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

11 In the Matter of the Accusation Against:

12 **AUBURN SERVICE CENTER**
13 **RICHARD ANTHONY DIEBOLD,**
OWNER
14 12205 Locksley Lane, #14
Auburn, CA 95602
15 Automotive Repair Dealer Registration
No. ARD 224459
16 Smog Check Station License No. RC 224459
Lamp Station License No. LS 224459, Class A
17 Brake Station License No. BS 224459, Class A

18 and

19 In the Matter of the Accusation and Petition to
Revoke Probation Against:

20 **DAVID EUGENE BROWN**
21 12645 Shannon Lane
Auburn, CA 95602
22 Smog Check Inspector (EO) License
No. 102061
23 Smog Check Repair Technician (EI) License
No. 102061
24 (formerly Advanced Emission Specialist
Technician License No. EA 102061)
25 Brake Adjuster License No. BA 102061,
Class A
26 Lamp Adjuster License No. LA 102061,
Class A

27 Respondents.
28

Case No. **79/16-114**

ACCUSATION AGAINST:
AUBURN SERVICE CENTER,
RICHARD ANTHONY DIEBOLD,
OWNER

ACCUSATION AND PETITION TO
REVOKE PROBATION AGAINST:
DAVID EUGENE BROWN

1 Patrick Dorais ("Complainant") alleges:

2 **PARTIES**

3 1. Complainant brings this *Accusation Against: Auburn Service Center, Richard*
4 *Anthony Diebold, Owner, and Accusation and Petition to Revoke Probation Against: David*
5 *Eugene Brown*, solely in his official capacity as the Chief of the Bureau of Automotive Repair
6 ("Bureau"), Department of Consumer Affairs.

7 **Auburn Service Center; Richard Anthony Diebold, Owner**

8 2. On or about November 15, 2002, the Director of Consumer Affairs ("Director")
9 issued Automotive Repair Dealer Registration Number ARD 224459 ("registration") to Richard
10 Anthony Diebold ("Respondent Diebold" or "Diebold"), owner of Auburn Service Center.
11 Respondent Diebold's registration will expire on October 31, 2016, unless renewed.

12 3. On or about November 20, 2002, Director issued Smog Check Station License
13 Number RC 224459 to Respondent Diebold. Respondent Diebold's smog check station license
14 will expire on October 31, 2016, unless renewed.

15 4. On or about October 24, 2011, the Director issued Lamp Station License Number
16 LS 224459, Class A, to Respondent Diebold. Respondent Diebold's lamp station license will
17 expire on October 31, 2016, unless renewed.

18 5. On or about October 24, 2011, the Director issued Brake Station License Number
19 BS 224459, Class A, to Respondent Diebold. Respondent Diebold's brake station license will
20 expire on October 31, 2016, unless renewed.

21 **David Eugene Brown**

22 6. In or about 1986, the Director issued Brake Adjuster License Number BA 102061,
23 Class A, to David Eugene Brown ("Respondent Brown" or "Brown"). Respondent Brown's brake
24 adjuster license will expire on January 31, 2020, unless renewed.

25 7. In or about 1986, the Director issued Lamp Adjuster License Number LA 102061,
26 Class A, to Respondent Brown. Respondent Brown's lamp adjuster license will expire on
27 January 31, 2018, unless renewed.

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1 against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating (suspending or revoking) a registration.

3 13. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
4 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
5 Automotive Repair Act.

6 14. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a
7 license by operation of law or by order or decision of the Director or a court of law, or the
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
9 disciplinary proceedings.

10 15. Code section 9884.7 states, in pertinent part:

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

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

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

22 (4) Any other conduct that constitutes fraud.

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

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

16. Code section 9887.1 states:

The director shall have the authority to issue licenses for official lamp and
brake adjusting stations and shall license lamp and brake adjusters. The licenses shall
be issued in accordance with this chapter and regulations adopted by the director
pursuant thereto. The director shall establish by regulation the terms of adjusters'
licenses as are necessary for the practical administration of the provisions relating to
adjusters, but those terms shall not be for less than one nor more than four years.
Licenses may be renewed upon application and payment of the renewal fees if the

1 application for renewal is made within the 30-day period prior to the date of
2 expiration. Persons whose licenses have expired shall immediately cease the activity
3 requiring a license . . .

