

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

In the Matter of the Accusation Against:

**SEARS ROEBUCK & CO. DBA SEARS
ROEBUCK & CO., #6460**

1011 W. Olive Avenue
Merced, CA 95348-2422

Mailing Address:

3333 Beverly Road, B2-112A
Hoffman Estates, IL 60179
Alywin Lewis, President
Automotive Repair Dealer Registration No.
ARD 22659

**SEARS ROEBUCK & CO. DBA SEARS
ROEBUCK & CO., #6811**

3636 N. Blackstone Avenue
Fresno, CA 93726-5304

Mailing Address:

3333 Beverly Road, Dept 768 Tax B2-112A
Alywin Lewis, President
ARD No. 22628

**SEARS ROEBUCK & CO. DBA SEARS
ROEBUCK & CO., #2639**

1140 Shaw Avenue
Clovis, CA 93612

Mailing Address:

3333 Beverly Road, B2-112A
Hoffman Estates, IL 60179
Alywin Lewis, President
ARD No. 207428

**SEARS ROEBUCK & CO. DBA SEARS
ROEBUCK & CO., #6271**

3501 S. Mooney Boulevard
Visalia, CA 93277-7775

Mailing Address:

3333 Beverly Road, B2-112A
Hoffman Estates, IL 60179
Alywin Lewis, President
ARD No. 22627

Case No. 77/11-56

OAH Case No. 2013070728

**SEARS ROEBUCK & CO. DBA SEARS
ROEBUCK & CO., #6258**
100 Vintage Faire
Modesto, CA 95356-0505
Mailing Address:
3333 Beverly Road, B2-112A
Hoffman Estates, IL 60179
Alywin Lewis, President
ARD No. 22609

**SEARS ROEBUCK & CO. DBA SEARS
ROEBUCK & CO., #6568**
6000 Mowry Avenue, SP 100 Newpark Mall
Newark, CA 94560-4900
Mailing Address:
3333 Beverly Road, B2-112A
Hoffman Estates, IL 60179
Alywin Lewis, President
ARD No. 82595

**SEARS ROEBUCK & CO. DBA SEARS
ROEBUCK & CO., #6771**
660 W. Winton Avenue
Hayward, CA 94545-2135
Mailing Address:
3333 Beverly Road, B2-112A
Hoffman Estates, IL 60179
Alywin Lewis, President
ARD No. 22635

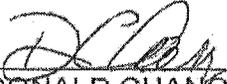
Respondents.

DECISION

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

This Decision shall become effective June 24, 2014

DATED: May 29, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KENT HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 J Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 **In the Matter of the Accusation Against:**

Case No. 77/11-56

13 **SEARS ROEBUCK & CO. DBA SEARS**
14 **ROEBUCK & CO., #6460**
1011 W. Olive Avenue
Merced, CA 95348-2422
15 Mailing Address:
3333 Beverly Road, B2-112A
16 Hoffman Estates, IL 60179
Alywin Lewis, President
17 Automotive Repair Dealer Registration No.
ARD 22659

OAH Case No. 2013070728

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 **SEARS ROEBUCK & CO. DBA SEARS**
19 **ROEBUCK & CO., # 6811**
3636 N. Blackstone Avenue
20 Fresno, CA 93726-5304
Mailing Address:
21 3333 Beverly Road, Dept 768 Tax B2-112A
Alywin Lewis, President
22 ARD No. 22628

23 **SEARS ROEBUCK & CO. DBA SEARS**
24 **ROEBUCK & CO., #2639**
1140 Shaw Avenue
Clovis, CA 93612
25 Mailing Address:
3333 Beverly Road, B2-112A
26 Hoffman Estates, IL 60179
Alywin Lewis, President
27 ARD No. 207428

28

1 SEARS ROEBUCK & CO. DBA SEARS
2 ROEBUCK & CO., # 6271
3 3501 S. Mooney Boulevard
4 Visalia, CA 93277-7775
5 Mailing Address:
6 3333 Beverly Road, B2-112A
7 Hoffman Estates, IL 60179
8 Alywin Lewis, President
9 ARD No. 22627

6 SEARS ROEBUCK & CO. DBA SEARS
7 ROEBUCK & CO., # 6258
8 100 Vintage Faire
9 Modesto, CA 95356-0505
10 Mailing Address:
11 3333 Beverly Road, B2-112A
12 Hoffman Estates, IL 60179
13 Alywin Lewis, President
14 ARD No. 22609

10 SEARS ROEBUCK & CO. DBA SEARS
11 ROEBUCK & CO., # 6568
12 6000 Mowry Avenue, SP 100 Newpark Mall
13 Newark, CA 94560-4900
14 Mailing Address:
15 3333 Beverly Road, B2-112A
16 Hoffman Estates, IL 60179
17 Alywin Lewis, President
18 ARD No. 82595

16 SEARS ROEBUCK & CO. DBA SEARS
17 ROEBUCK & CO., # 6771
18 660 W. Winton Avenue
19 Hayward, CA 94545-2135
20 Mailing Address:
21 3333 Beverly Road, B2-112A
22 Hoffman Estates, IL 60179
23 Alywin Lewis, President
24 ARD No. 22635

Respondents.

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

23 PARTIES

24 1. John Wallaugh (Complainant) is the former Chief of the Bureau of Automotive
25 Repair, who brought this action solely in his official capacity and was represented in this matter
26 by Kamala D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy
27 Attorney General. Patrick Dorais is John Wallaugh's successor, Chief of the Bureau of
28

1 Automotive Repair, and the Complainant in this matter. Complainant is represented by Kamala
2 D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney
3 General.

