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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. 79/12-47

13 **OFFICIAL SMOG**
14 **O'JAYLAND DEWAYNE BROWN, Owner**
15 **6613 Fair Oaks Blvd.**
16 **Carmichael, California 95608**
17 **Automotive Repair Dealer Registration No. ARD 248896**
18 **Smog Check Test Only Station License No. TC 248896**

A C C U S A T I O N

SMOG CHECK

17 **HENRY ALEXANDER CARMELO**
18 **2441 Northglen Street**
19 **Sacramento, California 95833**
20 **Advanced Emission Specialist Technician License No.**
21 **EA 154119**

Respondents.

22 Sherry Mehl ("Complainant") alleges:

23 **PARTIES**

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

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1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
2 place on probation, the registration for all places of business operated in this state by
3 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
4 engaged in a course of repeated and willful violations of this chapter, or regulations
5 adopted pursuant to it.

6 6. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
7 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
8 the Motor Vehicle Inspection Program.

9 7. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

23 9. Section 44072.8 of the Health and Safety Code states:

24 “When a license has been revoked or suspended following a hearing under this article, any
25 additional license issued under this chapter in the name of the licensee may be likewise revoked
26 or suspended by the director.”

27 COST RECOVERY

28 10. Code section 125.3 provides, in pertinent part, that a 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.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud, or Deceit)

3 16. Respondent Brown's station license is subject to discipline under Health and Safety
4 Code section 44072.2(d), in that on or about December 29, 2010, he committed acts involving
5 dishonesty, fraud, or deceit whereby another was injured by issuing electronic Certificate of
6 Compliance No. WR208010 for the 1996 Chevrolet Corsica without performing a bona fide
7 inspection of the emission control devices and systems on that vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 SIXTH CAUSE FOR DISCIPLINE

11 (Failure to Comply with Chapter Requirements)

12 17. Respondent Carmelo's technician license is subject to discipline under Health and
13 Safety Code section 44072.2(a), in that on or about December 29, 2010, regarding the 1996
14 Chevrolet Corsica, he failed to comply with the following Code sections:

15 a. Section 44012(a): Respondent Carmelo failed to determine that all emission control
16 devices and systems required by law were installed and functioning correctly in accordance with
17 test procedures.

18 b. Section 44012(f): Respondent Carmelo failed to perform emission control tests on
19 the vehicle in accordance with procedures prescribed by the department.

20 c. Section 44032: Respondent Carmelo failed to perform a test of the emission control
21 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

22 SEVENTH CAUSE FOR DISCIPLINE

23 (Failure to Comply with Regulations)

24 18. Respondent Carmelo's technician license is subject to discipline under Health and
25 Safety Code section 44072.2(c), in that on or about December 29, 2010, regarding the 1996
26 Chevrolet Corsica, he failed to comply with provisions of California Code of Regulations, title
27 16, as follows:

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1 a. **Section 3340.30(a):** Respondent Carmelo failed to inspect and test the vehicle in
2 accordance with Health and Safety Code section 44012.

3 b. **Section 3340.41(c):** Respondent Carmelo entered false information into the
4 Emission Inspection System unit by entering "Pass" for the fuel evaporative controls inspection
5 when, in fact, the EVAP canister was missing.

6 c. **Section 3340.42:** Respondent Carmelo failed to conduct the required smog tests and
7 inspections on the vehicle in accordance with the Bureau's specifications.

8 **EIGHTH CAUSE FOR DISCIPLINE**

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

10 19. Respondent Carmelo's technician license is subject to discipline under Health and
11 Safety Code section 44072.2(d), in that on or about December 29, 2010, he committed acts
12 involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic
13 Certificate of Compliance No. WR208010 for the 1996 Chevrolet Corsica without performing a
14 bona fide inspection of the emission control devices and systems on the vehicle, thereby
15 depriving the People of the State of California of the protection afforded by the Motor Vehicle
16 Inspection Program.

17 **CONSUMER COMPLAINT – 2001 LINCOLN LS**

18 20. On or about October 25, 2010, the Bureau received a consumer complaint from A.
19 Thorne ("consumer") regarding an improper smog inspection performed at Respondent Brown's
20 facility on or about October 20, 2010. Respondent Carmelo performed the smog inspection on
21 the consumer's vehicle. The test showed that the vehicle failed the functional on-board diagnosis
22 (OBDII) download for not having enough monitors completed when, in fact, the vehicle should
23 have failed due to a non-compliant aftermarket catalytic converter (left) that had been installed by
24 another facility. In addition, the right oxygen sensor was found hanging and not secured into the
25 appropriate bung in the exhaust pipe. No certificate of compliance was issued for the vehicle.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Chapter Requirements)**

3 21. Respondent Brown's station license is subject to discipline under Health and Safety
4 Code section 44072.2(a), in that on or about October 20, 2010, regarding the 2001 Lincoln LS, he
5 failed to comply with the following sections of that Code:

6 a. **Section 44012(a):** Respondent Brown failed to determine that all emission control
7 devices and systems required by law were installed and functioning correctly in accordance with
8 test procedures.

9 b. **Section 44012(f):** Respondent Brown failed to perform emission control tests on the
10 vehicle in accordance with procedures prescribed by the department.

11 **TENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations)**

13 22. Respondent Brown's station license is subject to discipline under Health and Safety
14 Code section 44072.2(c), in that on or about October 20, 2010, regarding the 2001 Lincoln LS, he
15 failed to comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.42:** Respondent Brown failed to conduct the required smog tests and
17 inspections on the vehicle in accordance with the Bureau's specifications.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Chapter Requirements)**

20 23. Respondent Carmelo's technician license is subject to discipline under Health and
21 Safety Code section 44072.2(a), in that on or about October 20, 2010, regarding the 2001 Lincoln
22 LS, he failed to comply with the following Code sections:

23 a. **Section 44012(a):** Respondent Carmelo failed to determine that all emission control
24 devices and systems required by law were installed and functioning correctly in accordance with
25 test procedures.