4 17. Code section 9889.3 states, in pertinent part:

5 The director may suspend, revoke, or take other disciplinary action against a
6 license as provided in this article [Article 7 (commencing with section 9889.1) of the
7 Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

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

10 18. Code section 9889.9 states:

11 When any license has been revoked or suspended following a hearing under the
12 provisions of this article, any additional license issued under Articles 5 and 6 of this
13 chapter in the name of the licensee may be likewise revoked or suspended by the
14 director.

15 19. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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 another is
25 injured . . .

26 20. Health and Safety Code section 44002 provides, in pertinent part, that the Director
27 has all the powers and authority granted under the Automotive Repair Act for enforcing the
28 Motor Vehicle Inspection Program.

21. Health and Safety 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 the
Department 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.

1 is required to be programmed into the vehicle's On-Board Diagnostics -- Generation II ("OBD
2 II") on 2005 and newer vehicles, and on many occasions was programmed into the OBD II
3 computer in earlier model-years. The electronically programmed VIN is referred to as the
4 "eVIN", is captured by the Bureau during a smog check inspection, and must match the physical
5 VIN on the vehicle. The printer is used to provide a Vehicle Inspection Report ("VIR"), which
6 shows the inspection results and the Smog Check Certificate of Compliance Number for passing
7 vehicles. Data retrieved and recorded during an OIS smog check includes the eVIN, the
8 communication protocol,² and the number of Parameter Identifications ("PID").³

9 27. As with the BAR-97 EIS, the technician also performs a visual and functional test on
10 the vehicle. The visual inspection of the emission control components verifies the required
11 emission control devices are present and properly connected and a functional test is performed of
12 the malfunction indicator light. The OIS software makes the determination whether or not the
13 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

14 **IMPROPER CERTIFICATION**

15 28. On or about June 2, 2015, Bureau Representative "M. B." reviewed emission tests
16 performed by Respondent Diebold using the Bureau's Vehicle Information Database. M. B.
17 found that on or about May 26, 2015, Respondent Diebold's technician, Respondent Brown,
18 performed a BAR-97 EIS inspection on a 2000 Ford 450 Diesel and issued Certificate of
19 Compliance No. PQ847135C for the vehicle.

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23 ² The OBD II communication protocol describes the specific manufacturer/vehicle
24 communication "language" used by the OBD II computer to communicate to scan tools and other
25 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II
26 computer during manufacture and does not change.

27 ³ PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
28 example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID count is the
number of data points reported by the OBD II computer, is programmed during manufacture, and
does not change. Each make and model vehicle reports a specific number of PID counts; i.e., the
PID count does not vary for that make and model vehicle.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Untrue or Misleading Statements)

3 29. Respondent Diebold's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(1), in that Respondent Diebold made or authorized a statement which he
5 knew or in the exercise of reasonable care should have known to be untrue or misleading.
6 Specifically, on or about May 26, 2015, Respondent Diebold's smog check inspector,
7 Respondent Brown, issued Certificate of Compliance No. PQ847135C on a 2000 Ford 450 Diesel
8 using a BAR-97 EIS inspection when, in fact, a BAR-OIS inspection was required for that
9 vehicle.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Fraud)

12 30. Respondent Diebold's registration is subject to discipline pursuant to Code section
13 9884.7, subdivision (a)(4), in that on or about May 26, 2015, Respondent Diebold committed an
14 act that constitutes fraud by issuing an electronic smog certificate of compliance for a 2000 Ford
15 450 Diesel without ensuring that a bona fide inspection was performed of the emission control
16 devices and systems on the vehicle, thereby depriving the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Motor Vehicle Inspection Program – Code Violations)

20 31. Respondent Diebold's smog check station license is subject to discipline pursuant to
21 Health and Safety Code section 44072.2, subdivision (a), in that on or about May 26, 2015, as
22 regards the 2000 Ford F450 Diesel, Respondent Diebold violated sections of that Code, as
23 follows:

24 a. **Section 44012(a)**: Respondent Diebold's technician, Respondent Brown, issued
25 Certificate of Compliance No. PQ847135C for the vehicle using a BAR-97 EIS inspection, when
26 a BAR-OIS inspection was required for that vehicle.

