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7

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

12 In the Matter of the Accusation Against:

Case No. 77/15-13383

13 **NESHEKS AUTO REPAIR, JON ROY**
14 **NESHEK, OWNER**
15 **5034 E. Third Street**
16 **Los Angeles, CA 90022**

A C C U S A T I O N

17 **Automotive Repair Dealer Registration No.**
18 **ARD 221311**
19 **Smog Check Station License No. RC 221311**
20 **Lamp Station License No. LS 221311, Class**
21 **A**
22 **Brake Station License No. BS 221311, Class**
23 **C**

24 **and**

25 **JON ROY NESHEK**
26 **5034 E. Third Street**
27 **Los Angeles, CA 90222**

28 **Brake Adjuster Class C, License No.**
BA77762
Lamp Adjuster Class A, License No.
LA77762
Smog Check Inspector License No. EO77762
Smog Check Repair Technician License No.
EI77762

Respondent.

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Complainant alleges:

PARTIES/LICENSE INFORMATION

1. Patrick Dorais (“Complainant”) brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs (the “Bureau”).

Nesheks Auto Repair, Jon Roy Neshek

2. On or about May 15, 2002, the Bureau issued Automotive Repair Dealer Registration Number ARD 221311 to Nesheks Auto Repair, Jon Roy Neshek, Owner (“Respondent NAR”). The Automotive Repair Dealer (“ARD”) Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2017, unless renewed.

3. On or about May 17, 2002, the Bureau issued Smog Check Station License Number RC 221311 to Respondent NAR. This license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2017, unless renewed.

4. On or about February 20, 2015, the Bureau certified Respondent NAR as a STAR Station. The certification will remain active unless Respondent NAR’s ARD Registration or Smog Check Station License is revoked, cancelled, license become delinquent or certification is invalidated.

5. On or about June 19, 2002, the Bureau issued Lamp Station, Class A, License Number LS 221311 to Respondent NAR. This license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2017, unless renewed.

6. On or about June 19, 2002, the Bureau issued Brake Station, Class C, License Number BS 221311 to Respondent NAR. This license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2017, unless renewed.

Jon Roy Neshek

7. In or around 1996, the Bureau issued Advanced Emission Specialist Technician License No. 77762 to Respondent Jon Roy Neshek (“Respondent Neshek”). This license was cancelled on September 16, 2013, when Respondent Neshek elected to receive a Smog Check

1 Inspector License No. EO77762 and Smog Check Repair Technician Licensee No. EI77762.
2 This Smog Check Inspector License and Smog Check Repair Technician License will expire on
3 October 31, 2017, unless renewed.

4 8. In or around 1981, the Bureau issued Brake Adjuster, Class C Number BA77762 to
5 Respondent Neshek. The Brake Adjuster, Class C License was in full force and effect at all times
6 relevant to the charges brought herein and will expire on October 31, 2018, unless renewed.

7 9. In or around 1982, the Bureau issued Lamp Adjuster, Class A Number LA77762 to
8 Respondent Neshek. The Lamp Adjuster, Class A License was in full force and effect at all times
9 relevant to the charges brought herein and will expire on October 31, 2018, unless renewed.

10 JURISDICTION

11 10. Business and Professions Code (“Bus. & Prof. Code”) section 9884.7 provides that
12 the Director may revoke an automotive repair dealer registration.

13 11. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
14 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
15 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
16 invalidating (suspending or revoking) a registration.

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

20 13. Bus. & Prof. Code section 9889.7 provides, in pertinent part, that the expiration or
21 suspension of a license by operation of law or by order or decision of the Director or a court of
22 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
23 proceed with any disciplinary proceedings.

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

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

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

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

6 STATUTORY PROVISIONS

7 17. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
8 "commission," "committee," "department," "division," "examining committee," "program," and
9 "agency." "License" includes certificate, registration or other means to engage in a business or
10 profession regulated by the Code.

11 18. Section 9884.7 of the Code states:

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

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

20 "(2) Causing or allowing a customer to sign any work order that does not state the repairs
21 requested by the customer or the automobile's odometer reading at the time of repair.

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

24 "(4) Any other conduct which constitutes fraud.

25 "(5) Conduct constituting gross negligence.

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

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1 19. Section 9884.8 of the Code states:

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

12 20. Section 9884.9 of the Code states:

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

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

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

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

5 _____

6 (signature or initials)”

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

9 21. Section 9889.3 of the Code states:

10 “The director may suspend, revoke, or take other disciplinary action against a license as
11 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division
12 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

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

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16 “(c) Violates any of the regulations promulgated by the director pursuant to this chapter [the
17 Automotive Repair Act].

