

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

In the Matter of the Accusation Against:

**LUPE'S AUTOMOTIVE REPAIR, INC.,**  
**dba QUALITY TUNE-UP #51**  
**ROBERTO G. ALCARAZ,**  
**PRES./SECTY/TREAS.**  
10801 Folsom Blvd.  
Rancho Cordova, CA 95670

Automotive Repair Dealer Reg. No.  
ARD 271650  
Smog Check Station License No.  
RC 271650

and

**LUPE'S AUTO REPAIR, INC.,**  
**dba QUALITY TUNE-UP #41**  
**ROBERTO G. ALCARAZ,**  
**PRES./SECTY/TREAS.**  
2545 Arden Way  
Sacramento, CA 95825

Automotive Repair Dealer Reg. No. ARD  
271897  
Smog Check Station License No. RC  
271897

Respondents.

Case No. 77/16-24

OAH No. 2015120141

**DECISION**


The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

June 15, 2016

DATED:

May 23, 2016

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 STANTON W. LEE  
Deputy Attorney General  
4 State Bar No. 203563  
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*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**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. 77/16-24

13 **LUPE'S AUTOMOTIVE REPAIR, INC.,**  
**dba QUALITY TUNE-UP #51**  
14 **ROBERTO G. ALCARAZ,**  
**PRES./SECTY/TREAS.**  
15 **10801 Folsom Blvd.**  
**Rancho Cordova, CA 95670**

OAH No. 2015120141  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 **Automotive Repair Dealer Reg. No. ARD**  
17 **271650**  
**Smog Check Station License No. RC 271650**

18 **and**

19 **LUPE'S AUTO REPAIR, INC.,**  
20 **dba QUALITY TUNE-UP #41**  
21 **ROBERTO G. ALCARAZ,**  
**PRES./SECTY/TREAS.**  
22 **2545 Arden Way**  
**Sacramento, CA 95825**

23 **Automotive Repair Dealer Reg. No. ARD**  
24 **271897**  
**Smog Check Station License No. RC 271897**

25 Respondents.  
26  
27  
28

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He  
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
6 Harris, Attorney General of the State of California, by Stanton W. Lee, Deputy Attorney General.

7 2. Respondent Lupe's Automotive Repair, Inc. (also known as "Lupe's Auto Repair,  
8 Inc.")<sup>1</sup> dba Quality Tune - Up #51 and Lupe's Auto Repair, Inc. dba Quality Tune-Up #41, and  
9 Roberto G. Alcaraz, President ("Respondents") are represented in this proceeding by attorney  
10 Michael Levin, whose address is: 3727 Camino del Rio South, Ste. 200, San Diego, CA 92108,  
11 (619) 272-6114.

12 3. On or about February 5, 2013, the Bureau of Automotive Repair issued Automotive  
13 Repair Dealer Registration No. ARD 271650 to Lupe's Automotive Repair, Inc. (also known as  
14 "Lupe's Auto Repair, Inc.") dba Quality Tune-Up #51; Roberto G. Alcaraz, President, Secretary,  
15 Treasurer. The Automotive Repair Dealer Registration was in full force and effect at all times  
16 relevant to the charges brought in Accusation No. 77/16-24 and will expire on February 29, 2016,  
17 unless renewed. On or about February 26, 2013, the Director issued Automotive Repair Dealer  
18 Registration Number ARD 271897 ("registration") to Lupe's Auto Repair, Inc. dba Quality Tune-  
19 Up #41, with Alcaraz as president, secretary, and treasurer. The registration was in full force and  
20 effect at all times relevant to the charges brought herein and will expire on February 28, 2017,  
21 unless renewed.

22 4. On or about March 1, 2013, the Bureau of Automotive Repair issued Smog Check  
23 Station License No. RC 271650 to Lupe's Automotive Repair, Inc. (also known as "Lupe's Auto  
24 Repair, Inc.") dba Quality Tune-Up #51. The Smog Check Station License was in full force and  
25 effect at all times relevant to the charges brought in Accusation No. 77/16-24 and will expire on  
26 February 29, 2016, unless renewed. On or about March 27, 2013, the Director issued Smog

27 <sup>1</sup> On December 2, 2015, the corporate name, "Lupe's Automotive Repair, Inc." was  
28 changed to "Lupe's Auto Repair, Inc."

1 Check Station License Number RC 271897 to Lupe's Auto Repair, Inc. dba Quality Tune-Up  
2 #41. The smog check station license was in full force and effect at all times relevant to the  
3 charges brought herein and will expire on February 28, 2017, unless renewed.

4 **JURISDICTION**

5 5. Accusation No. 77/16-24 was filed before the Director of Consumer Affairs  
6 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
7 Respondent. The Accusation and all other statutorily required documents were properly served  
8 on Respondent on November 19, 2015. Respondent timely filed its Notice of Defense contesting  
9 the Accusation.

10 6. A copy of Accusation No. 77/16-24 is attached as exhibit A and incorporated herein  
11 by reference.

12 **ADVISEMENT AND WAIVERS**

13 7. Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Accusation No. 77/16-24. Respondent has also carefully read, fully  
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
16 Order.

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

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

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1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 77/16-24.

4 11. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check  
5 Station Licenses for Quality Tune-Up #51 and Quality Tune-Up #41 are subject to discipline and  
6 they agree to be bound by the Director's probationary terms as set forth in the Disciplinary Order  
7 below.

8 CONTINGENCY

9 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
10 the Director's designee. Respondent understands and agrees that counsel for Complainant and the  
11 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of  
12 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to  
13 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands  
14 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the  
15 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the  
16 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
17 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
18 and the Director shall not be disqualified from further action by having considered this matter.

19 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
20 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
21 signatures thereto, shall have the same force and effect as the originals.

22 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
27 writing executed by an authorized representative of each of the parties.  
28

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration Nos. ARD 271650 and ARD 271897, and Smog Check Station License Nos. RC 271650 and RC 271897 issued to Respondent are revoked. However, the revocations are stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 271650 and Smog Check Station License No. RC 271650 issued to Respondent Quality Tune-Up #51 are suspended for seven (7) consecutive days, to begin on the effective date of the Bureau's decision adopting this Stipulated Settlement.

