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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 Accusation Against:

Case No. 77/10-43

13 **ZOOM SMOG & AUTOMOTIVE**
14 **ROBERT BRUCE CLARK, OWNER**
742 Hogan Dam Road
15 Valley Springs, CA 95252
Automotive Repair Dealer Reg. No. ARD 254307
16 Smog Check Station License No. RC 254307
Lamp Station License No. LS 254307
Brake Station License No. BS 254307,

ACCUSATION

17 **ZOOM SMOG & AUTOMOTIVE**
18 **ROBERT BRUCE CLARK, OWNER**
205 Amador Road
19 Sutter Creek, CA 95685
Automotive Repair Dealer Reg. No. ARD 253948
20 Smog Check Station License No. RC 253948
Lamp Station License No. LS 253948
Brake Station License No. BS 253948,

21 **ROBERT BRUCE CLARK**
22 P.O. Box 1894
Sutter Creek, CA 95685
23 Advanced Emission Specialist Technician License
No. EA 127919
24 Brake Adjuster License No. BA 127919
Lamp Adjuster License No. LA 127919,

25 and

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1 **JAMES ESTES**
2 **18850 Highway 88**
3 **Pine Grove, CA 95665**
4 **Advanced Emission Specialist Technician License**
5 **No. EA 144076**
6 **Brake Adjuster License No. BA 144076**
7 **Lamp Adjuster License No. LA 144076**

Respondents.

Complainant alleges:

PARTIES/LICENSE INFORMATION

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

Zoom Smog & Automotive, Valley Springs Facility

2. On or about April 1, 2008, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration ("registration") Number ARD 254307 to Robert Bruce Clark ("Respondent Clark" or "Clark"), owner of Zoom Smog & Automotive. Respondent's registration will expire on January 31, 2012, unless renewed.

3. On or about April 15, 2008, the Director issued Smog Check Station License Number RC 254307 to Respondent Clark. Respondent's smog check station license will expire on January 31, 2012, unless renewed.

4. On or about April 18, 2008, the Director issued Lamp Station License Number LS 254307 ("lamp station license") to Respondent Clark. Respondent's lamp station license was in a delinquent status (expired) from January 31, 2010, to July 22, 2010. Respondent's lamp station license will expire on January 31, 2012, unless renewed.

5. On or about April 18, 2008, the Director issued Brake Station License Number BS 254307 ("brake station license") to Respondent Clark. Respondent's brake station license was in a delinquent status (expired) from January 31, 2010, to July 22, 2010. Respondent's brake station license will expire on January 31, 2012, unless renewed.

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1 **Zoom Smog & Automotive, Sutter Creek Facility**

2 6. On or about March 4, 2008, the Director issued Registration Number ARD 253948 to
3 Respondent Clark. Respondent's registration will expire on January 31, 2012, unless renewed.

4 7. On or about March 11, 2008, the Director issued Smog Check Station License
5 Number RC 253948 to Respondent Clark. Respondent's smog check station license will expire
6 on January 31, 2012, unless renewed.

7 8. On or about March 19, 2008, the Director issued Lamp Station License Number LS
8 253948 ("lamp station license") to Respondent Clark. Respondent's lamp station license will
9 expire on January 31, 2012, unless renewed.

10 9. On or about March 19, 2008, the Director issued Brake Station License Number BS
11 253948 ("brake station license") to Respondent Clark. Respondent's brake station license will
12 expire on January 31, 2012, unless renewed.

13 **Robert Bruce Clark**

14 10. In or about 1997, the Director issued Advanced Emission Specialist Technician
15 License Number EA 127919 ("technician license") to Respondent Clark. Respondent's
16 technician license will expire on July 31, 2011, unless renewed.

17 11. In or about 2002, the Director issued Brake Adjuster License Number BA 127919 to
18 Respondent Clark. Respondent's brake adjuster license will expire on July 31, 2014, unless
19 renewed.

20 12. In or about 2002, the Director issued Lamp Adjuster License Number LA 127919 to
21 Respondent Clark. Respondent's lamp adjuster license will expire on July 31, 2014, unless
22 renewed.

