

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

In the Matter of the Accusation Against:

AUTOTEK
CHRIS MICHAEL LULL, Owner
18650 Antelope North Road, Suite E
Antelope, CA 95843

Automotive Repair Dealer Registration
No. ARD 200544
Smog Check, Test Only, Station License
No. TC 200544

and

JONATHAN CLYDE FORD
6869 Barbara Lee Circle
Sacramento, CA 95842

Advanced Emission Specialist Technician
License No. EA 149931

Respondents.

Case No. 79/09-102

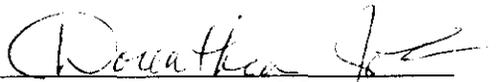
OAH No. 2009060970

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective 2/13/10.

IT IS SO ORDERED this 19th day of January, 2010.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 79/09-102

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OWNER
8650 Antelope North Road, Suite E,
Antelope, CA 95843

OAH Case No. 2009060970

Automotive Repair Dealer
Reg. No. ARD 200544
Smog Check, Test Only, Station
License No. TC 200544

and

JONATHAN CLYDE FORD
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Advanced Emission Specialist Technician
License No. EA 149931,

Respondents.

PROPOSED DECISION

This matter was heard before Marilyn A. Woollard, Administrative Law Judge for the Office of Administrative Hearings (OAH), State of California, on November 9, 2009, in Sacramento, California.

Deputy Attorney General Patrick M. Kenady appeared on behalf of complainant, Sherry Mehl, Chief of the Bureau of Automotive Repair (Bureau).

Deborah Barron, Attorney at Law, appeared on behalf of respondent Chris Michael Lull, owner of Autotek.

Respondent Jonathan Clyde Ford appeared and represented himself.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing arguments. The record was then closed, and the matter was submitted for decision on November 9, 2009.

FACTUAL FINDINGS

1. On July 20, 1998, the Bureau issued Automotive Repair Dealer Registration Number ARD 200544 to respondent Chris Michael Lull (respondent Lull), owner, doing business as Autotek at 8650 Antelope North Road, in Antelope, California 95843. Unless renewed, revoked or suspended, this registration will expire on July 31, 2010.

2. On December 11, 2001, the Bureau issued Smog Check, Test Only, Station License Number TC 200544, to respondent Lull/Autotek. Unless renewed, revoked or suspended, this license will expire on July 31, 2010.

3. On August 19, 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 149931 to respondent Jonathan Clyde Ford (respondent Ford). Unless renewed, revoked or suspended, this license will expire on October 31, 2010.

4. Under the Motor Vehicle Inspection Program, Health and Safety Code section 44000, et seq., the Bureau has the responsibility of monitoring smog check stations and smog check technicians, to ensure that they are properly performing their duties under the smog control laws of the State of California. As part of its enforcement mission, the Bureau conducts undercover operations and surveillance operations at licensed smog check stations to ensure that its licensees are working in compliance with what is commonly referred to as the smog check program.

5. On May 18, 2009, Sherry Mehl, Chief, Bureau of Automotive Repair, made and signed the Accusation in her official capacity, and alleged that respondents had engaged in "clean piping" 10 vehicles as revealed in the Bureau's video surveillance operations conducted on December 6, 2008, and on January 3 and 10, 2009. By this conduct, respondents made untrue or misleading statements; engaged in fraud, dishonesty or deceit; and violated provisions of the Motor Vehicle Inspection Program and related regulations. Complainant requested that respondent Lull's Automotive Repair Dealer Registration and his Check, Test Only, Station License be temporarily or permanently invalidated or revoked; and that respondent Ford's Advanced Emission Specialist Technician License be revoked or suspended. Complainant further requested that respondents be ordered to pay reasonable costs of its investigation and enforcement pursuant to Business and Professions Code section 125.3.

6. Respondents filed their Notices of Defense. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

* * *

7. Respondent Lull testified that he became licensed smog technician in 1995, when he worked at another auto repair shop (license number EA135778). In 1997, respondent Lull started Autotek on a part-time basis while continuing to work at his job. In 1998, he quit his job and began to work full-time at Autotek with his wife, who has been in charge of the day-to-day business operations at Autotek since that time. At some point, respondent Lull began another business venture in the construction industry and hired three to four employees. His wife was physically present at Autotek Monday through Friday from 9 a.m. to 5 p.m. Respondent Lull typically came to the shop at 3:00 p.m.

In 2004, respondent Lull hired respondent Ford to work as a smog technician at Autotek. Neither respondent Lull nor his wife worked at Autotek on Saturdays; however, respondent Ford worked alone at Autotek on Saturdays.

8. "Clean piping" means "the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS [Emissions inspection system] to issue a certificate of compliance for another vehicle." (Cal. Code Regs., tit. 16, § 3340.1, subd. (t).)¹

9. Tim Bowden is a Program Representative II Specialist who has been employed by the Bureau for 11 years. Mr. Bowden testified that, to initiate investigations, the Bureau reviews data from its smog test analyzer to determine if there are anomalies which might be indicative of improper smog testing. In this case, the data indicated that clean piping activity was "most likely" occurring at Autotek and was occurring on Saturdays rather than other days. This was the reason that the video surveillance occurred only on Saturdays.

