

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

In the Matter of the Accusation Against:

**COREY'S AUTOMOTIVE & SMOG,
JAMES DENNIS COREY
aka JIM COREY, Owner
Quincy, California 95971**

Automotive Repair Dealer Registration
No. ARD 209888
Smog Check Station License No. RC 209888
Lamp Station License No. LS 209888
Brake Station License No. BS 209888

and,

**JAMES DENNIS COREY
Quincy, California 95971**

Advanced Emission Specialist Technician
License No. EA 146078
Brake Adjuster License No. BA 146078
Lamp Adjuster License No. LA 146078

Respondent.

Case No. 77/11-06

OAH No. 2011100695

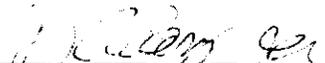
DECISION

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 _____

2/15/13

DATED: January 11, 2013



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Respondent.

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 23 and 24, 2012, in Quincy, California, and on September 5, 2012, in Sacramento, California.

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

James Dennis Corey, aka Jim Corey, was present and represented himself, individually and as owner of Corey's Automotive & Smog (Corey's Automotive or respondent).

Evidence was received, the record was closed, and the matter was submitted for decision on September 5, 2012.

On September 26, 2012, the Office of Administrative Hearings received an ex parte communication from respondent. A disclosure of the ex parte communication was made pursuant to Government Code section 11430.50, and the record was reopened to include the disclosure and the ex parte communication. Neither party requested an opportunity to address the communication within 10 days after receipt of the disclosure. (Gov. Code § 11430.50, subd. (c).) On October 12, 2012, the record was closed, and the matter was submitted for decision.

FACTUAL FINDINGS

1. In 2000, the bureau issued automotive repair dealer registration number ARD 209888 (registration) to respondent, doing business as Corey's Automotive, located in Quincy, California. The registration expires on March 31, 2013, unless renewed.

2. On January 23, 2003, the bureau issued smog check station license number RC 209888 (station license) to respondent, doing business as Corey's Automotive, located in Quincy, California. The license will expire on March 31, 2013, unless renewed.

3. On March 13, 2004, the bureau issued Lamp Station License number LS 209888 to respondent, doing business as Corey's Automotive, located in Quincy, California. The license will expire on March 31, 2013, unless renewed.

4. On March 13, 2004, the bureau issued Brake Station License number BS 209888 to respondent, doing business as Corey's Automotive, located in Quincy, California. The license will expire on March 31, 2013, unless renewed.

5. In 2003, the bureau issued advanced emission specialist technician license number EA 146078 to respondent. The license will expire on December 31, 2012, unless renewed.

6. In 2003, the bureau issued brake adjuster license number EA 146078 to respondent. The license expired on December 31, 2011. No evidence was presented at hearing to establish that this license was renewed.

7. In 2003, the bureau issued lamp adjuster license number EA 146078 to respondent. The license expired on December 31, 2011, and was cancelled on February 5, 2012.

8. The bureau's "Handbook for Lamp Adjusting Stations" (lamp handbook) sets forth the items to be checked when conducting a lamp inspection, and to find any deficiencies in addition to proper lamp aim. The lamp inspection is a checklist for detecting many deficiencies in a vehicle's lighting system, including inspecting the vehicle for any burned out filaments, and checking the headlamp indicator lamp for proper beam function. A vehicle must pass the lamp inspection pursuant to the lamp handbook before a lamp adjustment certificate may be issued. In addition, the bureau's "Handbook for Brake Adjusters and Stations" (brake handbook) sets forth the "Typical Brake Adjustment-Inspection Procedures for Passenger Cars and Light Trucks." The brake handbook provides that the adjuster should not certify a vehicle if: 1) any drum or rotor exceeds the vehicle or parts manufacturer's service limits; and, 2) the thickness of the brake lining (friction material) is found to be less than that specified by the manufacturer's service limits. The brake handbook provides three other conditions where a brake adjustment certificate should not be issued. The undercover operation resulting in the allegations at issue concerned the lamp and brake inspection of a 1994 Ford Explorer.

9. On August 31, 2011, complainant filed the Accusation in her official capacity. Complainant seeks to revoke respondent's registration, licenses and licensing rights on the grounds that respondent passed the brake and lamp inspections on one bureau undercover vehicle, despite the fact that malfunctions were introduced into the vehicle to prevent the vehicle from passing the brake and lamp inspections.

St. Denis Complaint – August 28, 2009

10. On or about August 28, 2009, Donald St. Denis (St. Denis) filed a complaint with the bureau regarding repairs to his 1993 Dodge Pickup truck performed at Corey's Automotive. In his complaint, St. Denis stated that he had called Corey's Automotive to have his air conditioning repaired. Respondent told St. Denis that he needed a filter dryer, and that he would not work on a vehicle with more than 150,000 miles without changing the filter dryer. St. Denis ordered a filter dryer from Napa Auto Parts and brought it to respondent for installation on July 15, 2009. St. Denis was not provided a written estimate for repairs, but had the work done. Respondent told St. Denis that the air conditioning system was missing a piece of shrouding (a thin piece of rubber) causing the system to lose refrigerant, and gave St. Denis Repair Order No. 12317, dated July 15, 2009, totaling \$278.36 for repairs already performed. St. Denis disagreed with respondent's diagnosis and, on July 20, 2009, St. Denis took his truck to American Auto Air, Inc. which diagnosed the truck as needing a new fan clutch. St. Denis paid an additional \$370.13 to American Auto Air, Inc. for repair.

11. On or about September 23, 2009, Joy Wilcox (Wilcox), a Program Representative I with the bureau, requested respondent to provide a copy of all written records, invoices, and estimates regarding St. Denis's truck. On September 24, 2009, a bureau representative received a copy of Repair Order No. 12317 from respondent. Respondent had written the word "Estimate" in front of "Repair Order No. 12317." Wilcox

contacted respondent and explained to him that he could not alter the repair order by adding the word "estimate" to the repair order.

12. *Untrue or Misleading Statement.* By writing the word "estimate" in front of the repair order number, respondent made an untrue or misleading statement, in that he altered the repair order to deceive the bureau into believing that he had given St. Denis an estimate prior to the repairs. Respondent did not think that he needed to print a separate estimate because it had the same information as the repair order. By altering the repair order, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

13. *Failure to Document High and Low Pressure Readings.* Respondent was required to document the high and low pressure air conditioning readings, or the center duct temperature reading on Repair Order No. 12317, as required by California Code of Regulations, title 16, section 3366, subdivisions (a)(15) and (a)(16). The readings were not documented on the repair order. Respondent did not realize that he had to document the pressure and temperature duct readings. He admitted that he was unaware of the law. By failing to document the readings, respondent willfully departed from, or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner. Respondent's registration is thus subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

14. *Failure to Describe Service Work.* Complainant alleged that respondent failed to describe the service work performed on Repair Order No. 12317 pursuant to Business and Professions Code § 9884.8. However, respondent replaced the filter dryer, which was indicated on the repair order. Respondent also indicated on the repair order "Identify and recover refrigerant, then vacuum." Because respondent described the service work on his repair order, his registration is not subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

15. *Failure to Obtain Customer's Authorization.* Complainant alleged that respondent failed to provide St. Denis with a written estimate for repairs, and failed to obtain St. Denis's authorization prior to performing repairs on the truck. (Bus. & Prof. Code § 9884.9.) It was established that respondent failed to provide a written estimate for repairs prior to performing any work. However, St. Denis authorized respondent to replace the filter dryer, in reliance on respondent's diagnosis that it needed to be replaced, even though St. Denis found out later that there was nothing wrong with the filter dryer. St. Denis stated in his complaint that "if I had known what he was going to charge, I would not have authorized repairs." Therefore, it was not established that respondent failed to obtain St. Denis's authorization, based on St. Denis's admission that he authorized respondent to make repairs. However, respondent's registration is subject to discipline for failing to provide St. Denis with a written estimate. (Bus. & Prof. Code § 9884.9., Bus. & Prof. Code § 9884.7(a)(6).)

16. *Failure to Include Hazardous Waste Permit Number.* Respondent was required to include the hazardous waste permit number on the repair order when charging for

hazardous waste fees. (Cal. Code of Regs., tit. 16, §3356.1.) Respondent did not include the hazardous waste permit number on Repair Order No. 12317, although he charged a hazardous waste fee of \$4.50. Respondent admitted that he did not know anything about providing a hazardous waste permit number on the repair order. Respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

Deal Complaint – March 18, 2010

17. On or about March 18, 2010, Ruth Deal (Deal) filed a complaint with the bureau regarding repairs to her 1999 Dodge Pickup truck (Dodge) performed at Corey's Automotive. On February 10, 2010, Deal had her Dodge towed to Corey's Automotive for brake repairs. Deal authorized respondent by phone to repair the rear brakes. Respondent did not provide Deal with a written estimate. Later, Deal's son went to Corey's Automotive to pick up the Dodge. Respondent told Deal's son that the front brake pads had worn unevenly and that he had replaced them. Deal's son kept front brake pads that had been replaced, as they had been installed at Big O Tires on July 15, 2008. On June 16, 2010, Wilcox inspected the front brake pads that had been replaced, and found that the brake pads had not worn unevenly, in that the front brake pads had a thickness of 9/32 inches, and the minimum thickness is 2/32 inches. Wilcox determined that the replacement of the front brake pads was unnecessary.