26 b. **Section 44012(f):** Respondent Carmelo failed to perform emission control tests on
27 the vehicle in accordance with procedures prescribed by the department.

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1 c. **Section 44032:** Respondent Carmelo failed to perform a test of the emission control
2 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations)**

5 24. Respondent Carmelo's technician license is subject to discipline under Health and
6 Safety Code section 44072.2(c), in that on or about October 20, 2010, regarding the 2001 Lincoln
7 LS, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

8 a. **Section 3340.30(a):** Respondent Carmelo failed to inspect and test the vehicle in
9 accordance with Health and Safety Code section 44012.

10 b. **Section 3340.42:** Respondent Carmelo failed to conduct the required smog tests and
11 inspections on the vehicle in accordance with the Bureau's specifications.

12 **PRIOR DISCIPLINE**

13 25. To determine the degree of discipline, if any, Complaint alleges the following:

14 a. On or about July 9, 2007, the Bureau issued Citation No. C08-0024 against
15 Respondent's registration and station licenses for violations of Health and Safety Code section
16 44012(f) (failure to perform a visual/functional check of emission control devices according to
17 procedures prescribed by the department), and California Code of Regulations, title 16, section
18 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
19 issuing a certificate of compliant to a Bureau undercover vehicle with a missing Air Injection
20 System. The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
21 Respondent paid the Citation on August 28, 2007.

22 b. On or about October 12, 2007, the Bureau issued Citation No. C08-0342 against
23 Respondent's registration and station licenses for violations of Health and Safety Code section
24 44012(f) (failure to perform a visual/functional check of emission control devices according to
25 procedures prescribed by the department), and California Code of Regulations, title 16, section
26 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
27 issuing a certificate of compliant to a Bureau undercover vehicle with a missing Positive
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1 Crankcase Ventilation system. The Bureau assessed civil penalties totaling \$1,000 against
2 Respondent for the violations. Respondent paid the Citation on December 11, 2007.

3 c. On or about October 14, 2010, the Bureau issued Citation No. C2011-0460 against
4 Respondent's registration and station licenses for violations of Health and Safety Code section
5 44012(f) (failure to perform a visual/functional check of emission control devices according to
6 procedures prescribed by the department), and California Code of Regulations, title 16, section
7 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
8 issuing a certificate of compliance to a Bureau undercover vehicle with a missing Positive
9 Crankcase Ventilation system. The Bureau assessed civil penalties totaling \$2,000 against
10 Respondent for the violations. Respondent paid the Citation on December 9, 2010.

11 d. On or about July 9, 2007, the Bureau issued Citation No. M08-0025 against
12 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
13 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
14 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
15 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
16 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
17 undercover vehicle with a missing Air Injection System. Respondent was required to attend an 8-
18 hour training course. On or about October 20, 2007, Respondent completed the required training
19 course.

20 e. On or about October 12, 2007, the Bureau issued Citation No. M08-0343 against
21 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
22 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
23 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
24 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
25 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
26 undercover vehicle with a missing Positive Crankcase Ventilation system. Respondent was
27 required to attend a 16-hour training course. On or about January 19, 2008, Respondent
28 completed the required training course.

1 f. On or about October 14, 2010, the Bureau issued Citation No. M2011-0461 against
2 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
3 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
4 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
5 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
6 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
7 undercover vehicle with a missing Positive Crankcase Ventilation system. Respondent was
8 required to attend a 16-hour training course. On or about December 15, 2010, Respondent
9 completed the required training course.

10 **OTHER MATTERS**

11 26. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
12 probation the registrations for all places of business operated in this state by O'Jayland Dewayne
13 Brown, upon a finding that he has, or is, engaged in a course of repeated and willful violation of
14 the laws and regulations pertaining to an automotive repair dealer.

15 27. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
16 Station License Number TC 248896, issued to O'Jayland Dewayne Brown, doing business as
17 Official Smog, is revoked or suspended, any additional license issued under this chapter in the
18 name of said licensee may be likewise revoked or suspended by the director.

19 28. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
20 Specialist Technician License Number EA 154119, issued to Henry Alexander Carmelo, is
21 revoked or suspended, any additional license issued under this chapter in the name of said
22 licensee may be likewise revoked or suspended by the director.

23 **PRAYER**

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

26 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
27 Registration No. ARD 248896, issued to O'Jayland Dewayne Brown, doing business as Official
28 Smog;

- 1 2. Revoking, suspending, or placing on probation any other automotive repair dealer
2 registration issued to O'Jayland Dewayne Brown;
- 3 3. Revoking or suspending Smog Check Station License Number TC 248896, issued
4 to O'Jayland Dewayne Brown, doing business as Official Smog;
- 5 4. Revoking or suspending any additional license issued under chapter 5, of the
6 Health and Safety Code in the name of O'Jayland Dewayne Brown;
- 7 5. Revoking or suspending Advanced Emission Specialist Technician License
8 Number EA 154119 issued to Henry Alexander Carmelo;
- 9 6. Revoking or suspending any additional license issued under Chapter 5 of the
10 Health and Safety Code in the name of Henry Alexander Carmelo;
- 11 7. Ordering O'Jayland Dewayne Brown and Henry Alexander Carmelo to pay the
12 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
13 case, pursuant to Code section 125.3; and,
- 14 8. Taking such other and further action as deemed necessary and proper.

15 DATED: _____

10/11/14

Sherry Mehl by Doug Balatti
SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Doug Balatti
Assist. Chief

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