4 2. Respondents Sears Roebuck & Co. dba Sears Roebuck & Co., #6460, 6811, 2639,
5 6271, 6258, 6568 and 6771, with Alywin Lewis as President, April Hanes as Secretary and
6 William Crowley as Treasurer (#6258 only), are represented in this proceeding by attorney Louis
7 J. Anapolsky, Knox, Lemmon and Anapolsky LLP, whose address is: 300 Capitol Mall, Suite
8 1125, Sacramento, California 95814-3229

9 3. On an uncertain date in 1972, the Bureau of Automotive Repair issued Automotive
10 Repair Dealer Registration No. ARD 22659 to Respondent Sears Roebuck & Co. dba Sears
11 Roebuck & Co., #6460, with Alywin Lewis as President and April Hanes as Secretary. The
12 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
13 charges brought in Accusation No. 77/11-56 and will expire on June 30, 2014, unless renewed.

14 4. On an uncertain date in 1972, the Bureau of Automotive Repair issued Automotive
15 Repair Dealer Registration No. ARD 22628 to Respondent Sears Roebuck & Co. dba Sears
16 Roebuck & Co., #6811 with Alywin Lewis as President and April Hanes as Secretary. The
17 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
18 charges brought in Accusation No. 77/11-56 and will expire on June 30, 2014, unless renewed.

19 5. On an uncertain date in 1999, the Bureau of Automotive Repair issued Automotive
20 Repair Dealer Registration No. ARD 207428 to Respondent Sears Roebuck & Co. dba Sears
21 Roebuck & Co., #2639 with Alywin Lewis as President and April Hanes as Secretary. The
22 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
23 charges brought in Accusation No. 77/11-56 and will expire on October 31, 2014, unless
24 renewed.

25 6. On an uncertain date in 1972, the Bureau of Automotive Repair issued Automotive
26 Repair Dealer Registration No. ARD 22627 to Respondent Sears Roebuck & Co. dba Sears
27 Roebuck & Co., #6271 with Alywin Lewis as President and April Hanes as Secretary. The
28

1 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
2 charges brought in Accusation No. 77/11-56 and will expire on June 30, 2014, unless renewed.

3 7. On an uncertain date in 1972, the Bureau of Automotive Repair issued Automotive
4 Repair Dealer Registration No. ARD 22609 to Respondent Sears Roebuck & Co. dba Sears
5 Roebuck & Co., #6258 with Alywin Lewis as President, April Hanes as Secretary and William
6 Crowley as Treasurer. The Automotive Repair Dealer Registration was in full force and effect at
7 all times relevant to the charges brought in Accusation No. 77/11-56 and will expire on June 30,
8 2014, unless renewed.

9 8. On an uncertain date in 1980, the Bureau of Automotive Repair issued Automotive
10 Repair Dealer Registration No. ARD 82595 to Respondent Sears Roebuck & Co. dba Sears
11 Roebuck & Co., #6368 with Alywin Lewis as President and April Hanes as Secretary. The
12 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
13 charges brought in Accusation No. 77/11-56 and will expire on October 31, 2014, unless
14 renewed.

15 9. On an uncertain date in 1972, the Bureau of Automotive Repair issued Automotive
16 Repair Dealer Registration No. ARD 22635 to Respondent Sears Roebuck & Co. dba Sears
17 Roebuck & Co., #6771 with Alywin Lewis as President and April Hanes as Secretary. The
18 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
19 charges brought in Accusation No. 77/11-56 and will expire on June 30, 2014, unless renewed.

20 10. Some time after the filing of Accusation No. 77/11-56, Respondents' officers
21 changed. At this time, Ronald Boire is President of Respondents instead of Alywin Lewis,
22 Lawrence Meerschaert is Secretary of Respondents instead of April Hanes, and Scott Huckins is
23 Treasurer of Respondents instead of William Crowley.

24 JURISDICTION

25 11. Accusation No. 77/11-56 is filed before the Director of Consumer Affairs (Director),
26 for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondents.
27 The Accusation and all other statutorily required documents were properly served on
28 Respondents on April 26, 2012. Respondents timely filed their Notice of Defense contesting the

1 Accusation. A copy of Accusation No. 77/11-56 is attached as exhibit A and incorporated herein
2 by reference.

3 ADVISEMENT AND WAIVERS

4 12. Respondents have carefully read, fully discussed with counsel, and understand the
5 charges and allegations in Accusation No. 77/11-56. Respondents have also carefully read, fully
6 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
7 Order.

8 13. Respondents are fully aware of their respective legal rights in this matter, including
9 the right to a hearing on the charges and allegations in the Accusation; the right to be represented
10 by counsel at its own expense; the right to confront and cross-examine the witnesses against
11 them; the right to present evidence and to testify on their own behalf; the right to the issuance
12 of subpoenas to compel the attendance of witnesses and the production of documents; the right to
13 reconsideration and court review of an adverse decision; and all other rights accorded by the
14 California Administrative Procedure Act and other applicable laws.

15 14. Respondents voluntarily, knowingly, and intelligently waive and give up each and
16 every right set forth above.

17 CULPABILITY

18 15. Respondents understand and agree that the charges and allegations in Accusation No.
19 77/11-56, if proven at a hearing, constitute cause for imposing discipline upon their respective
20 Automotive Repair Dealer Registrations.

21 16. For the purpose of resolving the Accusation without the expense and uncertainty of
22 further proceedings, Respondents agree that at a hearing, Complainant could establish a factual
23 basis for the charges in the Accusation, and Respondents hereby give up their respective rights to
24 contest those charges.