18. *Untrue or Misleading Statements.* In Repair Order No. 12625, dated February 10, 2010, respondent falsely represented to Deal that the Dodge's front brake pads had worn down to the pad indicator, and had worn unevenly, when they had not. As a result, respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading. By doing so, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

19. *Fraud.* Respondent invoiced and received payment from Deal, in the amount of \$397.50, for the brake repair on Deal's Dodge, when the brake repair was not necessary. Respondent committed acts that constitute fraud, and respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

20. *Failure to Provide Written Estimate.* Respondent was required to provide Deal with a written estimate of the work, including parts and labor. (Bus. & Prof. Code § 9884.9, subd. (a).) Deal was not given a written estimate on the brake repair prior to respondent doing any work. As a result, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

Scheuchenzuber Complaint – June 20, 2010

21. On or about June 20, 2010, George Scheuchenzuber (Scheuchenzuber) filed a complaint with the bureau regarding repairs to his 1981 Honda Accord (Honda) performed at

Corey's Automotive. On or about January 11, 2010, Scheuchenzuber took his Honda to Corey's Automotive for a smog inspection. Scheuchenzuber told respondent that he only had \$200 to spend on the repairs and smog inspection. Respondent did not provide Scheuchenzuber with a written estimate. Later that same day, respondent told Scheuchenzuber that the Honda needed a new carburetor kit at a cost of \$90, and that his labor costs had already exceeded \$200. Respondent told Scheuchenzuber that he needed additional time to work on the Honda and that Scheuchenzuber could make payments to respondent for the cost of the repairs.

22. On or about January 13, 2010, respondent told Scheuchenzuber that the repairs were completed, and that the Honda passed the smog inspection. Respondent told Scheuchenzuber that the total cost of repairs was \$742 and that he could not take possession of the Honda until the repairs had been paid for in full. Scheuchenzuber paid respondent \$200.

23. On February 1, 2010, Scheuchenzuber paid the balance of the repairs and retrieved his vehicle.¹

24. *Failure to Provide Written Estimate.* Respondent was required to provide a written estimate of the price for parts and labor for a specific job. (Bus. & Prof. Code § 9884.9.) Respondent failed to provide Scheuchenzuber with a written estimate. As a result, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

25. *Failure to Provide Authorization for Additional Repairs.* Respondent was required to obtain Scheuchenzuber's authorization for additional repairs prior to performing the repairs on the Honda. (Bus. & Prof. Code § 9884.9.) On January 11, 2010, Scheuchenzuber told respondent that he only had \$200 for repairs. Respondent exceeded the authorized repair amount without informing Scheuchenzuber. Scheuchenzuber explained to respondent that he did not have the money, and inquired how much longer respondent would take to finish the Honda repairs. Respondent told Scheuchenzuber that he needed a couple of more hours. Scheuchenzuber asked if it would be possible to make payments, and respondent stated "yes." Scheuchenzuber did not know what the additional cost to repair would be, beyond the \$200 authorized by Scheuchenzuber. When Scheuchenzuber was informed that the total cost was \$742, he was also informed by respondent that he could not take his car until the bill was paid. Respondent did not obtain Scheuchenzuber's authorization for additional repairs. Scheuchenzuber felt he had no choice but to pay respondent for the additional cost. As a result, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

¹ Scheuchenzuber indicated in his complaint to the bureau that he stopped by Corey's Automotive on February 8, 2010 "to pay the last \$12."

26. *Failure to Maintain/Provide All Records.* Respondent was required to maintain all records, such as work orders, estimates, and invoices, and was required to keep those records open for reasonable inspection by the bureau. (Bus. & Prof. Code, § 9884.11.) On December 28, 2010, Wilcox requested that respondent provide the bureau with copies of the estimates, invoices, and receipts for all complaints, including the Scheuchenzuber complaint. Respondent was to fax the documents to the bureau by December 31, 2010. Respondent failed to do so, either because respondent failed to maintain said records, or because they did not exist. Respondent asserted that an office fire prevented him from giving the documents to Wilcox. His documents were stored in various places after the fire. Respondent provided no evidence to support this assertion. Respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

Bay Complaint – August 18, 2010

27. On August 18, 2010, Arnold Bay (Bay) filed a complaint with the bureau regarding repairs to his 1985 Pontiac 6000 (Pontiac). On August 12, 2010, Bay took his Pontiac to Corey's Automotive for a smog inspection at the recommendation of the State of California because the Pontiac had been "red-tagged" by Susanville Automotive as a gross polluter. Respondent inspected the Pontiac and told Bay that the catalytic converter caused the Pontiac to fail the smog inspection. Respondent also told Bay that he noticed a problem with the air conditioning, and asked Bay if he wanted respondent "to look at it." Bay said "ok." Respondent did not provide Bay with a written estimate. When Bay returned to retrieve his Pontiac, respondent gave Bay Invoice No. 12966, totaling \$196.91, which included repairs to the air conditioning system. The Pontiac still did not pass the smog inspection.

28. On December 28, 2010, Wilcox went to Corey's Automotive and requested copies of estimates, invoices, and receipts for parts related to Bay's Pontiac. Respondent was only able to provide Wilcox with a copy of Invoice No. 12966.

29. *Failure to Provide Written Estimate.* Respondent was required to provide a written estimate of the price for parts and labor for a specific job. (Bus. & Prof. Code § 9884.9.) Respondent failed to provide Bay with a written estimate. As a result, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

30. *Failure to Describe Services Performed and Parts Supplied.* Respondent was required to record all work on an invoice, and to describe all service work done and all parts supplied. (Bus. & Prof. Code § 9884.8.) Complainant alleged that respondent failed to describe the services performed and the parts supplied on Invoice No. 12966. However, respondent indicated on the invoice that he checked emission levels, and charged the system with refrigerant, amounting to a total cost for parts and labor of \$196.91, including sales tax on the refrigerant. The evidence established that respondent complied with Business and

Professions Code section 9884.8, and respondent's registration is not subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

31. *Failure to Maintain/Provide All Records.* Respondent was required to maintain all records, such as work orders, estimates, and invoices, and was required to keep those records open for reasonable inspection by the bureau. (Bus. & Prof. Code, § 9884.11.) On December 28, 2010, Wilcox requested that respondent provide the bureau with copies of the estimates, invoices, and receipts for all complaints, including the Bay complaint. Respondent was to fax the documents to the bureau by December 31, 2010. Respondent failed to do so, either because respondent failed to maintain said records, or because they did not exist. Respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

32. *Failure to Document High and Low Pressure Readings.* Respondent was required to document the high and low pressure air conditioning readings, or the center duct temperature reading on Invoice No. 12966, as required by California Code of Regulations, title 16, section 3366, subdivisions (a)(15) and (a)(16). By failing to do so, respondent willfully departed from, or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner. Respondent's registration is thus subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

Hughes Complaint – September 24, 2008

33. On September 24, 2008, Brian Hughes (Hughes) filed a complaint with the bureau regarding repairs to his 1989 Chevrolet S10 Blazer (Blazer) by Corey's Automotive. On August 15 2008, Hughes took his Blazer to Corey's Automotive for a smog inspection. Respondent did not give Hughes a written estimate. Respondent admitted that he had "no paperwork whatsoever on this car." He characterized his service of the Blazer as a "transaction between friends."

34. *Failure to Provide Written Estimate.* Respondent was required to provide a written estimate of the price for parts and labor for a specific job. (Bus. & Prof. Code § 9884.9.) Respondent failed to provide Hughes with a written estimate. As a result, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

35. *Failure to Maintain/Provide All Records.* Respondent was required to maintain all records, such as work orders, estimates, and invoices, and was required to keep those records open for reasonable inspection by the bureau. (Bus. & Prof. Code, § 9884.11.) On December 28, 2010, Wilcox requested that respondent provide the bureau with copies of the estimates, invoices, and receipts for all complaints, including the Bay complaint. Respondent was to fax the documents to the bureau by December 31, 2010. Respondent failed to do so, either because respondent failed to maintain said records, or because they did not exist. Respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

Undercover Operation – September 29, 2010 – 1994 Ford Explorer

36. Eric Schulte (Schulte) is a Program Representative I in the bureau's Sacramento Documentation Lab. As part of his job duties, Schulte prepares undercover vehicles for smog inspections and inspects those vehicles after they are returned.

37. From July 6 to July 16, 2010, Schulte documented a 1994 Ford Explorer (Explorer), California license number 3WYN738, for an undercover run. Schulte performed both California Emissions Inspection Tests – the Acceleration Simulation Mode (ASM) and the Two Speed idle (TSI) test. The vehicle passed both tests. He next conducted a lamp inspection in accordance with the lamp handbook. Schulte removed the operational bulb from the Instrument Panel Cluster (IPC) and installed a non-operational, burned-out bulb in its place. He also adjusted the left headlamp vertically and out of specification. The Explorer was not in a condition to receive a Certificate of Adjustment for Lamp Adjustment. The only repairs required to bring the lamps into lamp system compliance were to replace the lamp bulb and the high beam indicator bulb.

38. Schulte then inspected the Explorer in accordance with the brake handbook. The Explorer's entire braking system was found to be in good condition and not in need of any repairs. Schulte then machined the left front brake rotor to a thickness of 20.07 millimeters. The minimum acceptable thickness specification for front brake rotors on the Explorer is 20.60 millimeters. Schulte machined the right rear brake drum to an inside diameter of 257.04 millimeters. The maximum acceptable inside diameter specification for rear brake drums on the Explorer is 256.30 millimeters. The Explorer was not in a condition to receive a Certificate of Adjustment for Brake Adjustment. Schulte then obtained a new set of front brake pads and removed 50 percent of the usable lining. The remaining 50 percent of the lining remained intact, and the brake pads were not in need of replacement. The only repairs required to bring the Explorer into brake system compliance were to replace the left front brake rotor and the right rear brake drum.

39. On September 29, 2010, Schulte transferred custody of the Explorer to Wilcox. Wilcox then released custody of the Explorer to Forrest Miller (Miller), a bureau undercover operative. Miller drove the Explorer to Corey's Automotive, met with respondent, and requested a brake, lamp, and smog inspection. Respondent gave Miller a verbal estimate of \$260, which Miller agreed to. Respondent prepared Invoice No. 13063 and had Miller sign it. Respondent did not provide Miller with a copy. Miller returned later in the day to retrieve the Explorer. Respondent told Miller that the Explorer did not pass the brake inspection because both of the front rotors needed to be replaced, the front brake pads needed to be replaced, and the Anti Lock Brake System (ABS) had a problem that needed to be further diagnosed. Respondent also told Miller that the Explorer failed the lamp inspection because the high beam indicator and right front marker lamp were not working, however, the Explorer passed the smog inspection. Miller paid respondent \$260, and according to Miller, respondent had him sign Invoice 13063, provided a copy to Miller, and

stapled to it a copy of the Smog Check Vehicle Inspection Report. Miller released custody of the Explorer back to Wilcox.

40. On October 4, 2010, Wilcox requested that Schulte inspect the Explorer's ABS. Upon inspection, Schulte found no defects with the ABS. Schulte also inspected the integrity of his previous documentation and noted that all four previously installed wheel tamper indicators were broken. Wilcox requested that Schulte install a new tamper indicator on each rear wheel. On October 13, 2010, Schulte transferred custody of the Explorer back to Wilcox.

41. On October 11, 2010, Miller contacted respondent and requested an estimate to repair the Explorer to allow it to pass the brake and lamp inspections. Respondent told Miller it would cost \$869.90, which would include replacing the front brake pads, two rotors, two bottles of brake fluid, and three cans of brake cleaner. Respondent also told Miller that the Explorer needed a further diagnostic check for an additional cost of \$80, and the cost to repair the lights would be \$40, plus parts.

42. On October 13, 2010, Miller towed the Explorer to Corey's Automotive for the repairs. Respondent prepared a repair order. Miller signed the repair order but did not receive a copy.

43. On October 14, 2010, Miller returned to Corey's Automotive to retrieve the Explorer. The total cost of repairs was \$1,109.91, which Miller paid. Miller also received the signed brake and lamp certificates, and received a copy of Invoice No. 13099. Miller then drove the Explorer and released it to the custody of Wilcox.

44. On October 29, 2010, Wilcox returned the Explorer to Schulte for re-inspection. Schulte found the following: 1) the high beam indicator lamp bulb had not been replaced, rendering the Explorer unable to pass the lamp inspection; 2) respondent failed to replace the oversized right rear brake drum, rendering the Explorer unable to pass the brake inspection; 3) respondent unnecessarily replaced both front brake calipers, front brake pads, right front brake rotor, two front wheel seals, and unnecessarily inspected the ABS; and 4) respondent failed to pressure bleed the braking system as invoiced, which was not necessary.

45. *Untrue or Misleading Statement on Invoice.* Respondent told Miller that the ABS would need to have a diagnostic check performed to find the reason for the ABS light coming on. He stated that it would be an additional \$80 for the diagnostic check. Respondent stated to Miller that the ABS might need further repairs which would cost more money, but he needed to diagnose it first. Respondent indicated on Invoice No. 13099 to "Test ABS ECU for Trouble Codes or Diagnostic Info." Respondent charged \$80 for this service. Schulte confirmed that the ABS did not have any defects. Respondent denied making an untrue or misleading statement on the invoice. Respondent falsely represented that the ABS needed an additional diagnostic check; therefore, his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

46. *Untrue or Misleading Statement Regarding Brake System.* Respondent falsely represented to Miller that both front brake calipers, front brake pads, wheel seals, and the right front brake rotor needed to be replaced, when only the left front brake rotor needed to be replaced. As a result of Schulte's inducements of defects to the braking system, Schulte confirmed that the only repairs required to bring the Explorer into brake system compliance were to replace the left front brake rotor and the right rear brake drum.

Respondent asserted that "when you are doing a brake job, you have to do both sides." Respondent did not address the applicable brake handbook section that he followed in performing the brake inspection and repair.

Based upon respondent's untrue or misleading statements regarding the Explorer's brake system, his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

47. *Untrue or Misleading Statement Regarding Lamp Adjustment.* Respondent certified under penalty of the perjury on Lamp Adjustment Certificate No. LC 190799 that he had performed the applicable inspections, adjustments, or repairs on the Explorer in accordance with the laws and regulations. However, the headlamp high beam indicator bulb had not been replaced, and was non-operational. Respondent asserted that he replaced the bulb, and completed a work order for this repair. However, respondent provided no evidence to support this assertion. Therefore, respondent made an untrue or misleading statement on the lamp adjustment certificate, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

48. *Untrue or Misleading Statement Regarding Brake Adjustment.* Respondent certified under penalty of perjury on Brake Adjustment Certificate No. BC 552163 that he had performed the applicable inspections, adjustments, or repairs on the Explorer in accordance with the laws and regulations. However, the right rear brake drum exceeded factory specifications, in that Schulte machined the right rear brake drum to an inside diameter of 257.04 millimeters. The maximum acceptable inside diameter specification for rear brake drums on the Explorer is 256.30 millimeters. Therefore, respondent made an untrue or misleading statement on the brake adjustment certificate, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

49. *Fraud in Charging and Receiving Payment for Replacement of Front Brake Calipers and Rotors.* In July 2010, Schulte introduced defects to the brake system such that the only repairs required to bring the Explorer into brake system compliance were to replace the left front brake rotor and the right rear brake drum. (Finding 38.) Schulte reinspected the Explorer on October 29, 2010, and found that respondent unnecessarily replaced both front brake calipers and the right front brake rotor. (Finding 44.) Respondent invoiced and received payment for this job. By performing unnecessary work and charging for it, respondent committed fraud, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

50. *Fraud in Charging and Receiving Payment for Unnecessary Diagnostic Check of ABS.* On October 4, 2010, Schulte found no defects in the ABS of the Explorer. However, respondent invoiced and received payment for an unnecessary diagnostic check of the ABS. By performing unnecessary work and charging for it, respondent committed fraud, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

51. *Fraud in Charging and Receiving Payment for Bleeding the Brake System.* Schulte induced defects to the braking system on the Explorer, such that the only repairs required to bring the Explorer into brake system compliance were to replace the left front brake rotor and the right rear brake drum. Schulte found that respondent had not performed the brake pressure bleeding as invoiced. It was not necessary to "bleed" the braking system. By performing unnecessary work and charging for it, respondent committed fraud, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

52. *Fraud in Representing on Invoice that Additional Repairs Authorized.* Complainant alleged that respondent represented on the invoice that additional repairs were authorized when, in fact, they were not. On page two of the invoice, under "Approvals," respondent made the notation, "He said he will have me do the work and he will have the truck towed in tomorrow." Miller stated that "I spoke with [respondent] and requested he complete the repairs we previously spoke about so I could register my vehicle." Although the repairs performed were unnecessary, Miller authorized the additional repairs. Therefore, respondent did not commit fraud in this regard, and his registration is not subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

53. *Gross Negligence in Failing to Properly Inspect Brake and Lamp System.* Complainant alleged that respondent committed acts constituting gross negligence, in that he failed to properly inspect the brake and lamp system and issued Brake Adjustment Certificate No. BC 552163 and Lamp Adjustment Certificate No. LC 190799, certifying that the Explorer's brake and lamp systems were in satisfactory condition and were in accordance with the Vehicle Code, when, in fact, they were not.

Respondent disagreed with complainant's allegation. Respondent asserted that he inspected the Explorer "according to standards on the vehicle and BAR standards." He stated that "the front and rear brakes were bled entirely," and that he wanted to flush fluid in/through the system. He was adamant that he removed the dash when making the lamp inspection and repair.

Respondent failed to perform the only repairs required to bring the Explorer into brake system compliance: replacing the left front brake rotor and the right rear brake drum. If respondent had performed a proper inspection as specified by the bureau, he would have found the defects, and performed the requisite repairs. Instead, respondent performed

unnecessary work and installed unnecessary parts, received payment, and issued the Brake Adjustment Certificate. Respondent's acts constitute gross negligence, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(5).

By issuing the lamp adjustment certificate, respondent certified that he had performed the applicable inspections, adjustments, or repairs on the Explorer in accordance with the laws and regulations. The only repairs required to bring the lamps into lamp system compliance were to replace the lamp bulb and the high beam indicator bulb. Schulte found that the headlamp high beam indicator bulb had not been replaced, and was non-operational. Had respondent performed a proper inspection as specified by the bureau, he would have determined that the high beam indicator bulb needed replacement. By certifying that he performed a lamp inspection, receiving payment for the lamp inspection, and issuing the lamp adjustment certificate, while failing to discover the burned-out high beam indicator bulb, respondent's acts constitute gross negligence, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(5).

54. *Departure from Trade Standards for Failure to Properly Inspect Brake System.* Complainant alleged that respondent failed to properly inspect the Explorer's brake system, and issued the brake adjustment certificate without finding and performing the repairs to bring the brake system into compliance.

Respondent asserted that he "made measurements." Respondent denied that he departed from trade standards. He did not explain why he failed to replace the left front brake rotor and right rear brake drum.

By willfully departing from or disregarding accepted trade standards for good and workmanlike repair, and certifying that the Explorer's brake system was in satisfactory condition, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

55. *Departure from Trade Standards for Failure to Properly Inspect Lamp System.* Complainant alleged that respondent failed to properly inspect the Explorer's lamp system, and issued the lamp adjustment certificate without finding and performing the repairs to bring the lamp system into compliance.

Respondent asserted that he made the lamp inspection by making a visual inspection of the high and low beams, aiming the headlights, and making the adjustment. Respondent denied departing from trade standards in performing the lamp inspection. He did not explain why he failed to replace the burned-out high beam indicator bulb.

By willfully departing from or disregarding accepted trade standards for good and workmanlike repair, and certifying that the Explorer's lamp system was in satisfactory

condition, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

56. *Failure to Comply with Provisions of the Automotive Repair Act/Failure to Describe Service Work.* Complainant alleged that respondent failed to describe the service work on Invoice No. 13099. (Bus. & Prof. Code § 9884.8.) However, the invoice described the following work under "Labor/Notes" on page one of the invoice: "Replace front rotors & calipers; Pressure bleed system; Replace defective bulbs; Test ABS ECU for Trouble Codes or Diagnostic Info." Respondent described the service work on the invoice, despite the work being unnecessary or not actually performed. Respondent's registration is not subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

57. *Failure to Comply with Provisions of the Automotive Repair Act/Failure to Provide Operator with Copy of Invoice No. 13099.* Complainant alleged that respondent failed to provide Miller with a copy of Invoice No. 13099. (Bus. & Prof. Code § 9884.9.) However, Miller testified that respondent had him sign Invoice No. 13099, and provided a copy to Miller when Miller returned later in the day to pick up the Explorer. Miller stated that respondent stapled the invoice to the brake and lamp certificate. Therefore, respondent's registration is not subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

58. *Failure to Comply with Provisions of the Automotive Repair Act/Failure to Obtain Authorization.* Complainant alleged that respondent failed to obtain Miller's authorization prior to performing additional repairs on the Explorer. (Bus. & Prof. Code § 9884.9.) Miller, however, testified that when dropping off the Explorer at Corey's Automotive, "Jim stated I would need to stop by and sign the work order to start the repairs." Miller signed two copies of the repair order (Invoice No. 13099), but did not receive a copy when he dropped off the Explorer. By signing the repair order, Miller authorized the work as described on Invoice 13099. Therefore, respondent's registration is not subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

59. *Failure to Comply with Provisions of the Automotive Repair Act/Issuance of Brake and Lamp Certificates When Vehicle Not in Compliance.* (Bus. & Prof. Code § 9889.16.) Complainant alleged that respondent issued the brake and lamp certificates for the Explorer when it was not in compliance with bureau regulations or the requirements of the Vehicle Code, in that the right rear brake drum was oversized and the headlamp indicator bulb was non-operable. Respondent stated that this allegation is not true. He asserted that he made measurements, and the right rear brake drum was "within limits." He also asserted that he replaced the headlamp indicator bulb. According to respondent, the bureau lied.

Respondent failed to perform proper inspections of the brake and lamp systems on the Explorer, yet issued the brake and lamp certificates (Finding 53.) Therefore, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

60. *Failure to Perform a Brake and Lamp Inspection in Accordance with Vehicle's Manufacturer Standards and/or Current Bureau Standards.* (Cal. Code of Regs., tit. 16, § 3305, subd. (a).) Complainant alleged that respondent failed to perform a brake and lamp inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the bureau. Respondent asserted that this allegation was incorrect, and that his measurements and inspections "are quite thorough." However, if respondent followed the bureau's brake and lamp handbooks, he would have found the defects in the brake and lamp systems. Therefore, respondent failed to comply with the bureau's regulations, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

61. *Issuance of Lamp Adjustment Certificate Certifying Satisfactory Condition of Lamp System.* (Cal. Code of Regs., tit. 16, § 3316, subd. (d)(2).) Complainant alleged that respondent issued the lamp adjustment certificate, certifying that the Explorer's lamp system had been inspected and was in satisfactory condition, when, in fact, it was not. Respondent asserted that this allegation was incorrect, and that he performed a thorough inspection. However, if he had performed a thorough inspection, he would have found the burned-out headlamp indicator bulb. The Explorer was not in a condition to receive a certificate of adjustment for the lamp system. Therefore, respondent failed to comply with the bureau's regulations, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

62. *Issuance of Brake Adjustment Certificate Certifying Satisfactory Condition of Brake System.* (Cal. Code of Regs., tit. 16, § 3316, subd. (d)(2).) Complainant alleged that respondent issued the brake adjustment certificate, certifying that the Explorer's brake system had been inspected and was in satisfactory condition, when, in fact, it was not. Respondent asserted that this allegation was incorrect, and that he performed a thorough inspection. However, if he had performed a thorough inspection, he would have found that the left front brake rotor and the right rear brake drum needed to be replaced. The Explorer was not in a condition to receive a certificate of adjustment for the brake system. Therefore, respondent failed to comply with the bureau's regulations, and his registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

63. *Failure to Provide Copy of Signed Document.* (Bus. & Prof. Code § 9884.7, subd. (a)(3).) Complainant alleged that on September 29, 2010, and October 13, 2010, respondent failed to provide Miller with a copy of the invoices, as soon as Miller signed them. On September 29, 2010, respondent provided Miller with a copy of Invoice 13063 as soon as Miller signed it. (Finding 39.) However, on October 13, 2010, respondent did not provide a copy of the repair order that Miller had signed. Therefore, respondent's registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(3).

Respondent's Brake and Lamp Station Licenses

64. On October 14, 2010, respondent failed to comply with provisions of the California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in Findings 60 through 62. Therefore, respondent's brake and lamp stations licenses are subject to discipline pursuant to Business and Professions Code section 9889.3, subdivision (c).

65. On October 14, 2010, respondent committed acts constituting dishonesty, fraud, or deceit, whereby another was injured, as set forth in Findings 49 through 51. Therefore, respondent's brake and lamp stations licenses are subject to discipline pursuant to Business and Professions Code section 9889.3, subdivision (d).

Respondent's Brake and Lamp Adjuster Licenses

66. On October 14, 2010, respondent violated sections of the Business and Professions Code, in that respondent issued brake and lamp adjustment certificates for the Explorer when the Explorer was not in compliance with bureau regulations, as set forth in Finding 59. Therefore, respondent's brake and lamp adjuster licenses are subject to discipline pursuant to Business and Professions Code section 9889.3, subdivision (a).

67. On October 14, 2010, respondent failed to comply with provisions of the California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in Findings 60 through 62. Therefore, respondent's brake and lamp adjuster licenses are subject to discipline pursuant to Business and Professions Code section 9889.3, subdivision (c).

68. On October 14, 2010, respondent committed acts constituting dishonesty, fraud, or deceit, whereby another was injured, as set forth in Findings 49 through 51. Therefore, respondent's brake and lamp adjuster licenses are subject to discipline pursuant to Business and Professions Code section 9889.3, subdivision (d).

Respondent's Smog Check Station and Smog Technician License

69. Respondent committed dishonest, fraudulent, or deceitful acts whereby another was injured, by reason of Findings 12, 18, 19, and 45 through 48. Therefore, respondent's smog check station license and smog technician license are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d).

