

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

In the Matter of the Accusation Against:

CHEROKEE SMOG & REPAIR
LILUMA BAYANZAY, Owner
900 S. Cherokee Lane
Lodi, California 95240
Automotive Repair Dealer Registration
No. ARD 227347
Smog Check Station License No.
RC 227347

and

SHERAQA BAYANZAY
Stockton, California 95212
Brake Adjuster License No. BA 314232
Lamp Adjuster License No. LA 314232
Advanced Emission Specialist Technician
License No. EA 314232

and

SAJJAD KHAN JAFFAR
Lodi, California 95240
Advanced Emission Specialist Technician
License No. EA 151410
Break Adjuster License No. JC 151410

Respondents.

Case No. 79/09-12

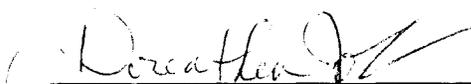
OAH No. 2009090380

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 11/5/10.

IT IS SO ORDERED September 29, 2010.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 20, 21, and 22, 2010, in Sacramento, California.

Jeffrey M. Phillips, Deputy Attorney General, represented Sherry Mehl (complainant), Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Brandon J. Kimura and Jessica V. Santamaria, Attorneys at Law,¹ represented Cherokee Smog (respondent Cherokee), Liluma Bayanzay (respondent L.B.), and Sheraqa Bayanza (respondent S.B.).

Sajjad Khan Jaffar represented himself.

Evidence was received and the record was held open to August 6, 2010, to allow the Bureau to submit a declaration of prosecution costs. A "Certification of Prosecution Costs: Declaration of Jeffrey M. Phillips" was received on July 29, 2010. The record was deemed closed on August 6, 2010.

FACTUAL FINDINGS

1. On May 13, 2003, the Bureau issued Automotive Repair Dealer Registration Number ARD 227347 to respondent L.B., doing business as Cherokee Smog. On June 5, 2003, the Bureau also issued Smog Check Station License Number 227347 to respondent L.B. Respondent L.B.'s registration and license were in full force and effect at all times relevant to the charges alleged in the accusation and were set to expire on April 30, 2010, unless renewed.

2. In 1997, the Bureau issued Advanced Emission Specialist (EA) Technician License Number EA 314232 to respondent S.B. His EA license will expire on August 31, 2011, unless renewed. In 2001, the Bureau issued Brake Adjuster (BA) License Number BA 314232, Class C and Lamp Adjuster (LA) License Number LA 314232, Class A, to respondent S.B. Respondent S.B.'s licenses were in full force and effect at all times relevant to the charges alleged in the accusation. His BA and LA licenses will expire on August 31, 2013, unless renewed.

3. In 2005, the Bureau issued EA Technician License Number EA 151410 to respondent Jaffar. In 2006, the Bureau issued BA License Number BA 151410, Class C, to respondent Jaffar. His EA and BA licenses were in full force and effect at all times relevant to the charges alleged in the accusation and will expire on November 30, 2010, unless renewed. On March 4, 2008, the Bureau issued LA License Number LA 151410, Class A, to respondent Jaffar. His LA license was in full force and effect at all times relevant to the charges alleged in the accusation and will expire on November 30, 2011, unless renewed.

¹ Brandon J. Kimura and Jessica V. Santamaria, Attorneys at Law, Five Palo Alto Square, Fourth Floor, 3000 El Camino Real, Palo Alto, California 94306-2155.

4. On August 25, 2008, the Bureau's Chief Executive Officer filed this accusation against respondents. The accusation seeks to discipline respondents' registration and license numbers based upon allegations that respondents issued Emission Inspection Certificates of Compliance for three undercover vehicles that had been equipped with modified emissions control equipment which could not, in their altered state, pass the California Emissions Inspection Test.

Enforcement History Prior to Undercover Operations

5. Tim Schaumburg, Bureau Program Representative, administers consumer complaints, station inspections, and undercover operations. He testified that there are three parts to a California Emissions Inspection Test (also called a smog inspection, smog check or smog test): 1) A visual inspection to identify any missing, modified, or altered equipment; 2) A tailpipe emissions test to ensure that the vehicle's emissions are reading at or below acceptable levels; and (3) a functional test to measure various components including ignition timing, gas cap pressure, and the diagnostic system, depending on the make and model of the vehicle. A vehicle must pass all three parts of the California Emissions Inspection Test before an Emission Inspection Certificate of Compliance can be issued.

6. An automated emission inspection system (EIS) is used to conduct vehicle inspections. For front and rear wheel drive vehicles, a Dynamometer or treadmill is used to simulate road wear. The Dynamometer test is also known as an Acceleration Simulation Mode (ASM) test. The vehicle's front or rear wheels are placed on rollers to effect driving. An attached computer with a monitor prompts technicians through the inspection process and can download information to the State of California data base. For all-wheel-drive (AWD) vehicles, a two-speed idle test wherein the vehicle is run in park at 125 rpm is conducted in lieu of the ASM test. Vehicles manufactured in 1996 or after must be hooked up to an on-board diagnostic (OBD) system for federally mandated testing.

7. Technicians must participate in extensive and ongoing training to perform smog testing. Classes are offered through Automotive Service Excellence (ASE). Training must be updated every two years. Technicians can receive a Basic Area Technician License (available in rural areas) and an Enhanced Technician License (required in large population areas), where tail pipe emissions are critical. Additionally, Bureau program representatives conduct periodic testing at smog check facilities to ensure technical expertise and compliance. Facilities can be Test and Repair stations or Test Only stations.

8. Mr. Schaumburg's job requires him to assess the technical expertise of technicians, to confirm that they have the diagnostic equipment and knowledge to conduct EIS testing. He conducted an initial inspection of Respondent Cherokee Smog & Repair on June 5, 2003. Mr. Schaumburg met with and observed respondent S.B. perform an official pretest inspection. The station passed the initial inspection and respondent S.B. passed the ASM test evaluation. No deficiencies were noted. The audit report was signed by Mr. Schaumburg and respondent S.B. on June 5, 2003.

9. On or about May 27, 2004, Mr. Schaumburg observed a Cherokee Smog technician attempting to "drop off" a vehicle at Tokay Shell, a Test Only facility in Lodi. A licensed smog check station shall not sublet (i.e. take to another repair shop for testing or repairs), smog inspections as part of the smog check program. (16 CCR, § 3340.15, subd. (i).) An exception is made for repairs to the exhaust system and other components that were previously diagnosed by the original smog check station and authorized by the customer. In this instance, there was no documented customer authorization to perform repairs or a smog inspection.

