

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

In the Matter of the Accusation Against:

ONE STOP SMOG & RPR CO ROSEDALE
JIMMIE WHITTINGTON, Partner
NELDA L. WHITTINGTON, Partner
10120 Rosedale Hwy
Bakersfield, CA 93312

Case No. 79/12-77

Automotive Repair Dealer Registration No.
ARD 182674
Smog Check, Station License No. 182674

and

ELIZABETH L. BURGER
2341 Pictoria Drive
Bakersfield, CA 93306

Advanced Emission Specialist Technician
License No. EA 148826

Respondents.

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 only as to respondent One Stop Smog & RPR Co Rosedale, Automotive Repair Dealer Registration No. ARD 182674 and Smog Check Station License No. RC 182674.

This Decision shall become effective 8/7/12.

DATED: July 18, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Attorney General of California
2 KAREN B. CHAPPELLE
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Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:
13 **ONE STOP SMOG & RPR CO**
ROSEDALE
14 **JIMMIE WHITTINGTON, PARTNER**
NELDA L. WHITTINGTON, PARTNER
15 **10120 Rosedale Hwy**
Bakersfield, CA 93312
16 **Automotive Repair Dealer Reg. No. ARD**
182674
Smog Check Station License No. RC 182674

Case No. 79/12-77

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 **and**
18 **ELIZABETH L. BURGER**
19 **2341 Pictoria Drive**
Bakersfield, CA 93306
20 **Advanced Emission Specialist Technician**
License No. EA 148826

21 Respondents.
22

23
24 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
25 entitled proceedings that the following matters are true:

26 **PARTIES**

27 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
28 brought this action solely in his official capacity and is represented in this matter by Kamala D.

1 Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney
2 General.

3 2. Respondent One Stop Smog & Rpr Co Rosedale; Jimmie Whittington; Nelda L.
4 Whittington (Respondent) is representing itself in this proceeding and has chosen not to exercise
5 its right to be represented by counsel.

6 3. On or about January 1, 1995, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration No. ARD 182674 to One Stop Smog & Rpr Co Rosedale; Jimmie
8 Whittington; Nelda L. Whittington (Respondent). The Automotive Repair Dealer Registration
9 was in full force and effect at all times relevant to the charges brought in Accusation No. 79/12-
10 77 and will expire on March 31, 2013, unless renewed.

11 4. On or about March 15, 1995, the Bureau of Automotive Repair issued Smog Check,
12 Station License No. RC 182674 to One Stop Smog & Rpr Co Rosedale; Jimmie Whittington;
13 Nelda L. Whittington (Respondent). The Smog Check, Station License was in full force and
14 effect at all times relevant to the charges brought in Accusation No. 79/12-77 and will expire on
15 March 31, 2013, unless renewed.

16 JURISDICTION

17 5. Accusation No. 79/12-77 was filed before the Director of Consumer Affairs
18 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
19 Respondent. The Accusation and all other statutorily required documents were properly served
20 on Respondent on March 14, 2012. Respondent timely filed its Notice of Defense contesting the
21 Accusation.

22 6. A copy of Accusation No. 79/12-77 is attached as exhibit A and incorporated herein
23 by reference.

24 ADVISEMENT AND WAIVERS

25 7. Respondent has carefully read, and understands the charges and allegations in
26 Accusation No. 79/12-77. Respondent has also carefully read, and understands the effects of this
27 Stipulated Settlement and Disciplinary Order.

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1 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
2 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
3 Director shall not be disqualified from further action by having considered this matter.

4 14. The parties understand and agree that facsimile copies of this Stipulated Settlement
5 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
6 effect as the originals.

7 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
8 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
9 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
10 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
11 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
12 writing executed by an authorized representative of each of the parties.

13 16. In consideration of the foregoing admissions and stipulations, the parties agree that
14 the Director may, without further notice or formal proceeding, issue and enter the following
15 Disciplinary Order:

16 **DISCIPLINARY ORDER**

17 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 182674
18 and Smog Check, Station License No. RC 182674 issued to Respondent One Stop Smog & Rpr
19 Co Rosedale; Jimmie Whittington; Nelda L. Whittington (Respondent) is revoked. However, the
20 revocation is stayed and Respondent is placed on probation for one (1) year on the following
21 terms and conditions.

22 1. **Obey All Laws.** Comply with all statutes, regulations and rules governing
23 automotive inspections, estimates and repairs.

24 2. **Reporting.** Respondent or Respondent's authorized representative must report in
25 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
26 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
27 maintaining compliance with the terms and conditions of probation.