As part of his duties, Mr. Bowden conducted video surveillance of Autotek by setting up the video equipment and remaining in the area during the three surveillance operations. He also reviewed the DVDs generated from the video surveillance and prepared reports and a video narrative relating to this investigation. Photographs were taken of some of the vehicles that were clean piped, to distinguish them from the vehicles seen in the DVD entering or leaving Autotek on a particular date. During

¹ "Emissions inspection system' or 'EIS' means a tamper-resistant instrument which meets the requirements of subdivision (b) of section 44036 of the Health and Safety Code and which is certified by the bureau for use in the California Smog Check program." (Cal. Code Regs., tit. 16, § 3340.1, subd. (g).)

these surveillance periods, respondent Ford was seen at Autotek, working on the vehicles in the smog test bay, inserting the emission sample hose into the tailpipe of the vehicles, and driving cars in and out of the smog bays. Respondent Lull was not observed on site.

Saturday, December 6, 2008 Video Surveillance

10. On December 6, 2008, from 12:45 p.m. to 12:55 p.m., respondent Ford conducted a smog inspection on a Toyota Camry whose exact date could not be determined, but that was manufactured between 1997 and 1999. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG268919C from Autotek to Vehicle 1, a 2002 Toyota Camry, license number 4UVT440, for an inspection completed during this time.

11. On December 6, 2008, from 2:36 p.m. to 2:42 p.m., respondent Ford conducted a smog inspection on a Ford Mustang whose exact date could not be determined, but that was manufactured between 1994 and 1998. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG268920C from Autotek to Vehicle 2, a 1989 Ford Mustang, license number 5FNG100, for an inspection completed during this time.²

12. On December 6, 2008, from 3:10 p.m. to 3:22 p.m., respondent Ford conducted a smog inspection on a 1992 Toyota Camry. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG268921C from Autotek to Vehicle 3, a 1993 Nissan Maxima, license number 5GHS222, for an inspection completed during this time.

13. Respondent Ford did not conduct emission control tests on Vehicles 1, 2, or 3. As to each of these three vehicles, respondent Ford entered false information into the Emission Inspection System (EIS) when he entered vehicle information and/or emission control system identification data for vehicles other than the ones he had actually tested. Respondent Ford issued Certificates of Compliance from Autotek to these three vehicles without inspecting and performing the required emission control tests on the vehicles he certified as in compliance with the smog check program.

Saturday, January 3, 2009 Video Surveillance

14. On January 3, 2009, from 10:13 a.m. to 10:18 a.m., respondent Ford conducted a smog inspection on a 1991 Honda Accord, license number 5NZD184. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance

² Effective December 18, 2008, a new license plate number 6FXG848 was issued for this vehicle.

No. NG564203C from Autotek to Vehicle No. 4, a 1990 Honda Accord, license number 5XTN719, for an inspection completed during this time.³

15. On January 3, 2009, from 10:41 a.m. to 10:48 a.m., respondent Ford conducted a smog inspection on a 1990 Buick Century, license number 4381KDP. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564205C from Autotek to Vehicle No. 5, a 1991 Oldsmobile Ninety-Eight, license number 2XXD769, for an inspection completed during this time.⁴

16. On January 3, 2009, from 11:53 a.m. to 12:00 p.m., respondent Ford conducted a smog inspection on a 1996 Chrysler Town & Country, license number 3NRZ273. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564207C from Autotek to Vehicle No. 6, a 1996 Dodge Caravan, license number DPK5983, for an inspection completed during this time.

17. On January 3, 2009, from 1:16 p.m. to 1:24 p.m., respondent Ford conducted a second smog inspection on a 1996 Chrysler Town & Country, license number 3NRZ273. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564210C from Autotek to Vehicle No. 7, a 1996 Dodge Intrepid, license number 5WZJ338, for an inspection completed during this time.

18. On January 3, 2009, from 2:32 p.m. to 2:55 p.m., respondent Ford conducted a smog inspection on a 1991 Toyota Corolla, license number 2XBF081. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564213C from Autotek to Vehicle No. 8, a 1988 Toyota Tercel, license number 2GGF854, for an inspection completed during this time.

19. Respondent Ford did not conduct emission control tests on Vehicles 4, 5, 6, 7, or 8. As to each of these five vehicles, respondent Ford entered false information into the EIS when he entered vehicle information and/or emission control system identification data for vehicles other than the ones he had actually tested. Respondent Ford issued Certificates of Compliance from Autotek to each of these vehicles without inspecting and performing the required emission control tests on the vehicles he certified as in compliance with the smog check program.

Saturday, January 10, 2009 Video Surveillance

20. On January 10, 2009, from 2:07 p.m. to 2:14 p.m., respondent Ford conducted a smog inspection on a 1996 GMC S15, license number 8R43648.

³ The 1991 Honda, license number 5NZD184, received its own smog inspection from 9:57 to 10:08 a.m. (Certificate No. NG564202C).

⁴ The 1990 Buick Century, license number 4381KDP, received its own smog inspection from 10:28 - 10:36 a.m. (Certificate No. NG564204C).

Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG624986C from Autotek to Vehicle No. 9, a 1999 GMC Sonoma, license number 5Y36921, for an inspection completed during this time.

21. On January 10, 2009, from 2:35 p.m. to 2:50 p.m., respondent Ford conducted a smog inspection on a 1991 Chevrolet S10, license number 7Z64676. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG624987C from Autotek to Vehicle No. 10, a 1985 Chevrolet G20 van, license number 5YBZ309, for an inspection completed during this time.

22. Respondent Ford did not conduct emission control tests on Vehicles 9 or 10. As to each of these vehicles, respondent Ford entered false information into the Emission Inspection System (EIS) when he entered vehicle information and/or emission control system identification data for vehicles other than the ones he had actually tested. Respondent Ford issued Certificates of Compliance from Autotek to each of these vehicles without inspecting and performing the required emission control tests on the vehicles he certified as in compliance with the smog check program.

