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

11 In the Matter of the Accusation Against:  
12 **D & J MAK PRODUCTIONS, INC.,**  
13 **dba D & J AUTO REPAIR**  
14 **DANIEL Y. MAK, PRESIDENT**  
15 **900 San Mateo Avenue**  
16 **San Bruno, California 94066**  
17 **Automotive Dealer Repair Reg. No. ARD 180420**  
18 **Official Lamp Station License No. LS 180420**  
19 **Official Brake Station License No. BS 180420**  
20 **and**  
21 **JOHNNY Y. MAK**  
22 **900 San Mateo Avenue**  
23 **San Bruno, California 94066**  
24 **Brake Adjuster License No. BA 111737**  
25 **Lamp Adjuster License No. LA 111737**  
26 Respondents.

Case No. 77/09-30

**ACCUSATION**

23 Complainant alleges:

24 **PARTIES**

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

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1 against an automotive repair dealer or to render a decision invalidating a registration temporarily  
2 or permanently.

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

6 10. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
7 license by operation of law or by order or decision of the Director or a court of law, or the  
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
9 disciplinary proceedings.

### 10 STATUTORY PROVISIONS

11 11. Code section 9884.7 states, in pertinent part:

12 (a) The director, where the automotive repair dealer cannot show there  
13 was a bona fide error, may refuse to validate, or may invalidate temporarily or  
14 permanently, the registration of an automotive repair dealer for any of the following  
15 acts or omissions related to the conduct of the business of the automotive repair  
16 dealer, which are done by the automotive repair dealer or any automotive technician,  
17 employee, partner, officer, or member of the automotive repair dealer.

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

21 . . . .

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

24 . . . .

25 (c) Notwithstanding subdivision (b), the director may refuse to validate,  
26 or may invalidate temporarily or permanently, the registration for all places of  
27 business operated in this state by an automotive repair dealer upon a finding that the  
28 automotive repair dealer has, or is, engaged in a course of repeated and willful  
violations of this chapter, or regulations adopted pursuant to it.

12. 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.

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(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 . . .

13. Code section 9889.16 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. Code section 9889.22 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter [the Automotive Repair Act] or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

15. 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.”

16. Code section 22, subdivision (a), states:

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

17. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

**COST RECOVERY**

18. 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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **UNDERCOVER OPERATION OF JUNE 19, 2008**

4 19. On June 19, 2008, a representative of the Bureau, acting in an undercover capacity  
5 (hereinafter "operator"), took the Bureau's 1986 Buick Regal to VH Automotive located in San  
6 Bruno, California, and met with the owner, Hector Sanchez ("Sanchez"). The operator asked  
7 Sanchez if he could perform a brake and lamp inspection on the vehicle. The brake drum on the  
8 left rear axle of the Bureau-documented vehicle was oversize, the left front brake rotor was  
9 undersize, both headlamps were out of adjustment, and the two light bulbs in the right brake  
10 lamps were defective. Sanchez stated that he could perform the inspection and asked the operator  
11 for his keys. Sanchez drove the vehicle out of the facility and returned several minutes later.  
12 Sanchez gave the operator Certificate of Brake Adjustment Number BC 676901 and Certificate of  
13 Lamp Adjustment Number LC 586732. The certificates were issued by Respondents D& J and  
14 Mak. The operator paid Sanchez \$356 in cash and left the facility.

15 20. On and between July 1, 2008, and July 7, 2008, the Bureau inspected the vehicle and  
16 found that the two defective right brake light bulbs had been replaced; however, the headlamps  
17 were still out of adjustment and the oversize drum on the left rear brake and the undersize left  
18 front brake rotor were still in place on the vehicle.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 21. Respondent D & J's automotive repair dealer registration is subject to disciplinary  
22 action pursuant to Code section 9884.7, subdivision (a)(1), Respondent made or authorized  
23 statements which Respondent knew or in the exercise of reasonable care should have known to be  
24 untrue or misleading, as follows:

25 a. Respondent certified under penalty of perjury on Brake Certificate Number BC  
26 676901 that the drums and rotors on the Bureau's 1986 Buick Regal were in a satisfactory  
27 condition. In fact, the brake drum on the left rear axle of the vehicle was oversize and the left  
28 front brake rotor was undersize.

1 b. Respondent certified under penalty of perjury on Lamp Certificate Number LC  
2 586732 that the applicable adjustment had been performed on the lighting system on the Bureau's  
3 1986 Buick Regal. In fact, the headlamps were still out of adjustment.

4 **SECOND CAUSE FOR DISCIPLINE**

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

6 22. Respondent D& J's automotive repair dealer registration is subject to disciplinary  
7 action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply  
8 with provisions of that Code in the following material respects:

9 a. **Section 9889.16:** Respondent issued Brake Certificate Number BC 676901 and  
10 Lamp Certificate Number LC 586732 as to the Bureau's 1986 Buick Regal when the vehicle was  
11 not in compliance with Bureau Regulations or the requirements of the Vehicle Code.

