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

10
11 In the Matter of the Accusation and Petition to Revoke
Probation Against:

Case No. 79/10-58

12 **ROESBERY CAR CARE**

13 2991 Hopyard Road
Pleasanton, CA 94588

14 Mailing Address:

15 3192 Santa Rita Road
Pleasanton, CA 94566

16 **MICHAEL C. ROESBERY, PARTNER**

17 **THOMAS SPILLNER, PARTNER**

Automotive Repair Dealer Registration

18 **No. ARD 246273**

Smog Check Station License No. RC 246273,

19 Respondent.

**ACCUSATION AND PETITION
TO REVOKE PROBATION**

SMOG CHECK

20
21 Complainant alleges:

22 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On or about August 2, 2006, the Bureau issued Automotive Repair Dealer
28 Registration Number ARD 246273 ("registration") to Roesbery Car Care ("Respondent") with

1 Michael C. Roesbery and Thomas Spillner as partners. The registration was in full force and
2 effect at all times relevant to the charges brought herein and will expire on July 31, 2010, unless
3 renewed.

4 **Smog Check Station License**

5 3. On or about August 14, 2006, the Bureau issued Smog Check Station License
6 Number RC 246273 ("station license") to Respondent. The station license was in full force and
7 effect at all times relevant to the charges brought herein and will expire on July 31, 2010, unless
8 renewed.

9 **PRIOR DISCIPLINARY ACTION**

10 4. Pursuant to the Decision in the Stipulated Settlement and Disciplinary Order in
11 Accusation Number 77/07-21, attached hereto as Exhibit A and incorporated herein by reference,
12 effective July 8, 2008, the Director of Consumer Affairs revoked Respondent's Automotive
13 Repair Dealer Registration Nos. ARD 246273, ARD 166276, ARD 201878, ARD 226936, ARD
14 244493, ARD 228393 and ARD 238462; and, Smog Check Station License Nos. RC 246273, RC
15 166276, RC 201878, RC 226936, RC 244493, and, RC 228393; however, the revocations were
16 stayed and Respondent was placed on probation for five (5) years with terms, including Term 2,
17 set forth below.

18 **Term 2 -- Obey all Laws:** Respondents and Roesbery Affiliates shall comply with all
19 statutes, regulations and rules governing automotive inspections, estimates and repairs.

20 **STATUTORY PROVISIONS**

21 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
22 part:

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

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

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

3 (4) Any other conduct which constitutes fraud.

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

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

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

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

23 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
24 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
25 the Motor Vehicle Inspection Program.

26 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

(c) Violates any of the regulations adopted by the director pursuant to
this chapter.

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

1 which it knew or in the exercise of reasonable care it should have known to be untrue or
2 misleading by issuing electronic Certificate of Compliance No. NI810682 for the 1992 Toyota,
3 certifying that the vehicle was in compliance with applicable laws and regulations. In fact, the
4 vehicle could not have passed the visual portion of the smog inspection because the vehicle's
5 PAIR system was missing.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Failure to Provide Copy of Signed Document)**

8 15. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
9 subdivision (a)(3), in that on or about April 20, 2009, it failed to provide the operator with a copy
10 of the work order as soon as she signed the document.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 16. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
14 subdivision (a)(4), in that on or about April 20, 2009, it committed acts which constitute fraud by
15 issuing electronic Certificate of Compliance No. NI810682 for the 1992 Toyota pickup without
16 performing a bona fide inspection of the emission control devices and systems on that vehicle,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

19 **FOURTH CAUSE FOR DISCIPLINE**

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

21 17. Respondent's station license is subject to discipline pursuant to Health & Safety Code
22 section 44072.2, subdivision (a), in that on or about April 20, 2009, regarding the 1992 Toyota
23 pickup, Respondent failed to comply with the following sections of that Code:

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

27 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
28 on that vehicle in accordance with procedures prescribed by the department.

1 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
2 Compliance No. NI810682 without properly testing and inspecting that vehicle to determine if it
3 was in compliance with Health & Safety Code section 44012.

