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

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In the Matter of the Accusation Against:
BERG-WEISS ENTERPRISES, INC.
dba Speedee Oil Change & Tune Up
1496 Freedom Blvd.
Watsonville, CA 95076
ROBERT D. WEISSBERG-President
Automotive Repair Dealer Registration No.
ARD 246091
Smog Check Station License No. RC 246091

Respondent.

79/13-62
ACCUSATION
Smog Check

Complainant alleges:

PARTIES

1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
2. On or about February 13, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 246091 ("registration") to Berg-Weiss Enterprise Inc., Robert D Weissberg, President, doing business as Speedee Oil Change & Tune Up ("Respondent"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

1 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not
2 deprive the Director of jurisdiction to proceed with disciplinary action.

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

4 “When a license has been revoked or suspended following a hearing under this article, any
5 additional license issued under this chapter in the name of the licensee may be likewise
6 revoked or suspended by the director.”

7 **COST RECOVERY**

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

12 **UNDERCOVER OPERATION – NOVEMBER 8, 2012**

13 14. On or about November 8, 2012, a Bureau undercover operator (“operator”) drove a
14 Bureau documented 1990 Pontiac Grand Prix to Respondent’s facility and requested a smog
15 inspection. The vehicle had a non-operational EGR valve, rendering the vehicle incapable of
16 passing a smog inspection. The operator completed and signed a work order, but was not
17 provided with a copy. Respondent performed the smog inspection and issued electronic
18 Certificate of Compliance No. [REDACTED], certifying that Respondent had tested and inspected
19 the vehicle and that it was in compliance with applicable laws and regulations when, in fact, the
20 vehicle could not have passed the functional portion of the smog inspection because the vehicle’s
21 EGR valve was non-operational. The operator paid Respondent \$58.24, and was provided with a
22 copy of estimate and Invoice No. [REDACTED] and a Vehicle Inspection Report.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 15. Respondent’s registration is subject to discipline under Code section 9884.7(a)(1), in
26 that on or about November 8, 2012, Respondent made statements which he knew or which by
27 exercise of reasonable care should have known to be untrue or misleading by issuing electronic
28 Certificate of Compliance No. [REDACTED] for the 1990 Pontiac Grand Prix and certifying that the

1 vehicle was in compliance with applicable laws and regulations when, in fact, it could not have
2 passed the functional portion of the smog inspection because the vehicle's EGR valve was non-
3 operational.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 16. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
7 that on or about November 8, 2012, he committed acts constituting fraud by issuing electronic
8 Certificate of Compliance No. [REDACTED] for the 1990 Pontiac Grand Prix without performing a
9 bona fide inspection of the emission control devices and systems on the vehicle; thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program.

12 **THIRD CAUSE FOR DISCIPLINE**

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

14 17. Respondent's station license is subject to discipline pursuant to Health & Safety Code
15 section 44072.2, subdivision (a), in that on or about November 8, 2012, regarding the 1990
16 Pontiac Grand Prix, Respondent failed to comply with the following sections of that Code:

17 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control
18 inspections on the vehicle in accordance with procedures prescribed by the department.

19 b. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
20 Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle to determine
21 if it was in compliance with Health & Safety Code section 44012.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations)**

24 18. Respondent's station license is subject to discipline pursuant to Health & Safety Code
25 section 44072.2, subdivision (c), in that on or about November 8, 2012, regarding the 1990
26 Pontiac Grand Prix, he failed to comply with provisions of California Code of Regulations, title
27 16, as follows:

1 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
2 Compliance No. [REDACTED] for the vehicle even though the vehicle had not been inspected in
3 accordance with section 3340.42.

4 b. **Section 3340.42:** Respondent failed to perform an emission control inspection on
5 the vehicle in accordance with procedures prescribed by the department.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 19. Respondent's station license is subject to discipline pursuant to Health & Safety Code
9 section 44072.2, subdivision (d), in that on or about November 8, 2012, regarding the 1990
10 Pontiac Grand Prix, he committed dishonest, fraudulent or deceitful acts whereby another is
11 injured by issuing electronic Certificate of Compliance No. [REDACTED] for the vehicle without
12 performing a bona fide inspection of the emission control devices and systems on the vehicle,
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program.

15 **PRIOR CITATIONS**

16 20. To determine the degree of discipline, if any, to be imposed on Respondent,
17 Complaint alleges the following:

18 a. On or about June 29, 2011, the Bureau issued Citation No. C2011-1511 against
19 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a
20 visual/functional check of emission control devices according to procedures prescribed by the
21 department), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing
22 Fuel Evaporative Canister. The Bureau assessed civil penalties totaling \$1000 against Respondent
23 for the violations. Respondent paid this citation on August 8, 2011.

24 b. On or about November 8, 2011, the Bureau issued Citation No. C2012-0430 against
25 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a
26 visual/functional check of emission control devices according to procedures prescribed by the
27 department), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing
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1 Positive Crankcase Ventilation valve. The Bureau assessed civil penalties totaling \$1500 against
2 Respondent for the violations. Respondent paid this citation on December 3, 2012.

3 c. On or about June 5, 2012, the Bureau issued Citation No. C2012-1699 against
4 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a
5 visual/functional check of emission control devices according to procedures prescribed by the
6 department), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing
7 Positive Crankcase Ventilation valve. The Bureau assessed civil penalties totaling \$1500 against
8 Respondent for the violations. Respondent appealed this citation on July 19, 2012.

9 **OTHER MATTERS**

10 21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
11 probation the registrations for all places of business operated in this state by Berg-Weiss
12 Enterprises Inc., Robert D. Weissberg, President, upon a finding that he has, or is, engaged in a
13 course of repeated and willful violation of the laws and regulations pertaining to an automotive
14 repair dealer.

15 22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test and Repair
16 Station License Number RC 246091, issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg,
17 President, doing business as Speedee Oil Change & Tune Up, is revoked or suspended, any
18 additional license issued under this chapter in the name of said licensees may be likewise
19 revoked or suspended by the director.

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. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration
24 No. ARD 246091, issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg, President, doing
25 business as Speedee Oil Change & Tune Up;

26 2. Revoking, suspending, or placing on probation any other automotive repair dealer
27 registration issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg, President;

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3. Revoking or suspending Smog Check Test and Repair Station License Number RC 246091, issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg, President, doing business as Speedee Oil Change & Tune Up;

4. Revoking or suspending any additional license issued under chapter 5, of the Health and Safety Code in the name of Berg-Weiss Enterprises Inc., Robert D. Weissberg, President;

5. Ordering Berg-Weiss Enterprises Inc., Robert D. Weissberg, President, doing business as Speedee Oil Change & Tune Up to pay the Director of Consumer Affairs 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: MARCH 21, 2013

John Wallauch by Duke Balatt
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant