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7
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 First Amended Accusation and
Petition to Revoke Probation Against:

Case No. 79/10-58

13 **ROESBERY CAR CARE**

2991 Hopyard Road
Pleasanton, CA 94588

14 Mailing Address:

15 3192 Santa Rita Road
Pleasanton, CA 94566

16 **MICHAEL C. ROESBERY, PARTNER**
THOMAS SPILLNER, PARTNER

17 **Automotive Repair Dealer Registration**
No. ARD 246273

18 **Smog Check Station License No. RC 246273**

19 and

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

21 3099 North Main Street
Walnut Creek, CA 94597

22 Mailing Address:

23 3192 Santa Rita Road
Pleasanton, CA 94566

24 **MICHAEL C. ROESBERY, PRESIDENT**
Automotive Repair Dealer Registration

25 **No. ARD 201878**
Smog Check Station License No. RC 201878

**FIRST AMENDED
ACCUSATION AND PETITION
TO REVOKE PROBATION**

SMOG CHECK

26 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration**

7 2. On or about August 2, 2006, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 246273 ("registration") to Roesbery Car Care ("Respondent
9 Affiliate") with Michael C. Roesbery and Thomas Spillner as partners. The registration was in
10 full force and effect at all times relevant to the charges brought herein and will expire on July 31,
11 2011, unless renewed.

12 **Smog Check Station License**

13 3. On or about August 14, 2006, the Bureau issued Smog Check Station License
14 Number RC 246273 ("station license") to Respondent Affiliate. The station license was in full
15 force and effect at all times relevant to the charges brought herein and will expire on July 31,
16 2011, unless renewed.

17 **Automotive Repair Dealer Registration**

18 4. On a date uncertain in 1998, the Bureau issued Automotive Repair Dealer
19 Registration Number ARD 201878 ("registration") to Michael C. Roesbery, Inc. ("Respondent"),
20 doing business as Roesbery Car Care. The registration was in full force and effect at all times
21 relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

22 **Smog Check Station License**

23 5. On or about December 17, 1998, the Bureau issued Smog Check Station License
24 Number RC 201878 ("station license") to Michael C. Roesbery, Inc. ("Respondent"), doing
25 business as Roesbery Car Care. The station license was in full force and effect at all times
26 relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

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1 **PRIOR DISCIPLINARY ACTION**

2 6. Pursuant to the Decision in the Stipulated Settlement and Disciplinary Order in
3 Accusation Number 77/07-21, attached hereto as Exhibit A and incorporated herein by reference,
4 effective July 8, 2008, the Director of Consumer Affairs revoked Respondent's and Respondent
5 Affiliate's Automotive Repair Dealer Registration Nos. ARD 246273, ARD 166276, ARD
6 201878, ARD 226936, ARD 244493, ARD 228393 and ARD 238462; and, Smog Check Station
7 License Nos. RC 246273, RC 166276, RC 201878, RC 226936, RC 244493, and, RC 228393;
8 however, the revocations were stayed and Respondent was placed on probation for five (5) years
9 with terms, including Term 2, set forth below.

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

12 **STATUTORY PROVISIONS**

13 7. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
14 part:

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

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

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

26 (4) Any other conduct which constitutes fraud.

27 (b) Except as provided for in subdivision (c), if an automotive repair
28 dealer operates more than one place of business in this state, the director pursuant to
subdivision (a) shall only invalidate temporarily or permanently the registration 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.

(c) Notwithstanding subdivision (b), the director may invalidate
temporarily or permanently, the registration for all places of business operated in this
state by an automotive repair dealer upon a finding that the automotive repair dealer

1 has, or is, engaged in a course of repeated and willful violations of this chapter, or
2 regulations adopted pursuant to it.

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

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

11 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
12 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
13 the Motor Vehicle Inspection Program.