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1 3. **Report Financial Interest.** Within 30 days of the effective date of this action, report
2 any financial interest which any partners, officers, or owners of the Respondent facility may have
3 in any other business required to be registered pursuant to Section 9884.6 of the Business and
4 Professions Code.

5 4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
6 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

7 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of
8 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
9 until the final decision on the accusation, and the period of probation shall be extended until such
10 decision.

11 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
12 Respondent has failed to comply with the terms and conditions of probation, the Department may,
13 after giving notice and opportunity to be heard, suspend or revoke the license.

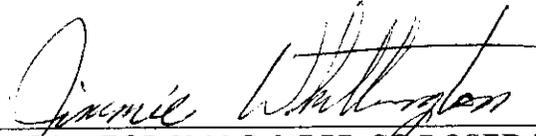
14 7. **Restrictions.** During the period of probation, Respondent shall not perform any form
15 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
16 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
17 properly perform such work, and BAR has been given 10 days notice of the availability of the
18 equipment for inspection by a BAR representative.

19 8. **Cost Recovery.** Payment to the Bureau the amount of \$6,304.00, which represents
20 50% of current costs related to the investigation and enforcement of this matter. Respondent shall
21 make such payment in six (6) equal monthly installments with final payment due no later than six
22 (6) months prior to the termination of probation. Failure to complete payment of cost recovery
23 within this time frame shall constitute a violation of probation which may subject Respondent's
24 automotive repair dealer registration and/or smog check station license to outright revocation;
25 however, the Director or the Director's Bureau of Automotive Repair designee may elect to
26 continue probation until such time as reimbursement of the entire cost recovery amount has been
27 made to the Bureau.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog Check, Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: May 31st 
ONE STOP SMOG & RPR CO ROSEDALE; JIMMIE WHITTINGTON
Respondent

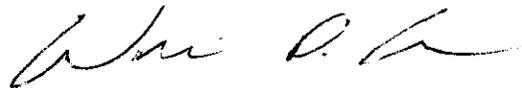
DATED: May 31, 2017 
ONE STOP SMOG & RPR CO ROSEDALE; NELDA L. WHITTINGTON
Respondent

ENDORSEMENT

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

Dated: 6/8/12

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General



WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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11 In the Matter of the Accusation Against:

Case No. 79/12-77

12 **ONE STOP SMOG & RPR CO ROSEDALE**
13 **JIMMIE WHITTINGTON, PARTNER**
14 **NELDA L. WHITTINGTON, PARTNER**
10120 Rosedale Hwy
15 Bakersfield, CA 93312
Automotive Repair Dealer Reg. No. ARD 182674
16 Smog Check Station License No. RC 182674

A C C U S A T I O N

(Smog Check)

17 and

18 **ELIZABETH L. BURGER**
2341 Pictoria Drive
19 Bakersfield, CA 93306
Advanced Emission Specialist Technician
20 License No. EA 148826

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 **One Stop Smog & Rpr Co Rosedale**

27 2. In or about 1995, the Director of Consumer Affairs ("Director") issued Automotive
28 Repair Dealer Registration Number ARD 182674 ("registration") to One Stop Smog & Rpr Co

1 Rosedale ("Respondent One Stop Smog & Rpr Co Rosedale"), with Jimmie Whittington and
2 Nelda L. Whittington as partners. Respondent's registration was in full force and effect at all
3 times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

4 3. On or about March 15, 1995, the Director issued Smog Check Station License
5 Number RC 182674 to Respondent One Stop Smog & Rpr Co Rosedale. Respondent's smog
6 check station license was in full force and effect at all times relevant to the charges brought herein
7 and will expire on March 31, 2012, unless renewed.

8 **Elizabeth L. Burger**

9 4. In or about 2006, the Director issued Advanced Emission Specialist Technician
10 License Number EA 148826 ("technician license") to Elizabeth L. Burger ("Respondent Burger"
11 or "Burger"). Respondent's technician license was in full force and effect at all times relevant to
12 the charges brought herein and will expire on October 31, 2012, unless renewed.

13 **JURISDICTION**

14 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
15 the Director may revoke an automotive repair dealer registration.

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

20 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
21 part, that the Director has all the powers and authority granted under the Automotive Repair Act
22 for enforcing the Motor Vehicle Inspection Program.

23 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
24 suspension of a license by operation of law, or by order or decision of the Director of Consumer
25 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
26 of jurisdiction to proceed with disciplinary action.

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STATUTORY PROVISIONS

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

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation 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.

....

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

(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.

....

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation 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. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

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 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 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 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 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 dealer when 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 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 specification of the additional parts and labor and the total additional cost . . .