23 **James Estes**

24 13. In or about 2001, the Director issued Advanced Emission Specialist Technician
25 License Number EA 144076 ("technician license") to James Estes ("Respondent Estes" or
26 "Estes"). Respondent's technician license will expire on August 31, 2011, unless renewed.

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1 14. In or about 2002, the Director issued Brake Adjuster License Number BA 144076 to
2 Respondent Estes. Respondent's brake adjuster license will expire on August 31, 2014, unless
3 renewed.

4 15. In or about 2002, the Director issued Lamp Adjuster License Number LA 144076 to
5 Respondent Estes. Respondent's lamp adjuster license will expire on August 31, 2014, unless
6 renewed.

7 **JURISDICTION**

8 16. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
9 the Director may revoke an automotive repair dealer registration.

10 17. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
11 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
12 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
13 invalidating (suspending or revoking) a registration.

14 18. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the Director may
15 suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of
16 the Automotive Repair Act.

17 19. Bus. & Prof. Code section 9889.7 provides, in pertinent part, that the expiration or
18 suspension of a license by operation of law or by order or decision of the Director or a court of
19 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
20 proceed with any disciplinary proceedings.

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

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

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STATUTORY PROVISIONS

22. Bus. & Prof. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke or place on probation the registration of an automotive repair dealer for any of the 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) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

....

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

(4) Any other conduct that constitutes fraud.

....

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

....

(c) Notwithstanding subdivision (b), the director may suspend, revoke or place on probation the registration for all places of business operated in 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.

23. Bus. & Prof. Code section 9889.3 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

(a) Violates any section of the Business and Professions Code which relates to his or her licensed activities.

....

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

....

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed . . .

1 24. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

2 The automotive repair dealer shall give to the customer a written
3 estimated price for labor and parts necessary for a specific job. No work shall be done
4 and no charges shall accrue before authorization to proceed is obtained from the
customer . . .

5 25. Bus. & Prof. Code section 9887.1 states, in pertinent part:

6 The director shall have the authority to issue licenses for official lamp
7 and brake adjusting stations and shall license lamp and brake adjusters. The licenses
8 shall be issued in accordance with this chapter and regulations adopted by the director
9 pursuant thereto . . . Licenses may be renewed upon application and payment of the
renewal fees if the application for renewal is made within the 30-day period prior to
the date of expiration. Persons whose licenses have expired shall immediately cease
the activity requiring a license . . .

10 26. Bus. & Prof. Code section 9888.3 states:

11 No person shall operate an "official" lamp or brake adjusting station
12 unless a license therefor has been issued by the director. No person shall issue, or
13 cause or permit to be issued, any certificate purporting to be an official lamp
adjustment certificate unless he or she is a licensed lamp adjuster or an official brake
adjustment certificate unless he or she is a licensed brake adjuster.

14 27. Bus. & Prof. Code section 9889.16 states:

15 Whenever a licensed adjuster in a licensed station upon an inspection or
16 after an adjustment, made in conformity with the instructions of the bureau,
determines that the lamps or the brakes upon any vehicle conform with the
17 requirements of the Vehicle Code, he shall, when requested by the owner or driver of
the vehicle, issue a certificate of adjustment on a form prescribed by the director,
18 which certificate shall contain the date of issuance, the make and registration number
of the vehicle, the name of the owner of the vehicle, and the official license of the
19 station.

20 28. Bus. & Prof. Code section 9889.22 states:

21 The willful making of any false statement or entry with regard to a
22 material matter in any oath, affidavit, certificate of compliance or noncompliance, or
application form which is required by this chapter [the Automotive Repair Act] or
23 Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health
and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

24 29. Bus. & Prof. Code section 9889.9 states that "[w]hen any license has been revoked or
25 suspended following a hearing under the provisions of this article [Article 7 (commencing with
26 section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and
27 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
28 director."

1 30. Bus. & Prof. Code section 22, subdivision (a), states:

2 "Board" as used in any provision of this Code, refers to the board in
3 which the administration of the provision is vested, and unless otherwise expressly
4 provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

5 31. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
6 "license" includes "registration" and "certificate."

