KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
State Bar No. 197268
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5333
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **SAM'S COMPLETE AUTO REPAIR AND SMOG, DBA SAM'S COMPLETE AUTO REPAIR & SMOG** **718 S. 9th Street** **Modesto, CA 95351** **<u>Mailing Address</u>:** **2025 Waterfall Court** **Modesto, CA 95351** **AMARJIT SINGH, PRESIDENT** **Automotive Repair Dealer Registration No. ARD 227163** **Smog Check Station License No. RC 227163** **Lamp Station License No. LS 227163, Class A** **Brake Station License No. BS 227163, Class C** **AMARJIT SINGH** **2025 Waterfall Court** **Modesto, CA 95351** **Advanced Emission Specialist Technician License No. EA 030749** **Brake Adjuster License No. BA 030749, Class C** **Lamp Adjuster License No. LA 030749, Class A** **KEVIN S. PARMAN** **3404 Bridlepath Lane** **Modesto, CA 95356** **Advanced Emission Specialist Technician License No. EA 154653** Respondents.	Case No. 79/12-63 OAH No. 2011120402 **FIRST AMENDED ACCUSATION** **SMOG CHECK**

///

///

Complainant alleges:

PARTIES

1. John Wallauch ("Complainant") brings this First Amended Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs. This First Amended Accusation replaces in its entirety Accusation No. 79/12-63 filed on February 27, 2012.

Automotive Repair Dealer Registration

2. On a date uncertain in 2003, the Bureau issued Automotive Repair Dealer Registration Number ARD 227163 ("registration") to Sam's Complete Auto Repair and Smog, ("Respondent Sam's"), doing business as Sam's Complete Auto Repair & Smog with Amarjit Singh as President. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

Smog Check Station License

3. On or about November 3, 2003, the Bureau issued Smog Check Station License Number RC 227163 ("station license") to Respondent Sam's. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

Lamp Station License

4. On or about November 4, 2003, the Bureau issued Lamp Station License Number LS 227163, Class A ("lamp station license") to Respondent Sam's. The lamp station license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

Brake Station License

5. On or about November 4, 2003, the Bureau issued Brake Station License Number BS 227163, Class C ("brake station license") to Respondent Sam's. The brake station license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

///

Advanced Emission Specialist Technician License

6. On a date uncertain in 1997, the Bureau issued Advanced Emission Specialist Technician License Number EA 030749 ("technician license") to Amarjit Singh ("Respondent Singh"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

Brake Adjuster License

7. On a date uncertain in 1993, the Bureau issued Brake Adjuster License Number BA 030749, Class C ("brake adjuster license") to Respondent Singh. The brake adjuster license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

Lamp Adjuster License

8. On a date uncertain in 1997, the Bureau issued Lamp Adjuster License Number LA 030749, Class A ("lamp adjuster license") to Respondent Singh. The lamp adjuster license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

Advanced Emission Specialist Technician License

9. On or about August 11, 2008, the Bureau issued Advanced Emission Specialist Technician License Number EA 154653 ("technician license") to Kevin S. Parman ("Respondent Parman"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

STATUTORY PROVISIONS

10. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

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

///

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

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

(4) Any other conduct that constitutes fraud.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

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

11. Code section 118, subdivision (b) states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

12. 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)"

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

14. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

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

16. Code section 9889.7 provides, in pertinent part, that 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 shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

17. Code section 9889.3 states, in pertinent part:

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

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

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

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

18. Code section 9887.1 states, in pertinent part:

> The director shall have the authority to issue licenses for official lamp 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 pursuant thereto . . . Licenses may be renewed upon application and payment of the renewal fees if the application for renewal is made within the 30-day period prior to the date of expiration. Persons whose licenses have expired shall immediately cease the activity requiring a license . . .

19. Code section 9888.3 states:

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

20. Code section 9889.9 states that "[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], 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."

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

22. Section 44072.2 of the Health and Safety 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, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

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

24. Section 44072.8 of the Health and Safety Code states:

> When 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.

COST RECOVERY

25. 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.

UNDERCOVER OPERATION – MARCH 23, 2011

26. On or about March 23, 2011, a Bureau undercover operator drove a Bureau-documented 2001 Ford Focus to Respondent Sam's facility and requested brake, lamp, and smog inspections. The vehicle could not pass the functional portion of a smog inspection because the vehicle's malfunction indicator light ("MIL") was inoperative. The vehicle was also unable to pass the brake inspection because the right and left rear brake drums were oversized. Further, the vehicle could not pass the lamp inspection because the headlights were out of adjustment. The operator signed a work order/estimate but was not provided with a copy of that document prior to the inspections.