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

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

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

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

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

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

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

9. **False and Misleading Advertising.** If the accusation involves false and misleading advertising, during the period of probation, Respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

10. **Cost Recovery.** Payment to the Bureau of the full amount of cost recovery: \$19,082.94. Costs shall be payable in 36 equal monthly installments of \$530.08 with the final payment due 12 months prior to the termination of probation. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's license and registration to outright revocation; however, the Director or the Director's Bureau of Automotive Repair designee may elect to continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael Levin. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registrations, and Smog Check Station Licenses. I enter

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into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,  
and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3-01-2016

Roberto G. Alcaraz  
LUPE'S AUTOMOTIVE REPAIR, INC. (also known  
as "LUPE'S AUTO REPAIR.") DBA QUALITY  
TUNE - UP #51 and #41; ROBERTO G. ALCARAZ,  
PRESIDENT  
Respondents

I have read and fully discussed with Respondent Lupe's Automotive Repair, Inc. (also  
known as "Lupe's Auto Repair, Inc.") dba Quality Tune - Up #51 and #41; Roberto G. Alcaraz,  
President the terms and conditions and other matters contained in the above Stipulated Settlement  
and Disciplinary Order. I approve its form and content.

DATED: 3/1/2016

Michael B. Levin  
Michael Levin  
Attorney for Respondent

#### ENDORSEMENT

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

Dated: 3/1/16

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
KENT D. HARRIS  
Supervising Deputy Attorney General

Stanton W. Lee  
Stanton W. Lee  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 77/16-24**

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 STANTON W. LEE  
Deputy Attorney General  
4 State Bar No. 203563  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-9921  
Facsimile: (916) 322-8288  
7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 77/16-24

12 LUPE'S AUTOMOTIVE REPAIR, INC.,  
dba QUALITY TUNE-UP #51  
13 ROBERTO G. ALCARAZ, PRES./SECTY/TREAS.  
14 10801 Folsom Blvd.  
Rancho Cordova, CA 95670

ACCUSATION

15 Automotive Repair Dealer Reg. No. ARD 271650  
16 Smog Check Station License No. RC 271650

17 and

18 LUPE'S AUTO REPAIR, INC.,  
dba QUALITY TUNE-UP #41  
19 ROBERTO G. ALCARAZ, PRES./SECTY/TREAS.  
20 2545 Arden Way  
Sacramento, CA 95825

21 Automotive Repair Dealer Reg. No. ARD 271897  
22 Smog Check Station License No. RC 271897

23 Respondents.

24 Complainant alleges:

25 PARTIES

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

28 ///

1           **Quality Tune-Up #51**

2           2.     On or about February 5, 2013, the Director of Consumer Affairs ("Director") issued  
3     Automotive Repair Dealer Registration Number ARD 271650 ("registration") to Lupe's  
4     Automotive Repair, Inc. ("Respondent Lupe's Automotive Repair"), doing business as Quality  
5     Tune-Up #51, with Roberto G. Alcaraz ("Alcaraz") as president, secretary, and treasurer. The  
6     registration was in full force and effect at all times relevant to the charges brought herein and will  
7     expire on February 29, 2016, unless renewed.

8           3.     On or about March 1, 2013, the Director issued Smog Check Station License Number  
9     RC 271650 to Respondent Lupe's Automotive Repair. The smog check station license was in full  
10    force and effect at all times relevant to the charges brought herein and will expire on February 29,  
11    2016, unless renewed.

12           **Quality Tune-Up #41**

13           4.     On or about February 26, 2013, the Director issued Automotive Repair Dealer  
14    Registration Number ARD 271897 ("registration") to Lupe's Auto Repair, Inc. ("Respondent  
15    Lupe's Auto Repair"), doing business as Quality Tune-Up #41, with Alcaraz as president,  
16    secretary, and treasurer. The registration was in full force and effect at all times relevant to the  
17    charges brought herein and will expire on February 29, 2016, unless renewed.

18           5.     On or about March 27, 2013, the Director issued Smog Check Station License  
19    Number RC 271897 to Respondent Lupe's Auto Repair. The smog check station license was in  
20    full force and effect at all times relevant to the charges brought herein and will expire on February  
21    29, 2016, unless renewed.

22                           **JURISDICTION**

23           6.     Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
24    the Director may revoke an automotive repair dealer registration.

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

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

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

8 **STATUTORY AND REGULATORY PROVISIONS**

9 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

19 ....  
20 (4) Any other conduct which constitutes fraud.

21 ....  
22 (6) Failure in any material respect to comply with the provisions of this  
23 chapter or regulations adopted pursuant to it.

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

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

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1 11. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

2 The automotive repair dealer shall give to the customer a written  
3 estimated price for labor and parts necessary for a specific job. No work shall be done  
4 and no charges shall accrue before authorization to proceed is obtained from the  
5 customer. No charge shall be made for work done or parts supplied in excess of the  
6 estimated price without the oral or written consent of the customer that shall be  
7 obtained at some time after it is determined that the estimated price is insufficient and  
8 before the work not estimated is done or the parts not estimated are supplied . . .

9 12. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes  
10 "bureau," "commission," "committee," "department," "division," "examining committee,"  
11 "program," and "agency."

12 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
13 "license" includes "registration" and "certificate."

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

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

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

21 . . . .

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

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

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

16. California Code of Regulations, title 16, section ("Regulation") 3353 states, in  
pertinent part:

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

. . . .

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1 (d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For  
2 purposes of this article, to tear down" shall mean to disassemble, and teardown" shall  
3 mean the act of disassembly. If it is necessary to tear down a vehicle component in  
4 order to prepare a written estimated price for required repair, the dealer shall first give  
5 the customer a written estimated price for the teardown. This price shall include the  
6 cost of reassembly of the component. The estimated price shall also include the cost  
7 of parts and necessary labor to replace items such as gaskets, seals and O rings that  
8 are normally destroyed by teardown of the component. If the act of teardown might  
9 prevent the restoration of the component to its former condition, the dealer shall write  
10 that information on the work order containing the teardown estimate before the work  
11 order is signed by the customer.

12 The repair dealer shall notify the customer orally and conspicuously in  
13 writing on the teardown estimate the maximum time it will take the repair dealer to  
14 reassemble the vehicle or the vehicle component in the event the customer elects not  
15 to proceed with the repair or maintenance of the vehicle and shall reassemble the  
16 vehicle within that time period if the customer elects not to proceed with the repair or  
17 maintenance . . .

18 17. Regulation 3356 states, in pertinent part:

19 (a) All invoices for service and repair work performed, and parts  
20 supplied, as provided for in Section 9884.8 of the Business and Professions Code,  
21 shall comply with the following:

22 . . . .