14 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

13. Section 44072.8 of the Health and Safety Code states:

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 the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **ACCUSATION**

7 **UNDERCOVER OPERATION, APRIL 20, 2009**

8 15. On April 20, 2009, a Bureau undercover operator ("operator") drove a Bureau-
9 documented 1992 Toyota pickup to Respondent Affiliate's facility and requested a smog
10 inspection. The vehicle could not pass the visual portion of the smog inspection because the
11 vehicle's pulse air injection system ("PAIR") was missing. The operator signed a work order and
12 was provided a copy of the document; however, her copy was unsigned. Son Sam, a licensed
13 technician, performed the smog inspection and issued electronic Certificate of Compliance
14 Number NI810682, certifying that the vehicle was in compliance with all applicable laws and
15 regulations. In fact, the vehicle should not have passed the visual portion of the smog inspection
16 because the vehicle's PAIR system was missing.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 16. Respondent Affiliate's registration is subject to discipline pursuant to Code section
20 9884.7, subdivision (a)(1), in that on or about April 20, 2009, it made or authorized statements
21 which it knew or in the exercise of reasonable care it should have known to be untrue or
22 misleading by issuing electronic Certificate of Compliance No. NI810682 for the 1992 Toyota,
23 certifying that the vehicle was in compliance with applicable laws and regulations. In fact, the
24 vehicle could not have passed the visual portion of the smog inspection because the vehicle's
25 PAIR system was missing.

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1 **CONSUMER COMPLAINT**

2 22. On or about January 22, 2010, J.K. ("consumer") drove her 1993 Buick Le Sabre to
3 Respondent's facility and requested an oil change and lube. Several hours later, a woman from
4 Respondent's facility telephoned J.K. and informed her that the vehicle was not safe to drive
5 because the vehicle's rear brake shoes and drums needed to be replaced. The consumer informed
6 the woman that her son took care of all the repairs to her vehicle. The woman replied: "the car is
7 unsafe to drive for you as well as anyone else on the road, don't even drive it home". The
8 consumer authorized the brake repairs. When the consumer retrieved her vehicle she asked for
9 the old parts and was provided with two brake drums, brake shoes, and two wheel cylinders. The
10 consumer paid Respondent \$580.91 for the repairs and was provided with Invoice No. 13565.
11 The consumer took the old parts to Solano Way Auto Repair and asked them to inspect the parts.
12 Ken, an employee of that repair facility, measured the brake drums and informed the consumer
13 that they did not need to be replaced.

14 23. On February 10, 2010, the consumer filed a complaint with the Bureau. On or about
15 March 4, 2010, the Bureau inspected the old brake parts. That inspection also revealed that the
16 brake drums were not in need of replacement.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 24. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
20 subdivision (a)(1), in that on or about January 22, 2010, it made statements which it knew or
21 which by exercise of reasonable care it should have known were untrue or misleading.
22 Respondent's employee represented to the consumer that her vehicle was "unsafe to drive" and
23 that the rear brake drums needed to be replaced. In fact, that statement was untrue because after
24 those parts were replaced, the old rear brake drums were measured and found to be in good
25 serviceable condition and not in need of replacement.

26 **UNDERCOVER OPERATION – MAY 4, 2010**

27 25. On or about May 4, 2010, a Bureau undercover operator ("operator") drove a Bureau
28 documented 1996 Lexus ES300 to Respondent's facility and requested a brake inspection because

1 the brake light on the dash was illuminated. The only repairs necessary were replacement of the
2 front brake pads, replenishing the brake fluid in the master cylinder, and inflation of the right
3 front tire. The operator spoke with a female employee identified as "Christina" and told her he
4 also wanted an oil change and safety inspection because he was going to be taking a trip. The
5 operator signed and received a copy of Work Order No. 14210. Later that morning, Christina
6 telephoned the operator and told him that the front brake pads were worn and needed to be
7 replaced and that the brake job included machining the rotors. The operator asked Christina why
8 the rotors had to be machined to which she responded: "they always machine the rotors."
9 Christina went on to say that the rotor "surfaces are really glazed." Christina also informed the
10 operator that the mechanic test drove the vehicle and noted that the vehicle "nose dives a lot."
11 The mechanic recommended replacement of the struts because "worn struts could cause uneven
12 tire wear like cupping and flat spots." In addition, Christina told the operator that the struts
13 looked to be the original struts and that most manufacturers recommend replacement of the struts
14 at 75,000 to 100,000 miles. Christina estimated the cost of the repairs to be \$1,580. The operator
15 told Christina he would talk to his wife and call her back.

