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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 and Petition to
Revoke Probation Against:

Case No. 79/23-9568

13 **SIMCAT ENTERPRISES, DBA LUBE N**
14 **GO, JOSEPH R. SIMONIN**
286 Higuera Street
15 San Luis Obispo, CA 93401

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16 Mailing:
2505 Theatre Drive
17 Paso Robles, CA 93446

18 **Automotive Repair Dealer Registration No.**
ARD 273956
19 **Smog Check Station License No. RC 273956**

20 Respondent.

21
22 **PARTIES**

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

26 2. On or about August 13, 2013, the Bureau issued Automotive Repair Dealer
27 Registration Number ARD 273956 to Simcat Enterprises, dba Lube N Go, Joseph R. Simonin
28

1 (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all
2 times relevant to the charges brought herein and will expire on August 31, 2024, unless renewed.

3 3. On or about October 10, 2013, the Bureau issued Smog Check Station License
4 Number RC 273956 to Respondent. The Smog Check Station License was in full force and effect
5 at all times relevant to the charges brought herein and will expire on August 31, 2024, unless
6 renewed.

7 4. In a disciplinary action titled *In the Matter of Accusation Against Joseph R. Simonin-*
8 *President, Simcat Enterprises dba Lube N Go, Jeremiah Langer, and Derek Ian Smith*, Case No.
9 79/19-12286, the Director of the Department of Consumer Affairs (Director) for the Bureau
10 issued a decision and order, effective April 27, 2021, in which Respondent's Automotive Repair
11 Dealer Registration and Smog Check Station License were revoked. However, the revocations
12 were stayed and Respondent's Automotive Repair Dealer Registration and Smog Check Station
13 License were placed on probation for a period of five (5) years with certain terms and conditions.
14 A copy of that decision and order is attached as Exhibit A and is incorporated by reference.

15 **JURISDICTION PROVISIONS FOR ACCUSATION**

16 5. This Accusation is brought before the Director for the Bureau under the authority of
17 the following laws. All section references are to the Business and Professions Code (Code) unless
18 otherwise indicated.

19 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
20 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed
21 with a disciplinary proceeding against an automotive repair dealer or to render a decision
22 temporarily or permanently invalidating (suspending or revoking) a registration.

23 7. Section 9884.7 of the Code provides that the Director may revoke an automotive
24 repair dealer registration.

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

1 is insufficient and before the work not estimated or posted is done or the parts not
2 estimated or posted are supplied. Written consent or authorization for an increase in
3 the original estimated or posted price may be provided by electronic mail or facsimile
4 transmission from the customer. The bureau may specify in regulation the procedures
5 to be followed by an automotive repair dealer if an authorization or consent for an
6 increase in the original estimated price is provided by electronic mail or facsimile
7 transmission. If that consent is oral, the dealer shall make a notation on the work
8 order of the date, time, name of person authorizing the additional repairs, and
9 telephone number called, if any, together with a specification of the additional parts
10 and labor and the total additional cost, and shall do either of the following:

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

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

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

18 _____
19 (signature or initials)"

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

23 ...

24 12. Section 44012 of the Health and Safety Code states, in pertinent part:

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

... ..

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

1 13. Section 44015, subdivision (b) of the Health and Safety Code states:

2 If a vehicle meets the requirements of Section 44012, a smog check station
3 licensed to issue certificates shall issue a certificate of compliance or a certificate of
4 noncompliance.

4 **REGULATORY PROVISIONS FOR ACCUSATION**

5 14. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

6 The bureau may suspend or revoke the license of or pursue other legal action
7 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate
8 of compliance or a certificate of noncompliance.

8 15. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

9 A licensed station shall issue a certificate of compliance or noncompliance to
10 the owner or operator of any vehicle that has been inspected in accordance with the
11 procedures specified in section 3340.42 of this article and has all the required
12 emission control equipment and devices installed and functioning correctly. The
13 following conditions shall apply:

12 (1) Customers shall be charged the same price for certificates as that paid by
13 the licensed station; and

14 (2) Sales tax shall not be assessed on the price of certificates.