Factors in Aggravation, Mitigation and Rehabilitation

70. Respondent lives in a "little town." He has been a mechanic for 40 years, and has been a mechanic in Quincy, California for over 20 years. He asserted that he will not crucify his business for the sake of four or five people. He went out of his way to help the complainants. With regard to the undercover operation, respondent asserted that he "did the

front brakes professionally and bled the entire system as a professional mechanic would.” Respondent inspected the brakes, and wrote down the measurements. He asserted that he “did the front and rear brakes correctly.” As for the burned-out bulb, he asserted that he did the work.

71. Respondent’s testimony throughout the entire proceedings was not credible. Respondent denied that he committed any of the acts alleged by the complainants. He asserted that his brake and lamp inspections were proper, and that all repairs were warranted. Respondent presented no other evidence in mitigation or rehabilitation.

Costs

72. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of prosecution in the total amount of \$12,390.00. Complainant submitted a Certification of Prosecution Costs and the Declaration of the Deputy Attorney General, reflecting the total amount. Attached to the Deputy Attorney General’s Declaration are printouts of documents entitled “Cost-of-Suit-Summary,” and “Matter Time Activity By Professional Type.” These documents describe the work performed by Deputies Attorney General and a paralegal. The amount requested by the Office of the Attorney General is reasonable in light of the description of the work performed and the nature of this case.

73. At hearing, respondent did not offer any evidence as to his financial ability to pay the costs. The costs of prosecution are addressed in Legal Conclusions 16 and 17 below.

LEGAL CONCLUSIONS

Corey’s Automotive Registration

1. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), where the automotive repair dealer cannot show that there was a “bona fide error,” an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, has made “in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” By reason of Findings 12, 18, 45, 46, 47, and 48, the evidence established that respondent made statements that were untrue and, which by the exercise of reasonable care, they should have known were untrue. Therefore, cause exists to discipline respondent Corey’s Automotive registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

2. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(3), an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, fails or refuses “to give to a customer a copy of any document

requiring his or her signature, as soon as the customer signs the document.” As set forth in Finding 39, respondent gave Invoice No. 13063 to Miller to sign, Miller signed the invoice, and respondent provided a copy to Miller, stapling the invoice to the copy of the smog check vehicle inspection report. As set forth in Finding 42, respondent gave two copies of the repair order for Miller to sign, but did not provide copies to Miller upon signing. As set forth in Finding 43, respondent provided Miller a copy of Invoice No. 13099 after Miller signed it, stapling the invoice to the brake and lamp inspection certificates. By reason of Finding 42, the evidence established that cause exists to discipline respondent’s registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(3).

3. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, has engaged in conduct that constitutes fraud. In general, fraud will be found when an individual “intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him.” (*Wayne v. Bureau of Private Investigators & Adjusters* (1962) 201 Cal.App.2d 427, 438.) By reason of Findings 19, 49, 50, and 51, the evidence established that respondent engaged in conduct that constituted fraud. Therefore, cause exists to discipline respondent’s registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

4. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(5), an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, has engaged in conduct constituting gross negligence. By reason of Finding 53, the evidence established that respondent engaged in conduct constituting gross negligence. Therefore, cause exists to discipline respondent’s registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(5).

5. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, fails “in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.” As set forth in Findings 15, 16, 20, 24, 25, 26, 29, 31, 34, 35, 59, 60, 61, and 62, respondent failed to comply with provisions of the Automotive Repair Act, and the bureau’s regulations. Therefore, cause exists to discipline respondent’s registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

6. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, has engaged in conduct constituting any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material

respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative. As set forth in Findings 13, 32, 54, and 55, respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair. Therefore, cause exists to discipline respondent's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

Corey's Automotive Brake and Lamp Station Licenses

7. Pursuant to Business and Professions Code section 9889.3, subdivision (c), the director may suspend, revoke, or take other disciplinary action against a license if the licensee or any partner, officer, or director violates any of the regulations promulgated by the director. As set forth in Findings 60 through 62, and 64, respondent failed to comply with the bureau's regulations. Therefore, cause exists to discipline respondent's brake and lamp station licenses pursuant to Business and Professions Code section 9889.3, subdivision (c).

8. Pursuant to Business and Professions Code section 9889.3, subdivision (d), the director may suspend, revoke, or take other disciplinary action against a license if the licensee or any partner, officer, or director commits any act involving dishonesty, fraud, or deceit whereby another is injured. As set forth in Findings 49 through 51, and 65, respondent committed acts constituting dishonesty, fraud, or deceit whereby another was injured. Therefore, cause exists to discipline respondent's brake and lamp station licenses pursuant to Business and Professions Code section 9889.3, subdivision (d).

Corey's Automotive Brake and Lamp Adjuster Licenses

9. Pursuant to Business and Professions Code section 9889.3, subdivision (a), the director may suspend, revoke, or take other disciplinary action against a license if the licensee or any partner, officer, or director violates any section of the Business and Professions Code that relates to his or her licensed activities. As set forth in Findings 59 and 66, respondent violated Business and Professions Code section 9889.16, (issuance of brake and lamp adjustment certificates when vehicle was not in compliance). Therefore, cause exists to discipline respondent's brake and lamp adjuster licenses pursuant to Business and Professions Code section 9889.3, subdivision (a).

10. Pursuant to Business and Professions Code section 9889.3, subdivision (c), the director may suspend, revoke, or take other disciplinary action against a license if the licensee or any partner, officer, or director violates any of the regulations promulgated by the director. As set forth in Findings 60 through 62, and 67, respondent failed to comply with the bureau's regulations. Therefore, cause exists to discipline respondent's brake and lamp adjuster licenses pursuant to Business and Professions Code section 9889.3, subdivision (c).

11. Pursuant to Business and Professions Code section 9889.3, subdivision (d), the director may suspend, revoke, or take other disciplinary action against a license if the licensee or any partner, officer, or director commits any act involving dishonesty, fraud, or deceit whereby another is injured. As set forth in Findings 49 through 51, and 68,

respondent committed acts constituting dishonesty, fraud, or deceit whereby another was injured. Therefore, cause exists to discipline respondent's brake and lamp station adjuster licenses pursuant to Business and Professions Code section 9889.3, subdivision (d).

Corey's Automotive Smog Check Station License

12. Pursuant to Health and Safety Code section 44072.2, subdivision (a), a station license may be suspended, revoked or otherwise disciplined if the licensee violates any section of the Motor Vehicle Inspection Program, Health and Safety Code section 44000 et seq.

13. Pursuant to Health and Safety Code section 44072.2, subdivision (d), a station license may be suspended, revoked or otherwise disciplined if the licensee "[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured." As set forth in Findings 12, 18, 19, 45 through 48, and 69, the evidence established that respondent engaged in acts involving dishonesty, fraud, or deceit. Therefore, cause exists to discipline respondent's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (d).

Other Matters

14. Pursuant to Business and Professions Code section 9884.7, subdivision (c), "the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it." Based on the Findings as a whole, the evidence established that respondent engaged in a course of repeated and willful violations of the Automotive Repair Act, and the bureau's regulations. Therefore, cause exists to discipline respondent's registration for all places of business operated by respondent.

15. Pursuant to Health and Safety Code section 44072.8, "[w]hen a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

Respondent's violations are serious, in that he performed unnecessary repairs, charged his customers for those repairs, did not perform required repairs despite his assertions that he did, failed to maintain records, departed from trade standards, and issued brake and lamp certificates when the vehicle was not in compliance. If not for the bureau's investigation and Accusation, respondent would have continued to violate the rules and regulations designed to protect the safety of all Californians. Respondent was not credible, and he offered no assurances that he now understands and accepts responsibility for his conduct, and will correct his actions. Therefore, respondent cannot be relied upon to comply with the law. Probation will not ensure that the public interest and welfare will be adequately protected. Respondent will not benefit from additional training, because he feels

that he is qualified, experienced, and competent. Respondent provided no evidence of this assertion. Given his history, revocation of respondent's registration, brake and lamp station licenses, brake and lamp adjuster licenses, smog check station license, and advanced emission specialist technician license is required to protect the public interest and welfare.

Cost Recovery

16. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the following factors to be considered in determining the reasonableness of the costs sought pursuant to regulatory and statutory provisions like Business and Professions Code section 125.3:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a chiropractor engaged in relatively innocuous misconduct.

17. As set forth in Finding 72, there was sufficient evidence to substantiate that the \$12,390 in costs charged by the Attorney General's office were reasonable. Respondent did not provide evidence of his financial ability to pay the requested costs. Respondent was, however, successful in getting the charges set forth in Findings 14, 15, 25, 30, 52, and 56 through 58, dismissed. Therefore, respondent established that these costs should be reduced. Based upon all the factors set forth in *Zuckerman*, respondent should be ordered to pay the bureau \$9,390 in costs for the prosecution of the Accusation.

