

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

In the Matter of the Accusation Against:

ZOOM SMOG & AUTOMOTIVE
ROBERT BRUCE CLARK, Owner
Valley Springs, CA 95252

Automotive Repair Dealer Registration
No. ARD 254307
Smog Check Station License No. RC 254307
Official Lamp Station License No. LS 254307
Official Brake Station License No. BS 254307

ZOOM SMOG & AUTOMOTIVE
ROBERT BRUCE CLARK, Owner
Sutter Creek, CA 95685

Automotive Repair Dealer Registration
No. ARD 253948
Smog Check Station License No. RC 253948
Official Lamp Station License No. LS 253948
Official Brake Station License No. BS 253948

ROBERT BRUCE CLARK
Sutter Creek, CA 95685

Advance Emission Specialist Technician
License No. EA 127919
Brake Adjuster License No. BA 127919
Lamp Adjuster License No. LA 127919

and

JAMES ESTES
Pine Grove, CA 95665

Advanced Emission Specialist Technician
License No. EA 144076
Brake Adjuster License No. BA 144076
Lamp Adjuster License No. LA 144076

Case No. 77/10-43

OAH No. 2011050760

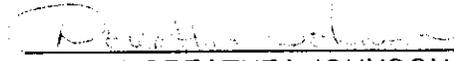
Respondents.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective February 27, 2012.

DATED: January 17, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

Case No. 77/10-43

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OAH No. 2011050760

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Smog Check Station License No. RC 254307
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ZOOM SMOG & AUTOMOTIVE, ROBERT BRUCE
CLARK, OWNER
Sutter Creek, CA 95685

Automotive Repair Dealer Registration No. ARD 253948
Smog Check Station License No. RC 253948
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Brake Adjuster License No. BA 127919
Lamp Adjuster License No. LA 127919;

and

JAMES ESTES
Pine Grove, CA 95665

Advanced Emission Specialist Technician License No.
EA 144076
Brake Adjuster License No. BA 144076
Lamp Adjuster License No. LA 144076

Respondents.

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on December 5, 2011.

Patrick M. Kenady, Deputy Attorney General, represented Sherry Mehl (complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Attorney William Ferreira represented respondents Robert Bruce Clark, individually and dba Zoom Smog & Automotive, and James Estes, neither of whom was present during the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on December 5, 2011.

SUMMARY

Complainant filed an Accusation seeking to discipline the automotive repair dealer registrations and various other licenses issued to respondent Clark, individually and dba Zoom Smog & Automotive, and respondent Estes. At the hearing, the parties stipulated to a factual and legal basis for disciplining those registrations and licenses, as well as the proposed discipline. Therefore, cause exists to discipline those registrations and various licenses, and the brake and lamp station licenses issued to respondent Clark dba Zoom Smog & Automotive and the brake adjuster and lamp adjuster licenses issued to respondents Clark and Estes are revoked. Furthermore, the registrations and smog check station licenses issued to respondent Clark dba Zoom Smog & Automotive and the advanced emission specialist technician licenses issued to respondents Clark and Estes are placed on probation subject to the terms and conditions specified in the Order below, which include a five-day actual suspension for each.

FACTUAL FINDINGS

1. On March 23, 2011, complainant, acting solely in her official capacity as Chief of the Bureau, filed an Accusation seeking to discipline the automotive repair dealer registrations, smog check station licenses, lamp station licenses, and brake station licenses issued to respondent Clark dba Zoom Smog & Automotive, as well as the lamp adjuster and brake adjuster licenses and advanced emission specialist technician licenses issued to respondents Clark and Estes.

2. At the administrative hearing, the parties stipulated to a factual and legal basis for disciplining the automotive repair dealer registrations, smog check station licenses, lamp station licenses, and brake station licenses issued to respondent Clark dba Zoom Smog & Automotive and the advanced emission specialist technician licenses, lamp adjuster licenses, and brake adjuster licenses issued to respondents Clark and Estes.¹ They also stipulated to the discipline specified in the Order below.² The use of the parties' stipulation was expressly limited to this and any future proceedings before the Bureau of Automotive Repair. The reliance on any discipline imposed as a result of the stipulation, however, is not limited in any manner.

1. *Applicable ARD's and Licenses*

A. *Zoom Smog & Automotive, Valley Springs Facility*

3. On April 1, 2008, the director of the Department (director) issued Automotive Repair Dealer Registration Number ARD 254307 to respondent Clark dba Zoom Smog & Automotive. The registration will expire on January 31, 2012, unless renewed or revoked.

4. On April 15, 2008, the director issued Smog Check Station License Number RC 254307 to respondent Clark dba Zoom Smog & Automotive. The license will expire on January 31, 2012, unless renewed or revoked.

5. On April 18, 2008, the director issued Lamp Station License Number LS 254307 to respondent Clark dba Zoom Smog & Automotive. The license was in delinquent status (expired) from January 31, 2010, to July 22, 2010.³ The license will expire on January 31, 2012, unless renewed or revoked.

6. On April 18, 2008, the director issued Brake Station License No. BS BS 254307 to respondent Clark dba Zoom Smog & Automotive. The license was in delinquent status (expired) from January 31, 2010, to July 22, 2010. The license will expire on January 31, 2012, unless renewed or revoked.

¹ Mr. Ferreira represented at the hearing that he had each of his client's express authority to enter into the stipulation on his (the client's) behalf.

² Respondents' stipulation to a factual and legal basis for discipline constitutes a judicial admission. (See, *Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 754-758.) "A judicial admission is a party's unequivocal concession of the truth of the matter, and removes the matter as an issue in the case." (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48.)

³ The expiration of a lamp station license or brake station license does not divest the Bureau of jurisdiction to discipline either or both licenses. (Bus. & Prof. Code, § 9889.7.)

B. *Zoom Smog & Automotive, Sutter Creek Facility*

7. On March 4, 2008, the director issued Automotive Repair Dealer Registration Number ARD 253948 to respondent Clark dba Zoom Smog & Automotive. The registration will expire on January 31, 2012, unless renewed or revoked.

8. On March 11, 2008, the director issued Smog Check Station License Number RC 253948 to respondent Clark dba Zoom Smog & Automotive. The license will expire on January 31, 2012, unless renewed or revoked.

9. On March 19, 2008, the director issued Lamp Station License Number LS 253948 to respondent Clark dba Zoom Smog & Automotive. The license will expire on January 31, 2012, unless renewed or revoked.

10. On March 19, 2008, the director issued Brake Station License No. BS BS 253948 to respondent Clark dba Zoom Smog & Automotive. The license will expire on January 31, 2012, unless renewed or revoked.

C. *Robert Bruce Clark*

11. In 1997, the director issued Advanced Emission Specialist Technician License Number EA 127919 to respondent Clark. The license will expire on July 31, 2013, unless renewed or revoked.

12. In 2002, the director issued Brake Adjuster License Number BA 127919 to respondent Clark. The license will expire on July 31, 2014, unless renewed or revoked.

