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

11 In the Matter of the Accusation Against:

Case No. *79/14-74*

12 **TONY'S TEST ONLY**
13 **ANTHONY R. TRIVETT, AKA**
ANTHONY RAY TRIVETT, OWNER
14 3615 Madison Avenue, Suite A
North Highlands, California 95660
Automotive Repair Dealer
15 **Registration No. ARD 258603**
Smog Check-Test Only Station
16 **License No. TC 258603**

ACCUSATION
Smog Check

17 **ANTHONY RAY TRIVETT, AKA**
18 **TONY R. TRIVETT**
7305 La Tour Drive
Sacramento, California 95842
19 **Advanced Emission Specialist Technician**
20 **License No. EA 312136 (to be designated**
upon renewal as EO 312136 and/or
21 **E1 312136)**

22 Respondents.

23 Patrick Dorais ("Complainant") alleges:

24 **PARTIES**

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

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1 **COST RECOVERY**

2 12. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
3 may request the administrative law judge to direct a licentiate found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Failure to Complete Training)

8 13. Respondent's technician license is subject to discipline pursuant to Health and Safety
9 Code section 44050 subdivision (e). Specifically, on or about August 26, 2010, the Bureau issued
10 Citation No. M2011-0218 to Respondent against his technician license for violations of Health
11 and Safety Code section 44032 (qualified technicians shall perform tests of emission control
12 systems and devices in accordance with Health and Safety Code section 44012) and California
13 Code of Regulations, title 16 "(Regulations)", section 3340.30, subdivision (a) (qualified
14 technicians shall inspect, test, and repair vehicles in accordance with Health and Safety Code
15 sections 44012 and 44035, and Regulation section 3340.42). On October 7, 2010, the Bureau
16 served the citation on Respondent by mail. The citation required Respondent to successfully
17 complete an eight-hour training course authorized by the Bureau. Respondent had thirty days in
18 which to either comply with the citation or file an appeal. Respondent did not submit proof of
19 completion of training or file an appeal.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Failure to Pay Administrative Fine)

22 14. Respondent's station license is subject to discipline pursuant to Health and Safety
23 Code section 44050, subdivision (e), in that on or about August 26, 2010, the Bureau issued
24 Citation No. C2011-0217 to Respondent against his station license for violations of Health and
25 Safety Code section 44012, subdivision (f) (shall perform visual or function check of emission
26 control devices according to procedures prescribed by the department) and Regulations, section
27 3340.35, subdivision (c) (issuance of a Certificate of Compliance to a vehicle that was improperly
28 tested). On October 7, 2010, the Bureau served the citation on Respondent by mail. The citation

1 required Respondent to pay a civil penalty in the amount of \$1,000. On or about November 2,
2 2010, Respondent filed an appeal. In the matter entitled *In the Matter of the Citation Against*
3 *Anthony Ray Trivett*, Case No. C2011-0217, a Deputy Director of the Department of Consumer
4 Affairs Bureau issued a *Decision*, effective February 23, 2012, which required Respondent to pay
5 the civil penalty in the amount of \$1,000 within 30 days of the effective date of the decision.
6 Respondent did not submit payment as required by that *Decision*. A copy of the *Decision* is
7 attached hereto as **Exhibit A**.

8 OTHER MATTERS

9 15. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
10 Number TC 258603, issued to Anthony R. Trivett, also known as Anthony Ray Trivett, owner of
11 Tony's Test Only, is revoked or suspended, any additional license issued under this chapter in the
12 name of Anthony R. Trivett, also known as Anthony Ray Trivett, may be likewise revoked or
13 suspended by the Director.

14 16. Under Health and Safety Code section 44072.8, if the Advanced Emission Specialist
15 Technician License issued to Anthony R. Trivett, also known as Anthony Ray Trivett, currently
16 designated as EA 312136, but upon renewal will be re-designated as EO 312136 and/or
17 E1 312136, is revoked or suspended, any additional license issued under this chapter in the name
18 of Respondent may likewise be revoked or suspended.

