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7

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

10
11 In the Matter of the Accusation Against:

Case No. 79/13-38

12 **L T HOMES, INC. DBA WHITTIER TIRE**
13 **ZONE 1; HAMID HAMIDZADEH**
HAMOUDI; RYAN KODA; PATRICIA
14 **ROBINSON**
15 **9127 Painter Avenue #A**
Whittier, CA 90602
16 **Automotive Repair Dealer Registration No.**
ARD 228160
Smog Check Station License No. RC 228160

ACCUSATION

Smog Check

17 **CESAR DURAN**
18 **741 Bartolo Avenue**
Montebello, CA 90640
19 **Advanced Emission Specialist Technician,**
EA 152775

20 Respondents.

21 Complainant alleges:

22 **PARTIES**

23 1. John Wallaeh ("Complainant") brings this Accusation solely in his official
24 capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
25 Affairs.
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Automotive Repair Dealer Registration ARD228160

27 2. On or about July 18, 2003, the Bureau issued Automotive Repair Dealer
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1 Registration Number ARD 228160 ("Registration") to LT Homes Inc. ("Respondent"), doing
2 business as Whittier Tire Zone 1, with Hamid Hamidzadeh Hamoodi as President. The
3 Registration was in full force and effect at all times relevant to the charges brought herein and
4 will expire on June 30, 2013, unless renewed.

5 **Smog Check Station License RC228160**

6 3. On or about July 22, 2003, the Bureau issued Smog Check Station License
7 Number RC 228160 ("Station License") to Respondent. The Station License was in full force
8 and effect at all times relevant to the charges brought herein and will expire on June 30, 2013,
9 unless renewed.

10 **Advanced Emission Specialist Technician License EA 152775**

11 4. On a date uncertain in 2006, the Bureau issued Advanced Emission Specialist
12 Technician License No. EA 152775 ("Technician License") to Cesar Duran ("Respondent
13 Duran"). The Technician License was in full force and effect at all times relevant to the
14 charges brought herein and will expire on December 31, 2013, unless renewed.

15 **JURISDICTION**

16 5. Section 9884.7¹ provides that the Director may revoke an automotive repair dealer
17 registration.

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

22 **STATUTORY PROVISIONS**

23 7. Section 9884.7 states, in pertinent part:

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

¹ All section references are to the Business and Professions Code, unless otherwise indicated.

1 member of the automotive repair dealer.

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

5

6 (3) Failing or refusing to give to a customer a copy of any document requiring his
7 or her signature, as soon as the customer signs the document.

8 (4) Any other conduct that constitutes fraud.

9

10 (6) Failure in any material respect to comply with the provisions of this
11 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
12 regulations adopted pursuant to it.

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

16

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

23 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
24 place on probation the registration for all places of business operated in this state by
25 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
26 engaged in a course of repeated and willful violations of this chapter, or regulations
27 adopted pursuant to it.

28 8. 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. . . One copy of the invoice shall be given to the customer and one copy
shall be retained by the automotive repair dealer.

9. Section 9884.9 states:

(a) The automotive repair dealer shall give to the customer a written estimated
price for labor and parts necessary for a specific job. 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 without the oral or written consent of the customer that shall be obtained at
some time after it is determined that the estimated price is insufficient and before the
work not estimated is done or the parts not estimated are supplied. Written consent or

1 authorization for an increase in the original estimated price may be provided by
2 electronic mail or facsimile transmission from the customer. The bureau may specify
3 in regulation the procedures to be followed by an automotive repair dealer when an
4 authorization or consent for an increase in the original estimated price is provided by
5 electronic mail or facsimile transmission. If that consent is oral, the dealer shall make
6 a notation on the work order of the date, time, name of person authorizing the
7 additional repairs and telephone number called, if any, together with a specification of
8 the additional parts and labor and the total additional cost . . .

9 10. Section 118, subdivision (b) states:

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

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

23 12. Section 477 states, in pertinent part:

24 (a) "Board" includes "bureau," "commission," "committee," "department,"
25 "division," "examining committee," "program," and "agency."

26 (b) "License" includes certificate, registration or other means to engage in a
27 business or profession regulated by the Code.

28 REGULATORY PROVISIONS

13. 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.