23 (2) The invoice shall separately list, describe and identify all of the  
24 following;

25 (A) All service and repair work performed, including all diagnostic and  
26 warranty work, and the price for each described service and repair . . .

### 27 COST RECOVERY

28 18. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
the administrative law judge to direct a licensee 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.

### 29 RESPONDENTS' APPLICATIONS FOR REGISTRATION

30 19. Complainant is informed and believes and herein alleges that on or about January 3,  
31 2012, Lupe's Auto Repairs was incorporated in the State of California and was assigned  
32 Corporation Number 3439280 by the California Secretary of State. The corporation is currently  
33 suspended.

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20. In or about January 2013, Alcaraz submitted an application for an automotive repair dealer registration to the Bureau on behalf of Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51, with a corporation number of 3439280. On or about January 22, 2013, Alcaraz certified under penalty of perjury that all statements made in the application were true and correct.

21. In or about February 2013, Alcaraz submitted an application for an automotive repair dealer registration to the Bureau on behalf of Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41, with a corporation number of 3439280. On or about February 13, 2013, Alcaraz certified under penalty of perjury that all statements made in the application were true and correct.

FIRST CAUSE FOR DISCIPLINE

**(Untrue or Misleading Statements)**

22. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent's president, Alcaraz, certified on the application that the name of his corporation was Lupe's Automotive Repair, Inc. when, in fact, the corporate name as registered with the Secretary of State is Lupe's Auto Repairs, Inc.

## SECOND CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud or Deceit)**

23. Respondent Lupe's Automotive Repair's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set forth in paragraph 22 above.

### THIRD CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent Lupe's Auto Repair's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or

1 authorized a statement which it knew or in the exercise of reasonable care should have known to  
2 be untrue or misleading, as follows: On or about February 13, 2013, Respondent's president,  
3 Alcaraz, certified on the application in his response to Question 8 (c) that he did not have a  
4 current automotive repair dealer registration. In fact, Automotive Repair Dealer Registration  
5 Number ARD 271650 had been issued to Lupe's Automotive Repair, Inc., doing business as  
6 Quality Tune-Up #51, with Alcaraz as president, secretary, and treasurer, on February 5, 2013, as  
7 set forth in paragraph 2 above.

8 **FOURTH CAUSE FOR DISCIPLINE**

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

10 25. Respondent Lupe's Auto Repair's smog check station license is subject to  
11 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
12 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set  
13 forth in paragraph 24 above.

14 **CONSUMER COMPLAINT (F. N.): 2003 TOYOTA COROLLA**

15 26. On or about September 23, 2013, the Bureau received a complaint from F. N.,  
16 alleging that Respondent Lupe's Automotive Repair's facility removed the transmission from his  
17 vehicle without his permission.

18 27. On or about October 1, 2013, Bureau Representative T. W. contacted F. N., who  
19 stated as follows: On or about September 21, 2013, F. N. took his 2003 Toyota Corolla to  
20 Respondent's facility because the clutch would not release and signed a written estimate  
21 authorizing a diagnosis of the vehicle for \$140. That same day, F. N. returned to the facility and  
22 found that the transmission had been removed. The facility's service writer advised F. N. that  
23 there was an internal problem in the transmission and that the problem was not in the clutch  
24 assembly. The service writer told F. N. that he could take the vehicle as is or pay another \$110 to  
25 have the transmission reinstalled. F. N. authorized the facility to reinstall the transmission. The  
26 representative reviewed the facility's repair records on the vehicle, Estimate/Work Order Nos.  
27 50891 and 50891-B and Invoice No. 51-50891. Estimate/Work Order No. 50891-B showed that

28 ///



1 F. N. had approved a revised estimate price of \$280 for the work on the vehicle, including the  
2 reinstallation of the transmission, and had paid the facility a total of \$250.

3 28. On or about October 3, 2013, T. W. met with Respondent's president, Alcaraz, and  
4 discussed the complaint. At the conclusion of his investigation, T. W. found that the facility had  
5 failed to provide F. N. with a teardown estimate or obtain his approval before removing the  
6 transmission from the vehicle.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Violations of the Bus. & Prof. Code)**

9 29. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to  
11 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:  
12 Respondent removed the transmission from F. N.'s 2003 Toyota Corolla without his oral or  
13 written consent.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Violations of Regulations)**

16 30. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
17 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to  
18 comply with Regulation 3353, subdivision (d), in a material respect, as follows: Respondent  
19 failed to include on the estimates/work orders the cost to re-install the transmission in F. N.'s  
20 2003 Toyota Corolla.

21 **CONSUMER COMPLAINT (J. P.): 1993 GEO PRIZM**

22 31. On or about November 22, 2013, the Bureau received a complaint from J. P., alleging  
23 that Respondent Lupe's Automotive Repair's facility input the wrong engine size while  
24 performing a smog test on his 1993 Geo Prizm, causing the vehicle to fail the test. J. P. provided  
25 the Bureau with copies of documents he received from the facility, including a vehicle inspection  
26 report ("VIR") dated October 2, 2013.

27 32. On or about December 2, 2013, Bureau Representative T. W. contacted J. P. and  
28 discussed the complaint. J. P. stated that on or about October 2, 2013, he took his vehicle to

1 Respondent's facility for a smog inspection. According to the VIR given to J. P., the vehicle  
2 failed the inspection due to excessive tailpipe emissions. J. P. paid the facility \$50.90 for the test.  
3 Later, J. P. looked at the VIR and noted that Respondent's smog check technician, Domingo  
4 Johnson ("Johnson"), had entered the engine size as 1.8 liter when, in fact, the vehicle was  
5 equipped with a 1.6 liter engine. On or about October 5, 2013, J. P. took the vehicle to another  
6 facility and requested a smog inspection. The vehicle passed the test. The VIR provided by the  
7 facility showed that the engine size had been properly input as 1.6 liter. J. P. contacted his credit  
8 card company and had the \$50.90 charge paid to Respondent's facility reversed.