25 17. Respondents agree that their respective Automotive Repair Dealer Registrations are
26 subject to discipline and they agree to be bound by the terms and conditions of the Disciplinary
27 Order below.

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1 18. The admissions made by Respondents herein are only for the purposes of this
2 proceeding, or any other proceedings in which the Bureau of Automotive Repair, the Department
3 of Consumer Affairs, or any successor agency is involved, and shall not be admissible in any
4 other criminal or civil proceedings.

5 CONTINGENCY

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

17 20. The parties understand and agree that facsimile copies of this Stipulated Settlement
18 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
19 effect as the originals.

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

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

DISCIPLINARY ORDER

1
2 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 22639
3 Issued to Respondent Sears Roebuck & Co. dba Sears Roebuck & Co., #6460 (with Alywin
4 Lewis as President and April Hanes as Secretary), Automotive Repair Dealer Registration No.
5 ARD 22628 Issued to Respondent Sears Roebuck & Co. dba Sears Roebuck & Co. #6811 (with
6 Alywin Lewis as President and April Hanes as Secretary), Automobile Repair Dealer Registration
7 No. ARD 207428 Issued to Respondent Sears Roebuck & Co. dba Sears Roebuck & Co. #2639
8 (with Alywin Lewis as President and April Hanes as Secretary), Automotive Repair Dealer
9 Registration No. ARD 22627 Issued to Respondent Sears Roebuck & Co. dba Sears Roebuck &
10 Co. #6271 (with Alywin Lewis as President and April Hanes as Secretary), Automotive Repair
11 Dealer Registration No. ARD 22609 Issued to Sears Roebuck & Co. dba Sears Roebuck & Co
12 #6258 (with Alywin Lewis as President, April Hanes as Secretary and William Crowley as
13 Treasurer), Automobile Repair Dealer Registration No. ARD 82595 Issued to Respondent Sears
14 Roebuck & Co. dba Sears Roebuck & Co. #6568 (with Alywin Lewis as President and April
15 Hanes as Secretary), Automobile Dealer Registration No. ARD 22635 Issued to Respondent Sears
16 Roebuck & Co. dba Sears Roebuck & Co., #6771 (with Alywin Lewis as President and April
17 Hanes as Secretary), and each of said registrations, are revoked. However, the revocations are
18 stayed, and except for Sears & Roebuck Co. dba Sears Roebuck & Co. # 6568 (with Alywin
19 Lewis as President and April Hanes as Secretary), each of the registrations issued to said
20 Respondents is placed on probation for one (1) year and shall be subject to Condition Nos. 2, 4, 5,
21 6, 7, 8, 9 and 10 below. As to Respondent Sears Roebuck & Co. dba Sears Roebuck & Co. #6568
22 (with Alywin Lewis as President and April Hanes as Secretary), Automobile Repair Dealer
23 Registration No. ARD 82595 Issued to said Respondent shall be subject to the Further Order and
24 Condition Nos. 1 through 10 below.

25 IT IS FURTHER ORDERED that Automotive Repair Dealer Registration No. ARD 82595
26 Issued to Sears Roebuck & Co. dba Sears Roebuck & Co. #6568 (with Alywin Lewis as
27 President, and April Hanes as Secretary), is revoked. However, the revocation is stayed and said
28 Respondent is placed on probation for three (3) years on the terms and conditions set forth below.

1 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 82598 issued
2 to Sears Roebuck & Co. dba Sears Roebuck & Co. #6368 (with Alywin Lewis as President and
3 April Hanes as Secretary) is suspended for four (4) consecutive days from the effective date of
4 the decision.

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

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

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

15 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
16 any financial interest which any partners, officers, or owners of the Respondents' respective
17 facilities which may have in any other business required to be registered pursuant to Section
18 9884.6 of the Business and Professions Code.

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

21 7. **Jurisdiction.** If an accusation is filed against one or more Respondents during the
22 term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this
23 matter until the final decision on the accusation, and the period of probation shall be extended
24 until such decision.

25 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
26 Respondent has failed to comply with the terms and conditions of probation, the Department may,
27 after giving notice and opportunity to be heard to the probation violator(s), may suspend, revoke
28 temporarily invalidate or permanently invalidate the registrations of Respondent(s) violating

1 probation.

2 9. Cost Recovery. Respondents shall be jointly and severally responsible for full
3 payment to the Bureau of the sum of \$45,000.00 for costs of investigation and prosecution. The
4 full amount of cost recovery must be received on the effective date of the decision.

5 ACCEPTANCE

6 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
7 discussed it with my attorney, Louis J. Anapolsky, I understand the stipulation and the effect it
8 will have upon Automotive Repair Dealer Registrations described above. I enter into this
9 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
10 to be bound by the Decision and Order of the Director of Consumer Affairs.

11 DATED: 5/14/14 Lawrence M. Meerschardt
12 LAWRENCE MEERSCHAERT, SECRETARY,
13 SEARS ROEBUCK & CO., DBA SEARS ROEBUCK
14 & CO., ##6460, 6811, 2639, 6271, 6258, 6568, AND
15 6771.
16 Respondents

17 I have read and fully discussed with Respondent Sears Roebuck & Co. dba Sears Roebuck
18 & Co., ## 6460, 6811, 2639, 6271, 6258, 6568, 6771, the terms, conditions and other matters
19 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and
20 content.

