

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

In the Matter of the Accusation Against:

C&F SMOG, SUSAN K. FREASE

1807 S. Chester Avenue
Bakersfield, CA 93304
Automotive Repair Dealer Registration No.
ARD 241840
Smog Check, Test Only, Station License No.
TC 241840,

and

TONY JOHN CERDA

2109 Westhaven Dr.
Bakersfield, CA 93304
Smog Check Inspector License No.
EO 150678
Smog Check Repair Technician License No.
EI 150678 (was redesignated upon renewal
from EA 150678 to EO 150678 and EI 150687)

Case No. 79/14-21

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order As To Respondent C & F Smog, Susan K. Frease Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Susan K. Frease, C & F Smog, Automotive Repair Dealer Registration No. ARD 241840, and Smog Check, Test Only, Station License No. TC 241840.

The suspension of Automotive Repair Dealer Registration No. ARD 241840 and Smog Check, Test Only, Station License No. TC 241840 shall commence on the effective date of this Decision.

This Decision shall become effective April 15, 2014.

DATED: MAR 18 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
4 State Bar No. 274129
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
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:

Case No. 79/14-21

13 **C & F SMOG**
14 **SUSAN K. FREASE, OWNER**
15 **1805 S. Chester Avenue**
16 **Bakersfield, CA 93304**
17 **Automotive Repair Dealer Reg. No. ARD**
18 **241840**
19 **Smog Check Test Only Station License No.**
20 **TC 241840,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT C & F SMOG, SUSAN K.
FREASE ONLY

21 and

22 **TONY JOHN CERDA**
23 **2109 Westhaven Dr.**
24 **Bakersfield, CA 93304**
25 **Smog Check Inspector License No. EO**
26 **150678 Smog Check Repair Technician**
27 **License No. EI 150678 (was redesignated**
28 **upon renewal from EA150678 to EO 150678**
and EI 150678)

Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between the parties¹ to the above-entitled proceedings that the following matters are true:

¹ The parties in this Stipulated Settlement are the Bureau of Automotive Repair and Respondent C & F Smog, Susan K. Frease only. Respondent Tony John Cerda is not a party to this settlement.

1 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
2 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
3 maintaining compliance with the terms and conditions of probation.

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

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

10 **8. Jurisdiction.** If an accusation or petition to revoke probation is filed against
11 Respondent during the term of probation, the Director of Consumer Affairs shall have continuing
12 jurisdiction over this matter until the final decision on the accusation, and the period of probation
13 shall be extended until such decision.

14 **9. Violation of Probation.** Should the Director of Consumer Affairs determine that
15 Respondent has failed to comply with the terms and conditions of probation, the Department may,
16 after giving notice and opportunity to be heard temporarily or permanently invalidate
17 Respondent's Registration and suspend or revoke Respondent's Station License.

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

23 **11. Cost Recovery.** Respondent shall pay to the Bureau, pursuant to Business and
24 Professions Code section 125.3, the costs of investigation and enforcement in this matter in the
25 amount of \$8,125.54. Payment to the Bureau shall be made in 24 equal installments, with the
26 final payment due no later than 12 months before probation terminates. Failure to complete
27 payment of cost recovery within this time frame shall constitute a violation of probation which
28 may subject Respondent's Station License and Registration to outright revocation. However, the

1 Director or the Director's Bureau of Automotive Repair designee may elect to continue probation
2 until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

3 ACCEPTANCE

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

9
10 DATED: 2-7-14 Susan K. Frease
11 C&F SMOG, SUSAN K. FREASE
12 Respondent

13 ENDORSEMENT

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

16
17 Dated: 2/10/14 Respectfully submitted,
18 KAMALA D. HARRIS
19 Attorney General of California
20 MARC D. GREENBAUM
21 Supervising Deputy Attorney General
22 Zachary T. Fanselow
23 ZACHARY T. FANSELOW
24 Deputy Attorney General
25 Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-21