Mr. Schaumburg decided to audit Cherokee Smog for other possible violations. While reviewing the EIS State database, Mr. Schaumburg found that technicians at Cherokee Smog had improperly bypassed functional tests on three different vehicles. On May 27, 2004, Mr. Schaumburg went to Cherokee Smog and discussed the violations with respondent S.B. and another technician, Jesse Soutter. Respondent S.B. is the responsible managing employee (RME) at Cherokee Smog. Before leaving, Mr. Schaumburg wrote a Station Inspection Report detailing the improper sublet and functional bypass tests. Both Mr. Soutter and respondent S.B. signed and received copies of the non-compliance report.

10. In a subsequent review, Mr. Schaumburg identified two more EIS test violations occurring on June 11 and July 5, 2004. Respondent S.B. was the technician on both vehicles (a 2000 Isuzu Truck and a 1996 Toyota Camry), wherein he improperly bypassed the OBD II functional test. In response, Mr. Schaumburg wrote a memorandum on July 22, 2004, and submitted it to the Sacramento Field Office for appropriate disciplinary action. As a result, a formal Educational Conference was held on July 28, 2004, the purpose of which was to review violations and offer written and verbal information on procedures, equipment, invoicing, laws, and educational materials. Both respondents L.B. and S.B. were present. A speaker's form was given to respondent for use in requesting on-site training. Ten specific recommendations were made to respondents S.B. and L.B. by Bureau representatives.

11. Program representative Roger Lehman conducted subsequent inspections of respondent Cherokee Smog on April 19, August 14, and October 21, 2005. His job was to monitor quality assurance by checking equipment, invoices, and technician expertise. Mr. Lehman wrote reports detailing instances of non-compliance at the time of each inspection.

On April 19, 2005, technician Soutter failed a test on the digital storage oscilloscope. Remedial training was recommended. Reference manuals with location guides and diagnostic procedures were missing, as were required tools including a dowel gauge and KV hook-up necessary to run an ignition test. A legally required "Notice to Motorists" sign was not posted. This sign gives consumers information on how to apply for assistance and what to do if they fail a test. Mr. Lehman found one invoice that was missing a "revision of estimate" or authorization for the revision. (Bus. & Prof. Code, § 9884.9, subd. (a).)

On August 14, 2005, Mr. Lehman found that the station had acquired a KV hook-up, but no one at the shop knew how to use it. Mr. Lehman showed respondent S.B. how to use

the KV module. The shop had purchased a dowel gauge, posted the Notice to Motorist, and moved all required manuals inside. Mr. Lehman recommended that respondents post new brake and lamp licenses immediately as the old licenses were out of date. He noted continuing invoice problems.

On October 21, 2005, Mr. Lehman returned to observe a demonstration of the KV module but learned that it had malfunctioned and been sent back for repair. He noted continuing invoice problems that failed to itemize repairs following failed emissions tests as is required by the Federal EPA and failed to document all revised estimates on invoices.

12. Mr. Lehman wrote an Investigative Report dated December 19, 2005, that documented respondents' continuing non-compliance issues. Mr. Lehman concluded that respondent Cherokee and its employees had "exhibited a blatant disregard for the provisions of the Automotive Repair Act and the smog check Laws and Regulations." As a result, a second formal Educational Conference was scheduled for January 26, 2006. Respondent S.B. was present at the meeting. Again, violations were reviewed and verbal and written information was provided on proper procedures, equipment, invoicing, laws, and regulations. The Bureau made 17 specific recommendations. Respondents S.B. and L.B. were noticed in a report signed by respondent S.B., that further non-compliance would result in additional disciplinary action.

13. Respondent Cherokee was issued Gold Shield status on or about April 2005. This status allowed respondent to certify gross polluting vehicles and repair those high emitting vehicles under the Consumer Assistance Program (CAP) for low income consumers. The program subsidizes a lower co-pay for qualifying consumers. On June 16, 2006, respondent Cherokee was served notice that their Gold Shield Certification was invalidated and their CAP contract was terminated. This action followed investigation and confirmation of a consumer complaint wherein respondent had taken complainant's vehicle to another shop for repairs without gaining prior consent or documenting the repair on the invoice. The conduct constituted an unlawful sublet for which respondent had been previously counseled. (Factual Finding 9.) Tim Bowden, B.A.R. program representative documented his investigation findings in a report dated April 3, 2006.

First Undercover Operation – August 31, 2007 – 1997 Chevrolet Astro

14. David Mummert is a Program Representative I in the Bureau's Sacramento Documentation Lab. As part of his job duties, Mr. Mummert prepares undercover vehicles for smog inspections and inspects those vehicles after they are returned.

On July 30, 2007, Mr. Mummert documented a 1997 Chevrolet Astro, California license number 3UBG685, for an undercover run. Prior to making any modifications, Mr. Mummert inspected and documented the vehicle's condition, performed an emissions inspection test, and obtained a printout indicating that the vehicle passed the test. Mr. Mummert then removed the positive crank case ventilation (PCV) valve and related hose, plugged the vacuum source, and installed an open element breather in place of the valve. He

photographed the modifications, performed a second emissions inspection test, and obtained a printout indicating that the vehicle failed the visual portion of the test due to the missing PCV components. The vehicle was then secured in the Bureau's Sacramento Documentation Lab.

15. On August 31, 2007, Mr. Lehman obtained the Chevrolet Astro from the Documentation Lab. He visually verified that the PCV system was missing and took a photograph of the introduced malfunction. Mr. Lehman released the vehicle to driver Lester Johnson who drove to respondent Cherokee Smog and requested a smog inspection. Respondent S.B. conducted the smog inspection on the Chevrolet Astro and provided a Smog Check Vehicle Inspection Report (VIR) showing that the vehicle "passed" the Emissions Control Systems (ECS) Visual Inspection/Functional Check. Respondent S.B. signed the VIR under a certification that states: "I certify, under penalty of perjury, under the laws of the State of California, that I performed the inspection in accordance with all bureau requirements, and that the information listed on this vehicle inspection report is true and accurate." Because the modified Chevrolet Astro could not pass a smog inspection with an missing PCV system, respondent S.B.'s certification was not true and accurate.

