

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

In the Matter of the Accusation Against:

**ANOTHER SMOG TEST ONLY CENTER**  
**RICHARD DANIEL FENTON, Partner**  
**ZENE FAWN FENTON, Partner**  
1075 #A Santa Rosa Avenue  
Santa Rosa, California 95404  
Mailing Address:  
2360 Mendocino Avenue A2 #173  
Santa Rosa, California 95403

Automotive Repair Dealer Registration  
No. ARD 236899  
Smog Check, Test Only, Station License  
No. TC 236899

and

**RICHARD DANIEL FENTON**  
2360 Mendocino Avenue A2 #173  
Santa Rosa, California 95403

Advanced Emission Specialist Technician  
License No. EA 138504

Respondents.

Case No. 79/11-51

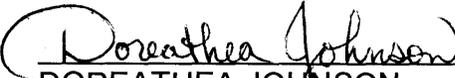
OAH No. 2011061396

**DECISION**

The attached Stipulated Settlement and 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 2/6/12.

DATED: DEC 30 2011

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SHANA A. BAGLEY  
Deputy Attorney General  
4 State Bar No. 169423  
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Oakland, CA 94612-0550  
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/11-51

13 **ANOTHER SMOG TEST ONLY CENTER**  
1075 #A Santa Rosa Avenue  
Santa Rosa, California 95404  
14 **Mailing Address:**  
2360 Mendocino Avenue A2 #173  
15 Santa Rosa, California 95403  
16 **RICHARD DANIEL FENTON, PARTNER**  
**ZENE FAWN FENTON, PARTNER**

OAH No. 2011061396

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17 **Automotive Repair Dealer License**  
No. ARD 236899  
18 **Smog Check Test Only Station License**  
No. TC 236899

19 **and**

20 **RICHARD DANIEL FENTON**  
2360 Mendocino Avenue A2 #173  
21 Santa Rosa, California 95403

22 **Advanced Emission Specialist Technician**  
23 License No. EA 138504

24 Respondents.

25  
26 ///  
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1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair  
5 (Bureau). She brought this action solely in her official capacity and is represented in this matter  
6 by Kamala D. Harris, Attorney General of the State of California, by Shana A. Bagley, Deputy  
7 Attorney General.

8 2. Respondents Another Smog Test Only Center, with Richard Daniel Fenton and Zene  
9 Fawn Fenton as partners, and Richard Daniel Fenton, as the technician, are represented in this  
10 proceeding by attorney Michael B. Levin, Esq., whose address is: 3727 Camino del Rio South,  
11 Suite 200, San Diego, CA 92108-4035.

12 3. On or about April 25, 2005, the Bureau issued Automotive Repair Dealer Registration  
13 No. ARD 236899 to Another Smog Test Only Center with Richard Daniel Fenton and Zene Fawn  
14 Fenton as partners (Respondent Another Smog). The Automotive Repair Dealer Registration was  
15 in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-51 and  
16 will expire on December 31, 2011, unless renewed.

17 4. On or about May 10, 2005, the Bureau issued Smog Check Test Only Station License  
18 No. TC 236899 to Respondent Another Smog. The Smog Check Test Only Station License was  
19 in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-51 and  
20 will expire on December 31, 2011, unless renewed.

21 5. On a date uncertain in 1998, the Bureau issued Advanced Emission Specialist  
22 Technician License No. EA 138504 to Richard Daniel Fenton (Respondent Fenton). The  
23 Technician License was in full force and effect at all times relevant to the charges brought in  
24 Accusation No. 79/11-51 and will expire on February 29, 2012, unless renewed.

25 **JURISDICTION**

26 6. Accusation No. 79/11-51 was filed before the Director of Consumer Affairs  
27 (Director), for the Bureau of Automotive Repair, and is currently pending against Respondents.  
28 The Accusation and all other statutorily required documents were properly served on

1 Respondents on March 3, 2011. Respondents timely filed their Notice of Defense contesting the  
2 Accusation. A copy of Accusation No. 79/11-51 is attached as exhibit A and incorporated by  
3 reference.

4 **ADVISEMENT AND WAIVERS**

5 7. Respondents have carefully read, fully discussed with counsel, and understands the  
6 charges and allegations in Accusation No. 79/11-51. Respondents have also carefully read, fully  
7 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary  
8 Order.

9 8. Respondents are fully aware of its legal rights in this matter, including the right to a  
10 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
11 their own expense; the right to confront and cross-examine the witnesses against them; the right  
12 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to  
13 compel the attendance of witnesses and the production of documents; the right to reconsideration  
14 and court review of an adverse decision; and all other rights accorded by the California  
15 Administrative Procedure Act and other applicable laws.

