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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. 77|07-21

12 **MICHAEL C. ROESBERY, INC., DBA**
13 **ROESBERY CAR CARE**

ACCUSATION

13 2411 Oak Grove Road
Walnut Creek, California 94598 and/or
14 2420 Camino Ramon, Suite 205
San Ramon, California 94583

15 **MICHAEL CHARLES ROESBERY, PRES.**

16 Automotive Repair Dealer Registration
No. AD 166276

17 Smog Check Station License No. RD 166276

18 and

19 **MICHAEL C. ROESBERY, INC., DBA**
20 **ROESBERY CAR CARE**

20 3099 N. Main Street
Walnut Creek, California 94597 and/or
21 2420 Camino Ramon, Suite 205
San Ramon, California 94583

22 **MICHAEL CHARLES ROESBERY, PRES.**

23 Automotive Repair Dealer Registration
No. AK 201878

24 Smog Check Station License No. RK 201878

25 Respondents.
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27 Sherry Mehl ("Complainant") alleges:

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1 PARTIES

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

4 **Automotive Repair Dealer Registration**

5 2. On or about April 15, 1992, the Bureau issued Automotive Repair Dealer
6 Registration Number AD 166276 ("registration") to Michael C. Roesbery, Inc. ("Respondent
7 No. 1"), doing business as Roesbery Car Care. The registration will expire on April 30, 2008,
8 unless renewed.

9 **Smog Check Station License**

10 3. On or about April 24, 1992, the Bureau issued Smog Check Station
11 License Number RD 166276 ("station license"), to Respondent No. 1. The station license will
12 expire on April 30, 2008, unless renewed.

13 **Automotive Repair Dealer Registration**

14 4. On or about October 6, 1998, the Bureau issued Automotive Repair Dealer
15 Registration Number AK 201878 ("registration") to Michael C. Roesbery, Inc. ("Respondent
16 No. 2"), doing business as Roesbery Car Care. The registration will expire on October 31, 2007,
17 unless renewed.

18 **Smog Check Station License**

19 5. On or about January 2, 2003, the Bureau issued Smog Check Station
20 License Number RK 201878 ("station license"), to Respondent No. 2. The station license will
21 expire on October 31, 2007, unless renewed.

22 STATUTORY PROVISIONS

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

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

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

5 (4) Any other conduct which constitutes fraud.

6 (7) Any willful departure from or disregard of accepted trade standards
7 for good and workmanlike repair in any material respect, which is prejudicial to
8 another without consent of the owner or his or her duly authorized representative.

9 (b) Except as provided for in subdivision (c), if an automotive repair
10 dealer operates more than one place of business in this state, the director pursuant
11 to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily
12 or permanently the registration of the specific place of business which has
13 violated any of the provisions of this chapter. This violation, or action by the
14 director, shall not affect in any manner the right of the automotive repair dealer to
15 operate his or her other places of business.

16 (c) Notwithstanding subdivision (b), the director may invalidate
17 temporarily or permanently, the registration for all places of business operated in
18 this state by an automotive repair dealer upon a finding that the automotive repair
19 dealer has, or is, engaged in a course of repeated and willful violations of this
20 chapter, or regulations adopted pursuant to it.

21 7. Code section 9884.9, subdivision (a), states:

22 (a) The automotive repair dealer shall give to the customer a written
23 estimated price for labor and parts necessary for a specific job. No work shall be
24 done and no charges shall accrue before authorization to proceed is obtained from
25 the customer. No charge shall be made for work done or parts supplied in excess
26 of the estimated price without the oral or written consent of the customer that
27 shall be obtained at some time after it is determined that the estimated price is
28 insufficient and before the work not estimated is done or the parts not estimated
are supplied. Written consent or authorization for an increase in the original
estimated price may be provided by electronic mail or facsimile transmission from
the customer. The bureau may specify in regulation the procedures to be followed
by an automotive repair dealer if an authorization or consent for an increase in the
original estimated price is provided by electronic mail or facsimile transmission.
If that consent is oral, the dealer shall make a notation on the work order of the
date, time, name of person authorizing the additional repairs and telephone
number called, if any, together with a specification of the additional parts and
labor and the total additional cost, and shall do either of the following:

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

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

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

3 _____
(signature or initials)"

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

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

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

15 10. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in
16 pertinent part, that the Director has all the powers and authority granted under the Automotive
17 Repair Act for enforcing the Motor Vehicle Inspection Program.

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

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

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

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

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

1 COST RECOVERY

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

6 UNDERCOVER OPERATION NO. 1 - OCTOBER 27, 2005

7 15. On October 27, 2005, a Bureau undercover operator, using the alias
8 Susie Parker ("operator"), drove a Bureau-documented 1998 Honda Civic, California License
9 Plate No. 4CDZ043, to Respondent's facility. The only repairs necessary were to replace the
10 front brake pads and properly inflate the right front tire. The operator spoke with Jeff, an
11 employee of the facility, and told him that the brakes were making noise. The operator also told
12 Jeff that the vehicle pulled to the right while she was driving. The operator provided Jeff with a
13 coupon for a "free brake inspection". The operator filled out and signed Estimate No. 10293;
14 however, the operator received an unsigned copy of the document.

15 16. Later that morning, the operator received a messaging page from Jeff.
16 The message stated that the vehicle needed pads, calipers, and rotors. Jeff stated that the caliper
17 was sticking on the right front, causing the vehicle to pull to the right. The operator telephoned
18 the facility and spoke with Jeff regarding the repairs. Jeff said that the brake pads were down to
19 the "thickness of a dime". Jeff also told the operator that "the caliper was not releasing and that
20 is what caused the pull". The operator asked if the rear brakes had been checked, to which Jeff
21 replied "they were fine, they were cleaned and adjusted". Jeff went on to say that they checked
22 the transmission and that the fluid was extremely dirty and needed to be flushed. Jeff told the
23 operator that the total cost of the repairs would be \$850.99. The operator authorized the brake
24 repairs but not the transmission flush. Jeff informed her that the revised price would be \$670.99.

25 17. On October 28, 2005, the operator returned to Respondent's facility to
26 pick up the vehicle. The operator paid Jeff \$704.83 for the repairs and was provided with a copy
27 of Invoice No. 10293 and Estimate No. 10293.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Fraudulent Act)**

3 26. Respondent's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(4), in that on or about November 16, 2005, it committed an act of fraud
5 when it accepted payment from the operator for repairs and/or services that were not necessary or
6 were not performed, as follows:

7 a. Respondent replaced the front brake rotors when, in fact, those parts were
8 in good serviceable condition and not in need of replacement.

9 b. Respondent performed a 4 wheel alignment when, in fact, that service was
10 not necessary.

11 c. Respondent failed to perform the brake system flush as invoiced.

12 **UNDERCOVER OPERATION NO. 3 - MARCH 21, 2006**

13 27. On March 21, 2006, a Bureau undercover operator, using the alias
14 Bill Price ("operator"), drove a Bureau-documented 1995 Chevrolet Astro Van, California
15 License Plate No. 3NUD802, to Respondent's facility. The only repairs necessary were to replace
16 the front brake pads and properly inflate the left front tire. The operator spoke with Donnie, an
17 employee of the facility, and told him that the brakes were making noise. The operator also told
18 Donnie that the vehicle goes to the left while he was driving. The operator provided Donnie with
19 coupons for a free brake inspection, free tire rotation, and \$5 off a set of wiper blades. Donnie
20 filled out Estimate No. 5367 and the operator signed the document and was provided with a copy.

21 28. Later that day, the operator telephoned Respondent's facility and spoke
22 with Donnie regarding the vehicle. Donnie told the operator that the vehicle's front brake sensors
23 were metal to metal and that the front wheel bearing seals were leaking. Donnie recommended
24 replacing the front brake pads, machining the front rotors, packing the wheel bearings, and
25 replacing the leaking seals. Donnie also told the operator that they filled the front left tire but the
26 vehicle was still pulling to the left. Donnie recommended a 4 wheel alignment, oil change, fuel
27 system flush, and replacing the wiper blades. Donnie said the cost of the repairs would be \$712.

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1 The operator authorized replacement of the front brakes, the alignment, and the wiper blades.
2 Donnie told the operator the cost of those repairs would be \$510.80.

3 29. On March 22, 2006, the operator returned to Respondent's facility to pick
4 up the vehicle. The operator spoke with Greg and asked him what they did to correct the pull in
5 the steering. Greg told the operator that "the toe was out 1.1 degrees and the steering wheel was
6 not straight". The operator paid Greg \$513.49 for the repairs and was provided with a copy of
7 Invoice No. 5367.

8 30. On March 23, 2006, after looking over Invoice No. 5367, the operator
9 telephoned Greg at Respondent's facility and asked what a brake flush was. Greg told the
10 operator that they would have only performed that service if the brake fluid was dirty. The
11 operator had not authorized that service.

12 31. On March 28, 2006, the Bureau reinspected the vehicle using Invoice No.
13 5367 as a reference. The reinspection revealed the following:

14 a. Respondent performed a wheel alignment that was not necessary and in the
15 process, incorrectly positioned the tie rod adjustment sleeve bolts and clamps, causing the steering
16 wheel to be off center.

