

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON, State Bar No. 161032
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-5558
Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 BROADWAY SMOG STATION
ESER ATES, OWNER
288 28th Street
Oakland, CA 94611

14 Automotive Repair Dealer Reg. No. AL 236372
Smog Check, Test Only, Station License
15 No. TL 236372

16 and

17 ESER ATES
288 28th Street
18 Oakland, CA 94611

19 Advanced Emission Specialist Technician
20 License No. EA 147038

21 Respondent.

Case No. 79/07-38

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]



22 FINDINGS OF FACT

23 1. On or about January 19, 2007, Complainant Sherry Mehl, in her official
24 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs,
25 filed Accusation No. 79/07-38 against Broadway Smog Station and Eser Ates (Respondents)
26 before the Director of Consumer Affairs.

27 2. On or about December 1, 2004, the Bureau of Automotive Repair (Bureau)
28 issued Automobile Repair Dealer Registration No. AL236372 to Respondent. The Automobile

1 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought
2 herein and expired on November 30, 2006.

3 3. On or about December 3, 2004, the Bureau of Automotive Repair issued
4 Smog Check Test Only Station License No. TL236372 to Respondent. The Smog Check Test
5 Only Station License was in full force and effect at all times relevant to the charges brought
6 herein and expired on November 30, 2006.

7 4. On or about June 12, 2003, the Bureau of Automotive Repair issued
8 Advanced Emission Specialist Technician License No. EA147038 to Respondent. The
9 Advanced Emission Specialist Technician License was in full force and effect at all times
10 relevant to the charges brought herein and expired on September 30, 2007.

11 5. On or about January 30, 2007, Anh Ho, an employee of the Department of
12 Justice, served by First Class Mail a copy of the Accusation No. 79/07-38, Statement to
13 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
14 11507.6, and 11507.7 to Respondent's address of record with the Bureau, which was and is:
15 288 28th Street
16 Oakland, CA 94611

17 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

18 6. Service of the Accusation was effective as a matter of law under the
19 provisions of Business and Professions Code section 124.

20 7. Thereafter, the aforementioned documents were returned by the U.S.
21 Postal Service marked "Attempted, Not Known."

22 8. Government Code section 11506 states, in pertinent part:

23 (c) The respondent shall be entitled to a hearing on the merits if the
24 respondent files a notice of defense, and the notice shall be deemed a specific
25 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

26 9. Respondent failed to file a Notice of Defense within 15 days after service
27 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
28 Accusation No. 79/07-38.

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10. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

11. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. 79/07-38 are true.

12. The total cost for investigation and enforcement in connection with the Accusation are \$24,377.95 as of July 1, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Eser Ates has subjected his Automobile Repair Dealer Registration No. AL236372, Smog Check Test Only Station License No. TL 236372, and Advanced Emission Specialist Technician License No. EA 147038 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Director of Consumer Affairs is authorized to revoke Respondent's Automobile Repair Dealer Registration, Smog Check Test Only Station License, and Advanced Emission Specialist Technician License, based upon the following violations alleged in the Accusation:

a. Untrue or Misleading Statements (Business and Professions Code section 9884.7(a)(1)); Fraud (Business and Professions Code section 9884.7(a)(4)); Violations of the Motor Vehicle Inspection Program (Health and Safety Code section 44072.2); Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program (Health and Safety Code section 44072.2); Dishonesty, Fraud and Deceit (Health and Safety Code section 44072.2(d)).

1 EDMUND G. BROWN JR., Attorney General
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Supervising Deputy Attorney General
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Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480

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

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11

12 In the Matter of the Accusation Against:

Case No. 79/07-38

13 BROADWAY SMOG STATION
ESER ATES, OWNER
14 288 28th Street
Oakland, CA 94611

ACCUSATION

15 Automotive Repair Dealer Reg. No. AL 236372
16 Smog Check, Test Only, Station License
No. TL 236372

17

and

18

19 ESER ATES
288 28th Street
Oakland, CA 94611

20

Advanced Emission Specialist Technician
21 License No. EA 147038

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Respondents.

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24 Complainant alleges:

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PARTIES

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

1 **Automotive Repair Dealer Reg. No. AL 236372**

2 2. On or about December 1, 2004, the Director of Consumer Affairs
3 ("Director") issued Automotive Repair Dealer Registration Number AL 236372 to Eser Ates
4 ("Respondent"), owner of Broadway Smog Station. Respondent's automotive repair dealer
5 registration was in full force and effect at all times relevant to the charges brought herein and
6 expired on November 30, 2006.

