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

In the Matter of the Statement of Issues Against: **AUTOTEK, INC.** 8633 Antelope North Rd. Antelope, CA 95843 **CHRIS MICHAEL LULL, CEO/CFO** Respondent.	Case No. 79/09-102S

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 2/12/13.

DATED: January 18, 2013

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the Statement of Issues Against: **AUTOTEK, INC.** **8633 Antelope North Rd.** **Antelope, CA 95843** **CHRIS MICHAEL LULL, CEO/CFO** Respondent.	Case No. 79/09-102S **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Lorrie M. Yost, Deputy Attorney General.

2. Respondent Autotek, Inc., Chris M. Lull, CEO/CFO of Autotek, has chosen not to exercise its right to be represented by counsel.

3. On or about June 1, 2012, Chris Lull filed applications dated May 29, 2012, with the Director of Consumer Affairs to obtain an Automotive Repair Dealer Registration and Smog Check Test Only Station License for Autotek, Inc. ("Respondent"), with Chris Michael Lull ("Lull") as the Chief Executive Officer and Chief Financial Officer.

JURISDICTION

4. Statement of Issues No. 79/09-102S was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on December 5, 2012.

5. A copy of Statement of Issues No. 79/09-102S is attached as Exhibit A and incorporated herein by reference.

BACKGROUND

6. Prior to the making of the current application, Automotive Repair Dealer Registration Number ARD 200544, and Smog Check Test Only Station License Number TC 200544 were issued to Chris Michael Lull as owner of Autotek. On or about February 23, 2010, pursuant to a Decision and Order in Accusation No. 79/09-102, attached hereto as Exhibit B, Lull's Automotive Repair Dealer Registration and Smog Check Test Only Station License were revoked. However, the revocations were stayed, and the licenses were placed on probation for a period of three (3) years under certain terms and conditions.

ADVISEMENT AND WAIVERS

7. Respondent, through its CEO Chris Lull, has carefully read, and understands the charges and allegations in Statement of Issues No. 79/09-102S. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against it; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 79/09-102S.

11. Respondent agrees that its application for an Automotive Repair Dealer Registration and Smog Check Test Only Station License is subject to denial and it agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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15. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the application of Respondent Autotek, Inc., Chris M. Lull, CEO/CFO, for an Automotive Repair Dealer Registration and Smog Check Test Only Station License be granted and the registration and license shall be issued and immediately revoked. The revocation will be stayed and the Respondent's registration and license placed on probation on the same terms and conditions as currently exist for the probation of Automotive Repair Dealer Registration Number ARD 200544, and Smog Check Test Only Station License Number TC 200544, issued to Chris Lull and as more fully set forth below. The probation on the newly issued registration and license will last until the scheduled termination date of the current probation on Automotive Repair Dealer Registration Number ARD 200544, and Smog Check Test Only Station License Number TC 200544, provided all of the terms and conditions of the probation are complied with.

1. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

2. **Reporting.** Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

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

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

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5. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

6. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and suspend or revoke the license.

7. **Cost Recovery.** Payment to the Bureau of any still outstanding amount of its cost recovery for the prosecution of Accusation No. 79/09-102, shall be received no later than 10 days prior to the scheduled termination of the probation. In the event that payment is not received in full by that time, the probation shall automatically be extended until payment is completed. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's license and registration to outright revocation.

ACCEPTANCE

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

DATED: 12/18/2012

CHRIS M. LULL, CEO/CFO of AUTOTEK, Inc.
Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE LACHMAN
Supervising Deputy Attorney General

LORRIE M. YOST
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **AUTOTEK, INC.** **8633 Antelope North Rd.** **Antelope, CA 95843** **CHRIS MICHAEL LULL, CEO/CFO** Respondent.	Case No. 79/09-102S **STATEMENT OF ISSUES**

John Wallauch ("Complainant") alleges:

PARTIES

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

2. On or about June 1, 2012, the Bureau received an Application for Automotive Repair Dealer Registration and Smog Check Test Only Station License from Autotek, Inc. ("Respondent"), with Chris Michael Lull ("Lull") as the Chief Executive Officer and Chief Financial Officer. On or about May 29, 2012, Lull certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. On or about June 29, 2012, the Bureau denied the applications.

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LICENSE HISTORY

Automotive Repair Dealer Registration No. ARD 200544

3. In or about 1998, the Bureau issued Automotive Repair Dealer Registration Number ARD 200544 to Lull as owner of Autotek. On or about February 23, 2010, the registration was revoked, the revocation stayed, and the registration placed on probation, as set forth below in paragraph 5.

Smog Check Test Only Station License No. TC 200544

4. In or about 2001, the Bureau issued Smog Check Test Only Station License Number TC 200544 to Lull as owner of Autotek. On or about February 23, 2010, the license was revoked, the revocation stayed, and the license placed on probation, as set forth below in paragraph 5.

PRIOR DISCIPLINE

5. On or about May 18, 2009, Accusation No. 79/09-102 was filed against Lull's Automotive Repair Dealer Registration Number ARD 200544 and Smog Station Test Only Station License Number TC 200544, alleging that Lull violated Business and Professions Code ("Code") sections 9884.7(a)(1) (made untrue and misleading statements); 9884.7(a)(4) (committed acts constituting fraud); Health and Safety Code sections 44012 (failing to perform tests on emission control systems or devices in accordance with procedures prescribed by the department); 44015 (failing to properly test and inspect vehicles to determine if they were in compliance with Health and Safety Code section 44012); 44072.2(d) (dishonesty, fraud, or deceit); and, California Code of Regulations sections 3340.24(c) (falsely or fraudulently issued electronic smog certificates of compliance) and 3340.35(c) (issued electronic smog certificates of compliance to vehicles that had not been inspected in accordance with section 3340.42) in that his employee used the facilities at Autotek to issue fraudulent smog certificates. Effective February 23, 2010, pursuant to a Decision and Order, attached hereto as **Exhibit A**, Lull's Automotive Repair Dealer Registration Number ARD 200544 and Smog Check Test Only Station License Number TC 200544, were revoked. However, the revocations were stayed, and the licenses were placed on probation for a period of three (3) years under certain terms and conditions.