17 b. Respondent unnecessarily machined both front brake rotors exceeding the
18 maximum specifications for lateral runout.

19 c. Respondent failed to replace the front grease seals as invoiced.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Misleading or Untrue Statements)**

22 32. Respondent's registration is subject to discipline under Code section
23 9884.7, subdivision (a)(1), in that on or about March 21, 2006, it made statements which it knew
24 or which by exercise of reasonable care it should have known to be untrue or misleading, as
25 follows:

26 a. Respondent falsely represented to the operator that even after filling the left
27 front tire with air, the vehicle still pulled to the left. In fact, proper inflation of the tire would have
28 corrected the problem.

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with the Automotive Repair Act)

3 34. Respondent's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(6), in that on or about March 21, 2006, Respondent failed to materially
5 comply with Code section 9884.9, subdivision (a) by failing to obtain the operator's consent to
6 perform the brake system flush.

7 EIGHTH CAUSE FOR DISCIPLINE

8 (Disregard for Trade Standards)

9 35. Respondent's registration is subject to discipline under Code section
10 9884.7, subdivision (a)(7), in that it willfully departed from or disregarded accepted trade
11 standards for good and workmanlike repair in the following material respects:

12 a. Respondent returned the vehicle to the operator with the steering wheel off
13 center in a counter clockwise direction.

14 b. Respondent incorrectly positioned the tie rod adjustment sleeve bolts and
15 clamps.

16 c. Respondent improperly machined both rotors, resulting in runout on one
17 rotor being .011 inches and the other at .010 inches.

18 UNDERCOVER OPERATION NO. 4 - JULY 26, 2006

19 36. On July 26, 2006, a Bureau undercover operator, using the alias
20 Ann Miller ("operator"), drove a Bureau-documented 1997 Toyota Camry, California License
21 Plate No. 3UET975, to Respondent's facility. The only repairs necessary were to replace the front
22 brake pads, properly inflate the right front and rear tires, and replenish the brake fluid in the
23 master cylinder. The operator spoke with Greg, an employee of the facility, and told him that the
24 brakes were making noise, the brake light was staying on, and that the vehicle goes to the right
25 while driving. The operator provided Greg with a coupon for a free brake inspection. The
26 operator filled out and signed Estimate No. 6177, and was provided a copy of the document.

27 37. Later that day, the operator telephoned Respondent's facility and spoke
28 with Greg regarding the vehicle. Greg told the operator that the brake light was on because the

1 brake fluid level was low. Greg recommended a brake fluid flush because of the low level of fluid
2 and the moisture in the fluid. Greg also told the operator that the brakes were almost metal to
3 metal and recommended replacing the front brakes. Further, Greg told the operator that with
4 regard to the struts, "the plates are binding, not smooth and are sticking". Greg went on to
5 describe ball bearings in the strut plates and stated they were wearing out. Greg also said that the
6 vehicle needed struts and that the transmission needed to be flushed. Later that afternoon, the
7 operator telephoned Greg and asked additional questions regarding the repairs. The operator
8 wanted to know why the brake system flush was needed. Greg stated to the operator "when the
9 brake pads wear it causes moisture in the system". Greg also explained that the "brakes run hotter
10 the first 100 miles after being replaced and that would cause moisture to enter the system". Greg
11 further stated that the brake work could not be guaranteed unless the brake fluid was flushed.
12 Greg continued by telling the operator that the struts were worn out and that the vehicle wobbled
13 going down the road. With regard to the vehicle pulling to the right, Greg stated that "it was
14 caused by the ball bearings in the strut plates being worn unevenly". The operator authorized all
15 of the repairs except the transmission flush. Greg told her the cost of repairs would be \$1,605.

16 38. On July 28, 2006, the operator returned to Respondent's facility to pick up
17 the vehicle. The operator paid Greg \$1,688.25 for the repairs and was provided with a copy of
18 Invoice No. 6177.

19 39. Between August 7 through 9, 2006, the Bureau reinspected the vehicle
20 using Invoice No. 6177 as a reference. The reinspection revealed the following:

- 21 a. Respondent failed to perform the brake fluid flush as invoiced.
- 22 b. Respondent unnecessarily replaced the front and rear struts.
- 23 c. Respondent unnecessarily replaced the front and rear strut mounting plates.