7 **Smog Check, Test Only, Station License No. TL 236372**

8 3. On or about December 3, 2004, the Director issued Smog Check, Test
9 Only, Station License Number TL 236372 to Respondent. Respondent's smog check station
10 license was in full force and effect at all times relevant to the charges brought herein and expired
11 on November 30, 2006.

12 **Advanced Emission Specialist Technician License No. EA 147038**

13 4. On or about June 12, 2003, the Director issued Advanced Emission
14 Specialist Technician License Number EA 147038 to Respondent. Respondent's advanced
15 emission specialist technician license was in full force and effect at all times relevant to the
16 charges brought herein and will expire on September 30, 2007, unless renewed.

17 **JURISDICTION**

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

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

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

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

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

3 **STATUTORY PROVISIONS**

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

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

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

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17 (4) Any other conduct which constitutes fraud.

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

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

11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

. . . .

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

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

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

8 **Cost Recovery**

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

13 **RECORDED SURVEILLANCE OPERATION OF JULY 20, 2006**

14 14. On July 20, 2006, a representative of the Bureau conducted a recorded
15 surveillance operation at Respondent's smog check station, using two video cameras and two
16 time lapse video recorders. The Bureau determined through the surveillance operation and
17 information obtained from the Bureau's Vehicle Information Database ("VID") that Respondent
18 issued electronic smog certificates of compliance, certifying that he had tested and inspected the
19 vehicles identified below and that the vehicles were in compliance with applicable laws and
20 regulations. In fact, Respondent conducted the inspections using clean-piping methods^{1/},
21 resulting in the issuance of fraudulent certificates of compliance for the vehicles. Further, the
22 vehicles were not present at the smog check station during the time the inspections were
23 conducted. On August 8, 2006, representatives of the Bureau went to the smog check station and
24 obtained invoices and vehicle inspection reports relating to smog inspections conducted at the
25 facility in July 2006, including the vehicle inspection reports and invoices pertaining to the
26 inspections identified below.

27 1. Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means the use of a
28 sample of the exhaust emissions of one vehicle in order to cause the Test Analyzer System or Emissions
Inspection System to issue a certificate of compliance for another vehicle.

Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle Actually Tested
1. 15:11 - 15:17	1985 Nissan Sentra; License # 3AXY593	HA410437C	Light blue Volvo 4-door sedan; License #3BFW541 ²
2. 15:22-15:35	1993 Toyota Corolla; License #4WWV578	HA410438C	Same vehicle as above

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

15. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew, or in the exercise of reasonable care should have known to be untrue or misleading. Respondent certified under penalty of perjury on the vehicle inspection reports for vehicles 1 and 2, identified in paragraph 14 above, that he conducted the smog inspections in accordance with all Bureau requirements and that the vehicles had passed the inspections and were in compliance with applicable laws and regulations. In fact, Respondent 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.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

16. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud. Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 14 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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2. The Bureau determined from Department of Motor Vehicles records that the vehicle was registered to Respondent.

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 17. Respondent's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with the following sections of that Code:

- 6 a. **Section 44012:** Respondent failed to perform emission control tests on
7 the vehicles identified in paragraph 14 above in accordance with
8 procedures prescribed by the department.
- 9 b. **Section 44015:** Respondent issued electronic smog certificates of
10 compliance for vehicles 1 and 2, identified in paragraph 14 above, without
11 properly testing and inspecting the vehicles to determine if they were in
12 compliance with Health & Saf. Code section 44012.
- 13 c. **Section 44059:** Respondent willfully made false entries on the vehicle
14 inspection reports, as set forth in paragraph 15 above.

15 **FOURTH CAUSE FOR DISCIPLINE**

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

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

- 21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
22 issued electronic smog certificates of compliance for vehicles
23 1 and 2, identified in paragraph 14 above.
- 24 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
25 certificates of compliance for vehicles 1 and 2, identified in paragraph 14
26 above, even though those vehicles had not been inspected in
27 accordance with California Code of Regulations, title 16, section 3340.42.

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1 c. **Section 3340.41, subdivision (c)**: Respondent entered false information
2 into the Emissions Inspection System ("EIS") unit by entering vehicle
3 identification information or emission control system identification data
4 for vehicles other than the ones being tested.

