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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No.

79/15-86

13 **ACCUSATION AND PETITION TO**
14 **REVOKE PROBATION**

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

17 **ROBERT BRUCE CLARK**
18 P.O. Box 1894
Sutter Creek, California 95685
19 **Smog Check Inspector (EO) License No.**
127919
20 **Smog Check Repair Technician (EI) License**
No. 127919 (Formerly Advanced Emission
21 **Specialist (EA) Technician License No.**
127919

22 Respondents.

23 **ZOOM SMOG & AUTOMOTIVE**
24 **ROBERT BRUCE CLARK, OWNER**
205 Amador Road
25 Sutter Creek, California 95685
Automotive Repair Dealer Registration No.
ARD 253948
26 **Smog Check Station License No. RC 253948**

27 Affiliated Licenses.

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1 Patrick Dorais (“Complainant/Petitioner”) alleges:

2 **PARTIES**

3 1. Complainant/Petitioner brings this Accusation and Petition to Revoke Probation
4 solely in his official capacity as the Chief of the Bureau of Automotive Repair (“Bureau”),
5 Department of Consumer Affairs.

6 **Automotive Repair Dealer Registrations**

7 2. On or about April 1, 2008, the Bureau issued Automotive Repair Dealer Registration
8 No. ARD 254307 to Robert Bruce Clark (“Respondent”), doing business in Valley Springs,
9 California, as Zoom Smog & Automotive (the “Valley Springs facility”). The registration will
10 expire on January 31, 2015, unless renewed.

11 3. On or about March 4, 2008, the Bureau issued Automotive Repair Dealer Registration
12 No. ARD 253948 to Respondent, doing business in Sutter Creek, California, as Zoom Smog &
13 Automotive (the “Sutter Creek facility”). The registration will expire on January 31, 2015, unless
14 renewed.

15 **Smog Check Station Licenses**

16 4. On or about April 15, 2008, the Bureau issued Smog Check Station License No.
17 RC 254307 to Respondent for his Valley Springs facility. The station license will expire on
18 January 31, 2015, unless renewed.

19 5. On or about March 11, 2008, the Bureau issued Smog Check Station License No.
20 RC 253948 to Respondent for his Sutter Creek facility. The station license will expire on
21 January 31, 2015, unless renewed.

22 **Lamp Station Licenses**

23 6. On or about April 18, 2008, the Bureau issued License No. LS 254307, class A, to
24 Respondent for his Valley Springs facility. The license was revoked on February 27, 2012.

25 7. On or about March 19, 2008, the Bureau issued License No. LS 253948, class A, to
26 Respondent for his Sutter Creek facility. The license was revoked on February 27, 2012.

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1 **Brake Station Licenses**

2 8. On or about April 18, 2008, the Bureau issued License No. BS 254307, class C, to
3 Respondent for his Valley Springs facility. The license was revoked on February 27, 2012.

4 9. On or about March 19, 2008, the Bureau issued License No. BS 253948, class C, to
5 Respondent for his Sutter Creek facility. The license was revoked on February 27, 2012.

6 **Robert Bruce Clark**

7 10. In or around 1997, the Bureau issued Advanced Emission Specialist Technician
8 License No. EA 127919 (“technician license”) to Respondent. Respondent’s technician license
9 was due to expire on July 31, 2013. Pursuant to California Code of Regulations, title 16
10 (“Regulations”), section 3340.28(e), and effective June 13, 2013, Respondent elected to renew the
11 license as Smog Check Inspector (EO) License No. 127919 and Smog Check Repair Technician
12 (EI) License No. 127919.¹ The smog check inspector and smog check repair technician licenses
13 were in full force and effect at all times relevant to the charges brought herein and will expire on
14 July 31, 2015, unless renewed. The advanced emission specialist technician license was cancelled
15 on August 6, 2013.

16 11. In or around 2002, the Bureau issued Brake Adjuster (BA) License No. 127919,
17 class C, to Respondent. The license was revoked on February 27, 2012.

18 12. In or around 2002, the Bureau issued Lamp Adjuster (LA) License No. 127919,
19 class A, to Respondent. The license was revoked on February 27, 2012.