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STATUTORY PROVISIONS

6. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct that constitutes fraud.

7. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

8. Health and Safety Code section 44072 provides:

Any license issued under this chapter and the regulations adopted pursuant to it may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

9. Health and Safety Code section 44072.1 states, in pertinent part:

The director may deny a license if the applicant, or any partner, officer, or director thereof, does any of the following:

(c) Has committed any act that, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefited.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Which if Done by a Licentiate Would Constitute Cause for Discipline)

10. Respondent's application for an Automotive Repair Dealer registration is subject to denial under Code sections 480(a)(3)(A) and 9884.7(a), in that Chris Michael Lull, the Chief Executive Officer and Chief Financial Officer for Autotek, Inc., committed acts which if done by a licentiate of the business would constitute grounds for suspension or revocation of a license, as more particularly set forth in the Decision and Order, Case No. 79/09-102, attached hereto as **Exhibit A**, and incorporated herein by reference.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonesty, Fraud or Deceit)

11. Respondent's application for an Automotive Repair Dealer registration is subject to denial under Code sections 480(a)(2) and 9884.7(a)(1) and (4), in that Chris Michael Lull, the Chief Executive Officer and Chief Financial Officer for Autotek, Inc. committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself, as more particularly set forth in the Decision and Order, Case No. 79/09-102, attached hereto as **Exhibit A**, and incorporated herein by reference.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Which if Done by a Licentiate Would Constitute Cause for Discipline)

12. Respondent's application for a Smog Check Test Only Station License is subject to denial under Code sections 480(a)(3)(A), and Health and Safety Code section 44072.1(c), in that Chris Michael Lull, the Chief Executive Officer and Chief Financial Officer for Autotek, Inc. committed acts which if done by a licentiate of the business would constitute grounds for suspension or revocation of a license, as more particularly set forth in the Decision and Order, Case No. 79/09-102, attached hereto as **Exhibit A**, and incorporated herein by reference.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Dishonesty, Fraud or Deceit)

13. Respondent's application for a Smog Check Test Only Station License is subject to denial under Code sections 480(a)(2), and Health and Safety Code section 44072.1(d), in that

Chris Michael Lull, the Chief Executive Officer and Chief Financial Officer for Autotek, Inc. committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself, as more particularly set forth in the Decision and Order, Case No. 79/09-102, attached hereto as **Exhibit A**, and incorporated herein by reference.

PRAYER

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

1. Denying the application of Autotek, Inc. for an Automotive Repair Dealer Registration;

2. Denying the application of Autotek, Inc. for a Smog Check Test Only Station License; and,

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

DATED: November 30, 2012

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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

In the Matter of the Accusation Against: **AUTOTEK** **CHRIS MICHAEL LULL, Owner** 18650 Antelope North Road, Suite E Antelope, CA 95843 Automotive Repair Dealer Registration No. ARD 200544 Smog Check, Test Only, Station License No. TC 200544 and **JONATHAN CLYDE FORD** 6869 Barbara Lee Circle Sacramento, CA 95842 Advanced Emission Specialist Technician License No. EA 149931 Respondents.	Case No. 79/09-102 OAH No. 2009060970

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective 2/23/10.

IT IS SO ORDERED this 19th day of January, 2010.

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 79/09-102
AUTOTEK, CHRIS MICHAEL LULL, OWNER 8650 Antelope North Road, Suite E, Antelope, CA 95843 Automotive Repair Dealer Reg. No. ARD 200544 Smog Check, Test Only, Station License No. TC 200544 and JONATHAN CLYDE FORD 6869 Barbara Lee Circle Sacramento, CA 95842 Advanced Emission Specialist Technician License No. EA 149931, Respondents.	OAH Case No. 2009060970

PROPOSED DECISION

This matter was heard before Marilyn A. Woollard, Administrative Law Judge for the Office of Administrative Hearings (OAH), State of California, on November 9, 2009, in Sacramento, California.

Deputy Attorney General Patrick M. Kenady appeared on behalf of complainant, Sherry Mehl, Chief of the Bureau of Automotive Repair (Bureau).

Deborah Barron, Attorney at Law, appeared on behalf of respondent Chris Michael Lull, owner of Autotek.

Respondent Jonathan Clyde Ford appeared and represented himself.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing arguments. The record was then closed, and the matter was submitted for decision on November 9, 2009.

FACTUAL FINDINGS

1. On July 20, 1998, the Bureau issued Automotive Repair Dealer Registration Number ARD 200544 to respondent Chris Michael Lull (respondent Lull), owner, doing business as Autotek at 8650 Antelope North Road, in Antelope, California 95843. Unless renewed, revoked or suspended, this registration will expire on July 31, 2010.

2. On December 11, 2001, the Bureau issued Smog Check, Test Only, Station License Number TC 200544, to respondent Lull/Autotek. Unless renewed, revoked or suspended, this license will expire on July 31, 2010.

3. On August 19, 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 149931 to respondent Jonathan Clyde Ford (respondent Ford). Unless renewed, revoked or suspended, this license will expire on October 31, 2010.