Second Undercover Operation – September 17, 2007 – 1994 Ford Ranger

16. Kyle Tetlow is a Program Representative I in the Bureau's Sacramento Documentation Lab. As part of his job duties, Mr. Tetlow prepares undercover vehicles for smog inspections and inspects those vehicles after they are returned.

On August 3, 2007, Mr. Tetlow documented a 1994 Ford Ranger, California license number 5B57772, for an undercover run. Prior to making any modifications, Mr. Tetlow inspected and documented the vehicle's condition, performed an emissions inspection test, and obtained a printout indicating that the vehicle passed the test. Mr. Tetlow then removed the PCV valve and connecting hoses, replaced the PCV hose with two separate cut and plugged hoses. He photographed the modifications, performed a second emissions inspection test, and obtained a printout indicating that the vehicle failed the visual portion of the test due to the missing PCV components. The vehicle was then secured in the Bureau's Sacramento Documentation Lab.

17. On September 17, 2007, Mr. Lehman obtained the Ford Ranger from the Documentation Lab. He visually verified that the PCV system was missing and took a photograph of the introduced malfunction. Mr. Lehman released the vehicle to driver Lester Johnson who drove to respondent Cherokee Smog and requested a smog inspection using the assumed name Lester McCoy. Respondent S.B. conducted the smog inspection on the Ford Ranger and provided a VIR showing that the vehicle "passed" the ECS Visual Inspection/Functional Check. Respondent S.B. signed the VIR under a certification that states: "I certify, under penalty of perjury, under the laws of the State of California, that I performed the inspection in accordance with all bureau requirements, and that the information listed on this vehicle inspection report is true and accurate." Because the

modified Ford Ranger could not pass a smog inspection with an missing PCV system, respondent S.B.'s certification was not true and accurate.

Third Undercover Operation – October 10, 2007 – 1991 Chevrolet Corsica

18. On October 10, 2007, Mr. Tetlow documented a 1991 Chevrolet Corsica, California license number 2WAY626, for an undercover run. Prior to making any modifications, Mr. Tetlow inspected and documented the vehicle's condition, performed an emissions inspection two-speed idle (TSI) test, and obtained a printout indicating that the vehicle passed the test. Mr. Tetlow then removed the exhaust gas recirculation (EGR) valve and rendered it inoperative. He then replaced the inoperative EGR valve, introduced a tamper indicator (to detect removal of the EGR valve), and placed a blockage plate underneath (to prevent gas from flowing out of this area). He photographed the modifications, performed a second emissions inspection test, and obtained a printout indicating that the vehicle failed the functional portion of the TSI test due to an inoperative EGR valve and blocked passageway. The vehicle was then secured in the Bureau's Sacramento Documentation Lab.

19. On October 19, 2007, Mr. Lehman obtained the Chevrolet Corsica from the Documentation Lab. He visually located the non-functional EGR valve and blockage plate and verified that the tamper indicator was intact. He took a photograph of the introduced malfunction. Mr. Lehman released the vehicle to driver Regina Ingram who drove to respondent Cherokee Smog and requested a smog inspection using the assumed name Regina Diaz. Respondent Jaffar conducted the smog inspection on the Chevrolet Corsica and provided a VIR showing that the vehicle "passed" the "Functional EGR" portion of the ECS Visual Inspection/Functional Check. Respondent Jaffar signed the VIR under a certification that states: "I certify, under penalty of perjury, under the laws of the State of California, that I performed the inspection in accordance with all bureau requirements, and that the information listed on this vehicle inspection report is true and accurate." Because the modified Chevrolet Corsica could not pass a smog inspection with the non-functional EGR system, respondent Jaffar's certification was not true and accurate.

Factors in Aggravation

20. As factors in aggravation against respondents Cherokee Smog, S.B., and L.B., the Bureau considered their previous enforcement history (Factual Findings 5 through 13) and S.B.'s criminal sanctions (Factual Findings 22, and 23). Respondents Cherokee Smog, L.B., and S.B. failed to adhere to known station requirements. Respondent S.B., as the responsible managing employee, and respondent L.B., as the owner, are responsible for ensuring that all technicians at the facility know how to correctly use equipment and run diagnostic tests.

21. Respondent L.B. is the adult daughter of respondent S.B. She is a housewife and mother, holds a real estate salesperson license, and a degree in biology from California State University, Sacramento. In 2003, the family decided that respondent S.B. should open

his own business. Respondent L.B.'s primary role was to assist her father with paperwork, financing, and discussions with the previous owner. She was not trained in smog repair and has never operated the machinery. Respondent L.B. testified that "Currently I don't have much of a role there. I am just the owner." Her cousin Kalimullah Bayanzay has been the manager and only employee of respondent Cherokee Smog for the last year. Her brother, Zabihullah Bayanzay is also a licensed smog technician and occasionally assists at the facility.

Respondent L.B. was clearly not involved in the technical operations of her company. However, she had a legal responsibility to ensure that laws and regulations related to her license were followed. (Bus. & Prof. Code, § 9884.7, 9889.3.) She was on notice that her company was not in compliance with the law. She attended the first Educational Conference on July 28, 2004. (Factual Finding 10.) At that Educational Conference, numerous violations and recommendations for corrective action were discussed. Respondent L.B. signed the Educational Conference report at the conclusion of the meeting. Though she was not present at the second Educational Conference (Factual Finding 12), at the end of both reports is the following notice to take corrective action:

Liluma Bayanzay shall immediately take any and all necessary action to effect compliance with the Automotive Repair Act, the Smog Check Program, and those regulations adopted pursuant thereto. A continued failure to comply can and will lead to further disciplinary action by the Department. It is expected that such violations will not be repeated.

There is no evidence that respondent L.B. took any steps to implement corrective changes to station procedures and/or technical staff.

22. On May 13, 1992, the Alameda County District Attorney's Office filed a complaint against respondent S.B. and his co-defendant, Roderick R. Garcia, alleging 15 violations of the Health and Safety Code related to issuance of smog certificates.

On July 15, 1992, respondent S.B. was convicted in the Superior Court of California, County of Alameda, in Case Number DKM043-2150113, on his plea of nolo contendere to violating Health and Safety Code section 44015, subdivision (a), a misdemeanor. The facts are that on or about February 14, 1992, respondent S.B. and co-defendant, Roderick R. Garcia, knowingly and willfully issued a smog certificate of compliance (No. C107853) for a 1986 Chevrolet Astro Van (license No. 2RSD028), which they knew was missing equipment that was required by Business and Professions Code section 44012. Imposition of sentence was suspended, and respondent was placed on three years probation with terms and conditions including 60 days in jail, fines and restitution.