27 b. **Section 44015**: Respondent Diebold's technician, Respondent Brown, issued
28 electronic smog Certificate of Compliance No. PQ847135C for the vehicle without ensuring that

1 the vehicle was properly tested and inspected to determine if it was in compliance with Health
2 and Safety Code section 44012.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Failure to Comply With Regulations)

5 32. Respondent Diebold's smog check station License is subject to discipline pursuant to
6 Health and Safety Code section 44072.2, subdivision (c), in that on or about May 26, 2015,
7 regarding the 2000 Ford F450 Diesel, Respondent Diebold failed to comply with provisions of the
8 California Code of Regulations, title 16 ("Regulations") as follows:

9 a. **Regulations section 3340.35, subdivision (c):** Respondent Diebold allowed
10 electronic smog Certificate of Compliance No. PQ847135C to be issued for the vehicle even
11 though the vehicle had not been inspected in accordance with Regulations section 3340.42.

12 b. **Regulations section 3340.42:** Respondent Diebold failed to ensure that the required
13 smog test was conducted in accordance with the Bureau's specifications for that vehicle.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 (Dishonesty, Fraud or Deceit)

16 33. Respondent Diebold's smog check station license is subject to discipline pursuant to
17 Health and Safety section 44072.2, subdivision (d), in that on or about May 26, 2015, Respondent
18 Diebold committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing
19 an electronic smog certificate of compliance on the 2000 Ford F450 Diesel without ensuring that
20 a bona fide inspection was performed of the emission control devices and systems on the vehicle,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 (Motor Vehicle Inspection Program - Code Violations)

25 34. Respondent Brown's smog check inspector license is subject to discipline pursuant to
26 Health and Safety section 44072.2, subdivision (a), in that on or about May 26, 2015, he failed to
27 comply with section 44012 when he failed to perform the emission control test on the 2000 Ford
28 F450 Diesel in accordance with procedures prescribed by the department.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply With Regulations)

3 35. Respondent Brown's smog check inspector license is subject to discipline pursuant to
4 Health and Safety section 44072.2, subdivision (c), in that on or about May 26, 2015, regarding
5 the 2000 Ford F450 Diesel, he failed to comply with provisions of the California Code of
6 Regulations ("Regulations"), as follows:

7 a. **Regulations section 3340.30, subdivision (a)**: Respondent Brown failed to inspect
8 and test the vehicle in accordance with Health and Safety Code section 44012.

9 b. **Regulations section 3340.42**: Respondent Brown failed to conduct the required smog
10 check inspection methods on the vehicle in accordance with the Bureau's specifications.

11 **EIGHTH CAUSE FOR DISCIPLINE**

12 (Dishonesty, Fraud or Deceit)

13 36. Respondent Brown's smog check inspector license is subject to discipline pursuant to
14 Health and Safety section 44072.2, subdivision (d), in that on or about May 26, 2015, Respondent
15 Brown committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing
16 an electronic smog certificate of compliance for a 2000 Ford F450 Diesel without performing a
17 bona fide inspection of the emission control devices and systems on the vehicle, thereby
18 depriving the People of the State of California of the protection afforded by the Motor Vehicle
19 Inspection Program.

20 **UNDERCOVER OPERATION – SEPTEMBER 16, 2015**

21 37. On or about September 16, 2015, a Bureau undercover operator using an alias (the
22 "operator") took a Bureau-documented 2002 Ford (the "vehicle") to Respondent Auburn Service
23 Center's facility. The positive crankcase ventilation ("PCV") system had been removed and an
24 aftermarket crankcase filter was installed on the vehicle. The operator asked for a smog
25 inspection and signed an estimate but did not receive a copy.

26 38. After the vehicle was inspected, the operator paid the facility \$58.20 and received a
27 VIR showing the issuance of Certificate of Compliance [REDACTED] for the vehicle, and an
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1 invoice. The VIR indicated that Respondent Brown had performed the smog inspection on the
2 vehicle.