7 **COST RECOVERY**

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

12 **BUSINESS INSPECTIONS OF JUNE 23, 2010**

13 33. On June 23, 2010, Bureau Representative Brian Cole ("Cole") performed a business
14 inspection of Clark's facility located in Valley Springs, California, and found that Clark's lamp
15 and brake station licenses at that location had been expired since January 31, 2010. Cole told
16 Clark that he wanted to inspect his lamp and brake certificate books. Clark opened a drawer to
17 his desk. Cole observed several certificates (copies of certificates that had already been issued)
18 lying in the drawer and asked Clark why the certificates were not attached to the certificate books.
19 Clark stated that he had torn the certificates out of the certificate books at his Sutter Creek facility
20 and had brought them to his Valley Springs facility. Cole obtained the certificates from Clark,
21 about 21 in all, and found that Clark had issued 9 lamp certificates and 8 brake certificates while
22 his lamp and brake station licenses were expired. Cole also obtained 11 invoices relating to some
23 of the lamp and brake inspections referenced on the certificates. The invoices indicated that the
24 inspections were performed at Clark's Valley Springs facility.

25 34. That same day (June 23, 2010), Bureau Representative Mike Johnson ("Johnson")
26 conducted a business inspection of Clark's facility located in Sutter Creek, California. Johnson
27 met with Clark's lamp and brake adjuster, Estes. Johnson requested Clark's lamp and brake
28 certificate books, which Estes provided. Upon reviewing the lamp certificate book (certificates

1 numbered LC1013551 to LC1013600) and brake certificate book (certificates numbered
2 BC1027801 to BC1027850), Johnson discovered that the first 11 certificates in each book had
3 been completely removed, including the carbon copies. Johnson asked Estes where the
4 certificates were located. Estes stated that Clark must have taken them to the Valley Springs
5 facility. Estes also stated that he and Clark were the only persons who had access to the
6 certificate books and that he (Estes) had not removed any of the certificates. Johnson obtained 4
7 lamp certificate books and 2 brake certificate books from Estes.

8 35. Between July 28, 2010, and August 9, 2010, Johnson performed an audit of the lamp
9 and brake certificates that had been obtained by Cole on June 23, 2010. Johnson found that Clark
10 had issued 8 lamp certificates and 7 brake certificates from his Valley Springs facility while his
11 lamp and brake station licenses were expired and that all 15 certificates had been sold to Clark's
12 Sutter Creek facility. Johnson also found that Estes had failed to properly issue several lamp and
13 brake certificates relating to inspections he had performed at the Sutter Creek facility.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 36. Respondent Clark's Registration Number ARD 254307 (Valley Springs Facility) is
17 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1),
18 Respondent made or authorized statements which he knew or in the exercise of reasonable care
19 should have known to be untrue or misleading, as follows: Respondent certified under penalty of
20 perjury on Lamp Certificate Numbers LC895514, LC895526, LC895527, LC895542, LC895543,
21 LC1013557, LC1013558, LC1013559, LC1013560, LC1013561, LC895515, and LC895513 that
22 his lamp station license number was HS253945 or LS253945. In fact, Respondent's lamp station
23 number is LS 254307.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Failure to Comply with the Bus. & Prof. Code)

3 37. Respondent Clark's Registration Number ARD 254307 (Valley Springs Facility) is
4 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in
5 that Respondent failed to comply with provisions of that Code in the following material respects:

6 a. Sections 9887.1 and 9888.3: Respondent issued the following lamp and brake
7 certificates while his lamp and brake station licenses were expired:

8 Brake Certificate No. Date of Issuance

9 BC908884 February 5, 2010
10 BC908886 February 23, 2010
11 BC1027801 March 19, 2010
12 BC1027802 April 19, 2010
13 BC1027803 May 21, 2010
14 BC1027804 May 25, 2010
15 BC1027805 May 22, 2010

16 Lamp Certificate No. Date of Issuance

17 LC895526 February 5, 2010
18 LC895542 February 22, 2010
19 LC895543 February 23, 2010
20 LC1013557 May 25, 2010
21 LC1013558 May 21, 2010
22 LC1013559 May 22, 2010
23 LC1013560 April 19, 2010
24 LC1013561 March 19, 2010

25 b. Section 9889.16:

26 1. Respondent failed to properly prepare or issue the brake certificates identified
27 in subparagraph (a) above in that Respondent failed to enter the vehicle type (passenger car, truck
28 or motor home) and the gross vehicle weight rating if applicable, as specified in the Bureau's
Handbook for Brake Adjusters and Stations.