16 26. Later that day, the operator telephoned Christina and asked her if replacement of the
17 struts included the rear struts as well. She said yes. Christina told the operator that the tires on
18 his vehicle were in good condition but advised him that when the struts go out "they will cause
19 uneven tire wear or damage to the tires." The operator then asked Christina if the struts on his
20 vehicle were worn out and she stated they were. The operator authorized all of the repairs.

21 27. On May 5, 2010, the operator telephoned Respondent's facility to inquire about
22 whether or not the repairs had been completed. Christina informed the operator that the repairs
23 were complete; however, a short time later, Christina telephoned the operator back and explained
24 that she was mistaken, the vehicle also needed an alignment. The operator authorized the
25 additional repair. Shortly after that, the operator returned to retrieve the vehicle. He paid
26 Respondent \$1,545 and received a copy of Invoice No. 14210 and the alignment printout.
27 Christina reviewed the alignment printout with the operator and told him "the toe was off on the
28 right side" and "the technician adjusted the toe and everything should be okay now."

1 28. On or about May 10, 2010, the Bureau re-inspected the vehicle using Invoice No.
2 14210 as a reference. That inspection revealed the following:

3 a. Respondent replaced the front and rear struts; however, those parts were not in need
4 of replacement. They were new and had only 65 miles of service on them when the vehicle was
5 taken to Respondent's facility.

6 b. Respondent adjusted the alignment on the vehicle; however, that service was not
7 necessary. Further, Respondent failed to center the steering wheel during the alignment causing
8 the steering wheel to tilt to the right.

9 c. Respondent resurfaced the front brake rotors; however, that service was not necessary
10 as the rotors were new and met factory specifications when they were installed just prior to taking
11 the vehicle to Respondent's facility.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Misleading Statements)**

14 29. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
15 subdivision (a)(1), in that on or about May 4, 2010, it made statements which it knew or which by
16 exercise of reasonable care it should have known were untrue or misleading, as follows:

17 a. Respondent represented to the operator that the struts needed to be replaced because
18 they looked worn and the vehicle "nose dives" when braking; however, the struts were new and in
19 good serviceable condition. The pulling in this vehicle was caused due to the right front tire not
20 being inflated to factory specification.

21 b. Respondent represented to the operator that the front brake rotors would be resurfaced
22 as part of the brake service; however, those parts were new and did not need to be resurfaced.

23 c. Respondent represented to the operator that the front brake rotors "were really
24 glazed" when, in fact, that statement was untrue.

25 d. Respondent represented to the operator that the vehicle needed a wheel alignment
26 because sometimes the strut plates wear out and that could cause a pull and sometimes tightening
27 the plates will take care of the pulling; however, the only repair/service necessary to cure the
28 "pulling" in this vehicle was to inflate the right front tire to factory specification.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 30. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(4), in that on or about May 4, 2010, it committed acts which constitute fraud by
5 accepting payment of \$1,367.06 for parts and labor for repairs/services that were not necessary, as
6 more particularly set forth in paragraph 28, subparagraphs a through c, above.

7 **TENTH CAUSE FOR DISCIPLINE**

8 **(Departure from Trade Standards)**

9 31. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
10 subdivision (a)(7), in that on or about May 4, 2010, Respondent willfully departed from or
11 disregarded accepted trade standards for good and workmanlike repair. Respondent failed to
12 center the steering wheel during the alignment causing the steering wheel to tilt to the right.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 32. Respondent's station license is subject to discipline pursuant to Health and Safety
16 Code section 44072.2, subdivision (d), in that on or about May 4, 2010, it committed acts
17 involving dishonesty, fraud or deceit whereby another was injured, as more particularly set forth
18 in paragraphs 16, 18, 21, 24, 29, and 30, above.

19 **PETITION TO REVOKE PROBATION**

20 20. The allegations of paragraphs 1 through 32 of the accusation above are incorporated
21 herein by reference as though fully set forth and are realleged.