27. Respondent Singh performed the brake and lamp inspections and issued Lamp Certificate No. LC1216611, certifying that the lamps were in satisfactory condition and Brake Certificate No. BC1234259, certifying that the brake system was in satisfactory condition. In fact, the headlights were out of adjustment and the right and left rear brake drums were oversized.

28. Respondent Parman performed the smog inspection and issued electronic Certificate of Compliance No. OA412576 for that vehicle, certifying that the vehicle was in compliance with applicable laws and regulations; however, the vehicle's MIL was inoperative. The operator paid $110 for the inspections and received a copy of Invoice No. 14162 and the Vehicle Inspection Report ("VIR").

///

///

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

29. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about March 23, 2011, regarding the 2001 Ford Focus, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading, as follows:

a. Respondent Sam's issued electronic Certificate of Compliance No. OA412576, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's MIL was inoperable.

b. Respondent Sam's issued Brake Certificate No. BC1234259, certifying that the brake system on that vehicle was in satisfactory condition when, in fact, the right and left rear brake drums were oversized.

c. Respondent Sam's issued Lamp Certificate No. LC1216611, certifying that the lamp system was in satisfactory condition when, in fact, the headlights were out of adjustment.

SECOND CAUSE FOR DISCIPLINE

(Failed to Provide a Copy of a Signed Document)

30. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(3), in that on or about March 23, 2011, Respondent Sam's failed to provide the operator with a copy of the work order as soon as she signed the document.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

31. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about March 23, 2011, regarding the 2001 Ford Focus, it received $110 for certificates of compliance that should not have been issued, constituting acts involving fraud, as follows:

a. Respondent Sam's issued electronic Certificate No. OA412576, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby

///

depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

b. Respondent Sam's issued Brake Certificate No. BC1234259, certifying that the brake system on that vehicle was in satisfactory condition when, in fact, the right and left rear brake drums were oversized.

c. Respondent Sam's issued Lamp Certificate No. LC1216611, certifying that the lamp system was in satisfactory condition when, in fact, the headlights were out of adjustment.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

32. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about March 23, 2011, it failed to comply with section 9884.9, subdivision (a) of that Code by failing to provide the operator with a written estimated price for a specific job prior to commencement of the inspections.

FIFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

33. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 23, 2011, regarding the 2001 Ford Focus, it violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Sam's failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Sam's failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Sam's issued electronic Certificate of Compliance No. OA412576 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

///

///

SIXTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

34. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 23, 2011, regarding the 2001 Ford Focus, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent Sam's issued electronic Certificate of Compliance No. OA412576 even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

b. **Section 3340.42**: Respondent Sam's failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

35. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 23, 2011, regarding the 2001 Ford Focus, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. OA412576 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

36. Respondent Parman has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 23, 2011, regarding the 2001 Ford Focus, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Parman failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

///

b. **Section 44012, subdivision (f)**: Respondent Parman failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Parman failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

NINTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

37. Respondent Parman has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 23, 2011, regarding the 2001 Ford Focus, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent Parman failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c)**: Respondent Parman entered false information into the Emission Inspection System for electronic Certificate of Compliance No. OA412576 by entering "Pass" for the functional inspection when, in fact, the vehicle could not pass the inspection because the vehicle's MIL was inoperable.

c. **Section 3340.42**: Respondent Parman failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

38. Respondent Parman has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 23, 2011, regarding the 2001 Ford Focus, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. OA412576 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

///

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

39. Respondent Sam's registration is subject to discipline under Code section 9884.7, subdivision (a)(6), in that Respondent Sam's failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305, subdivision (a):** Respondent Sam's failed to perform the inspection of the brake system and inspection and adjustment of the lighting system on the Bureau's 2001 Ford Focus in accordance with the specifications, instructions, and directives issued by the Bureau and the vehicle manufacturer.

b. **Section 3316, subdivision (d)(2):** Respondent Sam's issued Lamp Certificate No. LC1216611 as to the Bureau's 2001 Ford Focus when the headlights were out of adjustment and not in compliance with Bureau regulations.

c. **Section 3321, subdivision (c)(2):** Respondent Sam's issued Brake Certificate No. BC1234259 as to the Bureau's 2001 Ford Focus when the brake system on the vehicle had not been completely tested or inspected.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

40. Respondent Sam's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (c), in that Respondent Sam's failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 39, above.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

41. Respondent Sam's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (d), in that Respondent Sam's committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 38, above.