23. Effective June 10, 1994, the Bureau adopted the Decision of the Interim Director of the Bureau after an administrative hearing and Proposed Decision in the matter of Accusation No. N 9309075. Findings established that respondent S.B. violated numerous laws and regulations related to issuance of smog certificates. As a consequence, the Bureau

revoked respondent S.B.'s inspector license (No. NS 314232) and unlimited qualified mechanic's license (No. EU 314232).

24. Respondents Cherokee Smog, L.B., and S.B. and have an extensive record of interventions, both criminal and administrative. Respondents S.B. and L.B. on behalf of Cherokee Smog have had ample opportunity to comply with the laws and regulations governing automotive repair and smog inspections. The evidence supports a finding that respondents' continuing violations were knowing and willful. Consequently, revocation of the licenses issued by the Bureau to respondents Cherokee Smog, S.B., and L.B., is necessary for public protection.

Factors in Mitigation

25. Respondent Jaffar performed the inspection on October 19, 2007. Three years have passed and he does not remember the vehicle in question. He accepted that it was his signature on the VIR and assumed he worked on the car, but does not know for sure. He feels that if he violated the law, he should have been given a citation. At hearing, Mr. Lehman explained that the violation committed by respondent Jaffar is generally a training situation and usually warrants a citation. Respondent Jaffar has not engaged in a pattern of violations either before or after this specific test. He has not been the subject of any prior complaint, educational conference, citation, or accusation. Respondent Jaffar is no longer employed by or associated with respondent Cherokee Smog. Considering all of the facts, revocation of respondent Jaffar's EA, BA, and LA licenses is not warranted to ensure protection of the public.

Costs

26. Under Business and Professions Code section 125.3, a bureau or board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

As June 23, 2010, the cost of investigation and prosecution of this case was \$12,637.54. Complainant submitted a certification of prosecution costs billed by the attorney general's office in the amount of \$6,038.50. Complainant also submitted a certification of the Bureau's investigative costs in the amount of \$6,599.04. The costs are certified in the manner provided by Business and Professions Code section 125.3, subdivision (c). The time spent appears to be reasonable and the activities necessary to the development and presentation of the case.

27. Respondent L.B. testified concerning her family's current living situation. Respondent S.B. did not testify. The family owns a small office building and the Cherokee Smog facility since 2003. Respondent L.B. is the oldest child and has two sisters and three brothers. She is married and lives with her husband. Still living in the home of respondent S.B. are eight adults and two children including his wife, two sons and their wives, one

daughter, one daughter-in-law, and a grandchild. One of the adult brothers pays the mortgage with revenue from Cherokee Smog. Expenses include college tuition for three siblings, insurance, groceries, and household bills. According to respondent L.B., outside of smog technician work, there is no other income source. Respondent L.B. stated that her father, respondent S.B., has been working for approximately one week in Stockton at California Smog. She was not aware that he is the RME at California Smog. She stated that they have not discussed transferring ownership of Cherokee Smog. No income figure was provided for respondent L.B. or respondent S.B.

LEGAL CONCLUSIONS

Applicable Laws and Regulations

1. Business and Professions Code section 9884.7, provides in relevant part:
 - (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
 - (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
 - (2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
 - (3) Failing or refusing to give a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
 - (4) Any other conduct that constitutes fraud.
 - (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
2. Business and Professions Code section 9884.9, provides that the automotive repair dealer shall give to the consumer a written estimate price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to

proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied.

3 Business and Professions Code section 9889.3, provides that 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: (a) Violates any section of the Business and Professions Code that relates to his or her licensed activities... (d) Violates any of the regulations promulgated by the director pursuant to this chapter.

4. Health and Safety Code section 44072.2, subdivision (a), provides that 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 and the regulations adopted pursuant to it, which related to the licensed activities.
- (c) Violates any of the regulations adopted by the director pursuant to this chapter.
- (d) Has misrepresented a material fact in obtaining a license.

5. Health and Safety Code section 44012, subdivision (f), provides in relevant part, that “[a] visual or functional check is made of emission control devices specified by the department . . .”

6. Health and Safety Code section 44015, subdivision (a), provides that a licensed smog check station shall not issue a certificate of compliance to any vehicle that has been tampered with.

7. Health and Safety Code section 44032, provides that “Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.” (See also Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

8. Health and Safety Code section 44035, subdivision (a), provides that a smog check station’s license or a qualified smog check technician’s qualifications may be suspended or revoked by the department, after a hearing, for failing to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct.

9. California Code of Regulations, title 16, section 3340.30, subdivision (a), states, that a licensed technician shall inspect, test and repair vehicles in accordance with Health and Safety Code, sections 44012, 44035, and California Code of Regulations, title 16, section 3340.42.

10. California Code of Regulations, title 16, section 3340.35, subdivision (c), states, in relevant part:

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. . . .

11. California Code of Regulations, title 16, section 3340.41, subdivision (c) provides that "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.

12. California Code of Regulations, title 16, section 3340.42 provides for the visual inspection of emission system components by smog check stations in accordance with its directives and the Bureau-97 Emissions Inspection System Specifications referenced in subdivisions (a) and (b) of section 3340.17.

Cause for Discipline

Respondent L.B.'s Registration and License

13. Based upon Factual Findings 5 through 24, cause exists to revoke respondent L.B.'s Automotive Repair Dealer Registration and Smog Check Station License (Nos. 227347), for violations by respondent Cherokee Smog of Business and Professions Code sections 9884.7, 9884.9, 9889.3, 44012, 44015, and 44059; Health and Safety Code section 44072.2; and California Code of Regulations, title 16, sections 3340.24, 3340.30, 3340.35, 3340.41, and 3340.42.

Respondent L.B., as owner of respondent Cherokee Smog, failed to ensure compliance with laws and regulations governing her licensed activity. Accordingly, cause exists to discipline respondent L.B.'s registration and license.