15 16. California Code of Regulations, title 16, section 3340.42 states:

16 Smog check inspection methods are prescribed in the Smog Check Manual,
17 referenced by section 3340.45.

18 (a) All vehicles subject to a smog check inspection, shall receive one of the
19 following test methods:

19 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999
20 model-year vehicle, except diesel-powered, registered in the enhanced program areas
21 of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide,
22 carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's
23 specifications referenced in subsection (a) of Section 3340.17 of this article. The
24 loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
25 including a chassis dynamometer, certified by the bureau.

23 On and after March 31, 2010, exhaust emissions from a vehicle subject to this
24 inspection shall be measured and compared to the emissions standards shown in the
25 Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table,
26 dated March 2010, which is hereby incorporated by reference. If the emissions
27 standards for a specific vehicle are not included in this table then the exhaust
28 emissions shall be compared to the emissions standards set forth in TABLE I or
29 TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
30 emissions are less than or equal to the applicable emission standards specified in the
31 applicable table.

28 (2) A two-speed idle mode test shall be the test method used to inspect 1976 -

1 1999 model-year vehicles, except diesel-powered, registered in all program areas of
2 the state, except in those areas of the state where the enhanced program has been
3 implemented. The two-speed idle mode test shall measure hydrocarbon, carbon
4 monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as
5 contained in the bureau's specifications referenced in subsection (a) of Section
6 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
7 shall be measured and compared to the emission standards set forth in this section and
8 as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its
9 measured emissions are less than or equal to the applicable emissions standards
10 specified in Table III.

11 (3) An OBD-focused test, shall be the test method used to inspect gasoline-
12 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
13 model-year and newer. The OBD test failure criteria are specified in section
14 3340.42.2.

15 (b) In addition to subsection (a), all vehicles subject to the smog check program
16 shall receive the following:

17 (1) A visual inspection of emission control components and systems to verify
18 the vehicle's emission control systems are properly installed.

19 (2) A functional inspection of emission control systems as specified in the
20 Smog Check Manual, referenced by section 3340.45, which may include an OBD
21 test, to verify their proper operation.

22 (c) The bureau may require any combination of the inspection methods in
23 sections (a) and (b) under any of the following circumstances:

24 (1) Vehicles that the department randomly selects pursuant to Health and Safety
25 Code section 44014.7 as a means of identifying potential operational problems with
26 vehicle OBD systems.

27 (2) Vehicles identified by the bureau as being operationally or physically
28 incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross
polluters during an initial inspection will be considered gross polluters and the
provisions pertaining to gross polluting vehicles will apply, including, but not limited
to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of
compliance until the vehicle's emissions are reduced to or below the applicable
emissions standards for the vehicle included in the tables described in subsection (a),
as applicable. However, the provisions described in section 44017 of the Health and
Safety Code may apply.

1 (4) This subsection applies in all program areas statewide to vehicles requiring
2 inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

3 17. California Code of Regulations, title 16, section 3353 states, in pertinent part:

4 An estimate shall be provided to and authorized by the customer before any
5 work commences. The estimate shall meet the requirements of Business and
6 Professions Code section 9884.9 as well as the following:

7 (a) Estimate for Parts and Labor. Every automotive repair dealer shall give to
8 each customer an estimate containing the estimated price for parts and labor for a
9 specific job prior to obtaining authorization. Each part listed in the estimate shall be
10 new unless specifically identified as a used, rebuilt, or reconditioned part.

11 . . .

12 18. California Code of Regulations, title 16, section 3356(g) states:

13 Separate billing in an invoice for items generically noted as shop supplies,
14 miscellaneous parts, fees for electronic communication with the smog check database,
15 and the like, is prohibited.

16 **COST RECOVERY FOR ACCUSATION**

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

21 **FACTUAL ALLEGATIONS**

22 20. On or about May 30, 2023, a Bureau representative documented a 2003 Chevrolet for
23 a documented vehicle operation. A Bureau representative removed the vehicle's Positive
24 Crankcase Ventilation (PCV) valve and tube and photographed the area of the missing PCV
25 components.

26 21. On or about June 13, 2023, the undercover operator drove the 2003 Chevrolet to
27 Respondent's Lube N Go and requested a smog inspection. Respondent did not provide a copy of
28 the signed estimate to the undercover vehicle operator. After the smog inspection was performed,
the undercover operator paid \$70.00 and received a copy of Invoice #71132 and a Vehicle
Inspection Report (VIR). As indicated by the VIR and the VID, Respondent issued Certificate of

1 Compliance T1125792C to the vehicle using Smog Check Inspector License EO 643844 assigned
2 to David Ramos.

3 22. On June 14, 2023, a Bureau representative re-inspected the 2003 Chevrolet and
4 verified the PCV system components were still missing. The Bureau representative performed an
5 OIS Smog Check Inspection. The vehicle failed due to the missing PCV system components.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 23. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section
9 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which Respondent
10 knew or in the exercise of reasonable care should have known to be untrue or misleading when
11 Respondent issued certificate of compliance to the undercover vehicle, certifying the vehicle as
12 being in compliance with applicable laws and regulations when, in fact, the vehicle had not been
13 properly inspected. Respondent did not inspect the vehicle as required by Health & Saf. Code
14 section 44012. Complainant refers to, and by this reference incorporates, the allegations
15 contained in paragraphs 20 through 22, above, as though set forth fully herein.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Material Violation of Automotive Repair Act)**

18 24. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section
19 9884.7, subdivision (a)(6), in that Respondent failed in a material respect to comply with the
20 provisions of this chapter or regulations adopted pursuant to it when Respondent issued an
21 electronic smog certificate of compliance for the undercover vehicle without performing a bona
22 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
23 People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
25 paragraphs 20 through 22, above, as though set forth fully herein.

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27 ///

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Provide a Copy of the Written Estimate)**

3 25. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code sections
4 9884.7, subdivisions (a)(3) and (a)(6), in that Respondent failed to provide the Bureau
5 representative with a copy of the written estimate prior to conducting a smog inspection on the
6 undercover vehicle. Complainant refers to, and by this reference incorporates, the allegations
7 contained in paragraphs 20 through 22, above, as though set forth fully herein.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Violation of the Motor Vehicle Inspection Program)**

10 26. Respondent is subject to disciplinary action under Health & Saf. Code section
11 44072.2, subdivision (a), in that Respondent violated the following sections of the Health & Saf.
12 Code with respect to the inspection of the undercover vehicle:

13 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
14 performed on the vehicle in accordance with procedures prescribed by the department.

15 b. **Section 44015, subdivision (b):** Respondent issued a certificate of compliance to a
16 vehicle documented to fail a properly performed Smog Check Inspection and without properly
17 inspecting the vehicle to determine if it was in compliance with section 44012 of the Health &
18 Saf. Code.

19 Complainant refers to, and by this reference incorporates, the allegations contained in
20 paragraphs 20 through 22, above, as though set forth fully herein.

21 **FIFTH CAUSE FOR DISCIPLINE**

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

23 27. Respondent is subject to disciplinary action under Health & Saf. Code section
24 44072.2, subdivision (c), in that Respondent violated the following sections of title 16 of the
25 California Code of Regulations with respect to the inspection of the undercover vehicle:

26 a. **Section 3340.24, subdivision (c):** Respondent falsely issued a certificate of
27 compliance without performing a bona fide inspection of the emission control devices and
28 systems on the undercover vehicle as required by Health & Saf. Code section 44012.

PRAYER

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

1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case No. 79/19-12286 and imposing the disciplinary order that was stayed thereby revoking Automotive Repair Dealer Registration No. ARD 273956 and Smog Check Station License No. RC 273956 issued to Simcat Enterprises, dba Lube N Go, Joseph R. Simonin;

2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 273956, issued to Simcat Enterprises, dba Lube N Go, Joseph R. Simonin;

3. Revoking or suspending Smog Check Station License No. RC 273956, issued to Simcat Enterprises, dba Lube N Go, Joseph R. Simonin.

4. Ordering Simcat Enterprises, dba Lube N Go, Joseph R. Simonin to pay the Director of the Department of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: As of Digital Signature Date

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

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/19-12286