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

19 “(e) Has misrepresented a material fact in obtaining a license.

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

23 “(i) Is convicted of a violation of Section 551 of the Penal Code.”

24 22. Section 9889.9 of the Code states that “[w]hen any license has been revoked or
25 suspended following a hearing under the provisions of this article [Article 7 (commencing with
26 section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and
27 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
28 director.”

1 23. Section 44012 of the Health & Safety Code states:

2 “The test at the smog check stations shall be performed in accordance with procedures
3 prescribed by the department and may require loaded mode dynamometer testing in enhanced
4 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other
5 appropriate test procedures as determined by the department in consultation with the state board.
6 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
7 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
8 no earlier than January 1, 2013. However, the department, in consultation with the state board,
9 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
10 idle testing for vehicles with onboard diagnostic systems that the department and the state board
11 determine exhibit operational problems. The department shall ensure, as appropriate to the test
12 method, the following:

13 “(a) Emission control systems required by state and federal law are reducing excess
14 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
15 Section 44013.

16 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
17 the vehicle’s emission control system.

18 “(c) For other than diesel-powered vehicles, the vehicle’s exhaust emissions of
19 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
20 mode are tested in accordance with procedures prescribed by the department. In determining how
21 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
22 that the emission reduction targets for the enhanced program are met.

23 “(d) For other than diesel-powered vehicles, the vehicle’s fuel evaporative system and
24 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
25 compound emissions, in accordance with procedures prescribed by the department.

26 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices
27 and the vehicle’s exhaust emissions are tested in accordance with procedures prescribed by the
28 department, that may include, but are not limited to, onboard diagnostic testing. The test may

1 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
2 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

3 “(f) A visual or functional check is made of emission control devices specified by the
4 department, including the catalytic converter in those instances in which the department
5 determines it to be necessary to meet the findings of Section 44001. The visual or functional
6 check shall be performed in accordance with procedures prescribed by the department.

7 “(g) A determination as to whether the motor vehicle complies with the emission standards
8 for that vehicle’s class and model-year as prescribed by the department.

9 “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a
10 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
11 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
12 would have passed a tailpipe test.

13 “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
14 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
15 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
16 vehicle from compliance with all applicable requirements of this chapter.”

17 24. Section 44014 of the Health & Safety Code states:

18 “(a) Except as otherwise provided in this chapter, the testing and repair portion of the
19 program shall be conducted by smog check stations licensed by the department, and by smog
20 check technicians who have qualified pursuant to this chapter....”

21 25. Section 44030 of the Health & Safety Code states:

22 “(a) The department shall develop standards for the licensing of smog check stations.
23 Tests, service, and adjustment at smog check stations shall be performed by a qualified smog
24 check mechanic....”

25 26. Section 44032 of the Health & Saf. Code provides, in pertinent part, that “[q]ualified
26 technicians shall perform tests of emission control devices and systems in accordance with
27 Section 44012.”

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1 27. Section 44059 of the Health & Saf. Code provides:

2 “The willful making of any false statement or entry with regard to a material matter in any
3 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
4 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
5 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

6 28. Section 44072.2 of the Health & Saf. Code states, in pertinent part:

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

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

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

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

15 29. Section 44072.8 of the Health & Saf. Code states:

16 “When a license has been revoked or suspended following a hearing under this article, any
17 additional license issued under this chapter in the name of the licensee may be likewise revoked
18 or suspended by the director.”

19 30. Section 44072.10 of the Health & Saf. Code states, in pertinent part:

20 “(c) The department shall revoke the license of any smog check technician or station
21 licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of
22 vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

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24 “(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure
25 of the department implementing this chapter.”

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1 **COST RECOVERY PROVISION**

2 31. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FIRST UNDERCOVER INSPECTION**

9 32. On or about September 2, 2015, a Bureau undercover operator (“operator”) drove a
10 Bureau-owned 2002 Honda (the “Honda”) to Respondent NAR for inspection. Prior to
11 Respondent NAR’s inspection of the Honda, Bureau representatives installed right front and left
12 rear brake rotors that were undersized and not within the manufacturer’s specifications; they also
13 misadjusted both front headlamps and the license plate light was rendered non-operational.