9 33. That same day (December 2, 2013), T. W. went to the facility and reviewed various  
10 documents with Alcaraz, including the VIR dated October 2, 2013 and the vehicle's test history  
11 (prior VIR's) that the Bureau had received from J. P. Alcaraz agreed that the entry of the  
12 incorrect engine size during the October 2, 2013, smog test changed the emission cut-points  
13 (tailpipe emission pass/fail standards). The VIR also showed that Johnson had entered the results  
14 of the functional ignition timing test on the vehicle as "pass" at 23 degrees before top dead center  
15 ("BTDC"). T. W. pointed out that the manufacturer's ignition timing specifications on the  
16 vehicle are 10 degrees BTDC. Alcaraz agreed that if the ignition timing on the vehicle was truly  
17 set at 23 degrees BTDC, the vehicle would have failed the functional portion of the smog  
18 inspection.

#### 19 SEVENTH CAUSE FOR DISCIPLINE

##### 20 (Untrue or Misleading Statements)

21 34. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
22 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or  
23 authorized statements which it knew or in the exercise of reasonable care should have known to  
24 be untrue or misleading, as follows:

25 a. Respondent's smog check technician, Johnson, certified under penalty of perjury on  
26 the VIR dated October 2, 2013, that J. P.'s 1993 Geo Prizm had a 1.8 liter engine. In fact, the  
27 vehicle is equipped with a 1.6 liter engine.

28 b. Respondent's smog check technician, Johnson, certified under penalty of perjury on

1 the VIR dated October 2, 2013, that J. P.'s 1993 Geo Prizm had passed the functional ignition  
2 timing test at 23 degrees BTDC. In fact, the manufacturer's ignition timing specifications on the  
3 vehicle are 10 degrees BTDC (if the vehicle's ignition timing had been set to 23 degrees BTDC,  
4 the vehicle would not pass the inspection required by Health & Saf. Code section 44012).

5 **EIGHTH CAUSE FOR DISCIPLINE**

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

7 35. Respondent Lupe's Automotive Repair's smog check station license is subject to  
8 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that  
9 Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:  
10 Respondent failed to ensure that the functional ignition timing test was performed on J. P.'s 1993  
11 Geo Prizm in accordance with procedures prescribed by the department.

12 **NINTH CAUSE FOR DISCIPLINE**

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

15 36. Respondent Lupe's Automotive Repair's smog check station license is subject to  
16 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that  
17 Respondent failed to comply with Regulation 3340.42, as follows: Respondent failed to ensure  
18 that the required smog tests were conducted on J. P.'s 1993 Geo Prizm in accordance with the  
19 Bureau's specifications.

20 **TENTH CAUSE FOR DISCIPLINE**

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

22 37. Respondent Lupe's Automotive Repair's smog check station license is subject to  
23 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
24 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set  
25 forth in paragraph 34 above.

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1                                    **CONSUMER COMPLAINT (T. F.): 1999 CHRYSLER LHS**

2            38. On or about January 9, 2014, the Bureau received a complaint from T. F., alleging,  
3 among other things, that her 1999 Chrysler LHS began overheating after it was repaired by  
4 Respondent Lupe's Automotive Repair.

5            39. On or about January 13, 2014, Bureau Representative T. W. contacted T. F. and  
6 spoke with her regarding the complaint. T. F. stated that her vehicle would not start and that she  
7 believed the problem was due to a defective fuel pump. T. F. purchased a fuel pump from  
8 AutoZone. On or about January 4, 2014, T. F. towed the vehicle to Respondent's facility and had  
9 them install the pump. Later, T. F. and her father went to the facility to pay for the repairs and  
10 met with Respondent's technician, Johnson. Johnson informed T. F. that he had installed a crank  
11 angle sensor in the vehicle, and asked her to go to AutoZone and purchase a new sensor to replace  
12 the unit he installed. Respondent's manager, Edwin, overheard the conversation and realized that  
13 Johnson had installed parts that were not reflected on the final invoice, Invoice #51-52308.  
14 Edwin told T. F. that she needed to pay for the new sensor or the part would be removed. T. F.'s  
15 father and Edwin became involved in a heated discussion, and the police were called to the scene.  
16 T. F. would only pay for the installation of the fuel pump. T. F. paid the facility \$195 and  
17 received a copy of the invoice. About 25 miles after the repairs were completed, the engine  
18 began to overheat. According to T. F., the vehicle never had an overheating problem until the  
19 fuel pump and crank sensor were replaced by the facility.

20            40. On or about February 11, 2014, T. W. went to the facility and met with Alcaraz,  
21 Edwin, and Johnson. Johnson told T. W. that replacing the fuel pump had not corrected the no-  
22 start condition on the vehicle. Johnson performed a diagnosis of the vehicle and found that the  
23 crank sensor had an opening or defect. Johnson purchased a new sensor from AutoZone and  
24 installed it in the vehicle.

25                                    **ELEVENTH CAUSE FOR DISCIPLINE**

26                                    **(Violations of the Bus. & Prof. Code)**

27            41. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
28 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to

1 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:  
2 Respondent installed a new crank angle sensor in T. F.'s 1999 Chrysler LHS without her oral or  
3 written consent.

#### 4 TWELFTH CAUSE FOR DISCIPLINE

##### 5 (Violations of Regulations)

6 42. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
7 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to  
8 comply with Regulation 3356, subdivision (a)(2)(A), in a material respect, as follows:  
9 Respondent failed to list, identify or describe on Invoice #51-52308 all repairs performed on the  
10 vehicle, the installation of the crank angle sensor.

#### 11 CONSUMER COMPLAINT (D. D.): 2001 TOYOTA ECHO

12 43. On or about April 7, 2014, the Bureau received a complaint from D. D., alleging that  
13 Respondent Lupe's Automotive Repair's facility performed unnecessary repairs on her 2001  
14 Toyota Echo.

15 44. On or about April 9, 2014, Bureau Representative T. S. called D. D. and spoke with  
16 her regarding the complaint. D. D. stated that on April 1, 2014, she took her vehicle to Firestone  
17 Complete Auto Care ("Firestone") for service. Firestone performed a diagnosis of the on-board  
18 computer as the check engine light was on and found that the ignition coil was defective.  
19 Firestone replaced the ignition coil, air filter, two accessory belts, and the spark plugs, and  
20 performed an oil/filter change, cooling system service, and fuel injection service. That same day,  
21 D. D. took the vehicle to Respondent's facility for a smog inspection. The vehicle failed the  
22 inspection (the VIR provided to D. D. showed that the vehicle failed the emissions test and the  
23 OBD system check). D. D. authorized the facility to perform a diagnosis of the vehicle to  
24 determine the cause of the emissions failure. Later, D. D. was advised that the oxygen sensor and  
25 catalytic converter needed to be replaced. D. D. authorized the repairs. After the work was  
26 completed, the facility contacted D. D. and recommended replacing the valve cover gasket due to  
27 a leak and the spark plugs due to oil contamination. D. D. and her brother went to Firestone and  
28 discussed the recommended repairs. Firestone advised D. D. that the valve cover gasket was not

1 leaking, the spark plugs were new, and they did not believe the oxygen sensor or the catalytic  
2 converter were in need of replacement as there were no fault codes pending or stored in the on-  
3 board computer at the time they inspected the vehicle. D. D. and her brother went to  
4 Respondent's facility and confronted the manager. Despite a heated discussion, D. D. agreed to  
5 have the valve cover replaced, and paid the facility \$1,055.68 for the repairs.