5 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on
6 vehicles 1 and 2, identified in paragraph 14 above, in accordance with the
7 Bureau's specifications.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 19. Respondent's smog check station license is subject to disciplinary action
11 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
12 dishonest, fraudulent or deceitful acts whereby another is injured, as set forth in paragraph 16
13 above.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

16 20. Respondent's advanced emission specialist technician license is subject to
17 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
18 Respondent failed to comply with the following sections of that Code:

19 a. **Section 44012**: Respondent failed to perform emission control tests on
20 vehicles 1 and 2, identified in paragraph 14 above, in accordance with
21 procedures prescribed by the department.

22 b. **Section 44059**: Respondent willfully made false entries on the vehicle
23 inspection reports, as set forth in paragraph 15 above.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

27 21. Respondent's advanced emission specialist technician license is subject to
28 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that

1 Respondent failed to comply with the following sections of California Code of Regulations, title
2 16:

- 3 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently
4 issued electronic smog certificates of compliance for vehicles
5 1 and 2, identified in paragraph 14 above.
- 6 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test
7 vehicles 1 and 2, identified in paragraph 14 above, in accordance with
8 Health & Saf. Code sections 44012 and 44035, and California Code of
9 Regulations, title 16, section 3340.42.
- 10 c. **Section 3340.41, subdivision (c)**: Respondent entered false
11 information into the EIS unit by entering vehicle identification
12 information or emission control system identification data for vehicles
13 other than the ones being tested.
- 14 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on
15 vehicles 1 and 2, identified in paragraph 14 above, in accordance with the
16 Bureau's specifications.

17 **EIGHTH CAUSE FOR DISCIPLINE**
18 **(Dishonesty, Fraud or Deceit)**

19 22. Respondent's advanced emission specialist technician license is subject to
20 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
21 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
22 forth in paragraph 16 above.

23 **RECORDED SURVEILLANCE OPERATION OF JULY 21, 2006**

24 23. On July 21, 2006, a representative of the Bureau conducted a recorded
25 surveillance operation at Respondent's smog check station, using two video cameras and two
26 time lapse video recorders. The Bureau determined through the surveillance operation and
27 information obtained from the Bureau's VID that Respondent issued electronic smog certificates
28 of compliance, certifying that he had tested and inspected the vehicles identified below and that

1 the vehicles were in compliance with applicable laws and regulations. In fact, Respondent
2 conducted the inspections using clean-piping methods, resulting in the issuance of fraudulent
3 certificates of compliance for the vehicles. Further, the vehicles were not present at the smog
4 check station during the time the inspections were conducted.

5 Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle Actually Tested
6 3. 16:06-16:19	1989 Honda Accord; License #2RDB196	HA410448C	Green Toyota Camry; License #3TJK871
8 4. 16:22-16:29	1989 Cadillac Deville; License #2LKT891	HA410449C	Same vehicle as above

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10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 24. Respondent's automotive repair dealer registration is subject to
13 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
14 Respondent made statements which he knew, or in the exercise of reasonable care should have
15 known to be untrue or misleading. Respondent certified under penalty of perjury on the vehicle
16 inspection reports for vehicles 3 and 4, identified in paragraph 23 above, that he conducted the
17 smog inspections in accordance with all Bureau requirements and that the vehicles had passed
18 the inspections and were in compliance with applicable laws and regulations. In fact,
19 Respondent used clean-piping methods in order to issue certificates for the vehicles and did not
20 test or inspect the vehicles as required by Health & Saf. Code section 44012.

21 **TENTH CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 25. Respondent's automotive repair dealer registration is subject to
24 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
25 Respondent committed acts which constitute fraud. Respondent issued electronic smog
26 certificates of compliance for vehicles 3 and 4, identified in paragraph 23 above, without
27 performing bona fide inspections of the emission control devices and systems on the vehicles,

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

3 **ELEVENTH CAUSE FOR DISCIPLINE**

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

5 26. Respondent's smog check station license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
7 comply with the following sections of that Code:

- 8 a. **Section 44012:** Respondent failed to perform emission control tests on
9 the vehicles identified in paragraph 23 above in accordance with
10 procedures prescribed by the department.
- 11 b. **Section 44015:** Respondent issued electronic smog certificates of
12 compliance for vehicles 3 and 4, identified in paragraph 23 above, without
13 properly testing and inspecting the vehicles to determine if they were in
14 compliance with Health & Saf. Code section 44012.
- 15 c. **Section 44059:** Respondent willfully made false entries on the vehicle
16 inspection reports, as set forth in paragraph 24 above.