4. Under the Motor Vehicle Inspection Program, Health and Safety Code section 44000, et seq., the Bureau has the responsibility of monitoring smog check stations and smog check technicians, to ensure that they are properly performing their duties under the smog control laws of the State of California. As part of its enforcement mission, the Bureau conducts undercover operations and surveillance operations at licensed smog check stations to ensure that its licensees are working in compliance with what is commonly referred to as the smog check program.

5. On May 18, 2009, Sherry Mehl, Chief, Bureau of Automotive Repair, made and signed the Accusation in her official capacity, and alleged that respondents had engaged in "clean piping" 10 vehicles as revealed in the Bureau's video surveillance operations conducted on December 6, 2008, and on January 3 and 10, 2009. By this conduct, respondents made untrue or misleading statements; engaged in fraud, dishonesty or deceit; and violated provisions of the Motor Vehicle Inspection Program and related regulations. Complainant requested that respondent Lull's Automotive Repair Dealer Registration and his Check, Test Only, Station License be temporarily or permanently invalidated or revoked; and that respondent Ford's Advanced Emission Specialist Technician License be revoked or suspended. Complainant further requested that respondents be ordered to pay reasonable costs of its investigation and enforcement pursuant to Business and Professions Code section 125.3.

6. Respondents filed their Notices of Defense. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

* * *

7. Respondent Lull testified that he became licensed smog technician in 1995, when he worked at another auto repair shop (license number EA135778). In 1997, respondent Lull started Autotek on a part-time basis while continuing to work at his job. In 1998, he quit his job and began to work full-time at Autotek with his wife, who has been in charge of the day-to-day business operations at Autotek since that time. At some point, respondent Lull began another business venture in the construction industry and hired three to four employees. His wife was physically present at Autotek Monday through Friday from 9 a.m. to 5 p.m. Respondent Lull typically came to the shop at 3:00 p.m.

In 2004, respondent Lull hired respondent Ford to work as a smog technician at Autotek. Neither respondent Lull nor his wife worked at Autotek on Saturdays; however, respondent Ford worked alone at Autotek on Saturdays.

8. "Clean piping" means "the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS [Emissions inspection system] to issue a certificate of compliance for another vehicle." (Cal. Code Regs., tit. 16, § 3340.1, subd. (t).)[1]

9. Tim Bowden is a Program Representative II Specialist who has been employed by the Bureau for 11 years. Mr. Bowden testified that, to initiate investigations, the Bureau reviews data from its smog test analyzer to determine if there are anomalies which might be indicative of improper smog testing. In this case, the data indicated that clean piping activity was "most likely" occurring at Autotek and was occurring on Saturdays rather than other days. This was the reason that the video surveillance occurred only on Saturdays.

As part of his duties, Mr. Bowden conducted video surveillance of Autotek by setting up the video equipment and remaining in the area during the three surveillance operations. He also reviewed the DVDs generated from the video surveillance and prepared reports and a video narrative relating to this investigation. Photographs were taken of some of the vehicles that were clean piped, to distinguish them from the vehicles seen in the DVD entering or leaving Autotek on a particular date. During

[1] "'Emissions inspection system' or 'EIS' means a tamper-resistant instrument which meets the requirements of subdivision (b) of section 44036 of the Health and Safety Code and which is certified by the bureau for use in the California Smog Check program." (Cal. Code Regs., tit. 16, § 3340.1, subd. (g).)

these surveillance periods, respondent Ford was seen at Autotek, working on the vehicles in the smog test bay, inserting the emission sample hose into the tailpipe of the vehicles, and driving cars in and out of the smog bays. Respondent Lull was not observed on site.

Saturday, December 6, 2008 Video Surveillance

10. On December 6, 2008, from 12:45 p.m. to 12:55 p.m., respondent Ford conducted a smog inspection on a Toyota Camry whose exact date could not be determined, but that was manufactured between 1997 and 1999. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG268919C from Autotek to Vehicle 1, a 2002 Toyota Camry, license number 4UVT440, for an inspection completed during this time.

11. On December 6, 2008, from 2:36 p.m. to 2:42 p.m., respondent Ford conducted a smog inspection on a Ford Mustang whose exact date could not be determined, but that was manufactured between 1994 and 1998. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG268920C from Autotek to Vehicle 2, a 1989 Ford Mustang, license number 5FNG100, for an inspection completed during this time.[2]

12. On December 6, 2008, from 3:10 p.m. to 3:22 p.m., respondent Ford conducted a smog inspection on a 1992 Toyota Camry. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG268921C from Autotek to Vehicle 3, a 1993 Nissan Maxima, license number 5GHS222, for an inspection completed during this time.

13. Respondent Ford did not conduct emission control tests on Vehicles 1, 2, or 3. As to each of these three vehicles, respondent Ford entered false information into the Emission Inspection System (EIS) when he entered vehicle information and/or emission control system identification data for vehicles other that the ones he had actually tested. Respondent Ford issued Certificates of Compliance from Autotek to these three vehicles without inspecting and performing the required emission control tests on the vehicles he certified as in compliance with the smog check program.

Saturday, January 3, 2009 Video Surveillance

14. On January 3, 2009, from 10:13 a.m. to 10:18 a.m., respondent Ford conducted a smog inspection on a 1991 Honda Accord, license number 5NZD184. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance

[2] Effective December 18, 2008, a new license plate number 6FXG848 was issued for this vehicle.

