

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

In the Matter of the Accusation Against:

**BERG-WEISS ENTERPRISES, INC.**  
**dba Speedee Oil Change & Tune Up**  
1496 Freedom Blvd.  
Watsonville, CA 95076  
ROBERT D. WEISSBERG-President

Automotive Repair Dealer Registration No.  
ARD 246091

Smog Check Station License No. RC 246091

Case No. 79/13-62

OAH No. 2013060816

Respondent.

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter. The following typographical errors are noted:

1. Page 2, lines 8, 12, and 13: "June 30, 2013" should be "June 30, 2014".
2. Page 2, line 10 and page 4, line 12: "Smog Check Station License No. RC 246092" should be "Smog Check Station License No. RC 246091".

This Decision shall become effective \_\_\_\_\_

NOV 08 2013

DATED: October 16, 2013

  
DONALD CHANG  
Assistant Chief Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUSTIN R. SURBER  
Deputy Attorney General  
4 State Bar No. 226937  
455 Golden Gate Avenue, Suite 11000  
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*Attorneys for Complainant*  
7

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

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11 In the Matter of the Accusation Against:  
12 **BERG-WEISS ENTERPRISES, INC.**  
**dba Speedee Oil Change & Tune Up**  
13 **1496 Freedom Blvd.**  
**Watsonville, CA 95076**  
14 **ROBERT D. WEISSBERG-President**  
15 **Automotive Repair Dealer Registration No.**  
**ARD 246091**  
16 **Smog Check Station License No. RC 246091**  
17  
18 Respondent.

Case No. 79/13-62

OAH No. 2013060816

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Patrick Dorais (Complainant) is the Acting Chief of the Bureau of Automotive  
24 Repair. He brought this action solely in his official capacity and is represented in this matter by  
25 Kamala D. Harris, Attorney General of the State of California, by Justin R. Surber, Deputy  
26 Attorney General.

27 2. Respondent Speedee Oil Change & Tune Up - Watsonville, Robert D. Weissberg  
28 (Respondent) is represented in this proceeding by attorney William Ferreira, whose address is:

1 William Ferreira  
2 Automotive Defense Specialists  
3 582 Market St Ste 1608  
4 San Francisco, CA 94104

4 3. On or about February 13, 2007, the Bureau of Automotive Repair issued Automotive  
5 Repair Dealer Registration No. ARD 246091 to Speedee Oil Change & Tune Up - Watsonville,  
6 Robert D. Weissberg (Respondent). The Automotive Repair Dealer Registration was in full force  
7 and effect at all times relevant to the charges brought in Accusation No. 79/13-62 and will expire  
8 on June 30, 2013, unless renewed.

9 4. On or about June 5, 2007, the Bureau of Automotive Repair issued Smog Check  
10 Station License No. RC 246092 to Speedee Oil Change & Tune Up - Watsonville, Robert D.  
11 Weissberg (Respondent). The Smog Check Station License was in full force and effect at all  
12 times relevant to the charges brought in Accusation No. 79/13-62 and will expire on June 30,  
13 2013, unless renewed.

#### 14 JURISDICTION

15 5. Accusation No. 79/13-62 was filed before the Director of Consumer Affairs  
16 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
17 Respondent. The Accusation and all other statutorily required documents were properly served  
18 on Respondent on March 22, 2013. Respondent timely filed its Notice of Defense contesting the  
19 Accusation.

20 6. A copy of Accusation No. 79/13-62 is attached as exhibit A and incorporated herein  
21 by reference.

#### 22 ADVISEMENT AND WAIVERS

23 7. Respondent has carefully read, fully discussed with counsel, and understands the  
24 charges and allegations in Accusation No. 79/13-62. Respondent has also carefully read, fully  
25 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
26 Order.

27 8. Respondent is fully aware of its legal rights in this matter, including the right to a  
28 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at

1 its own expense; the right to confront and cross-examine the witnesses against them; the right to  
2 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel  
3 the attendance of witnesses and the production of documents; the right to reconsideration and  
4 court review of an adverse decision; and all other rights accorded by the California  
5 Administrative Procedure Act and other applicable laws.

6 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
7 every right set forth above.

8 CULPABILITY

9 10. Respondent admits the truth of each and every charge and allegation in Accusation  
10 No. 79/13-62.

11 11. Respondent agrees that its Automotive Repair Dealer Registration is subject to  
12 discipline and they agree to be bound by the Director's probationary terms as set forth in the  
13 Disciplinary Order below.

