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

11 In the Matter of the Accusation Against:

Case No. 77/14-18

12 **KUMBAWA R OH - OWNER, D.B.A.**
AUTOPORT CAR REPAIR SERVICE
13 3901 San Leandro St.
Oakland, CA 94601
14 **Automotive Repair Dealer Reg. No. ARD**
241395
15 **Smog Check Station License No. RC 241395**
Lamp Station License No. LS 241395, A
16 **Brake Station License No. BS 241395, C**

ACCUSATION

17 and

18 **KUMBAWA RUU OH**
3901 San Leandro St.
19 Oakland, CA 94601
Advanced Emissions Specialist Technician
20 **License No. EA 24793 (to be redesignated**
upon renewal as EO 24793 and/or EI 24793)
21 **Brake Adjuster License No. BA 24793, C**
Lamp Adjuster License No. LA 24793, A

22 Respondent.

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25 Complainant alleges:

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1 PARTIES

2 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity
3 as the Acting Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
4 Affairs.

5 LICENSE INFORMATION

6 **Automotive Repair Dealer Registration No. ARD 241395**

7 2. On or about September 15, 2005, the Director of Consumer Affairs ("Director") issued
8 Automotive Repair Dealer Registration Number ARD 241395 ("registration") to Kumbawa R. Oh,
9 doing business as Autoport Car Repair Service (Respondent). Respondent's registration was in full
10 force and effect at all times relevant to the charges brought herein and will expire on September 30,
11 2014, unless renewed.

12 **Smog Check Station License No. RC 241395**

13 3. On or about December 1, 2008, the Director issued Smog Check Station License
14 Number RC 241395 to Respondent. Respondent's smog check station license was in full force and
15 effect at all times relevant to the charges brought herein and will expire on September 30, 2014,
16 unless renewed.

17 **Lamp Station License Station License No. LS 241395**

18 4. On or about January 30, 2006, the Director issued Lamp Station License Number LS
19 241395 to Respondent. Respondent's lamp station license was in full force and effect at all times
20 relevant to the charges brought herein and will expire on September 30, 2014, unless renewed.

21 **Brake Station License No. BS 241395**

22 5. On or about January 30, 2006, the Director issued Brake Station License Number BS
23 241395 to Respondent. Respondent's brake station license was in full force and effect at all times
24 relevant to the charges brought herein and will expire on September 30, 2014, unless renewed.

25 **Advanced Emissions Specialist Technician License No. EA 24793**

26 6. In 2008 the Director issued an Advanced Emissions Specialist Technician License
27 Number EA 24793 to Kumbawa Ruu Oh ("Respondent Oh"). Respondent Oh's Advanced Emissions
28 Specialist Technician License was in full force and effect at all times relevant to the charges brought

1 herein and will expire on January 31, 2014, unless renewed. Upon timely renewal of the license, the
2 license will be redesignated as EO 24793 and/or EI 24793.¹

3 **Lamp Adjuster License No. LA 24793**

4 7. In 2004 the Director issued Lamp Adjuster License Number LA 24793 to Respondent
5 Oh. Respondent Oh's Lamp Adjuster license was in full force and effect at all times relevant to the
6 charges brought herein and will expire on January 31, 2016, unless renewed.

7 **Brake Adjuster License No. BA 24793**

8 8. In 1989 the Director issued Brake Adjuster License Number BA 24793 to Respondent
9 Oh. Respondent Oh's Brake Adjuster license was in full force and effect at all times relevant to the
10 charges brought herein and will expire on January 31, 2015, unless renewed.

11 **JURISDICTION**

12 9. Business and Professions Code ("Bus. & Prof. Code" or "Code") section 9884.7
13 provides that the Director may revoke an automotive repair dealer registration.

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

17 11. 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
the Automotive Repair Act.

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

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

24 14. Section 44072 of the Health and Safety Code provides, in pertinent part, that the
25 Director may suspend or revoke any license issued under Chapter 5 of Part 5 of Division 26 of the

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were
27 amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and
28 Basic Area Technician (EB) license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician
(EI) license.