ORDER

1. Automotive repair dealer registration number ARD 20988 issued to respondent, James Dennis Corey, doing business as Corey's Automotive and Smog, located in Quincy, California, is permanently invalidated.
2. Smog check station license number RC 209888 issued to respondent, James Dennis Corey, doing business as Corey's Automotive and Smog, located in Quincy, California, is revoked.
3. Lamp Station license number LS 209888 issued to respondent, James Dennis Corey, doing business as Corey's Automotive and Smog, located in Quincy, California, is revoked.
4. Brake Station license number BS 209888 issued to respondent, James Dennis Corey, doing business as Corey's Automotive and Smog, located in Quincy, California, is revoked.
5. Advanced Emission Specialist Technician license number EA 146078 issued to respondent James Dennis Corey is revoked.
6. Lamp Adjuster license number LA 146078 issued to respondent James Dennis Corey is revoked.
7. Brake Adjuster license number BA 146078 issued to respondent James Dennis Corey is revoked.
8. Respondent is ordered to pay to the bureau the costs of prosecution of this matter, in the amount of \$9,390, pursuant to Finding 72, and Legal Conclusions 16 and 17. This amount shall not be due and owing unless and until respondent reapplies for and is issued any of the aforementioned registration and/or licenses, or any of the aforementioned registration and/or licenses are reinstated. Upon issuance or reinstatement of any of said registration and/or licenses, respondent shall provide evidence of payment of prosecution costs to the bureau.

Dated: November 13, 2012



DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

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

11
12 In the Matter of the Accusation Against:

Case No. 77/11-06

13 **COREY'S AUTOMOTIVE & SMOG**
14 **JAMES DENNIS COREY**

ACCUSATION

15 **aka JIM COREY, Owner**

16 2115 East Main Street

Quincy, California 95971

17 **Automotive Repair Dealer Registration No. ARD 209888**

Smog Check Station License No. RC 209888

18 **Lamp Station License No. LS 209888**

Brake Station License No. BS 209888

19 **JAMES DENNIS COREY**

20 2115 East Main Street

Quincy, California 95971

21 **Advanced Emission Specialist Technician License No. EA**

146078

22 **Brake Adjuster License No. BA 146078**

Lamp Adjuster License No. LA 146078

23 Respondent.

24
25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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

1 **Automotive Repair Dealer Registration**

2 2. In or about 2000, the Bureau issued Automotive Repair Dealer Registration
3 Number ARD 209888 (“registration”) to James Dennis Corey, also known as Jim Corey
4 (“Respondent”), doing business as Corey’s Automotive & Smog. The registration was in full
5 force and effect at all times relevant to the charges brought herein and will expire on March 31,
6 2012, unless renewed.

7 **Smog Check Station License**

8 3. On or about January 23, 2003, the Bureau issued Smog Check Station Number RC
9 209888 (“station license”) to Respondent. The station license was in full force and effect at all
10 times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

11 **Lamp Station License**

12 4. On or about March 13, 2004, the Bureau issued Lamp Station License Number LS
13 209888 to Respondent. The lamp station license was in full force and effect at all times relevant
14 to the charges brought herein and will expire on March 31, 2012, unless renewed.

15 **Brake Station License**

16 5. On or about March 13, 2004, the Bureau issued Brake Station License Number BS
17 209888 to Respondent. The brake station license was in full force and effect at all times relevant
18 to the charges brought herein and will expire on March 31, 2012, unless renewed.

19 **Advanced Emission Specialist Technician License**

20 6. In or about 2003, the Bureau issued Advanced Emission Specialist Technician
21 License Number EA 146078 (“technician license”) to Respondent. Respondent’s technician
22 license was in full force and effect at all times relevant to the charges brought herein and will
23 expire on December 31, 2012, unless renewed.

24 **Brake Adjuster License**

25 7. In or about 2003, the Bureau issued Brake Adjuster License Number BA 146078
26 to Respondent. Respondent’s brake adjuster license was in full force and effect at all times
27 relevant to the charges brought herein and will expire on December 31, 2011, unless renewed.

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10. Section 9889.3 of the Code states, in pertinent part:

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

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

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

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

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

11. Section 9889.1 of the Code states:

Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

12. Section 9889.9 of the Code states:

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

13. Section 9889.16 of the Code states:

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

14. Section 9889.7 of the Code states:

The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license.

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15. Code section 9884.8 states:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

16. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs, and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

(signature or initials)"

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

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1 17. Code section 9884.11 states:

2 Each automotive repair dealer shall maintain any records that are required
3 by regulations adopted to carry out this chapter [the Automotive Repair Act]. Those
4 records shall be open for reasonable inspection by the chief or other law enforcement
5 officials. All of those records shall be maintained for at least three years.

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

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

13 20. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

23 22. Section 44072.8 of the Health and Safety Code states:

24 When a license has been revoked or suspended following a hearing under
25 this article, any additional license issued under this chapter in the name of the
26 licensee may be likewise revoked or suspended by the director.

27 **STATUTORY REGULATIONS**

28 23. California Code of Regulations, title 16, section 3305 states, in pertinent part:

(a) 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:

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(1) Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.

(2) Current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device manufacturers.

(3) Standards, specifications and recommended procedures found in current industry-standard reference manuals and periodicals published by nationally recognized repair information providers.

(4) The bureau's Handbook for Brake Adjusters and Stations, February 2003, which is hereby incorporated by reference.

(5) The burcau's Handbook for Lamp Adjusters and Stations, February 2003, which is hereby incorporated by reference.

24. California Code of Regulations, title 16, section 3316 states, in pertinent part:

The operation of official lamp adjusting stations shall be subject to the following provisions:

(d) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment from the bureau for a fee of three dollars and fifty cents (\$3.50) each and shall not purchase or otherwise obtain such certificates from any other source. Full payment is required at the time certificates are ordered. Certificates are not exchangeable following delivery. A licensed station shall not sell or otherwise transfer unused certificates of adjustment. Issuance of a lamp adjustment certificate shall be in accordance with the following provisions:

(2) Where all of the lamps, lighting equipment, and related electrical systems on a vehicle have been inspected and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, the certificate shall certify that the entire system meets all of those requirements.

25. California Code of Regulations, title 16, section 3321 states, in pertinent part:

The operation of official brake adjusting stations shall be subject to the following provisions:

(c) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment from the bureau for a fee of three dollars and fifty cents (\$3.50) and shall not purchase or otherwise obtain such certificates from any other source. A licensed station shall not sell or otherwise transfer unused certificates of adjustment. Full payment is required at the time certificates are ordered. Certificates are not exchangeable following delivery. Issuance of a brake adjustment certificate shall be in accordance with the following provisions:

(2) Where the entire brake system on any vehicle has been inspected or tested and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, and the vehicle has been road-tested, the certificate shall certify that the entire system meets all such requirements.

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1 26. California Code of Regulations, title 16, section 3356.1 states:

2 An automotive repair dealer may charge a customer for costs associated with
3 the handling, management and disposal of toxic wastes or hazardous substances under
4 California or federal law which directly relate to the servicing or repair of the
5 customer's vehicle. Such charge must be disclosed to the customer by being
6 separately itemized on the estimate prepared pursuant to Section 9884.9(a) of the
7 Business and Professions Code and on the invoice prepared pursuant to Section
8 9884.8 of the Business and Professions Code. In order to assess this charge, the
9 automotive repair dealer must note on the estimate and invoice the station's
10 Environmental Protection Agency identification number required by Section 262.12
11 of Title 40 of the Code of Federal Regulations.

12 27. California Code of Regulations, title 16, section 3366 states, in pertinent part:

13 (a) Except as provided in subsection (b) of this section, any automotive
14 repair dealer that advertises or performs, directly or through a subcontractor,
15 automotive air conditioning work and uses the words service, inspection, diagnosis,
16 top off, performance check or any expression or term of like meaning in any form of
17 advertising or on a written estimate or invoice shall include and perform all of the
18 following procedures as part of that air conditioning work:

19 (15) High and low side system operating pressures, as applicable, have been
20 measured and recorded on the final invoice; and,

21 (16) The center air distribution outlet temperature has been measured and
22 recorded on the final invoice.

23 COST RECOVERY

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

28 CONSUMER COMPLAINT NO. 1 - 1993 DODGE PICKUP

29 On or about September 2, 2009, the Bureau received a consumer complaint from
30 Donald St. Denis ("consumer") regarding repairs to his 1993 Dodge Pickup truck performed at
31 Respondent's facility. In or about July 2009, the consumer contacted Respondent regarding the
32 lack of cooling he was experiencing with the air conditioning system in his vehicle. Respondent
33 told the consumer that he would not repair the air conditioning system without first replacing the
34 filter dryer. The consumer purchased a filter dryer and brought it with him to Respondent's
35 facility on July 15, 2009, to be installed. The consumer was not provided with a written estimate
36 for the repairs, but had the work done. Respondent then told the consumer that the air -

1 conditioning system was missing a piece of shrouding causing the system to lose refrigerant and
2 presented the consumer with Repair Order No. 12317 totaling \$278.36 for the repairs already
3 performed. The consumer disagreed with Respondent's diagnosis and took the vehicle to another
4 repair facility which diagnosed the vehicle as needing a new cooling fan clutch. The consumer
5 paid an additional \$370.13 to that facility for that repair.