14 33. When the operator arrived at Respondent NAR, he spoke to Respondent Neshek and
15 L. S., an employee at Respondent NAR. The operator requested a brake, lamp, and smog check
16 inspections for the Honda and asked how much they would cost. Respondent Neshek informed
17 the operator they would cost \$80.00. The operator verbally authorized the work to be performed
18 and stood outside of the repair facility where he had a clear view of the vehicle. Respondent
19 NAR failed to provide a written estimate to the operator.

20 34. Respondent Neshek checked the operation of the running lights on the vehicle and
21 notified the operator that the license plate bulb was burned out and that he would replace the bulb
22 at no charge. The operator did not observe any headlight adjustments made to the vehicle or
23 apparatus hooked up to check the alignment of the headlights. Respondent Neshek then walked
24 inside the repair facility where the operator overheard respondent Neshek instruct another
25 employee (Employee 2) to check the brakes on the vehicle. The operator then observed
26 Employee 2 remove the driver’s side wheels and shine his flashlight in the vicinity of the brakes.
27 The wheels that had been removed were then reinstalled on the Honda. The passenger side tires
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1 were never removed and Respondent Neshek never personally inspected the brakes on the
2 vehicle.

3 35. L. S. then opened the trunk and instructed Employee 2 to replace the license plate
4 bulb. The operator observed Employee 2 replace the license plate bulb. L. S. then closed the
5 trunk, drove the vehicle through the service bay approximately 30-40 feet, and parked the vehicle
6 in the back alley.

7 36. L. S. then asked the operator to come to the front counter where the operator was
8 provided with completed brake and lamp certificates that were signed by Respondent Neshek. L.
9 S. then requested payment from the operator, asked him to sign the invoice, and then instructed
10 the operator to walk through the repair facility to retrieve the Honda. Respondent Neshek never
11 test drove the Honda.

12 37. Bureau representatives inspected the Honda after it was serviced by Respondent
13 NAR. The inspection revealed that the license plate light bulb had been replaced. However, the
14 headlamps had not been adjusted, as evidenced by the undisturbed tamper indicators on the
15 headlamp adjustment screws. The inspection also revealed that the tamper indicators on the
16 passenger side wheels were still in tact. This indicates the brakes were never inspected on the
17 passenger side. Therefore, the Honda should not have received either Brake or Lamp Certificates
18 of Adjustment due to undersized right front and left rear brake rotors that exceeded the
19 manufacturer's specification and headlamps being out of adjustment.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 38. Respondent NAR's registration is subject to disciplinary action pursuant to Business
23 & Professions Code section 9884.7, subdivision (a)(1), Respondent NAR made or authorized
24 statements which it knew or in the exercise of reasonable care should have known to be untrue or
25 misleading, as follows:

- 26 a. Respondent NAR certified under penalty of perjury on Brake Certificate [REDACTED]
27 [REDACTED] that the drums and rotors on the Honda were in a satisfactory condition. In fact, the
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1 front brake rotors were machined below the manufacturer's minimum service specifications and
2 the rear brake drums were machined beyond the manufacturer's maximum service specifications.

3 b. Respondent NAR certified under penalty of perjury on Lamp Certificate [REDACTED]
4 [REDACTED] that the headlamps on the Honda were inspected and that they were in a satisfactory
5 condition. In fact, both headlamps were out of adjustment and an inspection on the Honda's
6 headlamps was not performed.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 39. Respondent NAR's registration is subject to disciplinary action pursuant to Business
10 & Professions Code section 9884.7, subdivision (a)(4), in that Respondent committed acts
11 constituting fraud, as follows:

12 a. Respondent NAR issued a Brake Certificate [REDACTED] for the Honda without
13 ensuring that a bona fide inspection was performed of the Honda's brake systems.

14 b. Respondent NAR issued a Lamp Certificate [REDACTED] for the Honda without
15 ensuring that a bona fide inspection was performed of the Honda's lighting systems.

16 c. Respondent NAR obtained payment from the operator for performing the applicable
17 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's Honda as
18 specified by the Bureau and in accordance with the Vehicle Code. In fact, Respondent NAR
19 failed to perform the necessary inspections, adjustments, and repairs in compliance with Bureau
20 Regulations or the Vehicle Code.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Violations of Regulations)**

23 40. Respondent NAR's registration is subject to disciplinary action pursuant to Business
24 & Professions Code section 9884.7, subdivision (a)(6), in that Respondent NAR failed to comply
25 with provisions of California Code of Regulations, title 16, in the following material respects:

26 a. **Section 3305, subdivision (a)**: Respondent NAR failed to ensure that the inspection
27 of the brake system and inspection and adjustment of the lighting system were performed on the
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1 Bureau's Honda in accordance with the specifications, instructions, and directives issued by the
2 Bureau and the vehicle manufacturer.