Respondent S.B.'s Licenses

14. Based upon Factual Findings 5 through 24, cause exists to revoke respondent S.B.'s Advanced Emission Specialist Technician, Brake Adjuster, and Lamp Adjuster Licenses (Nos. 314232), for violations of Business and Professions Code sections 44012, 44032, 44059; Health and Safety Code section 44072.2; and California Code of Regulations, title 16, section 3340.30, 3340.41, and 3340.42.

Respondent S.B., as a technician and responsible managing employee of respondent Cherokee Smog, has been subject to extensive disciplinary interventions and criminal

sanctions. He failed to correct repeated violations of law and regulation governing automotive repair and smog inspections. Accordingly, cause exists to discipline respondent S.B.

Respondent Jaffar's Licenses

15. Based upon Factual Findings 19 and 25, cause does not exist to revoke respondent Jaffar's Advanced Emission Specialist Technician, Brake Adjuster, and Lamp Adjuster Licenses (Nos. 151410), for violations of Business and Professions Code section 9889.3; Health and Safety Code section 44072.2; and California Code of Regulations, title 16, section 3340.30, 3340.41, and 3340.42. Although he erroneously passed the functional EGR portion of the test in 2007, there is insufficient evidence of negligent, intentional or willful misconduct.

Respondent Jaffar has been a licensed smog check technician since 2005. He has never been issued a citation or otherwise disciplined by the Bureau. No public interest would be served by revoking his licenses based on this isolated incident.

Costs

16. Business and Professions Code sections 125.3, 3753.5 and 3753.7, authorize the Bureau to recoup reasonable costs of investigation and adjudication from a licensee whose license is disciplined. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the Board should consider the public interest in regulating the targeted conduct.

17. At hearing, respondent S.B. cross-examined the Bureau's witnesses but did not testify. Respondent L.B. was not involved in the operations of respondent Cherokee Smog and provided no evidence to counter the Bureau evidence of non-compliance. With the exception of respondent Jaffar, the evidence does not support a "subjective good faith belief" in the merits of respondents' position. Respondents S.B. and L.B. presented a colorable challenge to the discipline sought as nothing short of revocation was offered. It is unclear what the earning capacity will be if their licenses are revoked as no income figures were provided. The Bureau's case consisted of three undercover operations and evidence of prior disciplinary actions. Their investigation was not disproportionately large given the circumstances of the case.

18. By reason of the matters set forth in Factual Findings 26, and 27, in conjunction with an analysis pursuant to the factors set forth in *Zuckerman, supra*, it is determined that the billed cost of \$12,637.54, is a reasonable assessment to impose on

respondents. Respondents Cherokee Smog, S.B., and L.B. shall reimburse the Board in the amount of \$12,637.54. As cause does not exist to revoke respondent Jaffar's licenses, no cost reimbursement as to him is imposed.

ORDER

The Automotive Repair Dealer Registration issued to respondents Cherokee Smog and Liluma Bayanzay, owner, Number ARD 227347, is invalidated, and Smog Check Station License No. RC 227347 is revoked.

Respondent Sheraqua Bayanzay's Advanced Emission Specialist Technician License Number EA 314232, Brake Adjuster License Number BA314232, and Lamp Adjuster License Number 314232, are revoked.

The accusation against Sajjad Khan Jaffar, seeking revocation of his Advanced Emission Specialist Technician License Number EA 151410, Brake Adjuster License Number BA 151410, and Lamp Adjuster License Number LA 151410, is dismissed.

Pursuant to Business and Professions Code sections 125.3, 3753.5 and 3753.7, the cost of investigation and prosecution of the case is awarded to the Bureau in the amount of \$12,637.54, by reason of Legal Conclusions 16, 17, and 18. Respondents Liluma Bayanzay and Sheraqa Bayanzay are jointly and severably liable for the full amount and shall comply with payment terms established by the Bureau or its designee. This order to pay costs is enforceable regardless of respondents' license status.

DATED: September 9, 2010



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-6292
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79-09-12

13 **CHEROKEE SMOG & REPAIR**
900 S. Cherokee Lane
14 Lodi, CA 95240
LILUMA BAYANZAY, OWNER

A C C U S A T I O N

S M O G C H E C K

15 Automobile Repair Dealer
Registration No. ARD 227347
16 Smog Check Station License No. RC 227347

17 **SHERAQA BAYANZAY**
3725 Massimo Court
18 Stockton, CA 95212

19 Advanced Emission Specialist Technician
License No. EA 314232

20 **SAJJAD KHAN JAFFAR**
521 E. Maple Street
21 Lodi, CA 95240

22 Advanced Emission Specialist Technician
License No. EA 151410
23 Brake Adjuster License No. JC 151410, Class C

24 Respondents.

25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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

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

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

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

10 (4) Any other conduct which constitutes fraud.

11 (b) Except as provided for in subdivision (c), if an automotive repair
12 dealer operates more than one place of business in this state, the director pursuant
13 to subdivision (a) shall only invalidate temporarily or permanently the registration
14 of the specific place of business which has violated any of the provisions of this
15 chapter. This violation, or action by the director, shall not affect in any manner
16 the right of the automotive repair dealer to operate his or her other places of
17 business.

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

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

25 8. Code section 9884.9 states, in pertinent part:

26 (a) The automotive repair dealer shall give to the customer a written
27 estimated price for labor and parts necessary for a specific job. No work shall be
28 done and no charges shall accrue before authorization to proceed is obtained from
the customer. No charge shall be made for work done or parts supplied in excess
of the estimated price without the oral or written consent of the customer that
shall be obtained at some time after it is determined that the estimated price is
insufficient and before the work not estimated is done or the parts not estimated
are supplied. Written consent or authorization for an increase in the original
estimated price may be provided by electronic mail or facsimile transmission from
the customer. The bureau may specify in regulation the procedures to be followed
by an automotive repair dealer if an authorization or consent for an increase in the
original estimated price is provided by electronic mail or facsimile transmission.
If that consent is oral, the dealer shall make a notation on the work order of the
date, time, name of person authorizing the additional repairs, and telephone
number called, if any, together with a specification of the additional parts and
labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the
notation on the work order.

///

1 (2) Upon completion of the repairs, obtain the customer's signature or
2 initials to an acknowledgment of notice and consent, if there is an oral consent of
the customer to additional repairs, in the following language:

3 "I acknowledge notice and oral approval of an increase in the original
4 estimated price.

5 _____
6 (signature or initials)"

7 Nothing in this section shall be construed as requiring an automotive
8 repair dealer to give a written estimated price if the dealer does not agree to
9 perform the requested repair.