No. NG564203C from Autotek to Vehicle No. 4, a 1990 Honda Accord, license number 5XTN719, for an inspection completed during this time.[3]

15. On January 3, 2009, from 10:41 a.m. to 10:48 a.m., respondent Ford conducted a smog inspection on a 1990 Buick Century, license number 4381KDP. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564205C from Autotek to Vehicle No. 5, a 1991 Oldsmobile Ninety-Eight, license number 2XXD769, for an inspection completed during this time.[4]

16. On January 3, 2009, from 11:53 a.m. to 12:00 p.m., respondent Ford conducted a smog inspection on a 1996 Chrysler Town & Country, license number 3NRZ273. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564207C from Autotek to Vehicle No. 6, a 1996 Dodge Caravan, license number DPK5983, for an inspection completed during this time.

17. On January 3, 2009, from 1:16 p.m. to 1:24 p.m., respondent Ford conducted a second smog inspection on a 1996 Chrysler Town & Country, license number 3NRZ273. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564210C from Autotek to Vehicle No. 7, a 1996 Dodge Intrepid, license number 5WZJ338, for an inspection completed during this time.

18. On January 3, 2009, from 2:32 p.m. to 2:55 p.m., respondent Ford conducted a smog inspection on a 1991 Toyota Corolla, license number 2XBF081. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG564213C from Autotek to Vehicle No. 8, a 1988 Toyota Tercel, license number 2GGF854, for an inspection completed during this time.

19. Respondent Ford did not conduct emission control tests on Vehicles 4, 5, 6, 7, or 8. As to each of these five vehicles, respondent Ford entered false information into the EIS when he entered vehicle information and/or emission control system identification data for vehicles other that the ones he had actually tested. Respondent Ford issued Certificates of Compliance from Autotek to each of these vehicles without inspecting and performing the required emission control tests on the vehicles he certified as in compliance with the smog check program.

Saturday, January 10, 2009 Video Surveillance

20. On January 10, 2009, from 2:07 p.m. to 2:14 p.m., respondent Ford conducted a smog inspection on a 1996 GMC S15, license number 8R43648.

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[3] The 1991 Honda, license number 5NZD184, received its own smog inspection from 9:57 to 10:08 a.m. (Certificate No. NG564202C).

[4] The 1990 Buick Century, license number 4381KDP, received its own smog inspection from 10:28 – 10:36 a.m. (Certificate No. NG564204C).

Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG624986C from Autotek to Vehicle No. 9, a 1999 GMC Sonoma, license number 5Y36921, for an inspection completed during this time.

21. On January 10, 2009, from 2:35 p.m. to 2:50 p.m., respondent Ford conducted a smog inspection on a 1991 Chevrolet S10, license number 7Z64676. Respondent Ford then issued an electronic smog certificate, Certificate of Compliance No. NG624987C from Autotek to Vehicle No. 10, a 1985 Chevrolet G20 van, license number 5YBZ309, for an inspection completed during this time.

22. Respondent Ford did not conduct emission control tests on Vehicles 9 or 10. As to each of these vehicles, respondent Ford entered false information into the Emission Inspection System (EIS) when he entered vehicle information and/or emission control system identification data for vehicles other that the ones he had actually tested. Respondent Ford issued Certificates of Compliance from Autotek to each of these vehicles without inspecting and performing the required emission control tests on the vehicles he certified as in compliance with the smog check program.

23. Based upon his review of the video surveillance DVDs for these three dates, Mr. Bowden concluded that none of the 10 vehicles specified above, for whom "passing" smog certificates were issued by respondent Ford/Autotek, was actually on site at Autotek and inspected by respondent Ford. Mr. Bowden's testimony was corroborated by a review of the DVDs and other documentary evidence, including photographs, and the BAR97 Test Detail reports issued by Autotek, certifying the dates and times that these vehicles passed the inspection.

Evidence in Aggravation and Mitigation[5]

Respondent Ford

24. Due to a pending criminal action against him, respondent Ford asserted his privilege against self-incrimination. Respondent Ford refused to answer any questions regarding the Bureau's allegations of clean piping by him; however, he did admit that he was present at Autotek on the dates of the video surveillance and that people always tried to bribe him. Respondent Ford testified that respondent Lull had no knowledge of his activities on Saturdays at Autotek, and that he only gave Autotek money for the cost of the normal smog inspections.

25. Respondent Ford was issued three citations by the Bureau in 2006: on March 9, 2006 (No. M06-0544: issuing a certificate of compliance to an undercover

[5] In order to determine whether and to what extent it is appropriate to discipline respondents' licenses, it is necessary to weigh and balance respondents' conduct in light of any factors in aggravation and mitigation. (Cal. Code of Regs., tit. 16, § 3395.4.).

vehicle with a missing air injection system); on October 10, 2006 (No. M07-0188: issuing a certificate of compliance to an undercover vehicle with a non-functional EGR system); and on December 6, 2006 (No. M07-0368: issuing a certificate of compliance to an undercover vehicle with a missing air injection system reed valve). The Citations were based upon respondent Ford's violations of section 44032 [technicians to perform tests of emission control systems and devices in accordance with Health and Safety Code section 44012] and related regulations. Respondent Ford was ordered to complete, respectively, an 8-hour, a 16-hour, and a 68-hour training course. Respondent Ford complied with each of these citations and completed the required training courses.

Respondent Ford testified when he received these citations in 2006, he was very busy at the time and not as thorough in the inspections as he should have been.

Respondent Lull/Autotek

26. On June 25, 2002, respondent Lull was issued Citation No. C02-1176, against his technician license EA135778, based upon his violation of section 44012, subdivision (f) [failure to determine that the required emission control systems were installed and functioning], and CCR, title 16, section 3340.35, subdivision (c) [issuing certificate of compliance to improperly tested vehicle]. He was ordered to pay a $500 civil penalty. Following an unsuccessful appeal, respondent Lull paid the penalty.