3 b. **Section 3316, subdivision (d)(2)**: Respondent NAR issued Lamp Certificate No.
4 LC2072018 as to the Bureau's Honda when some of the lamps, lighting equipment, and/or related
5 electrical systems on the vehicle were not in compliance with Bureau regulations.

6 c. **Section 3321, subdivision (c)(2)**: Respondent NAR issued Brake Certificate No.
7 BC2106915 as to the Bureau's Honda when the brake system on the vehicle had not been
8 completely tested or inspected.

9 d. **Section 3353, subdivision (a)**: Respondent NAR failed to provide the operator with
10 a written estimated price for labor and parts for Honda.

11 e. **Section 3356, subdivision (a)(1)**: The invoice does not identify Respondent NAR as
12 "Nesheks Auto Repair," which is Respondent NAR's business name as shown in the Bureau's
13 records.

14 f. **Section 3356, subdivision (a)(2)(a)**: The invoice Respondent NAR provided to the
15 operator does not separately identify each service and the cost for each service performed on the
16 Honda.

17 g. **Section 3356, subdivision (a)(2)(e)**: The invoice Respondent NAR provided to the
18 operator does not identify the applicable sales tax applicable to the service performed on the
19 Honda.

20 h. **Section 3373**: Respondent NAR wrote in the invoice for services performed on the
21 Honda that Respondent NAR checked the brakes and lamps, or words to that effect. However,
22 Respondent NAR did not check the entire brake and lamp systems on the Honda. Thus, the
23 statements in the invoice were false.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure to Provide a Written Estimate)**

26 41. Respondent NAR's registration is subject to disciplinary action pursuant to Bus. &
27 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent NAR failed to comply with
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1 section 9884.9, subdivision (a), in a material respect, as follows: Neither Respondent Neshek nor
2 L. S. provided the operator with a written estimate for parts and labor necessary for a specific job.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 42. Respondent NAR's registration is subject to disciplinary action pursuant to Code
6 section 9884.7, subdivision (a)(5), in that Respondent NAR committed acts constituting gross
7 negligence when he failed to inspect the Honda's brake systems himself before issuing a brake
8 certification to the Honda and failed to conduct any inspection as to the Honda's headlamps
9 before issuing a lamp certification.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Insufficient Invoice)**

12 43. Respondent NAR's registration is subject to disciplinary action pursuant to Bus. &
13 Prof. Code section 9884.8, in that Respondent NAR provided a deficient invoice to the operator
14 for services performed on the Honda. Specifically, Respondent NAR's invoice did not list
15 service work and parts separately; did not separately state subtotal prices for service work and for
16 parts, not including sales tax; and did not separately identify the applicable sales tax, if any.

17 **SEVENTH CAUSE FOR DISCIPLINE**

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

19 44. Respondent NAR's brake and lamp station licenses are subject to disciplinary action
20 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent NAR failed to
21 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
22 (a); 3316, subdivision (d)(2); 3321, subdivision (c)(2); 3353, subdivision (a); 3356, subdivision
23 (a)(1); 3356, subdivision (a)(2)(a); 3356, subdivision (a)(2)(e); and section 3373, as set forth in
24 paragraph 40 above.

25 **EIGHTH CAUSE FOR DISCIPLINE**

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

27 45. Respondent NAR's brake and lamp station licenses are subject to disciplinary action
28 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent NAR

1 committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in
2 paragraphs 32-37 herein.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 46. Respondent Neshek's brake and lamp adjuster licenses are subject to disciplinary
6 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent Neshek
7 committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in
8 paragraphs 32-37 herein.

9 **SECOND UNDERCOVER INSPECTION**

10 47. On or about October 7, 2015, a second Bureau operator drove a Bureau-owned 2002
11 Toyota (the "First Toyota") to Respondent NAR for inspection. Prior to Respondent NAR's
12 inspection of the First Toyota, Bureau representatives installed right front and left rear brake
13 rotors that were undersized and not within the manufacturer's specifications. Bureau
14 representatives also misadjusted both front headlamps and rendered both rear license plate lights
15 non-operational.

16 48. When the operator arrived at Respondent NAR, he spoke to Respondent Neshek and
17 L. S. The operator requested a brake, lamp, and smog check inspections for the First Toyota so
18 he could complete the Department of Motor Vehicles ("DMV") registration process. L. S.
19 informed the operator that Respondent NAR could perform the requested services for \$110.00 but
20 failed to provide a written estimate to the operator. The operator verbally authorized the work to
21 be performed, provided L. S. with his DMV document, and stood outside of the repair facility
22 where he had a clear view of the vehicle.

