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

In the Matter of the Accusation and Petition to Revoke Probation Against**:** **A & A ALL PRO AUTO REPAIR;** **IGNACIO ANDRADE, OWNER** 439 Mercey Springs Road Los Banos, CA 93635 **Automotive Repair Dealer Registration** **No. ARD 227686** **Smog Check Station License** **No. RC 227686** **Lamp Station License, Class A,** **No. LS 227686** **Brake Station License, Class C,** **No. BS 227686** Respondent.	Case No. 77/21-3532 **ACCUSATION AND PETITION TO REVOKE PROBATION**

PARTIES

1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

LICENSE HISTORY

Automotive Repair Dealer Registration

2. In or around 2003, the Bureau issued Automotive Repair Dealer Registration Number ARD 227686 (registration) to Ignacio Andrade, as owner of A & A All Pro Auto Repair (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2022, unless renewed.

Smog Check Station License

3. On or about October 4, 2007, the Bureau issued Smog Check Station License Number RC 227686 (station license) to Respondent. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2022, unless renewed.

Lamp Station License

4. On or about September 7, 2010, the Bureau issued Lamp Station License, Class A, Number LS 227686 to Respondent. The Lamp Station License was suspended on December 19, 2019, and expired on May 31, 2020.

Brake Station License

5. On or about September 7, 2010, the Bureau issued Brake Station License, Class C, Number BS 227686 to Respondent. The Brake Station License was suspended on December 19, 2019, and expired on May 31, 2020.

DISCIPLINARY HISTORY

6. In a disciplinary action entitled "*In the Matter of the Accusation Against: A & A Auto Body; Ignacio Andrade, Owner and A & A All Pro Auto Repair; Ignacio Andrade, Owner*," Case No. 77/17-15844, the Director of the Department of Consumer Affairs (Director), for the Bureau, issued a Decision effective September 26, 2019, in which Respondent's Automotive Repair Dealer Registration, Smog Check Station License, Lamp Station License, Class A, and Brake Station License, Class C, were revoked. However, the revocations were stayed and Respondent's Automotive Repair Dealer Registration, Smog Check Station License, Lamp Station License, Class A, and Brake Station License, Class C, were placed on probation for a period of five (5)

years with certain terms and conditions.

JURISDICTION FOR ACCUSATION

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

8. Code section 118(b), states:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, 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.

9. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

10. 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.

11. Code section 9889.7 provides, in pertinent part, that 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 license shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

12. Health and Safety Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

13. Health and Safety Code section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

…

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

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

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

15. Health and Safety Code section 44072.8 of the Health and Safety Code 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.

STATUTORY PROVISIONS

16. Code section 9884.7 states, in pertinent part:

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

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

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

…

(4) Any other conduct that constitutes fraud.

…

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

17. Code section 9884.8 states:

All work done by an automotive repair dealer, including all warranty work, 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 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 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 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer 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 automotive repair dealer.

18. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job, except as provided in subdivision (e). No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price, or the posted price specified in subdivision (e), without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated or posted price is insufficient and before the work not estimated or posted is done or the parts not estimated or posted are supplied. Written consent or authorization for an increase in the original estimated or posted price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs, and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

I acknowledge notice and oral approval of an increase in the original estimated price.

(signature or initials)

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the

requested repair.

19. Code section 9889.3 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a 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:

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

…

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

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

…

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

20. Code section 9887.1 states, in pertinent part:

The director shall have the authority to issue licenses for official lamp and 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 pursuant thereto . . . Licenses may be renewed upon application and payment of the renewal fees if the 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 requiring a license….

REGULATIONS

21. California Code of Regulations, title 16 (CCR), section 3356, states, in pertinent part:

…

(b) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records.

…

(j) The automotive repair dealer shall give the customer a legible copy of the invoice.

22. CCR section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

(a) Firm Name and Address. The dealer's firm name and address as they appear on the State registration certificate as an automotive repair dealer; and

(b) Telephone Number. If a telephone number appears in an advertisement or on an advertising sign, this number shall be the same number as that listed for the dealer's firm name and address in the telephone directory, or in the telephone company records if such number is assigned to the dealer subsequent to the publication of such telephone directory.