13. In 2002, the director issued Lamp Adjuster License Number LA 127919 to respondent Clark. The license will expire on July 31, 2014, unless renewed or revoked.

D. *James Estes*

14. In 2001, the director issued Advanced Emission Specialist Technician License Number EA 144076 to respondent Estes. The license will expire on August 31, 2013, unless renewed or revoked.

15. In 2002, the director issued Brake Adjuster License Number BA 144076 to respondent Estes. The license will expire on August 31, 2014, unless renewed or revoked.

16. In 2002, the director issued Lamp Adjuster License Number LA 144076 to respondent Estes. The license will expire on August 31, 2014, unless renewed or revoked.

II. *Factual Basis for Discipline*

A. *BAR Inspection of the Valley Springs Facility*

17. On June 23, 2010, Bureau representative Brian Cole performed a business inspection of the Valley Springs facility and found that respondent Clark's lamp station and brake station licenses expired on January 31, 2010, and had not been renewed. Mr. Cole reviewed the facility's lamp adjustment certificate and brake adjustment certificate books and found the following violations of law:

a. Respondent Clark certified under penalty of perjury that his lamp station license number is HS 253945 or LS 253945 on 12 lamp adjustment certificates. But his number is LS 254307.

b. By making the certifications discussing in Factual Finding 17a, respondent Clark willfully made false statements on each of the lamp adjustment certificates.

c. Respondent Clark issued eight lamp adjustment certificates after his lamp station license expired and before it was renewed.

d. In issuing the lamp adjustment certificates discussed in Factual Finding 17c, respondent Clark failed to properly prepare or issue those certificates in that he did not show his lamp station license number on any of the certificates. Furthermore, he failed to indicate on four of those certificates the type of aimer used during the inspections, as specified in the Bureau's *Handbook for Lamp Adjusters and Stations*.

e. Respondent Clark failed to issue the lamp adjustment certificates discussed in Factual Finding 17c in accordance with the Bureau's *Handbook for Lamp Adjusters and Stations*.

f. By issuing the lamp adjustment certificates discussed in Factual Finding 17c, respondent Clark continued to operate his lamp station and issue lamp adjustment certificates even though his lamp station license was expired.

g. By issuing the lamp adjustment certificates discussed in Factual Finding 17c, respondent Clark failed to return all of his unused lamp adjustment certificates once his lamp station license had expired.

h. Respondent Clark issued seven brake adjustment certificates after his brake station license expired and before it was renewed.

i. Respondent Clark failed to properly prepare or issue the brake adjustment certificates discussed in Factual Finding 17h in that he failed to enter the vehicle type (i.e., passenger car, truck, or motor home) and gross vehicle weight rating, if applicable, as specified in the Bureau's *Handbook for Brake Adjusters and Stations*.

j. Respondent Clark failed to issue the brake adjustment certificates discussed in Factual Finding 17h in accordance with the Bureau's *Handbook for Brake Adjusters and Stations*.

k. By issuing the brake adjustment certificates discussed in Factual Finding 17h, respondent Clark continued to operate his brake station and issue brake adjustment certificates even though his brake station license was expired.

l. By issuing the brake adjustment certificates discussed in Factual Finding 17h, respondent Clark failed to return all of his unused brake adjustment certificates once his brake station license had expired.

B. *BAR Inspection of the Sutter Creek Facility*

18. That same day, Bureau representative Mike Johnson performed a business inspection of the Sutter Creek facility. He met with respondent Estes, respondent Clark's lamp and brake adjuster at that facility. Mr. Cole reviewed the facility's lamp adjustment certificate and brake adjustment certificate books and found the following violations of law:

a. Respondent Estes failed to properly prepare or issue three lamp adjustment certificates in that he failed to indicate the type of aimer used during the inspection, as specified in the Bureau's *Handbook for Lamp Adjusters and Stations*.

b. Respondent Estes failed to properly prepare or issue 15 lamp adjustment certificates in that he failed to indicate the registered owner of the vehicle inspected.

c. Respondent Estes failed to properly prepare or issue seven brake adjustment certificates in that he failed to indicate the registered owner of the vehicle inspected.

d. Respondent Estes failed to properly prepare or issue four brake adjustment certificates in that he failed to indicate the results of the 20 miles per hour stop test on the vehicle and failed to enter the vehicle type (e.g., passenger car, truck,

or motor home) and the gross vehicle weight rating if applicable, as specified in the Bureau's *Handbook for Brake Adjusters and Stations*.

e. Respondent Clark transferred various unused lamp adjustment certificates, including those discussed in Factual Finding 17c, from his Sutter Creek facility to his Valley Springs facility.

f. Respondent Clark transferred various unused brake adjustment certificates, including those discussed in Factual Finding 17h, from his Sutter Creek facility to his Valley Springs facility.

h. Respondent Estes failed to issue the lamp adjustment certificates discussed in Factual Findings 18a and 18b in accordance with the Bureau's *Handbook for Lamp Adjusters and Stations*.

i. Respondent Estes failed to issue the brake adjustment certificates discussed in Factual Findings 18c and 18d in accordance with the Bureau's *Handbook for Brake Adjusters and Stations*.

C. *Undercover Operation at the Valley Springs Facility*

19. On October 29, 2010, an undercover operator with the Bureau drove the Bureau's 2001 Chrysler 300M (Chrysler) to the Valley Springs facility and requested a smog inspection. The operator signed a work estimate but was not given a copy. The positive crankcase ventilation (PCV) valve had been removed and the PCV hose disconnected prior to the vehicle being brought to the facility. A smog inspection was performed, and a Vehicle Identification Report (VIR) indicating that the vehicle passed inspection was issued. Later that day, an electronic certificate of compliance was issued for the vehicle.

The following violations of law occurred in connection with the smog inspection:

a. By signing the VIR, respondent Clark certified under penalty of perjury that the vehicle passed inspection and was in compliance with applicable laws and regulations. However, the PCV valve was missing and the PCV hose was disconnected, either one of which should have caused the vehicle to fail the visual inspection portion of the inspection.

b. Respondent Clark committed fraud by issuing an electronic certificate of compliance for the vehicle without performing a proper inspection of the emissions control devices and systems on the vehicle, thereby depriving the People of the State of California of the protections afforded by the Motor Vehicle Inspection Program.

c. Respondent, or one of his employees, failed to give the Bureau operator a copy of the written estimate for the smog inspection.

d. Respondent Clark failed to perform the emissions control tests on the vehicle in accordance with procedures prescribed by the department.

e. Respondent Clark issued an electronic certificate of compliance without properly testing and inspecting the vehicle to determine if it was in compliance with applicable law and regulations.

f. Respondent Clark willfully made a false entry on the VIR.

g. Respondent Clark entered false information into the Emissions Inspection System when he input data indicating that the vehicle had passed the visual portion of the inspection.

D. *Undercover Operation at the Sutter Creek Facility*

20. On October 27, 2010, an undercover operator with the Bureau drove the Bureau's 1995 Chevrolet Caprice (Chevrolet) to the Sutter Creek facility and requested a smog inspection. The PCV valve and pipe had been removed from the vehicle prior to being brought to the facility. An inspection was performed, and a VIR indicating that the vehicle passed inspection was issued. Later that day, an electronic certificate of compliance was issued for the vehicle.