23. Based upon his review of the video surveillance DVDs for these three dates, Mr. Bowden concluded that none of the 10 vehicles specified above, for whom "passing" smog certificates were issued by respondent Ford/Autotek, was actually on site at Autotek and inspected by respondent Ford. Mr. Bowden's testimony was corroborated by a review of the DVDs and other documentary evidence, including photographs, and the BAR97 Test Detail reports issued by Autotek, certifying the dates and times that these vehicles passed the inspection.

Evidence in Aggravation and Mitigation⁵

Respondent Ford

24. Due to a pending criminal action against him, respondent Ford asserted his privilege against self-incrimination. Respondent Ford refused to answer any questions regarding the Bureau's allegations of clean piping by him; however, he did admit that he was present at Autotek on the dates of the video surveillance and that people always tried to bribe him. Respondent Ford testified that respondent Lull had no knowledge of his activities on Saturdays at Autotek, and that he only gave Autotek money for the cost of the normal smog inspections.

25. Respondent Ford was issued three citations by the Bureau in 2006: on March 9, 2006 (No. M06-0544: issuing a certificate of compliance to an undercover

⁵ In order to determine whether and to what extent it is appropriate to discipline respondents' licenses, it is necessary to weigh and balance respondents' conduct in light of any factors in aggravation and mitigation. (Cal. Code of Regs., tit. 16, § 3395.4.).

vehicle with a missing air injection system); on October 10, 2006 (No. M07-0188: issuing a certificate of compliance to an undercover vehicle with a non-functional EGR system); and on December 6, 2006 (No. M07-0368: issuing a certificate of compliance to an undercover vehicle with a missing air injection system reed valve). The Citations were based upon respondent Ford's violations of section 44032 [technicians to perform tests of emission control systems and devices in accordance with Health and Safety Code section 44012] and related regulations. Respondent Ford was ordered to complete, respectively, an 8-hour, a 16-hour, and a 68-hour training course. Respondent Ford complied with each of these citations and completed the required training courses.

Respondent Ford testified when he received these citations in 2006, he was very busy at the time and not as thorough in the inspections as he should have been.

Respondent Lull/Autotek

26. On June 25, 2002, respondent Lull was issued Citation No. C02-1176, against his technician license EA135778, based upon his violation of section 44012, subdivision (f) [failure to determine that the required emission control systems were installed and functioning], and CCR, title 16, section 3340.35, subdivision (c) [issuing certificate of compliance to improperly tested vehicle]. He was ordered to pay a \$500 civil penalty. Following an unsuccessful appeal, respondent Lull paid the penalty.

27. On March 9, 2006, October 10, 2006, and December 6, 2006, respondent Lull/Autotek was issued Citation Numbers C06-0543, C07-0187, and C07-0367, relating to the conduct set forth in Factual Finding 25. Respondent Lull was ordered to pay and paid civil penalties respectively of \$500, \$1,000, and \$2,000. He also participated in compliance conferences with the Bureau on April 25, 2006, October 26, 2006 and January 16, 2007.

28. Respondent Lull's testimony is paraphrased in pertinent part as follows. After the 2006 Citations, respondent Lull concluded that respondent Ford's conduct had not been blatant or intentional and that many technicians receive citations. However, he tried to keep a closer eye on respondent Ford and told his wife to "watch out" for anything fraudulent occurring in the smog business. Respondent Lull and his wife reviewed procedures with respondent Ford to get him to slow down in his work. After the third citation in December 2006, this practice seemed to be working and no citations were issued for three years.

Before the Accusation was issued, Mr. Bowden advised respondent Lull that Bureau was considering filing an Accusation against Autotek based upon charges of clean piping by respondent Ford. Respondent Lull was upset and began his own investigation. He checked the Saturday invoices for all cars that had received a smog inspection at Autotek, but nothing seemed out of the ordinary. He reviewed the Vehicle Inspection Reports (VIRs) issued by Autotek to determine if there were any

discrepancies, and he looked at his security cameras. There was nothing out of the ordinary.

Respondent Lull then confronted respondent Ford, who was “truthful and admitted some cars in question.” Respondent Lull had no knowledge of the scope of the activity and did not want to fire respondent Ford until he obtained more information. Respondent Ford did not tell him much more, but based upon his review of the security videos for the dates in question, respondent Lull recognized a woman at Autotek who he knew to be a car dealer. Respondent Lull later heard from a third party that respondent Ford charged \$200 to \$250 for the clean pipe inspections. Autotek only received invoices and cash for the typical \$50 to \$68 inspection fee.

Approximately four months passed between the time respondent Lull became aware that an Accusation was pending and his termination of respondent Ford. During this period, respondent Lull closed Autotek on Saturdays. Respondent Ford was allowed to work Monday through Friday; however, respondent Lull and his wife closely watched Ford’s activities, and reviewed all invoices and video surveillance. They believed him to be “remorseful.”

29. The evidence establishes that respondent Lull was not involved or aware of respondent Ford’s clean piping activities at Autotek. Nevertheless, there was no evidence that the illegal activities described above were the result of “a bona fide error.” It is concerning that respondent Lull did not immediately terminate respondent Ford, at least after the Accusation was issued. By closing Autotek on Saturdays, however, respondent Lull instituted a business change that acknowledged the seriousness of the violations and eliminated the opportunity for respondent Ford to work in an unsupervised fashion. Considering all circumstances, it would not be contrary to the public interest to allow his license and registration to continue on a probationary basis.