23. CCR, section 3373, states:

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

COST RECOVERY

24. Section 125.3 of the Code provides, in pertinent part, that the Board 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 the 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: 2007 DODGE CHARGER

25. In or around March 2021, a Bureau representative prepared and documented a 2007 Dodge for an undercover operation. After verifying the proper operation of the vehicle, a Bureau representative introduced the following malfunction to the 2007 Dodge: open/broken ground wire for the Bank1 Sensor 1 (B1S1) Heated Oxygen Sensor (HO2S) ground circuit located at terminal "Gl09". Ground terminal "G109" is located under the hood near the vehicle's passenger/right front shock tower. The broken wire causes the Malfunction Indicator Lamp (MIL) to illuminate and a Diagnostic Trouble Code (DTC) P0032 "02 Sensor 1/1 Heater Circuit High" to be stored in the vehicle's Electronic Control Module (ECM). To correct the malfunction, it was only necessary to repair the broken/open wire at the terminal G109 location or the wire overlay of the ground circuit at the B1S1 connector.

26. On or about March 16, 2021, a Bureau undercover operator (operator) using an alias took the Bureau-documented 2007 Dodge to Respondent's facility and requested a diagnosis for

an illuminated MIL. The operator was told the cost to diagnose the MIL would be $75.00. The operator signed Repair Estimate #018405. Repair Estimate #018405 listed the business name as A & A All Pro Auto Repair, Inc., which does not match Bureau record of A & A All Pro Auto Repair. Repair Estimate #018405 failed to list an odometer reading.

27. On or about March 23, 2021, the operator spoke to a representative of the facility to check on the status of the 2007 Dodge. The representative informed the operator that they had installed an oxygen sensor from an automotive parts retailer; however, that did not fix the illuminated MIL. The facility had ordered an oxygen sensor from a dealership to see if that would correct the illuminated MIL.

28. On or about March 24, 2021, the operator spoke to a representative of the facility to check the status of the 2007 Dodge. The representative informed the operator that two sensors and a powertrain control module (PCM) were needed to correct the illuminated MIL and the cost would be $1,687.86 with a $400.00 deposit to be provided before they ordered the PCM. The operator authorized the repairs.

29. On or about March 25, 2021, the operator entered the facility and spoke to a facility representative. The operator paid the $400.00 deposit and was provided with a receipt. The receipt showed that the BAR number for A & A All Pro Auto Repair was 335327D, which does not match the Bureau record BAR number of 227686.

30. On or about April 19, 2021, the operator received a telephone call from the facility and was informed that the 2007 Dodge was ready to be picked up. On or about April 20, 2021, the operator entered the facility and paid the balance of the repair in the amount of $1,287.86. The operator was provided with Repair Invoice #018405. Repair Invoice #018405 listed the business name as A & A All Pro Auto Repair, Inc., which does not match Bureau record of A & A All Pro Auto Repair.

31. Upon return to the Bureau, Vehicle 1 was re-inspected. The Bureau representative concluded that the vehicle's ECM was scanned, and no DTC's were present and that all readiness monitors except the Fuel Evaporative monitor and Exhaust Gas Recirculation had run to completion. The vehicle's ECM was reset and road tested. The vehicle drove normally and the

monitors for the O2 Heater circuits had completed. The ECM and both upstream and downstream HO2S's were replaced, although that was not needed to correct the malfunction. The broken wire at the terminal "G109" location was not repaired. A wire repair/overlay had been installed into the harness side of the B1S1 HO2S connector and grounded to the driver/left front shock tower, although it was only necessary to repair the broken/open wire at the terminal G109 location or the wire overlay of the ground circuit at the B1S1 connector. The wire overlay of the ground circuit at the B1S1 connector was not disclosed on Repair Invoice #018405.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

32. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading when Respondent stated to the operator that two oxygen sensors and a PCM were needed to correct the illuminated MIL.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

33. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that on or about April 20, 2021, Respondent committed an act that constitutes fraud when Respondent obtained payment from the operator for two oxygen sensors and a PCM when they were not needed to correct the illuminated MIL.

THIRD CAUSE FOR DISCIPLINE

(Failure to Record Odometer Reading)

34. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(2), in that on or about March 16, 2021, Respondent failed to document the Bureau's 2007 Dodge odometer reading on Repair Estimate #018405.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

35. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7(a)(6), in that Respondent failed to comply with provisions of that Code in the following material respects:

a. Code Section 9884.8:

i. Respondent recorded the business name, A & A Auto All Pro Auto Repair Inc., which does not match Bureau records of A & A All Pro Auto Repair, on Repair Estimate #018405 dated March 16, 2021, and Repair Invoice #018405 finalized April 20, 2021.

ii. Respondent recorded their BAR number as 0335327D, when the correct BAR number is 227686 on the receipt dated March 25, 2021.

b. **Code Section 9884.9, subdivision (a):** Respondent failed to disclose the wire overlay of the ground circuit at the B1S1 connector on Repair Invoice #018405 finalized April 20, 2021.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

36. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. Code Section 3356, subdivision (b):

i. Respondent recorded the business name, A & A Auto All Pro Auto Repair Inc., which does not match Bureau records of A & A All Pro Auto Repair, on Repair Estimate #018405 dated March 16, 2021, and Repair Invoice #018405 finalized April 20, 2021.

ii. Respondent recorded their BAR number as 0335327D, when the correct BAR number is 227686 on the receipt dated March 25, 2021.