27. On March 9, 2006, October 10, 2006, and December 6, 2006, respondent Lull/Autotek was issued Citation Numbers C06-0543, C07-0187, and C07-0367, relating to the conduct set forth in Factual Finding 25. Respondent Lull was ordered to pay and paid civil penalties respectively of $500, $1,000, and $2,000. He also participated in compliance conferences with the Bureau on April 25, 2006, October 26, 2006 and January 16, 2007.

28. Respondent Lull's testimony is paraphrased in pertinent part as follows. After the 2006 Citations, respondent Lull concluded that respondent Ford's conduct had not been blatant or intentional and that many technicians receive citations. However, he tried to keep a closer eye on respondent Ford and told his wife to "watch out" for anything fraudulent occurring in the smog business. Respondent Lull and his wife reviewed procedures with respondent Ford to get him to slow down in his work. After the third citation in December 2006, this practice seemed to be working and no citations were issued for three years.

Before the Accusation was issued, Mr. Bowden advised respondent Lull that Bureau was considering filing an Accusation against Autotek based upon charges of clean piping by respondent Ford. Respondent Lull was upset and began his own investigation. He checked the Saturday invoices for all cars that had received a smog inspection at Autotek, but nothing seemed out of the ordinary. He reviewed the Vehicle Inspection Reports (VIRs) issued by Autotek to determine if there were any

discrepancies, and he looked at his security cameras. There was nothing out of the ordinary.

Respondent Lull then confronted respondent Ford, who was "truthful and admitted some cars in question." Respondent Lull had no knowledge of the scope of the activity and did not want to fire respondent Ford until he obtained more information. Respondent Ford did not tell him much more, but based upon his review of the security videos for the dates in question, respondent Lull recognized a woman at Autotek who he knew to be a car dealer. Respondent Lull later heard from a third party that respondent Ford charged $200 to $250 for the clean pipe inspections. Autotek only received invoices and cash for the typical $50 to $68 inspection fee.

Approximately four months passed between the time respondent Lull became aware that an Accusation was pending and his termination of respondent Ford. During this period, respondent Lull closed Autotek on Saturdays. Respondent Ford was allowed to work Monday through Friday; however, respondent Lull and his wife closely watched Ford's activities, and reviewed all invoices and video surveillance. They believed him to be "remorseful."

29. The evidence establishes that respondent Lull was not involved or aware of respondent Ford's clean piping activities at Autotek. Nevertheless, there was no evidence that the illegal activities described above were the result of "a bona fide error." It is concerning that respondent Lull did not immediately terminate respondent Ford, at least after the Accusation was issued. By closing Autotek on Saturdays, however, respondent Lull instituted a business change that acknowledged the seriousness of the violations and eliminated the opportunity for respondent Ford to work in an unsupervised fashion. Considering all circumstances, it would not be contrary to the public interest to allow his license and registration to continue on a probationary basis.

Costs

30. In support of its request for an order assessing costs, the Bureau submitted the October 20, 2009, declaration under penalty of perjury of Curtis Worden, Program Manager I, Enforcement Oversight and Planning, who certified the investigative costs incurred by the Bureau through the filing of the Accusation. In investigating respondents' actions in this matter, the Bureau incurred a total of $7,732 in costs for 100 hours of investigation time by its Program Representative II (98 hours in 2008/2009 fiscal year; 2 hours in 2009/2010 fiscal years). The Bureau also submitted the November 5, 2009 Certification of Prosecution Costs: Declaration of Deputy Attorney General Patrick M. Kenady, with a copy of the Department of Justice's Cost-of-Suit Summary and Matter Time Activity by Professional Type for this case, through November 3, 2009. Total legal costs for enforcement of this matter in the fiscal years 2008 through 2009 and 2009 through 2010, were $7,435.75. The

Bureau incurred total costs of $15,167.75 in the investigation and enforcement of this Accusation against respondents.

Factors considered in determining the reasonableness of costs include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. *(Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32.) Respondent Ford did not provide any evidence or raise any colorable challenges to the proposed discipline of license suspension or revocation. He did not provide any evidence regarding financial hardship. Respondent Lull did not demonstrate that "there was a bona fide error" in the technician's work done at Autotek. He testified that that payment of $15,000 would be a cash drain and that he could pay, but "just not immediately."

The declarations of Curtis Worden and Mr. Kenady are prima facie evidence of the reasonable costs of the Bureau's investigation and prosecution of this matter. (Bus. & Prof. Code § 125.3.) Reviewed in light of the serious and detailed allegations in the Accusation, complainant established that the scope of its investigation and its prosecution were appropriate to the alleged misconduct by respondents. Respondents are jointly and severally liable to the Bureau for the total amount of these costs.

LEGAL CONCLUSIONS

1. The Bureau bears the burden of proof, by clear and convincing evidence, that the facts alleged in its Accusation are true and that the requested discipline against respondents' licenses and registrations be imposed.

2. The Legislature has declared that California's Motor Vehicle Inspection Program (Program), Health and Safety Code section 44000, et seq., requires an "enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven." (§ 44001, subd. (b)(5)(E).)[6] The Director of Consumer Affairs (director) has all of the powers and authority granted under the Automotive Repair Act (Business & Professions Code section 9880, et seq.) for enforcing the Program; the Program is enforced and administered by the chief of the Bureau of Automotive Repairs. (§§ 44001.5, 44002.)