1 Health and Safety Code.

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

6 16. California Code of Regulations title 16, section 3340.28, subdivision (e) states that
7 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
8 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
9 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

10 STATUTORY PROVISIONS

11 17. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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
18 written or oral which is untrue or misleading, and which is known, or which by the exercise of
19 reasonable care should be known, to be untrue or misleading.

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

22 (4) Any other conduct that constitutes fraud.

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

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

18 18. Bus. & Prof. Code section 9884.8 states:

19 All work done by an automotive repair dealer, including all warranty work, shall be
20 recorded on an invoice and shall describe all service work done and parts supplied. Service work
21 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
22 prices for service work and for parts, not including sales tax, and shall state separately the sales
23 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the
24 invoice shall clearly state that fact. If a part of a component system is composed of new and used,
25 rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
26 statement indicating whether any crash parts are original equipment manufacturer crash parts or
27 non-original equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
28 given to the customer and one copy shall be retained by the automotive repair dealer.

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

1 The automotive repair dealer shall give to the customer a written estimated price for labor
2 and parts necessary for a specific job. No work shall be done and no charges shall accrue before
3 authorization to proceed is obtained from the customer. No charges shall be made for work done
4 or parts supplied in excess of the estimated price without the oral or written consent of the
5 customer that shall be obtained at some time after it is determined that the estimated price is
6 insufficient and before the work not estimated is done or the parts not estimated are supplied. . . .
7 If that consent is oral, the dealer shall make a notation on the work order of the date, time, name
8 of person authorizing the additional repairs, and telephone number called, if any, together with a
9 specification of the additional parts and labor in the total additional cost, and shall do either of the
10 following:

11 (1) Make a notation on the invoice of the same facts set forth in the notation on the
12 work order.

13 (2) Upon completion of the repairs, obtain the customer's signature or initials to an
14 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
15 repairs, and the following language: "I acknowledge notice and oral approval of an increase in the
16 original estimated price. _____ (signature or initials)"

17 20. Bus. & Prof. Code section 9889.3 states, in pertinent part:

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

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

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

23 21. Bus. & Prof. Code section 9889.9 provides that when any license has been revoked
24 or suspended following a hearing under the provisions of Article 7 (commencing with section
25 9889.1), any additional license issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the
26 Code may likewise be suspended or revoked.

27 22. Bus. & Prof. Code section 22, states:

28 "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."

23. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
"License" includes "registration" and "certificate."

24. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

(d) Commits any act involving dishonesty, fraud, or deceit whereby

1 another is injured.

2 25. Section 44072.8 of the Health and Safety Code states:

3 When a license has been revoked or suspended following a hearing under this
4 article, any additional license issued under this chapter in the name of the licensee may be
5 likewise revoked or suspended by the director.

6 **COST RECOVERY**

7 26. Bus. & Prof. Code section 125.3 provides, in pertinent part, that the Bureau
8 may request the administrative law judge to direct a licentiate found to have committed a
9 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs
10 of the investigation and enforcement of the case.

11 **UNDERCOVER OPERATION 1 – October 11, 2012**

12 27. On October 11, 2012, a Bureau undercover operator (“operator”) drove a Bureau
13 documented 1994 Ford to Respondent’s facility and requested smog, brake and lamp inspections.
14 The vehicle was documented as having an undersized right front brake rotor, an oversized left
15 rear brake drum, both headlamps out of adjustment, and an inoperative left rear back-up light.
16 These defects would cause the vehicle to fail properly performed brake and lamp inspections. The
17 operator spoke to an individual he identified as Kumbawa Oh (Oh), the owner/technician of the
18 business. The operator received a verbal estimate of \$130.00 for the smog, brake and lamp
19 inspections/certifications. The operator did not sign or receive a work order or a written estimate
20 prior to the work being performed. The operator was able to observe the smog, brake and lamp
21 inspections. The operator watched as Oh drove the vehicle away from the facility and returned in
22 the vehicle approximately one minute later. He then watched as Oh performed the smog and lamp
23 inspections. The operator noted that the wheels were never removed from the Ford at any time
24 during the inspection process. After the inspections, Oh approached the operator and informed
25 him that one of the back-up lights did not work and the headlights were out of adjustment. Oh
26 told the operator that the cost to adjust the headlights was \$25.00 and the cost to replace the back-
27 up light bulb was \$5.00. The operator authorized these repairs, but did not sign or receive a
28 written estimate. The operator then observed an unidentified person replace the back-up bulb on
the Ford and Oh adjust the headlights with an optical type headlight aimer. Oh then completed
and signed Lamp Certificate of Adjustment number LC [REDACTED] and Brake Certificate of

1 Adjustment number BC [REDACTED]. The operator then filled out and signed a work order at Oh's
2 request and then paid Oh \$160.00. He then received a document titled "Estimate Copy # [REDACTED]
3 the Lamp and Brake Certificates of Adjustment mentioned above, and a copy of the smog check
4 Vehicle Inspection Report (VIR). The operator then retrieved the undercover vehicle.

5 28. On or about November 1, 2012, the Bureau re-inspected the undercover vehicle
6 and determined that the undersized right front brake rotor and oversized left rear brake drum were
7 still present, and the left side headlamp was still out of adjustment. The Lamp and Brake
8 Certificates of Adjustment should not have been issued to the undercover vehicle.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 29. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
12 subdivision (a)(1), in that on or about October 11, 2012, he made statements which he knew or
13 which by exercise of reasonable care should have known to be untrue or misleading. The
14 circumstances were that Respondent issued Lamp Certificate of Adjustment number LC [REDACTED]
15 and Brake Certificate of Adjustment number BC [REDACTED], certifying, with respect to the 1994
16 Ford, that Respondent had performed inspections, adjustments, and/or repairs in accordance with
17 the specifications of the Bureau of Automotive Repair, the vehicle manufacturer, and law, that all
18 items were of an approved type, and that all statements on the certificates were true.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 30. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
22 subdivision (a)(4), in that on or about October 11, 2012, Respondent committed acts which
23 constitute fraud by issuing a Brake Certificate of Adjustment for the 1994 Ford, as set forth in
24 "Undercover Operation 1 - October 11, 2012," without performing a bona fide inspection of the
25 brake system on that vehicle, and by accepting payment for an inspection not performed, thereby
26 depriving the People of the State of California of the protection afforded by the Business and
27 Professions Code and the Vehicle Code of the State of California.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Business and Professions Code)**

3 31. Respondent's registration is subject to discipline pursuant to Bus. & Prof. Code
4 section 9884.7, subdivision (a)(6), in that on or about October 11, 2012, Respondent, with
5 respect to the Bureau's 1994 Ford, failed to comply with provisions of the Code in the following
6 material respects:

7 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the Bureau
8 operator with a written estimate and failed to properly record the additional consent for the
9 replacement of the back-up light bulb and the adjustment of the headlights.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Violation of Regulations)**

12 32. Respondent's lamp and brake station licenses are subject to discipline pursuant to
13 Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about October 11, 2012, with
14 respect to the Bureau's 1994 Ford, Respondent failed to comply with provisions of California
15 Code of Regulations, title 16, in the following material respects:

16 a) **Section 3305:** Respondent failed to perform the brake and lamp inspections
17 and certifications on the Bureau's 1994 Ford to the standards set forth in this section of the
18 California Code of Regulations.

19 b) **Section 3316, subsection (d):** Respondent issued Lamp Certificate of
20 Adjustment number LC [REDACTED] the Bureau's 1994 Ford, when in fact the lighting system on
21 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
22 regulations.

23 c) **Section 3321, subsection (c):** Respondent issued Brake Certificate of
24 Adjustment number BC [REDACTED] to the Bureau's 1994 Ford, when in fact the brake system on the
25 vehicle was not in compliance with the requirements of the Vehicle Code and Bureau regulations.

26 **FIFTH CAUSE FOR DISCIPLINE**

27 **(Dishonesty, Fraud, Deceit)**

28 33. Respondent's brake and lamp station licenses are subject to discipline pursuant to

1 Bus. & Prof. Code section 9889.3, subdivision (d), in that on or about October 11, 2012,
2 Respondent committed an act involving dishonesty, fraud, or deceit whereby another was injured.
3 Specifically, Respondent accepted payment to perform an inspection, and issued a Brake
4 Certificate of Adjustment, but did not perform a bona fide inspection of the brake system on the
5 Bureau's 1994 Ford, thereby depriving the People of the State of California of the protection
6 afforded by the Business and Professions Code and the Vehicle Code of the State of California.