22 21. Grounds exist to revoke the probation and reimpose the order of revocation of
23 Respondent's and Respondent Affiliate's Automotive Repair Dealer Registration Nos. ARD
24 246273, ARD 166276, ARD 201878, ARD 226936, ARD 244493, ARD 228393, and ARD
25 238462; and, Smog Check Station License Nos. RC 246273, RC 166276, RC 201878, RC
26 226936, RC 244493, and, RC 228393, in that Respondent failed to comply with all statutes,
27 regulations, and rules governing estimates and inspections as required by Term 2 of the terms of
28 its probation under the Decision in the Stipulated Settlement and Disciplinary Order in

1 Accusation Number 77/07-21, as more particularly set forth in paragraphs 15 through 32 of the
2 accusation above.

3 **OTHER MATTERS**

4 22. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
5 or permanently or refuse to validate, the registrations for all places of business operated in this
6 state by Roesbery Car Care and/or Michael C. Roesbery, Inc., doing business as Roesbery Car
7 Care including, but not limited to, Automotive Repair Dealer Registration Nos. ARD 246273,
8 ARD 166276; ARD 201878; ARD 226936; ARD 244493; ARD 228393, and ARD 238462 upon
9 a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and
10 regulations pertaining to an automotive repair dealer.

11 23. Under Health and Safety Code section 44072.8, if Smog Check Station License
12 Number RC 246273, issued to Roesbery Car Care and RC 201878, issued to Michael C.
13 Roesbery, Inc., doing business as Roesbery Car Care, is revoked or suspended, any additional
14 licenses issued under this chapter in the name of said licensees may be likewise revoked or
15 suspended by the director, including but not limited to Smog Check Station License Nos.
16 RC 166276; RC 226936; RC 244493; and, RC 228393.

17 **PRAYER**

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

20 1. Vacating the stay and reimposing the order of revocation of Automotive Repair
21 Dealer Registration Number ARD 246273, issued to Roesbery Car Care and ARD 201878, issued
22 to Michael C. Roesbery, Inc., doing business as Roesbery Car Care including but not limited to
23 ARD 166276; ARD 226936; ARD 244493; ARD 228393, and ARD 238462;

24 2. Temporarily or permanently invalidating any other automotive repair dealer
25 registrations issued to Roesbery Car Care and/or Michael C. Roesbery, Inc., doing business as
26 Roesbery Car Care;

27 3. Vacating the stay and reimposing the order of revocation of Smog Check Station
28 License Number RC 246273, issued to Roesbery Car Care and Smog Check Station License

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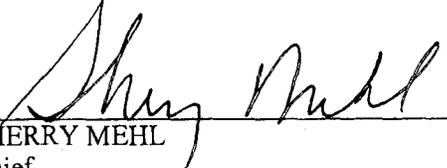
Number RC 201878, issued to Michael C. Roesbery, Inc., doing business as Roesbery Car Care including but not limited to RC 166276; RC 226936; RC 244493; and, RC 228393;

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

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

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

DATED: 10-4-10


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

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

In the Matter of the Accusation Against:)

MICHAEL C. ROESBERY, INC.)
dba ROESBERY CAR CARE)
2411 Oak Grove Road)
Walnut Creek, California 94598 and/or)
2420 Camino Ramon, Suite 205)
San Ramon, California 94583)
MICHAEL CHARLES ROESBERY, Pres.)

Case No. 77/07-21

OAH No. 2007110783

Automotive Repair Dealer Registration)
No. AD 166276)
Smog Check Station License No. RD 166276)

and)

MICHAEL C. ROESBERY, INC.,)
dba ROESBERY CAR CARE)
3099 N. Main Street)
Walnut Creek, California 94597 and/or)
2420 Camino Ramon, Suite 205)
San Ramon, California 94583)
MICHAEL CHARLES ROESBERY, Pres.)

Automotive Repair Dealer Registration)
No. AK 201878)
Smog Check Station License No. RK 201878)

Respondent.)

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.