14 CONTINGENCY

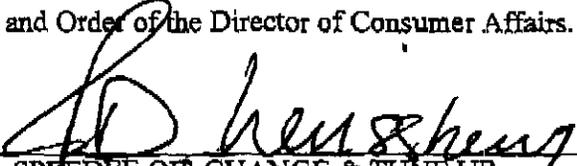
15 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
16 the Director's designee. Respondent understands and agrees that counsel for Complainant and the  
17 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of  
18 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to  
19 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands  
20 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the  
21 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the  
22 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
23 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
24 and the Director shall not be disqualified from further action by having considered this matter.

25 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
26 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
27 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.  
28





1 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,  
2 and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

3  
4 DATED: 9/9/13   
5 SPEEDEE OIL CHANGE & TUNE UP -  
6 WATSONVILLE, ROBERT D. WEISSBERG  
7 Respondent

8 I have read and fully discussed with Respondent Speedee Oil Change & Tune Up -  
9 Watsonville, Robert D. Weissberg the terms and conditions and other matters contained in the  
10 above Stipulated Settlement and Disciplinary Order. I approve its form and content.

11 DATED: 9/9/13   
12 William Ferreira  
13 Attorney for Respondent

14 ///  
15 ///  
16 ///

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Director of Consumer Affairs.

20  
21 Dated: Respectfully submitted,  
22 KAMALA D. HARRIS  
23 Attorney General of California  
24 FRANK H. PACOE  
25 Supervising Deputy Attorney General  
26 JUSTIN R. SURBER  
27 Deputy Attorney General  
28 Attorneys for Complainant

1 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,  
2 and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

3  
4 DATED: \_\_\_\_\_

SPEEDEE OIL CHANGE & TUNE UP -  
WATSONVILLE, ROBERT D. WEISSBERG  
Respondent

7 I have read and fully discussed with Respondent Speedee Oil Change & Tune Up -  
8 Watsonville, Robert D. Weissberg the terms and conditions and other matters contained in the  
9 above Stipulated Settlement and Disciplinary Order. I approve its form and content.

10  
11 DATED: \_\_\_\_\_

William Ferreira  
Attorney for Respondent

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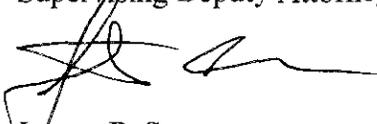
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Director of Consumer Affairs.

20  
21 Dated: 9/10/13

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

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JUSTIN R. SURBER  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 79/13-62**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUSTIN R. SURBER  
Deputy Attorney General  
4 State Bar No. 226937  
455 Golden Gate Avenue, Suite 11000  
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**Watsonville, CA 95076**  
**ROBERT D. WEISSBERG-President**  
15 **Automotive Repair Dealer Registration No.**  
16 **ARD 246091**  
17 **Smog Check Station License No. RC 246091**  
18 Respondent.

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79/13-62  
ACCUSATION  
Smog Check

Complainant alleges:

**PARTIES**

1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
2. On or about February 13, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 246091 ("registration") to Berg-Weiss Enterprise Inc., Robert D Weissberg, President, doing business as Speedee Oil Change & Tune Up ("Respondent"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.



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

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

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

...

(4) Any other conduct which constitutes fraud.

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

....

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

10. 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 another is injured."

11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the

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

3 12. Section 44072.8 of the Health and Safety Code states:

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

7 **COST RECOVERY**

8 13. Code section 125.3 provides, in pertinent part, that a Board may request the  
9 administrative law judge to direct a licensee found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

12 **UNDERCOVER OPERATION – NOVEMBER 8, 2012**

13 14. On or about November 8, 2012, a Bureau undercover operator ("operator") drove a  
14 Bureau documented 1990 Pontiac Grand Prix to Respondent's facility and requested a smog  
15 inspection. The vehicle had a non-operational EGR valve, rendering the vehicle incapable of  
16 passing a smog inspection. The operator completed and signed a work order, but was not  
17 provided with a copy. Respondent performed the smog inspection and issued electronic  
18 Certificate of Compliance No. [REDACTED] certifying that Respondent had tested and inspected  
19 the vehicle and that it was in compliance with applicable laws and regulations when, in fact, the  
20 vehicle could not have passed the functional portion of the smog inspection because the vehicle's  
21 EGR valve was non-operational. The operator paid Respondent \$58.24, and was provided with a  
22 copy of estimate and Invoice No. [REDACTED] and a Vehicle Inspection Report.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 15. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in  
26 that on or about November 8, 2012, Respondent made statements which he knew or which by  
27 exercise of reasonable care should have known to be untrue or misleading by issuing electronic  
28 Certificate of Compliance No. [REDACTED] for the 1990 Pontiac Grand Prix and certifying that the

1 vehicle was in compliance with applicable laws and regulations when, in fact, it could not have  
2 passed the functional portion of the smog inspection because the vehicle's EGR valve was non-  
3 operational.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 16. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in  
7 that on or about November 8, 2012, he committed acts constituting fraud by issuing electronic  
8 Certificate of Compliance No. [REDACTED] for the 1990 Pontiac Grand Prix without performing a  
9 bona fide inspection of the emission control devices and systems on the vehicle; thereby  
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
11 Inspection Program.