Costs

30. In support of its request for an order assessing costs, the Bureau submitted the October 20, 2009, declaration under penalty of perjury of Curtis Worden, Program Manager I, Enforcement Oversight and Planning, who certified the investigative costs incurred by the Bureau through the filing of the Accusation. In investigating respondents’ actions in this matter, the Bureau incurred a total of \$7,732 in costs for 100 hours of investigation time by its Program Representative II (98 hours in 2008/2009 fiscal year; 2 hours in 2009/2010 fiscal years). The Bureau also submitted the November 5, 2009 Certification of Prosecution Costs: Declaration of Deputy Attorney General Patrick M. Kenady, with a copy of the Department of Justice’s Cost-of-Suit Summary and Matter Time Activity by Professional Type for this case, through November 3, 2009. Total legal costs for enforcement of this matter in the fiscal years 2008 through 2009 and 2009 through 2010, were \$7,435.75. The

Bureau incurred total costs of \$15,167.75 in the investigation and enforcement of this Accusation against respondents.

Factors considered in determining the reasonableness of costs include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32.) Respondent Ford did not provide any evidence or raise any colorable challenges to the proposed discipline of license suspension or revocation. He did not provide any evidence regarding financial hardship. Respondent Lull did not demonstrate that "there was a bona fide error" in the technician's work done at Autotek. He testified that that payment of \$15,000 would be a cash drain and that he could pay, but "just not immediately."

The declarations of Curtis Worden and Mr. Kenady are prima facie evidence of the reasonable costs of the Bureau's investigation and prosecution of this matter. (Bus. & Prof. Code § 125.3.) Reviewed in light of the serious and detailed allegations in the Accusation, complainant established that the scope of its investigation and its prosecution were appropriate to the alleged misconduct by respondents. Respondents are jointly and severally liable to the Bureau for the total amount of these costs.

LEGAL CONCLUSIONS

1. The Bureau bears the burden of proof, by clear and convincing evidence, that the facts alleged in its Accusation are true and that the requested discipline against respondents' licenses and registrations be imposed.
2. The Legislature has declared that California's Motor Vehicle Inspection Program (Program), Health and Safety Code section 44000, et seq., requires an "enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven." (§ 44001, subd. (b)(5)(E).)⁶ The Director of Consumer Affairs (director) has all of the powers and authority granted under the Automotive Repair Act (Business & Professions Code section 9880, et seq.) for enforcing the Program; the Program is enforced and administered by the chief of the Bureau of Automotive Repairs. (§§ 44001.5, 44002.)
3. Business and Professions Code section 9884.7 provides that, where the

⁶ Unless otherwise indicated, all statutory references are to the Health and Safety Code.

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

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

[¶]. . . [¶]

(4) Any other conduct which constitutes fraud. . .

4. Qualified smog check technicians shall perform tests of emission control devices and systems in accordance with section 44012. (§ 44032.) Pursuant to section 44012, the test at the smog check stations “shall be performed in accordance with procedures prescribed by the department. . .” A smog check technician shall inspect, test and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, and regulation section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

5. Smog check stations and smog check technicians are required to conduct tests and inspections in accordance with the Bureau’s emissions inspections specifications. (Cal. Code Regs., tit. 16, § 3340.42.)

6. A licensed smog check station shall not issue a certificate of compliance “to any vehicle that has been tampered with.” (§ 44015, subd. (a)(1).) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and “has all the required emission control equipment and devices installed and functioning correctly. . .” (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

7. *Clean piping*: 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: (1) Clean piping, as defined by the department. . .” (Health & Safety 44072.10, subd. (c)(1).) As set forth in Factual Finding 8, ‘clean piping’ means “the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a certificate of compliance for another vehicle.” (Cal. Code Regs., tit. 16, § 3340.1, subd. (t).)

“No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.” (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

8. *Fraud/ Dishonesty:* The director may suspend, revoke, or take other disciplinary action against a license if the licensee violates any statute relating to the Motor Vehicle Inspection Program or its regulations which relate to the licensed activities; or if the licensee “commits any act involving dishonesty, fraud, or deceit whereby another is injured. (§ 44072.2, subd. (a), (c), (d).) The Bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance. (Cal. Code Regs., tit. 16, § 3340.24, subd. (c).) The willful making of any false statement or entry with regard to a material matter in any certificate of compliance or noncompliance under the Automotive Repair Act constitutes perjury and is punishable as provided in the Penal Code. (§ 44059.)

9. *Respondent Ford:* As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 9 through 23, respondent Ford has engaged in a practice of “clean piping” vehicles in violation of the Motor Vehicle Inspection Program. This practice injures the public in the precise manner that the Motor Vehicle Inspection Program is designed to prevent. Respondent Ford willfully and fraudulently entered false data into the EIS system, falsely certifying that he tested vehicles for which he entered certificates of completion. Legal cause is established to revoke respondent Ford’s Advanced Emission Specialist Technician License Number EA 149931 based upon his violations of sections 44012, 44032, and 44072.2, subdivisions (a), (c), (d); and violations of California Code of Regulations, title 16, sections 3340.1, subdivision (t), 3340.24, subdivision (c), 3340.30, subdivision (a), and 3340.42.

Respondent Ford offered no evidence or explanation of his conduct, and he offered no evidence in mitigation. He has previously been cited by the Bureau and has taken a total of 92 hours of remedial education regarding his duties and responsibilities as a smog technician. Respondent Ford’s conduct was intentional and repetitive. It would be detrimental to the public interest to issue a probationary license to respondent Ford.