16 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
17 every right set forth above.

18 **CULPABILITY**

19 10. Respondents admit the truth of each and every charge and allegation in Accusation  
20 No. 79/11-51. Any admissions, general or specific, express or implied, do not constitute  
21 admissions for any other purpose or proceeding to which the Department of Consumer Affairs or  
22 the Bureau of Automotive Repair are not a party, including third party civil, criminal, or  
23 administrative proceedings.

24 11. Respondents agree that their Automotive Repair Dealer Registration, Smog Station  
25 License, and Advanced Emission Specialist Technician License are subject to discipline and they  
26 agree to be bound by the Director's probationary terms as set forth in the Disciplinary Order  
27 below.

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1 CIRCUMSTANCES IN MITIGATION

2 12. Respondent Another Smog and Respondent Fenton have never been the subject of  
3 any disciplinary action. They are admitting responsibility at an early stage in the proceedings.

4 CONTINGENCY

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

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

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

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

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1                                    **DISCIPLINARY ORDER AS TO RESPONDENT ANOTHER SMOG**

2            IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 236899  
3 and Smog Check Test Only Station License No. TC 236899 issued to Respondent Another Smog  
4 are revoked. However, the revocations are stayed and Respondent is placed on probation for four  
5 (4) years on the following terms and conditions.

6            1.    **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 236899 and  
7 Smog Check Test Only Station License No. TC 236899 issued to Respondent Another Smog are  
8 suspended for 15 consecutive days, to be served beginning on the effective date of the Decision.

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

11           3.    **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning  
12 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be  
13 conspicuously displayed in a location open to and frequented by customers and shall remain  
14 posted during the entire period of actual suspension.

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

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

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

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

1           8.     **Violation of Probation.** Should the Director of Consumer Affairs determine that  
2 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
3 after giving notice and opportunity to be heard temporarily or permanently invalidate the  
4 Automotive Repair Dealer Registration and/or suspend or revoke the Smog Station License.

5           9.     **Cost Recovery.** Respondent shall pay to the Bureau, pursuant to Business and  
6 Professions Code section 125.3, the costs of investigation and enforcement in this matter in the  
7 amount of \$7,254.65. All Respondents are jointly and severally liable for these costs. Payment  
8 to the Bureau shall be made in 36 installments, with the final payment due no later than 12  
9 months before probation terminates. Failure to complete payment of cost recovery within this  
10 time frame shall constitute a violation of probation which may subject Respondent's Automotive  
11 Repair Dealer Registration and Smog Check Station License to outright revocation. However, the  
12 Director or the Director's Bureau of Automotive Repair designee may elect to continue probation  
13 until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

14                                    **DISCIPLINARY ORDER AS TO RESPONDENT FENTON**

15           IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License No. TC  
16 236899 issued to Respondent Fenton is revoked. However, the revocation is stayed and  
17 Respondent is placed on probation for four (4) years on the following terms and conditions.

18           1.     **Actual Suspension.** Advanced Emission Specialist Technician License No. EA  
19 138504 issued to Respondent Fenton is suspended for 15 consecutive days, to be served  
20 beginning on the effective date of the Decision.

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

23           3.     **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning  
24 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be  
25 conspicuously displayed in a location open to and frequented by customers and shall remain  
26 posted during the entire period of actual suspension.

27           4.     **Reporting.** Respondent or Respondent's authorized representative must report in  
28 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the

1 Bureau, but no more frequently than each quarter, on the methods used and success achieved in  
2 maintaining compliance with the terms and conditions of probation.

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

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

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

13 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that  
14 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
15 after giving notice and opportunity to be heard temporarily or permanently revoke the Advanced  
16 Emission Specialist Technician License.

17 9. **Continuing Education Courses.** During the period of probation, Respondent shall  
18 attend and successfully complete a Bureau Certified Advanced Clean Air Car Course. Said  
19 course shall be completed and proof of completion submitted to the Bureau within 180 days of  
20 the effective date of this decision and order. If proof of completion of the course is not furnished  
21 to the Bureau within the 180-day period, Respondent's license shall be immediately suspended  
22 until such proof is received.

23 10. **Cost Recovery.** Respondent shall pay to the Bureau, pursuant to Business and  
24 Professions Code section 125.3, the costs of investigation and enforcement in this matter in the  
25 amount of \$7,254.65. All Respondents are jointly and severally liable for these costs. Payment  
26 to the Bureau shall be made in 36 installments, with the final payment due no later than 12  
27 months before probation terminates. Failure to complete payment of cost recovery within this  
28 time frame shall constitute a violation of probation which may subject Respondent's Advanced

1 Emission Specialist Technician License to outright revocation. However, the Director or the  
2 Director's Bureau of Automotive Repair designee may elect to continue probation until such time  
3 as reimbursement of the entire cost recovery amount has been made to the Bureau.