20 **Disciplinary Action**

21 13. In a disciplinary action entitled *In the Matter of the Accusation Against Zoom Smog &*
22 *Automotive Robert Bruce Clark Owner, et al.*, Case No. 77/10-43, the Director of the Department
23 of Consumer Affairs adopted a *Proposed Decision*, effective February 27, 2012 (the “Decision”,
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26 ¹ Effective August 1, 2012, Regulations, sections 3340.28, 3340.29, and 3340.30 were
27 amended to implement a license restructure from the Advanced Emission Specialist Technician
28 (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license
and/or Smog Check Repair Technician (EI) license.

1 attached hereto as **Exhibit A**). The Decision revoked Respondent's automotive repair dealer
2 registration Nos. ARD 254307 (Valley Springs) and ARD 253948 (Sutter Creek), smog check
3 station license Nos. RC 254307 and RC 253948, brake station license Nos. BS 254307 and
4 BS 253948, lamp station license Nos. LS 254307 and LS 253948, Lamp Adjuster (LA) License
5 No. 127919, Brake Adjuster (BA) License No. 127919, and Advanced Emission Specialist (EA)
6 Technician License No. 127919. However, revocations of Respondent's registrations, smog
7 check station licenses, and advanced emission specialist technician license were stayed; those
8 registrations and licenses were placed on probation for three years with certain terms and
9 conditions, and each was suspended for 5 days.

10 **JURISDICTION**

11 14. Business and Professions Code ("Code") section 9884.7 provides that the Director
12 may revoke an automotive repair dealer registration.

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

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

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

24 **STATUTORY PROVISIONS**

25 18. Code section 9884.7 states, in pertinent part:

26 (a) The director, where the automotive repair dealer cannot show there was a
27 bona fide error, may deny, suspend, revoke, or place on probation the registration of
28 an automotive repair dealer for any of the following acts or omissions related to the
conduct of the business of the automotive repair dealer, which are done by the

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1 automotive repair dealer or any automotive technician, employee, partner, officer, or
2 member of the automotive repair dealer.

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

6 (4) Any other conduct that constitutes fraud.

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

9 (c) Notwithstanding subdivision (b), the director may suspend, revoke or place
10 on probation the registration for all places of business operated in this state by an
11 automotive repair dealer upon a finding that the automotive repair dealer has, or is,
12 engaged in a course of repeated and willful violations of this chapter, or regulations
13 adopted pursuant to it.

14 19. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
15 "commission," "committee," "department," "division," "examining committee," "program," and
16 "agency."

17 20. Code section 477(b) states, in pertinent part, that a "license" includes "registration"
18 and "certificate."

19 21. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

29 22. Health & Saf. Code section 44072.8 states that when a license has been revoked or
30 suspended following a hearing under this article, any additional license issued under this chapter
31 in the name of the licensee may be likewise revoked or suspended by the director.

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1 **COST RECOVERY**

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

6 **ACCUSATION**

7 **UNDERCOVER OPERATION – June 23, 2014**

8 24. In or around May 2014, the Bureau introduced a condition in its 1993 Chevrolet that
9 ensured that the vehicle would not pass a properly performed smog check test without adjustment
10 of the ignition timing.

11 25. On or about June 23, 2014, a representative of the Bureau, acting in an undercover
12 capacity (“operator”), took the Bureau’s 1993 Chevrolet to Respondent’s Valley Springs facility
13 and requested a smog and brake inspection.

14 26. The operator did not sign a work order or receive a written estimate for the
15 inspection. While waiting, the operator observed part of a brake inspection being performed.
16 After the inspections were completed, the operator paid the facility \$68.20 and received a copy of
17 an invoice and a Smog Check Vehicle Inspection Report (“VIR”). The VIR indicated that
18 Respondent Robert Bruce Clark performed a smog inspection on the vehicle. That same day,
19 electronic smog Certificate of Compliance No. [REDACTED] was issued for the vehicle.
20 Respondent verbally informed the operator that the brakes on the vehicle were in good condition
21 and that the operator was not charged for the inspection.

