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8

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

11
12 In the Matter of the Accusation Against:

Case No. **79/16-74**

13 **A+ TEST ONLY SMOG OF ROHNERT**
14 **PARK ; BRYAN CHRISTIAN SHIFLETT**
PRESIDENT/SECRETARY/TREASURER
15 **D.B.A. A+ TEST ONLY SMOG OF**
ROHNERT PARK
16 **1485 Southwest Blvd.**
Rohnert Park, CA 94928

A C C U S A T I O N

17 **Automotive Repair Dealer Registration No.**
ARD248969
18 **Smog Check Test Only Station License No.**
TC248969,

19
20 **and**

21 **RANDY LEE HOWELL**
207 Cassady Street
Vallejo, CA 94590

22
23 **Smog Check Inspector License No.**
EO633592

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about February 5, 2007, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 248969 (Registration) to A+ Test Only Smog of
7 Rohnert Park; Bryan Christian Shiflett President/Secretary/Treasurer D.B.A. A+ Test Only Smog
8 of Rohnert Park (Respondent A+ Test Only Smog). The Registration was in full force and effect
9 at all times relevant to the charges brought herein and will expire on January 31, 2017, unless
10 renewed.

11 3. On or about February 9, 2007, the Bureau of Automotive Repair issued Smog Check
12 Test Only Station License Number TC 248969 (Smog Check Station License) to Respondent A+
13 Test Only Smog. The Smog Check Station License was in full force and effect at all times
14 relevant to the charges brought herein and will expire on January 31, 2017, unless renewed.

15 4. On or about January 27, 2014, the Bureau of Automotive Repair issued Smog Check
16 Inspector License Number EO 633592 (Inspector License) to Randy Lee Howell (Respondent
17 Howell). The Inspector License was in full force and effect at all times relevant to the charges
18 brought herein and expired on January 31, 2016. It has not been renewed.

19 **JURISDICTION**

20 5. Business and Professions Code (Code) section 9884.7 provides that the Director may
21 revoke an automotive repair dealer registration.

22 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
23 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
24 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
25 invalidating (suspending or revoking) a registration

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

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

5 9. Health and Safety Code section 44072.8 states that when a license has been revoked
6 or suspended following a hearing under this article, any additional license issued under this
7 chapter in the name of the licensee may be likewise revoked or suspended by the director.

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

12 **STATUTORY PROVISIONS**

13 11. Code section 9884.7 states, in pertinent part:

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

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

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

27

28 (4) Any other conduct that constitutes fraud.

. . . .

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

. . . .

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

6 12. Code section 22, subdivision (a), states:

7 "Board" as used in any provision of this Code, refers to the board in which the
8 administration of the provision is vested, and unless otherwise expressly provided,
9 shall include "bureau," "commission," "committee," "department," "division,"
10 "examining committee," "program," and "agency."

11 13. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
12 "registration" and "certificate."

13 14. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

20

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

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

25 COST RECOVERY

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

29 CONSUMER COMPLAINT (R. L.): 2004 MITSUBISHI

30 16. On July 2, 2013, R. L. took his 2004 Mitsubishi to Car and E Inc., ARD 258961,
31 located at 8363 Rovana Circle, Sacramento, California for a repair involving the vehicle's
32 transfer case, a component of the vehicle's transmission system. On July 4, 2013, an employee of
33 Car and E Inc. and an automotive repair technician for approximately 20 years, Jorge Alcalá, EO

1 45536, placed the 2004 Mitsubishi on a vehicle lift in preparation for the repair. On July 5, 2013
2 Mr. Alcalá began the repair of the transfer case by beginning to remove the transfer case from the
3 vehicle. On July 6, 2013, Mr. Alcalá completed the removal of the transfer case, rendering the
4 vehicle undrivable. In removing the transfer case, Mr. Alcalá observed that the engine and
5 exhaust system had been modified. The engine had a modified positive crankcase ventilation
6 (PCV) system. The exhaust system had the catalytic converter removed. These modifications
7 rendered the vehicle unable to pass a Smog Check inspection. On July 6, 2013, between 12:00
8 p.m. and 1:00 p.m., Mr. Alcalá took the transfer case to Office Max located at 2800 Power Inn
9 Road in Sacramento, California, for shipment by Fed Ex to a transmission repair specialist in
10 Ohio.

11 17. On July 6, 2013, at approximately 12:25 p.m. Respondent A+ Test Only Smog and
12 Respondent Howell issued electronic smog Certificate of Compliance No. OY018615C for R. L.'s
13 2004 Mitsubishi. Respondent A+ Test Only Smog and Respondent Howell issued the Certificate
14 even though R. L.'s 2004 Mitsubishi was not actually present at Respondent A+ Test Only Smog
15 and had not been actually inspected by Respondent Howell.

16 18. On July 8, 2013, the Bureau inspected R. L.'s 2004 Mitsubishi and found that the
17 engine and exhaust system were still modified and the vehicle remained undrivable.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 19. Respondent A+ Test Only Smog's Registration is subject to disciplinary action
21 because Respondent A+ Test Only Smog made or authorized a statement which it knew or in the
22 exercise of reasonable care should have known to be untrue or misleading. (Bus. & Prof. Code §
23 9884.7, subd. (a)(1)) Specifically, Respondent A+ Test Only Smog's smog check technician,
24 Respondent Howell, certified under penalty of perjury that he performed a smog inspection on R.
25 L.'s 2004 Mitsubishi in accordance with all Bureau requirements and that the vehicle had passed
26 inspection and was in compliance with applicable laws and regulations. In fact, the vehicle was
27 not present at Respondent A+ Test Only Smog, had not been inspected by Respondent Howell,
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1 and due to the modified engine and exhaust system could not have passed the inspection required
2 by Health and Safety Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 20. Respondent A+ Test Only Smog's Registration is subject to disciplinary action
6 because Respondent A+ Test Only Smog committed an act that constitutes fraud by issuing an
7 electronic smog certificate of compliance for R. L.'s 2004 Mitsubishi without performing a bona
8 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
9 People of the State of California of the protection afforded by the Motor Vehicle Inspection
10 Program. (Bus. & Prof. Code § 9884.7, subdivision (a)(4))

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 21. Respondent A+ Test Only Smog's Smog Check Station License is subject to
14 disciplinary action because Respondent A+ Test Only Smog failed to comply with several
15 sections of the law. (Health & Saf. Code § 44072.2, subd. (a))

16 a. **Code section 44012, subdivision (f):** Respondent failed to perform the visual or
17 functional inspection of the emission control components on R. L.'s 2004 Mitsubishi in
18 accordance with procedures prescribed by the department.

19 b. **Code section 44015:** Respondent issued an electronic smog certificate of compliance
20 for R. L.'s 2004 Mitsubishi without properly testing and inspecting the vehicle to determine if it
21 was in compliance with Health & Saf. Code section 44012.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

25 22. Respondent A+ Test Only Smog's Smog Check Station License is subject to
26 disciplinary action because Respondent A+ Test Only Smog failed to comply with provisions of
27 California Code of Regulations, title 16. (Health & Saf. Code § 44072.2, subd. (c))
28

1 a. **Section 3340.15, subdivision (e)**: Respondent failed to maintain all necessary
2 records including the estimate, invoice and vehicle inspection report regarding R. L.'s 2004
3 Mitsubishi.

4 b. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
5 of compliance for R. L.'s 2004 Mitsubishi even though the vehicle had not been inspected in
6 accordance with section 3340.42.

7 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on R. L.'s
8 2004 Mitsubishi in accordance with the Bureau's specifications.

9 **FIFTH CAUSE FOR DISCIPLINE**

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

11 23. Respondent A+ Test Only Smog's Smog Check Station License is subject to
12 disciplinary action because Respondent A+ Test Only Smog committed a dishonest, fraudulent,
13 or deceitful act whereby another is injured. (Health & Saf. Code § 44072.2, subd. (d))
14 Specifically Respondent A+ Test Only Smog issued an electronic smog certificate of compliance
15 for R. L.'s 2004 Mitsubishi without performing a bona fide inspection of the emission control
16 devices and systems on the vehicle, thereby depriving the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

18 **SIXTH CAUSE FOR DISCIPLINE**

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

20 24. Respondent Howell's Inspector License is subject to disciplinary action because
21 Respondent Howell failed to comply with section 44012, subdivision (f), of the Code. (Health &
22 Saf. Code § 44072.2, subd. (a)) Respondent Howell failed to perform the visual or functional
23 inspection of the emission control components on R. L.'s 2004 Mitsubishi in accordance with
24 procedures prescribed by the department.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

4 25. Respondent Howell's Inspector License is subject to disciplinary action because
5 Respondent Howell failed to comply with provisions of California Code of Regulations, title 16.
6 (Health & Saf. Code § 44072.2, subd. (c))

7 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test R. L.'s 2004
8 Mitsubishi in accordance with Health & Saf. Code sections 44012 and 44035, and California
9 Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on R. L.'s
11 2004 Mitsubishi in accordance with the Bureau's specifications.