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11. Bus. & Prof. Code section 22, subdivision (a), states:

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

12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

13. Health & Saf. Code section 44072.2 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 Saf. 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 . . .

14. Health & Saf. Code section 44072.10 states, in pertinent part:

....

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

....

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

15. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

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1 **COST RECOVERY**

2 16. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **VIDEOTAPED UNDERCOVER OPERATION #1: 1993 HONDA ACCORD**

7 17. On April 9, 2011, an undercover operator with the Bureau ("operator") took the
8 Bureau's 1993 Honda Accord to Respondent One Stop Smog & Rpr Co Rosedale's facility and
9 requested a smog inspection. The ignition timing on the Bureau-documented vehicle was not
10 adjusted to manufacturer's specifications. The operator signed a work order for the inspection,
11 but was not given a copy or a written estimate. After the inspection was completed, the operator
12 paid the facility \$68.20 and received copies of an invoice and vehicle inspection report ("VIR").
13 The VIR indicated that Respondent Burger had performed the inspection. That same day,
14 electronic smog Certificate of Compliance Number WT697242C was issued for the vehicle.

15 18. On May 6, 2011, the Bureau inspected the vehicle and found that the ignition timing
16 still was not adjusted to manufacturer's specifications. The video tape of the undercover
17 operation revealed that Burger had not performed the required functional ignition timing test or
18 functional low pressure fuel evaporation test ("LPFET") on the vehicle.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 19. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
22 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
23 Respondent made or authorized statements which it knew or in the exercise of reasonable care
24 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr
25 Co Rosedale's technician, Respondent Burger, certified under penalty of perjury on the VIR that
26 she performed the smog inspection on the Bureau's 1993 Honda Accord in accordance with all
27 Bureau requirements and that the vehicle had passed inspection and was in compliance with
28 applicable laws and regulations. In fact, Respondent Burger failed to perform the required

1 functional ignition timing test and functional LPFET test on the vehicle. Further, the ignition
2 timing on the vehicle was not adjusted to manufacturer's specifications in that the ignition timing
3 was set to 25 degrees before top dead center (BTDC) when the specifications were 15 degrees
4 BTDC. As such, vehicle would not pass the inspection required by Health & Saf. Code section
5 44012.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Failure to Provide Customer with Copy of Signed Document)**

8 20. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
9 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that
10 Respondent failed to provide the operator with a copy of the work order.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 21. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
14 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
15 Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of
16 compliance for the Bureau's 1993 Honda Accord without ensuring that a bona fide inspection was
17 performed of the emission control devices and systems on the vehicle, thereby depriving the
18 People of the State of California of the protection afforded by the Motor Vehicle Inspection
19 Program.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Provisions of the Bus. & Prof. Code)**

22 22. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
23 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
24 Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material
25 respect, as follows: Respondent failed to provide the operator with a written estimate for the
26 smog inspection on the Bureau's 1993 Honda Accord.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Provisions of the Bus. & Prof. Code)**

3 23. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
5 Respondent failed to comply with California Code of Regulations, title 16, section 3356,
6 subdivision (a), in the following material respects: Respondent failed to show the correct
7 registration number on the invoice in that it was listed as RJ142219. Further, Respondent failed
8 to include its business address.

9 **SIXTH CAUSE FOR DISCIPLINE**

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

11 24. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
12 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
13 that Respondent failed to comply with provisions of that Code, as follows:

14 a. **Section 44012, subdivision (f)**: Respondent failed to ensure that the functional
15 check of the emission control systems and devices was performed on the Bureau's 1993 Honda
16 Accord in accordance with procedures prescribed by the department in that Respondent Burger
17 failed to perform the required functional ignition timing test and functional LPFET test on the
18 vehicle.

19 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for
20 the Bureau's 1993 Honda Accord without ensuring that the vehicle was properly tested and
21 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

22 **SEVENTH CAUSE FOR DISCIPLINE**

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

25 25. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
26 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in

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1 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
2 follows:

3 a. **Section 3340.35, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale
4 issued an electronic smog certificate of compliance for the Bureau's 1993 Honda Accord even
5 though the vehicle had not been inspected in accordance with section 3340.42.

6 b. **Section 3340.41, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale
7 permitted its technician, Respondent Burger, to enter false information into the Emissions
8 Inspection System ("EIS") by entering data indicating that the functional ignition timing test and
9 functional LPFET test were not required on the Bureau's 1993 Honda Accord.

10 c. **Section 3340.42**: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure
11 that the required smog tests were conducted on the Bureau's 1993 Honda Accord in accordance
12 with the Bureau's specifications.