21 DATED: 5/14/14 Knox Lemmon & Anapolsky, LLP
22 LOUIS J. ANAPOLSKY, Attorney for Respondents
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ENDORSEMENT

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

Dated: 5-14-2014

Respectfully submitted,

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



STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 77/11-56

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 77/11-56

13 **SEARS ROEBUCK & CO. DBA**
14 **SEARS ROEBUCK & CO. #6460**
1011 W. OLIVE AVENUE
14 **MERCED, CA 95348-2422**
MAILING ADDRESS:
15 3333 BEVERLY ROAD, B2-112A
16 HOFFMAN ESTATES, IL 60179
16 ALYWIN LEWIS, PRESIDENT
17 AUTOMOTIVE REPAIR DEALER REGISTRATION NO. ARD 22659

ACCUSATION

18 **SEARS ROEBUCK & CO., DBA**
19 **SEARS ROEBUCK & CO., #6811**
3636 N. BLACKSTONE AVENUE
19 **FRESNO, CA 93726-5304**
MAILING ADDRESS:
20 3333 BEVERLY ROAD, DEPT 768TAX B2-112A
21 HOFFMAN ESTATES, IL 60179
21 ALYWIN LEWIS, PRESIDENT
22 AUTOMOTIVE REPAIR DEALER REGISTRATION NO. ARD 22628

23 **SEARS ROEBUCK & CO., DBA**
24 **SEARS ROEBUCK & CO., #2639**
1140 SHAW AVENUE
24 **CLOVIS, CA 93612**
MAILING ADDRESS:
25 3333 BEVERLY ROAD, B2-112A
26 HOFFMAN ESTATES, IL 60179
26 ALYWIN LEWIS, PRESIDENT
27 AUTOMOTIVE REPAIR DEALER REGISTRATION NO. ARD 207428

1 SEARS ROEBUCK & CO., DBA
2 SEARS ROEBUCK & CO., #6271
3 3501 S. MOONEY BOULEVARD
4 VISALIA, CA 93277-7775
5 MAILING ADDRESS:
6 3333 BEVERLY ROAD, B2-112A
7 HOFFMAN ESTATES, IL 60179
8 ALYWIN LEWIS, PRESIDENT
9 AUTOMOTIVE REPAIR DEALER REGISTRATION No. ARD 22627

6 SEARS ROEBUCK & CO., DBA
7 SEARS ROEBUCK & CO., #6258
8 100 VINTAGE FAIRE
9 MODESTO, CA 95356-0505
10 MAILING ADDRESS:
11 3333 BEVERLY ROAD, B2-112A
12 HOFFMAN ESTATES, IL 60179
13 ALYWIN LEWIS, PRESIDENT
14 AUTOMOTIVE REPAIR DEALER REGISTRATION No. ARD 22609

11 SEARS ROEBUCK & CO., DBA
12 SEARS ROEBUCK & CO., #6568
13 6000 MOWRY AVENUE, SP 100 NEWPARK MALL
14 NEWARK, CA 94560-4900
15 MAILING ADDRESS:
16 3333 BEVERLY ROAD, B2-112A
17 HOFFMAN ESTATES, IL 60179
18 ALYWIN LEWIS, PRESIDENT
19 APRIL HANES, SECRETARY
20 AUTOMOTIVE REPAIR DEALER REGISTRATION No. ARD 082595

17 SEARS ROEBUCK & CO., DBA
18 SEARS ROEBUCK & CO., #6771
19 660 W. WINTON AVENUE
20 HAYWARD, CA 94545-2135
21 MAILING ADDRESS:
22 3333 BEVERLY ROAD, B2-112A
23 HOFFMAN ESTATES, IL 60179
24 ALYWIN LEWIS, PRESIDENT
25 APRIL HANES, SECRETARY
26 AUTOMOTIVE REPAIR DEALER REGISTRATION No. ARD 022635

22 Respondents.

24 Complainant alleges:

25 PARTIES

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

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1 **Automotive Repair Dealer Registration**

2 2. On a date uncertain in 1972, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 22659 ("registration") to Sears Roebuck & Co., doing business as
4 Sears Roebuck & Co., #6460 ("Respondent No. 1"), with Aylwin Lewis as President and April
5 Hanes as Secretary. The registration was in full force and effect at all times relevant to the
6 charges brought herein and will expire on June 30, 2012, unless renewed.

7 **Automotive Repair Dealer Registration**

8 3. On a date uncertain in 1972, the Bureau issued Automotive Repair Dealer
9 Registration Number ARD 22628 ("registration") to Sears Roebuck & Co., doing business as
10 Sears Roebuck & Co., #6811 ("Respondent No. 2"), with Aylwin Lewis as President and April
11 Hanes as Secretary. The registration was in full force and effect at all times relevant to the
12 charges brought herein and will expire on June 30, 2012, unless renewed.

13 **Automotive Repair Dealer Registration**

14 4. On a date uncertain in 1999, the Bureau issued Automotive Repair Dealer
15 Registration Number ARD 207428 to Sears Roebuck & Co., doing business as Sears Roebuck &
16 Co., #2639 ("Respondent No. 3") with Aylwin Lewis as President and April Hanes as Secretary.
17 The registration was in full force and effect at all times relevant to the charges brought herein and
18 will expire on October 31, 2012, unless renewed.

19 **Automotive Repair Dealer Registration**

20 5. On a date uncertain in 1972, the Bureau issued Automotive Repair Dealer
21 Registration Number ARD 22627 ("registration") to Sears Roebuck & Co., dba Sears Roebuck &
22 Co., #6271 ("Respondent No. 4") with Aylwin Lewis as President and April Hanes as Secretary.
23 The registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on June 30, 2012, unless renewed.

