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6
7 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
8 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

9 In the Matter of the Accusation Against:
10
11 **BLUE RIBBON AUTOMOTIVE**
6600 Schirra Court #A
Bakersfield, CA 93313
12 **WILLIAM CHIP CARROLL, OWNER**
13 Automotive Repair Dealer Registration
No. ARD 210627
14 Smog Check Station License
No. RC 210627
15 and
16 **WILLIAM CHIP CARROLL**
17 6600 Schirra Court, #A
Bakersfield, CA 93313
18 Advanced Emission Specialist Technician
19 License No. EA 151506
20 Respondents.

Case No. 79/09-47

ACCUSATION

SMOG CHECK

21
22 Complainant alleges:

23 **PARTIES**

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

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1 **Automotive Repair Dealer Registration No. ARD 210627**

2 2. On or about May 30, 2000, the Director of Consumer Affairs ("Director")
3 issued Automotive Repair Dealer Registration Number ARD 210627 to William Chip Carroll
4 ("Respondent"), owner of Blue Ribbon Automotive. Respondent's automotive repair dealer
5 registration was in full force and effect at all times relevant to the charges brought herein and will
6 expire on May 31, 2009, unless renewed.

7 **Smog Check Station License No. RC 210627**

8 3. On or about April 23, 2003, the Director issued Smog Check Station
9 License Number RC 210627 to Respondent. Respondent's smog check station license was in
10 full force and effect at all times relevant to the charges brought herein and will expire on
11 May 31, 2009, unless renewed.

12 **Advanced Emission Specialist Technician License No. EA 151506**

13 4. On or about June 13, 2005, the Director issued Advanced Emission
14 Specialist Technician License Number EA 151506 to Respondent. Respondent's advanced
15 emission specialist technician license was in full force and effect at all times relevant to the
16 charges brought herein and will expire on March 31, 2009, unless renewed.

17 **JURISDICTION**

18 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
19 provides that the Director may invalidate an automotive repair dealer registration.

20 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
21 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
22 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
23 registration temporarily or permanently.

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

27 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the Director

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
2 the Director of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there
6 was a bona fide error, may refuse to validate, or may invalidate temporarily or
7 permanently, the registration of an automotive repair dealer for any of the
8 following acts or omissions related to the conduct of the business of the
9 automotive repair dealer, which are done by the automotive repair dealer or any
10 automotive technician, employee, partner, officer, or member of the automotive
11 repair dealer.

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

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17 (4) Any other conduct which constitutes fraud.

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

21 (7) Any willful departure from or disregard of accepted trade standards for
22 good and workmanlike repair in any material respect, which is prejudicial to
23 another without consent of the owner or his or her duly authorized representative.

24

25 (c) Notwithstanding subdivision (b), the director may refuse to
26 validate, or may invalidate temporarily or permanently, the registration
27 for all places of business operated in this state by an automotive repair
28 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.

9. Bus. & Prof. Code section 9884.8 states, in pertinent part, that "[a]ll 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 . . ."

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1 11. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

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

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

15 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

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

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EIGHTH CAUSE FOR DISCIPLINE

(Departure From Trade Standards)

36. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative, in a material respect, as follows: Respondent failed to properly repair the Bureau's 1984 Chevrolet Monte Carlo by failing to properly adjust the TPS sensor on the vehicle.

NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

37. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44016 of that Code by failing to perform the repairs on the Bureau's 1984 Chevrolet Monte Carlo in accordance with established specifications and procedures.

TENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

38. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with Regulation 3340.41 by failing to follow applicable specifications and procedures when performing the repairs on the Bureau's 1984 Chevrolet Monte Carlo.

ELEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

39. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent made a false or misleading representation to Bureau Representative Velazquez regarding the Bureau's

1 1984 Chevrolet Monte Carlo, as set forth in paragraph 34 above, in order to induce Velazquez to
2 purchase an unnecessary repair on the vehicle, i.e., the replacement of the TPS sensor, then sold
3 Velazquez the unnecessary repair.

4 **TWELFTH CAUSE FOR DISCIPLINE**

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

6 40. Respondent's advanced emission specialist technician license is subject to
7 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
8 Respondent failed to comply with section 44016 of that Code by failing to perform the repairs on
9 the Bureau's 1984 Chevrolet Monte Carlo in accordance with established specifications and
10 procedures.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant
13 to the Motor Vehicle Inspection Program)**

14 41. Respondent's advanced emission specialist technician license is subject to
15 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
16 Respondent failed to comply with Regulation 3340.41 by failing to follow applicable
17 specifications and procedures when diagnosing the cause of the emissions failure and performing
18 the repairs on the Bureau's 1984 Chevrolet Monte Carlo.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

21 42. Respondent's advanced emission specialist technician license is subject to
22 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
23 Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as
24 follows: Respondent made a false or misleading representation to Bureau Representative
25 Velazquez regarding the Bureau's 1984 Chevrolet Monte Carlo, as set forth in paragraph 34
26 above, in order to induce Velazquez to purchase an unnecessary repair on the vehicle, i.e., the
27 replacement of the TPS sensor, then sold Velazquez the unnecessary repair.