10. *Respondent Lull's Smog Check, Test Only Station License Number TC 200544:* As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 9 through 23, legal cause is established to revoke respondent Lull’s Smog Check, Test Only Station License Number TC 200544, based upon violations of sections 44012, 44015, subdivision (a)(1), 44032, and 44072.2, subdivisions (a), (c), (d); and violations of California Code of Regulations, title 16, sections 3340.1, subdivision (t), 3340.24, subdivision (c), 3340.30, subdivision (a),

and 3340.42, 3340.35, subdivision (c). As set forth below, the revocation shall be stayed and respondent Lull's Smog Check, Test Only Station License will be placed on probation.

11. *Respondent Lull's Automotive Repair Dealer Registration Number ARD 200544*: As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 9 through 23, legal cause is established to revoke respondent Lull's Automotive Repair Dealer Registration Number ARD 200544, under Business and Professions Code section 9884.7, subdivisions (1) and (4), based upon violations of sections 44012, 44015, subdivision (a)(1), 44032, and 44072.2, subdivisions (a), (c), (d); and violations of California Code of Regulations, title 16, sections 3340.1, subdivision (t), 3340.24, subdivision (c), 3340.30, subdivision (a), and 3340.42, 3340.35, subdivision (c). As set forth below, revocation shall be stayed and respondent Lull's Automotive Repair Dealer Registration will be placed on probation.

12. *Costs*: Pursuant to Business and Professions Code section 125.3, respondents may be directed to pay the reasonable costs of investigation and enforcement of the action against them. As set forth in Factual Finding 30, the Bureau established by a preponderance of the evidence that the reasonable costs of investigation and prosecution of the allegation against respondents is \$15,167.75. Respondents are jointly and severally liable for payment of this total amount. Respondents may make periodic payments on said amount in a schedule to be determined by the Bureau. This order to pay costs is enforceable regardless of respondents' license status.

ORDER

1. The Advanced Emission Specialist Technician License Number EA 149931 issued to respondent Ford is hereby REVOKED.

2. Automotive Repair Dealer Registration Number ARD 200544 issued to respondent Lull is hereby REVOKED; however, revocation is STAYED and the registration shall be placed on probation for a period of three years, subject to the conditions set forth in Order 4.

3. Smog Check, Test Only Station License Number TC 200544 issued to respondent Lull is hereby REVOKED; however, revocation is STAYED and the license shall be placed on probation for a period of three years, subject to the conditions set forth in Order 4.

4. Respondent Lull's Automotive Repair Dealer Registration Number ARD 200544 and Smog Check, Test Only Station License Number TC 200544 are placed on probation for a period of three (3) years. During the period of probation, respondent Lull shall:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- b. Respondent Lull or his authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- e. If an accusation is filed against respondent Lull during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent Lull has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and suspend or revoke the license.

5. Within sixty (60) days of the date of this decision, respondents Ford and Lull shall pay to, or enter into a payment plan with, the Bureau for a total amount of 15,167.75 for costs of investigation and enforcement of this matter.

DATED: December 12, 2009


MARILYN WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

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11

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

12 In the Matter of the Accusation Against:
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18 and
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20
21 Advanced Emission Specialist Technician License
No. EA 149931
22
23 Respondents.

Case No. 79/09-102

ACCUSATION
SMOG CHECK

24 Complainant alleges:

PARTIES

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

1 **Automotive Repair Dealer Registration No. ARD 200544**

2 2. On or about July 20, 1998, the Director of Consumer Affairs ("Director")
3 issued Automotive Repair Dealer Registration Number ARD 200544 to Chris Michael Lull
4 ("Respondent Lull"), owner of Autotek. Respondent's automotive repair dealer registration was
5 in full force and effect at all times relevant to the charges brought herein and will expire on July
6 31, 2009, unless renewed.

7 **Smog Check, Test Only, Station License No. TC 200544**

8 3. In or about 2001, the Director issued Smog Check, Test Only, Station
9 License Number TC 200544 to Respondent Lull. Respondent's smog check station license was
10 in full force and effect at all times relevant to the charges brought herein and will expire on July
11 31, 2009, unless renewed.

12 **Advanced Emission Specialist Technician License No. EA 149931**

13 4. On or about August 10, 2004, the Director issued Advanced Emission
14 Specialist Technician License Number EA 149931 to Jonathan Clyde Ford ("Respondent Ford").
15 Respondent's technician license was in full force and effect at all times relevant to the charges
16 brought herein and will expire on October 31, 2010, unless renewed.

17 **JURISDICTION**

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

20 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
21 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
22 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
23 registration temporarily or permanently.

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

27 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the Director

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

3 STATUTORY PROVISIONS

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

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

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

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17 (4) Any other conduct which constitutes fraud.

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

25 10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board"
26 includes "bureau," "commission," "committee," "department," "division," "examining
27 committee," "program," and "agency." "License" includes certificate, registration or other
28 means to engage in a business or profession regulated by the Bus. & Prof. Code.

11. 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.

. . . .

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

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

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

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

11 (1) Clean piping, as defined by the department . . .

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

15 **COST RECOVERY**

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

20 **VIDEO SURVEILLANCE OPERATION OF DECEMBER 6, 2008**

21 15. On December 6, 2008, a representative of the Bureau conducted a video
22 surveillance operation of Respondent Lull's smog check facility. The surveillance video and
23 information obtained from the Bureau's vehicle information database ("VID") revealed that
24 Respondent Ford issued electronic smog certificates of compliance on behalf of Respondent Lull,
25 certifying that he had tested and inspected the vehicles identified below and that the vehicles
26 were in compliance with applicable laws and regulations. In fact, Respondent conducted the

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1 inspections using clean piping methods¹, resulting in the issuance of fraudulent certificates of
2 compliance for the vehicles.