25 **Automotive Repair Dealer Registration**

26 6. On a date uncertain in 1972, the Bureau issued Automotive Repair Dealer
27 Registration Number ARD 22609 ("registration") to Sears Roebuck & Co., doing business as
28 Sears Roebuck & Co., #6258 ("Respondent No. 5") with Aylwin Lewis as President, April

1 Hanes as Secretary, and William Crowley as Treasurer. The registration was in full force and
2 effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless
3 renewed.

4 **Automotive Repair Dealer Registration**

5 7. On a date uncertain in 1980, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 082595 ("registration") to Sears Roebuck & Co., doing business as
7 Sears Roebuck & Co., #6568 ("**Respondent No. 6**") with Aylwin Lewis as President and April
8 Hanes as Secretary. The registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on October 30, 2012, unless renewed.

10 **Automotive Repair Dealer Registration**

11 8. On a date uncertain in 1972, the Bureau issued Automotive Repair Dealer
12 Registration Number ARD 022635 ("registration") to Sears Roebuck & Co., doing business as
13 Sears Roebuck & Co., #6771 ("**Respondent No. 7**") with Aylwin Lewis as President and April
14 Hanes as Secretary. The registration was in full force and effect at all times relevant to the
15 charges brought herein and will expire on June 30, 2012, unless renewed.

16 **STATUTORY PROVISIONS**

17 9. Section 9884.7 of the Business and Professions Code ("Code") states:

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

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

27 (4) Any other conduct that constitutes fraud.

28 (5) Conduct constituting gross negligence.

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

(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.

1 (b) Except as provided for in subdivision (c), if an automotive repair
2 dealer operates more than one place of business in this state, the director pursuant to
3 subdivision (a) shall only suspend, revoke, or place on probation the registration of
4 the specific place of business which has violated any of the provisions of this chapter.
5 This violation, or action by the director, shall not affect in any manner the right of the
6 automotive repair dealer to operate his or her other places of business.

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

12 10. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
13 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
14 proceeding against an automotive repair dealer or to render a decision invalidating a registration
15 temporarily or permanently.

16 11. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
17 "commission," "committee," "department," "division," "examining committee," "program," and
18 "agency." "License" includes certificate, registration or other means to engage in a business or
19 profession regulated by the Code.

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

24 *RESPONDENT NO. 1*

25 **UNDERCOVER OPERATION APRIL 19, 2010**

26 13. On April 19, 2010, a Bureau undercover operator ("operator") drove a Bureau-
27 documented 1999 Mercedes S320 to Respondent No. 1's facility. The only service necessary was
28 an oil and filter change. The operator spoke with a male identified as Anthony and told him he
wanted an oil change. Anthony told the operator that the vehicle used synthetic oil, which would
cost \$51.50 and that the oil-filter had to be purchased from a parts store and would cost \$15.87.
The operator authorized the oil change. The operator signed Work Order No. [REDACTED] and
was provided with a copy of the document. After the service was complete, the operator paid
Respondent No. 1 \$68.76 and received Invoice No. [REDACTED]

1 Respondent No. 1 failed to comply with California Code of Regulation, title 16, section 3356,
2 subdivision (a)(1), by setting forth registration number AF 022659. In fact, the registration
3 should be shown as ARD 22659.

4 **UNDERCOVER OPERATION JULY 13, 2010**

5 19. On July 13, 2010, a Bureau undercover operator ("operator") drove a Bureau-
6 documented 2001 Chevrolet Silverado 2500HD truck to Respondent No. 1's facility. The only
7 service necessary was an oil and filter change. The operator spoke with a male employee and told
8 the employee that he wanted synthetic oil used for the oil change. The employee told the operator
9 that the cost would be \$51.50 for the oil and \$6.49 for the oil filter. The operator authorized the
10 oil change. The operator signed Work Order No. [REDACTED] and was provided with a copy of
11 the document. After the service was complete, the operator paid Respondent No. 1 \$53.56 and
12 received Invoice No. [REDACTED]

13 20. On July 13, 2010, the Bureau performed a re-inspection of the vehicle. That
14 inspection revealed that Respondent No. 1 had refilled the vehicle's crankcase with the proper
15 amount of oil; however, the technician failed to check the engine oil after refilling the vehicle's
16 crankcase.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 (Failure to Comply with Code)

19 21. Respondent No. 1's registration is subject to discipline pursuant to Code section
20 9884.7, subdivision (a)(6), in that on or about July 13, 2010, Respondent No. 1 failed to comply
21 with section 9884.8 of that Code. Regarding Invoice No. [REDACTED] Respondent No. 1 failed to
22 describe the amount of oil installed, the viscosity grade of oil installed, or the price per quart of
23 oil.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 (Failure to Comply with Regulations)

26 22. Respondent No. 1's registration is subject to discipline pursuant to Code section
27 9884.7, subdivision (a)(6), in that on or about July 13, 2010, regarding Invoice No. [REDACTED]
28 Respondent No. 1 failed to comply with California Code of Regulation, title 16, section 3356,

1 subdivision (a)(1), by setting forth registration number AF 022659. In fact, the registration
2 should be shown as ARD 22659.

3 ***RESPONDENT NO. 2***

4 **UNDERCOVER OPERATION – JULY 14, 2010**

5 23. On July 14, 2010, a Bureau undercover operator (“operator”) drove a Bureau-
6 documented 1999 Mercedes S320 to Respondent No. 2’s facility. The only service necessary was
7 an oil and filter change. The operator spoke with a male employee and told him he wanted an oil
8 change. The operator signed Work Order No. [REDACTED] and was provided with a copy of the
9 document. After the service was complete, the operator paid Respondent No. 2 \$78.79 and
10 received Invoice No. [REDACTED]

11 24. On July 19, 2010, the Bureau performed a re-inspection of the vehicle. That
12 inspection revealed that Respondent No. 2 overfilled the engine with 1 liter more oil than is
13 required for that engine, which could cause damage to the engine and catalytic converter.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 25. Respondent No. 2’s registration is subject to discipline pursuant to Code section
17 9884.7, subdivision (a)(5), in that on or about July 14, 2010, regarding the 1999 Mercedes S320,
18 Respondent No. 2 committed an act constituting gross negligence by overfilling the engine with 1
19 liter more oil than is required for that engine, which could cause damage to the engine and
20 catalytic converter.