6 45. That same day (April 9, 2014), T. S. made a field visit to Firestone and met with the  
7 general manager, J. L. J. L. stated that they replaced the spark plugs on the vehicle, that there  
8 were no signs of an internal or external oil leak from the valve cover gasket, and that no oxygen  
9 sensor or catalytic converter fault codes were stored in the on-board computer.

10 46. On or about April 16, 2014, T. S. went to Respondent's facility and discussed the  
11 complaint with the manager, Lorena Rodriguez ("Rodriguez"). Rodriguez claimed that D. D. was  
12 shown the oil on the spark plugs from the leaking valve cover gasket and that their recommended  
13 repairs were legitimate. T. S. obtained copies of Respondent's repair records on the vehicle,  
14 including Invoice #51-53589. The invoice indicated that a #P0420 catalyst efficiency fault code  
15 was found during the facility's diagnosis of the vehicle.

16 47. T. S. reviewed information from the Bureau's vehicle information database showing  
17 that a P0420 fault code was not stored or pending in the vehicle's computer memory. T. S. found  
18 that Respondent's facility failed to follow recommended procedures in diagnosing the emissions  
19 failure on the vehicle and made an untrue or misleading statement on the invoice.

### 20 THIRTEENTH CAUSE FOR DISCIPLINE

#### 21 (Untrue or Misleading Statements)

22 48. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
23 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or  
24 authorized a statement which it knew or in the exercise of reasonable care should have known to  
25 be untrue or misleading, as follows: Respondent represented on the invoice that a pending P0420  
26 catalyst efficiency fault code was found during the facility's emissions failure diagnosis of D.  
27 D.'s 2001 Toyota Echo. In fact, that fault code was not stored or pending in the vehicle's  
28 computer memory.

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 49. Respondent Lupe's Automotive Repair's smog check station license is subject to  
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that  
5 Respondent failed to comply with section 44016 of that Code, as follows: Respondent failed to  
6 diagnose the cause of the emissions failure on D. D.'s 2001 Toyota Echo in accordance with  
7 established specifications and procedures; specifically, Respondent performed an oxygen sensor  
8 rise time test which was not applicable to that make or model vehicle since it is equipped with an  
9 On Board Diagnostic II (OBDII) operating system.

10 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

13 50. Respondent Lupe's Automotive Repair's smog check station license is subject to  
14 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that  
15 Respondent failed to comply with Regulation 3340.41, subdivision (d), as follows: Respondent  
16 failed to follow applicable specifications and procedures when diagnosing the cause of the  
17 emissions failure on D. D.'s 2001 Toyota Echo.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

20 51. Respondent Lupe's Automotive Repair's smog check station license is subject to  
21 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
22 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set  
23 forth in paragraph 48 above.

24 **CONSUMER COMPLAINT (A. B.): 1991 MITSUBISHI ECLIPSE**

25 52. On or about October 9, 2014, the Bureau received a complaint from A. B., alleging  
26 that Respondent Lupe's Automotive Repair's facility failed to return the original starter on her  
27 1991 Mitsubishi Eclipse after replacing the part on the vehicle.

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1 53. On or about October 10, 2014, Bureau Representative T. S. spoke with A. B.  
2 regarding the complaint. A. B. stated that on or about September 8, 2014, she took the vehicle to  
3 the facility to have a rebuilt starter motor installed that she had purchased herself. The manager,  
4 Lorena, agreed to place the original starter motor in the trunk after finishing the repair so that  
5 A. B. could receive a refund of the \$27 core charge. A few weeks later, A. B. found that the  
6 starter motor had not been placed in the vehicle.

7 54. That same day (October 10, 2014), T. S. went to the facility and obtained copies of  
8 their repair records on the vehicle, Estimate/Work Order 55745 and Invoice #51-55745 . T. S.  
9 had been charged for a no start diagnosis of the vehicle and the replacement of the neutral safety  
10 switch. T. S. asked Rodriguez about the missing starter. Rodriguez told T. S. that A. B. waited  
11 too long to complain about the old starter and that she (Rodriguez) did not know anything about  
12 the part. Later, T. S. met with Respondent's technician, Ismael Acosta-Delgado ("Acosta-  
13 Delgado"), Acosta-Delgado stated that he installed the neutral safety switch in the vehicle, but  
14 did not perform the diagnosis, and did not know anything about the missing starter. T. S.  
15 informed Rodriguez and Acosta-Delgado that the vehicle had a manual transmission with a clutch  
16 pedal switch and was not equipped with a neutral safety switch.

17 55. On or about October 14, 2014, T. S. inspected the vehicle and found that the starter  
18 and clutch switch appeared to have been replaced.

## SEVENTEENTH CAUSE FOR DISCIPLINE

**(Untrue or Misleading Statements)**

21 56. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
22 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or  
23 authorized a statement which it knew or in the exercise of reasonable care should have known to  
24 be untrue or misleading, as follows: Respondent represented on the invoice that a safety neutral  
25 switch had been installed on A. B.'s 1991 Mitsubishi Eclipse when, in fact, a clutch pedal switch  
26 had been installed on the vehicle.

27 || *III*

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

3 57. Respondent Lupe's Automotive Repair's smog check station license is subject to  
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
5 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set  
6 forth in paragraph 56 above.

7 **CONSUMER COMPLAINT (F. B.): 1996 NISSAN MAXIMA**

8 58. On or about November 13, 2014, the Bureau received a complaint from F. B.,  
9 alleging that Respondent Lupe's Automotive Repair's facility damaged the radiator in his 1996  
10 Nissan Maxima during their diagnosis of the vehicle.