3 39. On or about October 27, 2015, a Bureau representative determined that the vehicle
4 was precluded from passing a lawful smog inspection because the vehicle's PCV system had been
5 replaced with an after market crankcase filter.

6 **NINTH CAUSE FOR DISCIPLINE**

7 (Untrue or Misleading Statements)

8 40. Respondent Diebold's registration is subject to discipline pursuant to Code
9 section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew or in
10 the exercise of reasonable care should have known to be untrue or misleading. Specifically, on or
11 about September 16, 2015, Respondent Diebold issued an electronic certificate of compliance for
12 the Bureau's 2002 Ford indicating that the vehicle had passed a smog inspection and was in
13 compliance with applicable laws and regulations. In fact, the vehicle would not pass the
14 inspection required by Health and Safety Code section 44012 because the vehicle's PCV system
15 was missing or modified.

16 **TENTH CAUSE FOR DISCIPLINE**

17 (Failure to Provide Customer with Copy of Signed Document)

18 41. Respondent Diebold's registration is subject to disciplinary action pursuant to Code
19 section 9884.7, subdivision (a)(3), in that on or about September 16, 2015, Respondent Diebold
20 failed to ensure that the operator was provided with a copy of the estimate as soon as the operator
21 signed the document.

22 **ELEVENTH CAUSE FOR DISCIPLINE**

23 (Fraud)

24 42. Respondent Diebold's registration is subject to disciplinary action pursuant to Code
25 section 9884.7, subdivision (a)(4), in that on or about September 16, 2015, Respondent Diebold
26 committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for
27 the Bureau's 2002 Ford without ensuring that a bona fide inspection was performed of the
28

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

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 (Violations of the Motor Vehicle Inspection Program)

5 43. Respondent Diebold's smog check station license is subject to discipline pursuant to
6 Health and Safety section 44072.2, subdivision (a), in that on or about September 16, 2015, as
7 regards the Bureau's 2002 Ford, he violated sections of that Code, as follows:

8 a. **Section 44012, subdivision (a):** Respondent Diebold failed to ensure that the
9 emission control tests were performed in accordance with procedures prescribed by the
10 department.

11 b. **Section 44015:** Respondent Diebold issued an electronic smog certificate of
12 compliance without ensuring that the vehicle was properly tested and inspected to determine if it
13 was in compliance with Health and Safety Code section 44012.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

16 44. Respondent Diebold's smog check station license is subject to discipline pursuant to
17 Health and Safety section 44072.2, subdivision (c), in that on or about September 16, 2015, as
18 regards the Bureau's 2002 Ford, Respondent Diebold failed to comply with provisions of
19 California Code of Regulations ("Regulations"), as follows:

20 a. **Regulations section 3340.35, subdivision (c):** Respondent Diebold issued an
21 electronic smog certificate of compliance even though the vehicle had not been inspected in
22 accordance with Regulation section 3340.42.

23 b. **Regulations section 3340.42:** Respondent Diebold failed to ensure that the required
24 smog tests were conducted in accordance with the Bureau's specifications.

25 **FOURTEENTH CAUSE FOR DISCIPLINE**

26 (Dishonesty, Fraud or Deceit)

27 45. Respondent Diebold's smog check station license is subject to discipline pursuant to
28 Health and Safety section 44072.2, subdivision (d), in that on or about September 16, 2015,

1 Respondent Diebold committed a dishonest, fraudulent or deceitful act, as set forth in paragraph
2 42, above.

3 **FIFTEENTH CAUSE FOR DISCIPLINE**

4 (Dishonesty, Fraud, or Deceit)

5 46. Respondent Diebold's lamp and brake station licenses are subject to disciplinary
6 action pursuant to Code section 9889.3, subdivision (d), in that on or about September 16, 2015,
7 Respondent Diebold committed an act involving dishonesty, fraud, or deceit whereby another was
8 injured, as set forth in paragraph 42, above.

9 **SIXTEENTH CAUSE FOR DISCIPLINE**

10 (Violations of the Motor Vehicle Inspection Program)

11 47. Respondent Brown's smog check inspector license is subject to discipline pursuant to
12 Health and Safety section 44072.2, subdivision (a), in that on or about September 16, 2015,
13 regarding the Bureau's 2002 Ford, he violated sections of that Code as follows:

14 a. **Section 44012, subdivision (f)**: Respondent Brown failed to perform on the vehicle a
15 visual and/or functional check of the emission control devices in accordance with required
16 procedures.