29 2. Respondent failed to properly prepare or issue the lamp certificates identified in
30 subparagraph (a) above in that Respondent failed to show his official lamp station license on the
31 certificates. Further, Respondent failed to indicate on Lamp Certificate Numbers LC1013557

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1 through LC1013560 the type of aimer used during the inspections, as specified in the Bureau's
2 *Handbook for Lamp Adjusters and Stations*.

3 c. **Section 9889.22:** Respondent willfully made false statements on the lamp certificates
4 set forth in paragraph 36 above.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Violations of Regulations)**

7 38. Respondent Clark's Registration Number ARD 254307 (Valley Springs Facility) is
8 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in
9 that Respondent failed to comply with provisions of California Code of Regulations, title 16, in
10 the following material respects:

11 a. **Section 3305, subdivision (a)(4):** Respondent failed to issue the brake certificates
12 identified in subparagraph 37 (a) above in accordance with the Bureau's *Handbook for Brake*
13 *Adjusters and Stations*.

14 b. **Section 3305, subdivision (a)(5):** Respondent failed to issue the lamp certificates
15 identified in subparagraph 37 (a) above in accordance with the Bureau's *Handbook for Lamp*
16 *Adjusters and Stations*.

17 c. **Section 3308:** Respondent continued to operate his lamp and brake station and issue
18 lamp and brake certificates even though his lamp and brake station licenses were expired.

19 d. **Section 3308, subdivision (c):** Respondent failed to return all of his unused
20 certificates to the Bureau once his lamp and brake station licenses had expired.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with the Bus. & Prof. Code)**

23 39. Respondent Clark's Brake Station License Number BS 254307 and Lamp Station
24 License Number LS 254307 (Valley Springs Facility) are subject to disciplinary action pursuant
25 to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the
26 provisions of Bus. & Prof. Code sections 9887.1, 9888.3, 9888.16, and 9889.22 relating to his
27 licensed activities, as set forth in paragraph 37 above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 40. Respondent Clark's Brake Station License Number BS 254307 and Lamp Station
4 License Number LS 254307 (Valley Springs Facility) are subject to disciplinary action pursuant
5 to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to comply with
6 the provisions of California Code of Regulations, title 16, sections 3305, subdivisions (a)(4) and
7 (5), 3308, and 3308, subdivision (c), as set forth in paragraph 38 above.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with the Bus. & Prof. Code)**

10 41. Respondent Clark's brake and lamp adjuster licenses are subject to disciplinary action
11 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
12 violated the provisions of Bus. & Prof. Code sections 9887.1, 9888.3, 9888.16, and 9889.22
13 relating to his licensed activities, as set forth in paragraph 37 above.

14 **SEVENTH CAUSE FOR DISCIPLINE**

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

16 42. Respondent Clark's brake and lamp adjuster licenses are subject to disciplinary action
17 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
18 comply with California Code of Regulations, title 16, sections 3305, subdivisions (a)(4) and (5),
19 3308, and 3308, subdivision (c), as set forth in paragraph 38 above.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Bus. & Prof. Code)**

22 43. Respondent Clark's Registration Number ARD 253948 (Sutter Creek Facility) is
23 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in
24 that Respondent failed to comply with Bus. & Prof. Code section 9888.16 in the following
25 material respects:

26 a. Respondent Clark's lamp and brake adjuster, Respondent Estes, failed to properly
27 prepare or issue Lamp Certificate Numbers LC772703, LC772710, and LC772730 in that Estes

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1 failed to indicate the type of aimer used during the inspections, as specified in the Bureau's
2 *Handbook for Lamp Adjusters and Stations*.

3 b. Respondent Clark's lamp and brake adjuster, Respondent Estes, failed to properly
4 prepare or issue Lamp Certificate Numbers LC634456, LC634492, LC772704, LC772716,
5 LC895520, LC895523, LC895524, LC895531, LC895534, LC895540, LC895544, LC895545,
6 LC895546, LC1013566, and LC1013573 in that Estes failed to indicate the registered owner of
7 the vehicle inspected.