23 49. After waiting for approximately one hour, L. S. drove the First Toyota inside the
24 service bay and began to perform a smog inspection on the First Toyota. L. S. sat in the vehicle
25 while Respondent Neshek walked to the rear of the vehicle and asked the operator if the license
26 plate bulbs were operational; the operator responded that he did not know. Respondent Neshek
27 did not make any headlight adjustments to the First Toyota, and Respondent Neshek did not
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1 attach an apparatus to the First Toyota to check the alignment of the headlights. The wheels of
2 the First Toyota were not removed from the vehicle by any of Respondent NAR's staff.

3 50. The operator observed Respondent Neshek go to the counter that is located inside the
4 repair facility and then complete the brake and lamp certificates while L. S. completed the smog
5 inspection. Respondent Neshek also signed the brake and lamp certificates and drafted the repair
6 invoice from the DMV document. L. S. then signed the Vehicle Inspection Report ("VIR") and
7 handed it to Respondent Neshek. Respondent Neshek never test drove the First Toyota.

8 51. Respondent Neshek then requested payment and asked the operator to sign the repair
9 invoice; the operator gave Respondent Neshek \$110.00 in cash and signed the invoice using a
10 pseudonym. Respondent Neshek gave the operator a yellow invoice, VIR, and the brake and
11 lamp certificates. L. S. then instructed the operator to walk through the repair facility to retrieve
12 the First Toyota.

13 52. Bureau representatives inspected the First Toyota after it was serviced by Respondent
14 NAR. The inspection revealed that one of the two defective license plate light bulbs had been
15 replaced. However, the headlamps had not been adjusted, as evidenced by the undisturbed
16 tamper indicators on the left side headlamp adjustment screw. The inspection also revealed that
17 the tamper indicators on the each of the four wheels were still intact. This indicates that none of
18 the brakes were inspected on First Toyota. Therefore, the First Toyota should not have received
19 Brake or Lamp Certificates of Adjustment due to undersized right front and left rear brake rotors
20 that exceeded the manufacturer's specification and headlamps being out of adjustment.

21 **TENTH CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 53. Respondent NAR's registration is subject to disciplinary action pursuant to Bus. &
24 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent NAR made or authorized
25 statements which he knew or in the exercise of reasonable care should have known to be untrue or
26 misleading, as follows:

1 a. Respondent NAR certified under penalty of perjury on Brake Certificate [REDACTED]
2 [REDACTED] that the drums and rotors on the First Toyota were in a satisfactory condition when,
3 in fact, they were undersized and exceeded the manufacturer's discard specification.

4 b. Respondent NAR certified under penalty of perjury on Lamp Certificate [REDACTED].
5 [REDACTED] that he inspected the headlamps on the First Toyota and that they were in a
6 satisfactory condition. In fact, both headlamps were out of adjustment and there was a defective
7 license plate bulb still installed on the vehicle.

8 **ELEVENTH CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 54. Respondent NAR's registration is subject to disciplinary action pursuant to Bus. &
11 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent NAR committed acts
12 constituting fraud, as follows:

13 a. Respondent NAR issued a Brake Certificate [REDACTED] for the First Toyota
14 without ensuring that a bona fide inspection was performed of the First Toyota's brake systems.

15 b. Respondent NAR issued a Lamp Certificate [REDACTED] for the First Toyota
16 without ensuring that a bona fide inspection was performed of the First Toyota's brake systems.

17 c. Respondent NAR obtained payment from the operator for performing the applicable
18 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's First
19 Toyota that were not in compliance with Bureau specifications.

20 **TWELFTH CAUSE FOR DISCIPLINE**

21 **(Violations of Regulations)**

22 55. Respondent NAR's registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent NAR failed to comply with
24 provisions of California Code of Regulations, title 16, in the following material respects:

25 a. **Section 3305, subdivision (a):** Respondent NAR failed to ensure that the inspection
26 of the brake system and inspection and adjustment of the lighting system were performed on the
27 Bureau's First Toyota in accordance with the specifications, instructions, and directives issued by
28 the Bureau and the vehicle manufacturer.

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FOURTEENTH CAUSE FOR DISCIPLINE

(Gross Negligence)

57. Respondent NAR's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(5), in that Respondent NAR committed acts constituting gross negligence when he failed to inspect the First Toyota's brake systems himself before issuing a brake certification; and when he failed to conduct a complete inspection as to the First Toyota's headlamps and readjusting the headlamps before issuing a lamp certification to the First Toyota.