The suspension of Automotive Repair Dealer Registration No. AD 166276, Automotive Repair Dealer Registration No. AK 201878, Smog Check Station License No. RD 166276, and Smog Check Station License No. RK 201878, issued to respondents Michael C. Roesbery, Inc., dba Roesbery Car Care, Michael Charles Roesbery, President, shall commence on the effective date of this Decision.

This Decision shall become effective July 8, 2008.

DATED: June 5, 2008

P. J. Harris
PATRICIA HARRIS
Deputy Director, Bureau Relations
Department of Consumer Affairs

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of the State of California
2 FRANK H. PACOE
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7 Attorneys for Complainant

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

Case No. 77/07-21

OAH No. 2007110783

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

3 **PARTIES**

4 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive
5 Repair (Bureau). She brought this action solely in her official capacity and is represented in this
6 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Rebecca
7 Heinstein, Deputy Attorney General.

8 2. Respondent Michael C. Roesbery, Inc., d.b.a. Roesbery Car Care
9 (Respondent), is represented in this proceeding by attorney Sean P. Beatty, whose address is
10 Cooper, White & Cooper, L.L.P., 201 California Street, 17th Floor, San Francisco, California
11 94111.

12 3. On or about April 15, 1992, the Bureau issued Automobile Repair Dealer
13 Registration No. AD166276 to Michael C. Roesbery, Inc., d.b.a. Roesbery Car Care
14 (Respondent). The Automobile Repair Dealer Registration was in full force and effect at all
15 times relevant to the charges brought in Accusation No. 77/07-21 and will expire on April 30,
16 2009, unless renewed.

17 4. On or about April 24, 1992, the Bureau issued Smog Check Station
18 License No. RD166276 to Michael C. Roesbery, Inc., d.b.a. Roesbery Car Care (Respondent).
19 The Smog Check Station License was in full force and effect at all times relevant to the charges
20 brought in Accusation No. 77/07-21 and will expire on April 30, 2009, unless renewed.

21 5. On or about October 6, 1998, the Bureau issued Automobile Repair Dealer
22 Registration No. AK201878 to Michael C. Roesbery, Inc., d.b.a. Roesbery Car Care
23 (Respondent). The Automobile Repair Dealer Registration was in full force and effect at all
24 times relevant to the charges brought in Accusation No. 77/07-21 and will expire on October 31,
25 2008, unless renewed.

26 6. On or about December 17, 1998, the Bureau issued Smog Check Station
27 License No. RK201878 to Michael C. Roesbery, Inc., d.b.a. Roesbery Car Care (Respondent).
28 The Smog Check Station License was in full force and effect at all times relevant to the charges

1 brought in Accusation No. 77/07-21 and will expire on October 31, 2008, unless renewed.

2 7. On or about June 2, 2003, the Bureau issued Automobile Repair Dealer
3 Registration No. AC226936 to Michael C. Roesbery, Partner, Thomas G. Spillner, Partner,
4 d.b.a. Roesbery Car Care (Roesbery Affiliate). The Automobile Repair Dealer Registration was
5 in full force and effect at all times relevant to the charges brought in Accusation No. 77/07-21
6 and will expire on March 31, 2009, unless renewed.

7 8. On or about June 3, 2003, the Bureau issued Smog Check Station License
8 No. RC226936 to Michael C. Roesbery, Partner, Thomas G. Spillner, Partner, d.b.a. Roesbery
9 Car Care (Roesbery Affiliate). The Smog Check Station License was in full force and effect at
10 all times relevant to the charges brought in Accusation No. 77/07-21 and will expire on March
11 31, 2009, unless renewed.

12 9. On or about March 21, 2006, the Bureau issued Automobile Repair Dealer
13 Registration No. AC244493 to Hillcrest Car Care, Inc., d.b.a. Roesbery Car Care (Roesbery
14 Affiliate). The Automobile Repair Dealer Registration was in full force and effect at all times
15 relevant to the charges brought in Accusation No. 77/07-21 and will expire on March 31, 2009,
16 unless renewed.

17 10. On or about April 24, 2006, the Bureau issued Smog Check Station
18 License No. RC244493 to Hillcrest Car Care, Inc., d.b.a. Roesbery Car Care (Roesbery
19 Affiliate). The Smog Check Station License was in full force and effect at all times relevant to
20 the charges brought in Accusation No. 77/07-21 and will expire on March 31, 2009, unless
21 renewed.