17 **TWELFTH CAUSE FOR DISCIPLINE**

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

20 27. Respondent's smog check station license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
22 comply with the following sections of California Code of Regulations, title 16:

- 23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
24 issued electronic smog certificates of compliance for vehicles
25 3 and 4, identified in paragraph 23 above.
- 26 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
27 certificates of compliance for vehicles 3 and 4, identified in paragraph 23

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above, even though those vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

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

d. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 3 and 4, identified in paragraph 23 above, in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

28. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set forth in paragraph 25 above.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

29. Respondent's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012**: Respondent failed to perform emission control tests on vehicles 3 and 4, identified in paragraph 23 above, in accordance with procedures prescribed by the department.

b. **Section 44059**: Respondent willfully made false entries on the vehicle inspection reports, as set forth in paragraph 24 above.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

4 30. Respondent's advanced emission specialist technician license is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
6 Respondent failed to comply with the following sections of California Code of Regulations, title
7 16:

- 8 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently
9 issued electronic smog certificates of compliance for vehicles
10 3 and 4, identified in paragraph 23 above.
- 11 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test
12 vehicles 3 and 4, identified in paragraph 23 above, in accordance with
13 Health & Saf. Code sections 44012 and 44035, and California Code of
14 Regulations, title 16, section 3340.42.
- 15 c. **Section 3340.41, subdivision (c)**: Respondent entered false
16 information into the EIS unit by entering vehicle identification
17 information or emission control system identification data for vehicles
18 other than the ones being tested.
- 19 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on
20 vehicles 3 and 4, identified in paragraph 23 above, in accordance with the
21 Bureau's specifications.

22 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

24 31. Respondent's advanced emission specialist technician license is subject to
25 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
26 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
27 forth in paragraph 25 above.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 34. Respondent'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. Respondent issued electronic smog
6 certificates of compliance for vehicles 5 through 7, identified in paragraph 32 above, without
7 performing bona fide inspections of the emission control devices and systems on the vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **NINETEENTH CAUSE FOR DISCIPLINE**

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

12 35. Respondent's smog check station license is subject to disciplinary action
13 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
14 comply with the following sections of that Code:

- 15 a. **Section 44012:** Respondent failed to perform emission control tests on
16 the vehicles identified in paragraph 32 above in accordance with
17 procedures prescribed by the department.
- 18 b. **Section 44015:** Respondent issued electronic smog certificates of
19 compliance for vehicles 5 through 7, identified in paragraph 32 above,
20 without properly testing and inspecting the vehicles to determine if they
21 were in compliance with Health & Saf. Code section 44012.
- 22 c. **Section 44059:** Respondent willfully made false entries on the vehicle
23 inspection reports, as set forth in paragraph 33 above.

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1 TWENTIETH CAUSE FOR DISCIPLINE

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

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

- 7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently
8 issued electronic smog certificates of compliance for vehicles
9 5 through 7, identified in paragraph 32 above.
- 10 b. Section 3340.35, subdivision (c): Respondent issued electronic smog
11 certificates of compliance for vehicles 5 through 7, identified in paragraph
12 32 above, even though those vehicles had not been inspected in
13 accordance with California Code of Regulations, title 16, section 3340.42.
- 14 c. Section 3340.41, subdivision (c): Respondent entered false information
15 into the EIS unit by entering vehicle identification information or emission
16 control system identification data for vehicles other than the ones being
17 tested.
- 18 d. Section 3340.42: Respondent failed to conduct the required smog tests on
19 vehicles 5 through 7, identified in paragraph 32 above, in accordance with
20 the Bureau's specifications.

21 TWENTY-FIRST CAUSE FOR DISCIPLINE

22 (Dishonesty, Fraud or Deceit)

23 37. Respondent's smog check station license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
25 dishonest, fraudulent or deceitful acts whereby another is injured, as set forth in paragraph 34
26 above.

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1 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
2 vehicles 5 through 7, identified in paragraph 32 above, in accordance with
3 the Bureau's specifications.

4 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

6 40. Respondent's advanced emission specialist technician license is subject to
7 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
8 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, as set
9 forth in paragraph 34 above.