14. Health and Safety Code Section 44012 states:

The test at the smog check stations shall be performed in accordance with
procedures prescribed by the department and may require loaded mode dynamometer
testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard
diagnostic system, or other appropriate test procedures as determined by the
department in consultation with the state board. The department shall implement
testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or
two-speed idle testing, on model year 2000 and newer vehicles only, beginning no
earlier than January 1, 2013. However, the department, in consultation with the state
board, may prescribe alternative test procedures that include loaded mode

1 dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems
2 that the department and the state board determine exhibit operational problems. The
department shall ensure, as appropriate to the test method, the following:

3 (a) Emission control systems required by state and federal law are reducing
4 excess emissions in accordance with the standards adopted pursuant to subdivisions
(a) and (c) of Section 44013.

5

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

9 15. Health and Safety Code Section 44015 states, in pertinent part:

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

12 16. Health and Safety Code Section 44032 states:

13 No person shall perform, for compensation, tests or repairs of emission control
14 devices or systems of motor vehicles required by this chapter unless the person
performing the test or repair is a qualified smog check technician and the test or
15 repair is performed at a licensed smog check station. Qualified technicians shall
perform tests of emission control devices and systems in accordance with Section
44012.

16 17. Health and Safety Code Section 44072.2 of the Health and Safety Code states:

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

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

22

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

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

26 18. Health and Safety Code Section 44072.6 provides, in pertinent part, that the
27 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
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1 the Director of jurisdiction to proceed with disciplinary action.

2 19. Health and Safety Code Section 44072.8 states:

3 When a license has been revoked or suspended following a hearing under this
4 article, any additional license issued under this chapter in the name of the licensee
5 may be likewise revoked or suspended by the director.

6 20. California Code of Regulations, title 16, section 3340.30, subdivision (a),
7 provides, in pertinent part, that a licensed technician shall inspect, test and repair vehicles in
8 accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and
9 Safety Code, and section 3340.42 of the California Code of Regulations.

10 21. California Code of Regulations, title 16, section 3340.35, subdivision (c),
11 provides, in pertinent part that a licensed station shall issue a certificate of compliance or
12 noncompliance to the owner or operator of any vehicle that has been inspected in accordance with
13 the procedures specified in section 3340.42 of the California Code of Regulations and have all the
14 required emission control equipment and devices installed and functioning correctly.

15 22. California Code of Regulations, title 16, section 3340.41, subdivision (c), states
16 that no person shall enter into the emissions inspection system any vehicle identification
17 information or emission control system identification data for any vehicle other than the one
18 being tested. Nor shall any person knowingly enter into the emissions inspection system any
19 false information about the vehicle being tested.

20 COST RECOVERY

21 23. Section 125.3 provides, in pertinent part, that a Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 **UNDERCOVER OPERATION # 1 - February 1, 2012**

26 24. On or about February 1, 2012, a Bureau undercover operator drove a Bureau-
27 documented 1992 Toyota Corolla, to the Respondent's Whittier Tire Zone 1 facility. A defect
28 had been created in the Powertrain Control Module ("PCM") by breaking the ground connection

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1 between the vacuum sensor² and the Corolla's PCM. This will cause the "check engine" light or
2 Malfunction Indicator Light ("MIL") to illuminate and record a diagnostic code 31 (vacuum
3 sensor signal) stored in memory. This defect causes the vehicle to fail a smog check inspection
4 for excessive tailpipe emissions (in gross polluter range) as well as the MIL functional test.

5 25. The operator was met by an employee who identified himself as "Cesar." The
6 operator told Cesar that the check engine light of the vehicle was illuminated and the vehicle was
7 hard to start when cold. Cesar stated that it would cost \$35 for diagnosis and it would be applied
8 to the cost of the necessary repairs. Cesar gave the operator a blank piece of paper to write his
9 contact information. The operator was not provided a written estimate.

10 26. At 1615 hours the operator called the Respondent and talked to a gentleman who
11 identified himself as Emerson, the manager. Emerson stated the car started up but lacked power
12 from first gear to second and there were no trouble codes in the vehicles computer.

13 27. On or about February 2, 2012, at approximately 1036 hours, the operator called the
14 Respondent and spoke with Cesar. Cesar stated the injectors were leaking fuel, especially injector
15 #3. He said he would check the injector O-rings which could be the cause of the leakage. He also
16 stated that there was a MAP sensor code which is related to the pressure of the intake manifold
17 and the MAP sensor would cost approximately \$200.