24 NINTH CAUSE FOR DISCIPLINE

25 (Misleading or Untrue Statements)

26 40. Respondent's registration is subject to discipline under Code section
27 9884.7, subdivision (a)(1), in that on or about July 26, 2006, it made statements which it knew or
28 which by exercise of reasonable care it should have known to be untrue or misleading, as follows:

1 a. Respondent falsely represented to the operator that the front strut plates had
2 failed, were binding, not smooth, and sticking and, further, that the struts were worn out and
3 caused the vehicle to wobble going down the road. In fact, the vehicle's front and rear struts
4 were new and not in need of replacement.

5 b. Respondent falsely represented to the operator that the brake hydraulic
6 system needed to be flushed when, in fact, that service was not necessary.

7 c. Respondent falsely represented on Invoice No. 6177 that it had performed a
8 brake hydraulic system flush when, in fact, that service had not been performed as invoiced.

9 d. Respondent falsely represented to the operator that the brake fluid was low
10 and had moisture in it when, in fact, the brake fluid only needed to be replenished.

11 **TENTH CAUSE FOR DISCIPLINE**

12 **(Fraudulent Act)**

13 41. Respondent's registration is subject to discipline under Code section
14 9884.7, subdivision (a)(4), in that on or about July 26, 2006, it committed an act of fraud when it
15 accepted payment from the operator for the following services and/or repairs that were performed
16 unnecessarily or not performed at all:

17 a. Respondent replaced the front and rear struts and front and rear strut
18 mounting plates when, in fact, those parts were in good serviceable condition and not in need of
19 replacement.

20 b. Respondent failed to perform the brake hydraulic system flush as invoiced.

21 **ELEVENTH CAUSE FOR DISCIPLINE**

22 **(Disregard for Trade Standards)**

23 42. Respondent's registration is subject to discipline under Code section
24 9884.7, subdivision (a)(7), in that on or about July 26, 2006, it willfully departed from or
25 disregarded accepted trade standards for good and workmanlike repair by failing to inspect and
26 correct the vehicle's low tire pressure when diagnosing a pull condition and/or when performing
27 the wheel alignment.

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1 TWELFTH CAUSE FOR DISCIPLINE

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

3 43. Respondent's station license is subject to discipline under Health & Saf.
4 Code section 44072.2, subdivision (d), in that it committed dishonest, fraudulent or deceitful acts
5 whereby another is injured, as set forth in paragraphs 20, 26, 33, and 41, above.

6 OTHER MATTERS

7 44. Under Code section 9884.7, subdivision (c), the director may invalidate
8 temporarily or permanently or refuse to validate, the registrations for all places of business
9 operated in this state by Michael C. Roesbery, Inc., doing business as Roesbery Car Care, upon a
10 finding that it has, or is, engaged in a course of repeated and willful violations of the laws and
11 regulations pertaining to an automotive repair dealer, including but not limited to Automotive
12 Repair Dealer Number AK 201878, issued to Michael C. Roesbery, Inc., doing business as
13 Roesbery Car Care.

14 45. Under Health and Safety Code section 44072.8, if Smog Check Station
15 License Number RD 166276, issued to Michael C. Roesbery, doing business as Roesbery Car
16 Care, is revoked or suspended, any additional license issued under this chapter in the name of said
17 licensee may be likewise revoked or suspended by the director, including but not limited to Smog
18 Check Station License Number RK 201878, issued to Michael C. Roesbery, Inc., doing business
19 as Roesbery Car Care.

20 PRAYER

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

- 23 1. Temporarily or permanently invalidating Automotive Repair Dealer
24 Registration Number AD 166276, issued to Michael C. Roesbery, Inc.;
- 25 2. Temporarily or permanently invalidating Automotive Repair Dealer
26 Registration Number AK 201878, issued to Michael C. Roesbery, Inc.;
- 27 2. Temporarily or permanently invalidating any other automotive repair dealer
28 registration issued to Michael C. Roesbery, Inc., doing business as Roesbery Car Care;

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3. Revoking or suspending Smog Check Station License Number RD 166276,
issued to Michael C. Roesbery, Inc., dba, Roesbery Car Care;

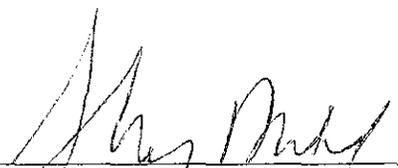
4. Revoking or suspending Smog Check Station License Number RK 201878,
issued to Michael C. Roesbery, Inc., dba, Roesbery Car Care;

5. Revoking or suspending any additional license issued under this chapter in
the name of Michael C. Roesbery, Inc., doing business as Roesbery Car Care;

6. Ordering Michael C. Roesbery, Inc., to pay the Bureau of Automotive
Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code
section 125.3; and,

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

DATED: 11/5/07



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant