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9 **BEFORE THE**
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. 79/09-59

13 **QUALITY AUTOMOTIVE & SMOG, INC.,**
11357A Deerfield Drive
14 Truckee, California 96161
HARRY FAYNE THOMPSON, PRESIDENT

ACCUSATION-SMOG CHECK

15 Automotive Repair Dealer Registration
16 No. ARD 240049
Smog Check Test Only Station License
17 No. RC 240049

18 Respondent.
19

20 Sherry Mehl ("Complainant") alleges:

21 **PARTIES**

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

24 **CURRENT LICENSES**

25 **Automotive Repair Dealer Registration**

26 2. On or about August 15, 2005, the Bureau issued Automotive Repair
27 Dealer Registration Number ARD 240049 ("registration") to Quality Automotive & Smog, Inc.,

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1 ("Respondent Quality"), with Harry Fayne Thompson as the President. The registration will
2 expire on June 30, 2009, unless renewed.

3 **Smog Check Station License**

4 3. On or about August 22, 2005, the Bureau issued Smog Check Station
5 License Number RC 240049 ("station license") to Respondent Quality. The station license will
6 expire on June 30, 2009, unless renewed.

7 **PRIOR LICENSES**

8 **Automotive Repair Dealer Registration**

9 4. On or about November 16, 2001, the Bureau issued Automotive Repair
10 Dealer Registration Number ARD 218815 ("registration") to Harry Fayne Thompson, doing
11 business as Quality Automotive & Smog. The registration was canceled on August 15, 2005,
12 and a new registration was issued, as set forth in paragraph 2, above.

13 **Smog Check Station License**

14 5. On or about January 2, 2002, the Bureau issued Smog Check Station
15 License Number RC 218815 ("station license") to Harry Fayne Thompson, doing business as
16 Quality Automotive & Smog. The station license was canceled on August 15, 2005, and a new
17 station license was issued on August 22, 2005, as set forth in paragraph 3, above.

18 **STATUTORY PROVISIONS**

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

21 (a) The director, where the automotive repair dealer cannot show there was
22 a bona fide error, may refuse to validate, or may invalidate temporarily or
23 permanently, the registration of an automotive repair dealer for any of the
24 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.

25 (1) Making or authorizing in any manner or by any means whatever any
26 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.

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1 (2) Causing or allowing a customer to sign any work order that does not
2 state the repairs requested by the customer or the automobile's odometer reading
at the time of repair.

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
6 to subdivision (a) shall only invalidate temporarily or permanently the registration
7 of the specific place of business which has violated any of the provisions of this
chapter. This violation, or action by the director, shall not affect in any manner
the right of the automotive repair dealer to operate his or her other places of
business.

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

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

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

19 9. Section 44002 of the Health and Safety Code provides, in pertinent part,
20 that the Director has all the powers and authority granted under the Automotive Repair Act for
21 enforcing the Motor Vehicle Inspection Program.

22 10. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

3 11. Section 44072.6 of the Health and Safety Code provides, in pertinent part,
4 that the expiration or suspension of a license by operation of law, or by order or decision of the
5 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall
6 not deprive the Director of jurisdiction to proceed with disciplinary action.

7 12. Section 44072.8 of the Health and Safety Code states:

8 "When a license has been revoked or suspended following a hearing under this
9 article, any additional license issued under this chapter in the name of the licensee may be
10 likewise revoked or suspended by the director."

11 **COST RECOVERY**

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

16 **UNDERCOVER OPERATION - APRIL 1, 2008**

17 14. On April 1, 2008, a Bureau undercover operator using the alias
18 Ronnie Brooks ("operator") drove a Bureau-documented 1990 Plymouth Sundance, California
19 License Plate No. 2RYS238, to Respondent Quality's facility for a smog inspection. The vehicle
20 could not pass the visual portion of a smog inspection because the vehicle's hot air tube was
21 missing. Cha Lee Thao, an employee of Respondent Quality, performed the smog inspection and
22 issued electronic Certificate of Compliance No. NA064837, certifying that he had tested and
23 inspected the 1990 Plymouth Sundance and that the vehicle was in compliance with applicable
24 laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog
25 inspection because the vehicle's hot air tube was missing.

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1 April 1, 2008, regarding the 1990 Plymouth Sundance, Respondent Quality failed to comply with
2 the following sections of that Code:

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

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

8 c. **Section 44015, subdivision (b):** Respondent Quality issued electronic
9 Certificate of Compliance No. NA064837 for that vehicle without properly testing and inspecting
10 the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

11 d. **Section 44059:** Respondent Quality willfully made false entries for
12 electronic Certificate of Compliance No. NA064837, certifying that the vehicle had been
13 inspected as required when, in fact, the vehicle could not have passed the visual portion of the
14 smog inspection because the vehicle's hot air tube was missing.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

17 14. Respondent Quality's station license is subject to disciplinary action
18 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about April 1,
19 2008, regarding the 1990 Plymouth Sundance, Respondent Quality failed to comply with
20 provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent Quality falsely or
22 fraudulently issued electronic Certificate of Compliance No. NA064837 for that vehicle, in that
23 the vehicle could not pass the visual portion of the smog inspection because the vehicle's hot air
24 tube was missing.

25 b. **Section 3340.35, subdivision (c):** Respondent Quality issued electronic
26 Certificate of Compliance No. NA064837 for that vehicle even though the vehicle had not been
27 inspected in accordance with section 3340.42.

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1 c. **Section 3340.42:** Respondent Quality failed to conduct the required smog
2 tests on the vehicle in accordance with the Bureau's specifications.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 15. Respondent Quality's station license is subject to disciplinary action
6 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about April 1,
7 2008, Respondent Quality committed dishonest, fraudulent or deceitful acts whereby another is
8 injured by issuing electronic Certificate of Compliance No. NA064837 for the 1990 Plymouth
9 Sundance without performing a bona fide inspection of the emission control devices and systems
10 on that vehicle, thereby depriving the People of the State of California of the protection afforded
11 by the Motor Vehicle Inspection Program.

12 **UNDERCOVER OPERATION - AUGUST 5, 2008**

13 16. On August 5, 2008, a Bureau undercover operator using the alias
14 Curtis Olinger ("operator") drove a Bureau-documented 1998 Ford Explorer, California License
15 Plate No. 5CEU688, to Respondent Quality's facility for a smog inspection. The vehicle could
16 not pass the visual portion of a smog inspection because the vehicle's positive crankcase
17 ventilation ("PCV") system was missing. Cha Lee Thao, an employee of Respondent Quality,
18 performed the smog inspection and issued electronic Certificate of Compliance No. NC759167C,
19 certifying that he had tested and inspected the 1998 Ford Explorer and that the vehicle was in
20 compliance with applicable laws and regulations. In fact, the vehicle could not have passed the
21 visual portion of the smog inspection because the vehicle's PCV system was missing.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 17. Respondent Quality's registration is subject to disciplinary action pursuant
25 to Code section 9884.7, subdivision (a)(1), in that on or about August 5, 2008, Respondent
26 Quality made or authorized statements which it knew or in the exercise of reasonable care it
27 should have known to be untrue or misleading by issuing electronic Certificate of Compliance
28 No. NC759167C for the 1998 Ford Explorer, certifying that the vehicle was in compliance with

1 applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of
2 the smog inspection because the vehicle's PCV system was missing.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 18. Respondent Quality's registration is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(4), in that on or about August 5, 2008, it committed acts
7 which constitute fraud by issuing electronic Certificate of Compliance No. NC759167C for the
8 1998 Ford Explorer without performing a bona fide inspection of the emission control devices
9 and systems on that vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **NINTH CAUSE FOR DISCIPLINE**

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

13 19. Respondent Quality's station license is subject to disciplinary action
14 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
15 August 5, 2008, regarding the 1998 Ford Explorer, Respondent Quality failed to comply with the
16 following sections of that Code:

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

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

22 c. **Section 44015, subdivision (b):** Respondent Quality issued electronic
23 Certificate of Compliance No. NC759167C for that vehicle without properly testing and
24 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section
25 44012.

26 d. **Section 44059:** Respondent Quality willfully made false entries for
27 electronic Certificate of Compliance No. NC759167C, certifying that the vehicle had been

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1 inspected as required when, in fact, the vehicle could not have passed the visual portion of the
2 smog inspection because the vehicle's PCV system was missing.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

5 20. Respondent Quality's station license is subject to disciplinary action
6 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about August 5,
7 2008, regarding the 1998 Ford Explorer, Respondent Quality failed to comply with provisions of
8 California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent Quality falsely or
10 fraudulently issued electronic Certificate of Compliance No. NC759167C for that vehicle, in that
11 the vehicle could not pass the visual portion of the smog inspection because the vehicle's PCV
12 system was missing.

13 b. **Section 3340.35, subdivision (c):** Respondent Quality issued electronic
14 Certificate of Compliance No. NC759167C for that vehicle even though the vehicle had not been
15 inspected in accordance with section 3340.42.

16 c. **Section 3340.42:** Respondent Quality failed to conduct the required smog
17 tests on the vehicle in accordance with the Bureau's specifications.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent Quality's station license is subject to disciplinary action
21 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about August 5,
22 2008, Respondent Quality committed dishonest, fraudulent or deceitful acts whereby another is
23 injured by issuing electronic Certificate of Compliance No. NC759167C for the 1998 Ford
24 Explorer without performing a bona fide inspection of the emission control devices and systems
25 on that vehicle, thereby depriving the People of the State of California of the protection afforded
26 by the Motor Vehicle Inspection Program.

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PRIOR CITATIONS

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

4 a. On or about June 6, 2007, the Bureau issued Citation No.
5 C07-0977 against Respondent Quality's registration and station licenses for violations of Health
6 & Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
7 emission control devices according to procedures prescribed by the department), and California
8 Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a
9 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
10 compliance to a Bureau undercover vehicle with a missing air injection system. The Bureau
11 assessed civil penalties totaling \$500 against Respondent for the violations. Respondent
12 complied with this citation on August 1, 2007.