13 **EIGHTH CAUSE FOR DISCIPLINE**

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

15 26. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
16 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
17 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
18 issuing an electronic smog certificate of compliance for the Bureau's 1993 Honda Accord without
19 ensuring that a bona fide inspection was performed of the emission control devices and systems
20 on the vehicle, thereby depriving the People of the State of California of the protection afforded
21 by the Motor Vehicle Inspection Program.

22 **NINTH CAUSE FOR DISCIPLINE**

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

24 27. Respondent Burger's technician license is subject to disciplinary action pursuant to
25 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
26 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the
27 functional check of the emission control systems and devices on the Bureau's 1993 Honda

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1 Accord in accordance with procedures prescribed by the department in that Respondent failed to
2 perform the required functional ignition timing test and functional LPFET test on the vehicle.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant**
5 **to the Motor Vehicle Inspection Program)**

6 28. Respondent Burger's technician license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
8 provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
10 1993 Honda Accord in accordance with Health & Saf. Code sections 44012 and 44035, and
11 California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS
13 by entering data indicating that the functional ignition timing test and functional LPFET test were
14 not required on the Bureau's 1993 Honda Accord.

15 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
16 Bureau's 1993 Honda Accord in accordance with the Bureau's specifications.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

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

19 29. Respondent Burger's technician license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
21 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
22 compliance for the Bureau's 1993 Honda Accord without performing a bona fide inspection of the
23 emission control devices and systems on the vehicle, thereby depriving the People of the State of
24 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **UNDERCOVER OPERATION #2: 1986 GMC 3500 SIERRA PICKUP TRUCK**

2 30. On April 30, 2011, an undercover operator with the Bureau ("operator") took the
3 Bureau's 1986 GMC 3500 Sierra pickup truck to Respondent One Stop Smog & Rpr Co
4 Rosedale's facility and requested a smog inspection. The exhaust gas recirculation ("EGR") valve
5 had been removed from the Bureau-documented vehicle and a non-factory blockage plate had
6 been installed in its place, and the vacuum hose was disconnected. The operator signed a work
7 order for the inspection, but was not given a copy or a written estimate. After the inspection was
8 completed, the operator paid the facility \$68.20 and received copies of an invoice and VIR. The
9 VIR indicated that Respondent Burger had performed the inspection. That same day, electronic
10 smog Certificate of Compliance Number WV228204C was issued for the vehicle.

11 31. On June 7, 2011, the Bureau inspected the vehicle and found that the EGR valve was
12 still missing and the vacuum hose was still disconnected.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 32. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
16 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
17 Respondent made or authorized statements which it knew or in the exercise of reasonable care
18 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr
19 Co Rosedale's technician, Respondent Burger, certified under penalty of perjury on the VIR that
20 she performed the smog inspection on the Bureau's 1986 GMC 3500 Sierra pickup truck in
21 accordance with all Bureau requirements and that the vehicle had passed inspection and was in
22 compliance with applicable laws and regulations. In fact, the EGR valve on the vehicle was
23 missing and a non-factory blockage plate had been installed in its place, and the vacuum hose was
24 disconnected. As such, vehicle would not pass the inspection required by Health & Saf. Code
25 section 44012.

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1 pickup truck in accordance with procedures prescribed by the department in that Respondent
2 Burger failed to determine that the EGR valve on the vehicle was missing and the vacuum hose
3 was disconnected.

4 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
5 the Bureau's 1986 GMC 3500 Sierra pickup truck without ensuring that the vehicle was properly
6 tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

7 **SEVENTEENTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations Pursuant**
9 **to the Motor Vehicle Inspection Program)**

10 37. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
11 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
12 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
13 follows:

14 a. **Section 3340.35, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
15 issued an electronic smog certificate of compliance for the Bureau's 1986 GMC 3500 Sierra
16 pickup truck even though the vehicle had not been inspected in accordance with section 3340.42.

17 b. **Section 3340.41, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
18 permitted its technician, Respondent Burger, to enter false information into the EIS by entering
19 data indicating that the Bureau's 1986 GMC 3500 Sierra pickup truck had passed the EGR visual
20 and functional tests when, in fact, the EGR valve was missing and the vacuum hose was
21 disconnected.

22 c. **Section 3340.42:** Respondent One Stop Smog & Rpr Co Rosedale failed to ensure
23 that the required smog tests were conducted on the Bureau's 1986 GMC 3500 Sierra pickup truck
24 in accordance with the Bureau's specifications.

25 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

27 38. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
28 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in

1 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
2 issuing an electronic smog certificate of compliance for the Bureau's 1986 GMC 3500 Sierra
3 pickup truck without ensuring that a bona fide inspection was performed 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 **NINETEENTH CAUSE FOR DISCIPLINE**

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

8 39. Respondent Burger's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
10 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the visual
11 check of the emission control systems and devices on the Bureau's 1986 GMC 3500 Sierra
12 pickup truck in accordance with procedures prescribed by the department in that Respondent
13 failed to determine that the EGR valve was missing on the vehicle and that the vacuum hose was
14 disconnected.

15 **TWENTIETH CAUSE FOR DISCIPLINE**

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

18 40. Respondent Burger's technician license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
20 provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
22 1986 GMC 3500 Sierra pickup truck in accordance with Health & Saf. Code sections 44012 and
23 44035, and California Code of Regulations, title 16, section 3340.42.

24 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
25 by entering data indicating that the Bureau's 1986 GMC 3500 Sierra pickup truck had passed the
26 EGR visual and functional tests when, in fact, the EGR valve was missing and the vacuum hose
27 was disconnected.

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1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
2 Bureau's 1986 GMC 3500 Sierra pickup truck in accordance with the Bureau's specifications.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

5 41. Respondent Burger's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
7 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
8 compliance for the Bureau's 1986 GMC 3500 Sierra pickup truck without performing a bona fide
9 inspection of the emission control devices and systems on the vehicle, thereby depriving the
10 People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **VEHICLE INSPECTION: 2005 BMW 5-SERIES**

13 42. On April 2, 2011, Respondent Burger performed a smog inspection on a 2005 BMW
14 5-Series, License No. 5NFL458, on behalf of Respondent One Stop Smog & Rpr Co Rosedale,
15 resulting in the issuance of electronic smog Certificate of Compliance No. WT743984C.

16 43. A representative of the Bureau reviewed test data from the Bureau's vehicle
17 information database ("VID"), which revealed that Burger entered "pass" for the EGR system and
18 the pulse air injection system ("AIS") during the visual check portion of the smog inspection.
19 The representative obtained information indicating that the vehicle was not equipped with an
20 EGR system and that the EGR system was not a required emission control system for the vehicle.
21 The information also indicated that the vehicle was equipped with an electric AIS pump and not a
22 pulse type pump.

23 44. On May 31, 2011, the representative inspected the vehicle using the under-hood
24 Vehicle Emission Control Information ("VECI") label¹ and confirmed that the vehicle did not

25 ¹ Section 1.3.0 of the Bureau's August 2009 Smog Check Inspection Procedures Manual
26 states, in pertinent part, that "[t]echnicians shall conduct the visual inspection in accordance with
27 the inspection procedures described in this manual and as prompted by the EIS . . .". Section
28 1.3.1. states, in pertinent part, that "[t]echnicians must use all available information necessary to
determine the vehicle's emission control requirements, including but not limited to, the under-
hood emission control label . . ."

1 require an EGR system. The representative also observed that the vehicle was equipped with an
2 electric AIS pump (the pump was mounted in the interior of the left front fender).

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 45. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
6 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
7 Respondent made or authorized statements which it knew or in the exercise of reasonable care
8 should have known to be untrue or misleading, as follows:

9 a. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,
10 certified that the EGR system on the 2005 BMW 5-Series had passed the visual check portion of
11 the smog inspection. In fact, the vehicle is not equipped with an EGR system and that the EGR
12 system is not a required emission control system for the vehicle.

13 b. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,
14 certified that the 2005 BMW 5-Series was equipped with a pulse type AIS pump when, in fact,
15 the vehicle is equipped with an electric AIS pump.

16 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

18 46. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
19 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
20 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:
21 Respondent failed to ensure that the visual check of the emission control systems and devices on
22 the 2005 BMW 5-Series was performed properly, as set forth in paragraph 45 above.

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1 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

4 47. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
5 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
6 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
7 follows:

8 a. **Section 3340.35, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale
9 issued an electronic smog certificate of compliance for the 2005 BMW 5-Series even though the
10 vehicle had not been inspected in accordance with section 3340.42.

11 b. **Section 3340.41, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale
12 permitted its technician, Respondent Burger, to enter false information into the EIS concerning
13 the 2005 BMW 5-Series, as set forth in paragraph 45 above.

14 c. **Section 3340.42**: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure
15 that the required smog tests were conducted on the 2005 BMW 5-Series in accordance with the
16 Bureau's specifications.

17 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

19 48. Respondent Burger's technician license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
21 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform
22 the visual check of the emission control systems and devices on the 2005 BMW 5-Series, as set
23 forth in paragraph 45 above.

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1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

4 49. Respondent Burger's technician license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 2005
8 BMW 5-Series in accordance with Health & Saf. Code sections 44012 and 44035, and California
9 Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
11 concerning the 2005 BMW 5-Series, as set forth in paragraph 45 above.

12 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 2005
13 BMW 5-Series in accordance with the Bureau's specifications.

14 **VEHICLE INSPECTION: 2003 TOYOTA SEQUOIA**

15 50. On April 9, 2011, Respondent Burger performed a smog inspection on a 2003 Toyota
16 Sequoia, License No. JPALMER, on behalf of Respondent One Stop Smog & Rpr Co Rosedale,
17 resulting in the issuance of electronic smog Certificate of Compliance No. WT697245C.

18 51. A representative of the Bureau reviewed test data from the Bureau's VID, which
19 revealed that Burger entered "pass" for the EGR system during the visual check portion of the
20 smog inspection.

21 52. On June 16, 2011, the representative inspected the vehicle using the VECI label and
22 found that the vehicle was not equipped with an EGR system and that the EGR system was not a
23 required emission control system for the vehicle.

24 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

25 **(Untrue or Misleading Statements)**

26 53. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
27 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
28 Respondent made or authorized a statement which it knew or in the exercise of reasonable care

1 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr
2 Co Rosedale's technician, Respondent Burger, certified that the EGR system on the 2003 Toyota
3 Sequoia had passed the visual check portion of the smog inspection. In fact, the vehicle is not
4 equipped with an EGR system and that the EGR system is not a required emission control system
5 for the vehicle.

6 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

8 54. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
9 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
10 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:
11 Respondent failed to ensure that the visual check of the emission control systems and devices on
12 the 2003 Toyota Sequoia was performed properly, as set forth in paragraph 53 above.

13 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

16 55. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
17 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
18 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
19 follows:

20 a. **Section 3340.35, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
21 issued an electronic smog certificate of compliance for the 2003 Toyota Sequoia even though the
22 vehicle had not been inspected in accordance with section 3340.42.

23 b. **Section 3340.41, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
24 permitted its technician, Respondent Burger, to enter false information into the EIS concerning
25 the 2003 Toyota Sequoia, as set forth in paragraph 53 above.

26 c. **Section 3340.42:** Respondent One Stop Smog & Rpr Co Rosedale failed to ensure
27 that the required smog tests were conducted on the 2003 Toyota Sequoia in accordance with the
28 Bureau's specifications.

1 portion of the smog inspection. The representative obtained information showing that the LPFET
2 functional test was required for the vehicle.²

3 60. On June 22, 2011, the representative inspected the vehicle and found that the LPFET
4 pinch point was accessible, indicating that the LPFET test could have been performed.

5 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 61. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
8 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
9 Respondent made or authorized a statement which it knew or in the exercise of reasonable care
10 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr
11 Co Rosedale's technician, Respondent Burger, certified that the LPFET functional test was not
12 applicable to the 1995 Saturn SC. In fact, the LPFET functional test was required for the vehicle.

13 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

15 62. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
16 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
17 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:
18 Respondent failed to ensure that the functional check of the emission control devices and systems
19 was properly performed on the 1995 Saturn SC.

20 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant**
22 **to the Motor Vehicle Inspection Program)**

23 63. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
24 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in

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27 ² Section 1.3.1 of the Bureau's August 2009 Smog Check Inspection Procedures Manual
28 states, in pertinent part, that ". . . [t]echnicians are prohibited from entering "Not Applicable" for
an emission control system that is in fact required for the vehicle undergoing inspection."

1 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
2 follows:

3 a. **Section 3340.35, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale
4 issued an electronic smog certificate of compliance for the 1995 Saturn SC even though the
5 vehicle had not been inspected in accordance with section 3340.42.

6 b. **Section 3340.41, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale
7 permitted its technician, Respondent Burger, to enter false information into the EIS concerning
8 the 1995 Saturn SC, as set forth in paragraph 61 above.

9 c. **Section 3340.42**: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure
10 that the required smog tests were conducted on the 1995 Saturn SC in accordance with the
11 Bureau's specifications.

12 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

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

14 64. Respondent Burger's technician license is subject to disciplinary action pursuant to
15 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
16 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform
17 the functional check of the emission control devices and systems on the 1995 Saturn SC.

18 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant**
20 **to the Motor Vehicle Inspection Program)**

21 65. Respondent Burger's technician license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
23 provisions of California Code of Regulations, title 16, as follows:

24 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 1995
25 Saturn SC in accordance with Health & Saf. Code sections 44012 and 44035, and California Code
26 of Regulations, title 16, section 3340.42.

27 b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS
28 concerning the 1995 Saturn SC, as set forth in paragraph 61 above.

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1995
2 Saturn SC in accordance with the Bureau's specifications.

3 **VEHICLE INSPECTION: 1990 CHEVROLET CAPRICE**

4 66. On April 16, 2011, Respondent Burger ("Burger") performed a smog inspection on a
5 1990 Chevrolet Caprice, License No. 3CYK021, on behalf of Respondent One Stop Smog & Rpr
6 Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance No.
7 WT886848C.

8 67. A representative of the Bureau reviewed test data from the Bureau's VID, which
9 revealed that Burger entered "pass" for both the carburetor and the pulse AIS during the visual
10 check portion of the smog inspection.

11 68. On June 22, 2011, the representative inspected the vehicle using the VECI label and
12 found that the vehicle was equipped with a throttle body fuel injection system, instead of a
13 carburetor, and a belt driven type AIS pump instead of a pulse AIS.

14 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 69. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
17 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
18 Respondent made or authorized statements which it knew or in the exercise of reasonable care
19 should have known to be untrue or misleading, as follows:

20 a. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,
21 certified that the 1990 Chevrolet Caprice was equipped with a carburetor when, in fact, the
22 vehicle is equipped with a throttle body fuel injection system.

23 b. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,
24 certified that the 1990 Chevrolet Caprice was equipped with a pulse type AIS pump. In fact, the
25 vehicle is equipped with a belt driven type AIS pump.

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1 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

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

3 70. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
4 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
5 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:
6 Respondent failed to ensure that the visual check of the emission control systems and devices on
7 the 1990 Chevrolet Caprice were performed properly, as set forth in paragraph 69 above.

8 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations Pursuant**
10 **to the Motor Vehicle Inspection Program)**

11 71. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
12 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
13 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
14 follows:

15 a. **Section 3340.35, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
16 issued an electronic smog certificate of compliance for the 1990 Chevrolet Caprice even though
17 the vehicle had not been inspected in accordance with section 3340.42.

18 b. **Section 3340.41, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
19 permitted its technician, Respondent Burger, to enter false information into the EIS concerning
20 the 1990 Chevrolet Caprice, as set forth in paragraph 69 above.

21 c. **Section 3340.42:** Respondent One Stop Smog & Rpr Co Rosedale failed to ensure
22 that the required smog tests were conducted on the 1990 Chevrolet Caprice in accordance with
23 the Bureau's specifications.

24 **FORTIETH CAUSE FOR DISCIPLINE**

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

26 72. Respondent Burger's technician license is subject to disciplinary action pursuant to
27 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
28 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform

1 the visual check of the emission control systems and devices on the 1990 Chevrolet Caprice, as
2 set forth in paragraph 69 above.

3 **FORTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant**
5 **to the Motor Vehicle Inspection Program)**

6 73. Respondent Burger's technician license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
8 provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 1990
10 Chevrolet Caprice in accordance with Health & Saf. Code sections 44012 and 44035, and
11 California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS
13 concerning the 1990 Chevrolet Caprice, as set forth in paragraph 69 above.

14 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the 1990
15 Chevrolet Caprice in accordance with the Bureau's specifications.

16 **VEHICLE INSPECTION: 2001 CHEVROLET MONTE CARLO**

17 74. On April 16, 2011, Respondent Burger ("Burger") performed a smog inspection on a
18 2001 Chevrolet Monte Carlo SS, License No. LINDALL, on behalf of Respondent One Stop
19 Smog & Rpr Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance
20 No. WT990301C.

21 75. A representative of the Bureau reviewed test data from the Bureau's VID, which
22 revealed that Burger entered "pass" for the pulse AIS during the visual check portion of the smog
23 inspection. The representative obtained information showing that the vehicle was equipped with
24 an electronically driven type AIS pump.

25 76. On July 18, 2011, the representative inspected the vehicle and observed that it was
26 equipped with an electronically driven type AIS pump.

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1 **VEHICLE INSPECTION: 1994 GMC C3500 SIERRA**

2 82. On April 30, 2011, Respondent Burger ("Burger") performed a smog inspection on a
3 1994 GMC C3500 Sierra, License No. 4Y26455, on behalf of Respondent One Stop Smog & Rpr
4 Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance No.
5 WV091450C.