FIFTEENTH CAUSE FOR DISCIPLINE

(Insufficient Invoice)

58. Respondent NAR's brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.8, in that Respondent NAR provided a deficient invoice to the operator for services performed on the First Toyota. Specifically, Respondent NAR's invoice did not list service work and parts separately; did not separately state subtotal prices for service work and for parts, not including sales tax; and did not separately identify the applicable sales tax, if any.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

59. Respondent NAR's brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent NAR failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a); 3316, subdivision (d)(2); 3321, subdivision (c)(2); 3353, subdivision (a); 3356, subdivision (a)(1); 3356, subdivision (a)(2)(a); 3356, subdivision (a)(2)(e); and section 3373, as set forth in paragraph 55, above.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

60. Respondent NAR's brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts

1 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraphs 47-
2 52 herein.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

5 61. Respondent Neshek's brake and lamp adjuster licenses are subject to disciplinary
6 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent Neshek
7 committed acts involving dishonest, fraud, or deceit whereby another was injured, as set forth in
8 paragraphs 47-52 herein.

9 **THIRD UNDERCOVER INSPECTION**

10 62. On or about October 27, 2015, a third Bureau operator drove a Bureau-owned 2008
11 Toyota (the "Second Toyota") to Respondent NAR for inspection. Prior to Respondent NAR's
12 inspection of the Second Toyota, Bureau representatives installed a right front brake rotor that
13 was undersized and a left rear brake drum that was oversized. Both were not within the
14 manufacturer's specifications. Bureau representatives also misadjusted both front headlamps and
15 rendered the left rear taillight non-operational.

16 63. When the operator arrived at Respondent NAR, he spoke to Respondent Neshek. The
17 operator requested brake, lamp, and smog check inspections for the Second Toyota and asked
18 how much they would cost. Respondent Neshek informed the operator that they would cost
19 \$110.00, but failed to provide a written estimate to the operator. The operator verbally authorized
20 the work to be performed. Respondent Neshek asked the operator to park the Second Toyota just
21 outside the service bay and to turn on the lights and hit the brakes while Respondent Neshek
22 checked the bulbs. Respondent Neshek informed the operator that the left rear bulb was burned
23 out, but that he could replace it for an additional \$6.00. The operator verbally authorized the
24 replacement of the left rear bulb but was not provided with a written or revised estimate. The
25 operator subsequently exited the vehicle and stood outside of the repair facility where he had a
26 clear view of the vehicle.

27 64. The operator observed Respondent Neshek speaking to an employee who then
28 attached an orange apparatus on the right front headlight assembly; it appeared the employee was

1 adjusting the right front headlight assembly. The employee then replaced the left rear taillight
2 bulb and removed the driver's side wheels. Respondent Neshek looked at the left front and left
3 rear brakes and informed the operator that the brakes were good without taking any
4 measurements. Respondent Neshek did not take any measurements of the brakes. The passenger
5 side wheels were never removed. The employee then reattached the driver's side wheels and
6 proceeded to complete the smog inspection on the Second Toyota.

7 65. Respondent Neshek then completed and signed the brake and lamp certificates.
8 When the employee completed the smog inspection on the Second Toyota, the employee handed
9 the Smog Inspection VIR to Respondent Neshek. Respondent Neshek then signed the Smog
10 Inspection VIR despite the fact that he did not personally perform the smog inspection on the
11 vehicle.

12 66. Respondent Neshek then requested payment for \$116.00 and asked the operator to
13 sign the repair invoice. The operator handed the employee \$120.00 in cash and signed the
14 invoice with a pseudonym. The operator received \$4.00 in cash, a yellow invoice, VIR, and the
15 brake and lamp certificates. The operator retrieved the Second Toyota and left Respondent
16 NAR's facility.

17 67. Bureau representatives inspected the Second Toyota after it was serviced by
18 Respondent NAR. The inspection revealed that the left rear taillight bulb had been replaced. The
19 left headlamp had not been adjusted as evidenced by the undisturbed tamper indicators on the
20 headlamp adjustment screws. A Bureau representative checked the headlight aim, and the left
21 headlight remained misadjusted. Therefore, the Second Toyota should not have received a Lamp
22 Certificate of Adjustment. The inspection also revealed that the tamper indicators on the
23 passenger-side wheels were still in tact, indicating that the brakes on the passenger side were not
24 inspected. Therefore, the Second Toyota should not have received a Brake Certificate of
25 Adjustment due to the left front brake rotor and left rear brake drum that exceeded manufacturer's
26 specification.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 68. Respondent NAR has subjected his Registration to discipline pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), in that on or about October 27, 2015, he issued a smog
5 certification to the Second Toyota indicating that Respondent Neshek had conducted a smog test
6 on the Second Toyota. In fact, Respondent NAR was aware that Respondent Neshek did not
7 conduct this inspection. Respondent NAR made these statements when it knew or by exercise of
8 reasonable care should have known that the statements were untrue or misleading. Complainant
9 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 62-67.