12 b. **Section 9889.22:** Respondent willfully made false statements or entries on Brake  
13 Certificate Number BC 676901 and Lamp Certificate Number LC 586732, as set forth in  
14 paragraph 21 above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violations of Regulations)**

17 23. Respondent D & J's automotive repair dealer registration is subject to disciplinary  
18 action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply  
19 with provisions of California Code of Regulations, title 16, in the following material respects:

20 a. **Section 3305, subdivision (a):** Respondent failed to perform the inspection of the  
21 brake system and inspection and adjustment of the lamp system on the Bureau's 1986 Buick  
22 Regal in accordance with the specifications, instructions, and directives issued by the Bureau and  
23 the vehicle manufacturer.

24 b. **Section 3316, subdivision (d)(2):** Respondent issued Lamp Certificate Number LC  
25 586732 as to the Bureau's 1986 Buick Regal when all of the lamps, lighting equipment, and/or  
26 related electrical systems on the vehicle were not in compliance with Bureau regulations, as set  
27 forth in paragraph 21 above.

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**FOURTH CAUSE FOR DISCIPLINE**

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

24. Respondent D & J's official brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of Code sections 9889.16 and 9889.22 relating to Respondent's licensed activities, as set forth in paragraph 22 above.

**FIFTH CAUSE FOR DISCIPLINE**

**(Failure to Comply with Regulations)**

25. Respondent D & J's official brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Respondent 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 23 above.

**SIXTH CAUSE FOR DISCIPLINE**

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

26. Respondent Mak's brake and lamp adjuster licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that he violated the provisions of Code sections 9889.16, and 9889.22 relating to his licensed activities, as set forth in paragraph 22 above.

**SEVENTH CAUSE FOR DISCIPLINE**

**(Violations of Regulations)**

27. Respondent Mak's brake and lamp adjuster licenses are subject to disciplinary action pursuant to 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 23 above.

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**UNDERCOVER OPERATION OF AUGUST 4, 2009**

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2           28. On August 4, 2009, a representative of the Bureau, acting in an undercover capacity  
3 (hereinafter "operator"), took the Bureau's 1994 Chevrolet Caprice to VH Automotive and met  
4 with Sanchez. The operator asked Sanchez if he could perform a brake and lamp inspection on  
5 the vehicle. The right rear brake drum and left front brake rotor on the Bureau-documented  
6 vehicle exceeded the manufacturers' machining specifications and both headlamps were out of  
7 adjustment. Sanchez stated that he could perform the inspection. The operator provided Sanchez  
8 with the registration for the vehicle. Sanchez took the registration and drove the vehicle out of  
9 the facility. Approximately two hours later, an employee of VH Automotive returned with the  
10 vehicle and gave the operator Certificate of Brake Adjustment Number BC 786581 and  
11 Certificate of Lamp Adjustment Number LC 876301. The certificates were issued by  
12 Respondents D& J and Mak. The operator paid the employee \$150 for the two certificates, then  
13 asked the employee if he could also provide lamp and brake certificates for a 1988 Honda  
14 Accord. The employee stated that the operator would have to return with the vehicle. The  
15 operator left the facility.

16           29. Later that same day, the operator took the Bureau's 1988 Honda Accord to VH  
17 Automotive and met with the employee. The right rear brake drum and left front brake rotor on  
18 the Bureau-documented vehicle exceeded the manufacturers' machining specifications and both  
19 headlamps were out of adjustment. The operator requested a lamp and brake inspection and gave  
20 the employee the registration and keys to the vehicle. The employee drove the vehicle from the  
21 facility and returned several hours later. The employee gave the operator Certificate of Brake  
22 Adjustment Number BC 786582 and Certificate of Lamp Adjustment Number LC 876302. The  
23 certificates were issued by Respondents D& J and Mak. The operator paid the employee \$150 for  
24 the two certificates then left the facility.

25           30. On and between August 5, 2009, and August 11, 2009, the Bureau inspected the  
26 vehicles and found that the headlamps on both vehicles were still out of adjustment and the right  
27 rear brake drum and left front brake rotor on each vehicle still exceeded the manufacturers'  
28 machining specifications. The Bureau also found that only one wheel on the 1994 Chevrolet

1 Caprice, the left rear wheel, had been removed for the brake inspection, indicating that a complete  
2 brake inspection had not been performed on the vehicle.

3 31. On November 2, 2009, the operator performed an Official Station Inspection at  
4 Respondent D & J's facility and requested Respondent's Lamp Certificate Books LC 586701  
5 through LC 586750 and LC 876301 through LC 876350 and Brake Certificate Books BC 676901  
6 through BC 676950 and BC 786551 through BC 786600. Daniel Mak, Respondent's president,  
7 had his bookkeeper surrender the certificate books to the operator for inspection. The certificate  
8 books contained carbon copies of the lamp and brake certificates that had been issued for the  
9 Bureau's 1986 Buick Regal, 1994 Chevrolet Caprice, and 1988 Honda Accord, as set forth above.

10 **EIGHTH CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 32. Respondent D & J's automotive repair dealer registration is subject to disciplinary  
13 action pursuant to Code section 9884.7, subdivision (a)(1), Respondent made or authorized  
14 statements which Respondent knew or in the exercise of reasonable care should have known to be  
15 untrue or misleading, as follows:

16 a. Respondent certified under penalty of perjury on Brake Certificate Number BC  
17 786581 that the applicable inspection was performed on the brake system on the Bureau's 1994  
18 Chevrolet Caprice. In fact, Respondent failed to perform a complete brake inspection on the  
19 vehicle, as set forth in paragraph 30 above.

20 b. Respondent certified under penalty of perjury on Brake Certificate Number BC  
21 786581 that the drums and rotors on the Bureau's 1994 Chevrolet Caprice were in a satisfactory  
22 condition. In fact, right rear brake drum and left front brake rotor on the Bureau-documented  
23 vehicle exceeded the manufacturers' machining specifications.

24 c. Respondent certified under penalty of perjury on Lamp Certificate Number LC  
25 876301 that the applicable adjustment had been performed on the lighting system on the Bureau's  
26 1994 Chevrolet Caprice. In fact, the headlamps were still out of adjustment, as set forth above.

27 d. Respondent certified under penalty of perjury on Brake Certificate Number BC  
28 786582 that the drums and rotors on the Bureau's 1988 Honda Accord were in a satisfactory

1 condition. In fact, right rear brake drum and left front brake rotor on the Bureau-documented  
2 vehicle exceeded the manufacturers' machining specifications.

3 e. Respondent certified under penalty of perjury on Lamp Certificate Number LC  
4 876302 that the applicable adjustment had been performed on the lighting system on the Bureau's  
5 1988 Honda Accord. In fact, the headlamps were still out of adjustment, as set forth above.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 33. Respondent D& J's automotive repair dealer registration is subject to disciplinary  
9 action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply  
10 with provisions of that Code in the following material respects:

11 a. **Section 9889.16:** Respondent issued Brake Certificate Number BC 786581 and  
12 Lamp Certificate Number LC 876301 as to the Bureau's 1994 Chevrolet Caprice and Brake  
13 Certificate Number BC 786582 and Lamp Certificate Number LC 876302 as to the Bureau's  
14 1988 Honda Accord when the vehicles were not in compliance with Bureau Regulations or the  
15 requirements of the Vehicle Code.

16 b. **Section 9889.22:** Respondent willfully made false statements or entries on Brake  
17 Certificate Numbers BC 786581 and 786582 and Lamp Certificate Numbers LC 876301 and LC  
18 876302, as set forth in paragraph 32 above.

19 **TENTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations)**

21 34. Respondent D & J's automotive repair dealer registration is subject to disciplinary  
22 action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply  
23 with provisions of California Code of Regulations, title 16, in the following material respects:

24 a. **Section 3305, subdivision (a):** Respondent failed to perform the inspections of the  
25 brake systems and inspections and adjustment of the lamp systems on the Bureau's 1994  
26 Chevrolet Caprice and 1988 Honda Accord in accordance with the specifications, instructions,  
27 and directives issued by the Bureau and the vehicle manufacturers.

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1 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise revoked or  
2 suspended by the Director.

3 PRAYER

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

6 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration  
7 Number ARD 180420, issued to D & J Mak Productions, Inc., doing business as D & J Auto  
8 Repair;

9 2. Temporarily or permanently invalidating any other automotive repair dealer  
10 registration issued to D & J Mak Productions, Inc.;

11 3. Revoking or suspending Official Lamp Station License Number LS 180420, issued to  
12 D & J Mak Productions, Inc., doing business as D & J Auto Repair;

13 4. Revoking or suspending Official Brake Station License Number BS 180420, issued to  
14 D & J Mak Productions, Inc., doing business as D & J Auto Repair;

15 5. Revoking or suspending any additional license issued under Articles 5 and 6 of  
16 Chapter 20.3 of the Business and Professions Code in the name of D & J Mak Productions, Inc.;

17 6. Revoking or suspending Lamp Adjuster License Number LA 111737 issued to  
18 Johnny Y. Mak;

19 7. Revoking or suspending Brake Adjuster License Number BA 111737, issued to  
20 Johnny Y. Mak;

21 8. Revoking or suspending any additional license issued under Articles 5 and 6 of  
22 Chapter 20.3 of the Business and Professions Code in the name of Johnny Y. Mak;

23 9. Ordering D & J Mak Productions, Inc., doing business as D & J Auto Repair, and  
24 Johnny Y. Mak to pay the Director of Consumer Affairs the reasonable costs of the investigation  
25 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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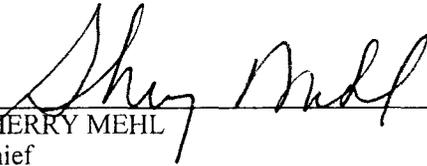
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10. Taking such other and further action as deemed necessary and proper.

DATED: 5/10/10

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