17 b. **Section 44032**: Respondent Brown failed to perform tests of the emission control
18 devices and systems on the vehicle in accordance with Code section 44012, in that the vehicle
19 was precluded from passing a lawful smog inspection because the PCV system was missing or
20 modified.

21 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

23 48. Respondent Brown's smog check inspector license is subject to discipline pursuant to
24 Health and Safety section 44072.2, subdivision (c), in that on or about September 16, 2015,
25 regarding the Bureau's 2002 Ford, he failed to comply with provisions of California Code of
26 Regulations ("Regulations"), as follows:

27 a. **Regulations section 3340.30, subdivision (a)**: Respondent Brown failed to inspect
28 and test the vehicle in accordance with Health and Safety section 44012.

1 **CAUSE TO REVOKE PROBATION**

2 (Failure to Obey all Laws)

3 53. Condition 2 of Respondent Brown's probationary order states that Respondent shall
4 comply with all statutes, regulations and rules governing automotive inspections, estimates, and
5 repairs.

6 54. Respondent Brown's probation is subject to revocation in that he failed to comply
7 with statutes, regulations, and rules governing automotive inspections, estimates, and/or repairs,
8 as set forth in paragraphs 28, 34, 35, 36, 47 and its subparts, 48 and its subparts, 49, and 50,
9 above, incorporated herein by reference.

10 **MATTERS IN AGGRAVATION**

11 55. To determine the degree of discipline, if any, to be imposed on Respondent Diebold,
12 Complainant alleges that in a disciplinary action entitled *In the Matter of the Accusation Against*
13 *Auburn Service Center; Richard Anthony Diebold, Owner and David Eugene Brown*, Case No.
14 77/13-26, the Director of the Department of Consumer Affairs adopted a *Proposed Decision*,
15 effective January 6, 2014 (the "Decision"). The Decision revoked Respondent Diebold's
16 Automotive Repair Dealer Registration No. ARD 224459. However, revocation of Respondent
17 Diebold's registration was stayed and placed on probation for two years with certain terms and
18 conditions.

19 **OTHER MATTERS**

20 56. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
21 place on probation the registration for all places of business operated in this state by Respondent
22 Richard Anthony Diebold, doing business as Auburn Service Center, upon a finding that
23 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
24 regulations pertaining to an automotive repair dealer.

25 57. Pursuant to Code section 9889.9, if Lamp Station License No. LS 224459, Class A,
26 and/or Brake Station License No. BS 224459, Class A, issued to Respondent Richard Anthony
27 Diebold, doing business as Auburn Service Center, is revoked or suspended, then any additional
28 license issued in the name of said licensee may be likewise revoked or suspended by the Director.

- 1 6. Revoking probation and re-imposing the order of revocation of Lamp Adjuster
- 2 License No. LA 102061 issued to David Eugene Brown;
- 3 7. Revoking or suspending Lamp Adjuster License No. LA 102061 issued to David
- 4 Eugene Brown;
- 5 8. Revoking probation and re-imposing the order of revocation of Brake Adjuster
- 6 License No. LA 102061 issued to David Eugene Brown;
- 7 9. Revoking or suspending Brake Adjuster License No. BA 102061 issued to David
- 8 Eugene Brown;
- 9 10. Revoking or suspending Smog Check Inspector (EO) License No. 102061 and/or
- 10 Smog Check Repair Technician (EI) License No. 102061 (formerly Advanced Emission
- 11 Specialist Technician EA License No. 102061) issued to David Eugene Brown;
- 12 11. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 13 and Safety Code in the name of David Eugene Brown;
- 14 12. Ordering Richard Anthony Diebold, owner of Auburn Service Center, and David
- 15 Eugene Brown to pay the Director of the Department of Consumer Affairs the reasonable costs of
- 16 the investigation and enforcement of this case, pursuant to Business and Professions Code section
- 17 125.3; and,
- 18 13. Taking such other and further action as deemed necessary and proper.

19
20 DATED: May 9, 2016



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

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