8 c. Respondent Clark's lamp and brake adjuster, Respondent Estes, failed to properly
9 prepare or issue Brake Certificate Numbers BC908854, BC908855, BC908857, BC908887,
10 BC908889, BC908890, and BC1027812 in that Estes failed to indicate the registered owner of the
11 vehicle inspected.

12 d. Respondent Clark's lamp and brake adjuster, Respondent Estes, failed to properly
13 prepare or issue Brake Certificate Numbers BC908870, BC908873, BC1027813, and BC1027815
14 in that Estes failed to indicate the results of the 20 mph stop test on the vehicle, and failed to enter
15 the vehicle type (passenger car, truck or motor home) and the gross vehicle weight rating if
16 applicable, as specified in the Bureau's *Handbook for Brake Adjusters and Stations*.

17 **NINTH CAUSE FOR DISCIPLINE**

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

19 44. Respondent Clark's Brake Station License Number BS 253948 and Lamp Station
20 License Number LS 253948 (Sutter Creek Facility) are subject to disciplinary action pursuant to
21 Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to comply with
22 provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3316, subdivision (d)**: Respondent transferred various unused lamp
24 certificates, including the lamp certificates identified in subparagraph 37 (a) above, from his
25 Sutter Creek facility to his Valley Springs facility.

26 b. **Section 3321, subdivision (c)**: Respondent transferred various unused brake
27 certificates, including the brake certificates identified in subparagraph 37 (a) above, from his
28 Sutter Creek facility to his Valley Springs facility.

1 inspection on the vehicle and that the vehicle passed the inspection. That same day, electronic
2 smog Certificate of Compliance No. NW 995880C was issued for the vehicle.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 48. Respondent Clark's Registration Number ARD 253948 is subject to disciplinary
6 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made
7 or authorized a statement which he knew or in the exercise of reasonable care should have known
8 to be untrue or misleading, as follows: Respondent Clark's technician, Respondent Estes,
9 certified under penalty of perjury on the VIR that the Bureau's 1995 Chevrolet Caprice had
10 passed inspection and was in compliance with applicable laws and regulations. In fact, the PCV
11 valve and pipe were missing on the vehicle and as such, the vehicle would not pass the inspection
12 required by Health & Saf. Code section 44012.

13 **THIRTEENTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 49. Respondent Clark's Registration Number ARD 253948 is subject to disciplinary
16 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent
17 committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for
18 the Bureau's 1995 Chevrolet Caprice without ensuring that a bona fide inspection was performed
19 of the emission control devices and systems on the vehicle, thereby depriving the People of the
20 State of California of the protection afforded by the Motor Vehicle Inspection Program.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

23 50. Respondent Clark's Smog Check Station License Number RC 253948 is subject to
24 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
25 Respondent failed to comply with provisions of that Code, as follows:

26 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
27 performed on the Bureau's 1995 Chevrolet Caprice in accordance with procedures prescribed by
28 the department.

1 **NINETEENTH CAUSE FOR DISCIPLINE**

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

3 55. Respondent Estes' technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
5 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
6 compliance for the Bureau's 1995 Chevrolet Caprice without performing a bona fide inspection of
7 the emission control devices and systems on the vehicle, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **UNDERCOVER OPERATION (VALLEY SPRINGS FACILITY)**

10 **2001 CHRYSLER 300M**

11 56. On October 29, 2010, an undercover operator with the Bureau (hereinafter
12 "operator") took the Bureau's 2001 Chrysler 300M to Respondent Clark's facility located in
13 Valley Springs, California, and requested a smog inspection. The PCV valve had been removed
14 from the Bureau-documented vehicle and the PCV hose was disconnected. The operator was not
15 given a written estimate prior to the inspection. After the inspection was completed, the facility
16 had the operator sign a written estimate, but did not provide her with a copy. The operator paid
17 the facility \$68.20 and received copies of an invoice and a VIR. The VIR indicated that
18 Respondent Clark had performed the smog inspection on the vehicle and that the vehicle passed
19 the inspection. That same day, electronic smog Certificate of Compliance No. NW 553143C was
20 issued for the vehicle.

21 **TWENTIETH CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 57. Respondent Clark's Registration Number ARD 254307 is subject to disciplinary
24 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made
25 or authorized a statement which he knew or in the exercise of reasonable care should have known
26 to be untrue or misleading, as follows: Respondent certified under penalty of perjury on the VIR
27 that the Bureau's 2001 Chrysler 300M had passed inspection and was in compliance with
28 applicable laws and regulations. In fact, the PCV valve was missing on the vehicle and the PCV

1 hose was disconnected. As such, the vehicle would not pass the inspection required by Health &
2 Saf. Code section 44012.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Failure to Provide Customer with Copy of Signed Document)**

5 58. Respondent Clark's Registration Number ARD 254307 is subject to disciplinary
6 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent or his
7 employees failed to provide the operator with a copy of the written estimate after she signed the
8 document.

9 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 59. Respondent Clark's Registration Number ARD 254307 is subject to disciplinary
12 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent
13 committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for
14 the Bureau's 2001 Chrysler 300M without performing a bona fide inspection of the emission
15 control devices and systems on the vehicle, thereby depriving the People of the State of California
16 of the protection afforded by the Motor Vehicle Inspection Program.

17 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

18 **(Violations of the Bus. & Prof. Code)**

19 60. Respondent Clark's Registration Number ARD 254307 is subject to disciplinary
20 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed
21 to comply with section 9884.9, subdivision (a), of that Code, as follows: Respondent or his
22 employees failed to provide the operator with a written estimate for the smog inspection on the
23 Bureau's 2001 Chrysler 300M.

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1 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
2 issuing an electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M
3 without performing a bona fide inspection of the emission control devices and systems on the
4 vehicle, thereby depriving the People of the State of California of the protection afforded by the
5 Motor Vehicle Inspection Program.

6 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

8 64. Respondent Clark's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
10 provisions of that Code, as follows:

11 a. **Section 44012:** Respondent failed to perform the emission control tests on the
12 Bureau's 2001 Chrysler 300M in accordance with procedures prescribed by the department.

13 b. **Section 44059:** Respondent willfully made a false entry on the VIR, as set forth in
14 paragraph 57 above.

15 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

18 65. Respondent Clark's technician license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
20 provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
22 electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M.

23 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
24 2001 Chrysler 300M in accordance with Health & Saf. Code sections 44012 and 44035, and
25 California Code of Regulations, title 16, section 3340.42.

26 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
27 in that Respondent input data indicating that the Bureau's 2001 Chrysler 300M had passed the
28 visual portion of the smog inspection. In fact, the PCV valve on the vehicle was missing and the

1 PCV hose was disconnected. As such, the vehicle would not pass the inspection required by
2 Health & Saf. Code section 44012.

3 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
4 Bureau's 2001 Chrysler 300M in accordance with the Bureau's specifications.

5 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

7 66. Respondent Clark's technician license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
9 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
10 compliance for the Bureau's 2001 Chrysler 300M without performing a bona fide inspection of
11 the emission control devices and systems on the vehicle, thereby depriving the People of the State
12 of California of the protection afforded by the Motor Vehicle Inspection Program.

13 **OTHER MATTERS**

14 67. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
15 revoke, suspend, or place on probation the registration for all places of business operated in this
16 state by Respondent Robert Bruce Clark, owner of Zoom Smog & Automotive, upon a finding
17 that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
18 regulations pertaining to an automotive repair dealer.

19 68. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
20 Number RC 254307 or Smog Check Station License Number RC 253948, issued to Respondent
21 Robert Bruce Clark, owner of Zoom Smog & Automotive, are revoked or suspended, any
22 additional license issued under this chapter in the name of said licensee may be likewise revoked
23 or suspended by the Director.

24 69. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Station License Number LS
25 254307 or Lamp Station License Number LS 253948, issued to Respondent Robert Bruce Clark,
26 owner of Zoom Smog & Automotive, are revoked or suspended, any additional license issued
27 under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
28 revoked or suspended by the Director.

1 70. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Station License Number BS
2 254307 or Brake Station License Number BS 253948, issued to Respondent Robert Bruce Clark,
3 owner of Zoom Smog & Automotive, are revoked or suspended, any additional license issued
4 under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
5 revoked or suspended by the Director.

6 71. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
7 Technician License Number EA 127919, issued to Respondent Robert Bruce Clark, is revoked or
8 suspended, any additional license issued under this chapter in the name of said licensee may be
9 likewise revoked or suspended by the Director.

10 72. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number BA
11 127919, issued to Respondent Robert Bruce Clark, is revoked or suspended, any additional
12 license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee
13 may be likewise revoked or suspended by the Director.

14 73. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number LA
15 127919, issued to Respondent Robert Bruce Clark, is revoked or suspended, any additional
16 license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee
17 may be likewise revoked or suspended by the Director.

18 74. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
19 Technician License Number EA 144076, issued to Respondent James Estes, is revoked or
20 suspended, any additional license issued under this chapter in the name of said licensee may be
21 likewise revoked or suspended by the Director.

22 75. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number BA
23 144076, issued to Respondent James Estes, is revoked or suspended, any additional license issued
24 under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
25 revoked or suspended by the Director.

26 76. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number LA
27 144076, issued to Respondent James Estes, is revoked or suspended, any additional license issued

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1 under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
2 revoked or suspended by the Director.

3 **PRAYER**

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

6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 254307, issued to Robert Bruce Clark, owner of Zoom Smog & Automotive (Valley Springs
8 facility);

9 2. Revoking or suspending Automotive Repair Dealer Registration Number ARD
10 253948, issued to Robert Bruce Clark, owner of Zoom Smog & Automotive (Sutter Creek
11 facility);

12 3. Revoking or suspending any other automotive repair dealer registration issued to
13 Robert Bruce Clark;

14 4. Revoking or suspending Smog Check Station License Number RC 254307, issued to
15 Robert Bruce Clark, owner of Zoom Smog & Automotive (Valley Springs facility);

16 5. Revoking or suspending Smog Check Station License Number RC 253948, issued to
17 Robert Bruce Clark, owner of Zoom Smog & Automotive (Sutter Creek facility);

18 6. Revoking or suspending Advanced Emission Specialist Technician License Number
19 EA 127919, issued to Robert Bruce Clark;

20 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Robert Bruce Clark;

22 8. Revoking or suspending Lamp Station License Number LS 254307, issued to Robert
23 Bruce Clark, owner of Zoom Smog & Automotive (Valley Springs facility);

24 9. Revoking or suspending Brake Station License Number BS 254307, issued to Robert
25 Bruce Clark, owner of Zoom Smog & Automotive (Valley Springs facility);

26 10. Revoking or suspending Lamp Station License Number LS 253948, issued to Robert
27 Bruce Clark, owner of Zoom Smog & Automotive (Sutter Creek facility);

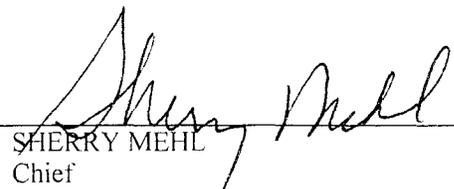
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- 1 11. Revoking or suspending Brake Station License Number BS 253948, issued to Robert
2 Bruce Clark, owner of Zoom Smog & Automotive (Sutter Creek facility);
- 3 12. Revoking or suspending Brake Adjuster License Number BA 127919, issued to
4 Robert Bruce Clark;
- 5 13. Revoking or suspending Lamp Adjuster License Number LA 127919, issued to
6 Robert Bruce Clark;
- 7 14. Revoking or suspending any additional license issued under Articles 5 and 6 of
8 Chapter 20.3 of the Business and Professions Code in the name of Robert Bruce Clark;
- 9 15. Revoking or suspending Advanced Emission Specialist Technician License Number
10 EA 144076, issued to James Estes;
- 11 16. Revoking or suspending any additional license issued under Chapter 5 of the Health
12 and Safety Code in the name of James Estes;
- 13 17. Revoking or suspending Brake Adjuster License Number BA 144076, issued to
14 James Estes;
- 15 18. Revoking or suspending Lamp Adjuster License Number LA 144076, issued to James
16 Estes;
- 17 19. Revoking or suspending any additional license issued under Articles 5 and 6 of
18 Chapter 20.3 of the Business and Professions Code in the name of James Estes;
- 19 20. Ordering Robert Bruce Clark, individually, and as owner of Zoom Smog &
20 Automotive, and James Estes to pay the Director of Consumer Affairs the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;
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21. Taking such other and further action as deemed necessary and proper.

DATED: 3/23/11



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

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