10 **TWENTIETH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 69. Respondent NAR has subjected his Registration to discipline pursuant to Bus. & Prof.
13 Code section 9884.7, subdivision (a)(4), in that on or about October 27, 2015, he committed acts
14 which constitute fraud by issuing an electronic certificate of compliance for the Second Toyota
15 stating that Respondent Neshek had performed the smog test when, in fact, an unlicensed operator
16 performed the test. Complainant refers to, and by this reference incorporates, the allegations set
17 forth above in paragraphs 62-67.

18 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

19 **(Violations of Regulations)**

20 70. Respondent NAR's registration is subject to disciplinary action pursuant to Bus. &
21 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent NAR failed to comply with
22 provisions of California Code of Regulations, title 16, in the following material respects:

23 a. **Section 3305, subdivision (a):** Respondent NAR failed to ensure that the inspection
24 of the brake system and inspection and adjustment of the lighting system were performed on the
25 Bureau's Second Toyota in accordance with the specifications, instructions, and directives issued
26 by the Bureau and the vehicle manufacturer.

1 Respondent NAR provided the operator with a written estimate for parts and labor necessary for a
2 specific job.

3 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 72. Respondent NAR's registration is subject to disciplinary action pursuant to Code
6 section 9884.7, subdivision (a)(5), in that Respondent NAR committed acts constituting gross
7 negligence when he failed to inspect the Second Toyota's brake systems himself before issuing a
8 brake certification to the Honda, and when he failed to conduct a complete inspection as to the
9 Second Toyota's headlamps and readjusting the headlamps before issuing a lamp certification.

10 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

12 73. Respondent NAR's brake and lamp station licenses are subject to disciplinary action
13 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent NAR failed to
14 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
15 (a); 3316, subdivision (d)(2); 3321, subdivision (c)(2); 3353, subdivision (a); 3356, subdivision
16 (a)(1); 3356, subdivision (a)(2)(a); 3356, subdivision (a)(2)(e); and section 3373, as set forth in
17 paragraph 70, above.

18 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

20 74. Respondent NAR's brake and lamp station licenses are subject to disciplinary action
21 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent NAR
22 committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in
23 paragraphs 62-67, above.

24 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

25 **(Insufficient Invoice)**

26 75. Respondent NAR's registration is subject to disciplinary action pursuant to Bus. &
27 Prof. Code section 9884.8, in that Respondent NAR provided a deficient invoice to the operator
28 for services performed on the Second Toyota. Specifically, Respondent NAR's invoice did not

1 list service work and parts separately; did not separately state subtotal prices for service work and
2 for parts, not including sales tax; and did not separately identify the applicable sales tax, if any.

3 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

5 76. Respondent Neshek's brake and lamp adjuster licenses are subject to disciplinary
6 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent Neshek
7 committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in
8 in paragraphs 62-67 herein.

9 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

10 **(Violation of the Motor Vehicle Inspection Program)**

11 77. Respondent NAR has subjected his Smog Check Station license to discipline pursuant
12 to Health & Saf. Code section 44072.2, subdivision (a), in that on October 27, 2015, Respondent
13 NAR violated the following sections of the Health & Saf. Code with respect to the inspection of
14 the Bureau's Second Toyota.

15 a. **Section 44059:** Respondent NAR willfully made false entries for the electronic
16 certificates of compliance by certifying that Respondent Neshek conducted the smog test on the
17 Second Toyota when, in fact, an unlicensed individual completed the test. Complainant refers to,
18 and by this reference incorporates, the allegations set forth above in paragraphs 62-67.

19 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

21 78. Respondent NAR has subjected his Smog Check Station License to discipline
22 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that on October 27, 2015,
23 Respondent NAR committed acts involving dishonesty, fraud or deceit whereby another was
24 injured by issuing an electronic certificate of compliance for the Second Toyota stating that
25 Respondent Neshek performed the smog test when, in fact, an unlicensed individual performed
26 the test. Complainant refers to, and by this reference incorporates, the allegations set forth above
27 in paragraphs 62-67.

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1 **THIRTIETH CAUSE FOR DISCIPLINE**

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

3 79. Respondent Neshek has subjected his Smog Check Inspector License to discipline
4 under Health & Saf. Code section 44072.2, subdivision (a), in that on October 27, 2015, he
5 violated the following sections of the Health & Saf. Code with respect to the inspection of certain
6 vehicles:

7 a. **Section 44059:** Respondent Neshek willfully made false entries for the electronic
8 certificate of compliance issued to the Second Toyota by certifying that he had conducted the
9 smog test of the Second Toyota when, in fact, an unlicensed individual conducted the smog test.
10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraphs 62-67.

12 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

14 80. Respondent Neshek has subjected his Smog Check Inspector License to discipline
15 under Health & Saf. Code section 44072.2, subdivision (d), in that on October 27, 2015, he
16 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing an
17 electronic certificate of compliance for the Second Toyota stating that he conducted the smog test
18 when, in fact, an unlicensed individual conducted the test. Complainant refers to, and by this
19 reference incorporates, the allegations set forth above in paragraphs 62-67.

20 **OTHER MATTERS**

21 81. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
22 may suspend, revoke, or place on probation the registration for all places of business operated in
23 this State by Respondent Neshek, upon a finding that Respondent Neshek has, or is, engaged in a
24 course of repeated and willful violations of the laws and regulations pertaining to an automotive
25 repair dealer.

26 82. Pursuant to Code section 9889.9, if Lamp Station License Number LS 221311, issued
27 to Respondent Neshek, is revoked or suspended, any additional license issued under Articles 5
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1 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
2 revoked or suspended by the Director.

3 83. Pursuant to Code section 9889.9, if Brake Station License Number BS 221311, issued
4 to Respondent Neshek, is revoked or suspended, any additional license issued under Articles 5
5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
6 revoked or suspended by the Director.

7 84. Pursuant to Code section 9889.9, if Brake Adjuster, Class C, License Number BA
8 77762, issued to Respondent Neshek, is revoked or suspended, any additional license issued
9 under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may
10 be likewise revoked or suspended by the Director.

11 85. Pursuant to Code section 9889.9, if Lamp Adjuster, Class A, Number LA77762,
12 issued to Respondent Neshek, is revoked or suspended, any additional license issued under
13 Articles 5 and 6 of Chapter 20 .3 of Division 3 of the Code in the name of said licensee may be
14 likewise revoked or suspended by the Director.

15 86. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
16 Number RC 221311 issued to Respondent Neshek, who is the sole owner of Nesheks Auto
17 Repair, is revoked or suspended, any additional license issued under this chapter in the name of
18 said licensee may be likewise revoked or suspended by the Director.

19 87. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
20 Number EO 77762 or Smog Check Repair Technician License No. EI 77762, issued to
21 Respondent Neshek, who is the sole owner of Nesheks Auto Repair, is revoked or suspended, any
22 additional license issued under this chapter in the name of said licensee may be likewise revoked
23 or suspended by the Director.

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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 or suspending Automotive Repair Dealer Registration Number ARD 221311, issued to Nesheks Auto Repair, Jon Roy Neshek, Owner;
2. Revoking, suspending, or placing on probation any other Automotive Repair Dealer Registration issued to Jon Roy Neshek;
3. Revoking or suspending Smog Check Station License Number RC 221311, issued to Nesheks Auto Repair, Jon Roy Neshek, Owner;
4. Revoking or suspending Lamp Station, Class A, License Number LS 221311, issued to Nesheks Auto Repair, Jon Roy Neshek, Owner;
5. Revoking or suspending Brake Station, Class C, License Number BS 221311, issued to Nesheks Auto Repair, Jon Roy Neshek, Owner;
6. Revoking or suspending Brake Adjuster, Class C, License Number BA 77762, issued to Jon Roy Neshek;
7. Revoking or suspending Lamp Adjuster Class A Number LA 77762, issued to Jon Roy Neshek;
8. Revoking, suspending, or placing on probation any additional license issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Code in the name of Jon Roy Neshek;
9. Revoking or suspending Smog Check Inspector Number EO 77762, issued to Jon Roy Neshek;
10. Revoking or suspending Smog Check Repair Technician License Number EI 77762, issued to Jon Roy Neshek;
11. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jon Roy Neshek;
12. Ordering Jon Roy Neshek 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,

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

DATED: March 7, 2017



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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