4 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
5 Compliance No. NI810682, by certifying that the vehicle had been inspected as required when, in
6 fact, it had not.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations Pursuant to the**
9 **Motor Vehicle Inspection Program)**

10 18. Respondent's station license is subject to discipline pursuant to Health & Safety Code
11 section 44072.2, subdivision (c), in that on or about April 20, 2009, regarding the 1992 Toyota
12 pickup, Respondent failed to comply with provisions of California Code of Regulations, title 16,
13 as follows:

14 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
15 electronic Certificate of Compliance No. NI810682, in that the vehicle could not pass the visual
16 portion of the smog inspection because the vehicle's PAIR system was missing.

17 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
18 Compliance No. NI810682 even though that vehicle had not been inspected in accordance with
19 section 3340.42.

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

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 19. Respondent's station license is subject to discipline pursuant to Health & Safety Code
25 section 44072.2, subdivision (d), in that on or about April 20, 2009, Respondent committed
26 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate
27 of Compliance No. NI810682 for the 1992 Toyota pickup without performing a bona fide
28 inspection of the emission control devices and systems on that vehicle, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **PETITION TO REVOKE PROBATION**

4 20. The allegations of paragraphs 1 through 19 of the accusation above are incorporated
5 herein by reference as though fully set forth and are realleged.

6 21. Grounds exist to revoke the probation and reimpose the order of revocation of
7 Respondent's Automotive Repair Dealer Registration Nos. ARD 246273, ARD 166276, ARD
8 201878, ARD 226936, ARD 244493, ARD 228393, and ARD 238462; and, Smog Check Station
9 License Nos. RC 246273, RC 166276, RC 201878, RC 226936, RC 244493, and, RC 228393, in
10 that Respondent failed to comply with all statutes, regulations, and rules governing estimates and
11 inspections as required by Term 2 of the terms of its probation under the Decision in the
12 Stipulated Settlement and Disciplinary Order in Accusation Number 77/07-21, as more
13 particularly set forth in paragraphs 13 through 19 of the accusation above.

14 **OTHER MATTERS**

15 22. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
16 or permanently or refuse to validate, the registrations for all places of business operated in this
17 state by Roesbery Car Care, including but not limited to Automotive Repair Dealer Registration
18 Nos. ARD 246273, ARD 166276; ARD 201878; ARD 226936; ARD 244493; ARD 228393, and
19 ARD 238462 upon a finding that it has, or is, engaged in a course of repeated and willful
20 violations of the laws and regulations pertaining to an automotive repair dealer.

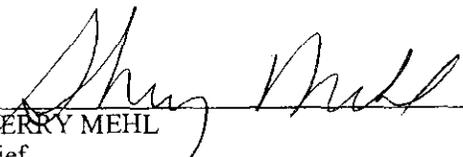
21 23. Under Health and Safety Code section 44072.8, if Smog Check Station License
22 Number RC 246273, issued to Roesbery Car Care, is revoked or suspended, any additional
23 license issued under this chapter in the name of said licensee may be likewise revoked or
24 suspended by the director, including but not limited to Smog Check Station License Nos.
25 RC 166276; RC 201878; RC 226936; RC 244493; and, RC 228393.

26 **PRAYER**

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

- 1 1. Vacating the stay and reimposing the order of revocation of Automotive Repair
2 Dealer Registration Number ARD 246273, including but not limited to ARD 166276; ARD
3 201878; ARD 226936; ARD 244493; ARD 228393, and ARD 238462, issued to Roesbery Car
4 Care;
- 5 2. Temporarily or permanently invalidating any other automotive repair dealer
6 registration issued to Roesbery Car Care;
- 7 3. Vacating the stay and reimposing the order of revocation of Smog Check Station
8 License Number RC 246273, including but not limited to RC 166276; RC 201878; RC 226936;
9 RC 244493; and, RC 228393 issued to Roesbery Car Care;
- 10 4. Revoking or suspending any additional license issued under this chapter in the name
11 of Roesbery Car Care;
- 12 5. Ordering Roesbery Car Care to pay the Bureau of Automotive Repair the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3; and,
- 15 6. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 3/3/10


18 SHERRY MEHL
19 Chief
20 Bureau of Automotive Repair
21 Department of Consumer Affairs
22 State of California
23 Complainant
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