4 ACCEPTANCE

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

11  
12 DATED: 11/30/11   
13 RICHARD DANIEL FENTON, Partner  
14 ANOTHER SMOG TEST ONLY CENTER  
15 Respondent

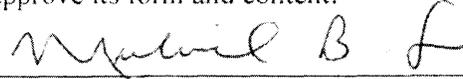
16 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
17 discussed it with my attorney, Michael B. Levin, Esq. I understand the stipulation and the effect  
18 it will have on my Advanced Emission Specialist Technician License. I enter into this Stipulated  
19 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
20 bound by the Decision and Order of the Director of Consumer Affairs.

21  
22 DATED: 11/30/11   
23 RICHARD DANIEL FENTON, Technician  
24 Respondent

25  
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1 I have read and fully discussed with Respondents Another Smog Test Only Center, with  
2 Richard Daniel Fenton and Zene Fawn Fenton as partners, and Richard Daniel Fenton, as  
3 technician, the terms and conditions and other matters contained in the above Stipulated  
4 Settlement and Disciplinary Order. I approve its form and content.

5 DATED: 12/1/11



6 Michael B. Levin, Esq.  
7 Attorney for Respondents

8 **ENDORSEMENT**

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

11 Dated:

Respectfully submitted.

12  
13 KAMALA D. HARRIS  
14 Attorney General of California  
15 DIANN SOKOLOFF  
16 Supervising Deputy Attorney General

17 SHANA A. BAGLEY  
18 Deputy Attorney General  
19 *Attorneys for Complainant*

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1 I have read and fully discussed with Respondents Another Smog Test Only Center, with  
2 Richard Daniel Fenton and Zene Fawn Fenton as partners, and Richard Daniel Fenton, as  
3 technician, the terms and conditions and other matters contained in the above Stipulated  
4 Settlement and Disciplinary Order. I approve its form and content.

5 DATED: \_\_\_\_\_

6 Michael B. Levin, Esq.  
7 Attorney for Respondents

8 **ENDORSEMENT**

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

11 Dated: 1 December 2011

12 Respectfully submitted,

13 KAMALA D. HARRIS  
14 Attorney General of California  
15 DIANN SOKOLOFF  
16 Supervising Deputy Attorney General

17 SHANA A. BAGLEY  
18 Deputy Attorney General  
19 *Attorneys for Complainant*

20 SF2010200995/ Stipulation.rtf  
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**Exhibit A**

**Accusation No. 79/11-51**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SHANA A. BAGLEY  
Deputy Attorney General  
4 State Bar No. 169423  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2129  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
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10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

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14 Mailing Address:  
2360 Mendocino Avenue A2 #173  
15 Santa Rosa, California 95403  
16 **RICHARD DANIEL FENTON, PARTNER**  
**ZENE FAWN FENTON, PARTNER**  
Automotive Repair Dealer License  
17 No. ARD 236899  
Smog Check Test Only Station License  
18 No. TC 236899

19 **ACCUSATION**  
**SMOG CHECK**

19 and

20 **RICHARD DANIEL FENTON**  
2360 Mendocino Avenue A2 #173  
21 Santa Rosa, California 95403  
Advanced Emission Specialist Technician  
22 License No. EA 138504

23 Respondents

24  
25 Complainant alleges:

26 **PARTIES**

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



1 This violation, or action by the director, shall not affect in any manner the right of the  
2 automotive repair dealer to operate his or her other places of business.

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

8 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
9 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
10 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
11 temporarily or permanently.

12 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
13 "commission," "committee," "department," "division," "examining committee," "program," and  
14 "agency." "License" includes certificate, registration or other means to engage in a business or  
15 profession regulated by the Code.

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

19 9. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

10. Section 44072.6 of the Health and Safety Code 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.

///

1 11. Section 44072.8 of the Health and Safety Code states:

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

4 COST RECOVERY

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

9 UNDERCOVER OPERATION –DECEMBER 21, 2009

10 13. On or about December 21, 2009, a Bureau undercover operator drove a Bureau-  
11 documented 1987 Toyota pickup to Respondent Another Smog's facility and requested a smog  
12 inspection. The vehicle could not pass the visual portion of a smog inspection because the  
13 vehicle's exhaust gas recirculation (EGR) system was missing. The operator was not asked to  
14 sign any paperwork nor was he provided any paperwork prior to the smog inspection.  
15 Respondent Fenton performed the smog inspection and issued electronic Certificate of  
16 Compliance No. NQ060402 for that vehicle even though the vehicle could not have passed the  
17 visual portion of the smog inspection. The operator paid \$80 for the smog inspection and  
18 received a copy of Invoice No. 22785 and the Vehicle Inspection Report ("VIR").