13 b. On or about August 30, 2007, the Bureau issued Citation No.
14 C08-0188 against Respondent Quality's registration and station licenses for violations of Health
15 & Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
16 emission control devices according to procedures prescribed by the department), and California
17 Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a
18 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
19 compliance to a Bureau undercover vehicle with a missing pulse air injection system. The
20 Bureau assessed civil penalties totaling \$1,000 against Respondent for the violations.
21 Respondent complied with this citation on October 12, 2007.

22 c. On or about November 20, 2007, the Bureau issued Citation No.
23 C08-0499 against Respondent Quality's registration and station licenses for violations of Health
24 & Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
25 emission control devices according to procedures prescribed by the department), and California
26 Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a
27 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
28 compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation system.

1 The Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations.

2 Respondent complied with this citation on February 4, 2008.

3 **MATTERS IN AGGRAVATION**

4 23. To determine the degree of discipline, if any, to be imposed on
5 Respondent Quality, Complainant alleges that Harry Fayne Thompson ("Thompson"), who
6 serves as the President of Respondent herein, was issued the following citations as the owner of
7 Automotive Repair Dealer Registration No. ARD 218815, Smog Check Station License No.
8 RC 218815, and Basic Area Technician License No. EB 130006:

9 a. On or about June 25, 2002, the Bureau issued Citation No.
10 C02-1160 against Thompson's registration and station licenses for violations of Health & Safety
11 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
12 control devices according to procedures prescribed by the department), and California Code of
13 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
14 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
15 Bureau undercover vehicle with the ignition timing adjusted beyond manufacturer's
16 specifications. The Bureau assessed civil penalties totaling \$500 against Thompson for the
17 violations. Thompson complied with this citation on August 23, 2002.

18 b. On or about June 25, 2002, the Bureau issued Citation No.
19 M02-1161 against Thompson's technician license for violations of Health & Safety Code section
20 44032, (failure to perform a visual/functional check of emission control devices according to
21 procedures prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a
22 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
23 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond the
24 manufacturer's specifications. The Bureau directed Thompson to complete an 8-hour training
25 course. Thompson complied with this citation on September 22, 2002.

26 c. On or about November 15, 2002, the Bureau issued Citation No.
27 C03-0573 against Thompson's registration and station licenses for violations of Health & Safety
28 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission

1 control devices according to procedures prescribed by the department), and Regulation 3340.35,
2 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
3 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing
4 adjusted beyond manufacturer's specifications. The Bureau assessed civil penalties totaling
5 \$1,000 against Thompson for the violations. Thompson complied with this citation on
6 January 13, 2003.

7 d. On or about November 15, 2002, the Bureau issued Citation No.
8 M03-0574 against Thompson's technician license for violations of Health & Safety Code section
9 44032, (failure to perform a visual/functional check of emission control devices according to
10 procedures prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a
11 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
12 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
13 manufacturer's specifications. The Bureau directed Thompson to complete a 16-hour training
14 course. Thompson complied with this citation on February 27, 2003.

15 e. On or about February 4, 2003, the Bureau issued Citation No. C03-0819
16 against Thompson's registration and station licenses for violations of Health & Safety Code
17 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
18 devices according to procedures prescribed by the department), and Regulation 3340.35,
19 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
20 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing
21 adjusted beyond manufacturer's specifications. The Bureau assessed civil penalties totaling
22 \$2,000 against Thompson for the violations. Thompson complied with this citation on
23 March 24, 2003.

24 f. On or about February 4, 2003, the Bureau issued Citation No. M03-0820
25 against Thompson's technician license for violations of Health & Safety Code section 44032,
26 (failure to perform a visual/functional check of emission control devices according to procedures
27 prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a certificate of
28 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a

1 Bureau undercover vehicle with the ignition timing adjusted beyond manufacturer's
2 specifications. The Bureau directed Thompson to complete a 120-hour training course.
3 Thompson complied with this citation on April 29, 2003.

4 **OTHER MATTERS**

5 24. Under Code section 9884.7, subdivision (c), the director may invalidate
6 temporarily or permanently or refuse to validate, the registrations for all places of business
7 operated in this state by Quality Automotive & Smog, Inc., upon a finding that it has, or is,
8 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
9 automotive repair dealer.

10 25. Under Health & Safety Code section 44072.8, if Smog Check Station
11 License Number RC 240049, issued to Quality Automotive & Smog, Inc., is revoked or
12 suspended, any additional license issued under this chapter to the licensee may be likewise
13 revoked or suspended by the director.

14 **PRAYER**

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

17 1. Temporarily or permanently invalidating Automotive Repair Dealer
18 Registration Number ARD 240049, issued to Quality Automotive & Smog, Inc.;

19 2. Temporarily or permanently invalidating any other automotive repair
20 dealer registration issued to Quality Automotive & Smog, Inc.;

21 3. Revoking or suspending Smog Check Station License Number
22 RC 240049, issued to Quality Automotive & Smog, Inc.;

23 4. Revoking or suspending any additional license issued under Chapter 5 of
24 the Health & Safety Code in the name of Quality Automotive & Smog, Inc.;

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5. Ordering Quality Automotive & Smog, 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,

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

DATED: 12/19/08


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

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