21 **EIGHTH CAUSE FOR DISCIPLINE**

22 **(Departure from Trade Standards)**

23 26. Respondent No. 2’s registration is subject to discipline pursuant to Code section
24 9884.7, subdivision (a)(7), in that on or about July 14, 2010, Respondent No. 2 willfully departed
25 from or disregarded accepted trade standards for good and workmanlike repair in the following
26 material respect. Respondent No. 2 overfilled the engine with 1 liter more oil than is required for
27 that engine, which could cause damage to the engine and catalytic converter.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Code)

3 27. Respondent No. 2's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that on or about July 14, 2010, Respondent No. 2 failed to comply
5 with section 9884.8 of that Code. Regarding Invoice No. [REDACTED] Respondent No. 2 failed to
6 describe the amount of oil installed, the viscosity grade of oil installed, or the price per quart of
7 oil.

8 *RESPONDENT NO. 3*

9 **UNDERCOVER OPERATION – SEPTEMBER 13, 2010**

10 28. On September 13, 2010, a Bureau undercover operator ("operator") drove a Bureau-
11 documented 2001 Chevrolet Silverado 2500HD truck to Respondent No. 3's facility. The only
12 service necessary was an oil and filter change. The operator spoke with a male employee and told
13 the employee he wanted an oil change. The employee estimated the cost of the oil and filter
14 change to be \$38.80. The operator signed Work Order No. [REDACTED] and was provided with a
15 copy of the document. After the service was complete, the operator paid Respondent No. 3
16 \$38.80 and received Invoice No. [REDACTED]

17 29. On September 13, 2010, the Bureau performed a re-inspection of the vehicle. That
18 inspection revealed that Respondent No. 3 failed to refill the vehicle's crankcase with the proper
19 amount of oil. Further, the technician failed to follow proper manufacturer procedures for
20 checking the oil level by failing to check the engine oil after the vehicle was started.

21 TENTH CAUSE FOR DISCIPLINE

22 (Departure from Trade Standards)

23 30. Respondent No. 3's registration is subject to discipline pursuant to Code section
24 9884.7, subdivision (a)(7), in that on or about September 13, 2010, Respondent No. 3 willfully
25 departed from or disregarded accepted trade standards for good and workmanlike repair in the
26 following material respect. Respondent No. 3 failed to follow proper manufacturer procedures
27 for checking the oil level by failing to check the engine oil after the vehicle was started.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Code)**

3 31. Respondent No. 3's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that on or about September 13, 2010, Respondent No. 3 failed to
5 comply with section 9884.8 of that Code. Regarding Invoice No. [REDACTED], Respondent No. 3
6 failed to describe the amount of oil installed, the viscosity grade of oil installed, or the price per
7 quart of oil.

8 ***RESPONDENT NO. 4***

9 **UNDERCOVER OPERATION SEPTEMBER 15, 2010**

10 32. On September 15, 2010, a Bureau undercover operator ("operator") drove a Bureau-
11 documented 1999 Mercedes S320 to Respondent No. 4's facility. The only service necessary was
12 an oil and filter change. The operator spoke with a male employee and told the employee he
13 wanted an oil change. The operator signed Work Order No. [REDACTED] and was provided with
14 a copy of the document. After the service was complete, the operator paid Respondent No. 4
15 \$44.24 and received Invoice No. [REDACTED].

16 33. On September 20, 2010, the Bureau performed a re-inspection of the vehicle. That
17 inspection revealed that Respondent No. 4 overfilled the engine with 2.350 liters more oil than is
18 required for that engine, which could cause damage to the engine and catalytic converter.
19 Further, Respondent No. 4 failed to replace the oil filter as invoiced, and the tire pressures had not
20 been checked, which is part of the oil change service.

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 34. Respondent No. 4's registration is subject to discipline pursuant to Code section
24 9884.7, subdivision (a)(1), in that on or about September 15, 2010, Respondent made or
25 authorized statements which Respondent No. 4 knew or in the exercise of reasonable care
26 Respondent No. 4 should have known to be untrue or misleading, as follows:

27 a. Respondent No. 4 represented on Invoice No. [REDACTED] that the oil filter had been
28 replaced when, in fact, that part had not been replaced as invoiced.

1 failed to describe the amount of oil installed, the viscosity grade of oil installed, or the price per
2 quart of oil.

3 *RESPONDENT NO. 5*

4 **UNDERCOVER OPERATION OCTOBER 20, 2010**

5 39. On October 20, 2010, a Bureau undercover operator ("operator") drove a Bureau-
6 documented 1999 Mercedes S320 to Respondent No. 5's facility. The only service necessary was
7 an oil and filter change. The operator spoke with a male employee and told the employee he
8 wanted an oil change. The employee told the operator that the vehicle required synthetic oil,
9 which would cost \$55.50, and that the oil filter had to be purchased from a parts store and would
10 cost \$15.04. The operator signed Work Order No. [REDACTED] and was provided with a copy of
11 the document. After the service was complete, the operator paid Respondent No. 4 \$61.80 and
12 received Invoice No. [REDACTED]

13 40. On October 25, 2010, the Bureau performed a re-inspection of the vehicle. That
14 inspection revealed that Respondent No. 5 overfilled the engine with 1.70 liters more oil than is
15 required for that engine, which could cause damage to the engine and catalytic converter.
16 Further, Respondent No. 5 failed to check the tire pressures, which is part of the oil change
17 service.