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

14 26. Respondent Howell's Inspector License is subject to disciplinary action because
15 Respondent Howell committed a dishonest, fraudulent, or deceitful act whereby another is
16 injured. (Health & Saf. Code § 44072.2, subd. (d)) Respondent Howell issued an electronic
17 smog certificate of compliance for R. L.'s 2004 Mitsubishi without performing a bona fide
18 inspection of the emission control devices and systems on the vehicle, thereby depriving the
19 People of the State of California of the protection afforded by the Motor Vehicle Inspection
20 Program.

21 **UNDERCOVER OPERATION: 1990 MERCURY**

22 27. On September 12, 2014, an undercover operator with the Bureau ("operator") took
23 the Bureau's 1990 Mercury to Respondent A+ Test Only Smog and requested a smog inspection.
24 The ignition timing had been adjusted out of manufacturer's specification on the Bureau-
25 documented vehicle. The operator signed and received a copy of a written estimate for the
26 inspection. After the inspection was completed, the operator paid the facility \$58 and received
27 copies of an invoice and a vehicle inspection report ("VIR"). The VIR indicated that Respondent
28 Howell had performed the smog inspection on the vehicle. That same day, electronic smog

1 Certificate of Compliance No. PK592421C was issued for the vehicle.

2 28. On September 15, 2014, the Bureau inspected the vehicle and found that ignition
3 timing was still adjusted out of manufacturer's specification.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 29. Respondent A+ Test Only Smog's Registration is subject to disciplinary action
7 because Respondent A+ Test Only Smog made or authorized a statement which it knew or in the
8 exercise of reasonable care should have known to be untrue or misleading. (Bus. & Prof. Code §
9 9884.7, subd. (a)(1)) Specifically, Respondent A+ Test Only Smog's smog check technician,
10 Respondent Howell, certified under penalty of perjury that he performed a smog inspection on the
11 Bureau's 1990 Mercury in accordance with all Bureau requirements and that the vehicle had
12 passed inspection and was in compliance with applicable laws and regulations. In fact, the
13 ignition timing was out of manufacturer's specification and therefore, the vehicle would not pass
14 the inspection required by Health and Safety Code section 44012.

15 **TENTH CAUSE FOR DISCIPLINE**

16 **(Odometer Reading on Work Order)**

17 30. Respondent A+ Test Only Smog's Registration is subject to disciplinary action
18 because Respondent A+ Test Only Smog provided the customer for the Bureau's 1990 Mercury a
19 work order that did not contain the vehicle's odometer reading. (Bus. & Prof. Code section
20 9884.7, subdivision (a)(2))

21 **ELEVENTH CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 31. Respondent A+ Test Only Smog's Registration is subject to disciplinary action
24 because Respondent A+ Test Only Smog committed an act that constitutes fraud. (Bus. & Prof.
25 Code § 9884.7, subd. (a)(4)) Specifically, Respondent A+ Test Only Smog issued an electronic
26 smog certificate of compliance for the Bureau's 1990 Mercury without performing a bona fide
27 inspection of the emission control devices and systems on the vehicle, thereby depriving the
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1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **TWELFTH CAUSE FOR DISCIPLINE**

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

5 32. Respondent A+ Test Only Smog's Smog Check Station License is subject to
6 disciplinary action because Respondent A+ Test Only Smog failed to comply with several
7 sections of the law. (Health & Saf. Code § 44072.2, subd. (a))

8 a. **Code section 44012, subdivision (f)**: Respondent failed to perform the functional
9 inspection of the emission control components on the Bureau's 1990 Mercury in accordance with
10 procedures prescribed by the department.

11 b. **Code section 44015**: Respondent issued an electronic smog certificate of compliance
12 for the Bureau's 1990 Mercury without properly testing and inspecting the vehicle to determine if
13 it was in compliance with Health & Saf. Code section 44012.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

17 33. Respondent A+ Test Only Smog's Smog Check Station License is subject to
18 disciplinary action because Respondent A+ Test Only Smog failed to comply with some
19 provisions of California Code of Regulations, title 16. (Health & Saf. Code § 44072.2, subd. (c))

20 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 1990 Mercury even though the vehicle had not been inspected in
22 accordance with section 3340.42.

23 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
24 Bureau's 1990 Mercury in accordance with the Bureau's specifications.

25 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

27 34. Respondent A+ Test Only Smog's Smog Check Station License is subject to
28 disciplinary action because Respondent A+ Test Only Smog committed a dishonest, fraudulent,

1 or deceitful act whereby another is injured. (Health & Saf. Code § 44072.2, subd. (d))
2 Respondent A+ Test Only Smog issued an electronic smog certificate of compliance for the
3 Bureau's 1990 Mercury without performing a bona fide inspection of the emission control
4 devices and systems on the vehicle, thereby depriving the People of the State of California of the
5 protection afforded by the Motor Vehicle Inspection Program.

6 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

8 35. Respondent Howell's Inspector License is subject to disciplinary action because
9 Respondent Howell failed to comply with section 44012, subdivision (f), of the Code. (Health &
10 Saf. Code § 44072.2, subd. (a)) Specifically, Respondent Howell failed to perform the functional
11 inspection of the emission control components on the Bureau's 1990 Mercury in accordance with
12 procedures prescribed by the department.

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

16 36. Respondent Howell's Inspector License is subject to disciplinary action because
17 Respondent Howell failed to comply with provisions of California Code of Regulations, title 16.
18 (Health & Saf. Code § 44072.2, subd. (c))

19 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
20 1990 Mercury in accordance with Health & Saf. Code sections 44012 and 44035, and California
21 Code of Regulations, title 16, section 3340.42.

22 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
23 Bureau's 1990 Mercury in accordance with the Bureau's specifications.

24 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

26 37. Respondent Howell's Inspector License is subject to disciplinary action because
27 Respondent Howell committed a dishonest, fraudulent, or deceitful act whereby another is
28 injured. (Health & Saf. Code § 44072.2, subd. (d)) Specifically, Respondent Howell issued an

1 electronic smog certificate of compliance for the Bureau's 1990 Mercury without performing a
2 bona fide inspection of the emission control devices and systems on the vehicle, thereby
3 depriving the People of the State of California of the protection afforded by the Motor Vehicle
4 Inspection Program.

5 **MATTERS IN AGGRAVATION**

6 38. To determine the degree of discipline, if any, to be imposed on Respondent A+ Test
7 Only Smog, Complainant alleges as follows:

8 a. On or about April 29, 2009, in a prior action, the Bureau of Automotive Repair issued
9 Citation Number C09-1245 and ordered Respondent A+ Test Only Smog to pay a civil penalty of
10 \$500.00. That Citation is now final and is incorporated by reference as if fully set forth.

11 b. On or about August 1, 2011, in a prior action, the Bureau of Automotive Repair
12 issued Citation Number C2012-0099 and ordered Respondent A+ Test Only Smog to pay a civil
13 penalty of \$1500.00. That Citation is now final and is incorporated by reference as if fully set
14 forth.

15 c. On or about January 20, 2012, in a prior action, the Bureau of Automotive Repair
16 issued Citation Number C2012-0750 and ordered Respondent A+ Test Only Smog to pay a civil
17 penalty of \$1500.00. That Citation is now final and is incorporated by reference as if fully set
18 forth.

19 **OTHER MATTERS**

20 39. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke
21 or place on probation the registration for all places of business operated in this state by
22 Respondent A+ Test Only Smog, upon a finding that Respondent A+ Test Only Smog has, or is,
23 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
24 automotive repair dealer.

25 40. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
26 Station License Number TC 248969, issued to Respondent A+ Test Only Smog, is revoked or
27 suspended, any additional license issued under this chapter in the name of said licensee may be
28 likewise revoked or suspended by the Director.

1 41. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
2 License Number EO 633592, issued to Respondent Howell, is revoked or suspended, any
3 additional license issued under this chapter in the name of said licensee may be likewise revoked
4 or suspended by the Director.

5 **PRAYER**

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

8 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
9 248969, issued to A+ Test Only Smog of Rohnert Park;

10 2. Revoking or suspending any other automotive repair dealer registration issued to A+
11 Test Only Smog of Rohnert Park;

12 3. Revoking or suspending Smog Check Test Only Station License Number TC 248969,
13 issued to A+ Test Only Smog of Rohnert Park;

14 4. Revoking or suspending any additional licenses issued under Chapter 5 of the Health
15 and Safety Code in the name of A+ Test Only Smog of Rohnert Park;

16 5. Revoking or suspending Smog Check Inspector License Number EO 633592, issued
17 to Randy Lee Howell;

18 6. Revoking or suspending any additional licenses issued under Chapter 5 of the Health
19 and Safety Code in the name of Randy Lee Howell;

20 7. Ordering Respondents A+ Test Only Smog of Rohnert Park, and Randy Lee Howell
21 to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
22 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: March 3, 2016



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

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