6 83. A representative of the Bureau reviewed test data from the Bureau's VID, which
7 revealed that Burger entered "pass" for both the carburetor and the pulse AIS during the visual
8 check portion of the smog inspection, and "not applicable" for the LPFET test during the
9 functional check. Later, the representative obtained information showing that the LPFET
10 functional test was required for the vehicle.

11 84. On June 1, 2011, the representative inspected the vehicle using the VECI label and
12 found that the vehicle was equipped with a throttle body fuel injection system and not a
13 carburetor. The representative also found that the vehicle was not equipped with an AIS system
14 and that the AIS system was not a required emission control system for the vehicle.

15 **FORTY-SEVENTH CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 85. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to
18 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
19 Respondent made or authorized statements which it knew or in the exercise of reasonable care
20 should have known to be untrue or misleading, as follows:

21 a. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,
22 certified that the 1994 GMC C3500 Sierra was equipped with a carburetor when, in fact, the
23 vehicle is equipped with a throttle body fuel injection system.

24 b. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,
25 certified that the 1994 GMC C3500 Sierra was equipped with a pulse type AIS pump. In fact, the
26 vehicle is not equipped with an AIS system and the AIS system is not a required emission control
27 system for the vehicle.

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1 c. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,
2 certified that the LPFET functional test was not applicable to the 1994 GMC C3500 Sierra. In
3 fact, the LPFET functional test was required for the vehicle.

4 **FORTY-EIGHTH CAUSE FOR DISCIPLINE**

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

6 86. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
7 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
8 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:
9 Respondent failed to ensure that the visual and functional checks of the emission control systems
10 and devices on the 1994 GMC C3500 Sierra were performed properly, as set forth in paragraph
11 85 above.

12 **FORTY-NINTH CAUSE FOR DISCIPLINE**

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

15 87. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is
16 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
17 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as
18 follows:

19 a. **Section 3340.35, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
20 issued an electronic smog certificate of compliance for the 1994 GMC C3500 Sierra even though
21 the vehicle had not been inspected in accordance with section 3340.42.

22 b. **Section 3340.41, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale
23 permitted its technician, Respondent Burger, to enter false information into the EIS concerning
24 the 1994 GMC C3500 Sierra, as set forth in paragraph 85 above.

25 c. **Section 3340.42:** Respondent One Stop Smog & Rpr Co Rosedale failed to ensure
26 that the required smog tests were conducted on the 1994 GMC C3500 Sierra in accordance with
27 the Bureau's specifications.

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1 3340.42). On or about January 14, 2009, Respondent issued a certificate of compliance to a
2 Bureau undercover vehicle with the ignition timing adjusted beyond specifications. Respondent
3 was directed to complete an 8 hour training course and to submit proof of completion to the
4 Bureau within 30 days from receipt of the citation. Respondent completed the training on
5 February 22, 2009.

6 **OTHER MATTERS**

7 91. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
8 suspend, revoke, or place on probation the registration for all places of business operated in this
9 state by Respondent One Stop Smog & Rpr Co Rosedale upon a finding that Respondent has, or
10 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
11 an automotive repair dealer.

12 92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
13 Number RC 182674, issued to Respondent One Stop Smog & Rpr Co Rosedale, is revoked or
14 suspended, any additional license issued under this chapter in the name of said licensee may be
15 likewise revoked or suspended by the Director.

16 93. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
17 Technician License Number EA 148826, issued to Respondent Elizabeth L. Burger, is revoked or
18 suspended, any additional license issued under this chapter in the name of said licensee may be
19 likewise revoked or suspended by the Director.

20 **PRAYER**

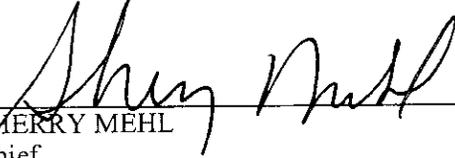
21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Director of Consumer Affairs issue a decision:

- 23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 182674, issued to One Stop Smog & Rpr Co Rosedale;
- 25 2. Revoking or suspending any other automotive repair dealer registration issued to One
26 Stop Smog & Rpr Co Rosedale;
- 27 3. Revoking or suspending Smog Check Station License Number RC 182674, issued to
28 One Stop Smog & Rpr Co Rosedale,

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- 4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of One Stop Smog & Rpr Co. Rosedale;
- 5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 148826, issued to Elizabeth L. Burger;
- 6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Elizabeth L. Burger;
- 7. Ordering One Stop Smog & Rpr Co Rosedale and Elizabeth L. Burger to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 8. Taking such other and further action as deemed necessary and proper.

DATED: 2/8/12


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