3. Business and Professions Code section 9884.7 provides that, where the

[6] Unless otherwise indicated, all statutory references are to the Health and Safety Code.

automotive repair dealer cannot show there was a bona fide error, the director may temporarily or permanently invalidate the registration of an automotive repair dealer for acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer:

> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> [¶]. . . [¶]
>
> (4) Any other conduct which constitutes fraud. . .

4. Qualified smog check technicians shall perform tests of emission control devices and systems in accordance with section 44012. (§ 44032.) Pursuant to section 44012, the test at the smog check stations "shall be performed in accordance with procedures prescribed by the department. . ." A smog check technician shall inspect, test and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, and regulation section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

5. Smog check stations and smog check technicians are required to conduct tests and inspections in accordance with the Bureau's emissions inspections specifications. (Cal. Code Regs., tit. 16, § 3340.42.)

6. A licensed smog check station shall not issue a certificate of compliance "to any vehicle that has been tampered with." (§ 44015, subd. (a)(1).) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and "has all the required emission control equipment and devices installed and functioning correctly. . ." (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

7. *Clean piping*: The department "shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following: (1) Clean piping, as defined by the department. . ." (Health & Safety 44072.10, subd. (c)(1).) As set forth in Factual Finding 8, '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." (Cal. Code Regs., tit. 16, § 3340.1, subd. (t).)

"No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested." (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

8. *Fraud/ Dishonesty*: The director may suspend, revoke, or take other disciplinary action against a license if the licensee violates any statute relating to the Motor Vehicle Inspection Program or its regulations which relate to the licensed activities; or if the licensee "commits any act involving dishonesty, fraud, or deceit whereby another is injured. (§ 44072.2, subd. (a), (c), (d).) 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. (Cal. Code Regs., tit. 16, § 3340.24, subd. (c).) The willful making of any false statement or entry with regard to a material matter in any certificate of compliance or noncompliance under the Automotive Repair Act constitutes perjury and is punishable as provided in the Penal Code. (§ 44059.)

9. *Respondent Ford:* As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 9 through 23, respondent Ford has engaged in a practice of "clean piping" vehicles in violation of the Motor Vehicle Inspection Program. This practice injures the public in the precise manner that the Motor Vehicle Inspection Program is designed to prevent. Respondent Ford willfully and fraudulently entered false data into the EIS system, falsely certifying that he tested vehicles for which he entered certificates of completion. Legal cause is established to revoke respondent Ford's Advanced Emission Specialist Technician License Number EA 149931 based upon his violations of sections 44012, 44032, and 44072.2, subdivisions (a), (c), (d); and violations of California Code of Regulations, title 16, sections 3340.1, subdivision (t), 3340.24, subdivision (c), 3340.30, subdivision (a), and 3340.42.

Respondent Ford offered no evidence or explanation of his conduct, and he offered no evidence in mitigation. He has previously been cited by the Bureau and has taken a total of 92 hours of remedial education regarding his duties and responsibilities as a smog technician. Respondent Ford's conduct was intentional and repetitive. It would be detrimental to the public interest to issue a probationary license to respondent Ford.

10. *Respondent Lull's Smog Check, Test Only Station License Number TC 200544*: As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 9 through 23, legal cause is established to revoke respondent Lull's Smog Check, Test Only Station License Number TC 200544, based upon violations of sections 44012, 44015, subdivision (a)(1), 44032, and 44072.2, subdivisions (a), (c), (d); and violations of California Code of Regulations, title 16, sections 3340.1, subdivision (t), 3340.24, subdivision (c), 3340.30, subdivision (a),

and 3340.42, 3340.35, subdivision (c). As set forth below, the revocation shall be stayed and respondent Lull's Smog Check, Test Only Station License will be placed on probation.

11. *Respondent Lull's Automotive Repair Dealer Registration Number ARD 200544*: As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 9 through 23, legal cause is established to revoke respondent Lull's Automotive Repair Dealer Registration Number ARD 200544, under Business and Professions Code section 9884.7, subdivisions (1) and (4), based upon violations of sections 44012, 44015, subdivision (a)(1), 44032, and 44072.2, subdivisions (a), (c), (d); and violations of California Code of Regulations, title 16, sections 3340.1, subdivision (t), 3340.24, subdivision (c), 3340.30, subdivision (a), and 3340.42, 3340.35, subdivision (c). As set forth below, revocation shall be stayed and respondent Lull's Automotive Repair Dealer Registration will be placed on probation.

12. *Costs:* Pursuant to Business and Professions Code section 125.3, respondents may be directed to pay the reasonable costs of investigation and enforcement of the action against them. As set forth in Factual Finding 30, the Bureau established by a preponderance of the evidence that the reasonable costs of investigation and prosecution of the allegation against respondents is $15,167.75. Respondents are jointly and severally liable for payment of this total amount. Respondents may make periodic payments on said amount in a schedule to be determined by the Bureau. This order to pay costs is enforceable regardless of respondents' license status.

ORDER

1. The Advanced Emission Specialist Technician License Number EA 149931 issued to respondent Ford is hereby REVOKED.

2. Automotive Repair Dealer Registration Number ARD 200544 issued to respondent Lull is hereby REVOKED; however, revocation is STAYED and the registration shall be placed on probation for a period of three years, subject to the conditions set forth in Order 4.

3. Smog Check, Test Only Station License Number TC 200544 issued to respondent Lull is hereby REVOKED; however, revocation is STAYED and the license shall be placed on probation for a period of three years, subject to the conditions set forth in Order 4.