7 **SIXTH CAUSE FOR DISCIPLINE**

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

9 34. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
10 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about October 11,
11 2012, with respect to the Bureau's 1994 Ford, Respondent failed to comply with provisions of the
12 California Code of Regulations, title 16, in the following material respects:

13 a) **Section 3305:** Respondent Oh failed to perform the brake and lamp inspections
14 and certifications on the Bureau's 1994 Ford to the standards set forth in this section of the
15 California Code of Regulations.

16 b) **Section 3316, subsection (d):** Respondent Oh issued Lamp Certificate of
17 Adjustment number LC [REDACTED] to the Bureau's 1994 Ford, when in fact the lighting system on
18 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
19 regulations.

20 c) **Section 3321, subsection (c):** Respondent Oh issued Brake Certificate of
21 Adjustment number BC [REDACTED] to the Bureau's 1994 Ford, when in fact the brake system on the
22 vehicle was not in compliance with the requirements of the Vehicle Code and Bureau regulations.

23 d) **Section 3373:** Respondent Oh inserted information into the Brake and Lamp
24 Certificates of Adjustment issued to the Bureau's 1994 Ford that caused those documents to be
25 false and misleading.

26 **SEVENTH CAUSE FOR DISCIPLINE**

27 **(Dishonesty, Fraud, Deceit)**

28 35. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline

1 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that on or about October 11,
2 2012, Respondent Oh committed an act involving dishonesty, fraud, or deceit whereby another
3 was injured. Specifically, Respondent Oh accepted payment to perform an inspection, and he
4 issued a Brake Certificate of Adjustment, without performing a bona fide inspection of the brake
5 system on the Bureau's 1994 Ford, thereby depriving the People of the State of California of the
6 protection afforded by the Business and Professions Code and the Vehicle Code of the State of
7 California.

8 **UNDERCOVER OPERATION 2 – December 19, 2012**

9 36. On December 19, 2012, a Bureau undercover operator ("operator") drove a Bureau
10 documented 1995 Honda to Respondent's facility and requested smog, brake and lamp
11 inspections. The vehicle was documented as having an undersized right front brake rotor,
12 oversized left rear brake drum, the headlamps were out of adjustment, and a left rear license plate
13 light was inoperative. These defects would cause the vehicle to fail properly performed brake and
14 lamp inspections. The operator spoke to Kumbawa Oh, the owner/technician of the business. Oh
15 told the operator the smog, brake and lamp inspections would cost \$140.00. The operator verbally
16 authorized the inspections, but did not sign a work order and was not provided with a copy of a
17 written estimate prior to the work being performed. The operator was able to observe the
18 inspections. The operator observed that Oh did not remove any wheels, test drive the vehicle or
19 use any tools/equipment to inspect or adjust the headlamps. The operator observed Oh complete
20 and sign Lamp Certificate of Adjustment number LC [REDACTED] and Brake Certificate of
21 Adjustment number BC [REDACTED]. The operator paid \$140.00, received a document titled
22 "Estimate Copy [REDACTED] 7", the Lamp and Brake Certificates of Adjustment mentioned above, and
23 a VIR for the smog check/certification. The operator then retrieved the undercover vehicle.

24 37. On or about December 20, 2012, the Bureau re-inspected the undercover vehicle
25 and determined the undersized right front brake rotor and oversized left rear brake drum were still
26 present, the headlamps were still out of adjustment, the tamper seals were still intact, and the left
27 rear license plate light was inoperative, such that the 1995 Honda was unable to pass properly
28 performed brake and lamp inspections.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 38. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(1), in that on or about December 19, 2012, Respondent made statements which he
5 knew or which by exercise of reasonable care should have known to be untrue or misleading.
6 Respondent issued Lamp Certificate of Adjustment number LC [REDACTED] and Brake Certificate of
7 Adjustment number BC [REDACTED], certifying, with respect to the 1995 Honda, that Respondent had
8 performed inspections, adjustments, and/or repairs in accordance with the specifications of the
9 Bureau of Automotive Repair, the vehicle manufacturer, and law, that all items were of an
10 approved type, and that all statements on the certifications were true.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 39. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
14 subdivision (a)(4), in that on or about December 19, 2012, Respondent committed acts which
15 constitute fraud. Specifically, Respondent accepted payment for inspections of the 1995 Honda,
16 and issued Lamp Certificate of Adjustment number LC [REDACTED] and Brake Certificate of
17 Adjustment number BC [REDACTED], but did not perform bona fide inspections of the brake and lamp
18 systems on the vehicle, thereby depriving the People of the State of California of the protection
19 afforded by the Business and Professions Code and Vehicle Code of California.