19 PRAYER

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

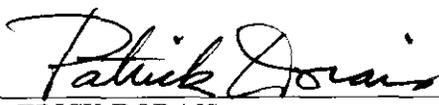
- 22 1. Revoking or suspending Smog Check Test Only Station License Number TC 258603
23 issued to Anthony R. Trivett, also known as Anthony Ray Trivett, owner of Tony's Test Only;
- 24 2. Revoking or suspending the Advanced Emission Specialist Technician License issued
25 to Anthony R. Trivett, , also known as Anthony Ray Trivett, License Number EA 312136, and if
26 renewed, designated License Number EO 312136 and/or E1 312136;
- 27 3. Revoking or suspending any additional license issued under Chapter 5 of the Health
28 and Safety Code in the name of Anthony R. Trivett, also known as Anthony Ray Trivett;

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4. Ordering Anthony R. Trivett, also known as Anthony Ray Trivett, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: January 6, 2014



PATRICK DORAIS
Chief
Bureau of Automotive Repair I/M Smog
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

Decision, effective February 23, 2012

In the Matter of the Citation Against Anthony Ray Trivett, Case No. C2011-0217
Department of Consumer Affairs for Bureau of Automotive Repair

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

In the Matter of the Citation Against:

TONY'S TEST ONLY;
ANTHONY R. TRIVETT, Owner
North Highlands, CA 95660

Automotive Repair Dealer Registration
No. ARD 258603
Smog Check, Test Only, Station License
No. TC 258603

Citation No. C2011-0217

OAH No. 2011060644

Respondents.

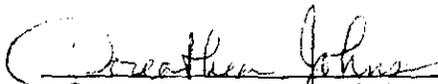
DECISION

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.

FEB 23 2012

This Decision shall become effective _____.

DATED: January 18, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Citation Against:

TONY'S TEST ONLY; ANTHONY R.
TRIVETT, OWNER,
North Highlands, CA 95660

Automotive Repair Dealer Registration No.
ARD 258603
Smog Check Test Only Station License No.
TC 258603

Case No. C2011-0217

OAH No. 2011060644

Respondents.

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on December 8, 2011.

Sterling A. Smith, Deputy Attorney General, represented the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

No one appeared for or on behalf of respondent Anthony R. Trivett, individually or dba Tony's Test Only.

Evidence was received, the record was closed, and the matter was submitted for decision on December 8, 2011.

SUMMARY

On August 18, 2010, an undercover operative working for the Bureau brought an undercover vehicle into respondent's shop for a smog inspection. The vehicle was fitted with an aftermarket adjustable fuel pressure regulator which was not approved for use in California by the California Air Resources Board. For that reason, the vehicle should have failed the visual inspection portion of the smog inspection. But respondent passed the vehicle and issued a certificate of compliance. By doing so, he

violated the law. The Bureau issued two citations – one against respondent's station license which imposed a \$1,000 administrative fine, and another against his technician license which required him to complete an eight-hour training course. Only the former citation was appealed. For the reasons discussed below, that citation is affirmed in its entirety.

FACTUAL FINDINGS

1. On June 25, 2009, the Bureau issued Automobile Repair Dealer Registration No. ARD 258603 to respondent dba Tony's Test Only. The registration expired on November 16, 2010.¹

2. On June 26, 2009, the Bureau issued respondent dba Tony's Test Only, Test Only Station License No. TC 258603. The license expired November 16, 2010.²

3. On August 26, 2010, the Bureau issued Citation No. C2011-0217 because respondent issued a certificate of compliance to a Bureau undercover vehicle fitted with a non-approved, adjustable fuel pressure regulator. The citation imposed a \$1,000 administrative fine.³

4. On November 2, 2010, the Bureau received respondent's letter appealing Citation No. C2011-0217 only.

5. On July 15, 2011, a Notice of Hearing was sent to respondent at the address included in his appeal letter. Therefore, he was properly served.

6. This matter was called on the date and at the time and location specified in the Notice of Hearing. Respondent did not appear, no one appeared on his behalf, and an evidentiary hearing was conducted as a default proceeding pursuant to Government Code section 11520.

¹ The expiration of the registration does not divest the Bureau of jurisdiction to proceed with this matter. (Bus. & Prof. Code, § 9884.13.)

² The expiration of the license does not divest the Bureau of jurisdiction to discipline the license. (Health & Saf. Code, § 44072.6.)

³ The Bureau also issued Citation No. M2011-0218 for the same reason. That citation required respondent to attend an eight-hour training course. However, he did not appeal that citation. (Factual Finding 4.) Therefore, this Decision pertains only to Citation No. C2011-0217.

7. A California Smog Check Inspection Test (smog inspection) requires a licensed technician to perform a tailpipe emissions test, a comprehensive visual inspection, and a functional test of the vehicle's required emission systems. A comprehensive visual inspection is conducted to verify that the required emission control devices are present and free of any tampering or defects. After visually inspecting each device, the Emissions Inspection System (EIS) requires the technician to make the appropriate entry: "P" for pass, "D" for disconnected, "M" for modified, "S" for missing, "N" for not applicable, or "F" for defective. Any tampered, missing, modified, disconnected, or defective emission control device constitutes an inspection failure.