3 Time of Smog Inspection	4 Vehicle Certified & License No.	5 Certificate of Compliance No.	6 Vehicle Actually Tested
7 1. 1245 - 1255	8 2002 Toyota Camry; 9 #4UVT440	10 NG268919C	11 1997 to 1999 Toyota Camry
12 2. 1436 - 1442	13 1989 Ford Mustang; 14 #5FNG100 (the vehicle was 15 issued a new license number, 16 6FXG848, as of 12/18/2008)	17 NG268920C	18 1994 to 1998 Ford Mustang
19 3. 1510 - 1522	20 1993 Nissan Maxima; 21 #5GHS222	22 NG268921C	23 1992 Toyota Camry

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Untrue or Misleading Statements)**

26 16. Respondent Lull's automotive repair dealer 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 statements which he knew or in the exercise of reasonable care
should have known to be untrue or misleading, as follows: Respondent Lull's technician,
Respondent Ford, certified that vehicles 1 through 3, identified in paragraph 15 above, had
passed inspection and were in compliance with applicable laws and regulations. In fact,
Respondent Ford used clean piping methods in order to issue certificates for the vehicles and did
not test or inspect the vehicles as required by Health & Saf. Code section 44012.

29 **SECOND CAUSE FOR DISCIPLINE**

30 **(Fraud)**

31 17. Respondent Lull's automotive repair dealer registration is subject to
32 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
33 Respondent committed acts which constitute fraud by issuing electronic smog certificates of
34 compliance for vehicles 1 through 3, identified in paragraph 15 above, without performing bona

35 1. Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping"
36 means the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a certificate of
37 compliance for another vehicle.

1 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
2 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program.

4 **THIRD CAUSE FOR DISCIPLINE**

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

6 18. Respondent Lull's smog check station license is subject to disciplinary
7 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
8 to comply with provisions of that Code, as follows:

- 9 a. **Section 44012:** Respondent failed to perform emission control tests on
10 vehicles 1 through 3, identified in paragraph 15 above, in accordance with
11 procedures prescribed by the department.
12 b. **Section 44015:** Respondent issued electronic smog certificates of
13 compliance for vehicles 1 through 3, identified in paragraph 15 above,
14 without properly testing and inspecting the vehicles to determine if they
15 were in compliance with Health & Saf. Code section 44012.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

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

- 22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
23 issued electronic smog certificates of compliance for vehicles 1 through
24 3, identified in paragraph 15 above.
25 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
26 certificates of compliance for vehicles 1 through 3, identified in paragraph
27 15 above, even though those vehicles had not been inspected in
28 accordance with section 3340.42.

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- c. **Section 3340.41, subdivision (c):** Respondent's technician, Respondent Ford, entered false information into the Emission Inspection System ("EIS") by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.
- d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 3, identified in paragraph 15 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud or Deceit)

20. Respondent Lull's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE
(Violations of the Motor Vehicle Inspection Program)

21. Respondent Ford's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

- a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1 through 3, identified in paragraph 15 above, in accordance with procedures prescribed by the department.
- b. **Section 44059:** Respondent willfully made false entries in the EIS, resulting in the issuance of fraudulent certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above.

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1 SEVENTH CAUSE FOR DISCIPLINE

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

4 22. Respondent Ford's advanced emission specialist technician 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 3340.24, subdivision (c): Respondent falsely or fraudulently
9 issued electronic smog certificates of compliance for vehicles 1 through
10 3, identified in paragraph 15 above.
- 11 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test
12 vehicles 1 through 3, identified in paragraph 15 above, in accordance with
13 Health & Saf. Code sections 44012 and 44035, and California Code of
14 Regulations, title 16, section 3340.42.
- 15 c. Section 3340.41, subdivision (c): Respondent entered false information
16 into the EIS by entering vehicle identification information or emission
17 control system identification data for vehicles other than the ones being
18 tested.
- 19 d. Section 3340.42: Respondent failed to conduct the required smog tests on
20 vehicles 1 through 3, identified in paragraph 15 above, in accordance with
21 the Bureau's specifications.

22 EIGHTH CAUSE FOR DISCIPLINE

23 (Dishonesty, Fraud or Deceit)

24 23. Respondent Ford's advanced emission specialist technician license is
25 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
26 that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
27 issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in
28 paragraph 15 above, without performing bona fide inspections of the emission control devices

1 and systems on the vehicles, thereby depriving the People of the State of California of the
2 protection afforded by the Motor Vehicle Inspection Program.

3 **VIDEO SURVEILLANCE OPERATION OF JANUARY 3, 2009**

4 24. On January 3, 2009, a representative of the Bureau conducted a video
5 surveillance operation of Respondent Lull's smog check facility. The surveillance video and
6 information obtained from the Bureau's VID revealed that Respondent Ford issued electronic
7 smog certificates of compliance on behalf of Respondent Lull, certifying that he had tested and
8 inspected the vehicles identified below and that the vehicles were in compliance with applicable
9 laws and regulations. In fact, Respondent conducted the inspections using clean piping methods,
10 resulting in the issuance of fraudulent certificates of compliance for the vehicles.