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1 **UNDERCOVER OPERATION #2: 1988 OLDSMOBILE CUTLASS CIERA**

2 43. On August 9, 2007, a representative of the Bureau acting in an undercover
3 capacity and using the alias Claire Johnson ("Johnson"), took the Bureau's 1988 Oldsmobile
4 Cutlass Ciera to Respondent's facility and requested a smog inspection, a brake inspection, and
5 diagnostics to determine why the air conditioning did not function. The computer knock sensor
6 was disconnected on the Bureau-documented vehicle, causing the vehicle to fail a smog
7 inspection. In addition, the vehicle's air conditioning clutch relay was made defective, causing
8 the system not to operate. Johnson signed and received a copy of a written estimate, then left the
9 facility.

10 44. On August 10, 2007, Johnson received a telephone message from
11 Respondent. Respondent stated that the air conditioning system needed to be retrofitted, the
12 front calipers were leaking brake fluid, the rotors were below specifications, and the vehicle had
13 failed the smog test.

14 45. On August 13, 2007, at approximately 0820 hours, Johnson telephoned
15 Respondent. Respondent told her that the vehicle had failed smog and would need a diagnosis;
16 the vehicle needed front brakes, including brake pads, rotors, and calipers; and the air
17 conditioning system needed to be retrofitted. Respondent told Johnson that the total cost of the
18 repairs would be \$1,056.56 and he would call her back with an estimate for any additional
19 repairs. Johnson authorized the vehicle repairs.

20 46. On August 14, 2007, Johnson received a telephone message from
21 Respondent. Respondent stated that the vehicle's air conditioning and brakes were working, the
22 vehicle had passed smog, and the vehicle was ready to be picked-up.

23 47. On August 15, 2007, Johnson paid the facility \$1,082.83 and received a
24 copy of an invoice and the vehicle inspection report ("VIR") for the August 14, 2007, smog
25 inspection. That same day, Bureau Representative Leask inspected the vehicle and found that the
26 front brake calipers, disc pads, and disc rotors had been replaced and the air conditioning system
27 recharged or retrofitted to R134 refrigerant when, in fact, the only repairs needed were the
28 reconnection of the knock sensor wire and replacement of the AC compressor clutch relay.

1 Further, the left inner disc pad staked retainer spring Respondent had installed on the vehicle was
2 broken. Leask also found that the air conditioning relay had been replaced, but was not listed on
3 Respondent's invoice.

4 **FIFTEENTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 48. Respondent's automotive repair dealer registration is subject to
7 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
8 Respondent made or authorized a statement which he knew or in the exercise of reasonable care
9 should have known to be untrue or misleading. Respondent represented to Bureau
10 Representative Johnson that the Bureau's 1988 Oldsmobile Cutlass Ciera needed the front brake
11 calipers, disc pads, and disc rotors replaced and the air conditioning system retrofitted. In fact,
12 the front brake calipers, disc pads, and disc rotors were not in need of replacement and the air
13 conditioning system did not need to be retrofitted. Further, the only repairs needed on the vehicle
14 were the reconnection of the knock sensor wire and replacement of the AC compressor clutch
15 relay.

16 **SIXTEENTH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 49. Respondent's automotive repair dealer registration is subject to
19 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
20 Respondent committed an act constituting fraud, as follows: Respondent made a false or
21 misleading representation to Bureau Representative Johnson regarding the Bureau's 1988
22 Oldsmobile Cutlass Ciera, as set forth in paragraph 48 above, in order to induce Johnson to
23 purchase unnecessary repairs on the vehicle, i.e., replacement of the front brake calipers, disc
24 pads, and disc rotors and retrofitting of the air conditioning system, then sold Johnson the
25 unnecessary repairs.

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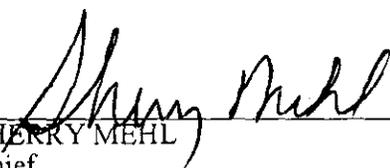
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6. Ordering Respondent William Chip Carroll individually and as owner of Blue Ribbon Automotive, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/2/08



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