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

11 79/10-50

12 In the Matter of the Accusation Against:

Case No.

13 **BUDGET SMOG TEST ONLY CENTER**
14 **538 Olive Avenue, Suite 300**
Vista, CA 92083
15 **DALE CLIFTON WRIGHT, PARTNER**
TANA MARIE HANNIBAL-WRIGHT, PARTNER
16 **Automotive Repair Dealer Registration**
No. ARD 229367
17 **Smog Check Test Only Station License No. TC 229367**

ACCUSATION
SMOG CHECK

18 and

19 **DALE CLIFTON WRIGHT**
538 Olive Avenue, #300 C
Vista, CA 92083
20 **Advanced Emission Specialist Technician License**
21 **No. EA 147941**

22 Respondents.

23 Complainant alleges:

24 **PARTIES**

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

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1 (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
2 regulations adopted pursuant to it.

3 (b) Except as provided for in subdivision (c), if an automotive repair
dealer operates more than one place of business in this state, the director pursuant to
4 subdivision (a) shall only invalidate temporarily or permanently the registration of the
specific place of business which has violated any of the provisions of this chapter.
5 This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

6 (c) Notwithstanding subdivision (b), the director may invalidate
temporarily or permanently, the registration for all places of business operated in this
7 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
8 regulations adopted pursuant to it.

9 6. Code section 9884.8 states:

10 All work done by an automotive repair dealer, including all warranty
work, shall be recorded on an invoice and shall describe all service work done and
11 parts supplied. Service work and parts shall be listed separately on the invoice, which
shall also state separately the subtotal prices for service work and for parts, not
12 including sales tax, and shall state separately the sales tax, if any, applicable to each.
If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state
13 that fact. If a part of a component system is composed of new and used, rebuilt or
reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
14 a statement indicating whether any crash parts are original equipment manufacturer
crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
15 of the invoice shall be given to the customer and one copy shall be retained by the
automotive repair dealer.
16

17 7. Code section 9884.9, subdivision (a), states:

18 (a) The automotive repair dealer shall give to the customer a written
estimated price for labor and parts necessary for a specific job. No work shall be done
19 and no charges shall accrue before authorization to proceed is obtained from the
customer. No charge shall be made for work done or parts supplied in excess of the
20 estimated price without the oral or written consent of the customer that shall be
obtained at some time after it is determined that the estimated price is insufficient and
21 before the work not estimated is done or the parts not estimated are supplied. Written
consent or authorization for an increase in the original estimated price may be
22 provided by electronic mail or facsimile transmission from the customer. The bureau
may specify in regulation the procedures to be followed by an automotive repair
23 dealer if an authorization or consent for an increase in the original estimated price is
provided by electronic mail or facsimile transmission. If that consent is oral, the
24 dealer shall make a notation on the work order of the date, time, name of person
authorizing the additional repairs and telephone number called, if any, together with a
25 specification of the additional parts and labor and the total additional cost, and shall
do either of the following:
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27 (1) Make a notation on the invoice of the same facts set forth in the
notation on the work order.
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1 (2) Upon completion of the repairs, obtain the customer's signature or
2 initials to an acknowledgment of notice and consent, if there is an oral consent of the
3 customer to additional repairs, in the following language:

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

6 _____
7 (signature or initials)"

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

11 8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
12 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
13 proceeding against an automotive repair dealer or to render a decision invalidating a registration
14 temporarily or permanently.

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

19 REGULATORY PROVISION

20 10. California Code of Regulations, title 16, section 3356, subdivision (a)(1), states:

21 (a) All invoices for service and repair work performed, and parts
22 supplied, as provided for in Section 9884.8 of the Business and Professions Code,
23 shall comply with the following:

24 (1) The invoice shall show the automotive repair dealer's registration
25 number and the corresponding business name and address as shown on the Bureau's
26 records.