18 28. On or about February 2, 2012, at approximately 1428 hours, the operator called the
19 Respondent and spoke with Cesar. Cesar stated the cost of a new MAP sensor was \$439 and a
20 used replacement part would be \$180 plus \$25 labor. In addition, he stated the fuel injector seal
21 kit was \$48 and the labor to replace them was \$60. Cesar said the total cost with a used MAP
22 sensor was \$313 plus tax. The operator asked if the recommended repairs were necessary in order
23 for the check engine light to turn off. Cesar confirmed that the recommended repairs were
24 necessary. The operator said he needed to check with his sister in-law before he could authorize
25 the repair.

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27 ² The term "Vacuum Sensor," which is a Toyota Motor Corp. part description, is the same
28 component which is also known as a "Manifold Absolute Pressure Sensor" ("MAP"). These
terms have the same meaning and are sometimes interchanged in this Accusation.

1 recommended as documented on invoice number [REDACTED] when in fact those services were not
2 needed.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 34. Respondent has subjected its registration to discipline pursuant to Section 9884.7,
6 subsection (a)(4), in that Respondent committed an act that constitutes fraud or deceit, as follows:

7 a. Respondent stated that the fuel injectors, especially injector number 3, were
8 leaking and accepted payment from the operator for a new fuel injector kit seal, when in fact the
9 injectors were not leaking and the repair was unnecessary.

10 b. Respondent accepted payment for replacing the MAP sensor when in fact, the
11 repair was not necessary. Additionally, Respondent did not disclose to the operator or document
12 on Invoice number [REDACTED] the repair to the ground wire connection between the MAP sensor and
13 the Corolla's PCM, which was the only repair required on the vehicle.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Automotive Repair Act)**

16 35. Respondent has subjected its registration to discipline pursuant to Section 9884.7,
17 subdivision (a)(6), in that on or about February 1, 2012, Respondent failed to comply with the
18 following sections of the Automotive Repair Act:

19 a. Respondent failed to provide the operator with a written estimated price for parts
20 and labor for a specific job in violation of Section 9884.9, subdivision (a). Respondent exceeded
21 the verbal authorization of \$60 labor to install the fuel injector kit when the actual labor cost was
22 \$70 and the total cost was \$313 plus tax when in fact the cost of the authorized repairs
23 documented on final invoice number [REDACTED] was \$370.29.

24 b. Respondent failed to describe the repair to the ground wire connection between the
25 MAP sensor and the Corolla's PCM on Invoice number [REDACTED] in violation of Section 9884.8.
26 Respondent failed to properly describe all parts including the part number and description of the
27 fuel injector kit on invoice number [REDACTED]. Respondent failed to specify whether the injector's
28 upper or lower seals were replaced on Invoice number [REDACTED]

1 operator told Emerson he could not pick up the car until Monday, February 27, 2012.

2 39. On February 27, 2012, the operator paid Emerson \$500 and was asked to sign
3 several documents that appeared to be estimates and/or invoices. The operator asked about the
4 missing dip stick and Emerson said it was found in the engine compartment.

5 40. On February 28, 2012, a Bureau representative conducted a reinspection of the
6 vehicle and found the following:

7 a. The vehicle failed a smog inspection, due to having an ignition timing
8 incorrectly set at 5 degrees Before Top Dead Center ("BTDC"). The vehicle's under hood label
9 calls for 10 degrees BTDC. The VIR shows that Smog Technician Cesar A. Duran, Technician
10 License No. EA152775 performed the smog inspection and Electronic Certificate of Compliance
11 No. [REDACTED] was issued.

12 b. The Vehicle Speed Sensor, ECT sensor, and the oxygen sensor were
13 replaced as invoiced but were not in need of replacement. The broken wire to the ECT sensor
14 that was created by the Bureau representative had been repaired but the repair was not described
15 on the invoice. The repair was performed using standard crimp splice type of connectors and
16 wrapped with electrical tape. Repairing a wire with a non-watertight connector is not in
17 accordance with the accepted trade standards for this type of repair. The only repair necessary
18 for the vehicle to pass the Smog inspection was to repair the wire to the ECT sensor. The
19 replacement of the ECT sensor, the O2 Sensor, and speed sensor was not necessary.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Untrue and Misleading Statements)**

22 41. Respondent has subjected its registration to discipline under Section 9884.7,
23 subdivision (a)(l), in that Respondent made statements which it knew or which by exercise of
24 reasonable care it should have known were untrue or misleading, as follows:

25 a. Respondent's technician told the operator that the ECT sensor, O2 Sensor, and the
26 vehicle speed sensor needed to be replaced when he knew or should have known the only repair
27 necessary was the broken wire to the ECT sensor. When the operator asked if the repairs were
28 necessary in order for vehicle to pass a smog check, he was told the recommended repairs were

1 necessary.