20 **TENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Written Documentation Requirements)**

22 40. Respondent's registration is subject to discipline pursuant to Bus. & Prof. Code
23 section 9884.7, subdivisions (a)(3) and (a)(6), in that Respondent failed to comply with
24 requirements for written documentation with respect to the Bureau's 1995 Honda. Specifically:

25 a. **Section 9884.7, subdivision (a)(3):** Respondent failed to provide the
26 Bureau operator with a copy of the signed work order.

27 b. **Section 9884.7, subdivision (a)(6), and section 9884.9, subdivision (a):**
28 Respondent failed to provide the Bureau operator with a written estimate.

1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 43. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
4 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about December 19,
5 2012, with regard to the Bureau's 1995 Honda, Respondent failed to comply with provisions of
6 the California Code of Regulations, title 16, in the following material respects:

7 a. **Section 3305:** Respondent Oh failed to perform the brake and lamp inspections
8 and certifications on the Bureau's 1995 Honda to the standards set forth in this section of the
9 California Code of Regulations.

10 b. **Section 3316, subsection (d):** Respondent Oh issued Lamp Certificate of
11 Adjustment number LC [REDACTED] to the Bureau's 1995 Honda, when in fact the lighting system on
12 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
13 regulations.

14 c. **Section 3321, subsection (c):** Respondent Oh issued Brake Certificate of
15 Adjustment number BC [REDACTED] to the Bureau's 1995 Honda, when in fact the brake system on
16 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
17 regulations.

18 d. **Section 3373:** Respondent Oh inserted information into the Brake and Lamp
19 Certificates of Adjustment issued to the Bureau's 1995 Honda that caused those documents to be
20 false and misleading.

21 **TWENTIETH CAUSE FOR DISCIPLINE**

22 **(Dishonesty, Fraud, Deceit)**

23 44. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
24 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that on or about December 19,
25 2012, Respondent Oh committed acts involving dishonesty, fraud, or deceit whereby another was
26 injured. Specifically, Respondent Oh accepted payment to perform inspections, and issued Lamp
27 and Brake Certificates of Adjustment, but did not perform bona fide inspections of the brake and
28 lamp systems, thereby depriving the People of the State of California of the protection afforded

1 by the Business and Professions Code and the Vehicle Code of the State of California.

2 **UNDERCOVER OPERATION 3 – February 13, 2013**

3 45. On February 13, 2013, a Bureau undercover operator (“operator”) drove a Bureau
4 documented 1999 GMC to Respondent’s facility and requested smog, brake and lamp
5 inspections. The vehicle was documented as having an undersized right front brake rotor,
6 oversized left rear brake drum, the headlamps adjusted outside of manufacturer specifications,
7 inoperative license plate lights, and a missing air injection (AIR) pump. These defects would
8 cause the vehicle to fail properly performed smog, lamp, and brake inspections. The operator
9 spoke to an individual identified as Kumbawa Oh, the owner/technician of the business, who told
10 him the inspections would cost \$120.00. The operator did not receive a copy of the work order or
11 written estimate. The operator was able to observe the smog, brake and lamp inspections. The
12 operator observed that Oh performed the smog inspection and a portion of the lamp inspection
13 and then drove the vehicle away from the facility, returning approximately one minute and twenty
14 seconds later. Oh then completed the lamp inspection but never performed a brake inspection.