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12 Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
13 1. 1013 - 1018	1990 Honda Accord; #5XTN719	NG564203C	1991 Honda Accord; #5NZD184
14 2. 1041 - 1048	1991 Oldsmobile Ninety- Eight; #2XXD769	NG564205C	1990 Buick Century; #4381KDP
15 3. 1153 - 1200	1996 Dodge Caravan; #DPK5983	NG564207C	1996 Chrysler Town & Country; #3NRZ273
16 4. 1316 - 1324	1996 Dodge Intrepid; #5WZJ338	NG564210C	1996 Chrysler Town & Country; #3NRZ273
17 5. 1432 - 1455	1988 Toyota Tercel; #2GGF854	NG564213C	1991 Toyota Corolla; #2XBF081

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20 **NINTH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 25. Respondent Lull's automotive repair dealer registration is subject to
23 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
24 Respondent made or authorized statements which he knew or in the exercise of reasonable care
25 should have known to be untrue or misleading, as follows: Respondent Lull's technician,
26 Respondent Ford, certified that vehicles 1 through 5, identified in paragraph 24 above, had
27 passed inspection and were in compliance with applicable laws and regulations. In fact,

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1 Respondent Ford used clean piping methods in order to issue certificates for the vehicles and did
2 not test or inspect the vehicles as required by Health & Saf. Code section 44012.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 26. Respondent Lull's automotive repair dealer registration is subject to
6 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
7 Respondent committed acts which constitute fraud by issuing electronic smog certificates of
8 compliance for vehicles 1 through 5, identified in paragraph 24 above, without performing bona
9 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
10 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **ELEVENTH CAUSE FOR DISCIPLINE**

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

14 27. Respondent Lull's smog check station license is subject to disciplinary
15 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
16 to comply with provisions of that Code, as follows:

- 17 a. **Section 44012:** Respondent failed to perform emission control tests on
18 vehicles 1 through 5, identified in paragraph 24 above, in accordance with
19 procedures prescribed by the department.
- 20 b. **Section 44015:** Respondent issued electronic smog certificates of
21 compliance for vehicles 1 through 5, identified in paragraph 24 above,
22 without properly testing and inspecting the vehicles to determine if they
23 were in compliance with Health & Saf. Code section 44012.

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1 TWELFTH CAUSE FOR DISCIPLINE

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

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

- 7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently
8 issued electronic smog certificates of compliance for vehicles 1 through
9 5, identified in paragraph 24 above.
- 10 b. Section 3340.35, subdivision (c): Respondent issued electronic smog
11 certificates of compliance for vehicles 1 through 5, identified in paragraph
12 24 above, even though those vehicles had not been inspected in
13 accordance with section 3340.42.
- 14 c. Section 3340.41, subdivision (c): Respondent's technician, Respondent
15 Ford, entered false information into the EIS by entering vehicle
16 identification information or emission control system identification data
17 for vehicles other than the ones being tested.
- 18 d. Section 3340.42: Respondent failed to conduct the required smog tests on
19 vehicles 1 through 5, identified in paragraph 24 above, in accordance with
20 the Bureau's specifications.

21 THIRTEENTH CAUSE FOR DISCIPLINE

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

23 29. Respondent Lull's smog check station license is subject to disciplinary
24 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
25 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
26 smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above.
27 without performing bona fide inspections of the emission control devices and systems on the

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1 vehicles, thereby depriving the People of the State of California of the protection afforded by the
2 Motor Vehicle Inspection Program.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

5 30. Respondent Ford's advanced emission specialist technician license is
6 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
7 that Respondent failed to comply with provisions of that Code, as follows:

- 8 a. **Section 44012:** Respondent failed to perform emission control tests on
9 vehicles 1 through 5, identified in paragraph 24 above, in accordance with
10 procedures prescribed by the department.
11 b. **Section 44059:** Respondent willfully made false entries in the EIS,
12 resulting in the issuance of fraudulent certificates of compliance for
13 vehicles 1 through 5, identified in paragraph 24 above.

14 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

- 21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
22 issued electronic smog certificates of compliance for vehicles 1 through
23 5, identified in paragraph 24 above.
24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
25 vehicles 1 through 5, identified in paragraph 24 above, in accordance with
26 Health & Saf. Code sections 44012 and 44035, and California Code of
27 Regulations, title 16, section 3340.42.

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c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 5, identified in paragraph 24 above, in accordance with the Bureau's specifications.

SIXTEENTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud or Deceit)

32. Respondent Ford's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

VIDEO SURVEILLANCE OPERATION OF JANUARY 10, 2009

33. On January 10, 2009, a representative of the Bureau conducted a video surveillance operation of Respondent Lull's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondent Ford issued electronic smog certificates of compliance on behalf of Respondent Lull, certifying that he had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections using clean piping methods, resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
1. 1407 - 1414	1999 GMC Sonoma; #5Y36921	NG624986C	1996 GMC S15; #8R43648

Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
2. 1435 - 1450	1985 Chevrolet G20 van; #5YBZ309	NG624987C	1991 Chevrolet S10; #7Z64676

SEVENTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

34. Respondent Lull's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Lull's technician, Respondent Ford, certified that vehicles 1 and 2, identified in paragraph 33 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Ford used clean piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Fraud)

35. Respondent Lull's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 identification information or emission control system identification data
2 for vehicles other than the ones being tested.

3 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
4 vehicles 1 and 2, identified in paragraph 33 above, in accordance with
5 the Bureau's specifications.

6 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

8 38. Respondent Lull's smog check station license is subject to disciplinary
9 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
10 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
11 smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above, without
12 performing bona fide inspections of the emission control devices and systems on the vehicles.
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program.

15 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

17 39. Respondent Ford's advanced emission specialist technician license is
18 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
19 that Respondent failed to comply with provisions of that Code, as follows:

20 a. **Section 44012:** Respondent failed to perform emission control tests on
21 vehicles 1 and 2, identified in paragraph 33 above, in accordance with
22 procedures prescribed by the department.