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

12. Section 44072.2 of the Health and Safety Code states:

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:

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

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

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

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

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

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

16 COST RECOVERY

17 15. Code section 125.3 provides, in pertinent part, that a Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 UNDERCOVER OPERATION - JUNE 12, 2009

22 16. On or about June 12, 2009, a Bureau undercover operator using the alias "Ramona
23 Torres" ("operator") drove a Bureau documented 1992 Toyota Corolla to Respondent Budget's
24 facility and requested a smog inspection. The vehicle could not pass a smog inspection because
25 the vehicle's ignition timing was adjusted beyond the manufacturer's specifications. The operator
26 signed a work order; however, she was not provided with a copy of the document prior to the
27 smog inspection. Respondent Wright performed the smog inspection and issued electronic
28 Certificate of Compliance No. WB061325, certifying that the vehicle was in compliance with
applicable laws and regulations when, in fact, the vehicle could not have passed the smog
inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's

1 specifications. Following the inspection, the operator paid Respondent Budget \$59 and was
2 provided with Invoice No. 14559 and a Vehicle Inspection Report.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 17. Respondent Budget has subjected its registration to disciplinary action pursuant to
6 Code section 9884.7, subdivision (a)(1), in that on or about June 12, 2009, it made statements
7 which it knew or which by exercise of reasonable care it should have known were untrue or
8 misleading by issuing electronic Certificate of Compliance No. WB061325 for the 1992 Toyota
9 Corolla, certifying that the vehicle was in compliance with applicable laws and regulations. In
10 fact, the vehicle could not have passed the functional portion of the smog inspection because the
11 vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Failure to Immediately Provide a Copy of a Signed Document)**

14 18. Respondent Budget has subjected its registration to disciplinary action pursuant to
15 Code section 9884.7, subdivision (a)(3), in that on or about June 12, 2009, it failed to provide the
16 operator with a copy of the work order as soon as she signed the document.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Fraud)**

19 19. Respondent Budget has subjected its registration to disciplinary action pursuant to
20 Code section 9884.7, subdivision (a)(4), in that on or about June 12, 2009, it committed acts
21 which constitute fraud by issuing electronic Certificate of Compliance No. WB061325 for the
22 1992 Toyota Corolla without performing a bona fide inspection of the emission control devices
23 and systems on the vehicle, thereby depriving the People of the State of California of the
24 protection afforded by the Motor Vehicle Inspection Program.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent Budget has subjected its registration to disciplinary action pursuant to
4 Code section 9884.7, subdivision (a)(6), in that on or about June 12, 2009, Respondent failed to
5 materially comply with the following Code sections:

6 a. **Code section 9884.8:** Regarding Invoice No. 14559, Respondent failed to separately
7 set forth subtotal prices for service work, parts, and any sales tax.

8 b. **Code section 9884.9, subdivision (a):** Respondent Budget failed to provide the
9 operator with a written estimated price for parts and labor for a specific job for the smog
10 inspection.

11 **FIFTH CAUSE FOR DISCIPLINE**

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

13 21. Respondent Budget has subjected its registration to disciplinary action pursuant to
14 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with California
15 Code of Regulations, title 16, section 3356, subdivision (a). Regarding Invoice No. 14559,
16 Respondent failed to set forth its correct business address as it appears on Bureau records.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 22. Respondent Budget has subjected its station license to disciplinary action pursuant to
20 Health and Safety Code section 44072.2, subdivision (a), in that on or about June 12, 2009,
21 regarding the 1992 Toyota Corolla, it violated sections of that Code, as follows:

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

25 b. **Section 44012, subdivision (f):** Respondent Budget failed to perform emission
26 control tests on that vehicle in accordance with procedures prescribed by the department.

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1 c. **Section 44015, subdivision (b):** Respondent Budget issued electronic Certificate of
2 Compliance No. WB061325 without properly testing and inspecting the vehicle to determine if it
3 was in compliance with Code section 44012.

4 d. **Section 44059:** Respondent Budget willfully made false entries for electronic
5 Certificate of Compliance No. WB061325, certifying that the vehicle had been inspected as
6 required when, in fact, it had not.