The following violations of law occurred in connection with the smog inspection:

a. By signing the VIR, respondent Estes certified under penalty of perjury that the vehicle passed inspection and was in compliance with applicable laws and regulations. However, the PCV valve and pipe were missing, either one of which should have caused the vehicle to fail the visual inspection portion of the inspection.

b. Respondent Estes committed fraud by issuing an electronic certificate of compliance for the vehicle without performing a proper inspection of the emissions control devices and systems on the vehicle, thereby depriving the People of the State of California of the protections afforded by the Motor Vehicle Inspection Program.

c. Respondent Estes failed to perform the emissions control tests on the vehicle in accordance with procedures prescribed by the department.

d. Respondent Estes issued an electronic certificate of compliance without properly testing and inspecting the vehicle to determine if it was in compliance with applicable law and regulations.

e. Respondent Estes willfully made a false entry on the VIR.

f. Respondent Estes entered false information into the Emissions Inspection System when he input data indicating that the vehicle has passed the visual portion of the inspection.

III. *Costs of Investigation and Enforcement*

21. The parties stipulated that costs of investigation and prosecution in the amount of \$5,000 are reasonable.

LEGAL CONCLUSIONS

I. *Cause to Discipline Registration and Licenses Based on the Inspection of the Valley Springs Facility*

A. *Untrue or Misleading Statements*

1. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Respondent Clark made a false statement on each of the lamp station certificates discussed in Factual Finding 17a when he wrote the wrong lamp station license number on each certificate, even though he knew the correct license number. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

B. *Failure to Comply with the Business and Professions Code*

2. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Cause exists to discipline Automotive Repair Dealer Registration No. ARD 254307 based on the following violations the Business and Professions Code:

a. **Sections 9887.1 and 9888.3:** A lamp station license is required to operate an official lamp adjusting station, and a brake station license is required to operate an official brake adjusting station. (Bus. & Prof. Code, § 9888.3.) Once a lamp (brake) station's license has expired, it must immediately cease issuing lamp (brake) certificates. (Bus. & Prof. Code, § 9887.1.) Therefore, each lamp adjustment

certificate (Factual Finding 17c) and brake adjustment certificate (Factual Finding 17h) respondent Clark issued after his respective station license had expired constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).)

b. **Section 9889.16:** When a licensed adjuster makes an adjustment in conformance with the Bureau's instructions, he shall issue a certificate which "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 station." (Bus. & Prof. Code, § 9889.16.) Respondent Clark failed to include his lamp station license number on each lamp adjustment certificate discussed in Factual Finding 17c. (Factual Finding 17d.) Additionally, four of those certificates did not specify the type of aimer used during the inspection, as specified in the *Bureau's Handbook for Lamp Adjusters and Stations* and required by California Code of Regulations, title 16, section 3305, subdivision (a)(5). Therefore, the issuance of each of those certificates constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

c. **Section 9889.16:** A certificate issued by a licensed adjuster "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 station." (Bus. & Prof. Code, § 9889.16.) Respondent Clark failed to include the vehicle type and gross vehicle weight rating, if applicable, on each brake adjustment certificate discussed in Factual Finding 17h. (Factual Finding 17i.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

d. **Section 9889.22:** The "willful making of any false statement or entry with regard to a material matter in any . . . oath [or] affidavit" is prohibited by Business and Professions Code section 9889.22. Respondent Clark willfully made a false statement when he certified that each of the 12 certificates identified in Factual Finding 17a contained the correct station license number. (Factual Finding 17b.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

3. A lamp station and/or brake station license may be disciplined 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" or "(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed. . . ." (Bus. & Prof. Code, § 9889.3, subs. (a) and (h).) Cause exists to discipline Lamp Station License Number LS 254307 and

Brake Station License Number BS 254307 based on the following violations of the Business and Professions Code:

a. **Sections 9887.1 and 9888.3:** A lamp station license is required to operate an official lamp adjusting station, and a brake station license is required to operate an official brake adjusting station. (Bus. & Prof. Code, § 9888.3.) Once a lamp (brake) station's license has expired, it must immediately cease issuing lamp (brake) certificates. (Bus. & Prof. Code, § 9887.1.) Therefore, each lamp adjustment certificate (Factual Finding 17c) respondent Clark issued after his lamp station license had expired constitutes separate cause to discipline Lamp Station License Number LS 254307 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively. And each brake adjustment certificate (Factual Finding 17h) respondent Clark issued after his brake station license had expired constitutes separate cause to discipline Brake Station License Number BS 254307 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

b. **Section 9889.16:** When a licensed adjuster makes an adjustment in conformance with the Bureau's instructions, he shall issue a certificate which "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 station." (Bus. & Prof. Code, § 9889.16.) Respondent Clark failed to include his lamp station license number on each lamp adjustment certificate discussed in Factual Finding 17c. (Factual Finding 17d.) Additionally, four of those certificates did not specify the type of aimer used during the inspection, as specified in the *Bureau's Handbook for Lamp Adjusters and Stations* and required by California Code of Regulations, title 16, section 3305, subdivision (a)(5). Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Station License Number LS 254307 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

c. **Section 9889.16:** A certificate issued by a licensed adjuster "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 station." (Bus. & Prof. Code, § 9889.16.) Respondent Clark failed to include the vehicle type and gross vehicle weight rating, if applicable, on each brake adjustment certificate discussed in Factual Finding 17h. (Factual Finding 17i.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Brake Station License Number BS 254307 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

d. **Section 9889.22:** The "willful making of any false statement or entry with regard to a material matter in any . . . oath [or] affidavit" is prohibited by Business and Professions Code section 9889.22. Respondent Clark willfully made a false statement when he certified that each of the 12 certificates identified in Factual

Finding 17a contained the correct station license number. (Factual Finding 17b.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Station License Number LS 254307 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

4. A lamp adjuster and/or brake adjuster license may be disciplined 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" or "(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed. . . ." (Bus. & Prof. Code, § 9889.3, subs. (a) and (h).) Cause exists to discipline Lamp Adjuster License Number LA 127919 and Brake Adjuster License Number BA 127919 based on the following violations of the Business and Professions Code:

a. **Sections 9887.1 and 9888.3:** Only a licensed lamp adjuster may issue a lamp adjustment certificate, and only a licensed brake adjuster may issue a brake adjustment certificate. (Bus. & Prof. Code, § 9888.3.) Once a lamp (brake) station's license has expired, the adjuster must immediately cease issuing lamp (brake) adjustment certificates. (Bus. & Prof. Code, § 9887.1.) Therefore, each lamp adjustment certificate (Factual Finding 17c) and brake adjustment certificate (Factual Finding 17h) respondent Clark issued after his respective station license expired constitutes separate cause to discipline Lamp Adjuster License Number LA 127919 and Brake Adjuster License Number BA 127919 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