15 46. Oh then told the operator that the GMC’s right headlight was out of adjustment
16 and the license plate light bulbs were inoperative. Oh also said that it would cost \$10.00 to adjust
17 the right headlamp and \$10.00 to replace the two bulbs. Oh then said that the operator could
18 either replace the bulbs himself, or return the vehicle later that morning and another technician
19 would replace them. The operator verbally authorized Oh to perform all the repairs and Oh then
20 adjusted the right side headlamp with an optical aimer. The operator then observed Oh
21 completing and signing Lamp and Brake Certificates of Adjustment. The operator paid Oh
22 \$130.00 and received a document titled “Estimate Copy # [REDACTED]” and a VIR for the smog
23 inspection. The VIR shows that the 1999 GMC passed the smog inspection and Electronic
24 Certificate of Compliance number [REDACTED] was issued. The VIR further shows the smog
25 inspection was performed by Respondent Oh. Oh retained the Brake and Lamp Certificates of
26 Adjustment until the operator returned for the bulb replacement, explaining “they go together”.

27 47. On February 13, 2013, at 11:30 a.m., the operator returned the GMC to
28 Respondent and the license plate bulbs were replaced by another technician. The operator then

1 paid Oh the balance of \$10.00 and received Lamp Certificate of Adjustment number LC [REDACTED]
2 and Brake Certificate of Adjustment number BC [REDACTED]. The operator never received a final
3 invoice for the license plate bulb replacement. The operator then retrieved the vehicle.

4 48. On or about March 12, 2013, the Bureau re-inspected the 1999 GMC vehicle and
5 determined that the undersized right front brake rotor and oversized left rear brake drum were still
6 present, the headlamps were still adjusted beyond manufacturer specifications, and the air
7 injection (AIR) pump was still missing from the vehicle. These defects should have caused the
8 1999 GMC to fail the smog, brake, and lamp inspections.

9 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 49. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
12 subdivision (a)(1), in that on or about February 13, 2013, Respondent made statements which he
13 knew or by exercise of reasonable care should have known to be untrue or misleading, in that:

14 a. Respondent issued Lamp Certificate of Adjustment number LC [REDACTED] and
15 Brake Certificate of Adjustment number BC [REDACTED] certifying, with respect to the 1999 GMC,
16 that Respondent had performed inspections, adjustments, and/or repairs in accordance with the
17 specifications of the Bureau of Automotive Repair, the vehicle manufacturer, and law, that all
18 items were of an approved type, and that all statements on the certifications were true.

19 b. Respondent issued Smog Certificate of Compliance number [REDACTED] and
20 certified in the VIR that he had performed the inspection in accordance with all Bureau
21 requirements and that all information in the VIR was true and accurate.

22 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 50. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
25 subdivision (a)(4), in that on or about February 13, 2013, Respondent committed acts which
26 constitute fraud. Specifically, Respondent accepted payment for inspections of the 1999 GMC,
27 and issued certificates of compliance and adjustment as described above, but did not perform
28 bona fide inspections of the emission, lamp and brake systems on the vehicle, thereby depriving

1 the People of the State of California of the protection afforded by the Health and Safety Code, the
2 Business and Professions Code, and the Vehicle Code of the State of California.

3 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Written Documentation Requirements)**

5 51. Respondent's registration is subject to discipline pursuant to Bus. & Prof. Code
6 section 9884.7, subdivisions (a)(3) and (a)(6), in that on or about February 13, 2013, Respondent,
7 with regard to the Bureau's 1999 GMC, failed to comply with written documentation
8 requirements in the following material respects:

9 a. **Section 9884.7, subdivision (a)(3):** Respondent failed to provide the Bureau
10 operator with a copy of the signed work order when the operator signed it.

11 b. **Section 9884.7, subdivision (a)(6), and section 9884.8:** Respondent failed to
12 provide the operator with an invoice for the replacement of the license plate bulbs.

13 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

14 **(Violation of Regulations)**

15 52. Respondent's lamp and brake station licenses are subject to discipline pursuant to
16 Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about February 13, 2013, with
17 regard to the Bureau's 1999 GMC, Respondent failed to comply with provisions of the California
18 Code of Regulations, title 16, in the following material respects:

19 a. **Section 3305:** Respondent failed to perform the brake and lamp
20 inspections and certifications on the Bureau's 1999 GMC to the standards set forth in this section
21 of the California Code of Regulations.

