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

11 In the Matter of the Accusation Against:

12 **ADVANCED SMOG**  
13 **KENNETH FLOYD WUORI, Owner**  
14 **1881 Walters Ct., Suite F**  
**Fairfield, CA 94533**

15 **Automotive Repair Dealer Registration No.**  
**ARD 253746**  
16 **Smog Check Test Only Station License No.**  
**TC 253746**

17 **KENNETH FLOYD WUORI**  
18 **57 Barcelona Court**  
**Fairfield, CA 94533**

19 **Smog Check Repair Technician License No.**  
20 **EI 153230 (formerly Advanced Emission**  
**Specialist Technician License No. EA**  
21 **153230)**

22 **Smog Check Inspector License No. EO**  
23 **153230 (formerly Advanced Emission**  
**Specialist Technician License No. EA**  
24 **153230)**

25 Respondent.

Case No.

*79/15-105*

**ACCUSATION AND PETITION TO**  
**REVOKE PROBATION**

*SMOG CHECK*

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 **Automotive Repair Dealer Registration**

6 2. On or about February 22, 2008, the Bureau of Automotive Repair issued Automotive  
7 Repair Dealer Registration Number ARD 253746 to Kenneth Floyd Wuori (Respondent). The  
8 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the  
9 charges brought herein and will expire on January 31, 2016, unless renewed.

10 **Smog Check Station License**

11 3. On or about February 26, 2008, the Bureau of Automotive Repair issued Smog  
12 Check Test Only Station License Number TC 253746 to (Respondent). The Smog Check Test  
13 Only Station License was in full force and effect at all times relevant to the charges brought  
14 herein and will expire on January 31, 2016, unless renewed.

15 **Smog Check Inspector License**

16 4. In 2006, the Bureau issues Advanced Emissions Specialist Technician License  
17 Number EA 153230 (“technician license”) to Respondent. The technician license was due to  
18 expire on December 31, 2013. Pursuant to California Code of Regulations, title 16, section  
19 3340.28, subdivision (e), the license was renewed, pursuant to Respondent’s election, and the  
20 Bureau of Automotive Repair issued Smog Check Inspector License Number EO 153230 to  
21 (Respondent). The Smog Check Inspector License was in full force and effect at all times  
22 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.<sup>1</sup>

23 **Smog Check Repair Technician License**

24 5. In 2006, the Bureau issues Advanced Emissions Specialist Technician License  
25 Number EA 153230 (“technician license”) to Respondent. The technician license was due to

26 <sup>1</sup> Effective August 1, 2013, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) License.

1 expire on December 31, 2013. Pursuant to California Code of Regulations, title 16, section  
2 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, and the  
3 Bureau of Automotive Repair issued Smog Check Repair Technician License Number EI 153230  
4 to (Respondent). The Smog Check Inspector License was in full force and effect at all times  
5 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.<sup>2</sup>

### 6 JURISDICTION

7 6. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
8 Bureau of Automotive Repair, under the authority of the following laws.

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

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

17 9. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
18 surrender, cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction  
19 to proceed with a disciplinary action during the period within which the license may be renewed,  
20 restored, reissued or reinstated.

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

25 / /

26 <sup>2</sup> Effective August 1, 2013, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) License.

1 PETITION TO REVOKE PROBATION

2 11. The Petition to Revoke Probation is brought before the Chief of the Bureau of  
3 Automotive Repair, Department of Consumer Affairs under Probation Term and Condition  
4 Number(s) 2 and 8 of the Decision and Order In the Matter of the Accusation Against Advanced  
5 Smog Center Case No. 79/12-31. Those terms and conditions state:

6 12. **Obey All Laws.** Comply with all statutes, regulations and rules governing  
7 automotive inspections estimates and repairs.

8 13. **Violation of Probation.** Should the Director of Consumer Affairs determine that  
9 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
10 after giving notice and opportunity to be heard temporarily or permanently invalidate the  
11 Automotive Repair Dealer Registration and/or suspend or revoke the Smog Check Test Only  
12 Station License and/or Advanced Emission Specialist Technician License.<sup>3</sup>

13 STATUTORY PROVISIONS

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

17 15. Section 44072.2 of the Health and Safety Code states:

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

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

24 "(b) Is convicted of any crime substantially related to the qualifications, functions, and  
25 duties of the licenseholder in question.

26 <sup>3</sup> In the Matter of the Accusation Against Advanced Smog Center, Case No. 79/12-31 as  
27 noted in the Decision and Order, following a Stipulated Settlement Agreement, adopted June 8,  
28 2012 and effective on June 28, 2012, Respondent was disciplined as follows: Revocation stayed,  
three years' probation and suspension of 15 days.

- 1           (c) Violates any of the regulations adopted by the director pursuant to this chapter.
- 2           (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.
- 3           (e) Has misrepresented a material fact in obtaining a license.
- 4           (f) Aids or abets unlicensed persons to evade the provisions of this chapter.
- 5           (g) Fails to make and keep records showing his or her transactions as a licensee, or fails to
- 6 have those records available for inspection by the director or his or her duly authorized
- 7 representative for a period of not less than three years after completion of any transaction to
- 8 which the records refer, or refuses to comply with a written request of the director to make the
- 9 records available for inspection.
- 10          (h) Violates or attempts to violate the provisions of this chapter relating to the particular
- 11 activity for which he or she is licensed."

12          16. Section 9884.7 of the Code states:

13          (a) The director, where the automotive repair dealer cannot show there was a bona fide

14 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair

15 dealer for any of the following acts or omissions related to the conduct of the business of the

16 automotive repair dealer, which are done by the automotive repair dealer or any automotive

17 technician, employee, partner, officer, or member of the automotive repair dealer.

18           (1) Making or authorizing in any manner or by any means whatever any statement written

19 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable

20 care should be known, to be untrue or misleading.

21           (2) Causing or allowing a customer to sign any work order that does not state the repairs

22 requested by the customer or the automobile's odometer reading at the time of repair.

23           (3) Failing or refusing to give to a customer a copy of any document requiring his or her

24 signature, as soon as the customer signs the document.

25           (4) Any other conduct that constitutes fraud.

26           (5) Conduct constituting gross negligence.

27           (6) Failure in any material respect to comply with the provisions of this chapter or

28 regulations adopted pursuant to it.

1 (7) Any willful departure from or disregard of accepted trade standards for good and  
2 workmanlike repair in any material respect, which is prejudicial to another without consent of the  
3 owner or his or her duly authorized representative.

4 (8) Making false promises of a character likely to influence, persuade, or induce a  
5 customer to authorize the repair, service, or maintenance of automobiles.

6 (9) Having repair work done by someone other than the dealer or his or her employees  
7 without the knowledge or consent of the customer unless the dealer can demonstrate that the  
8 customer could not reasonably have been notified.

9 17. Section 44072.8 of the Health and Safety Code states:

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

13 18. Section 44012 of the Health and Safety Code states:

14 "The test at the smog check stations shall be performed in accordance with procedures  
15 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded  
16 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,  
17 and shall ensure all of the following:

18 "(a) Emission control systems required by state and federal law are reducing excess  
19 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of  
20 Section 44013.

21 "(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of  
22 the vehicle's emission control system.

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

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

4           "(e) For diesel-powered vehicles, if the department determines that the inclusion of those  
5 vehicles is technologically and economically feasible, a visual inspection is made of emission  
6 control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in  
7 accordance with procedures prescribed by the department. The test may include testing of  
8 emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of  
9 applicable standards, measurement of emissions of smoke or particulates, or both.

10           "(f) A visual or functional check is made of emission control devices specified by the  
11 department, including the catalytic converter in those instances in which the department  
12 determines it to be necessary to meet the findings of section 44001. The visual or functional  
13 check shall be performed in accordance in procedures prescribed by the department.

14           19. Section 44015 of the Health and Safety Code states in pertinent part:

15           "A licensed smog check station shall not issue a smog certificate except as authorized by  
16 this chapter."

17           20. Section 44059 of the Health and Safety Code states:

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

22           21. California Code of Regulations, title 16, section 3340.24, states:

23           "(a) Any disciplinary or reinstatement proceeding under this article involving licensed  
24 stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health  
25 and Safety Code shall be conducted in accordance with chapter 5 (commencing with section  
26 11500) of division 3, Title 2 of the Government Code.

27           "(b) The bureau may suspend or revoke the license of or pursue other legal action against a  
28 licensee, if the licensee knowingly and willfully resists, delays, or obstructs any employee of the

1 bureau or any employee of the quality assurance contractor of the bureau in carrying out the  
2 lawful performance of his or her duties.

3 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a  
4 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
5 certificate of noncompliance.

6 "(d) The bureau may suspend or revoke the license of or pursue other legal action against a  
7 licensee that fails to complete retraining when required by the department, pursuant to section  
8 44045.6 of the Health and Safety Code."

9 22. California Code of Regulations, title 16, section 3340.35, states in pertinent part:

10 A licensed station shall issue a certificate of compliance or noncompliance to the owner or  
11 operator of any vehicle that has been inspected in accordance with the procedures specified in  
12 section 3340.42 of this article and has all the required emission control equipment and devices  
13 installed and functioning correctly.

14 23. California Code of Regulations, title 16, section 3340.41, states:

15 "(a) A licensed station shall give a copy of the test report printed from the emissions  
16 inspection system to the customer. The report shall be attached to the customer's invoice.

17 "(b) No person shall enter into the emissions inspection system any access or qualification  
18 number other than as authorized by the bureau, nor in any way tamper with the emissions  
19 inspection system.

20 "(c) No person shall enter into the emissions inspection system any vehicle identification  
21 information or emission control system identification data for any vehicle other than the one  
22 being tested. Nor shall any person knowingly enter into the emissions inspection system any false  
23 information about the vehicle being tested.

24 "(d) The specifications and procedures required by Section 44016 of the Health and Safety  
25 Code shall be the vehicle manufacturer's recommended procedures for emission problem  
26 diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard  
27 reference manuals and periodicals published by nationally recognized repair information  
28 providers. Smog check stations and smog check technicians shall, at a minimum, follow the

1 applicable specifications and procedures when diagnosing defects or performing repairs for  
2 vehicles that fail a smog check test.

3 "(e) A smog check station shall not perform an initial test, except for an official pre-test, on  
4 or issue a certificate of compliance to any vehicle that has been directed to a test-only station for  
5 its biennial smog check pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code,  
6 unless the station is licensed as a test-only station pursuant to subdivision (b) of Section 44014 of  
7 the Health and Safety Code. The reinspection and certification of a test-only directed vehicle that  
8 has failed an initial test at a test-only station and has undergone subsequent repairs to correct the  
9 cause of the failure, may be performed by a test-only station, or by a test-and- repair station that  
10 performs those repairs and that is also certified as a Gold Shield station pursuant to Section  
11 44014.2 of the Health and Safety Code and Article 10 (commencing with section 3392.1) of this  
12 chapter.

13 24. California Code of Regulations, title 16, section 3340.42, states in pertinent part:

14 Smog check stations and smog check technicians shall conduct tests and inspections in  
15 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in  
16 subsections (a) and (b) of Section 3340.17.

#### 17 **COST RECOVERY**

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

#### 22 **UNDERCOVER OPERATION**

23 26. On or about June 25, 2014, for the purpose of determining if Respondent was in  
24 compliance with the terms of probation, a Bureau undercover operator drove a Bureau  
25 documented 1997 Chevrolet to Respondent's facility and requested a smog inspection. The  
26 vehicle was not capable of passing a properly conducted smog test because the vehicle's Fuel  
27 Evaporative Canister was defective. The operator was not provided a copy of the work order  
28 before work began and prior to the smog inspection. Respondent performed the smog inspection

1 and issued electronic Certificate of Compliance No. [REDACTED] for that vehicle. The operator paid  
2 \$48.00 for the smog inspection and received a copy of Invoice No. [REDACTED] and the vehicle  
3 inspection report.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Misleading Statements)**

6 27. Respondent is subject to disciplinary action under section Code section 9884.7,  
7 subdivision (a)(1), in that on or about June 25, 2014, he made statements which he knew or which  
8 by the exercise of reasonable care should have known were untrue or misleading when he issued  
9 electronic Certificate of Compliance No. [REDACTED], for the 1997 Chevrolet, certifying that the  
10 vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's Fuel  
11 Evaporative Canister was defective and the vehicle could not pass a properly conducted smog  
12 test.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 28. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4),  
16 in that on or about June 25, 2014, he committed acts which constitute fraud by issuing electronic  
17 Certificate of Compliance No. [REDACTED], for the 1997 Chevrolet, without performing a bona  
18 fide inspection of the systems on that vehicle, thereby depriving the public of the protection  
19 afforded by the Motor Vehicle Inspection Program.