11 59. On or about November 21, 2014, Bureau Representative T. W. spoke with F. B.  
12 regarding the complaint. F. B. stated that the vehicle's malfunction indicator lamp ("MIL")  
13 illuminated soon after he was involved in a rear-end collision. On or about November 11, 2014,  
14 F. B. took the vehicle to the facility and requested a diagnosis of the MIL. After the diagnosis  
15 was completed, F. B. paid the facility \$80 and received a copy of Invoice #51-56503. The  
16 invoice indicated that 3 fuel evaporative system ("EVAP") fault codes had been stored in the on-  
17 board computer and that the EVAP canister had a large leak. The facility recommended replacing  
18 the EVAP canister, an EVAP purge valve and a fuel cap, which F. B. declined. F. B. decided to  
19 repair the vehicle himself and went to a local auto parts store. When F. B. raised the hood to  
20 verify the engine size, he found a wooden stick lying on top of the engine close to the radiator.  
21 The next day, F. B. discovered that the vehicle was leaking coolant. On or about November 13,  
22 2014, F. B. returned the vehicle to the facility. F. B. was advised that the wooden stick was used  
23 to hold the hood open during the facility's prior diagnosis of the vehicle. The facility inspected  
24 the vehicle and found that the radiator was defective and was leaking coolant at the top tank pinch  
25 point. F. B. contends that the facility caused the coolant leak by placing the stick on top of the  
26 radiator and slamming the hood.

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1       60. On or about November 25, 2014, T. W. inspected the vehicle, including the engine  
2 compartment, and found that the radiator leak appeared old and that the unit was leaking from the  
3 top tank seam; there was no evidence that the radiator was damaged by a wooden stick.

4       61. On or about November 26, 2014, T. W. went to the facility and obtained copies of  
5 their repair records on the vehicle, including the above invoice. T. W. found that the invoice was  
6 not in compliance with Regulation 3356, subdivision (a)(2)(A).

7                                   **NINETEENTH CAUSE FOR DISCIPLINE**

8                                   **(Violations of Regulations)**

9       62. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to  
11 comply with Regulation 3356, subdivision (a)(2)(A), in a material respect, as follows:  
12 Respondent failed to list, identify or describe on Invoice #51-56503 the diagnostic work  
13 performed on F. B.'s 1996 Nissan Maxima upon which the facility's recommendations were  
14 based, specifically, the recommendations pertaining to the replacement of the EVAP purge valve  
15 and fuel cap.

16                                   **UNDERCOVER OPERATION #1: 2002 FORD**

17       63. On or about August 27, 2014, an undercover operator of the Bureau ("operator") took  
18 the Bureau's 2002 Ford to Respondent Lupe's Automotive Repair's facility and requested an oil  
19 change. A wire to the mass air flow ("MAF") sensor on the Bureau-documented vehicle had been  
20 broken, causing the MIL to illuminate on the instrument panel. Respondent's service advisor  
21 recommended a "high mileage" oil change service on the vehicle. The operator signed and  
22 received a copy of a written estimate of \$59.38 for the service, which included a tire rotation,  
23 brake inspection, and courtesy inspection. During the oil change, the operator told the service  
24 advisor that she also wanted a smog inspection on the vehicle. The operator left the facility.

25       64. At approximately 1140 hours that same day, the operator received a call from the  
26 service advisor, informing her that the vehicle failed the smog inspection. The service advisor  
27 told the operator that the vehicle had a sensor problem, that the service light (MIL) was on, and  
28 that it would cost \$80 to perform a diagnosis. The operator authorized the additional work.

1        65. At approximately 1535 hours, the service advisor contacted the operator and told her  
2 that the brakes on the vehicle were "metal to metal", that the vehicle needed new brakes and one  
3 rotor, and that the power steering and transmission fluids should be changed. The operator asked  
4 about the diagnosis of the sensor problem and service light. The service advisor told the operator  
5 that the vehicle needed a new sensor, but recommended that the brakes be repaired first. The  
6 operator stated that she needed to get the smog and registration paid for first. The service advisor  
7 told the operator that she would call her back with a price to replace the sensor.

8        66. At approximately 1550 hours, the service advisor called the operator and told her that  
9 it would cost \$355.94 to replace the MAF sensor and that the computer monitors would have to  
10 be reset. The service advisor also recommended that the brakes be replaced. The operator  
11 authorized the replacement of the MAF sensor, but declined the brake repairs.

12        67. On or about August 28, 2014, the operator went to the facility to retrieve the vehicle  
13 and was informed that the technician had taken it on a road test. The technician, later identified  
14 as Alcaraz, returned with the vehicle. The operator asked Alcaraz to show her the defective  
15 sensor that he had replaced on the vehicle. Alcaraz reached into a box on a nearby shelf and  
16 showed the operator a sensor. The operator asked Alcaraz if she could keep the part. Alcaraz  
17 consulted with the service advisor, then told the operator that she would have to pay a \$95 "core  
18 charge" for the part. Alcaraz stated that he found a broken wire on the vehicle and had fixed it  
19 free of charge. The operator authorized the \$95 core charge, paid the facility \$693 for the repairs,  
20 and was given copies of Invoice [REDACTED], a VIR, a Multi-Point Courtesy Checklist, and the  
21 original MAF sensor. The invoice indicated that a "gray wire" to the MAF sensor had been  
22 repaired and that the sensor was not sending a signal back to the computer.

23        68. On and between August 28, 2014, and September 2, 2014, the Bureau inspected the  
24 vehicle and found that the broken wire to the MAF sensor had been repaired as set forth on the  
25 invoice. The Bureau also found that Respondent's facility had performed unnecessary repairs on  
26 the vehicle and had damaged the original MAF sensor on the vehicle. The total estimated value  
27 of the repairs Respondent failed to perform on the vehicle is approximately \$365.94.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 (Untrue or Misleading Statements)

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

7 a. Respondent's service writer represented to the operator that the Bureau's 2002 Ford  
8 failed the smog inspection, that the vehicle had a sensor problem, and that the MAF sensor was in  
9 need of replacement. In fact, the only repair needed on the vehicle to resolve the problem with  
10 the illuminated MIL was the repair of the open circuit (broken wire) to the MAF sensor. Further,  
11 the MAF sensor was in good working condition and was not in need of replacement at the time  
12 the vehicle was taken to Respondent's facility.

