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

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

Case No. 77/13-22

13 **HEAUSERS PLAZA TIRE CO., INC.,**
14 **dba HEAUSERS PLAZA TIRE & AUTO SERVICE**
15 **MARK HEAUSER, PRESIDENT/SECRETARY**
16 **MICHAEL HEAUSER, TREASURER**
17 **531 Searls Avenue**
18 **Nevada City, CA 95959-3003**

**ACCUSATION AND PETITION
TO REVOKE PROBATION**

19 **Automotive Repair Dealer Reg. No. ARD 061817**
20 **Lamp Station License No. LS 061817**
21 **Brake Station License No. BS 061817**

22 **and**

23 **DANIEL PATRICK OLSON**
24 **13256 Long Valley Road**
25 **Penn Valley, CA 95946**

26 **Brake Adjuster License No. BA 149155**
27 **Lamp Adjuster License No. LA 149155**

28 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

6 **Heusers Plaza Tire Co., Inc. dba Heusers Plaza Tire & Auto Service**

7 2. On or about January 27, 1978, the Director of Consumer Affairs ("Director") issued
8 Automotive Repair Dealer Registration Number ARD 061817 ("registration") to Heusers Plaza
9 Tire Co., Inc. ("Respondent HPTC"), doing business as Heusers Plaza Tire & Auto Service, with
10 Mark Heuser as president and secretary and Michael Heuser as treasurer. On July 25, 2005,
11 Respondent's registration was revoked; however, the revocation was stayed and Respondent was
12 placed on probation for 2 years on terms and conditions, as set forth in subparagraph 36 (a)
13 below. On January 22, 2009, pursuant to the Proposed Decision of the Administrative Law Judge
14 adopted by the Director as the Decision in the disciplinary proceeding titled "In the Matter of the
15 Accusation and Petition to Revoke Probation Against: Heusers Plaza Tire Co. Inc. dba Heusers
16 Plaza Tire & Auto Service", et al., Case No. 79/08-03, the Director permanently invalidated
17 (revoked) Respondent's registration effective March 2, 2009.¹ The revocation was stayed and
18 Respondent was placed on probation for 4 years on terms and conditions. A true and correct copy
19 of the Decision and Order is attached hereto as **Exhibit A** and incorporated herein. Respondent's
20 registration will expire on January 31, 2013, unless renewed.

21 3. On or about February 11, 1999, the Director issued Lamp Station License Number
22 LS 061817 to Respondent HPTC. Respondent's lamp station license will expire on January 31,
23 2013, unless renewed.

24 4. On or about April 27, 1999, the Director issued Brake Station License Number
25 BS 061817 to Respondent HPTC. Respondent's brake station license will expire on January 31,
26 2013, unless renewed.

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28 ¹ The Director also revoked Respondent's Smog Check Station License No. RC 061817.

1 related to the conduct of the business of the automotive repair dealer, which are done
2 by the automotive repair dealer or any automotive technician, employee, partner,
officer, or member of the automotive repair dealer.

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

5

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

7

8 (c) Notwithstanding subdivision (b), the director may revoke, suspend, or
9 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,
10 engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

11
12 12. Code section 9889.3 states, in pertinent part:

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

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

17

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

20

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

22 13. Bus. & Prof. Code section 9887.1 states, in pertinent part:

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

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1 14. Code section 9888.3 states:

2 No person shall operate an "official" lamp or brake adjusting station
3 unless a license therefore has been issued by the director. No person shall issue, or
4 cause or permit to be issued, any certificate purporting to be an official lamp
5 adjustment certificate unless he or she is a licensed lamp adjuster or an official brake
6 adjustment certificate unless he or she is a licensed brake adjuster.

7 15. Bus. & Prof. Code section 9889.16 states:

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

16 16. Code section 9889.9 states that "[w]hen any license has been revoked or suspended
17 following a hearing under the provisions of this article [Article 7 (commencing with section
18 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of
19 this chapter in the name of the licensee may be likewise revoked or suspended by the director."

20 17. Code section 22, subdivision (a), states:

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

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

27 **COST RECOVERY**

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

BACKGROUND

20. On May 18, 2012, a representative of the Bureau conducted a Periodic Brake and
Lamp Station inspection at Respondent HPTC's facility and met with manager Ron Lackey

1 ("Lackey") and Respondent Olson. During the inspection, the representative discovered that
 2 Olson's brake and lamp adjuster licenses had expired on March 31, 2012, and advised Lackey to
 3 cover or remove the facility's brake and lamp station signs. The representative then reviewed the
 4 facility's brake certificate books, containing Certificate Nos. BC1307601 to BC1307650, and
 5 lamp certificate books, containing Certificate Nos. LC1288201 to LC1288250, and found that
 6 Olson had issued eight brake and eight lamp certificates after his brake and lamp adjuster licenses
 7 had expired, as set forth below.