10 **DISCIPLINE CONSIDERATIONS**

11 41. To determine the degree of discipline, if any, to be imposed on
12 Respondent, Complainant alleges as follows:

13 a. On or about November 18, 2005, the Bureau issued Citation No. C06-
14 0260 against Respondent, as owner of Broadway Smog Station, for violations of Health & Saf.
15 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
16 control devices according to procedures prescribed by the department), and California Code of
17 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
18 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
19 compliance to a Bureau undercover vehicle that had a tampered emission control system (the fuel
20 evaporative canister was missing). The Bureau assessed civil penalties totaling \$500 against
21 Respondent for the violations. Respondent complied with the citation on December 29, 2005.

22 b. On or about November 18, 2005, the Bureau issued Citation No. M06-
23 0261 against Respondent's advanced emission specialist technician license for violations of
24 Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control
25 systems and devices in accordance with Health & Saf. Code section 44012) and Regulation
26 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
27 accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42).
28 Respondent had issued a certificate of compliance to a Bureau undercover vehicle that had a

1 tampered emission control system, as set forth in subparagraph (a) above. Respondent was
2 directed to complete an 8 hour training course, with proof of completion submitted to the Bureau
3 within thirty (30) days from receipt of the citation. Respondent complied with the citation on
4 January 21, 2006.

5 c. On or about March 29, 2006, the Bureau issued Citation No. C06-0607
6 against Respondent, as owner of Broadway Smog Station, for violations of Health & Saf. Code
7 section 44012, subdivision (f) (failure to determine that emission control devices and systems
8 required by State and Federal law are installed and functioning correctly in accordance with test
9 procedures) and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a
10 vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
11 Bureau undercover vehicle that had a tampered emission control system (the ignition timing was
12 not set to manufacturer's specifications). The Bureau assessed civil penalties totaling \$1,000
13 against Respondent for the violations. Respondent complied with the citation on April 17, 2006.

14 d. On or about March 29, 2006, the Bureau issued Citation No. M06-0608
15 against Respondent's advanced emission specialist technician license for violations of Health &
16 Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems
17 and devices in accordance with Health & Saf. Code section 44012) and Regulation 3340.30,
18 subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with
19 Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued
20 a certificate of compliance to a Bureau undercover vehicle that had a tampered emission control
21 system, as set forth in subparagraph (c) above. Respondent was directed to complete a 16 hour
22 training course, with proof of completion submitted to the Bureau within thirty (30) days from
23 receipt of the citation. Respondent complied with the citation on May 15, 2006.

24 **OTHER MATTERS**

25 42. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
26 Director may invalidate temporarily or permanently, the registrations for all places of business
27 operated in this state by Respondent Eser Ates, owner of Broadway Smog Station, upon a finding

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1 that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws
2 and regulations pertaining to an automotive repair dealer.

3 43. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
4 License Number TL 236372, issued to Respondent Eser Ates, owner of Broadway Smog Station,
5 is revoked or suspended, any additional license issued under this chapter in the name of said
6 licensee may be likewise revoked or suspended by the Director.

7 44. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission
8 Specialist Technician License Number EA 147038, issued to Respondent Eser Ates, is revoked
9 or suspended, any additional license issued under this chapter in the name of said licensee may
10 be likewise revoked or suspended by the Director.

11 **PRAYER**

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

14 1. Temporarily or permanently invalidating Automotive Repair Dealer
15 Registration Number AL 236372, issued to Eser Ates, owner of Broadway Smog Station;

16 2. Temporarily or permanently invalidating any other automotive repair
17 dealer registration issued to Eser Ates;

18 3. Revoking or suspending Smog Check Station License Number TL 236372,
19 issued to Eser Ates, owner of Broadway Smog Station;

20 4. Revoking or suspending Advanced Emission Specialist Technician
21 License Number EA 147038, issued to Eser Ates,

22 5. Revoking or suspending any additional license issued under Chapter 5 of
23 the Health and Safety Code in the name of Eser Ates;

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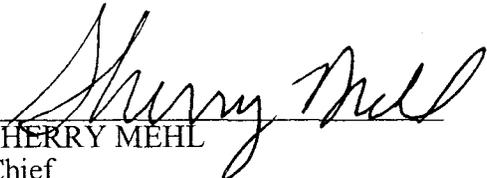
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6. Ordering Respondent Eser Ates, individually, and as owner of Broadway Smog Station, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

7. Taking such other and further action as deemed necessary and proper.

DATED: 1/19/2007.



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

Complainant