In addition to a visual inspection, the smog inspection also requires the technician to perform functional tests to applicable emission system devices. For each emission control component/system, the EIS prompts the technician to enter the appropriate test result before the EIS will allow the technician to proceed to the next item. The vehicle must pass all visual and functional tests, in addition to the tailpipe emissions test, in order to pass the smog inspection and for a certificate of compliance to be issued.

8. On June 30, 2010, Michael C. Roberts, a Program Representative I employed by the Bureau in its Sacramento Documentation Lab, documented a 1998 Honda Civic EX, California license number [REDACTED] (Honda), from the Bureau's inventory. The vehicle is California emissions certified as a passenger car and is equipped with a fuel injected 1.6 liter four-cylinder engine, front wheel drive, and an automatic transmission. The odometer reading at the start of the documentation was 103,137 miles.

9. Mr. Roberts removed the Honda's original equipment adjustable fuel pressure regulator and replaced it with an aftermarket one. The fuel pressure regulator is part of the vehicle's fuel injection system – a required component of the vehicle's overall emission control system. The particular aftermarket adjustable fuel pressure regulator installed was not approved by the California Air Resources Board (CARB) for use on emission controlled vehicles, such as the Honda. Therefore, the installation of such part would cause the vehicle to fail the visual inspection portion of a properly performed smog inspection and, therefore, the overall inspection.

10. Mr. Roberts performed a smog inspection on the Honda, and the vehicle failed the visual portion due to an illegally modified fuel injection system; specifically, the installation of the unapproved aftermarket adjustable fuel pressure regulator. In order to pass inspection, the vehicle required removal of the non-approved fuel pressure regulator and installation of an original equipment or approved aftermarket fuel pressure regulator. The vehicle's odometer advanced two miles during the inspection.

11. Mr. Roberts photographed the underhood emission label, the approved cold air intake system, and the approved exhaust header, including the CARB approval stickers for the air intake system, and the exhaust header. He also photographed the illegal adjustable fuel pressure regulator. The original fuel pressure regulator was also photographed and secured in the lab. Mr. Roberts secured the vehicle in the lab. The odometer reading was 103,139 miles.

12. On July 10, 2010, Mr. Roberts released custody of the vehicle to Christopher Pryor, a Program Representative I employed by the Bureau. The odometer still read 103,139 miles.

13. On August 18, 2010, Mr. Pryor received the Honda at the Sacramento Documentation Lab. The odometer read 103,230.⁴ He reviewed the declaration Mr. Roberts prepared about his documentation of the vehicle and confirmed that the non-approved aftermarket adjustable fuel pressure regulator Mr. Roberts described was still installed on the vehicle. He then released the vehicle to a Bureau undercover operative with instructions to follow him to a prearranged location.

Once at the prearranged location, Mr. Pryor re-inspected the Honda and confirmed that the non-approved aftermarket adjustable fuel pressure regulator was still installed on the vehicle. He then instructed the operative to take the car to respondent's shop and request a smog inspection.

14. The operative arrived at respondent's shop, requested a smog inspection, and was given a copy of the estimate for the inspection. Afterwards, she paid \$45 for the inspection and received a copy of the invoice and Vehicle Inspection Report (VIR). She returned to the prearranged location, where Mr. Pryor re-inspected the vehicle and confirmed that the non-approved aftermarket adjustable fuel pressure regulator was still installed. He received the estimate, invoice, and VIR and then instructed the operative to drive the vehicle back to the Sacramento Documentation Lab. Mr. Pryor took custody of the vehicle at the lab and secured it. The odometer read 103,275 miles.

⁴ There is a discrepancy in the evidence concerning the date Mr. Pryor took custody of the Honda. He declared that he took custody on August 18, 2010, and the vehicle's odometer read 103,230 miles. Mr. Roberts, however, declared that he gave custody of the vehicle to Mr. Pryor on July 10, 2010, and the odometer reading was 103,139 miles. No explanation was provided for this five-month 91 mile discrepancy. But such discrepancy is moot in light of the fact that Mr. Pryor confirmed that Mr. Roberts' inducement was still intact when he took custody of the Honda.

15. On August 31, 2010, Mr. Roberts received custody of the Honda from Mr. Pryor.⁵ The odometer read 103,322 miles. Mr. Roberts performed a smog inspection four days later, and the vehicle failed due to the existence of the non-approved aftermarket adjustable fuel pressure regulator.

16. The VIR that the undercover operative received contains a box entitled "Overall Test Results." In that box, the VIR, in relevant part, states, "Congratulations! Your vehicle passed the enhanced Smog Check inspection" This box also includes the Certificate of Compliance number assigned to the Honda and states that "Your Smog Check certificate has been electronically transmitted to DMV."