4. Respondent Lull's Automotive Repair Dealer Registration Number ARD 200544 and Smog Check, Test Only Station License Number TC 200544 are placed on probation for a period of three (3) years. During the period of probation, respondent Lull shall:

a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent Lull or his authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

e. If an accusation is filed against respondent Lull during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

f. Should the Director of Consumer Affairs determine that respondent Lull has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and suspend or revoke the license.

5. Within sixty (60) days of the date of this decision, respondents Ford and Lull shall pay to, or enter into a payment plan with, the Bureau for a total amount of 15,167.75 for costs of investigation and enforcement of this matter.

DATED: December 12, 2009

MARILYN WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: AUTOTEK CHRIS MICHAEL LULL, OWNER 8650 Antelope North Road, Suite E Antelope, CA 95843 Automotive Repair Dealer Reg. No. ARD 200544 Smog Check, Test Only, Station License No. TC 200544 and JONATHAN CLYDE FORD 6869 Barbara Lee Circle Sacramento, CA 95842 Advanced Emission Specialist Technician License No. EA 149931 Respondents.	Case No. 79/09-102 **ACCUSATION** SMOG CHECK

Complainant alleges:

PARTIES

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.

Automotive Repair Dealer Registration No. ARD 200544

2. On or about July 20, 1998, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 200544 to Chris Michael Lull ("Respondent Lull"), owner of Autotek. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

Smog Check, Test Only, Station License No. TC 200544

3. In or about 2001, the Director issued Smog Check, Test Only, Station License Number TC 200544 to Respondent Lull. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

Advanced Emission Specialist Technician License No. EA 149931

4. On or about August 10, 2004, the Director issued Advanced Emission Specialist Technician License Number EA 149931 to Jonathan Clyde Ford ("Respondent Ford"). Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

JURISDICTION

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

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

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

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

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

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> . . . .
>
> (4) Any other conduct which constitutes fraud.
>
> . . . .
>
> (c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means 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.
>
> . . . .

///

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

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

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

. . . .

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

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

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

COST RECOVERY

14. Bus. & Prof. 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.

VIDEO SURVEILLANCE OPERATION OF DECEMBER 6, 2008

15. On December 6, 2008, a representative of the Bureau conducted a video surveillance operation of Respondent Lull's smog check facility. The surveillance video and information obtained from the Bureau's vehicle information database ("VID") revealed that Respondent Ford issued electronic smog certificates of compliance on behalf of Respondent Lull, certifying that he had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent conducted the

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inspections using clean piping methods[1], resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
1. 1245 - 1255	2002 Toyota Camry; #4UVT440	NG268919C	1997 to 1999 Toyota Camry
2. 1436 - 1442	1989 Ford Mustang; #5FNG100 (the vehicle was issued a new license number, 6FXG848, as of 12/18/2008)	NG268920C	1994 to 1998 Ford Mustang
3. 1510 - 1522	1993 Nissan Maxima; #5GHS222	NG268921C	1992 Toyota Camry

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent Lull'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 or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Lull's technician, Respondent Ford, certified that vehicles 1 through 3, identified in paragraph 15 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Ford 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)

17. Respondent Lull'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 by issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above, without performing bona

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1. Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "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.

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.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1 through 3, identified in paragraph 15 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above, without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above.

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above, even though those vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.41, subdivision (c)**: Respondent's technician, Respondent Ford, entered false information into the Emission Inspection System ("EIS") 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 1 through 3, identified in paragraph 15 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent Lull'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 by issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 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.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

21. Respondent Ford'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 provisions of that Code, as follows:

a. **Section 44012**: Respondent failed to perform emission control tests on vehicles 1 through 3, identified in paragraph 15 above, in accordance with procedures prescribed by the department.

b. **Section 44059**: Respondent willfully made false entries in the EIS, resulting in the issuance of fraudulent certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above.

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SEVENTH CAUSE FOR DISCIPLINE

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

22. Respondent Ford's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 above.

b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1 through 3, identified in paragraph 15 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS 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 1 through 3, identified in paragraph 15 above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent Ford's advanced emission specialist technician 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 by issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 15 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.

VIDEO SURVEILLANCE OPERATION OF JANUARY 3, 2009

24. On January 3, 2009, a representative of the Bureau conducted a video surveillance operation of Respondent Lull's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondent Ford issued electronic smog certificates of compliance on behalf of Respondent Lull, certifying that he had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections using clean piping methods, resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
1. 1013 - 1018	1990 Honda Accord; #5XTN719	NG564203C	1991 Honda Accord; #5NZD184
2. 1041 - 1048	1991 Oldsmobile Ninety-Eight; #2XXD769	NG564205C	1990 Buick Century; #4381KDP
3. 1153 - 1200	1996 Dodge Caravan; #DPK5983	NG564207C	1996 Chrysler Town & Country; #3NRZ273
4. 1316 - 1324	1996 Dodge Intrepid; #5WZJ338	NG564210C	1996 Chrysler Town & Country; #3NRZ273
5. 1432 - 1455	1988 Toyota Tercel; #2GGF854	NG564213C	1991 Toyota Corolla; #2XBF081

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

25. Respondent Lull'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 or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Lull's technician, Respondent Ford, certified that vehicles 1 through 5, identified in paragraph 24 above, had passed inspection and were in compliance with applicable laws and regulations. In fact,

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Respondent Ford 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.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

26. Respondent Lull'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 by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 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.

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012**: Respondent failed to perform emission control tests on vehicles 1 through 5, identified in paragraph 24 above, in accordance with procedures prescribed by the department.

b. **Section 44015**: Respondent issued electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above, without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

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TWELFTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above.

