to be imposed, Complainant alleges the
14 following:

15 43. On or about January 3, 2017, the Bureau issued Citation No. C2017-20 against
16 Respondent for violations of Health & Saf. Code section 44012 (failure to perform smog check
17 tests in accord with procedures prescribed by the department). On or about September 24, 2016,
18 Respondent issued a certificate of compliance to a 1998 Mercedes-Benz E300 TD Diesel using
19 the BAR97 when an OBD Inspection System (OIS) was required. An Order of Abatement was
20 issued.

21 44. On or about September 21, 2017, the Bureau issued Citation No. C2017-1711 against
22 Respondent for violations of Health & Saf. Code section 44012 (failure to perform smog check
23 tests in accord with procedures prescribed by the department). On or about August 17, 2017,
24 Respondent issued a certificate of compliance to a Bureau undercover vehicle with missing or
25 modified Air Injection (AIS) System components. Respondent was assessed a \$1,000 penalty.
26 Respondent complied with the citation on or about January 22, 2018.

27 45. On or about September 21, 2017, the Bureau issued Citation No. M2017-1712 against
28 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall

1 perform tests of emission control devices and systems in accord with Section 44012). On or about
2 August 17, 2017, Respondent issued a certificate of compliance to a Bureau undercover vehicle
3 with missing or modified Air Injection (AIS) System components. Respondent was directed to
4 complete an eight-hour BAR certified smog check citation training course. Respondent complied
5 with the citation on or about March 24, 2018.

6 46. On or about September 1, 2021, the Bureau conducted an on-site Proactive
7 Conference with Respondent, during which Respondent was advised that the conference was
8 being held in an attempt to obtain future voluntary compliance. Respondent was advised that
9 compliance with the Automotive Repair Act was mandatory and failure to comply with its
10 provisions could result in disciplinary action that could jeopardize his automotive repair dealer
11 registration. Estimate and invoice requirements, as well as records maintenance, *inter alia*, were
12 reviewed with Respondent.

13 **OTHER MATTERS**

14 47. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
15 or permanently or refuse to validate, the registrations for all places of business operated in this
16 state by Respondent upon a finding that it has, or is, engaged in a course of repeated and willful
17 violations of the laws and regulations pertaining to an automotive repair dealer.

18 48. Under Code section 9889.9, if Brake Station License No. BS 196224, Class C, or
19 Lamp Station License No. LS 196224, Class A, issued to Respondent Armando Barajas is
20 revoked or suspended, any additional license issued under Division 3, Chapter 20.3, Articles 5
21 and 6 of the Code in the name of said licensee may be likewise revoked or suspended by the
22 Director.

23 49. Under Code section 9889.9, if Brake Adjuster License No. BA 37558, Class C, or
24 Lamp Adjuster License No. LA 37558, Class A, issued to Respondent is revoked or suspended,
25 any additional license issued under Division 3, Chapter 20.3, Articles 5 and 6 of the Code in the
26 name of said licensee may be likewise revoked or suspended by the Director.

27 50. Under Health & Saf. Code section 44072.8, if Smog Check Station License No.
28 RC 196224 issued to Respondent is revoked or suspended, any additional license issued under

Chapter 5 of part 5 of Division 26 of the Health & Saf. Code in the name of said licensee 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 the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 196224, issued to Armando Barajas, doing business as Armandos Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to Armando Barajas;
3. Revoking or suspending Lamp Station License Number LS 196224, Class A, and Brake Station License Number BS 196224, Class C, issued to Armando Barajas, doing business as Armandos Smog;
4. Revoking or suspending Brake Adjuster License Number BA 37558, Class C, and Lamp Adjuster License Number LA 37558, Class A, issued to Armando Barajas;
5. Revoking or suspending any additional license issued under Division 3, Chapter 20.3, Articles 5 and 6 of the Business and Professions Code in the name of Armando Barajas;
6. Revoking or suspending Smog Check Station License Number RC 196224, issued to Armando Barajas, doing business as Armandos Smog;
7. Revoking or suspending Smog Check Inspector License Number EO 37558 and Smog Check Repair Technician License Number EI 37558, issued to Armando Barajas;
8. Revoking or suspending any additional license issued under of Chapter 5 of Part 5 of Division 26 of the Health & Safety Code in the name of Armando Barajas;
9. Ordering Armando Barajas 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,

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

DATED: As of Digital Signature Date

Dorais,
Patrick@DCA

Digitally signed by Dorais,
Patrick@DCA
Date: 2023.01.11 15:29:48 -08'00'

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

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