20 **THIRD CAUSE FOR DISCIPLINE**

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

22 29. Respondent is subject to disciplinary action under Health and Safety Code section  
23 44072.2, subdivision (a), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he  
24 violated various sections of that Code as follows:

25 a. **Section 44012**, subdivision (e); Respondent failed to perform a visual inspection of  
26 the vehicle emission control systems.

27 b. **Section 44012**, subdivision (f); Respondent failed to perform a visual inspection of  
28 the vehicle emission and control systems in compliance with the requirement of this chapter.

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

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

7 **FOURTH CAUSE FOR DISCIPLINE**

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

9 30. Respondent is subject to discipline under Health and Safety Code section 44072.2,  
10 subdivision (c), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he violated  
11 sections of the California Code of Regulations, title 16, as follows:

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

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

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

21 **FIFTH CAUSE FOR DISCIPLINE**

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

23 31. Respondent is subject to disciplinary action under Health and Safety Code section  
24 44072.2, subdivision (d), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he  
25 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing  
26 electronic Certificate of Compliance No. [REDACTED] for that vehicle without performing a bona  
27 fide inspection of the emission control devices and system 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 **SIXTH CAUSE FOR DISCIPLINE**

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

5 32. Respondent is subject to disciplinary action under Health and Safety Code section  
6 44072.2, subdivision (a), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he  
7 violated sections of that Code, as follows:

8 a. **Section 44012**, subdivision (a): Respondent failed to determine that all emission  
9 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 failed to perform emission control tests  
12 on that vehicle in accordance with procedures prescribed by the department.

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

15 d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of  
16 Compliance No. [REDACTED], certifying that the vehicle had been inspected as required when, in  
17 fact, it had not.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 33. Respondent is subject to disciplinary action under section Health and Safety Code  
21 section 44072.2, subdivision (c ) in that on or about June 25, 2014, regarding the 1997 Chevrolet  
22 he violated section of the California Code of Regulations, title 16, as follows:

23 a. **Section 3340.24**, subdivision ( c ); Respondent false or fraudulently issued electronic  
24 Certificate of Compliance No. [REDACTED] without performing a bona fide visual inspection of the  
25 control systems on the vehicle as required by Health Safety Code section 44012.

26 b. **Section 3340.30**, subdivision (a); Respondent failed to inspect and test that vehicle  
27 in accordance with Health and Safety Code section 44012.

28 c. **Section 3340.41**, subdivision (c ); Respondent entered false information into

1 the emissions Inspection System for electronic Certificate of Compliance No. [REDACTED] by  
2 entering pass for the visual inspection of the fuel evaporative canister system, when in fact the  
3 fuel evaporative carrier was defective.

4 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections  
5 The vehicle in accordance with Bureau specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 34. Respondent is subject to disciplinary action under Health and Safety Code section  
9 44072.2 subdivision (d), in that on or about June 25, 20124, regarding the 1997 Chevrolet, he  
10 committed acts involving dishonesty fraud or deceit which by another was injured using  
11 electronic Certificate of Compliance No. [REDACTED] without performing a bona fide inspection of  
12 the visual components and systems on t the vehicle, thereby depriving the public of the protection  
13 afforded by the Motor Vehicle Inspection Program.

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**PRAYER**

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 253746, issued to Kenneth Floyd Wuori;
2. Revoking or suspending Smog Check Test Only Station License Number TC 253746, issued to Kenneth Floyd Wuori;
3. Revoking or suspending Smog Check Inspector License Number EO 153230, issued to Kenneth Floyd Wuori;
4. Revoking or suspending Smog Check Repair Technician License Number EI 153230 issued to Kenneth Floyd Wuori;
5. Ordering Kenneth Floyd Wuori 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;
6. Taking such other and further action as deemed necessary and proper.

DATED: April 7, 2015



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

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