19 FIRST CAUSE FOR DISCIPLINE

20 (Misleading Statements)

21 14. Respondent Another Smog has subjected its registration to discipline under Code  
22 section 9884.7, subdivision (a)(1), in that on or about December 21, 2009, it made statements  
23 which it knew or which by exercise of reasonable care it should have known were untrue or  
24 misleading when it issued electronic Certificate of Compliance No. NQ060402 for the 1987  
25 Toyota pickup, certifying that the vehicle was in compliance with applicable laws and regulations  
26 when, in fact, the vehicle's EGR system was missing.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 15. Respondent Another Smog has subjected its registration to discipline under Code  
4 section 9884.7, subdivision (a)(4), in that on or about December 21, 2009, it committed acts  
5 which constitute fraud by issuing electronic Certificate of Compliance No. NQ060402 for the  
6 1987 Toyota pickup, without performing a bona fide inspection of the emission control devices  
7 and systems on that vehicle, thereby depriving the People of the State of California of the  
8 protection afforded by the Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 16. Respondent Another Smog has subjected its station license to discipline under Health  
12 and Safety Code section 44072.2, subdivision (a), in that on or about December 21, 2009,  
13 regarding the 1987 Toyota pickup, it violated sections of that Code, as follows:

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

17 b. **Section 44012, subdivision (f):** Respondent Another Smog failed to perform  
18 emission control tests on that vehicle in accordance with procedures prescribed by the  
19 department.

20 c. **Section 44015, subdivision (b):** Respondent Another Smog issued electronic  
21 Certificate of Compliance No. NQ060402 without properly testing and inspecting the vehicle to  
22 determine if it was in compliance with section 44012 of that Code.

23 d. **Section 44059:** Respondent Another Smog willfully made false entries for the  
24 electronic Certificate of Compliance No. NQ060402, certifying that the vehicle had been  
25 inspected as required when, in fact, it had not.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

3 17. Respondent Another Smog has subjected its station license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (c), in that on or about December 21, 2009,  
5 regarding the 1987 Toyota pickup, it violated sections of the California Code of Regulations, title  
6 16, as follows:

7 a. Section 3340.24, subdivision (c): Respondent Another Smog falsely or fraudulently  
8 issued electronic Certificate of Compliance No. NQ060402 without performing a bona fide  
9 inspection of the emission control devices and systems on that vehicle as required by Health and  
10 Safety Code section 44012.

11 b. Section 3340.35, subdivision (c): Respondent Another Smog issued electronic  
12 Certificate of Compliance No. NQ060402 even though that vehicle had not been inspected in  
13 accordance with section 3340.42 of that Code.

14 c. Section 3340.42: Respondent Another Smog failed to conduct the required smog  
15 tests and inspections on that vehicle in accordance with the Bureau's specifications.

16 FIFTH CAUSE FOR DISCIPLINE

17 (Dishonesty, Fraud or Deceit)

18 18. Respondent Another Smog subjected its station license to discipline under Health and  
19 Safety Code section 44072.2, subdivision (d), in that on or about December 21, 2009, regarding  
20 the 1987 Toyota pickup, it committed acts involving dishonesty, fraud or deceit whereby another  
21 was injured by issuing electronic Certificate of Compliance No. NQ060402 for that vehicle  
22 without performing a bona fide inspection of the emission control devices and systems on the  
23 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
24 Motor Vehicle Inspection Program.

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1 c. Section 3340.41, subdivision (c): Respondent Fenton entered false information into  
2 the Emission Inspection System ("EIS") for electronic Certificate of Compliance No. NQ060402  
3 by entering "Pass" for the visual portion of the smog inspection.

4 d. Section 3340.42: Respondent Fenton failed to conduct the required smog tests and  
5 inspections on that vehicle in accordance with the Bureau's specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 21. Respondent Fenton has subjected his technician license to discipline under Health and  
9 Safety Code section 44072.2, subdivision (d), in that on or about December 21, 2009, regarding  
10 the 1987 Toyota pickup, he committed acts involving dishonesty, fraud or deceit whereby another  
11 was injured by issuing electronic Certificate of Compliance No. NQ060402 without performing a  
12 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
14 Inspection Program.