18 **SEVENTEENTH CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 41. Respondent No. 5's registration is subject to discipline pursuant to Code section
21 9884.7, subdivision (a)(1), in that on or about October 20, 2010, Respondent No. 5 made or
22 authorized statements which Respondent No. 5 knew or in the exercise of reasonable care
23 Respondent No. 5 should have known to be untrue or misleading, when Respondent No. 5
24 represented on Invoice No. [REDACTED] that the tire pressures had been checked when, in fact,
25 they had not been checked as invoiced.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 42. Respondent No. 5's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(5), in that on or about October 20, 2010, regarding the 1999 Mercedes
5 S320, Respondent No. 5 committed an act constituting gross negligence by overfilling the engine
6 with 1.70 liters more oil than is required for that engine, which could cause damage to the engine
7 and catalytic converter.

8 **NINETEENTH CAUSE FOR DISCIPLINE**

9 **(Departure from Trade Standards)**

10 43. Respondent No. 5's registration is subject to discipline pursuant to Code section
11 9884.7, subdivision (a)(7), in that on or about October 20, 2010, Respondent No. 5 willfully
12 departed from or disregarded accepted trade standards for good and workmanlike repair in the
13 following material respect. Respondent No. 5 overfilled the engine with 1.70 liters more oil than
14 is required for that engine, which could cause damage to the engine and catalytic converter.

15 **TWENTIETH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Code)**

17 44. Respondent No. 5's registration is subject to discipline pursuant to Code section
18 9884.7, subdivision (a)(6), in that on or about October 20, 2010, Respondent failed to comply
19 with section 9884.8 of that Code. Regarding Invoice No. [REDACTED] Respondent failed to
20 describe the amount of oil installed, the viscosity grade of oil installed, or the price per quart of
21 oil.

22 ***RESPONDENT NO. 6***

23 **UNDERCOVER OPERATION NOVEMBER 29, 2011**

24 45. On November 29, 2011, a Bureau undercover operator ("operator") drove a Bureau-
25 documented 2001 Chevrolet Silverado truck to Respondent No. 6's facility. The only service
26 necessary was an oil and filter change. The operator spoke with a male employee, who identified
27 himself as Ed and told Ed he wanted an oil change. Ed told the operator that the vehicle required
28 6.4 quarts of oil. Ed also told the operator that they were out of stock of the oil filter required for

1 this vehicle. Ed told the operator the oil change would cost \$26.31. The operator signed Work
2 Order No. [REDACTED] and was provided with a copy of the document. After the service was
3 complete, Ed showed the operator an alignment check printout and told the operator that they had
4 checked the vehicle's alignment at no charge and that the vehicle needed an alignment. The
5 operator declined the alignment. The operator paid Respondent No. 6 \$26.31 and received
6 Invoice No. [REDACTED]

7 46. On November 29, 2011, the Bureau performed a re-inspection of the vehicle. That
8 inspection revealed the following:

9 a. Respondent No. 6 overfilled the engine with 22 ounces more oil than is required for
10 that engine.

11 b. Respondent No. 6 invoiced that the tire pressures had been checked. In fact, they had
12 not.

13 c. Respondent No. 6 recommended on Invoice No. [REDACTED] that the vehicle's fuel
14 system should be cleaned pursuant to the vehicle's manufacturer maintenance schedule; however,
15 the vehicle manufacturer does not list a maintenance schedule for cleaning the fuel system.

16 d. Invoice No. [REDACTED] documents that a Purolator Oil Filter was installed on this
17 vehicle; however, a Microguard Oil Filter was installed instead.

18 e. Respondent No. 6 failed to check the engine oil level after the vehicle's engine was
19 warmed up.

20 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 47. Respondent No. 6's registration is subject to discipline pursuant to Code section
23 9884.7, subdivision (a)(1), in that on or about November 29, 2011, Respondent No. 6 made or
24 authorized statements which Respondent No. 6 knew or in the exercise of reasonable care
25 Respondent No. 6 should have known to be untrue or misleading, as follows:

26 a. Respondent No. 6 represented on Invoice No. [REDACTED] that the tire pressures had
27 been checked when, in fact, they had not been checked as invoiced.

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1 specifications. Vargas told the operator the cost of the alignment was \$79.99 and would take
2 approximately 1 hour and 45 minutes to complete. The operator left the facility and returned later
3 that day to retrieve the vehicle. The operator paid Vargas \$79.99 and was provided with a copy
4 of Invoice No. [REDACTED] and the alignment printout. The operator also asked Vargas for a copy
5 of the free alignment check printout. Vargas informed the operator she could not reprint the free
6 alignment check but, she made a copy of her printout and provided him with the copy of that
7 printout.

8 51. On March 21, 2012, the Bureau performed a re-inspection of the vehicle's alignment.
9 That inspection revealed the following:

- 10 a. The printouts provided by Respondent No. 6 showed no inconsistent measurements.
11 b. Respondent No. 6 had not performed an all wheel alignment as invoiced.