<u>Lamp Certificate No.</u>	<u>Date of Issuance</u>
LC1288243	April 9, 2012
LC1288244	April 10, 2012
LC1288246	April 24, 2012
LC1288245	April 24, 2012
LC1288247	May 1, 2012
LC1288248	May 8, 2012
LC1288249	May 10, 2012
LC1288250	May 17, 2012

<u>Brake Certificate No.</u>	<u>Date of Issuance</u>
BC1307626	April 9, 2012
BC1307627	April 10, 2012
BC1307628	April 24, 2012
BC1307629	April 25, 2012
BC1307630	May 1, 2012
BC1307631	May 8, 2012
BC1307632	May 10, 2012
BC1307633	May 15, 2012

21. On May 22, 2012, the representative returned to the facility and took possession of
 two brake certificate books and two lamp certificate books.² The representative found in
 reviewing the books that Olson failed to properly prepare or issue Lamp Certificate No.
 LC1288246, as set forth in subparagraph 25 (b) below.

² The representative obtained a lamp certificate book containing unissued certificates, Nos. LC1409401 to LC1409450, a brake certificate book containing unissued certificates, Nos. BC1431601 to BC1431650, a lamp certificate book containing issued certificates, Nos. LC1288201 to LC1288250, and a brake certificate book containing issued certificates, Nos. BC1307601 to BC1307633, and unissued certificates, Nos. BC1307634 to BC1307650.

1 adjuster license had expired, in violation of Code sections 9887.1 and 9888.3 and California Code
2 of Regulations, title 16, section 3305, subdivision (a).

3 **SECOND CAUSE FOR DISCIPLINE**

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

5 25. Respondent HPTC's registration is subject to disciplinary action pursuant to Code
6 section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that
7 Code in the following material respects:

8 a. **Sections 9887.1 and 9888.3:** Respondent HPTC continued to issue lamp and brake
9 certificates at its station despite the fact that Respondent Olson's lamp and brake adjuster licenses
10 had expired on March 31, 2012, and not yet been renewed or reissued.

11 b. **Section 9889.16:** Respondent HPTC failed to ensure that Lamp Certificate No.
12 LC1288246 was properly issued in that Respondent's brake/lamp adjuster, Respondent Olson,
13 failed to indicate on the certificate, by checking the box marked "Repair", that the headlight(s) on
14 the 1992 Honda Civic, identified in paragraph 22 above, had been repaired, as specified in the
15 Bureau's *Handbook for Lamp Adjusters and Stations*.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of Regulations)**

18 26. Respondent HPTC's registration is subject to disciplinary action pursuant to Code
19 section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
20 California Code of Regulations, title 16, in the following material respects:

21 a. **Section 3305, subdivision (a):** Respondent HPTC continued to issue lamp and brake
22 certificates at its station despite the fact that Respondent Olson's lamp and brake adjuster licenses
23 had expired on March 31, 2012, and had not yet been renewed or reissued.

24 b. **Section 3305, subdivision (a)(5):** Respondent HPTC failed to ensure that Lamp
25 Certificate No. LC1288246 was issued in accordance with the Bureau's *Handbook for Lamp*
26 *Adjusters and Stations*.

27 c. **Section 3308:** Respondent HPTC continued to perform its official functions as a
28 lamp and brake station, including issuing lamp and brake certificates, even though Respondent

1 Olson's brake and lamp adjuster licenses had expired on March 31, 2012, and not yet been
2 renewed or reissued.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 27. Respondent HPTC 's brake and lamp station licenses are subject to disciplinary action
6 pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the
7 provisions of Code sections 9887.1, 9888.3, and 9888.16 relating to its licensed activities, as set
8 forth in paragraph 25 above.

9 **FIFTH CAUSE FOR DISCIPLINE**

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

11 28. Respondent HPTC's brake and lamp station licenses are subject to disciplinary action
12 pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with the
13 provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3305,
14 subdivision (a)(5), and 3308, as set forth in paragraph 26 above.

15 **SIXTH CAUSE FOR DISCIPLINE**

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

17 29. Respondent Olson's brake and lamp adjuster licenses are subject to disciplinary action
18 pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the
19 provisions of Code sections 9887.1, 9888.3, and 9888.16 relating to his licensed activities, as set
20 forth in paragraph 25 above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

23 30. Respondent Olson's brake and lamp adjuster licenses are subject to disciplinary action
24 pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with
25 California Code of Regulations, title 16, section 3305, subdivisions (a) and (a)(5), and as set forth
26 in paragraph 26 above.

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10. Ordering Heusers Plaza Tire Co., Inc., doing business as Heusers Plaza Tire & Auto Service, and Daniel Patrick Olson to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: November 14, 2011 John Wallauch
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/18-03