b. **Section 9889.16:** When a licensed adjuster makes an adjustment in conformance with the Bureau's instructions, he shall issue a certificate which "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 station." (Bus. & Prof. Code, § 9889.16.) Respondent Clark failed to include his lamp station license number on each lamp adjustment certificate discussed in Factual Finding 17c. (Factual Finding 17d.) Additionally, four of those certificates did not specify the type of aimer used during the inspection, as specified in the *Bureau's Handbook for Lamp Adjusters and Stations* and required by California Code of Regulations, title 16, section 3305, subdivision (a)(5). Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Adjuster License Number LA 127919 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

c. **Section 9889.16:** A certificate issued by a licensed adjuster "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 station." (Bus. & Prof. Code, § 9889.16.) Respondent Clark failed to include the vehicle type and gross

vehicle weight rating, if applicable, on each brake adjustment certificate discussed in Factual Finding 17h. (Factual Finding 17i.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Brake Adjuster License Number BA 127919 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

d. **Section 9889.22:** The "willful making of any false statement or entry with regard to a material matter in any . . . oath [or] affidavit" is prohibited by Business and Professions Code section 9889.22. Respondent Clark willfully made a false statement when he certified that each of the 12 adjustment certificates identified in Factual Finding 17a contained the correct station license number. (Factual Finding 17b.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Adjuster License Number LA 127919 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

C. *Failure to Comply with the California Code of Regulations*

5. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Cause exists to discipline Automotive Repair Dealer Registration No. ARD 254307 based on the following violations of California Code of Regulations, title 16:

a. **Section 3305, subdivision (a)(4):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (4) The bureau's *Handbook for Brake Adjusters and Stations, February 2003*, which is hereby incorporated by reference. . . ." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(4).) Respondent Clark failed to issue the brake adjustment certificates discussed in Factual Finding 17h in accordance with the Bureau's *Handbook for Brake Adjusters and Stations*. (Factual Finding 17j.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

b. **Section 3305, subdivision (a)(5):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (5) The bureau's *Handbook for Lamp Adjusters and Stations, February 2003*, which is hereby incorporated by reference." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(5).) Respondent Clark failed to issue the lamp

adjustment certificates discussed in Factual Finding 17c in accordance with the Bureau's *Handbook for Lamp Adjusters and Stations*. (Factual Finding 17e.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

c. **Section 3308:** "An official station shall stop performing the functions for which it has been licensed when it no longer has the services of a licensed adjuster, or when its station license has expired or has been surrendered, suspended, or revoked. . . ." (Cal. Code Regs., tit. 16, § 3308.) Respondent Clark issued the lamp and brake adjustment certificates discussed in Factual Findings 17c and 17h after the respective station licenses had expired and before they were renewed. (Factual Findings 17f and 17k.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

d. **Section 3308, subdivision (c):** "When an official station license has expired or has been surrendered, suspended, or revoked, the station shall return to the bureau all unused certificates purchased by the station to carry out the function for which it is no longer licensed." (Cal. Code Regs., tit. 16, § 3308, subd. (c).) Respondent Clark failed to return all of his unused certificates to the Bureau after his lamp station and brake station licenses expired. (Factual Findings 17g and 17l.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

6. A lamp station and/or brake station license may be disciplined if the licensee or any partner, officer, or director thereof: "(c) Violates any of the regulations promulgated by the director pursuant to this chapter." (Bus. & Prof. Code, § 9889.3, subd. (c).) Cause exists to discipline Lamp Station License Number LS 254307 and Brake Station License Number BS 254307 based on the following violations of California Code of Regulations, title 16:

a. **Section 3305, subdivision (a)(4):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (4) The bureau's *Handbook for Brake Adjusters and Stations, February 2003*, which is hereby incorporated by reference. . . ." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(4).) Respondent Clark failed to issue the brake adjustment certificates discussed in Factual Finding 17h in accordance with the Bureau's *Handbook for Brake Adjusters and Stations*. (Factual Finding 17j.) Therefore, the issuance of each of those certificates constitutes separate cause to

discipline Brake Station License Number BS 254307 pursuant to Business and Professions Code section 9889.3, subdivision (c).

b. **Section 3305, subdivision (a)(5):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (5) The bureau's *Handbook for Lamp Adjusters and Stations, February 2003*, which is hereby incorporated by reference." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(5).) Respondent Clark failed to issue the lamp adjustment certificates discussed in Factual Finding 17c in accordance with the Bureau's *Handbook for Lamp Adjusters and Stations*. (Factual Finding 17e.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Station License Number LS 254307 pursuant to Business and Professions Code section 9889.3, subdivision (c).

c. **Section 3308:** "An official station shall stop performing the functions for which it has been licensed when it no longer has the services of a licensed adjuster, or when its station license has expired or has been surrendered, suspended, or revoked. . . ." (Cal. Code Regs., tit. 16, § 3308.) Respondent Clark issued the lamp adjustment certificates discussed in Factual Finding 17c after the lamp station license expired and before it was renewed. (Factual Finding 17f.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Station License Number LS 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). He also issued the brake adjustment certificates discussed in Factual Finding 17h after the brake station license expired and before it was renewed (Factual Finding 17k), and the issuance of each of those certificates constitutes separate cause to discipline Brake Station License Number BS 254307 pursuant to Business and Professions Code section 9889.3, subdivision (c).

d. **Section 3308, subdivision (c):** "When an official station license has expired or has been surrendered, suspended, or revoked, the station shall return to the bureau all unused certificates purchased by the station to carry out the function for which it is no longer licensed." (Cal. Code Regs., tit. 16, § 3308, subd. (c).) Respondent Clark failed to return all of his unused lamp adjustment certificates to the Bureau after his lamp station license had expired. (Factual Finding 17g.) Therefore, the issuance of each certificate discussed in Factual Finding 17c constitutes separate cause to discipline Lamp Station License Number LS 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). He also failed to return all of his unused brake adjustment certificates to the Bureau after his brake station license had expired. (Factual Finding 17l.) Therefore, the issuance of each certificate discussed in Factual Finding 17h constitutes separate cause to discipline Brake Station License Number BS 254307 pursuant to Business and Professions Code section 9889.3, subdivision (c).