2 b. On or about February 24, 2012, Respondent made statements which he knew or
3 which by exercise of reasonable care should have known to be untrue or misleading by issuing
4 electronic Certificate of Compliance No. [REDACTED] for the 1993 Mazda Protégé. Respondent
5 thus certified that the vehicle was in compliance with applicable laws and regulations when the
6 vehicle could not have passed the functional portion of the smog inspection because the vehicle's
7 ignition timing was adjusted beyond specifications.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 42. Respondent's registration is subject to disciplinary action pursuant to Section
10 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by:

11 a. On or about February 27, 2012, Respondent accepted payment for replacing the
12 ECT Sensor, O2 Sensor, and the vehicle speed sensor when in fact these devices were in
13 serviceable condition and their replacement was not necessary. Additionally, Respondent did not
14 disclose to the operator or document on Invoice No. [REDACTED] the repair of the broken wire to the
15 ECT sensor which was the only repair required on the vehicle.

16 b. On or about February 24, 2012, Respondent committed acts constituting fraud by
17 issuing electronic Certificate of Compliance No. [REDACTED] to the 1993 Mazda Protégé without
18 performing a bona fide inspection of the emission control devices and systems on the vehicle,
19 thereby depriving the People of the State of California of the protection afforded by the Motor
20 Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Code)**

23 43. Respondent has subjected his registration to discipline pursuant to Section 9884.7,
24 subdivision (a)(6), in that on or about February 21, 2012, Respondent failed to comply with the
25 following sections of that code:

26 a. Respondent failed to provide the operator with a written estimated price for parts
27 and labor for a specific job in violation of Section 9884.9, subdivision (a).

28 **SEVENTH CAUSE FOR DISCIPLINE**

1 TENTH CAUSE FOR DISCIPLINE

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 47. Respondent has subjected its Station License to discipline under Health and Safety
4 Code section 44072.2, subdivision (c), in that on or about February 24, 2012, regarding the 1993
5 Mazda Protégé, when it violated sections of the California Code of Regulations, title 16, as
6 follows:

7 a. Respondent issued electronic Certificate of Compliance No. [REDACTED] even
8 though the 1993 Mazda Protégé had not been inspected in accordance with section 3340.42 of the
9 California Code of Regulations in violation of California Code of Regulations, title 16, section
10 3340.35, subdivision (c).

11 b. Respondent failed to conduct the required smog tests and inspections on the 1993
12 Mazda Protégé in accordance with the Bureau's specifications in violation of California Code of
13 Regulations, title 16, section 3340.42.

14 ELEVENTH CAUSE FOR DISCIPLINE

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

16 48. Respondent has subjected its station license to discipline under Health and Safety
17 Code section 44072.2, subdivision (d), in that on or about February 24, 2012, regarding the 1993
18 Mazda Protégé, Respondent committed acts involving dishonesty, fraud or deceit, causing injury
19 to another by issuing electronic Certificate of Compliance No. [REDACTED] for the 1993 Mazda
20 Protégé without performing a bona fide inspection of the emission control devices and systems on
21 the vehicle, thereby depriving the People of the State of California of the protection afforded by
22 the Motor Vehicle Inspection Program.

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27 TWELFTH CAUSE FOR DISCIPLINE

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

1 registration issued to LT Homes Inc.;

2 3. Revoking or suspending Smog Check Station License Number RC 228160, issued to
3 LT Homes, Inc., doing business as Whittier Tire Zone 1;

4 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
5 and Safety Code in the name of LT Homes Inc.;

6 5. Revoking or suspending Advanced Emission Specialist Technician License Number
7 EA 152775, issued to Cesar A. Duran;

8 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
9 and Safety Code in the name of Cesar A. Duran;

10 7. Ordering LT Homes Inc., doing business as Whittier Tire Zone 1 and Cesar A. Duran
11 to pay the Director the reasonable costs of the investigation and enforcement of this case,
12 pursuant to Business and Professions Code section 125.3; and,

13 8. Taking such other and further action as deemed necessary and proper.

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DATED: 12/21/12

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

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