10 9. Code section 9889.9 states:

11 When any license has been revoked or suspended following a hearing
12 under the provisions of this article, any additional license issued under Articles 5
13 and 6 of this chapter in the name of the licensee may be likewise revoked or
14 suspended by the director.

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

19 11. Code section 9889.3 states, in pertinent part:

20 The director may suspend, revoke, or take other disciplinary action against
21 a license as provided in this article [Article 7 (commencing with Code section
22 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or
23 director thereof:

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

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

13. Health and Safety Code section 44072.2 states:

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

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

20 ///

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

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

13 16. Code section 477 provides, in pertinent part, that "Board" includes
14 "bureau," "commission," "committee," "department," "division," "examining committee,"
15 "program," and "agency." "License" includes certificate, registration or other means to engage in
16 a business or profession regulated by the Code.

17 COST RECOVERY

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

22 UNDERCOVER OPERATION - AUGUST 31, 2007

23 18. On August 31, 2007, a Bureau undercover operator using the alias
24 Lester McCoy ("operator") drove a Bureau-documented 1997 Chevrolet Astro, California
25 License Plate No. 3UBG685, to Respondent Liluma's facility for a smog inspection. The vehicle
26 could not pass a smog inspection because the vehicle's positive crankcase ventilation ("PCV")
27 valve and hose were missing. The operator signed a blank work order. The operator was not
28 provided with a copy of an estimate. Respondent Sheraqa performed the smog inspection and
issued electronic Certificate of Compliance No. MU397077C, certifying that he had tested and

1 inspected the vehicle and that the vehicle was in compliance with applicable laws and
2 regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection
3 because the vehicle's PCV system was missing. Respondent Liluma provided the operator with
4 Invoice No. 1146 and a Vehicle Inspection Report ("VIR").

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Untrue or Misleading Statements)

7 19. Respondent Liluma's registration is subject to disciplinary action pursuant
8 to Code section 9884.7, subdivision (a)(1), in that on or about August 31, 2007, Respondent
9 Liluma made or authorized statements which she knew or in the exercise of reasonable care she
10 should have known to be untrue or misleading by issuing electronic Certificate of Compliance
11 No. MU397077C for the 1997 Chevrolet Astro, certifying that the vehicle was in compliance
12 with applicable laws and regulations. In fact, the vehicle could not have passed the smog
13 inspection because the vehicle's PCV system was missing.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Fraud)

16 20. Respondent Liluma's registration is subject to disciplinary action pursuant
17 to Code section 9884.7, subdivision (a)(4), in that on or about August 31, 2007, she committed
18 acts which constitute fraud by issuing electronic Certificate of Compliance No. MU397077C for
19 the 1997 Chevrolet Astro without performing a bona fide inspection of the emission control
20 devices and systems on the vehicle, thereby depriving the People of the State of California of the
21 protection afforded by the Motor Vehicle Inspection Program.

22 **THIRD CAUSE FOR DISCIPLINE**

23 (Failure to Comply with the Automotive Repair Act)

24 21. Respondent Liluma's registration is subject to denial under Code section
25 9884.7, subdivision (a)(2), in that on or about August 31, 2007, Respondent Liluma allowed the
26 operator to sign a work order that failed to state the repairs requested by the operator.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Work Order Requirements)

3 22. Respondent Liluma's registration is subject to disciplinary action pursuant
4 to Code section 9884.7, subdivision (a)(3), in that on or about August 31, 2007, Respondent
5 Liluma failed to provide the operator with a copy of the work order as soon as she signed the
6 document.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 (Failure to Comply with Code)

9 23. Respondent Liluma's registration is subject to disciplinary action pursuant
10 to Code section 9884.7, subdivision (a)(6), in that on or about August 31, 2007, Respondent
11 Liluma failed to comply with Code section 9884.9, subdivision (a) by failing to provide the
12 operator with a written estimated price for parts and labor for a specific job regarding the vehicle.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (Violations of the Motor Vehicle Inspection Program)

15 24. Respondent Liluma's station license is subject to disciplinary action
16 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
17 August 31, 2007, regarding the 1997 Chevrolet Astro, she failed to comply with provisions of
18 that Code, as follows:

19 a. **Section 44012, subdivision (f)**: Respondent Liluma failed to perform
20 emission control tests on the vehicle in accordance with procedures prescribed by the department.

21 b. **Section 44015, subdivision (b)**: Respondent Liluma issued electronic
22 Certificate of Compliance No. MU397077C for the vehicle without properly testing and
23 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section
24 44012.

25 c. **Section 44059**: Respondent Liluma willfully made false entries for
26 electronic Certificate of Compliance No. MU397077C, by certifying that the vehicle had been
27 inspected as required when, in fact, it had not.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 25. Respondent Liluma's station license is subject to disciplinary action
4 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about
5 August 31, 2007, regarding the 1997 Chevrolet Astro, she failed to comply with provisions of
6 California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c)**: Respondent Liluma falsely or
8 fraudulently issued electronic Certificate of Compliance No. MU397077C for the vehicle, in that
9 it could not pass the smog inspection because the vehicle's PCV system was missing.

10 b. **Section 3340.35, subdivision (c)**: Respondent Liluma issued electronic
11 Certificate of Compliance No. MU397077C for the vehicle, even though the vehicle had not been
12 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.42**: Respondent Liluma failed to conduct the required smog
14 tests on the vehicle in accordance with the Bureau's specifications.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 (Dishonesty, Fraud or Deceit)

17 26. Respondent Liluma's station license is subject to disciplinary action
18 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about
19 August 31, 2007, Respondent Liluma committed dishonest, fraudulent or deceitful acts whereby
20 another is injured by issuing electronic Certificate of Compliance No. MU397077C for the 1997
21 Chevrolet Astro without performing a bona fide inspection of the emission control devices and
22 systems on the vehicle, thereby depriving the People of the State of California of the protection
23 afforded by the Motor Vehicle Inspection Program.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 27. Respondent Sheraqa's technician license is subject to disciplinary action
4 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
5 August 31, 2007, regarding the 1997 Chevrolet Astro, he failed to comply with provisions of that
6 Code, as follows:

7 a. Section 44012, subdivision (f): Respondent Sheraqa failed to perform
8 emission control tests on the vehicle in accordance with procedures prescribed by the department.