///

///

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

42. Respondent Singh's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 39, above.

UNDERCOVER OPERATION – APRIL 20, 2011

43. On or about April 20, 2011, a Bureau undercover operator drove a Bureau-documented 1993 Toyota pickup to Respondent Sam's facility and requested brake, lamp, and smog inspections. The vehicle could not pass the functional portion of a smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications. The vehicle was also unable to pass the brake inspection because the right and left rear brake drums were oversized. Further, the vehicle could not pass the lamp inspection because the headlights were out of adjustment. The operator signed a work order/estimate but was not provided with a copy of that document prior to the inspections.

44. Respondent Singh performed the brake and lamp inspections and informed the operator that the vehicle did not pass the lamp inspection because the backup lights were not working. No certificate was issued. Respondent Singh issued Brake Certificate No. BC1234352, certifying that the brake system was in satisfactory condition and that the vehicle had been road-tested. In fact, the rear right and left brake drums were oversized and the vehicle had not been road tested.

45. Respondent Singh performed the smog inspection and issued electronic Certificate of Compliance No. OC515748 for that vehicle, certifying that the vehicle was in compliance with applicable laws and regulations; however, during the smog inspection, Respondent Singh adjusted the ignition timing and informed the operator that he had done so. The operator paid $100 for the inspections and received a copy of Invoice No. 14734 and the VIR.

46. On or about April 27, 2011, another Bureau undercover operator, returned the vehicle to Respondent Sam's facility for a lamp reinspection. The operator did not sign nor was she

provided with an estimate prior to the inspection. Respondent Singh performed the inspection and issued Lamp Certificate No. LC1216485, certifying that the lamp system was satisfactory when, in fact, the headlights were still out of adjustment. The operator was not charged for the inspection.

FIFTEENTH CAUSE FOR DISCIPLINE

(Misleading Statements)

47. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that regarding the 1993 Toyota pickup, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading, as follows:

a. On or about April 20, 2011, Respondent Sam's issued electronic Certificate of Compliance No. OC515748, certifying that the vehicle was in compliance with applicable laws and regulations; however, Respondent Singh adjusted the ignition timing during the smog inspection, it is unknown whether the vehicle would pass if the timing had been adjusted prior to the inspection and then the smog inspection was performed again with the adjusted timing.

b. On or about April 20, 2011, Respondent Sam's issued Brake Certificate No. BC1234352, certifying that the brake system on that vehicle was in satisfactory condition and that the vehicle had been road-tested when, in fact, the right and left rear brake drums were oversized and the vehicle had not been road tested.

c. On or about April 27, 2011, Respondent Sam's issued Lamp Certificate No. LC1216485, certifying that the lamp system was in satisfactory condition when, in fact, the headlights were out of adjustment.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failed to Provide a Copy of a Signed Document)

48. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(3), in that on or about April 20, 2011, Respondent failed to provide the operator with a copy of the work order as soon as he signed the document.

///

SEVENTEENTH CAUSE FOR DISCIPLINE

(Fraud)

49. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that, regarding the 1993 Toyota pickup, it received $100 for certificates of compliance that should not have been issued, constituting acts involving fraud, as follows:

a. On or about April 20, 2011, Respondent Sam's issued electronic Certificate No. OC515748, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

b. On or about April 20, 2011, Respondent Sam's issued Brake Certificate No. BC1234352, certifying that the brake system on that vehicle was in satisfactory condition and that the vehicle had been road tested when, in fact, the right and left rear brake drums were oversized and the vehicle had not been road-tested.

c. On or about April 27, 2011, Respondent Sam's issued Lamp Certificate No. LC1216485, certifying that the lamp system was in satisfactory condition when, in fact, the headlights were out of adjustment.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

50. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that it failed to comply with section 9884.9, subdivision (a) of that Code, as follows:

a. On or about April 20, 2011, Respondent failed to provide the operator with a written estimated price for a specific job prior to commencement the inspections.

b. On or about April 27, 2011, Respondent failed to provide the operator with a written estimated price for a specific job prior to commencement of the lamp inspection.

///

///

NINETEENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

51. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about April 20, 2011, regarding the 1993 Toyota pickup, it violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Sam's failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Sam's failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Sam's issued electronic Certificate of Compliance No. OC515748 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

TWENTIETH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

52. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about April 20, 2011, regarding the 1993 Toyota pickup, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent Sam's issued electronic Certificate of Compliance No. OC515748 even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

b. **Section 3340.42**: Respondent Sam's failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

53. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 20, 2011, regarding the

1993 Toyota pickup, it committed acts involving dishonesty, fraud or deceit thereby another was injured by issuing electronic Certificate of Compliance No. OC515748 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

54. Respondent Singh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about April 20, 2011, regarding the 1993 Toyota pickup, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Singh failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Singh failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Singh failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

55. Respondent Singh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about April 20, 2011, regarding the 1993 Toyota pickup, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent Singh failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

b. **Section 3340.42**: Respondent Singh failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

///

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

56. Respondent Singh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 20, 2011, regarding the 1993 Toyota pickup, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. OC515748 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

57. Respondent Sam's registration is subject to discipline under Code section 9884.7, subdivision (a)(6), in that Respondent Sam's failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305, subdivision (a):** Respondent Sam's failed to perform the inspection of the brake system and inspection and adjustment of the lighting system on the Bureau's 1993 Toyota pickup in accordance with the specifications, instructions, and directives issued by the Bureau and the vehicle manufacturer.

b. **Section 3316, subdivision (d)(2):** Respondent Sam's issued Lamp Certificate No. LC1216485 as to the Bureau's 1993 Toyota pickup when the headlights were out of adjustment and not in compliance with Bureau regulations.

c. **Section 3321, subdivision (c)(2):** Respondent Sam's issued Brake Certificate No. BC1234352 as to the Bureau's 1993 Toyota pickup when the brake system on the vehicle had not been completely tested or inspected nor had the vehicle been road tested.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

58. Respondent Sam's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (c), in that Respondent Sam's failed to comply with the

provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 57, above.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

59. Respondent Sam's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (d), in that Respondent Sam's committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 56, above.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

60. Respondent Singh's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 57, above.

UNDERCOVER OPERATION – JULY 7, 2011

61. On or about July 7, 2011, a Bureau undercover operator drove a Bureau-documented 2002 Ford Mustang to Respondent Sam's facility and requested brake, lamp, and smog inspections. The vehicle could not pass the functional portion of a smog inspection because the vehicle's MIL was inoperative. The vehicle was also unable to pass the brake inspection because the right front brake rotor and left rear brake rotor needed to be replaced. Further, the vehicle could not pass the lamp inspection because the headlights were out of adjustment. The operator signed a work order/estimate but was not provided with a copy of that document prior to the inspections.

62. Respondent Singh performed the brake and lamp inspections and caused Lamp Certificate No. LC1276022 to be issued, certifying that the lamps were in satisfactory condition. In fact, the headlights were out of adjustment. The operator was informed by an employee that the vehicle did not pass the brake inspection because the front rotors needed to be replaced; however, the operator declined the repair.

///

63. Respondent Singh performed the smog inspection and issued electronic Certificate of Compliance No. OE460704 for that vehicle, certifying that the vehicle was in compliance with applicable laws and regulations; however, the vehicle's MIL was inoperative. The operator paid $100 for the inspections and received a copy of Invoice No. 16125 and the VIR.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

64. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading, as follows:

a. Respondent Sam's issued electronic Certificate of Compliance No. OE460704, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's MIL was inoperable.

b. Respondent Sam's issued Lamp Certificate No. LC1276022, certifying that the lamp system was in satisfactory condition when, in fact, the headlights were out of adjustment.

THIRTIETH CAUSE FOR DISCIPLINE

(Failed to Provide a Copy of a Signed Document)

65. Respondent Sam's has subjected its registration to discipline under Code section 9884,7, subdivision (a)(3), in that on or about July 7, 2011, Respondent failed to provide the operator with a copy of the work order as soon as he signed the document.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

66. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, it received $100 for certificates of compliance that should not have been issued, constituting acts involving fraud, as follows:

a. Respondent Sam's issued electronic Certificate No. OE460704, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby

depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

b. Respondent Sam's issued Lamp Certificate No. LC1276022, certifying that the lamp system was in satisfactory condition when, in fact, the headlights were out of adjustment.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

67. Respondent Sam's has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about July 7, 2011, it failed to comply with section 9884.9, subdivision (a) of that Code by failing to provide the operator with a written estimated price for a specific job prior to commencing the inspections.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

68. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, it violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Sam's failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Sam's failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Sam's issued electronic Certificate of Compliance No. OE460704 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

///

///

///

///

///

THIRTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

69. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent Sam's issued electronic Certificate of Compliance No. OE460704 even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

b. **Section 3340.42**: Respondent Sam's failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

THIRTY-FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

70. Respondent Sam's has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, it committed acts involving dishonesty, fraud or deceit thereby another was injured by issuing electronic Certificate of Compliance No. OE460704 for that vehicle without performing a bona fide inspection of the emission control devices and system on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

71. Respondent Singh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Singh failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