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above, even though those vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.41, subdivision (c):** Respondent's technician, Respondent Ford, entered false information into the EIS 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 1 through 5, identified in paragraph 24 above, in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

29. Respondent Lull'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 by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above, without performing bona fide inspections of the emission control devices and systems on the

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vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

30. Respondent Ford'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 provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1 through 5, identified in paragraph 24 above, in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries in the EIS, resulting in the issuance of fraudulent certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above.

FIFTEENTH CAUSE FOR DISCIPLINE

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

31. Respondent Ford's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 above.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 5, identified in paragraph 24 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS 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 1 through 5, identified in paragraph 24 above, in accordance with the Bureau's specifications.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

32. Respondent Ford's advanced emission specialist technician 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 by issuing electronic smog certificates of compliance for vehicles 1 through 5, identified in paragraph 24 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.

VIDEO SURVEILLANCE OPERATION OF JANUARY 10, 2009

33. On January 10, 2009, a representative of the Bureau conducted a video surveillance operation of Respondent Lull's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondent Ford issued electronic smog certificates of compliance on behalf of Respondent Lull, certifying that he had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections using clean piping methods, resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
1. 1407 - 1414	1999 GMC Sonoma; #5Y36921	NG624986C	1996 GMC S15; #8R43648

Time of Smog Inspection	Vehicle Certified & License No.	Certificate of Compliance No.	Vehicle Actually Tested
2. 1435 - 1450	1985 Chevrolet G20 van; #5YBZ309	NG624987C	1991 Chevrolet S10; #7Z64676

SEVENTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

34. Respondent Lull'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 or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Lull's technician, Respondent Ford, certified that vehicles 1 and 2, identified in paragraph 33 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Ford 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.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Fraud)

35. Respondent Lull'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 by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 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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NINETEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012**: Respondent failed to perform emission control tests on vehicles 1 and 2, identified in paragraph 33 above, in accordance with procedures prescribed by the department.

b. **Section 44015**: Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above, without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

TWENTIETH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above, even though those vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.41, subdivision (c)**: Respondent's technician, Respondent Ford, entered false information into the EIS by entering vehicle

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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 1 and 2, identified in paragraph 33 above, in accordance with the Bureau's specifications.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

38. Respondent Lull'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 by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 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.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

39. Respondent Ford'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 provisions of that Code, as follows:

a. **Section 44012**: Respondent failed to perform emission control tests on vehicles 1 and 2, identified in paragraph 33 above, in accordance with procedures prescribed by the department.

b. **Section 44059**: Respondent willfully made false entries in the EIS, resulting in the issuance of fraudulent certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above.

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TWENTY-THIRD CAUSE FOR DISCIPLINE

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

40. Respondent Ford's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 above.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 and 2, identified in paragraph 33 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS 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 1 and 2, identified in paragraph 33 above, in accordance with the Bureau's specifications.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

41. Respondent Ford's advanced emission specialist technician 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 by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 33 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.

DISCIPLINE CONSIDERATIONS

42. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges as follows:

Respondent Lull:

a. On or about June 25, 2002, the Bureau issued Citation No. C02-1176 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by State and Federal law are installed and functioning correctly in accordance with test procedures), and California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling $500 against Respondent for the violations. Respondent appealed the citation; however, it became final on June 18, 2003. Respondent complied with the citation and paid the fine on July 17, 2003.

b. On or about March 9, 2006, the Bureau issued Citation No. C06-0543 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing air injection system. The Bureau assessed civil penalties totaling $500 against Respondent for the violations. Respondent complied with the citation and paid the fine on May 18, 2006.

c. On or about October 10, 2006, the Bureau issued Citation No. C07-0187 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance

to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a non-functional EGR system. The Bureau assessed civil penalties totaling $1,000 against Respondent for the violations. Respondent complied with the citation and paid the fine on November 27, 2006.

d. On or about December 6, 2006, the Bureau issued Citation No. C07-0367 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing air injection system reed valve. The Bureau assessed civil penalties totaling $2,000 against Respondent for the violations. Respondent complied with the citation and paid the fine on February 16, 2007.

Respondent Ford:

e. On or about March 9, 2006, the Bureau issued Citation No. M06-0544 against Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing air injection system. Respondent was directed to complete an 8 hour training course, with proof of completion submitted to the Bureau within thirty (30) days from receipt of the citation. Respondent complied with the citation and completed the training course on May 8, 2006.

f. On or about October 10, 2006, the Bureau issued Citation No. M07-0188 against Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and

Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a non-functional EGR system. Respondent was directed to complete a 16 hour training course, with proof of completion submitted to the Bureau within thirty (30) days from receipt of the citation. Respondent complied with the citation and completed the training course on December 10, 2006.

g. On or about December 6, 2006, the Bureau issued Citation No. M07-0368 against Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing air injection system reed valve. Respondent was directed to complete a Basic Clean Air Car Course with proof of completion submitted to the Bureau. Respondent complied with the citation and completed the training course on March 25, 2007.

OTHER MATTERS

43. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Respondent Chris Michael Lull, owner of Autotek, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

44. Pursuant to Health & Saf. Code section 44072.8, if Smog Check. Test Only. Station License Number TC 200544, issued to Respondent Chris Michael Lull, owner of Autotek, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

45. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 149931, issued to Jonathan Clyde Ford, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 200544, issued to Chris Michael Lull, owner of Autotek;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Chris Michael Lull;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 200544, issued to Chris Michael Lull, owner of Autotek;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Chris Michael Lull;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 149931, issued to Jonathan Clyde Ford;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jonathan Clyde Ford;

7. Ordering Chris Michael Lull, owner of Autotek, and Jonathan Clyde Ford 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;

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

DATED: 5-18-09

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