7 **SEVENTH CAUSE FOR DISCIPLINE**

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

9 23. Respondent Budget has subjected its station license to disciplinary action pursuant to
10 Health and Safety Code section 44072.2, subdivision (c), in that on or about June 12, 2009,
11 regarding the 1992 Toyota Corolla, it violated sections of the California Code of Regulations, title
12 16, as follows:

13 a. **Section 3340.24, subdivision (c):** Respondent Budget falsely or fraudulently issued
14 electronic Certificate of Compliance No. WB061325 without performing a bona fide inspection
15 of the emission control devices and systems on that vehicle as required by Health and Safety
16 Code section 44012.

17 b. **Section 3340.35, subdivision (c):** Respondent Budget issued electronic Certificate of
18 Compliance No. WB061325 even though the vehicle had not been inspected in accordance with
19 section 3340.42 of that Code.

20 c. **Section 3340.42:** Respondent Budget failed to conduct the required smog tests and
21 inspections on that vehicle in accordance with the Bureau's specifications.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 24. Respondent Budget has subjected its station license to disciplinary action pursuant to
25 Health and Safety Code section 44072.2, subdivision (d), in that on or about June 12, 2009, it
26 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
27 Certificate of Compliance No. WB061325 without performing a bona fide inspection of the
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1 emission control devices and systems on the 1992 Toyota Corolla, thereby depriving the People
2 of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 25. Respondent Wright has subjected his technician license to discipline under Health
6 and Safety Code section 44072.2, subdivision (a), in that on or about June 12, 2009, regarding the
7 1992 Toyota Corolla, he violated sections of that Code, as follows:

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

11 b. **Section 44012, subdivision (f):** Respondent Wright failed to perform emission
12 control tests on that vehicle in accordance with procedures prescribed by the department.

13 c. **Section 44032:** Respondent Wright failed to perform tests of the emission control
14 devices and systems on that vehicle in accordance with section 44012 of that Code.

15 d. **Section 44059:** Respondent Wright willfully entered false information for electronic
16 Certificate of Compliance No. WB061325, certifying that the vehicle had been inspected as
17 required when, in fact, it had not.

18 **TENTH CAUSE FOR DISCIPLINE**

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

20 26. Respondent Wright has subjected his technician license to discipline under Health
21 and Safety Code section 44072.2, subdivision (c), in that on or about June 12, 2009, regarding the
22 1992 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as
23 follows:

24 a. **Section 3340.24, subdivision (c):** Respondent Wright falsely or fraudulently issued
25 electronic Certificate of Compliance No. WB061325 without performing a bona fide inspection
26 of the emission control devices and systems on that vehicle as required by Health and Safety
27 Code section 44012.

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1 assessed civil penalties totaling \$500 against Respondent Budget for the violations. Respondent
2 Budget appealed this citation on December 14, 2006. A decision upholding the citation was
3 issued on September 19, 2007. Respondent Budget complied with this citation on October 25,
4 2007.

5 b. On or about November 7, 2006, the Bureau issued Citation No. M07-0278 against
6 Respondent Wright's technician license for violations of Health & Safety Code section 44032,
7 (failure to perform tests and inspects in accordance with H&S section 44012), and California
8 Code of Regulations, title 16, section ("Regulation") 3340.30, subdivision (a) (inspect, test, and
9 repair vehicles in accordance with H&S sections 44012, 44035, and Regulation 3340.42) for
10 issuing a certificate of compliance to a Bureau undercover vehicle with a missing positive
11 crankcase ventilation system. Respondent Wright was required to attend an 8-hour training
12 course. Respondent Wright appealed this citation on December 14, 2006. A decision upholding
13 the citation was issued on September 19, 2007. Respondent Wright complied with this citation on
14 October 29, 2007.

15 c. On or about May 14, 2007, the Bureau issued Citation No. C07-0874 against
16 Respondent Budget's registration and station licenses for violations of Health & Safety Code
17 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
18 devices according to procedures prescribed by the department), and California Code of
19 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
20 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
21 Bureau undercover vehicle with a missing air suction valve. The Bureau assessed civil penalties
22 totaling \$1,000 against Respondent Budget for the violations. Respondent Budget appealed this
23 citation on July 11, 2007. A decision upholding the citation was issued on June 16, 2008.
24 Respondent Budget complied with this citation on April 6, 2009.

25 d. On or about May 14, 2007, the Bureau issued Citation No. M07-0875 against
26 Respondent Wright's technician license for violations of Health & Safety Code section 44032,
27 (failure to perform tests and inspects in accordance with H&S section 44012), and California
28 Code of Regulations, title 16, section ("Regulation") 3340.30, subdivision (a) (inspect, test, and

1 repair vehicles in accordance with H&S sections 44012, 44035, and Regulation 3340.42) for
2 issuing a certificate of compliance to a Bureau undercover vehicle with a missing air suction
3 valve. Respondent Wright was required to attend a 16-hour training course. Respondent Wright
4 appealed the citation on July 11, 2007. A decision upholding the citation was issued on June 16,
5 2008. Respondent Wright complied with this citation on July 20, 2008.

6 e. On or about September 5, 2007, the Bureau issued Citation No. C08-0199 against
7 Respondent Budget's registration and station licenses for violations of Health & Safety Code
8 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
9 devices according to procedures prescribed by the department), and California Code of
10 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
11 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
12 Bureau undercover vehicle with a missing pulse air injection system. The Bureau assessed civil
13 penalties totaling \$2,000 against Respondent Budget for the violations. Respondent Budget
14 appealed this citation on November 13, 2007. A decision was issued upholding the citation on
15 June 16, 2008. Respondent Budget complied with this citation on February 19, 2009.

16 f. On or about September 5, 2007, the Bureau issued Citation No. M08-0200 against
17 Respondent Wright's technician license for violations of Health & Safety Code section 44032,
18 (failure to perform tests and inspects in accordance with H&S section 44012), and California
19 Code of Regulations, title 16, section ("Regulation") 3340.30, subdivision (a) (inspect, test, and
20 repair vehicles in accordance with H&S sections 44012, 44035, and Regulation 3340.42) for
21 issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air
22 injection system. Respondent Wright was required to attend a 68-hour training course.
23 Respondent Wright appealed this citation on November 13, 2007. A decision upholding the
24 citation was issued on June 16, 2008. Respondent Wright complied with this citation on April 1,
25 2009.

26 g. On or about March 26, 2009, the Bureau issued Citation No. C09-1110 against
27 Respondent Budget's registration and station licenses for violations of Health & Safety Code
28 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control

1 devices according to procedures prescribed by the department), and California Code of
2 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
3 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
4 Bureau undercover vehicle with the ignition timing adjusted beyond manufacturer's
5 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent Budget for
6 the violations. Respondent Budget appealed this citation on May 4, 2009. A decision upholding
7 the citation was issued on January 3, 2010; however, Respondent Budget complied with this
8 citation on December 10, 2009.

9 h. On or about March 26, 2009, the Bureau issued Citation No. M09-1111 against
10 Respondent Wright's technician license for violations of Health & Safety Code section 44032,
11 (failure to perform tests and inspects in accordance with H&S section 44012), and California
12 Code of Regulations, title 16, section ("Regulation") 3340.30, subdivision (a) (inspect, test, and
13 repair vehicles in accordance with H&S sections 44012, 44035, and Regulation 3340.42) for
14 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing
15 adjusted beyond manufacturer's specifications. Respondent Wright was required to attend an 8-
16 hour training course. Respondent Wright appealed this citation on may 4, 2009. A decision
17 upholding the citation was issued on January 3, 2010; however, Respondent Wright complied
18 with this citation on December 20, 2009.

19 OTHER MATTERS

20 29. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
21 or permanently or refuse to validate, the registrations for all places of business operated in this
22 state by Budget Smog Test Only Center, upon a finding that it has, or is, engaged in a course of
23 repeated and willful violations of the laws and regulations pertaining to an automotive repair
24 dealer.

25 30. Under Health & Safety Code section 44072.8, if Smog Check Station License
26 Number TC 229367, issued to Budget Smog Test Only Center, is revoked or suspended, any
27 additional license issued under this chapter in the name of said licensee may be likewise revoked
28 or suspended by the director.

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7. Ordering Budget Smog Test Only Center and Dale Clifton Wright 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,

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

DATED: _____

1/13/10



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

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