1 KAMALA D. HARRIS
Attorney General of California
2 Marc D. Greenbaum
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/14-21

13 **C & F SMOG**
14 **SUSAN K. FREASE, OWNER**
1805 S. Chester Avenue
Bakersfield, CA 93304
15 Automotive Repair Dealer Reg. No. ARD 241840
16 Smog Check Test Only Station License No. TC
241840,

ACCUSATION

(Smog Check)

17 and

18 **TONY JOHN CERDA**
19 2109 Westhaven Dr.
Bakersfield, CA 93304
20 Smog Check Inspector License No. EO 150678
21 Smog Check Repair Technician License No. EI
150678 (was redesignated upon renewal from
22 EA150678 to EO 150678 and EI 150678)

Respondents.

24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

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

1 **C & F SMOG; Susan K. Frease, Owner**

2 2. On or about October 14, 2005, the Director of Consumer Affairs ("Director") issued
3 Automotive Repair Dealer Registration Number ARD 241840 ("registration") to Susan K. Frease
4 ("Respondent Frease"), owner of C & F SMOG. Respondent's registration was in full force and
5 effect at all times relevant to the charges brought herein and will expire on October 31, 2013,
6 unless renewed.

7 3. On or about October 27, 2005, the Director issued Smog Check Test Only Station
8 License Number TC 241840 ("smog check station license") to Respondent Frease. Respondent's
9 smog check station license was in full force and effect at all times relevant to the charges brought
10 herein and will expire on October 31, 2013, unless renewed.

11 **Tony John Cerda**

12 4. In or about 2005, the Director issued Advanced Emission Specialist Technician
13 License Number EA 150678 ("technician license") to Tony John Cerda ("Respondent Cerda").
14 Upon timely renewal of the license, the licenses were re-designated as EO 150678 and EI
15 150678¹ ("technician licenses"). Respondent's technician licenses were in full force and effect at
16 all times relevant to the charges brought herein and will expire on April 30, 2015, unless renewed.

17 **JURISDICTION**

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

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

24
25
26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

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

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

7

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

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

12

13 (f) Aids or abets unlicensed persons to evade the provisions of this
14 chapter . . .

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

16

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

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

22

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

25 **REGULATORY PROVISIONS**

26 14. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),
27 states:

28 "The bureau may suspend or revoke the license of or pursue other legal action against a
licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
certificate of noncompliance."

15. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section

1 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
2 3340.42 of this article.”

3 16. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
4 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
5 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
6 this article and has all the required emission control equipment and devices installed and
7 functioning correctly.”

8 17. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall enter into
9 the emissions inspection system any vehicle identification information or emission control system
10 identification data for any vehicle other than the one being tested. Nor shall any person
11 knowingly enter into the emissions inspection system any false information about the vehicle
12 being tested.”

13 18. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
14 procedures which apply to all vehicles inspected in the State of California.

15 19. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
16 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
17 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
18 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

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

22 **COST RECOVERY**

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

27 ///

28 ///

1 VIDEO SURVEILLANCE OPERATION OF NOVEMBER 10, 2012

2 22. Between November 10, 2012 and November 19, 2012, representatives of the Bureau
3 conducted a video surveillance operation of Respondent Frease's smog check facility. The
4 surveillance video and information obtained from the Bureau's vehicle information database
5 ("VID") showed that Respondent Cerda employed a method commonly known as clean piping²
6 during the following smog inspections, resulting in the issuance of fraudulent certificates of
7 compliance for the following vehicles:

8 Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
9 1. 11/12/2012 11:43-11:51	1997 Honda Civic;	XN656769C
10 2. 11/13/2012 09:02-09:08	2006 Dodge Charger; License No. 3QCX753	XN656773C
11 3. 11/13/2012 14:53-14:58	2002 Chrysler Concorde License No. 6KSW707	XN656783C
12 4. 11/14/2012 11:55-12:00	1991 GMC C3500 Sierra License No. 4Y98087	XN656793C
13 5. 11/14/2012 12:03-12:09	1998 Chevrolet C1500 Suburban License No. 6HAX522	XN656794C
14 6. 11/14/2012 12:13-12:19	1998 Ford Expedition License No. 3XLF349	XN656795C
15 7. 11/14/2012 12:23-12:33	1979 Chevrolet El Camino License No. 1R83450	XN656796C
16 8. 11/15/2012 10:05-10:19	1995 Nissan Maxima License No. 3KFL207	XN656800C
17 9. 11/15/2012 10:23-10:30	1998 Nissan Quest License No. 5KKA182	XN756751C
18 10. 11/15/2012 10:50-10:56	1997 Honda Accord License No. 6FEV009	XN756753C
19 11. 11/15/2012 11:25-11:35	2003 Mitsubishi Lancer License No. 6HYA922	XN756754C
20 12. 11/16/2012 08:28-08:38	1992 Mercedes 500SL License No. 3CGD131	XN756763C
21 13. 11/17/2012 15:12-15:18	2001 Chevrolet C1500 Tahoe License No. 4NGT401	XN756779C

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26
27 ² Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),
28 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to
cause the EIS to issue a certificate of compliance for another vehicle.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 23. Respondent Frease's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement
5 which she knew or in the exercise of reasonable care should have known to be untrue or
6 misleading, as follows: Respondent Frease's inspector, Respondent Cerda, certified that the
7 vehicles identified in paragraph 22 above had passed inspection and were in compliance with
8 applicable laws and regulations. In fact, Respondent Cerda used clean piping methods in order to
9 issue certificates for those vehicles and did not test or inspect the vehicles as required by Health
10 & Saf. Code section 44012.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 24. Respondent Frease's registration is subject to disciplinary action pursuant to Bus. &
14 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
15 constitutes fraud by issuing electronic smog certificates of compliance for the vehicles identified
16 above in paragraph 22 without ensuring that a bona fide inspection was performed of the emission
17 control devices and systems on the vehicles, thereby depriving the People of the State of
18 California of the protection afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

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

21 25. Respondent Frease's smog check station license is subject to disciplinary action
22 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
23 comply with provisions of that Code, as follows:

24 a. **Section 44012:** Respondent Cerda failed to ensure that emission control tests were
25 performed on the vehicles identified above in paragraph 22 in accordance with procedures
26 prescribed by the department.

27 b. **Section 44015:** Respondent Cerda issued an electronic smog certificate of
28 compliance for the vehicles identified above in paragraph 22 without ensuring that the vehicles

1 were properly tested and inspected to determine if they were in compliance with Health & Saf.
2 Code section 44012.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

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

9 a. **Section 3340.24, subdivision (c)**: Respondent Cerda falsely or fraudulently issued
10 electronic smog certificates of compliance for the vehicles identified in paragraph 22 above.

11 b. **Section 3340.35, subdivision (c)**: Respondent Cerda issued electronic smog
12 certificates of compliance for the vehicles identified in paragraph 22 above even though the
13 vehicles had not been inspected in accordance with section 3340.42.

14 c. **Section 3340.41, subdivision (c)**: Respondent Frease authorized or permitted her
15 inspector, Respondent Cerda, to enter false information into the EIS by entering vehicle
16 identification information or emission control system identification data for a vehicle other than
17 the one being tested.

18 d. **Section 3340.42**: Respondent Cerda failed to ensure that the required smog tests
19 were conducted on the vehicles identified in paragraph 22 above in accordance with the Bureau's
20 specifications.

21 **FIFTH CAUSE FOR DISCIPLINE**

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

23 27. Respondent Frease'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 a
25 dishonest, fraudulent or deceitful act whereby another is injured by issuing electronic smog
26 certificates of compliance for the vehicles identified in paragraph 22 without ensuring that a bona
27 fide inspection was performed of the emission control devices and systems on the vehicles,
28 thereby depriving the People of the State of California of the protection afforded by the Motor

1 Vehicle Inspection Program.

2 **SIXTH CAUSE FOR DISCIPLINE**

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

4 28. Respondent Cerda's technician licenses are subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
6 provisions of that Code, as follows:

7 a. **Section 44012:** Respondent Cerda failed to perform the emission control tests on the
8 vehicles identified in paragraph 22 above in accordance with procedures prescribed by the
9 department.