6 30. On or about September 23, 2009, a Bureau representative requested Respondent to
7 provide a copy of all written records, invoices, and/or estimates regarding the consumer's vehicle

8 31. On or about September 24, 2009, a Bureau representative received a copy of Repair
9 Order No. 12317 from Respondent. Respondent had written the word "estimate" in front of the
10 repair order number. A Bureau representative contacted Respondent and explained to him that he
11 could not alter the repair order by adding the word "estimate" in front of the repair order number.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 32. Respondent's registration is subject to discipline pursuant to Code section
15 9884.7(a)(1), in that on or about July 15, 2009, Respondent made or authorized statements which
16 he knew or in the exercise of reasonable care should have known to be untrue or misleading, in
17 that Respondent altered Repair Order No. 12317 by writing the word "estimate" in front of the
18 repair order number.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Departure from Trade Standards)**

21 33. Respondent's registration is subject to discipline under Code section 9884.7(a)(7), in
22 that Respondent willfully departed from or disregarded accepted trade standards for good and
23 workmanlike repair without the consent of the owner or the owner's duly authorized
24 representative in a material respect, in that Respondent failed to document the high and low
25 pressure air conditioning reading, or the center duct temperature reading on Repair Order No.
26 12317, as required by California Code of Regulations, title 16, section 3366(a)(15) and (16).

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1 replaced elsewhere. On or about June 16, 2010, a Bureau representative inspected the front brake
2 pads that had been replaced and found that the brake pads had not worn unevenly¹.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 37. Respondent's registration is subject to discipline pursuant to Code section
6 9884.7(a)(1), in that on or about February 10, 2010, Respondent made or authorized statements
7 which he knew or in the exercise of reasonable care should have known to be untrue or
8 misleading, in that Respondent falsely represented to the consumer on Repair Order No. 12625
9 that the front brake pads had worn down to the pad indicator and had worn unevenly when, in
10 fact, they had not.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 38. Respondent's registration is subject to discipline pursuant to Code section
14 9884.7(a)(4), in that on or about February 10, 2010, Respondent committed acts that constitute
15 fraud, in that Respondent invoiced and received payment from the consumer for replacing the
16 front brake pads when, in fact, that repair was not necessary.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Provisions of the Automotive Repair Act)**

19 39. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
20 in that on or about February 10, 2010, Respondent failed to materially comply with Code section
21 9884.9(a), in that he failed to provide the consumer with a written estimated price for parts and
22 labor for a specific job.

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26 ¹ The consumer's front brake pads measured at a thickness of 9/32, when the minimum
27 thickness is 2/32.
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2 **CONSUMER COMPLAINT NO. 3 – 1981 HONDA ACCORD**

3 40. On or about June 20, 2010, the Bureau received a consumer complaint from George
4 Scheuchenzuber ("consumer") regarding repairs to his 1981 Honda Accord performed at
5 Respondent's facility. On or about January 11, 2010, the consumer drove his vehicle to
6 Respondent's facility for a smog inspection. The consumer told Respondent that he only had
7 \$200 to spend on repairs and the smog inspection. Respondent did not provide the consumer with
8 an estimate. Later that same day, Respondent told the consumer that the vehicle needed a new
9 carburetor kit at a cost of \$90, and that his labor costs had already exceeded \$200. Respondent
10 also told the consumer that he needed additional time to work on the vehicle and that the
11 consumer could make payments to him for the cost of the repairs.

12 41. On or about January 13, 2010, Respondent told the consumer that the repairs were
13 completed, and that the vehicle passed the smog inspection. Respondent told the consumer that
14 the total cost of the repairs was \$742 and that he could not take possession of the vehicle until the
15 repairs had been paid for in full. The consumer paid Respondent \$200.

16 42. On or about February 1, 2010, the consumer paid the balance of the repairs and
17 retrieved his vehicle.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Provisions of the Automotive Repair Act)**

20 43. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
21 in that on or about January 11, 2010, Respondent failed to materially comply with the following
22 provisions of that Code:

23 a. **Section 9884.9:**

24 i. Respondent failed to provide the consumer with a written estimated price
25 for parts and labor for a specific job.

26 ii. Respondent failed to obtain the consumer's authorization for additional
27 repairs prior to performing the repairs on the vehicle.

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2 b. **Section 9884.11:**

3 iii. Respondent failed to produce a copy of all work orders, estimates, or
4 invoices regarding the consumer's vehicle when requested by a Bureau representative.

5 **CONSUMER COMPLAINT NO. 4 – 1985 PONTIAC 6000**

6 44. On or about August 18, 2010, the Bureau received a consumer complaint from
7 Arnold Bay ("consumer") regarding repairs to his 1985 Pontiac 6000 performed at Respondent's
8 facility. On or about August 12, 2010, the consumer drove his vehicle to Respondent's facility for
9 a smog inspection². Respondent inspected the vehicle and told the consumer that the catalytic
10 converter was causing the vehicle to fail the smog inspection. Respondent also told the consumer
11 he noticed a problem with the vehicle's air conditioning system and asked the consumer if he
12 would like him to inspect it. The consumer agreed. When the consumer returned to retrieve his
13 vehicle, Respondent presented the consumer with Invoice No. 12966 totaling \$196.91, which
14 included repairs to the air conditioning system.

15 45. On or about December 28, 2010, a Bureau representative went to Respondent's
16 facility and requested copies of estimates, invoices, and receipts for parts regarding the
17 consumer's vehicle. Respondent was only able to provide the Bureau representative with a copy
18 of Invoice No. 12966.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Provisions of the Automotive Repair Act)**

21 46. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
22 in that on or about August 12, 2010, Respondent failed to materially comply with the following
23 provisions of that Code:

24 a. **Section 9884.9:**

25 i. Respondent failed to provide the consumer with a written estimated price
26 for parts and labor for a specific job.

27 ² The State of California recommended Respondent's facility to the consumer as a referee,
28 in that the consumer's vehicle had been red-tagged by another facility as a gross polluter.

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2 b. **Section 9884.8:**

3 ii. Respondent failed to describe the services performed and the parts supplied
4 on Invoice No. 12966.

5 c. **Section 9884.11:**

6 iii. Respondent failed to produce a copy of all work orders, estimates, or
7 invoices regarding the consumer's vehicle when requested by a Bureau representative.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Departure from Trade Standards)**

10 47. Respondent's registration is subject to discipline under Code section 9884.7(a)(7), in
11 that Respondent willfully departed from or disregarded accepted trade standards for good and
12 workmanlike repair without the consent of the owner or the owner's duly authorized
13 representative in a material respect, in that Respondent failed to document the high and low
14 pressure air conditioning reading, or the center duct temperature reading on Invoice No. 12966, as
15 required by California Code of Regulations, title 16, section 3366(a)(15) and (16).

16 **CONSUMER COMPLAINT NO. 5 – 1989 CHEVROLET S10 BLAZER**

17 48. On or about September 28, 2010, the Bureau received a consumer complaint from
18 Brian Hughes ("consumer") regarding repairs to his 1989 Chevrolet S10 Blazer performed at
19 Respondent's facility. On or about November 4, 2008, the consumer drove his vehicle to
20 Respondent's facility for a smog inspection. Respondent failed to provide the consumer with an
21 estimate.

22 **ELEVENTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Provisions of the Automotive Repair Act)**

24 49. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
25 in that on or about November 4, 2008, Respondent failed to materially comply with the following
26 provisions of that Code:

27 a. **Section 9884.9:**

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1 i. Respondent failed to provide the consumer with a written estimated price
2 for parts and labor for a specific job.

3 b. **Section 9884.11:**

4 ii. Respondent failed to produce a copy of all work orders, estimates, or
5 invoices regarding the consumer's vehicle when requested by a Bureau representative.

6 **UNDERCOVER OPERATION NO. 1: 1994 FORD EXPLORER**

7 50. On or about September 29, 2010, an undercover Bureau operator ("operator")
8 drove a Bureau documented 1994 Ford Explorer to Respondent's facility for a brake, lamp, and
9 smog inspection³. The operator was greeted by Respondent and requested a brake, lamp, and
10 smog inspection be performed on the vehicle. Respondent gave the operator a verbal estimate of
11 \$260, which the operator agreed to. Later, Respondent prepared Invoice No. 13063 and had the
12 operator sign it. Respondent did not provide the operator with a copy. That same day, the
13 operator returned to Respondent's facility to retrieve the vehicle. Respondent told the operator
14 that the vehicle did not pass the brake inspection because both of the front rotors needed to be
15 replaced; the front brake pads needed to be replaced; and the Anti Lock Brake System ("ABS")
16 had a problem that needed to be further diagnosed. Respondent also told the operator that the
17 vehicle failed the lamp inspection because the high beam indicator and right front marker lamp
18 was not working; however, the vehicle passed the smog inspection. The operator paid
19 Respondent \$260.

20 51. On or about October 11, 2010, the operator contacted Respondent and requested
21 an estimate to repair the vehicle to allow it to pass the brake and lamp inspections. Respondent
22 told the operator it would cost \$869.90, which would include replacing the front brake pads, two
23 rotors, two bottles of brake fluid, and three cans of brake cleaner. Respondent also told the
24 operator that the vehicle needed a further diagnostic check for an additional cost of \$80; and the
25 cost to repair the lights would be \$40 plus parts.