12 **THIRD CAUSE FOR DISCIPLINE**

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

14 17. Respondent's station license is subject to discipline pursuant to Health & Safety Code  
15 section 44072.2, subdivision (a), in that on or about November 8, 2012, regarding the 1990  
16 Pontiac Grand Prix, Respondent failed to comply with the following sections of that Code:

17 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control  
18 inspections on the vehicle in accordance with procedures prescribed by the department.

19 b. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
20 Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle to determine  
21 if it was in compliance with Health & Safety Code section 44012.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 18. Respondent's station license is subject to discipline pursuant to Health & Safety Code  
25 section 44072.2, subdivision (c), in that on or about November 8, 2012, regarding the 1990  
26 Pontiac Grand Prix, he failed to comply with provisions of California Code of Regulations, title  
27 16, as follows:  
28

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

4 b. Section 3340.42: Respondent failed to perform an emission control inspection on  
5 the vehicle in accordance with procedures prescribed by the department.

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 19. Respondent's station license is subject to discipline pursuant to Health & Safety Code  
9 section 44072.2, subdivision (d), in that on or about November 8, 2012, regarding the 1990  
10 Pontiac Grand Prix, he committed dishonest, fraudulent or deceitful acts whereby another is  
11 injured by issuing electronic Certificate of Compliance No. [REDACTED] for the vehicle without  
12 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
13 thereby depriving the People of the State of California of the protection afforded by the Motor  
14 Vehicle Inspection Program.

15 **PRIOR CITATIONS**

16 20. To determine the degree of discipline, if any, to be imposed on Respondent,  
17 Complaint alleges the following:

18 a. On or about June 29, 2011, the Bureau issued Citation No. C2011-1511 against  
19 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a  
20 visual/functional check of emission control devices according to procedures prescribed by the  
21 department), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing  
22 Fuel Evaporative Canister. The Bureau assessed civil penalties totaling \$1000 against Respondent  
23 for the violations. Respondent paid this citation on August 8, 2011.

24 b. On or about November 8, 2011, the Bureau issued Citation No. C2012-0430 against  
25 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a  
26 visual/functional check of emission control devices according to procedures prescribed by the  
27 department), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing  
28

1 Positive Crankcase Ventilation valve. The Bureau assessed civil penalties totaling \$1500 against  
2 Respondent for the violations. Respondent paid this citation on December 3, 2012.

3 c. On or about June 5, 2012, the Bureau issued Citation No. C2012-1699 against  
4 Respondent for violating Health and Safety Code section 44012(f) (failure to perform a  
5 visual/functional check of emission control devices according to procedures prescribed by the  
6 department), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing  
7 Positive Crankcase Ventilation valve. The Bureau assessed civil penalties totaling \$1500 against  
8 Respondent for the violations. Respondent appealed this citation on July 19, 2012.

9 **OTHER MATTERS**

10 21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
11 probation the registrations for all places of business operated in this state by Berg-Weiss  
12 Enterprises Inc., Robert D. Weissberg, President, upon a finding that he has, or is, engaged in a  
13 course of repeated and willful violation of the laws and regulations pertaining to an automotive  
14 repair dealer.

15 22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test and Repair  
16 Station License Number RC 246091, issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg,  
17 President, doing business as Speedee Oil Change & Tune Up, is revoked or suspended, any  
18 additional license issued under this chapter in the name of said licensees may be likewise  
19 revoked or suspended by the director.

20 **PRAYER**

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

23 1. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration  
24 No. ARD 246091, issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg, President, doing  
25 business as Speedee Oil Change & Tune Up;

26 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
27 registration issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg, President;

28

- 1           3.    Revoking or suspending Smog Check Test and Repair Station License Number RC
- 2   246091, issued to Berg-Weiss Enterprises Inc., Robert D. Weissberg, President, doing business as
- 3   Speedee Oil Change & Tune Up;
- 4           4.    Revoking or suspending any additional license issued under chapter 5, of the Health
- 5   and Safety Code in the name of Berg-Weiss Enterprises Inc., Robert D. Weissberg, President;
- 6           5.    Ordering Berg-Weiss Enterprises Inc., Robert D. Weissberg, President, doing business
- 7   as Speedee Oil Change & Tune Up to pay the Director of Consumer Affairs the reasonable costs
- 8   of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 9           6.    Taking such other and further action as deemed necessary and proper.

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DATED: MARCH 21, 2013    John Wallauch by Doug Balatt  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*