22 11. On or about July 18, 2003, the Bureau issued Automobile Repair Dealer
23 Registration No. AF228393 to Michael Roesbery, Partner, Thomas G. Spillner, Partner, d.b.a.
24 Roesbery Car Care (Roesbery Affiliate). The Automobile Repair Dealer Registration was in full
25 force and effect at all times relevant to the charges brought in Accusation No. 77/07-21 and will
26 expire on June 30, 2008, unless renewed.

27 12. On or about July 25, 2003, the Bureau issued Smog Check Station License
28 No. RF228393 to Michael Roesbery, Partner, Thomas G. Spillner, Partner, d.b.a. Roesbery Car

1 Care (Roesbery Affiliate). The Smog Check Station License was in full force and effect at all
2 times relevant to the charges brought in Accusation No. 77/07-21 and will expire on June 30,
3 2008, unless renewed.

4 13. In or about July, 2006, the Bureau issued Automobile Repair Dealer
5 Registration No. AC246273 to Michael C. Roesbery, Partner, Thomas Spillner, Partner, d.b.a.
6 Rocsbery Car Care (Roesbery Affiliate). The Automobile Repair Dealer Registration was in full
7 force and effect at all times relevant to the charges brought in Accusation No. 77/07-21 and will
8 expire on July 31, 2008, unless renewed.

9 14. On or about August 14, 2006, the Bureau issued Smog Check Station
10 License No. RC246273 to Michael C. Roesbery, Partner, Thomas Spillner, Partner, d.b.a.
11 Roesbery Car Care (Roesbery Affiliate). The Smog Check Station License was in full force and
12 effect at all times relevant to the charges brought in Accusation No. 77/07-21 and will expire on
13 July 31, 2008, unless renewed.

14 15. In or about March 2005, the Bureau issued Automobile Repair Dealer
15 Registration No. 238462 to Michael C. Roesbery, Partner, Justin Spitzer, Partner, d.b.a. Valley
16 Hydramatic (Roesbery Affiliate). The Automobile Repair Dealer Registration expired on March
17 31, 2008.

18 16. Roesbery Affiliates, through Michael C. Roesbery, are representing
19 themselves in this proceeding and have chosen not to exercise their right to be represented by
20 counsel.

21 JURISDICTION

22 17. Accusation No. 77/07-21 was filed before the Bureau of Automotive
23 Repair, Department of Consumer Affairs (Bureau), and is currently pending against Respondents.
24 The Accusation and all other statutorily required documents were properly served on
25 Respondents on November 9, 2007. Respondents timely filed their Notice of Defense contesting
26 the Accusation. A copy of Accusation No. 77/07-21 is attached as Exhibit A and incorporated
27 herein by reference.

28

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

6 5. **Report Financial Interest.** Within 30 days of the effective date of this
7 action, Respondents and Roesbery Affiliates shall report any financial interest which any
8 partners, officers, or owners of the Respondents' and Roesbery Affiliates facilities may have in
9 any other business required to be registered pursuant to Section 9884.6 of the Business and
10 Professions Code.

11 6. **Random Inspections.** Respondents and Roesbery Affiliates shall provide
12 Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing
13 repairs, up to and including the point of completion.

14 7. **Jurisdiction.** If an accusation is filed against Respondents or Roesbery
15 Affiliates during the term of probation, the Director of Consumer Affairs shall have continuing
16 jurisdiction over this matter until the final decision on the accusation, and the period of probation
17 shall be extended until such decision.

18 8. **Violation of Probation.** Should the Director of Consumer Affairs
19 determine that Respondents or Roesbery Affiliates have failed to comply with the terms and
20 conditions of probation, the Department may, after giving notice and opportunity to be heard
21 temporarily or permanently invalidate the registrations and revoke the licenses.