26
27 ³ The only repairs necessary were the replacement of the left front brake rotor, right rear
28 brake drum, one marker lamp bulb, and the high beam indicator bulb.

1 c. Respondent certified under penalty of perjury on Lamp Adjustment Certificate
2 Number LC 190799 that he had performed the applicable inspections, adjustments, or repairs on
3 the vehicle in accordance with the laws and regulations when, in fact, the headlamp high beam
4 indicator bulb was non-operational.

5 d. Respondent certified under penalty of perjury on Brake Adjustment Certificate
6 Number BC 552163 that he had performed the applicable inspections, adjustments, or repairs on
7 the vehicle in accordance with the laws and regulations when, in fact, the right rear brake drum
8 was beyond factory specifications for maximum diameter (oversized).

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 56. Respondent's registration is subject to discipline pursuant to Code section
12 9884.7(a)(4), in that on or about October 14, 2010, Respondent committed acts that constitute
13 fraud, as follows:

14 a. Respondent invoiced and received payment for replacing both front brake calipers
15 and rotors when, in fact, only the left front brake rotor needed to be replaced.

16 b. Respondent invoiced and received payment for an unnecessary diagnostic check of
17 the ABS.

18 c. Respondent invoiced and received payment for bleeding the brake system when, in
19 fact, that service was not performed. In addition, that repair was not necessary.

20 d. Respondent represented on the invoice that additional repairs were authorized
21 when, in fact, they were not.

22 **FOURTEENTH CAUSE FOR DISCIPLINE**

23 **(Gross Negligence)**

24 57. Respondent's registration is subject to discipline under Code section 9884.7(a)(5),
25 in that on or about October 14, 2010, Respondent committed acts constituting gross negligence, in
26 that he failed to properly inspect the brake and lamp system and issued Brake Adjustment
27 Certificate Number BC 552163 and Lamp Adjustment Certificate Number LC 190799, certifying
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1 that the vehicle's brake and lamp systems were in satisfactory condition and were in accordance
2 with the Vehicle Code when, in fact, they were not.

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6 **FIFTEENTH CAUSE FOR DISCIPLINE**

7 **(Departure from Trade Standards)**

8 58. Respondent's registration is subject to discipline under Code section 9884.7(a)(7),
9 in that Respondent willfully departed from or disregarded accepted trade standards for good and
10 workmanlike repair without the consent of the owner or the owner's duly authorized
11 representative in a material respect, as follows:

12 a. Respondent failed to properly inspect the vehicle's brake system and issued Brake
13 Adjustment Certificate Number BC 552163, certifying that the vehicle's brake system was in
14 satisfactory condition and in accordance with the Vehicle Code when, in fact, it was not.

15 b. Respondent failed to properly inspect the vehicle's lamp system and issued Lamp
16 Adjustment Certificate Number LC 190799, certifying that the vehicle's lamp system was in
17 satisfactory condition and in accordance with the Vehicle Code when, in fact, it was not.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Provisions of the Automotive Repair Act)**

20 59. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
21 in that on or about October 14, 2010, Respondent failed to materially comply with the following
22 provisions of that Code:

23 a. **Section 9884.8:** Respondent failed to describe the service work performed on
24 Invoice No. 13099.

25 b. **Section 9884.9:**

26 i. Respondent failed to provide the operator with a copy of Invoice No.
27 13099.

1 ii. Respondent failed to obtain the operator's authorization prior to performing
2 additional repairs on the vehicle.

3 c. Section 9889.16: Respondent issued Brake Adjustment Certificate Number BC
4 552163 and Lamp Adjustment Certificate Number LC 190799 for the vehicle, when the vehicle
5 was not in compliance with Bureau regulations or the requirements of the Vehicle Code, in that
6 the right rear brake drum was oversized and the headlamp indicator bulb was non-operative.

7 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

9 60. Respondent's registration is subject to discipline pursuant to Code section
10 9884.7(a)(6), in that on or about October 14, 2010, Respondent failed to comply with provisions
11 of California Code of Regulations, title 16, in the following material respects:

12 a. Section 3305(a): Respondent failed to perform a brake and lamp inspection in
13 accordance with the vehicle's manufacturer standards and/or current standards, specifications,
14 recommended procedures, and/or directives issued by the Bureau.

15 b. Section 3316(d)(2): Respondent issued Lamp Adjustment Certificate Number LC
16 190799, certifying that the vehicle's lamp system had been inspected and was in satisfactory
17 condition when, in fact, it was not.

18 c. Section 3321(c)(2): Respondent issued Brake Adjustment Certificate Number BC
19 552163, certifying that the vehicle's brake system had been inspected and was in satisfactory
20 condition when, in fact, it was not.

21 **EIGHTEENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Provide a Copy of a Signed Document)**

23 61. Respondent's registration is subject to discipline under Code section 9884.7(a)(3),
24 in that on or about September 29, 2010, and October 13, 2010, Respondent failed to provide the
25 operator with a copy of the invoices, as soon as the operator signed them.

26 **NINETEENTH CAUSE FOR DISCIPLINE**

27 **(Failure to Comply with the Code)**

1 provisions of California Code of Regulations, title 16, as more particularly set forth above in
2 paragraph 60.

3 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

4 **(Acts Involving Dishonesty, Fraud, or Deceit - Adjuster Licenses)**

5 67. Respondent's brake and lamp adjuster licenses are subject to discipline under Code
6 section 9889.3(d), in that on or about October 14, 2010, he committed acts involving dishonesty,
7 fraud, or deceit, by issuing Brake Adjustment Certificate Number BC 552163 and Lamp
8 Adjustment Certificate Number LC 190799, certifying that the brake and lamp systems were in
9 satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

10 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

12 68. Respondent's smog check station license and smog technician license are subject
13 to discipline pursuant to Health and Safety Code section 44072.2(d), in that Respondent
14 committed dishonest, fraudulent, or deceitful acts whereby another was injured, as more
15 particularly set forth above in paragraphs 32, 27, 28, 55, and 56.

16 **OTHER MATTERS**

17 69. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
18 probation the registrations for all places of business operated in this state by James Dennis Corey,
19 doing business as Corey's Automotive & Smog, upon a finding that he has, or is, engaged in a
20 course of repeated and willful violation of the laws and regulations pertaining to an automotive
21 repair dealer.

22 70. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
23 License Number RC 209888, issued to James Dennis Corey, doing business as Corey's
24 Automotive & Smog, is revoked or suspended, any additional license issued under this chapter in
25 the name of said licensees may be likewise revoked or suspended by the director.

26 71. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
27 Specialist Technician License Number EA 146078, issued to James Dennis Corey, is revoked or
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1 suspended, any additional license issued under this chapter in the name of said licensee may be
2 likewise revoked or suspended by the director.

3 72. Pursuant to Code section 9889.9, if Lamp Station License Number LS 209888,
4 issued to James Dennis Corey, doing business as Corey's Automotive & Smog, is revoked or
5 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
6 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
7 director.

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9 73. Pursuant to Code section 9889.9, if Brake Station License Number BS 209888,
10 issued to James Dennis Corey, doing business as Corey's Automotive & Smog, is revoked or
11 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
12 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
13 director.

14 74. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 146078,
15 issued to James Dennis Corey, is revoked or suspended, any additional license issued under
16 Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said
17 licensee may be likewise revoked or suspended by the director.

18 75. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 146078,
19 issued to James Dennis Corey, doing business as Corey's Automotive & Smog, is revoked or
20 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
21 and Professions Code in the name of said licensee may be likewise revoked or suspended by the
22 director.

23 **PRAYER**

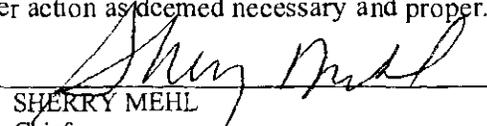
24 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
25 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

26 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
27 Registration No. ARD 209888, issued to James Dennis Corey, doing business as Corey's
28 Automotive & Smog;

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- 2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to James Dennis Corey;
- 3. Revoking or suspending Smog Check Station License Number RC 209888, issued to James Dennis Corey, doing business as Corey's Automotive & Smog;
- 4. Revoking or suspending any additional license issued under chapter 5, of the Health and Safety Code in the name of James Dennis Corey;
- 5. Revoking or suspending Lamp Station License Number LS 209888, issued to James Dennis Corey, doing business as Corey's Automotive & Smog;
- 6. Revoking or suspending Brake Station License Number BS 209888, issued to James Dennis Corey, doing business as Corey's Automotive & Smog;
- 7. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of James Dennis Corey;
- 8. Revoking or suspending Advanced Emission Specialist Technician License Number EA 146078, issued to James Dennis Corey;
- 9. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of James Dennis Corey;
- 10. Ordering James Dennis Corey, doing business as Corey's Automotive & Smog to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 11. Taking such other and further action as deemed necessary and proper.

DATED: 8/31/11


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

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