12 TWENTY-FOURTH CAUSE FOR DISCIPLINE

13 (Untrue or Misleading Statements)

14 52. Respondent No. 6's registration is subject to discipline pursuant to Code section
15 9884.7, subdivision (a)(1), in that on or about March 8, 2012, Respondent No. 6 made or
16 authorized statements which Respondent No. 6 knew or in the exercise of reasonable care
17 Respondent No. 6 should have known to be untrue or misleading, as follows:

18 a. Respondent No. 6 represented to the operator that the vehicle needed an all wheel
19 alignment when, in fact, that statement was untrue. The vehicle's alignment was within
20 specifications and that service was not necessary.

21 b. Respondent No. 6 represented on Invoice [REDACTED] that it had performed an all
22 wheel alignment when, in fact, that service had not been performed as invoiced.

23 TWENTY-FIFTH CAUSE FOR DISCIPLINE

24 (Fraud)

25 53. Respondent No. 6's registration is subject to discipline under Code section 9884.7,
26 subdivision (a)(4), in that on or about March 8, 2012, it committed acts which constitute fraud by
27 accepting payment from the operator of \$79.99 to perform an all wheel alignment when, in fact,
28 that service had not been performed as invoiced.

1 TWENTY-SIXTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Code)

3 54. Respondent No. 6's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that on or about March 8, 2012, Respondent No. 6 failed to comply
5 with section 9884.9, subdivision (a) of that Code, by failing to obtain the operator's authorization
6 to perform the alignment service prior to performing that service.

7 *RESPONDENT NO. 7*

8 **UNDERCOVER OPERATION NOVEMBER 29, 2011**

9 55. On November 29, 2011, a Bureau undercover operator ("operator") drove a Bureau-
10 documented 1999 Mercedes S320 to Respondent No. 7's facility. The only service necessary was
11 an oil and filter change. The operator spoke with a male employee and told the employee he
12 wanted an oil change. The employee, who identified himself as Ricky, asked the operator if he
13 wanted to take advantage of a free alignment check. The operator declined the alignment check.
14 The operator signed Work Order No. [REDACTED] and was provided with a copy of the
15 document. After the service was complete, the operator returned to Respondent No. 7's facility to
16 retrieve the vehicle. The operator spoke with a different employee named Kahled and paid him
17 \$73.01 for the oil and filter change. Kahled provided the operator with Invoice No. [REDACTED]
18 including an alignment printout.

19 56. On November 29, 2011, the Bureau performed a re-inspection of the vehicle. That
20 inspection revealed the following:

- 21 a. Respondent No. 7 overfilled the engine with 0.5 liters more oil than is required for
22 that engine.
- 23 b. Respondent No. 7 invoiced that the tire pressures had been checked. In fact, they had
24 not.
- 25 c. Respondent No. 7 failed to replace the drain plug gasket pursuant to the
26 manufacturer's procedures.

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1 TWENTY-SEVENTH CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 57. Respondent No. 7's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(1), in that on or about November 29, 2011, Respondent No. 7 made or
5 authorized statements which Respondent No. 7 knew or in the exercise of reasonable care
6 Respondent No. 7 should have known to be untrue or misleading, when Respondent No. 7
7 represented on Invoice No. [REDACTED] that the tire pressures had been checked when, in fact,
8 they had not been checked as invoiced.

9 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

10 (Departure from Trade Standards)

11 58. Respondent No. 7's registration is subject to discipline pursuant to Code section
12 9884.7, subdivision (a)(7), in that on or about November 29, 2011, Respondent No. 7 willfully
13 departed from or disregarded accepted trade standards for good and workmanlike repair in the
14 following material respect. Respondent No. 7 failed to replace the drain plug gasket pursuant to
15 the manufacturer's procedures. Further, Respondent No. 7 overfilled the engine with 0.5 liters
16 more oil than is required for that engine.

17 TWENTY-NINTH CAUSE FOR DISCIPLINE

18 (Failure to Comply with Code)

19 59. Respondent No. 7's registration is subject to discipline pursuant to Code section
20 9884.7, subdivision (a)(6), in that on or about November 29, 2011, Respondent No. 7 failed to
21 comply with the following sections of that Code:

22 a. Section 9884.8: Regarding Invoice No. [REDACTED] Respondent No. 7 failed to
23 describe the amount of oil installed, the viscosity grade of oil installed, or the price per quart of
24 oil.

25 b. Section 9884.9, subdivision (a): Respondent No. 7 failed to provide the operator
26 with a written estimate to perform the alignment check. Further, Respondent No. 7 failed to
27 obtain the operator's authorization to perform the alignment check.

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OTHER MATTERS

60. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Sears Roebuck & Co., upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

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, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 22659, issued to Sears Roebuck & Co., doing business as Sears Roebuck & Co., #6460;

2. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 22628, issued to Sears Roebuck & Co., doing business as Sears Roebuck & Co., #6811;

3. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 207428, issued to Sears Roebuck & Co., doing business as Sears Roebuck & Co., #2639;

4. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 22627, issued to Sears Roebuck & Co., doing business as Sears Roebuck & Co., #6271;

5. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 22609, issued to Sears Roebuck & Co., doing business as Sears Roebuck & Co., #6258;

6. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 082595, issued to Sears Roebuck & Co., doing business as Sears Roebuck & Co., #6568;

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1 7. Revoking, suspending, or placing on probation Automotive Repair Dealer
2 Registration Number ARD 022635, issued to Sears Roebuck & Co., doing business as Sears
3 Roebuck & Co., #6771;

4 8. Revoking, suspending, or placing on probation any other automotive repair dealer
5 registration(s) issued to Sears & Roebuck Co.;

6 9. Ordering Sears Roebuck & Co., to pay the Bureau of Automotive Repair the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and,

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

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DATED: 4/17/12

John Wallauch by *Doug Balati*
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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