The VIR also contains a section entitled "Emission Control Systems Visual Inspection/Functional Check Results." Under this title, in parentheses, the VIR states: "Visual/Functional tests are used to assist in the identification of crankcase and cold start emissions which are not measured during the ASM test." One of the emission control systems listed on the VIR is the "Carb./Fuel Injection." The VIR indicates that the Honda passed the visual inspection portion of the test.

Near the bottom of the VIR is an area entitled "Smog Check Inspection Station Information." The VIR identifies respondent as the technician who performed the smog inspection. Respondent signed the VIR under a certification that states:

I certify, under penalty of perjury under the laws of the State of California, that I inspected the vehicle described above, 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.

17. Respondent did not appear at the hearing, and no evidence was introduced on his behalf.

⁵ There is a discrepancy in the evidence concerning the date Mr. Roberts took custody of the Honda. He declared that he took custody from Mr. Pryor on August 31, 2010, and the odometer read 103,322 miles. Mr. Pryor, however, declared that he secured the vehicle in the Sacramento Documentation Lab on August 18, 2010, and the odometer read 103,275 miles. No explanation of how 47 miles were added to the vehicle's odometer during the intervening period was provided. This discrepancy, however, is moot because Mr. Roberts confirmed that his inducement was still intact when he performed a smog inspection of the vehicle on September 4, 2010.

LEGAL CONCLUSIONS

1. Health and Safety Code section 44012, subdivision (f), requires that all smog inspections include a visual inspection of the vehicle's emission control devices. This includes a visual inspection of the fuel injection system on the Honda. (Factual Finding 9; see, Cal. Code Regs., tit. 16, § 3340.42, subd. (e)(1)(G).) Respondent failed to perform such an inspection. (Factual Findings 8-11 and 13-15.) Nonetheless, he issued a certificate of compliance. (Factual Findings 14 and 16; see, Cal. Code Regs., tit. 16, § 3340.35, subd. (c) [no certificate of compliance may be issued if a required emission control device or component is not installed on the vehicle or has been modified].) Therefore, grounds exist for affirming the citation issued to respondent dba Tony's Test Only pursuant to Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c).

2. A citation may impose an administrative fine in an amount not less than \$100 nor greater than \$5,000 for each violation. (Health & Saf. Code, § 44050, subd. (b).) The Department has developed criteria to be considered when determining the amount of the fine. The criteria which are relevant here are: 1) the nature, gravity, severity, and seriousness of the violation; 2) whether respondent acted in good faith or willfully; 3) whether respondent failed to perform work for which he was paid; 4) respondent's failure to make restitution to consumers affected; and 5) the extent to which respondent has mitigated or attempted to mitigate any damage or injury caused by the violation. (Health & Saf. Code, § 44050, subs. (b)(1), (b)(3), (b)(5), and (b)(7)-(b)(8).)

3. California's smog check program is designed to reduce vehicle emissions which are harmful to people and the environment. (Health & Saf. Code, § 44000 et seq.) Respondent's failure to comply with the program places the health, safety, and welfare of the public at risk by increasing their exposure to harmful vehicle emissions.

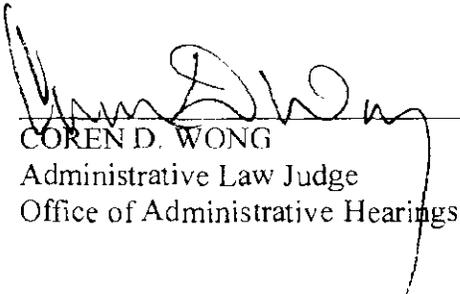
The undercover operator paid \$45 for a smog inspection of the undercover vehicle. (Factual Finding 14.) Respondent offered no evidence to rebut the Bureau's evidence. (Factual Finding 17; Evid. Code, § 413 [party's failure to explain or contradict incriminating evidence creates inference that he cannot].) There was no evidence that he made any restitution to the operator and made no attempts to mitigate any damage or injury caused by his (respondent's) violations. When all of the evidence is considered, imposing a \$1,000 administrative fine against respondent is reasonable.

4. Grounds exist for affirming the citation issued to respondent dba Tony's Test Only pursuant to Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c), for the reasons discussed in Legal Conclusion 1. The administrative fine in the amount of \$1,000 is reasonable for the reasons explained in Legal Conclusions 2 and 3, jointly and severally. Therefore, the citation is affirmed in its entirety.

ORDER

Citation No. C2011-0217 issued August 26, 2010, to respondent Anthony Trivett dba Tony's Test Only is AFFIRMED in its entirety. Respondent shall pay an administrative fine in the amount of \$1,000 within thirty (30) days of the effective date of this Decision.

DATED: December 27, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings