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

11 In the Matter of the Accusation Against:	Case No. 79/09-92
12 JM & SONS, INC., DBA	ACCUSATION
13 BRANHAM ARCO SMOGPROS	
14 1405 Branham Lane	
15 San Jose, California 95118-2414	
16 JOSEPH HUONG LAI, PRESIDENT	
17 Automotive Repair Dealer Registration No. ARD 179189 Smog Check Station License No. RC 179189	[SMOG CHECK]
18 Respondent.	

19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On or about June 29, 1994, the Bureau issued Automotive Repair Dealer
25 Registration Number ARD 179189 ("registration") to JM & Sons, Inc., doing business as
26 Branham Arco Smogpros ("Respondent"). The registration will expire on June 30, 2009, unless
27 renewed.

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1 **Smog Check Station License**

2 3. On or about July 13, 1994, the Bureau issued Smog Check Station License
3 Number RC 179189 ("station license") to Respondent. The station license will expire on
4 June 30, 2009, unless renewed.

5 **STATUTORY PROVISIONS**

6 4. Section 9884.7 of the Business and Professions Code ("Code") states, in
7 pertinent part:

8 (a) The director, where the automotive repair dealer cannot show there was
9 a bona fide error, may refuse to validate, or may invalidate temporarily or
10 permanently, the registration of an automotive repair dealer for any of the
11 following acts or omissions related to the conduct of the business of the
12 automotive repair dealer, which are done by the automotive repair dealer or any
13 automotive technician, employee, partner, officer, or member of the automotive
14 repair dealer.

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

19 (4) Any other conduct which constitutes fraud.

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

23 (b) Except as provided for in subdivision (c), if an automotive repair
24 dealer operates more than one place of business in this state, the director pursuant
25 to subdivision (a) shall only invalidate temporarily or permanently the registration
26 of the specific place of business which has violated any of the provisions of this
27 chapter. This violation, or action by the director, shall not affect in any manner
28 the right of the automotive repair dealer to operate his or her other places of
business.

(c) Notwithstanding subdivision (b), the director may invalidate
temporarily or permanently, 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.

25 5. Code section 9884.13 provides, in pertinent part, that the expiration of a
26 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
27 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
28 registration temporarily or permanently.

1 systems on the vehicle, thereby depriving the People of the State of California of the protection
2 afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Provide a Copy of a Signed Work Order)**

5 15. Respondent's registration is subject to discipline pursuant to Code section
6 9884.7, subdivision (a)(3), in that on or about November 13, 2008, Respondent failed to provide
7 the operator with a signed copy of the work order as soon as the operator signed the document.

8 **FOURTH CAUSE FOR DISCIPLINE**

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

10 16. Respondent's station license is subject to discipline pursuant to Health &
11 Safety Code section 44072.2, subdivision (a), in that on or about November 13, 2008, regarding
12 the 1990 Mercury Sable, Respondent failed to comply with the following sections of that Code:

13 a. **Section 44012, subdivision (a):** Respondent failed to determine that all
14 emission control devices and systems required by law were installed and functioning correctly in
15 accordance with test procedures.

16 b. **Section 44012, subdivision (f):** Respondent failed to perform emission
17 control tests in accordance with procedures prescribed by the department.

18 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate
19 of Compliance No. NE791720 without properly testing and inspecting the vehicle to determine if
20 it was in compliance with Health & Safety Code section 44012.

21 d. **Section 44059:** Respondent willfully made false entries for electronic
22 Certificate of Compliance No. NE791720, certifying that the vehicle had been inspected as
23 required when, in fact, it had not.

24 **FIFTH CAUSE FOR DISCIPLINE**

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

27 17. Respondent's station license is subject to discipline pursuant to Health &
28 Safety Code section 44072.2, subdivision (c), in that on or about November 13, 2008, regarding

1 the 1990 Mercury Sable, Respondent failed to comply with provisions of California Code of
2 Regulations, title 16, as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
4 issued electronic Certificate of Compliance No. NE791720, in that the vehicle could not pass the
5 functional portion of the smog inspection because the vehicle's ignition timing was adjusted
6 beyond the manufacturer's specifications.

7 b. **Section 3340.35, subdivision (c):** Respondent issued electronic
8 Certificate of Compliance No. NE791720 even though the vehicle had not been inspected in
9 accordance with section 3340.42.

10 c. **Section 3340.42:** Respondent to conduct the required smog tests on that
11 vehicle in accordance with the Bureau's specifications.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 18. Respondent's station license is subject to discipline pursuant to Health &
15 Safety Code section 44072.2, subdivision (d), in that on or about November 13, 2008,
16 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
17 issuing electronic Certificate of Compliance No. NE791720 for the 1990 Mercury Sable without
18 performing a bona fide inspection of the emission control devices and systems on that vehicle,
19 thereby depriving the People of the State of California of the protection afforded by the Motor
20 Vehicle Inspection Program.

21 **PRIOR CITATIONS**

22 19. To determine the degree of discipline, if any, to be imposed on
23 Respondent, Complainant alleges as follows:

24 a. On or about October 30, 2007, the Bureau issued Citation No. C08-0431
25 against Respondent's registration and station licenses for violations of Health & Safety Code
26 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
27 devices according to procedures prescribed by the department), and California Code of
28 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of