22 9. **Cost Recovery.** Payment to the Bureau in the amount of \$40,000.00 in
23 cost recovery shall be received no later than 6 months before probation terminates. Failure to
24 complete payment of cost recovery within this time frame shall constitute a violation of
25 probation which may subject Respondents' and Roesbery Affiliates registrations and licenses to
26 outright revocation; however, the Director or the Director's Bureau of Automotive Repair
27 designee may elect to continue probation until such time as reimbursement of the entire cost
28 recovery amount has been made to the Bureau.

1 recovery amount has been made to the Bureau.

2 ACCEPTANCE

3 On behalf of Michael C. Roesbery, Inc., I have carefully read the above Stipulated
4 Settlement and Disciplinary Order and have fully discussed it with its attorney, Sean P. Beatty. I
5 understand the stipulation and the effect it will have on the Automobile Repair Dealer
6 Registrations and Smog Check Station Licenses. I enter into this Stipulated Settlement and
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
8 Decision and Order of the Bureau of Automotive Repair.

9 DATED: 5/16/08.

10
11


MICHAEL C. ROESBERY, PRESIDENT
MICHAEL C. ROESBERY, INC.
d.b.a. ROESBERY CAR CARE
Respondents

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On behalf of Hillcrest Car Care, Inc., I have carefully read the above Stipulated
Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on the
Automobile Repair Dealer Registrations and Smog Check Station Licenses. I enter into this
Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
to be bound by the Decision and Order of the Bureau of Automotive Repair.

19 DATED: 5/16/08.

20
21


MICHAEL C. ROESBERY, PRESIDENT
HILLCREST CAR CARE
d.b.a. ROESBERY CAR CARE
Respondents

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On behalf of the partnership between Michael C. Roesbery and Thomas G.
Spillner, I have carefully read the above Stipulated Settlement and Disciplinary Order. I
understand the stipulation and the effect it will have on the Automobile Repair Dealer
Registrations and Smog Check Station Licenses. I enter into this Stipulated Settlement and

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Bureau of Automotive Repair.

3 DATED: 5/16/08

4
5 
6 MICHAEL C. ROESBERY, PARTNER
d.b.a. ROESBERY CAR CARE

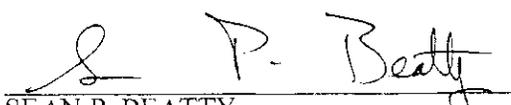
7
8 On behalf of the partnership between Michael C. Roesbery and Justin Spitzer, I
9 have carefully read the above Stipulated Settlement and Disciplinary Order. I understand the
10 stipulation and the effect it will have on the Automobile Repair Dealer Registration. I enter into
11 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
12 agree to be bound by the Decision and Order of the Bureau of Automotive Repair.

13 DATED: 5/16/08

14
15 
16 MICHAEL C. ROESBERY, PARTNER
d.b.a. VALLEY HYDRAMATIC

17 I have read and fully discussed with Respondents the terms and conditions and
18 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
19 form and content.

20 DATED: 5/19/08

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22 
23 SEAN P. BEATTY
Attorney for Respondents

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Bureau of Automotive Repair, Department of Consumer Affairs.

DATED: 5/21/08

EDMUND G. BROWN JR., Attorney General
of the State of California

FRANK H. PACOE
Supervising Deputy Attorney General

Rebecca Heinste
REBECCA HEINSTEIN
Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 77/07-21

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 REBECCA M. HEINSTEIN, State Bar No. 173202
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5604
6 Facsimile: (415) 703-5480
7 Attorneys for Complainant

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
10 **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
26 Respondents.

27 Sherry Mehl ("Complainant") alleges:

28 ///

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 _____
4 (signature or initials)"

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

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

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

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

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

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

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

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

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.

28 ///

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.

28 ///

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 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;

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

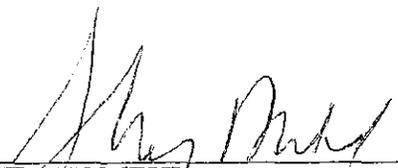
3 4. Revoking or suspending Smog Check Station License Number RK 201878,
4 issued to Michael C. Roesbery, Inc., dba, Roesbery Car Care;

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

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

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

11
12 DATED: 11/5/07

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14 
15 SHERRY MEHL
16 Chief
17 Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California
20 Complainant
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