7. A lamp adjuster and/or brake adjuster license may be disciplined if the licensee or any partner, officer, or director thereof: "(c) Violates any of the regulations promulgated by the director pursuant to this chapter." (Bus. & Prof. Code, § 9889.3, subd. (c).) Cause exists to discipline Lamp Adjuster License Number LA 127919 and Brake Adjuster License Number BA 127919 based on the following violations of California Code of Regulations, title 16:

a. **Section 3305, subdivision (a)(4):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (4) The bureau's *Handbook for Brake Adjusters and Stations, February 2003*, which is hereby incorporated by reference. . . ." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(4).) Respondent Clark failed to issue the brake adjustment certificates discussed in Factual Finding 17h in accordance with the Bureau's *Handbook for Brake Adjusters and Stations*. (Factual Finding 17j.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Adjuster License Number LA 127919 pursuant to Business and Professions Code section 9889.3, subdivision (c).

b. **Section 3305, subdivision (a)(5):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (5) The bureau's *Handbook for Lamp Adjusters and Stations, February 2003*, which is hereby incorporated by reference." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(5).) Respondent Clark failed to issue the lamp adjustment certificates discussed in Factual Finding 17e in accordance with the Bureau's *Handbook for Lamp Adjusters and Stations*. (Factual Finding 17e.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Adjuster License Number LA 127919 pursuant to Business and Professions Code section 9889.3, subdivision (c).

c. **Section 3308:** "An official station shall stop performing the functions for which it has been licensed when it no longer has the services of a licensed adjuster, or when its station license has expired or has been surrendered, suspended, or revoked. . . ." (Cal. Code Regs., tit. 16, § 3308.) Respondent Clark issued the lamp adjustment certificates discussed in Factual Finding 17c after the lamp station licenses had expired and before it was renewed. (Factual Finding 17f.) Therefore, the issuance of each of those certificates constitutes separate cause to discipline Lamp Adjuster License Number LA 127919 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). He also issued the brake adjustment certificates discussed in Factual Finding 17h after the brake station license had expired and before it was renewed (Factual Finding 17k), and the issuance of each of those certificates constitutes separate cause to discipline Brake Adjuster

License Number BA 127919 pursuant to Business and Professions Code section 9889.3, subdivision (c).

d. **Section 3308, subdivision (c):** "When an official station license has expired or has been surrendered, suspended, or revoked, the station shall return to the bureau all unused certificates purchased by the station to carry out the function for which it is no longer licensed." (Cal. Code Regs., tit. 16, § 3308, subd. (c).) Respondent Clark failed to return all of his unused lamp adjustment certificates to the Bureau after his lamp station license had expired. (Factual Finding 17g.) Therefore, the issuance of each certificate discussed in Factual Finding 17c constitutes separate cause to discipline Lamp Adjuster License Number LA 127919 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). He also failed to return all of his unused brake adjustment certificates to the Bureau after his brake station license had expired. (Factual Finding 17l.) Therefore, the issuance of each certificate discussed in Factual Finding 17h constitutes separate cause to discipline Brake Adjuster License Number BA 127919 pursuant to Business and Professions Code section 9889.3, subdivision (c).

II. *Cause to Discipline Registration and Licenses Based on the Inspection of the Sutter Creek Facility*

A. *Failure to Comply with the Business and Professions Code*

8. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Automotive Repair Dealer Registration No. ARD 253948 is subject to discipline based on respondent Clark's failure to comply with Business and Professions Code section 9889.16, which requires an adjustment certificate to state "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 station." The following failures constitute cause for discipline:

a. Respondent Clark's lamp and brake adjuster, respondent Estes, failed to properly prepare or issue three lamp adjustment certificates in that he failed to indicate the type of aimer used during each inspection, as specified in the Bureau's *Handbook for Lamp Adjusters and Stations* and required by California Code of Regulations, title 16, section 3305, subdivision (a)(5). (Factual Finding 18a.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253948 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

b. Respondent Clark's lamp and brake adjuster, respondent Estes, failed to properly prepare or issue 15 lamp adjustment certificates in that he failed to indicate the register owner of each vehicle inspected. (Factual Finding 18b.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253948 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

c. Respondent Clark's lamp and brake adjuster, respondent Estes, failed to properly prepare or issue seven brake adjustment certificates in that he failed to indicate the registered owner of each vehicle inspected. (Factual Finding 18c.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253948 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

d. Respondent Clark's lamp and brake adjuster, respondent Estes, failed to properly prepare or issue four brake adjustment certificates in that he failed to indicate the results of the 20 miles per hour stop test for each vehicle and failed to enter each vehicle type and the gross vehicle weight, if applicable, as specified in the Bureau's *Handbook for Brake Adjusters and Stations* and required by California Code of Regulations, title 16, section 3305, subdivision (a)(4). (Factual Finding 18d.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253948 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

9. A lamp adjuster and/or brake adjuster license may be disciplined 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" or "(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed. . . ." (Bus. & Prof. Code, § 9889.3, subds. (a); and (h).) Lamp Adjuster License Number LA 144076 and Brake Adjuster License Number BA 144076 because respondent Estes failed to comply with Business and Professions Code section 9889.16, which requires an adjustment certificate to state "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 station." The following failures constitute cause for discipline:

a. Respondent Estes failed to properly prepare or issue three lamp adjustment certificates in that he failed to indicate the type of aimer used during each inspection, as specified in the Bureau's *Handbook for Lamp Adjusters and Stations* and required by California Code of Regulations, title 16, section 3305, subdivision (a)(5). (Factual Finding 18a.) Therefore, cause exists to discipline Lamp Adjuster License Number LA 144076 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

b. Respondent Estes failed to properly prepare or issue 15 lamp adjustment certificates in that he failed to indicate the registered owner of each vehicle inspected. (Factual Finding 18b.) Therefore, cause exists to discipline Lamp

Adjuster License Number LA 144076 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

c. Respondent Estes failed to properly prepare or issue seven brake adjustment certificates in that he failed to indicate the registered owner of each vehicle inspected. (Factual Finding 18c.) Therefore, Brake Adjuster License Number BA 144076 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

d. Respondent Estes failed to properly prepare or issue four brake adjustment certificates in that he failed to indicate the results of the 20 miles per hour stop test for each vehicle and failed to enter each vehicle type and the gross vehicle weight, if applicable, as specified in the Bureau's *Handbook for Brake Adjusters and Stations* and required by California Code of Regulations, title 16, section 3305, subdivision (a)(4). (Factual Finding 18d.) Therefore, cause exists to discipline Brake Adjuster License Number BA 144076 pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h), individually and collectively.

B. *Failure to Comply with California Code of Regulations*

10. A lamp station and/or brake station license may be disciplined if the licensee or any partner, officer, or director thereof: "(c) Violates any of the regulations promulgated by the director pursuant to this chapter." (Bus. & Prof. Code, § 9889.3, subd. (c).) Cause exists to discipline Lamp Station License Number LS 253948 and Brake Station License Number BS 253948 based on the following violations of California Code of Regulations, title 16:

a. **Section 3316, subdivision (d):** No unused lamp adjustment certificate may be sold or transferred. (Cal Code of Regs., tit. 16, § 3316, subd. (d).) Respondent Clark sold or transferred unused lamp adjustment certificates from his Sutter Creek facility to his Valley Springs facility. (Factual Finding 18c.) Therefore, cause exists to discipline Lamp Station License Number LS 253948 pursuant to Business and Professions Code section 9889.3, subdivision (c).

b. **Section 3321, subdivision (c):** No unused brake adjustment certificate may be sold or transferred. (Cal Code of Regs., tit. 16, § 3321, subd. (c).) Respondent Clark sold or transferred unused brake adjustment certificates from his Sutter Creek facility to his Valley Springs facility. (Factual Finding 18f.) Therefore, cause exists to discipline Brake Station License Number BS 253948 pursuant to Business and Professions Code section 9889.3, subdivision (c).

11. A lamp adjuster and/or brake adjuster license may be disciplined if the licensee or any partner, officer, or director thereof: "(c) Violates any of the regulations promulgated by the director pursuant to this chapter." (Bus. & Prof. Code, § 9889.3, subd. (c).) Cause exists to discipline Lamp Adjuster License Number

LA 144076 and Brake Adjuster License Number BA 144076 based on the following violations of California Code of Regulations, title 16:

a. **Section 3305, subdivision (a)(4):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (4) The bureau's *Handbook for Brake Adjusters and Stations, February 2003*, which is hereby incorporated by reference. . . ." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(4).) Respondent Estes failed to issue brake adjustment certificates in accordance with the Bureau's *Handbook for Brake Adjusters and Stations*. (Factual Finding 18i.) Therefore, the issuance of each certificate discussed in Factual Findings 18c and 18d constitutes separate cause to discipline Brake Adjuster License Number BA 144076 pursuant to Business and Professions Code section 9889.3, subdivision (c).

b. **Section 3305, subdivision (a)(5):** "All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable: . . . (5) The bureau's *Handbook for Lamp Adjusters and Stations, February 2003*, which is hereby incorporated by reference." (Cal. Code Regs., tit. 16, § 3305, subd. (a)(5).) Respondent Estes failed to issue lamp adjustment certificates in accordance with the Bureau's *Handbook for Lamp Adjusters and Stations*. (Factual Finding 18h.) Therefore, the issuance of each certificate discussed in Factual Findings 18a and 18h constitutes separate cause to discipline Lamp Adjuster License Number LA 144076 pursuant to Business and Professions Code section 9889.3, subdivision (c).

III. Cause to Discipline Registration and Licenses Based on the Undercover Operation at the Valley Springs Facility

A. Untrue or Misleading Statements

12. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Respondent Clark made untrue or misleading statements as discussed in Factual Finding 19a. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

B. *Fraud*

13. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has engaged in conduct that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) Respondent Clark engaged in acts of fraud as discussed in Factual Finding 19b. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

C. *Violations of the Business and Professions Code*

14. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed to provide a customer with a copy of any document which required the customer's signature. (Bus. & Prof. Code, § 9884.7, subd. (a)(3).) Respondent Clark, or one of his employees, failed to provide the Bureau operative with a copy of the written estimate after the operative signed the document. (Factual Finding 19c.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(3).

15. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed to comply with the Automotive Repair Act. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) The Automotive Repair Act requires dealers to provide customers with written estimates of work to be done before commencing such work. (Bus. & Prof. Code, § 9884.9, subd. (a).) Respondent Clark, or one of his employees, failed to provide the Bureau operative with a copy of the written estimate after the operative signed the document. (Factual Finding 19c.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 254307 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

D. *Violations of the Motor Vehicle Inspection Program*

16. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (a).) Cause exists to discipline Smog Check Station License Number RC 254307 based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 44012:** Health and Safety Code section 44012 requires all smog inspections to be performed in accordance with the procedures established by the department. Respondent Clark failed to ensure that the inspection of the Chrysler was performed in accordance with those procedures. (Factual Finding 19d.)

Therefore, cause exists to discipline Smog Check Station License Number RC 254307 pursuant to Health and Safety Code section 44072.2, subdivision (a).

b. **Section 44015:** Health and Safety Code section 44012 forbids the issuance of a certificate of compliance to vehicles with certain conditions. Respondent Clark issued an electronic certificate of compliance for the Chrysler without conducting a proper smog inspection to determine if the vehicle met any of those conditions. (Factual Finding 19c.) Therefore, cause exists to discipline Smog Check Station License Number RC 254307 pursuant to Health and Safety Code section 44072.2, subdivision (a).

17. A smog technician's license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (a).) Cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 issued to respondent Clark based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 44012:** Health and Safety Code section 44012 requires all smog inspections to be performed in accordance with the procedures established by the department. Respondent Clark failed to ensure that the inspection of the Chrysler was performed in accordance with those procedures. (Factual Finding 19d.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 pursuant to Health and Safety Code section 44072.2, subdivision (a).

b. **Section 44059:** Health and Safety Code section 44059 forbids the making of any false statements in oaths or affidavits. Respondent Clark willfully made a false statement on the VIR for the Chrysler when he certified that the vehicle passed smog inspection. (Factual Finding 19f.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 pursuant to Health and Safety Code section 44072.2, subdivision (a).

E. *Violations of the California Code of Regulations*

18. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates any regulation adopted pursuant to the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) Cause exists to discipline Smog Check Station License Number RC 254307 based on the following violations of regulations adopted pursuant to the Motor Vehicle Inspection Program:

a. **Section 3340.24, subdivision (c)**: California Code of Regulations, title 16, section 3340.24, subdivision (c), precludes the issuance of a fraudulent certificate of compliance. Respondent Clark issued a fraudulent certificate for the Chrysler. (Factual Finding 19b.) Therefore, cause exists to discipline Smog Check Station License Number RC 254307 pursuant to Health and Safety Code section 44072.2, subdivision (c).

b. **Section 3340.35, subdivision (c)**: California Code of Regulations, title 16, section 3340.35, subdivision (c), precludes the issuance of a certificate of compliance for a vehicle that has not undergone a proper smog inspection. Respondent Clark issued a certificate for the Chrysler without having performed a proper smog inspection. (Factual Finding 19b.) Therefore, cause exists to discipline Smog Check Station License Number RC 254307 pursuant to Health and Safety Code section 44072.2, subdivision (c).

c. **Section 3340.42**: California Code of Regulations, title 16, section 3340.42 specifies the testing methods and procedures for smog inspections. Respondent Clark did not follow those methods and procedures when he inspected the Chrysler. (Factual Finding 19d.) Therefore, cause exists to discipline Smog Check Station License Number RC 254307 pursuant to Health and Safety Code section 44072.2, subdivision (c).

19. A smog technician's license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates any regulation adopted pursuant to the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) Cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 issued to respondent Clark based on the following violations of regulations adopted pursuant to the Motor Vehicle Inspection Program:

a. **Section 3340.24, subdivision (c)**: California Code of Regulations, title 16, section 3340.24, subdivision (c), precludes the issuance of a fraudulent certificate of compliance. Respondent Clark issued a fraudulent certificate for the Chrysler. (Factual Finding 19b.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 pursuant to Health and Safety Code section 44072.2, subdivision (c).

b. **Section 3340.30, subdivision (a)**: California Code of Regulations, title 16, section 3340.30, subdivision (c), requires a smog technician to perform smog inspections in accordance with the law. Respondent Clark failed to perform a proper smog inspection of the Chrysler. (Factual Finding 19d.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 pursuant to Health and Safety Code section 44072.2, subdivision (c).

c. **Section 3340.41, subdivision (c):** California Code of Regulations, title 16, section 3340.41, subdivision (c), precludes the entry of false information into the EIS. Respondent Clark entered false information into the EIS when he input data indicating that the Chrysler had passed the visual portion of the inspection. (Factual Findings 19g.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 pursuant to Health and Safety Code section 44072.2, subdivision (c).

d. **Section 3340.42:** California Code of Regulations, title 16, section 3340.42 specifies the testing methods and procedures for smog inspections. Respondent Clark did not follow those methods and procedures when he inspected the Chrysler. (Factual Finding 19d.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919 pursuant to Health and Safety Code section 44072.2, subdivision (c).

F. *Dishonesty, Fraud, or Deceit*

20. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, commits an act involving dishonesty, fraud, or deceit. (Health & Saf. Code, § 44072.2, subd. (d).) Respondent Clark issued a fraudulent certificate of compliance for the Chrysler. (Factual Finding 19b.) Therefore, cause exists to discipline Smog Check Station License Number RC 254307 pursuant to Health and Safety Code section 44072.2, subdivision (d).

21. A smog technician license may be disciplined if the licensee, or any officer, partner, or director of the licensee, commits an act involving dishonesty, fraud, or deceit. (Health & Saf. Code, § 44072.2, subd. (d).) Respondent Clark issued a fraudulent certificate of compliance for the Chrysler. (Factual Finding 19h.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 127919.

IV. *Cause to Discipline Registration and Licenses Based on the Undercover Operation at the Sutter Creek Facility*

A. *Untrue or Misleading Statements*

22. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Respondent Estes made untrue or misleading statements as discussed in Factual Finding 20a. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253948 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

B. *Fraud*

23. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partners, officer, or member of the dealer has engaged in conduct that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) Respondent Estes engaged in acts of fraud as discussed in Factual Finding 20b. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253948 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

C. *Violations of the Motor Vehicle Inspection Program*

24. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (a).) Cause exists to discipline Smog Check Station License Number RC 253948 based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 44012**: Health and Safety Code section 44012 requires all smog inspections to be performed in accordance with the procedures established by the department. Respondent Estes failed to ensure that the inspection of the Chevrolet was performed in accordance with those procedures. (Factual Finding 20c.) Therefore, cause exists to discipline Smog Check Station License Number RC 253948 pursuant to Health and Safety Code section 44072.2, subdivision (a).

b. **Section 44015**: Health and Safety Code section 44012 forbids the issuance of a certificate of compliance to vehicle with certain conditions. Respondent Estes issued an electronic certificate of compliance for the Chevrolet without conducting a proper smog inspection to determine if the vehicle met any of those conditions. (Factual Finding 20d.) Therefore, cause exists to discipline Smog Check Station License Number RC 253948 pursuant to Health and Safety Code section 44072.2, subdivision (a).

25. A smog technician's license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (a).) Cause exists to discipline Advanced Emission Specialist Technician License Number EA 144076 issued to respondent Estes based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 44012**: Health and Safety Code section 44012 requires all smog inspections to be performed in accordance with the procedures established by the department. Respondent Estes failed to ensure that the inspection of the Chevrolet was performed in accordance with those procedures. (Factual Finding 20c.) Therefore, cause exists to discipline Advanced Emission Specialist Technician

License Number EA 144076 pursuant to Health and Safety Code section 44072.2, subdivision (a).

b. **Section 44059:** Health and Safety Code section 44059 forbids the making of any false statements in oaths or affidavits. Respondent Estes willfully made a false statement on the VIR for the Chevrolet when he certified that the vehicle passed smog inspection. (Factual Finding 20e.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 144076 pursuant to Health and Safety Code section 44072.2, subdivision (a).

D. *Violations of the California Code of Regulations*

26. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates any regulation adopted pursuant to the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) Cause exists to discipline Smog Check Station License Number RC 253948 based on the following violations of regulations adopted pursuant to the Motor Vehicle Inspection Program:

a. **Section 3340.24, subdivision (c):** California Code of Regulations, title 16, section 3340.24, subdivision (c), precludes the issuance of a fraudulent certificate of compliance. Respondent Estes issued a fraudulent certificate for the Chevrolet. (Factual Finding 20h.) Therefore, cause exists to discipline Smog Check Station License Number RC 253948 pursuant to Health and Safety Code section 44072.2, subdivision (c).

b. **Section 3340.35, subdivision (c):** California Code of Regulations, title 16, section 3340.35, subdivision (c), precludes the issuance of a certificate of compliance for a vehicle that has not undergone a proper smog inspection. Respondent Estes issued a certificate for the Chevrolet without having performed a proper smog inspection. (Factual Finding 20d.) Therefore, cause exists to discipline Smog Check Station License Number RC 253948 pursuant to Health and Safety Code section 44072.2, subdivision (c).

c. **Section 3340.42:** California Code of Regulations, title 16, section 3340.42 specifies the testing methods and procedures for smog inspections. Respondent Estes did not follow those methods and procedures when he inspected the Chevrolet. (Factual Finding 20c.) Therefore, cause exists to discipline Smog Check Station License Number RC 253948 pursuant to Health and Safety Code section 44072.2, subdivision (c).

27. A smog technician's license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates any regulation adopted pursuant to the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) Cause exists to discipline Advanced Emission Specialist Technician License Number

EA 144076 issued to respondent Estes based on the following violations of regulations adopted pursuant to the Motor Vehicle Inspection Program:

a. **Section 3340.24, subdivision (c)**: California Code of Regulations, title 16, section 3340.24, subdivision (c), precludes the issuance of a fraudulent certificate of compliance. Respondent Estes issued a fraudulent certificate for the Chevrolet. (Factual Finding 20b.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 144076 pursuant to Health and Safety Code section 44072.2, subdivision (c).

b. **Section 3340.30, subdivision (a)**: California Code of Regulations, title 16, section 3340.30, subdivision (c), requires a smog technician to perform smog inspections in accordance with the law. Respondent Estes failed to perform a proper smog inspection of the Chevrolet. (Factual Finding 20c.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 144076 pursuant to Health and Safety Code section 44072.2, subdivision (c).

c. **Section 3340.41, subdivision (c)**: California Code of Regulations, title 16, section 3340.41, subdivision (c), precludes the entry of false information into the EIS. Respondent Estes entered false information into the EIS when he input data indicating that the Chevrolet had passed the visual portion of the inspection. (Factual Findings 20f.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 144076 pursuant to Health and Safety Code section 44072.2, subdivision (c).

d. **Section 3340.42**: California Code of Regulations, title 16, section 3340.42 specifies the testing methods and procedures for smog inspections. Respondent Estes did not follow those methods and procedures when he inspected the Chevrolet. (Factual Finding 20c.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 144076 pursuant to Health and Safety Code section 44072.2, subdivision (c).

E. *Dishonesty, Fraud, or Deceit*

28. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, commits an act involving dishonesty, fraud, or deceit. (Health & Saf. Code, § 44072.2, subd. (d).) Respondent Estes issued a fraudulent certificate of compliance for the Chevrolet. (Factual Finding 20b.) Therefore, cause exists to discipline Smog Check Station License Number RC 253948 pursuant to Health and Safety Code section 44072.2, subdivision (d).

29. A smog technician license may be disciplined if the licensee, or any officer, partner, or director of the licensee, commits an act involving dishonesty, fraud, or deceit. (Health & Saf. Code, § 44072.2, subd. (d).) Respondent Estes issued

a fraudulent certificate of compliance for the Chevrolet. (Factual Finding 20b.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 144076.

V. *Cost Recovery*

30. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) whether the licensee has been successful at hearing in getting charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his or her position; 3) whether the licensee has raised a colorable challenge to the proposed discipline; 4) the financial ability of the licensee to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Factual Finding 21, the parties stipulated to investigation and prosecution costs in the amount of \$5,000. Therefore, investigation and prosecution costs in the amount of \$5,000 are reasonable and awarded against respondent Robert Bruce Clark, individually and dba Zoom Smog & Automotive, and respondent Estes, jointly and severally, as set forth in the Order below.

ORDER

1. Brake Station License Nos. BS 253948 (Sutter Creek) and BS 254307 (Valley Springs) issued to respondent Robert Bruce Clark dba Zoom Smog & Automotive are REVOKED.

2. Lamp Station License Nos. LS 253948 (Sutter Creek) and LS 254307 (Valley Springs) issued to respondent Clark dba Zoom Smog & Automotive are REVOKED.

3. Brake Adjuster License No. BA 127919 issued to respondent Clark is REVOKED.

4. Lamp Adjuster License No. LA 127919 issued to respondent Clark is REVOKED.

5. Brake Adjuster License No. BA 144076 issued to respondent James Estes is REVOKED.

6. Lamp Adjuster License No. LA 144076 issued to respondent Estes is REVOKED.

7. Automotive Repair Dealer Registration Nos. ARD 253948 (Sutter Creek) and ARD 254307 (Valley Springs) and Smog Check Station License Nos. RC 253948 (Sutter Creek) and RC 254307 (Valley Springs), each of which was issued to respondent Clark dba Zoom Smog & Automotive; Advanced Emission Specialist Technician License No. EA 127919 issued to respondent Clark; and Advanced Emission Specialist Technician License No. 144076 issued to respondent Estes are each REVOKED. However, each revocation is STAYED and each registration or license is placed on PROBATION for a period of three years, subject to the following terms and conditions:

a. Each registration or license is suspended for a period of 5 days commencing on the effective date of this Decision.

b. During the period of probation, respondent Clark, individually and dba Zoom Smog & Automotive, shall

i. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

ii. Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

iii. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

iv. Within 30 days of the effective date of this Decision, report any financial interest which any partners, officers, or owners of Zoom Smog & Automotive may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

v. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

vi. If an accusation is filed against respondent individually or dba Zoom Smog & Automotive during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

vii. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and/or suspend or revoke any of the licenses.

viii. Attend and successfully complete the Bureau's advanced air/clean air car course. Said course shall be completed and proof of completion submitted to the Bureau within 180 days of the effective date of this Decision and Order. If proof of completion of the course is not furnished to the Bureau within the 180-day period, Smog Check Station License Nos RC 253948 (Sutter Creek) and RC 254307 (Valley Springs) and Advanced Emission Specialist Technician License No. EA 127919 shall each be immediately suspended until such proof is received.

ix. Not perform any form of smog inspection, or emission system diagnosis or repair, until respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the availability of the equipment for inspection by a BAR representative.

c. During the period of probation, respondent Estes shall

i. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

ii. Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

iii. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

iv. Within 30 days of the effective date of this Decision, report any financial interest which he may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

v. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

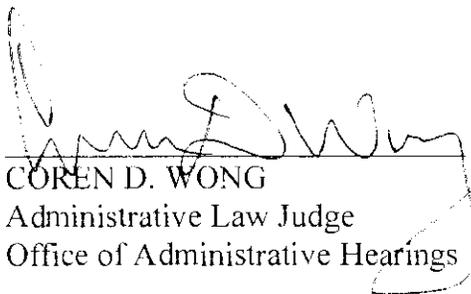
vi. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

vii. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and/or suspend or revoke any of the licenses.

viii. Attend and successfully complete the Bureau's advanced air/clean air car course. Said course shall be completed and proof of completion submitted to the Bureau within 180 days of the effective date of this Decision and Order. If proof of completion of the course is not furnished to the Bureau within the 180-day period, Advanced Emission Specialist Technician License No. EA 144076 shall be immediately suspended until such proof is received.

d. Respondents Clark, individually and dba Zoom Smog & Automotive, and Estes, jointly and severally, shall reimburse the Bureau the sum of \$5,000 for costs incurred while investigating and prosecuting this matter. The costs shall be paid over a 24-month period commencing on the effective date of this Decision and may be paid in accordance with a payment plan approved by the Bureau or its designee.

DATED: December 27, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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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
Valley Springs, CA 95252
15 **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,

A C C U S A T I O N

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

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

3 45. Respondent Estes' brake and lamp adjuster licenses are subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
5 violated section 9889.16 of that Code, as set forth in paragraph 43 above.

6 **ELEVENTH CAUSE FOR DISCIPLINE**

7 **(Violations of Regulations)**

8 46. Respondent Estes' brake and lamp adjuster licenses are subject to disciplinary action
9 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
10 comply with provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3305, subdivision (a)(4)**: Respondent failed to issue the brake certificates
12 identified in subparagraphs 43 (c) and (d) above in accordance with the Bureau's *Handbook for*
13 *Brake Adjusters and Stations*.

14 b. **Section 3305, subdivision (a)(5)**: Respondent failed to issue the lamp certificates
15 identified in subparagraphs 43 (a) and (b) above in accordance with the Bureau's *Handbook for*
16 *Lamp Adjusters and Stations*.

17 **UNDERCOVER OPERATION (SUTTER CREEK FACILITY)**

18 **1995 CHEVROLET CAPRICE**

19 47. On October 27, 2010, an undercover operator with the Bureau (hereinafter
20 "operator") took the Bureau's 1995 Chevrolet Caprice to Respondent Clark's facility located in
21 Sutter Creek, California, and requested a smog inspection. The positive crankcase ventilation
22 ("PCV") valve and pipe¹ had been removed from the Bureau-documented vehicle. The operator
23 signed and received a copy of a written estimate for the inspection. After the inspection was
24 completed, the operator paid the facility \$68.20 and received copies of an invoice and a vehicle
25 inspection report ("VIR"). The VIR indicated that Respondent Estes had performed the smog
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27 ¹ The PCV system prevents harmful engine crankcase vapors from entering the
28 atmosphere.

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);

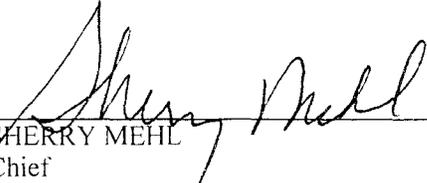
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- 1 11. Revoking or suspending Brake Station License Number BS 253948, issued to Robert
2 Bruce Clark, owner of Zoom Smog & Automotive (Sutter Creek facility);
- 3 12. Revoking or suspending Brake Adjuster License Number BA 127919, issued to
4 Robert 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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