22 b. **Section 3316, subsection (d):** Respondent issued Lamp Certificate of
23 Adjustment number LC [REDACTED] to the Bureau's 1999 GMC, when in fact the lighting system on
24 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
25 regulations.

26 c. **Section 3321, subsection (c):** Respondent issued Brake Certificate of
27 Adjustment number BC [REDACTED] to the Bureau's 1999 GMC, when in fact the brake system on
28 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau

1 regulations.

2 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

3 **(Dishonesty, Fraud, Deceit)**

4 53. Respondent's brake and lamp station licenses are subject to discipline pursuant to
5 Bus. & Prof. Code section 9889.3, subdivision (d), in that respondent committed acts involving
6 dishonesty, fraud, or deceit whereby another was injured. Specifically, Respondent accepted
7 payment for inspections of the 1999 GMC, and issued certificates of compliance and adjustment
8 as described above, but did not perform bona fide inspections of the brake, lamp, and emission
9 systems on the Bureau's 1999 GMC, thereby depriving the People of the State of California of the
10 protection afforded by the Health and Safety Code, the Business and Professions Code, and the
11 Vehicle Code of the State of California.

12 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

14 54. Respondent's smog station license is subject to discipline pursuant to Health and
15 Safety Code section 44072.2, subdivision (a), in that on or about February 13, 2013, with respect
16 to the 1999 GMC, Respondent violated provisions of the Health and Safety Code, as follows:

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

20 b. **Section 44012, subdivision (f):** Respondent failed to perform the
21 visual/functional test in accordance with procedures prescribed by the department.

22 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

24 55. Respondent's smog station license is subject to discipline pursuant to Health and
25 Safety Code section 44072.2, subdivision (c), in that on or about February 13, 2013, with regard
26 to the 1999 GMC, Respondent violated sections of the California Code of Regulations, title 16, as
27 follows:
28

1 a. **Section 3340.35, subdivision (c):** Respondent issued Electronic Certificate of
2 Compliance No. [REDACTED] even though the vehicle had not been inspected in accordance with
3 the procedures specified in section 3340.42.

4 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and
5 inspections in accordance with the Bureau's specifications.

6 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

8 56. Respondent's smog station license is subject to discipline pursuant to Health and
9 Safety Code section 44072.2, subdivision (d), in that on or about February 13, 2013, with respect
10 to the 1999 GMC, he committed acts involving dishonesty, fraud or deceit whereby another was
11 injured. Specifically, Respondent accepted payment for inspections of the 1999 GMC, and issued
12 certificates of compliance and adjustment as described above, but he did not perform bona fide
13 inspections of the emission, brake, and lamp systems on the vehicle, thereby depriving the People
14 of the State of California of the protection afforded by the Health and Safety Code, Business and
15 Professions Code, and Vehicle Code of California.

16 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

18 57. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
19 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about February 13,
20 2013, with regard to the Bureau's 1999 GMC, Respondent Oh failed to comply with provisions of
21 the California Code of Regulations, title 16, in the following material respects:

22 a. **Section 3305:** Respondent Oh failed to perform the brake and lamp inspections
23 and certifications on the Bureau's 1999 GMC to the standards set forth in this section of the
24 California Code of Regulations.

25 b. **Section 3316, subsection (d):** Respondent Oh issued Lamp Certificate of
26 Adjustment number LC [REDACTED] to the Bureau's 1999 GMC when in fact the lighting system on
27 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
28 regulations.

1 discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about
2 February 13, 2013, regarding the 1999 GMC, he violated sections of the California Code of
3 Regulations, title 16, as follows:

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

6 b. **Section 3340.41, subdivision (c):** Respondent Oh entered false information into
7 the Emission Inspection System for the 1999 GMC by entering "Pass" for the "air injection"
8 portion when, in fact, the vehicle's air injection (AIR) pump was missing.

9 c. **Section 3340.42:** Respondent Oh failed to conduct the required smog tests and
10 inspections in accordance with the Bureau's specifications.