22 27. On or about June 8, 2014 and July 10, 2014, the Bureau inspected the vehicle and
23 found that the vehicle could not have passed the functional portion of the smog test because the
24 ignition timing had not been adjusted properly.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 28. Respondent’s registration is subject to disciplinary action pursuant to Code
28 section 9884.7(a)(1), in that Respondent made or authorized a statement which he knew or in the

1 exercise of reasonable care should have known to be untrue or misleading. Specifically,
2 Respondent certified under penalty of perjury on the VIR that the Bureau's 1993 Chevrolet
3 passed the inspection and was in compliance with applicable laws and regulations. In fact the
4 vehicle could not have passed the functional portion of an inspection required by Health & Saf.
5 Code section 44012 because the ignition timing had not been adjusted properly.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 29. Respondent's registration is subject to disciplinary action pursuant to Code
9 section 9884.7(a)(4), in that Respondent committed an act that constitutes fraud by issuing an
10 electronic smog certificate of compliance for the Bureau's 1993 Chevrolet without ensuring that a
11 bona fide inspection was performed of the emission control devices and systems on the vehicle,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

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

16 30. Respondent's registration is subject to disciplinary action pursuant to Code section
17 9884.7(a)(6), in that Respondent failed to comply with that Code as regards the Bureau's 1993
18 Chevrolet, as follows:

19 a. **Section 9884.9(a)**: Respondent failed to provide the operator with a written estimate
20 for the smog inspection.

21 b. **Section 9884.8**: Respondent failed to record on the invoice provided to the Bureau
22 operator that the brakes were inspected.

23 **FOURTH CAUSE FOR DISCIPLINE**

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

25 31. Respondent's smog check station license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2(a), in that, as regards the Bureau's 1993 Chevrolet,
27 Respondent failed to comply with the following sections of that Code:

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1 a. **Section 44012:** Respondent failed to ensure that a functional test of the emission
2 control devices, was performed in accordance with procedures prescribed by the department.

3 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance
4 without ensuring that the vehicle was properly tested and inspected to determine if it was in
5 compliance with Health & Saf. Code section 44012.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Motor Vehicle Inspection Program - Failure to Comply with Regulations)**

8 32. Respondent's smog check station license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2(c), in that, as regards the Bureau's 1993 Chevrolet,
10 Respondent failed to comply with provisions of California Code of Regulations, title 16, as
11 follows:

12 a. **Section 3340.35(c):** Respondent issued an electronic smog certificate of compliance
13 even though the vehicle had not been inspected in accordance with section 3340.42.

14 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests, including
15 a functional timing test, were conducted in accordance with the Bureau's specifications.

16 **SIXTH CAUSE FOR DISCIPLINE**

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

18 33. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2(d), in that Respondent committed a dishonest, fraudulent, or
20 deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
21 for the Bureau's 1993 Chevrolet without ensuring that a bona fide inspection was performed of
22 the emission control devices and systems on the vehicle, thereby depriving the People of the State
23 of California of the protection afforded by the Motor Vehicle Inspection Program.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

26 34. Respondent's smog check inspector license is subject to disciplinary action pursuant
27 to Health & Saf. Code section 44072.2(a), as regards the Bureau's 1993 Chevrolet, in that
28 Respondent failed to comply with provisions of that Code, as follows:

1 a. **Section 44012:** Respondent failed to perform the emission control tests in
2 accordance with procedures prescribed by the department.

3 b. **Section 44059:** Respondent willfully made a false entry on the VIR, as set forth in
4 paragraph 28, above.

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 **(Motor Vehicle Inspection Program - Failure to Comply with Regulations)**

7 35. Respondent's smog check inspector license is subject to disciplinary action pursuant
8 to Health & Saf. Code section 44072.2(c), in that, as regards the Bureau's 1993 Chevrolet,
9 Respondent failed to comply with provisions of California Code of Regulations, title 16, as
10 follows:

11 a. **Section 3340.24(c):** Respondent falsely or fraudulently issued an electronic smog
12 certificate of compliance.

13 b. **Section 3340.30(a):** Respondent failed to inspect and test the vehicle in accordance
14 with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16,
15 section 3340.42.

16 c. **Section 3340.41(c):** Respondent entered false information into the Emissions
17 Inspection System ("EIS") in that Respondent input data indicating that the vehicle had passed the
18 functional portion of the smog inspection. In fact it could not have passed the functional portion
19 of an inspection required by Health & Saf. Code section 44012 because the ignition timing had
20 not been properly adjusted.

21 d. **Section 3340.42:** Respondent failed to conduct the required smog tests, including a
22 functional timing test, in accordance with the Bureau's specifications.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 36. Respondent's smog check inspector and smog check repair technician licenses are
26 subject to discipline pursuant to Health & Saf. Code section 44072.2(d), in that Respondent
27 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an
28 electronic smog certificate of compliance for the Bureau's 1993 Chevrolet without performing a

1 bona fide inspection of the emission control devices and systems on the vehicle, thereby
2 depriving the People of the State of California of the protection afforded by the Motor Vehicle
3 Inspection Program.

4 **PETITION TO REVOKE PROBATION**

5 37. Petitioner incorporates by reference as though fully set forth herein the allegations
6 contained in paragraphs 24 through 36 above.

7 38. Condition 7(b)(vii), of Respondent's probationary order states that should the
8 Director determine that Respondent has failed to comply with the terms and conditions of
9 probation, the Department may, after giving notice and opportunity to be heard, temporarily or
10 permanently invalidate and or suspend or revoke any of the licenses.

11 39. Grounds exist to revoke Respondent's probation and reimpose the order of revocation
12 of Respondent's registrations and licenses as follows:

13 **CAUSE TO REVOKE PROBATION**

14 **(Failure to Obey all Laws)**

15 40. Condition 7(b)(i), of Respondent's probation states that Respondent shall comply
16 with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.

17 41. Respondent's probation is subject to revocation in that he failed to comply with
18 statutes, regulations, and rules governing automotive inspections, as set forth in paragraphs 24
19 through 36 above.

20 **OTHER MATTERS**

21 42. Pursuant to Code section 9884.7(c), the Director may suspend, revoke or place on
22 probation the registration for all places of business operated in this state by Respondent Robert
23 Bruce Clark, doing business as Zoom Smog & Automotive, including Automotive Repair Dealer
24 Registration No. ARD 253948, issued to Robert Bruce Clark, doing business as Zoom Smog &
25 Automotive, upon a finding that Respondent has, or is, engaged in a course of repeated and
26 willful violations of the laws and regulations pertaining to an automotive repair dealer.

27 43. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License No.
28 RC 254307, issued to Robert Bruce Clark, doing business as Zoom Smog & Automotive, is

1 revoked or suspended, including Smog Check Station License No. RC 253948, issued to Robert
2 Bruce Clark, doing business as Zoom Smog & Automotive, and any additional license issued
3 under this chapter in the name of said licensee may be likewise revoked or suspended by the
4 Director.

5 44. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector (EO)
6 License No. 127919, and/or Smog Check Repair Technician (EI) License No. 127919 (formerly
7 Advanced Emission Specialist Technician License No. EA 127919), issued to Robert Bruce
8 Clark, is revoked or suspended, any additional license issued under this chapter in the name of
9 said licensee may be likewise revoked or suspended by the Director.

10 **PRAYER**

11 **WHEREFORE**, Complainant/Petitioner requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 13 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 254307,
14 issued to Robert Bruce Clark, doing business as Zoom Smog & Automotive;
- 15 2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 253948,
16 issued to Robert Bruce Clark, doing business as Zoom Smog & Automotive;
- 17 3. Revoking probation and reimposing the order of revocation of Automotive Repair
18 Dealer Registration No. ARD 254307, issued to Robert Bruce Clark, doing business as Zoom
19 Smog & Automotive;
- 20 4. Revoking probation and reimposing the order of revocation of Automotive Repair
21 Dealer Registration No. ARD 253948, issued to Robert Bruce Clark, doing business as Zoom
22 Smog & Automotive;
- 23 5. Revoking or suspending any other automotive repair dealer registration issued to
24 Robert Bruce Clark;
- 25 6. Revoking or suspending Smog Check Station License No. RC 254307, issued to
26 Robert Bruce Clark, doing business as Zoom Smog & Automotive;
- 27 7. Revoking or suspending Smog Check Station License No. RC 253948, issued to
28 Robert Bruce Clark, doing business as Zoom Smog & Automotive;

Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 77/10-43

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

Respondents.

Case No. 77/10-43

OAH No. 2011050760

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

Doreatha Johnson

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

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

OAH No. 2011050760

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

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.

I. *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, subds. (a) and (h).) Cause exists to discipline Lamp Station License Number L.S. 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, subds. (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 17c.) 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 17i.) 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 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 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 18c.) 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 19h.) 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 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).

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.

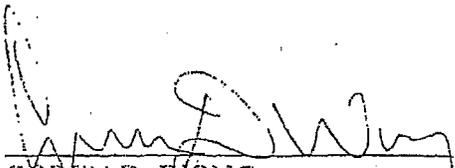
vi. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

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