

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 LORRIE M. YOST, State Bar No. 119088
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 445-2271
6 Facsimile: (916) 327-8643
7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 GOOD GUY AUTO PLUS & SALE
SANDY SAYAREH, OWNER
14 8009 Carlton Road
Sacramento, CA 95826
15 Automotive Repair Dealer Reg. No. ARD 204488
16 Smog Check Station License No. RC 204488,
17 and
18 JOHN TRACY LYONS
479 Encina Drive
19 El Dorado Hills, CA 95762
20 Advanced Emission Specialist Technician License
No. EA 145576
21
22 Respondents.

Case No. 79/09-31

ACCUSATION

Smog Check

23 Complainant alleges:

24 **PARTIES**

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

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1 **Automotive Repair Dealer Registration No. ARD 204488**

2 2. In or about 1999, the Director of Consumer Affairs ("Director") issued
3 Automotive Repair Dealer Registration Number ARD 204488 to Sandy Sayareh ("Respondent
4 Sayareh"), owner of Good Guy Auto Plus & Sale. Respondent's automotive repair dealer
5 registration was in full force and effect at all times relevant to the charges brought herein and will
6 expire on March 31, 2009, unless renewed.

7 **Smog Check Station License No. RC 204488**

8 3. On or about August 3, 1999, the Director issued Smog Check Station
9 License Number RC 204488 to Respondent Sayareh. Respondent's smog check station license
10 was in full force and effect at all times relevant to the charges brought herein and will expire on
11 March 31, 2009, unless renewed.

12 **Advanced Emission Specialist Technician License No. EA 145576**

13 4. In or about 2002, the Director issued Advanced Emission Specialist
14 Technician License Number EA 145576 to John Tracy Lyons ("Respondent Lyons").
15 Respondent's advanced emission specialist technician license was in full force and effect at all
16 times relevant to the charges brought herein and will expire on August 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.

16
17 (4) Any other conduct which constitutes fraud.
18

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."

28 11. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part,
that a "license" includes "registration" and "certificate."

12. 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.

.....

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 13. 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 14. 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 15. 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 OF JULY 2, 2008**

21 16. On July 2, 2008, a representative of the Bureau conducted a video
22 surveillance operation of Respondent Sayareh's smog check facility. The surveillance video and
23 information obtained from the Bureau's vehicle information database ("VID") revealed that
24 Respondent Lyons issued electronic smog certificates of compliance on behalf of Respondent
25 Sayareh, certifying that he had tested and inspected the vehicles identified below and that the
26 vehicles were in compliance with applicable laws and regulations. In fact, Respondent Lyons

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

3 Time of Smog Inspection	4 Vehicle Certified & License #	Certificate of Compliance No.	Vehicle Actually Tested
5 1. 0858 - 0914	1992 Lexus SC400; license # 5VEK204	NC344554C	1998 Plymouth Neon; license # 6DVA099 ²
6 2. 0955 - 1002	1999 Volkswagen Jetta; license # 5WBW030	NC344555C	2003 Volkswagen Passat; license # DPA 4736

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 17. Respondent Sayareh's automotive repair dealer registration is subject to
11 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
12 Respondent made or authorized statements which she knew or in the exercise of reasonable care
13 should have known to be untrue or misleading, as follows: Respondent Sayareh's technician,
14 Respondent Lyons, certified that vehicles 1 and 2, identified in paragraph 16 above, had passed
15 inspection and were in compliance with applicable laws and regulations. In fact, Respondent
16 Lyons used clean piping methods in order to issue certificates for the vehicles and did not test or
17 inspect the vehicles as required by Health & Saf. Code section 44012.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 18. Respondent Sayareh's automotive repair dealer registration is subject to
21 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
22 Respondent committed acts which constitute fraud by issuing electronic smog certificates of
23 compliance for vehicles 1 and 2, identified in paragraph 16 above, without performing bona fide
24 inspections of the emission control devices and systems on the vehicles, thereby depriving the
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26 1. Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping"
27 means the use of a sample of the exhaust emissions of one vehicle in order to cause the Emission Inspection
System to issue a certificate of compliance for another vehicle.

28 2. The Bureau determined that the 1998 Plymouth Neon was registered to Respondent Lyons.

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **THIRD CAUSE FOR DISCIPLINE**

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

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

- 8 a. **Section 44012:** Respondent Sayareh failed to ensure that the emission
9 control tests were performed on vehicles 1 and 2, identified in paragraph
10 16 above, in accordance with procedures prescribed by the department.
11 b. **Section 44015:** Respondent Sayareh issued electronic smog certificates
12 of compliance for vehicles 1 and 2, identified in paragraph 16 above,
13 without ensuring that the vehicles were properly tested and inspected to
14 determine if they were in compliance with Health & Saf. Code section
15 44012.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

19 20. Respondent Sayareh'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 Sayareh falsely or
23 fraudulently issued electronic smog certificates of compliance for vehicles
24 1 and 2, identified in paragraph 16 above.
25 b. **Section 3340.35, subdivision (c):** Respondent Sayareh issued electronic
26 smog certificates of compliance for vehicles 1 and 2, identified in
27 paragraph 16 above, even though those vehicles had not been inspected in
28 accordance with section 3340.42.

1 c. **Section 3340.41, subdivision (c)**: Respondent Sayareh authorized or
2 permitted Respondent Lyons to enter false information into the emissions
3 inspection system ("EIS") by entering vehicle identification information or
4 emission control system identification data for vehicles other than the ones
5 being tested.

6 d. **Section 3340.42**: Respondent Sayareh failed to ensure that the required
7 smog tests were conducted on vehicles 1 and 2, identified in paragraph 16
8 above, in accordance with the Bureau's specifications.

9 **FIFTH CAUSE FOR DISCIPLINE**

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

11 21. Respondent Sayareh's smog check station license is subject to disciplinary
12 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
13 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
14 smog certificates of compliance for vehicles 1 and 2, identified in paragraph 16 above, without
15 performing bona fide inspections of the emission control devices and systems on the vehicles,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program.

18 **SIXTH CAUSE FOR DISCIPLINE**

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

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

23 a. **Section 44012**: Respondent failed to perform the emission control tests
24 on vehicles 1 and 2, identified in paragraph 16 above, in accordance with
25 procedures prescribed by the department.

26 b. **Section 44059**: Respondent willfully made false entries in the EIS in
27 order to issue certificates of compliance for vehicles 1 and 2, identified in
28 paragraph 16 above.

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

3 **VIDEO SURVEILLANCE OF JULY 16, 2008**

4 25. On July 16, 2008, a representative of the Bureau conducted a video
5 surveillance operation of Respondent Sayareh's smog check facility. The surveillance video and
6 information obtained from the Bureau's VID revealed that Respondent Lyons issued electronic
7 smog certificates of compliance on behalf of Respondent Sayareh, certifying that he had tested
8 and inspected the vehicles identified below and that the vehicles were in compliance with
9 applicable laws and regulations. In fact, Respondent Lyons conducted the inspections using
10 clean piping methods, resulting in the issuance of fraudulent certificates of compliance for the
11 vehicles.

12 Time of Smog Inspection	13 Vehicle Certified & License #	14 Certificate of Compliance No.	15 Vehicle Actually Tested
16 1. 1044 - 1053	17 2000 Honda Accord; license # 4LUX599	NC344585C	1999 Toyota Camry; license #4EYY235
18 2. 1335 - 1359	19 2006 Chrysler 300M; Indiana license # 95G1898	NC344586C	Same vehicle as above
20 3. 1435 - 1446	21 1999 Pontiac Sunfire; license # 4DWK553	NC344588C	1999 Chevrolet Tahoe; license # 4XFB185

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 26. Respondent Sayareh's automotive repair dealer registration is subject to
25 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
26 Respondent made or authorized statements which she knew or in the exercise of reasonable care
27 should have known to be untrue or misleading, as follows: Respondent Sayareh's technician,
28 Respondent Lyons, certified that vehicles 1 through 3, identified in paragraph 25 above, had
passed inspection and were in compliance with applicable laws and regulations. In fact,
Respondent Lyons 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.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 27. Respondent Sayareh's automotive repair dealer registration is subject to
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
5 Respondent committed acts which constitute fraud by issuing electronic smog certificates of
6 compliance for vehicles 1 through 3, identified in paragraph 25 above, without performing bona
7 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
8 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 ELEVENTH CAUSE FOR DISCIPLINE

11 (Violations of the Motor Vehicle Inspection Program)

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

- 15 a. Section 44012: Respondent Sayareh failed to ensure that the emission
16 control tests were performed on vehicles 1 through 3, identified in
17 paragraph 25 above, in accordance with procedures prescribed by the
18 department.
- 19 b. Section 44015: Respondent Sayareh issued electronic smog certificates
20 of compliance for vehicles 1 through 3, identified in paragraph 25 above,
21 without ensuring that the vehicles were properly tested and inspected to
22 determine if they were in compliance with Health & Saf. Code section
23 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 29. Respondent Sayareh'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 Sayareh falsely or
8 fraudulently issued electronic smog certificates of compliance for vehicles
9 1 through 3, identified in paragraph 25 above.
- 10 b. Section 3340.35, subdivision (c): Respondent Sayareh issued electronic
11 smog certificates of compliance for vehicles 1 through 3, identified in
12 paragraph 25 above, even though those vehicles had not been inspected in
13 accordance with section 3340.42.
- 14 c. Section 3340.41, subdivision (c): Respondent Sayareh authorized or
15 permitted Respondent Lyons to enter false information into the EIS by
16 entering vehicle identification information or emission control system
17 identification data for vehicles other than the ones being tested.
- 18 d. Section 3340.42: Respondent Sayareh failed to ensure that the required
19 smog tests were conducted on vehicles 1 through 3, identified in paragraph
20 25 above, in accordance with the Bureau's specifications.

21 THIRTEENTH CAUSE FOR DISCIPLINE

22 (Dishonesty, Fraud or Deceit)

23 30. Respondent Sayareh'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 3, identified in paragraph 25 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 31. Respondent Lyons' 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 the emission control tests
9 on vehicles 1 through 3, identified in paragraph 25 above, in accordance
10 with procedures prescribed by the department.
11 b. **Section 44059:** Respondent willfully made false entries in the EIS in
12 order to issue certificates of compliance for vehicles 1 through 3,
13 identified in paragraph 25 above.

14 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

17 32. Respondent Lyons' 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 3, identified in paragraph 25 above.
24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
25 vehicles 1 through 3, identified in paragraph 25 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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1 c. Section 3340.41, subdivision (c): Respondent entered false information
2 into the EIS by entering vehicle identification information or emission
3 control system identification data for vehicles other than the ones being
4 tested.

5 d. Section 3340.42: Respondent failed to conduct the required smog tests on
6 vehicles 1 through 3, identified in paragraph 25 above, in accordance with
7 the Bureau's specifications.

8 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

10 33. Respondent Lyons' advanced emission specialist technician license is
11 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
12 that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
13 issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in
14 paragraph 25 above, without performing bona fide inspections of the emission control devices
15 and systems on the vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 **MATTERS IN AGGRAVATION**

18 34. To determine the degree of discipline, if any, to be imposed on
19 Respondents Sayareh and Lyons, Complainant alleges by way of aggravation, as follows:

20 a. On or about January 3, 2007, the Bureau issued Citation No. C07-0432
21 against Respondent Sayareh for violations of Health & Saf. Code section 44012, subdivision (f)
22 (failure to perform a visual/functional check of emission control devices according to procedures
23 prescribe by the department), and California Code of Regulations, title 16, section ("Regulation")
24 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
25 tested). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with
26 a non-functional exhaust gas recirculation (EGR) system. The Bureau assessed civil penalties
27 totaling \$500 against Respondent for the violations. Respondent paid the citation on February
28 15, 2007.

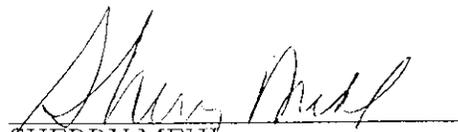
PRAYER

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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 204488, issued to Sandy Sayareh, owner of Good Guy Auto Plus & Sale;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Sandy Sayareh;
3. Revoking or suspending Smog Check Station License Number RC 204488, issued to Sandy Sayareh, owner of Good Guy Auto Plus & Sale;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Sandy Sayareh;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 145576, issued to John Tracy Lyons;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of John Tracy Lyons;
7. Ordering Respondents Sandy Sayareh, owner of Good Guy Auto Plus & Sale, and John Tracy Lyons 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: 10/3/08.


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