9 b. Section 44032: Respondent Sheraqa failed to perform tests of the
10 emission control devices and systems on the vehicle in accordance with Health & Safety Code
11 section 44012.

12 c. Section 44059: Respondent Sheraqa willfully made false entries into the
13 Emission Inspection System ("EIS") for electronic Certificate of Compliance No. MU397077C
14 by entering "Pass" in the unit for the PCV system even though that system was missing from the
15 vehicle.

16 TENTH CAUSE FOR DISCIPLINE

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

18 28. Respondent Sheraqa's technician license is subject to disciplinary action
19 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about
20 August 31, 2007, regarding the 1997 Chevrolet Astro, he failed to comply with provisions of
21 California Code of Regulations, title 16, as follows:

22 a. Section 3340.30, subdivision (a): Respondent Sheraqa failed to inspect
23 and test the vehicle in accordance with procedures prescribed by Health & Safety Code sections
24 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

25 b. Section 3340.41, subdivision (c): Respondent Sheraqa entered false
26 information into the EIS unit by entering "Pass" in the unit for the PCV system even though that
27 system was missing from the vehicle.

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

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 (Dishonesty, Fraud or Deceit)

5 29. Respondent Sheraqa's technician license is subject to disciplinary action
6 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about
7 August 31, 2007, regarding the 1997 Chevrolet Astro, he committed dishonest, fraudulent or
8 deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No.
9 MU397077C for the vehicle without performing a bona fide inspection of the emission control
10 devices and systems on the vehicle, thereby depriving the People of the State of California of the
11 protection afforded by the Motor Vehicle Inspection Program.

12 **UNDERCOVER OPERATION - SEPTEMBER 17, 2007**

13 30. On September 17, 2007, a Bureau undercover operator using the alias
14 Lester McCoy ("operator") drove a Bureau-documented 1994 Ford Ranger, California License
15 Plate No. 5B57772, to Respondent Liluma's facility for a smog inspection. The vehicle could
16 not pass a smog inspection because the vehicle's PCV valve and hose were missing. Respondent
17 Sheraqa performed the smog inspection and issued electronic Certificate of Compliance
18 No. MU562043C, certifying that he had tested and inspected the vehicle and that the vehicle was
19 in compliance with applicable laws and regulations. In fact, the vehicle could not have passed
20 the visual portion of the smog inspection because the vehicle's PCV system was missing.
21 Respondent Liluma provided the operator with Invoice No. 2817 and a VIR.

22 **TWELFTH CAUSE FOR DISCIPLINE**

23 (Untrue or Misleading Statements)

24 31. Respondent Liluma's registration is subject to disciplinary action pursuant
25 to Code section 9884.7, subdivision (a)(1), in that on or about September 17, 2007, Respondent
26 Liluma made or authorized statements which she knew or in the exercise of reasonable care he
27 should have known to be untrue or misleading by issuing electronic Certificate of Compliance
28 No. MU562043C for the 1994 Ford Ranger, certifying that the vehicle was in compliance with

1 applicable laws and regulations. In fact, the vehicle could not have passed the smog inspection
2 because the vehicle's PCV system was missing.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

4 (Fraud)

5 32. Respondent Liluma's registration is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(4), in that on or about September 17, 2007, she
7 committed acts which constitute fraud by issuing electronic Certificate of Compliance No.
8 MU562043C for the 1994 Ford Ranger without performing a bona fide inspection of the
9 emission control devices and systems on the vehicle, thereby depriving the People of the State of
10 California of the protection afforded by the Motor Vehicle Inspection Program.

11 **FOURTEENTH CAUSE FOR DISCIPLINE**

12 (Violations of the Motor Vehicle Inspection Program)

13 33. Respondent Liluma's station license is subject to disciplinary action
14 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
15 September 17, 2007, regarding the 1994 Ford Ranger, she failed to comply with that Code, as
16 follows:

17 a. **Section 44012, subdivision (f)**: Respondent Liluma failed to perform
18 emission control tests on the vehicle in accordance with procedures prescribed by the department.

19 b. **Section 44015, subdivision (b)**: Respondent Liluma issued electronic
20 Certificate of Compliance No. MU562043C for the vehicle without properly testing and
21 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section
22 44012.

23 c. **Section 44059**: Respondent Liluma willfully made false entries for
24 electronic Certificate of Compliance No. MU562043C, by certifying that the vehicle had been
25 inspected as required when, in fact, it had not.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent Liluma's station license is subject to disciplinary action
4 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about
5 September 17, 2007, regarding the 1994 Ford Ranger, she failed to comply with provisions of
6 California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c)**: Respondent Liluma falsely or
8 fraudulently issued electronic Certificate of Compliance No. MU562043C for the vehicle, in that
9 it could not pass the smog inspection because the vehicle's PCV system was missing.

10 b. **Section 3340.35, subdivision (c)**: Respondent Liluma issued electronic
11 Certificate of Compliance No. MU562043C for the vehicle, even though the vehicle had not been
12 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.42**: Respondent Liluma failed to conduct the required smog
14 tests on the vehicle in accordance with the Bureau's specifications.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

16 (Dishonesty, Fraud or Deceit)

17 35. Respondent Liluma's station license is subject to disciplinary action
18 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about
19 September 17, 2007, Respondent Liluma committed dishonest, fraudulent or deceitful acts
20 whereby another is injured by issuing electronic Certificate of Compliance No. MU562043C for
21 the 1994 Ford Ranger without performing a bona fide inspection of the emission control devices
22 and systems on the vehicle, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

2 (Dishonesty, Fraud or Deceit)

3 38. Respondent Sheraqa's technician license is subject to disciplinary action
4 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about
5 September 17, 2007, regarding the 1994 Ford Ranger, he committed dishonest, fraudulent or
6 deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No.
7 MU562043C for the vehicle without performing a bona fide inspection of the emission control
8 devices and systems on the vehicle, thereby depriving the People of the State of California of the
9 protection afforded by the Motor Vehicle Inspection Program.

10 **UNDERCOVER OPERATION - OCTOBER 19, 2007**

11 39. On October 19, 2007, a Bureau undercover operator using the alias
12 Regina Diaz ("operator") drove a Bureau-documented 1991 Chevrolet Corsica, California
13 License Plate No. 2WAY626, to Respondent Liluma's facility for a smog inspection. The
14 vehicle could not pass a smog inspection because the vehicle's exhaust gas recirculation ("EGR")
15 system had been rendered inoperable. The operator signed a copy of the work order, however,
16 she was not provided with a copy of it. Respondent Jaffar performed the smog inspection and
17 issued electronic Certificate of Compliance No. MU907699C, certifying that he had tested and
18 inspected the vehicle and that the vehicle was in compliance with applicable laws and
19 regulations. In fact, the vehicle could not have passed the smog inspection test because the
20 vehicle's EGR system had been rendered inoperable. Respondent Liluma provided the operator
21 with Invoice No. 1783 and a VIR.

22 **TWENTIETH CAUSE FOR DISCIPLINE**

23 (Untrue or Misleading Statements)

24 40. Respondent Liluma's registration is subject to disciplinary action pursuant
25 to Code section 9884.7, subdivision (a)(1), in that on or about October 19, 2007, Respondent
26 Liluma made or authorized statements which she knew or in the exercise of reasonable care she
27 should have known to be untrue or misleading by issuing electronic Certificate of Compliance
28 No. MU907699C for the 1991 Chevrolet Corsica, certifying that the vehicle was in compliance

1 with applicable laws and regulations. In fact, the vehicle could not have passed the smog
2 inspection because the vehicle's EGR system had been rendered inoperable.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

4 (Fraud)

5 41. Respondent Liluma's registration is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(4), in that on or about October 19, 2007, she committed
7 acts which constitute fraud by issuing electronic Certificate of Compliance No. MU907699C for
8 the 1991 Chevrolet Corsica without performing a bona fide inspection of the emission control
9 devices and systems on the vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

12 (Work Order Requirements)

13 42. Respondent Liluma's registration is subject to disciplinary action pursuant
14 to Code section 9884.7, subdivision (a)(3), in that on or about October 19, 2007, Respondent
15 Liluma failed to provide the operator with a copy of the work order as soon as she signed the
16 document.

17 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

18 (Failure to Comply with Code)

19 43. Respondent Liluma's registration is subject to disciplinary action pursuant
20 to Code section 9884.7, subdivision (a)(6), in that on or about October 19, 2007, Respondent
21 Liluma failed to comply with Code section 9884.9, subdivision (a) by failing to provide the
22 operator with a written estimated price for parts and labor for a specific job regarding the vehicle.

23 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

24 (Violations of the Motor Vehicle Inspection Program)

25 44. Respondent Liluma's station license is subject to disciplinary action
26 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
27 October 19, 2007, regarding the 1991 Chevrolet Corsica, she failed to comply with that Code, as
28 follows:

1 a. **Section 44012, subdivision (f)**: Respondent Liluma failed to perform
2 emission control tests on the vehicle in accordance with procedures prescribed by the department.

3 b. **Section 44015, subdivision (b)**: Respondent Liluma issued electronic
4 Certificate of Compliance No. MU907699C for the vehicle without properly testing and
5 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section
6 44012.

7 c. **Section 44059**: Respondent Liluma willfully made false entries for
8 electronic Certificate of Compliance No. MU907699C, by certifying that the vehicle had been
9 inspected as required when, in fact, it had not.

10 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

12 45. Respondent Liluma's station license is subject to disciplinary action
13 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about
14 October 19, 2007, regarding the 1991 Chevrolet Corsica, she failed to comply with provisions of
15 California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c)**: Respondent Liluma falsely or
17 fraudulently issued electronic Certificate of Compliance No. MU907699C for the vehicle, in that
18 it could not pass the smog inspection because the vehicle's EGR system had been rendered
19 inoperable.

20 b. **Section 3340.35, subdivision (c)**: Respondent Liluma issued electronic
21 Certificate of Compliance No. MU907699C for the vehicle, even though the vehicle had not been
22 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

23 c. **Section 3340.42**: Respondent Liluma failed to conduct the required smog
24 tests on the vehicle in accordance with the Bureau's specifications.

25 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

26 (Dishonesty, Fraud or Deceit)

27 46. Respondent Liluma's station license is subject to disciplinary action
28 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about

1 October 19, 2007, Respondent Liluma committed dishonest, fraudulent or deceitful acts whereby
2 another is injured by issuing electronic Certificate of Compliance No. MU907699C for the 1991
3 Chevrolet Corsica without performing a bona fide inspection of the emission control devices and
4 systems on the vehicle, thereby depriving the People of the State of California of the protection
5 afforded by the Motor Vehicle Inspection Program.

6 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

7 (Violations of the Motor Vehicle Inspection Program)

8 47. Respondent Jaffar's technician license is subject to disciplinary action
9 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
10 October 19, 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of
11 that Code, as follows:

12 a. **Section 44012, subdivision (f)**: Respondent Jaffar failed to perform
13 emission control tests on the vehicle in accordance with procedures prescribed by the department.

14 b. **Section 44032**: Respondent Jaffar failed to perform tests of the emission
15 control devices and systems on the vehicle in accordance with Health & Safety Code section
16 44012.

17 c. **Section 44059**: Respondent Jaffar willfully made false entries into the
18 EIS for electronic Certificate of Compliance No. MU907699C by entering "Pass" in the unit for
19 the EGR system even though that system had been rendered inoperable.

20 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

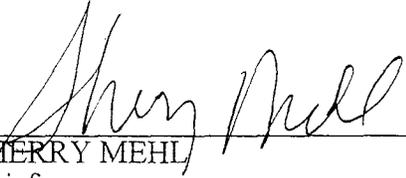
22 48. Respondent Jaffar's technician license is subject to disciplinary action
23 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about
24 October 19, 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of
25 California Code of Regulations, title 16, as follows:

26 a. **Section 3340.30, subdivision (a)**: Respondent Jaffar failed to inspect and
27 test the vehicle in accordance with procedures prescribed by Health & Safety Code sections
28 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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- 7. Revoking or suspending Advanced Emission Specialist Technician Number EA 151410, issued to Sajjad Khan Jaffar;
- 8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Sajjad Khan Jaffar;
- 9. Revoking or suspending Brake Adjuster License Number JC 151410 C, issued to Sajjad Khan Jaffar;
- 10. Revoking or suspending any additional license issued under this chapter in the name of Sajjad Khan Jaffar;
- 11. Ordering Liluma Bayanzay, Jaffar Bayanzay, and Sajjad Khan Jaffar to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 12. Taking such other and further action as deemed necessary and proper.

DATED: 8/25/08



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

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