11 THIRTY-THIRD CAUSE FOR DISCIPLINE

12 (Dishonesty, Fraud or Deceit)

13 61. Respondent Oh's Advanced Emission Specialist Technician License is subject to
14 discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or
15 about February 13, 2013, with regard to the 1999 GMC, he committed acts involving dishonesty,
16 fraud or deceit whereby another was injured. Specifically, Respondent Oh accepted payment for
17 inspections, and issued certificates of compliance and adjustment as described above, but did not
18 perform bona fide inspections of the brake, lamp, and emission control systems on the vehicle,
19 thereby depriving the People of the State of California of the protection afforded by the Health and
20 Safety Code, the Business and Professions Code, and the Vehicle Code of California.

21 PRIOR CITATIONS

22 62. To determine the degree of discipline, if any, to be imposed upon Respondents,
23 Complainant alleges as follows:

24 a. On June 7, 2012, the Bureau issued Citation No. C2012-1730 to Respondent,
25 against its Smog Station license, for violations of Health and Safety Code section 44012,
26 subdivision (f) (failure to perform a visual/functional check of emission control devices according
27 to procedures prescribed by the department). The Bureau assessed a civil penalty of \$1000.00.
28

1 Respondent complied with the citation on August 15, 2012.

2 b. On June 7, 2012, the Bureau issued Citation No. M2012-1731 to Respondent Oh,
3 against his Advanced Emission Specialist Technician License, for violations of Health and Safety
4 Code section 44032 (failure to perform a test of emission control systems and devices in
5 accordance with Health and Safety Code section 44012). Respondent Oh was required to
6 complete an eight (8) hour training course. Respondent Oh complied with the citation on
7 August 11, 2012.

8 **OTHER MATTERS**

9 63. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
10 probation the registrations for all places of business operated in this state by Kumbawa Oh, upon
11 a finding that he has, or is, engaged in a course of repeated and willful violation of the laws and
12 regulations pertaining to an automotive repair dealer.

13 64. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
14 License Number RC 241395, issued to Kumbawa Oh, is revoked or suspended, any additional
15 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name
16 of said licensee may be likewise revoked or suspended by the director.

17 65. Pursuant to Code section 9889.9, if Lamp Station License Number LS 241395,
18 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
19 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
20 revoked or suspended by the Director.

21 66. Pursuant to Code section 9889.9, if Brake Station License Number BS 241395
22 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
23 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
24 revoked or suspended by the Director.

25 67. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
26 Specialist Technician License number EA 24793 (to be redesignated upon renewal as EO 24793
27 and/or EI 24793), issued to Kumbawa Oh, is revoked or suspended, any additional license issued
28 under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said

1 licensee may be likewise revoked or suspended by the director.

2 68. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 24793,
3 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
4 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
5 revoked or suspended by the Director.

6 69. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 24793,
7 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
8 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
9 revoked or suspended by the Director.

10 **PRAYER**

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

13 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
14 Registration No. ARD 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair
15 Service;

16 2. Revoking, suspending, or placing on probation any other automotive repair dealer
17 registration issued to Kumbawa Oh;

18 3. Revoking, suspending, or placing on probation Smog Check Station License
19 Number RC 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair Service;

20 4. Revoking, suspending, or placing on probation Advanced Emission Specialist
21 Technician License Number EA 24793 (to be redesignated upon renewal as EO 24793 and/or EI
22 24793), issued to Kumbawa Oh;

23 5. Revoking, suspending, or placing on probation any additional license issued under
24 Chapter 5, Part 5, Division 26 of the Health and Safety Code in the name of Kumbawa Oh;

25 6. Revoking, suspending, or placing on probation Brake Station License Number BS
26 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair Service;

27 7. Revoking, suspending, or placing on probation Lamp Station License Number LS
28 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair Service;

1 8. Revoking, suspending, or placing on probation Brake Adjuster License Number
2 BA 24793, issued to Kumbawa Oh;

3 9. Revoking, suspending, or placing on probation Lamp Adjuster License Number
4 LA 24793, issued to Kumbawa Oh;

5 10. Revoking, suspending, or placing on probation any other license issued to
6 Kumbawa Oh under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Business and
7 Professions Code;

8 11. Ordering Respondents to pay the Director of Consumer Affairs the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and;

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

11
12 DATED: September 25, 2013 *Patrick Dorais*

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

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