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SIXTH CAUSE FOR DISCIPLINE

(Fraud)

37. Respondent's station license is subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that on or about April 20, 2021, Respondent committed an act that constitutes fraud when Respondent obtained payment from the operator for two oxygen sensors and a PCM when they were not needed to correct the illuminated MIL.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

38. Respondent's station license is subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of Code sections 9884.8, and 9884.9 subdivision (a) relating to its licensed activities, as set forth in paragraph 35 above.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

39. Respondent's station license is subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, sections 3356, subdivision (b), as set forth in paragraph 36 above.

NINTH CAUSE FOR DISCIPLINE

(Fraud)

40. Respondent's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that on or about April 20, 2021, Respondent committed an act that constitutes fraud when Respondent obtained payment from the operator for two oxygen sensors and a PCM when they were not needed to correct the illuminated MIL.

TENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

41. Respondent's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of Code sections 9884.8, and 9884.9 subdivision (a) relating to its licensed activities,

as set forth in paragraph 35 above.

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

42. Respondent's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, sections 3356, subdivision (b), as set forth in paragraph 36 above.

JURISDICTION FOR PETITION TO REVOKE PROBATION

43. At all times after the effective date of the Decision, Condition 7 states:

> If Respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

44. Respondent's probation is subject to revocation, in that Respondent did not comply with the terms and conditions of Respondent's probation, as more particularly set forth below.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey all Laws)

45. At all times after the effective date of the Decision, Condition 1 states:

> During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Respondent.

46. Respondent's probation is subject to revocation in that Respondent failed to comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs, as set forth in paragraphs 25 through 42 above.

SECOND CAUSE TO REVOKE PROBATION

(Maintain a Valid License)

47. At all times after the effective date of Respondent's probation, Condition 8 states:

> Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If Respondent's registration or license is expired at

the time the decision becomes effective, the registration or license must be renewed by Respondent within 30 days of that date. If Respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal Respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

48. Respondent's probation is subject to revocation in that Respondent failed to comply with Probation Condition 8, above, when during the undercover operation, it was found that Respondent failed to maintain current and active Brake and Lamp Station Licenses. In fact, both licenses were suspended on November 19, 2019, and expired on May 31, 2020.

OTHER MATTERS

49. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke, or place on probation the registrations for all places or business operated in this state by Ignacio Andrade, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

50. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Station License issued to Ignacio Andrade is revoked or suspended, any additional licenses issued under Chapter 5 of Part 5 of Division 26 of the HSC in the name of said licensee may be likewise revoked or suspended by the director.

51. Pursuant to Code section 9889.9, if the Lamp Station License issued to Ignacio Andrade is revoked or suspended, any additional licenses issued under Articles 5 and 6 of [the Automotive Repair Act] in the name of the licensee may be likewise revoked or suspended by the director.

52. Pursuant to Code section 9889.9, if the Brake Station License issued to Ignacio Andrade is revoked or suspended, any additional licenses issued under Articles 5 and 6 of [the Automotive Repair Act] in the name of the licensee may be likewise revoked or suspended by the director.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation and Petition to Revoke Probation, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking the probation that was granted by the Bureau in Case No. 77/17-15844 and imposing the disciplinary order that was stayed thereby revoking Automotive Repair Dealer Registration No. ARD 227686, Smog Check Station License No. RC227686, Lamp Station License, Class A, No. LS 227686, and Brake Station License, Class C, No. BS 227686, issued to Ignacio Andrade, owner of A & A All Pro Auto Repair;

2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 227686, issued to Ignacio Andrade, owner of A & A All Pro Auto Repair;

3. Revoking or suspending Smog Check Station License No. RC 227686, issued to Ignacio Andrade, owner of A & A All Pro Auto Repair;

4. Revoking or suspending Lamp Station License, Class A, No. LS 227686, issued to Ignacio Andrade, owner of A & A All Pro Auto Repair;

5. Revoking or suspending Brake Station License, Class C, No. BS 227686, issued to Ignacio Andrade, owner of A & A All Pro Auto Repair; and,

6. 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: 2021.10.14 15:13:43 -07'00'

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

Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 77/17-15844