///

b. **Section 44012, subdivision (f)**: Respondent Singh failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Singh failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

THIRTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

72. Respondent Singh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent Singh failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c)**: Respondent Singh entered false information into the Emission Inspection System for electronic Certificate of Compliance No. OE460704 by entering "Pass" for the functional inspection when, in fact, the vehicle could not pass the inspection because the vehicle's MIL was inoperable.

c. **Section 3340.42**: Respondent Singh failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

73. Respondent Singh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 7, 2011, regarding the 2002 Ford Mustang, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. OE460704 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

///

///

THIRTY-NINTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

74. Respondent Sam's registration is subject to discipline under Code section 9884.7, subdivision (a)(6), in that Respondent Sam's failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305, subdivision (a):** Respondent Sam's failed to perform the inspection of the brake system and inspection and adjustment of the lighting system on the Bureau's 2002 Ford Mustang in accordance with the specifications, instructions, and directives issued by the Bureau and the vehicle manufacturer.

b. **Section 3316, subdivision (d)(2):** Respondent Sam's issued Lamp Certificate No. LC1276022 as to the Bureau's 2002 Ford Mustang when the headlights were out of adjustment and not in compliance with Bureau regulations.

FORTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

75. Respondent Sam's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (c), in that Respondent Sam's failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), and 3316, subdivision (d)(2), as set forth in paragraph 74, above.

FORTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

76. Respondent Sam's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (d), in that Respondent Sam's committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 73, above.

FORTY-SECOND CAUSE FOR DISCIPLINE

(Violations of Regulations)

77. Respondent Singh's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California

///

Code of Regulations, title 16, sections 3305, subdivision (a), and 3316, subdivision (d)(2), as set forth in paragraph 74, above.

OTHER MATTERS

78. Pursuant to 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 Respondent Sam's Complete Auto Repair and Smog, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

79. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test & Repair Station License Number RC 227163, issued to Respondent Sam's Complete Auto Repair and Smog, is revoked or suspended, any additional license issued under Chapter 5 of the Health & Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

80. Pursuant to Code section 9889.9, if Lamp Station License Number LS 227163, Class A, issued to Respondent Sam's Complete Auto Repair and Smog is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of Code in the name of said licensee may be likewise revoked or suspended by the Director.

81. Pursuant to Code section 9889.9, if Brake Station License Number BS 227163, Class C, issued to Respondent Sam's Complete Auto Repair and Smog, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of that Code in the name of said licensee may be likewise revoked or suspended by the Director.

82. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 030749, issued to Respondent Amarjit Singh, is revoked or suspended, any additional license issued under Chapter 5 of the Health & Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

83. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 030749, Class C, issued to Respondent Amarjit Singh, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of that Code in the name of said licensee may be likewise revoked or suspended by the Director.

84. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 030749, Class A, issued to Respondent Amarjit Singh, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of that Code in the name of said licensee may be likewise revoked or suspended by the Director.

85. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 154653, issued to Respondent Kevin S. Parman, is revoked or suspended, any additional license issued under Chapter 5 of the Health & Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 227163, issued to Sam's Complete Auto Repair and Smog, doing business as Sam's Auto Repair & Smog;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Sam's Complete Auto Repair and Smog;

3. Revoking or suspending Smog Check Station License Number RC 227163, issued to Sam's Complete Auto Repair and Smog, doing business as Sam's Complete Auto Repair & Smog;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Sam's Complete Auto Repair and Smog;

5. Revoking or suspending Lamp Station License Number LS 227163, Class A, issued to Sam's Complete Auto Repair and Smog, doing business as Sam's Complete Auto Repair & Smog;

6. Revoking or suspending Lamp Station License Number BS 227163, Class C, issued to Sam's Complete Auto Repair and Smog, doing business as Sam's Complete Auto Repair & 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 Sam's Complete Auto Repair and Smog;

8. Revoking or suspending Advanced Emission Specialist Technician License Number EA 030749, issued to Amarjit Singh;

9. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Amarjit Singh;

10. Revoking or suspending Lamp Adjuster License Number LA 030749, Class A, issued to Amarjit Singh;

11. Revoking or suspending Brake Adjuster License Number BA 030749, Class C, issued to Amarjit Singh;

12. 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 Amarjit Singh;

13. Revoking or suspending Advanced Emission Specialist Technician License Number EA 154653, issued to Kevin S Parman;

14. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Kevin S. Parman;

15. Ordering Sam's Complete Auto Repair and Smog, Amarjit Singh, and Kevin S. Parman to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 10-31-2012

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SA2011103282
31395885.doc