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

In the Matter of the Accusation 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 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

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Quality Tune-Up #51

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

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

Quality Tune-Up #41

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

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

JURISDICTION

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

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

8. Health and Safety Code ("Health & Saf. 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.

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

STATUTORY AND REGULATORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> (4) Any other conduct which constitutes fraud.
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> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
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> (7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.
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> . . . .
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> (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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11. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

> 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 . . .

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

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

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

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
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> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
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> . . . .
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> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
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> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

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

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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> . . . .

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

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

17. Regulation 3356 states, in pertinent part:

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

. . . .

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

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

COST RECOVERY

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

RESPONDENTS' APPLICATIONS FOR REGISTRATION

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

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

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

25. Respondent Lupe's Auto 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 24 above.

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

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

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

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

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

FIFTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

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

SIXTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

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

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

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

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

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

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

SEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

34. 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 statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

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

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

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

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

NINTH CAUSE FOR DISCIPLINE

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

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

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

37. 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 dishonest, fraudulent or deceitful acts whereby another is injured, as set forth in paragraph 34 above.

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

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

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

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

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

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

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

TWELFTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

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

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

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

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

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

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

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

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

THIRTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

48. 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 represented on the invoice that a pending P0420 catalyst efficiency fault code was found during the facility's emissions failure diagnosis of D. D.'s 2001 Toyota Echo. In fact, that fault code was not stored or pending in the vehicle's computer memory.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

FIFTEENTH CAUSE FOR DISCIPLINE

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

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

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

51. 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 48 above.

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

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

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

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

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

SEVENTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

56. 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 represented on the invoice that a safety neutral switch had been installed on A. B.'s 1991 Mitsubishi Eclipse when, in fact, a clutch pedal switch had been installed on the vehicle.

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EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

57. 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 56 above.

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

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

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

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

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

NINETEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

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

UNDERCOVER OPERATION #1: 2002 FORD

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

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

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

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

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

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

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TWENTIETH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

69. 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 statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

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

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

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

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

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

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

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

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

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

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

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

73. 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 dishonest, fraudulent or deceitful acts whereby another is injured, as set 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

vehicle is approximately $244.88.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

80. 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 statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

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

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

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Fraud)

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

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

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

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

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

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

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

83. 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 dishonest, fraudulent or deceitful acts whereby another is injured, as set forth in paragraphs 80 and 81 above.

UNDERCOVER OPERATION #3: 1999 CHEVROLET

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

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

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

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

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

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

88. 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 statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

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

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

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

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

THIRTIETH CAUSE FOR DISCIPLINE

(Fraud)

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

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

90. 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 dishonest, fraudulent or deceitful acts whereby another is injured, as set forth in paragraphs 88 and 89 above.

OTHER MATTERS

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

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

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

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

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

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 271650, issued to Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51;

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

3. Revoking or suspending Smog Check Station License Number RC 271650, issued to Lupe's Automotive Repair, Inc., doing business as Quality Tune-Up #51;

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

5. Revoking or suspending Automotive Repair Dealer Registration Number ARD 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

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

SA2015104449