10 b. **Section 44059:** Respondent Cerda willfully made false entries in the EIS, resulting in
11 the issuance of fraudulent certificates of compliance for the vehicles identified in paragraph 22
12 above.

13 **SEVENTH CAUSE FOR DISCIPLINE**

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

16 29. Respondent Cerda's technician licenses are subject to disciplinary action pursuant to
17 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
18 provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.24, subdivision (c):** Respondent Cerda falsely or fraudulently issued
20 electronic smog certificates of compliance for the vehicles identified in paragraph 22 above.

21 b. **Section 3340.30, subdivision (a):** Respondent Cerda failed to inspect and test the
22 vehicles identified in paragraph 22 above in accordance with Health & Saf. Code sections 44012
23 and 44035, and California Code of Regulations, title 16, section 3340.42.

24 c. **Section 3340.41, subdivision (c):** Respondent Cerda entered false information into
25 the EIS by entering vehicle identification information or emission control system identification
26 data for a vehicle other than the one being tested.

27 d. **Section 3340.42:** Respondent Cerda failed to conduct the required smog tests on the
28 vehicles identified in paragraph 22 above in accordance with the Bureau's specifications.

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 30. Respondent Cerda's technician licenses are subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
5 fraudulent or deceitful act whereby another is injured by issuing electronic smog certificates of
6 compliance for the vehicles identified in paragraph 22 above without performing a bona fide
7 inspection of the emission control devices and systems on the vehicles, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 OTHER MATTERS

11 31. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
12 suspend, revoke or place on probation the registration for all places of business operated in this
13 state by Respondent Susan K. Frease, owner of C & F SMOG, upon a finding that Respondent
14 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
15 pertaining to an automotive repair dealer.

16 32. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
17 License Number TC.241840, issued to Respondent Susan K. Frease, owner of C & F SMOG, is
18 revoked or suspended, any additional license issued under this chapter in the name of said
19 licensee may be likewise revoked or suspended by the Director.

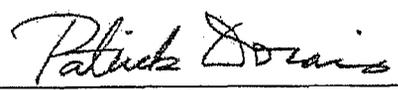
20 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
21 Number EO 150678 and Smog Check Repair Technician License No. EI 150678, (formerly
22 Advanced Emission Specialist Technician License No. EA 150678), issued to Respondent Tony
23 John Cerda, is revoked or suspended, any additional license issued under this chapter in the name
24 of said licensee may be likewise revoked or suspended by the Director.

25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of Consumer Affairs issue a decision:
28

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
- 2 241840, issued to Susan K. Frease, owner of C & F SMOG;
- 3 2. Revoking or suspending any other automotive repair dealer registration issued to
- 4 Susan K. Frease;
- 5 3. Revoking or suspending Smog Check Test Only Station License Number TC 241840,
- 6 issued to Susan K. Frease, owner of C & F SMOG;
- 7 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 8 and Safety Code in the name of Susan K. Frease;
- 9 5. Revoking or suspending Smog Check Inspector License Number EO 150678 and
- 10 Smog Check Repair Technician License No. EI 150678, (formerly Advanced Emission Specialist
- 11 Technician License No. EA 150678) issued to Tony John Cerda;
- 12 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 13 and Safety Code in the name of Tony John Cerda;
- 14 7. Ordering Susan K. Frease, individually, and as owner of C & F SMOG, and Tony
- 15 John Cerda to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
- 16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 8. Taking such other and further action as deemed necessary and proper.

18
19 DATED: September 10, 2013


PATRICK DORAIS
Acting Chief, Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant.

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