13 b. Respondent's service writer represented to the operator that the brakes (rear brakes)  
14 on the Bureau's 2002 Ford were "metal to metal", that the vehicle needed new brakes and one  
15 rotor, and that the power steering and transmission fluids should be changed. In fact, the rear  
16 brakes were not in need of replacement, and the power steering and transmission fluids were in  
17 good condition, met manufacturer's specifications, and were not in need of replacement at the  
18 time the vehicle was taken to Respondent's facility.

19 c. Respondent represented on the Multi-Point Courtesy Checklist that the rear brake  
20 pads and rotor and transmission, brake, power steering, and differential fluids should be replaced  
21 on the Bureau's 2002 Ford. In fact, none of those repairs or services were needed on the vehicle.

22 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

23 (Fraud)

24 70. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
25 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed  
26 acts constituting fraud, as follows: Respondent's service writer made a false or misleading  
27 representation to the operator regarding the Bureau's 2002 Ford, as set forth in subparagraph 69  
28 (a) above, in order to induce the operator to authorize and pay for an unnecessary repair on the

1 vehicle, then sold the operator an unnecessary repair, the replacement of the MAF sensor.  
2 Further, Respondent's facility damaged the original MAF sensor.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

4 **(Departure from Trade Standards)**

5 71. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
6 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully  
7 departed from or disregarded accepted trade standards for good and workmanlike repair without  
8 the consent of the owner or the owner's duly authorized representative in a material respect, as  
9 follows: Respondent failed to properly diagnose the cause of the illuminated MIL on the  
10 Bureau's 2002 Ford in that Respondent determined that the MAF sensor was defective. In fact,  
11 the MAF sensor was in good working condition and was not in need of replacement at the time  
12 the vehicle was taken to Respondent's facility.

13 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

14 **(Violations of the Bus. & Prof. Code)**

15 72. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
16 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to  
17 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:  
18 Respondent repaired the broken wire (open circuit) to the MAF sensor on the Bureau's 2002 Ford  
19 without the operator's oral or written consent.

20 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

22 73. Respondent Lupe's Automotive Repair's smog check station license is subject to  
23 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
24 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set  
25 forth in paragraphs 69 and 70 above.

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UNDERCOVER OPERATION #2: 2001 DODGE

74. On or about November 18, 2014, an undercover operator of the Bureau ("operator") took the Bureau's 2001 Dodge to Respondent Lupe's Automotive Repair's facility and requested an oil change. A defective oxygen sensor heater relay was installed in the Bureau-documented vehicle, causing the MIL to illuminate on the dashboard. Alcaraz recommended a "high mileage" oil change service on the vehicle due to its age and mileage. The operator authorized the work and signed and received a copy of a written estimate in the amount of \$52.90. The estimate indicated that the oil change service would include a tire rotation, brake inspection, and courtesy inspection. The operator left the facility.

75. At approximately 1208 hours that same day, the operator received a call from Alcaraz, informing her that the service light was on in the vehicle. Alcaraz gave the operator a verbal estimate of \$80 to perform a diagnosis on the vehicle, which the operator authorized.

76. At approximately 1354 hours, Alcaraz called the operator and told her that one of the rear oxygen sensors on the vehicle was bad and the other one was lazy. Alcaraz recommended that the operator replace both rear oxygen sensors, but, when asked by the operator, acknowledged that only one of the sensors had caused the MIL to illuminate. The operator asked Alcaraz to replace just the bad sensor at an additional cost of \$247.

77. At approximately 1535 hours, the operator went to the facility to pick up the vehicle. A technician came into the office while the operator was paying the bill and stated that the MIL had come back on in the vehicle. Alcaraz asked the operator to leave the vehicle overnight. The operator left the facility.

78. On November 19, 2014, at approximately 1129 hours, the operator returned to the facility, paid \$412.76 for the repairs, and received a copy of Invoice [REDACTED].

79. On or about November 19 and 20, 2014, the Bureau inspected the vehicle and found that the defective oxygen sensor heater relay had been replaced as invoiced. The Bureau also found that Respondent's facility failed to rotate the tires or inspect the brakes and replaced the downstream oxygen sensor when it was in good working condition and not in need of replacement. The total estimated value of the unnecessary repairs that were performed on the

1 vehicle is approximately \$244.88.

2 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

3 **(Untrue or Misleading Statements)**

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

8 a. Respondent's president, Alcaraz, represented to the operator that one of the rear  
9 oxygen sensors on the Bureau's 2001 Dodge was bad causing the MIL to illuminate on the  
10 dashboard and that the part should be replaced. In fact, the only repair needed on the vehicle to  
11 resolve the problem with the illuminated MIL was the replacement of the defective oxygen sensor  
12 heater relay. Further, the bank 1, sensor 2, oxygen sensor was new, was in good working  
13 condition, and was not in need of replacement at the time the vehicle was taken to the facility.

14 b. Respondent represented on the invoice that the heater resistance for the bank 1, sensor  
15 2, oxygen sensor on the Bureau's 2001 Dodge was infinity ohms when, in the fact, the heater  
16 resistance of the sensor was 4.6 ohms and was within manufacturer's specifications at the time  
17 the vehicle was taken to Respondent's facility.

18 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 81. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
21 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed  
22 acts constituting fraud, as follows:

23 a. Respondent's president, Alcaraz, made a false or misleading representation to the  
24 operator regarding the Bureau's 2001 Dodge, as set forth in subparagraph 80 (a) above, in order  
25 to induce the operator to authorize and pay for an unnecessary repair on the vehicle, then sold the  
26 operator an unnecessary repair, the replacement of the bank 1, sensor 2, oxygen sensor.

27 b. Respondent obtained payment from the operator for performing a high mileage oil  
28 change service on the Bureau's 2001 Dodge, including a tire rotation, brake inspection, and

1 courtesy inspection. In fact, Respondent failed to rotate the tires or inspect the brakes.

2 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

3 **(Violations of the Bus. & Prof. Code)**

4 82. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
5 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to  
6 comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows:  
7 Respondent replaced the oxygen sensor heater relay on the Bureau's 2001 Dodge without the  
8 operator's oral or written consent.

9 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

11 83. Respondent Lupe's Automotive Repair's smog check station license is subject to  
12 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
13 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set  
14 forth in paragraphs 80 and 81 above.

15 **UNDERCOVER OPERATION #3: 1999 CHEVROLET**

16 84. On or about December 10, 2014, an undercover operator of the Bureau ("operator")  
17 had the Bureau's 1999 Chevrolet towed to Respondent Lupe's Automotive Repair's facility. A  
18 defective fuel pump relay had been installed in the Bureau-documented vehicle, preventing the  
19 engine from starting. The operator rode in the tow truck during the transport of the vehicle and  
20 met with Lorena upon arrival at the facility. The operator told Lorena that the vehicle would not  
21 start and requested a diagnosis. The operator signed and received a copy of a written estimate in  
22 the amount of \$80 for the diagnosis, then left the facility.

23 85. At approximately 1340 hours that same day, Lorena called the operator and told him  
24 that the fuel pump relay was bad, the fuel filter was clogged, and the fuel system was dirty.  
25 Lorena stated that a dirty fuel system was bad and that the vehicle needed a fuel injection flush.  
26 Loreno then told the operator that the engine oil was low and asked him when it was last changed  
27 on the vehicle. The operator stated that he did not know. Lorena told the operator that the power  
28 steering fluid looked dark and that dark fluid was bad for the power steering system. Lorena



1 recommended that the power steering system be flushed. Loreno also recommended that a tune  
2 up be performed for maintenance, and gave the operator an estimate of \$319 to replace the spark  
3 plugs. The operator authorized the replacement of the fuel pump and fuel filter service, the oil  
4 change, and the power steering flush at a total cost of \$469.57.

5 86. On or about December 11, 2014, the operator returned to the facility to pick up the  
6 vehicle and met with Alcaraz. The operator paid Alcaraz \$469.51 for the repairs and received a  
7 copy of Invoice [REDACTED]. The operator asked Alcaraz, "What's with the tune-up Lorena called  
8 about." Alcaraz told the operator that the spark plug wires showed high resistance and looked  
9 original and made a note to this effect on the operator's copy of the invoice. The operator  
10 requested a tune-up of the vehicle at a cost of \$319. Alcaraz told the operator that the vehicle  
11 would be ready in 45 minutes. The operator left the facility at approximately 1415 hours and  
12 returned at approximately 1550 hours. The operator paid the facility \$334.29 and received a copy  
13 of Invoice [REDACTED].

14 87. On or about December 22, 2014, the Bureau inspected the vehicle and found that  
15 Respondent's facility performed unnecessary repairs. The total estimated value of the  
16 unnecessary repairs that were performed on the vehicle is approximately \$498.90.

17 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 88. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
20 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or  
21 authorized statements which it knew or in the exercise of reasonable care should have known to  
22 be untrue or misleading, as follows:

23 a. Respondent's employee, Lorena, represented to the operator that the fuel filter on the  
24 Bureau's 1999 Chevrolet was clogged. In fact, the fuel filter was new, was in good working  
25 condition, and was not in need of replacement at the time the vehicle was taken to Respondent's  
26 facility. Further, the only repair needed on the vehicle was the replacement of the defective fuel  
27 pump relay.

28 b. Respondent's employee, Lorena, represented to the operator that the fuel system on

1 the Bureau's 1999 Chevrolet was dirty, that a dirty fuel system was bad, and that the vehicle  
2 needed a fuel injection flush. In fact, the fuel injectors, fuel pump pressure, and fuel pressure  
3 regulator were within manufacturer's specifications at the time the vehicle was taken to  
4 Respondent's facility and the vehicle was not in need of a fuel injection service.

5 c. Respondent's president, Alcaraz, represented to the operator that the spark plug wires  
6 on the Bureau's 1999 Chevrolet showed high resistance and looked original. In fact, the spark  
7 plugs and spark plug wires were new, were in good working condition, and were not in need of  
8 replacement at the time the vehicle was taken to Respondent's facility.

### 9 THIRTIETH CAUSE FOR DISCIPLINE

#### 10 (Fraud)

11 89. Respondent Lupe's Automotive Repair's registration is subject to disciplinary action  
12 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed  
13 acts constituting fraud, as follows: Respondent's employee, Lorena, and president, Alcaraz, made  
14 false or misleading representations to the operator regarding the Bureau's 1999 Chevrolet, as set  
15 forth in paragraph 88 above, in order to induce the operator to authorize and pay for unnecessary  
16 repairs on the vehicle, then sold the operator unnecessary repairs, including the replacement of  
17 the fuel filter, spark plugs and spark plug wires and the fuel injection service.

### 18 THIRTY-FIRST CAUSE FOR DISCIPLINE

#### 19 (Dishonesty, Fraud or Deceit)

20 90. Respondent Lupe's Automotive Repair's smog check station license is subject to  
21 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
22 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set  
23 forth in paragraphs 88 and 89 above.

### 24 OTHER MATTERS

25 91. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
26 suspend, revoke, or place on probation the registration for all places of business operated in this  
27 state by Respondent Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51,  
28

1 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations  
2 of the laws and regulations pertaining to an automotive repair dealer.

3 92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
4 Number RC 271650, issued to Respondent Lupe's Automotive Repair, Inc., doing business as  
5 Quality Tune-Up #51, is revoked or suspended, any additional license issued under this chapter in  
6 the name of said licensee may be likewise revoked or suspended by the Director.

7 93. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
8 suspend, revoke, or place on probation the registration for all places of business operated in this  
9 state by Respondent Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41, upon a  
10 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the  
11 laws and regulations pertaining to an automotive repair dealer.

12 94. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
13 Number RC 271897, issued to Respondent Lupe's Auto Repair, Inc., doing business as Quality  
14 Tune-Up #41, is revoked or suspended, any additional license issued under this chapter in the  
15 name of said licensee may be likewise revoked or suspended by the Director.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
18 and that following the hearing, the Director of Consumer Affairs issue a decision:

- 19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
20 271650, issued to Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51;
- 21 2. Revoking or suspending any other automotive repair dealer registration issued to  
22 Lupe's Automotive Repair, Inc.;
- 23 3. Revoking or suspending Smog Check Station License Number RC 271650, issued to  
24 Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51;
- 25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
26 and Safety Code in the name of Lupe's Automotive Repair, Inc.;
- 27 5. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
28 271897, issued to Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41;

6. Revoking or suspending any other automotive repair dealer registration issued to Lupe's Auto Repair, Inc.;

7. Revoking or suspending Smog Check Station License Number RC 271897, issued to Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Lupe's Auto Repair, Inc.;

9. Ordering Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51, and Lupe's Auto Repair, Inc., doing business as Quality Tune-Up #41, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: November 18, 2015 Fatimah Dooain

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

SA2015104449