23 b. **Section 44059:** Respondent willfully made false entries in the EIS,
24 resulting in the issuance of fraudulent certificates of compliance for
25 vehicles 1 and 2, identified in paragraph 33 above.

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TWENTY-THIRD CAUSE FOR DISCIPLINE

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

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

- a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above.
- b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1 and 2, identified in paragraph 33 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.
- d. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1 and 2, identified in paragraph 33 above, in accordance with the Bureau's specifications.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

41. Respondent Ford's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above, without performing bona fide inspections of the emission control devices and systems on

1 the vehicles, thereby depriving the People of the State of California of the protection afforded by
2 the Motor Vehicle Inspection Program.

3 **DISCIPLINE CONSIDERATIONS**

4 42. To determine the degree of discipline, if any, to be imposed on
5 Respondents, Complainant alleges as follows:

6 **Respondent Lull:**

7 a. On or about June 25, 2002, the Bureau issued Citation No. C02-1176
8 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
9 determine that emission control devices and systems required by State and Federal law are
10 installed and functioning correctly in accordance with test procedures), and California Code of
11 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
12 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
13 compliance to a Bureau undercover vehicle with incorrect ignition timing. The Bureau assessed
14 civil penalties totaling \$500 against Respondent for the violations. Respondent appealed the
15 citation; however, it became final on June 18, 2003. Respondent complied with the citation and
16 paid the fine on July 17, 2003.

17 b. On or about March 9, 2006, the Bureau issued Citation No. C06-0543
18 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
19 perform a visual/functional check of emission control devices according to procedures prescribed
20 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
21 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
22 Bureau undercover vehicle with a missing air injection system. The Bureau assessed civil
23 penalties totaling \$500 against Respondent for the violations. Respondent complied with the
24 citation and paid the fine on May 18, 2006.

25 c. On or about October 10, 2006, the Bureau issued Citation No. C07-0187
26 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
27 perform a visual/functional check of emission control devices according to procedures prescribed
28 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance

1 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
2 Bureau undercover vehicle with a non-functional EGR system. The Bureau assessed civil
3 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with the
4 citation and paid the fine on November 27, 2006.

5 d. On or about December 6, 2006, the Bureau issued Citation No. C07-0367
6 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
7 perform a visual/functional check of emission control devices according to procedures prescribed
8 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
9 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
10 Bureau undercover vehicle with a missing air injection system reed valve. The Bureau assessed
11 civil penalties totaling \$2,000 against Respondent for the violations. Respondent complied with
12 the citation and paid the fine on February 16, 2007.

13 **Respondent Ford:**

14 e. On or about March 9, 2006, the Bureau issued Citation No. M06-0544
15 against Respondent for violations of Health & Saf. Code section 44032 (qualified technicians
16 shall perform tests of emission control systems and devices in accordance with Health & Saf.
17 Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect,
18 test, and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
19 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
20 vehicle with a missing air injection system. Respondent was directed to complete an 8 hour
21 training course, with proof of completion submitted to the Bureau within thirty (30) days from
22 receipt of the citation. Respondent complied with the citation and completed the training course
23 on May 8, 2006.

24 f. On or about October 10, 2006, the Bureau issued Citation No. M07-0188
25 against Respondent for violations of Health & Saf. Code section 44032 (qualified technicians
26 shall perform tests of emission control systems and devices in accordance with Health & Saf.
27 Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect,
28 test, and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and

1 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
2 vehicle with a non-functional EGR system. Respondent was directed to complete a 16 hour
3 training course, with proof of completion submitted to the Bureau within thirty (30) days from
4 receipt of the citation. Respondent complied with the citation and completed the training course
5 on December 10, 2006.

6 g. On or about December 6, 2006, the Bureau issued Citation No. M07-0368
7 against Respondent for violations of Health & Saf. Code section 44032 (qualified technicians
8 shall perform tests of emission control systems and devices in accordance with Health & Saf.
9 Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect,
10 test, and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
11 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
12 vehicle with a missing air injection system reed valve. Respondent was directed to complete a
13 Basic Clean Air Car Course with proof of completion submitted to the Bureau. Respondent
14 complied with the citation and completed the training course on March 25, 2007.

15 OTHER MATTERS

16 43. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
17 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
18 for all places of business operated in this state by Respondent Chris Michael Lull, owner of
19 Autotek, upon a finding that said Respondent has, or is, engaged in a course of repeated and
20 willful violations of the laws and regulations pertaining to an automotive repair dealer.

21 44. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test
22 Only, Station License Number TC 200544, issued to Respondent Chris Michael Lull, owner of
23 Autotek, is revoked or suspended, any additional license issued under this chapter in the name of
24 said licensee may be likewise revoked or suspended by the Director.

25 45. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission
26 Specialist Technician License Number EA 149931, issued to Jonathan Clyde Ford, 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.

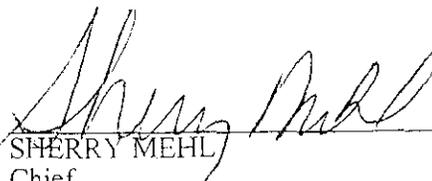
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PRAYER

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. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 200544, issued to Chris Michael Lull, owner of Autotek;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Chris Michael Lull;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 200544, issued to Chris Michael Lull, owner of Autotek;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Chris Michael Lull;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 149931, issued to Jonathan Clyde Ford;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jonathan Clyde Ford;
7. Ordering Chris Michael Lull, owner of Autotek, and Jonathan Clyde Ford 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;
8. Taking such other and further action as deemed necessary and proper.

DATED: 5-18-09


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