15 **PRIOR CITATIONS**

16 22. To determine the degree of penalty, if any, to be imposed upon Respondent,  
17 Complainant alleges as follows:

18 a. On December 11, 2006, the Bureau issued Citation No. C07-0379 to Respondent  
19 Another Smog against its registration and station licenses for violations of Health and Safety  
20 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
21 control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35,  
22 subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent  
23 Another Smog issued a certificate of compliance to a Bureau vehicle with a nonfunctional  
24 exhaust gas recirculation system. The Bureau assessed a civil penalty of \$500. Respondent  
25 Another Smog complied with this citation on January 8, 2007.

26 b. On May 17, 2007, the Bureau issued Citation No. C07-0904 to Respondent Another  
27 Smog against its registration and station licenses for violations of Health and Safety Code section  
28 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)

1 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
2 improperly tested). Respondent Another Smog issued a certificate of compliance to a Bureau  
3 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau  
4 assessed a civil penalty of \$1,000. Respondent complied with this citation on July 5, 2007.

5 c. On September 26, 2007, the Bureau issued Citation No. C08-0277 to Respondent  
6 Another Smog against its registration and station licenses for violations of Health and Safety  
7 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
8 control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of  
9 compliance to a vehicle improperly tested). Respondent Another Smog issued a certificate of  
10 compliance to a Bureau vehicle with a missing PAIR reed valve assembly. The Bureau assessed  
11 a civil penalty of \$2,000. Respondent Another Smog appealed this citation on October 5, 2007;  
12 however, it withdrew the appeal on July 2, 2008. Respondent Another Smog complied with this  
13 citation on August 11, 2008.

14 d. On December 29, 2008, the Bureau issued Citation No. C09-0763 to Respondent  
15 Another Smog against its registration and station licenses for violations of Health and Safety  
16 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
17 control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of  
18 compliance to a vehicle improperly tested). Respondent Another Smog issued a certificate of  
19 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's  
20 specifications. The Bureau assessed a civil penalty of \$500. Respondent Another Smog  
21 complied with this citation on February 26, 2009.

22 e. On August 18, 2009, the Bureau issued Citation No. C2010-0139 to Respondent  
23 Another Smog against its registration and station licenses for violations of Health and Safety  
24 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
25 control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of  
26 compliance to a vehicle improperly tested). Respondent Another Smog issued a certificate of  
27 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's  
28

1 specifications. The Bureau assessed a civil penalty of \$1,000. Respondent Another Smog  
2 complied with this citation on October 21, 2009.

3 f. On March 26, 2001, the Bureau issued Citation No. M01-0452 to Respondent Fenton  
4 against his technician license for violations of Health and Safety Code section 44032, (qualified  
5 technicians shall perform tests of emission control systems and devices in accordance with  
6 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
9 3340.42). Respondent Fenton issued a certificate of compliance to a Bureau vehicle with the  
10 ignition timing adjusted beyond the manufacturer's specifications. Respondent Fenton was  
11 required to attend an 8-hour training course. Respondent Fenton complied with this citation on  
12 August 14, 2001.

13 g. On December 11, 2006, the Bureau issued Citation No. M07-0380 to Respondent  
14 Fenton against his technician license for violations of Health and Safety Code section 44032,  
15 (qualified technicians shall perform tests of emission control systems and devices in accordance  
16 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")  
17 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
18 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
19 3340.42). Respondent Fenton issued a certificate of compliance to a Bureau vehicle with a  
20 nonfunctional exhaust gas recirculation system. Respondent Fenton was required to attend an 8-  
21 hour training course. Respondent Fenton complied with this citation on December 13, 2006.

22 h. On May 17, 2007, the Bureau issued Citation No. M07-0905 to Respondent Fenton  
23 against his technician license for violations of Health and Safety Code section 44032, (qualified  
24 technicians shall perform tests of emission control systems and devices in accordance with  
25 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
26 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
27 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
28 3340.42). Respondent Fenton issued a certificate of compliance to a Bureau vehicle with the

1 ignition timing adjusted beyond the manufacturer's specifications. Respondent Fenton was  
2 required to attend a 16-hour training course. Respondent Fenton complied with this citation on  
3 July 15, 2007.

4 i. On September 26, 2007, the Bureau issued Citation No. M08-0278 to Respondent  
5 Fenton against his technician license for violations of Health and Safety Code section 44032,  
6 (qualified technicians shall perform tests of emission control systems and devices in accordance  
7 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")  
8 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
9 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
10 3340.42). Respondent Fenton issued a certificate of compliance to a Bureau vehicle with a  
11 missing PAIR reed valve assembly. Respondent Fenton was required to attend a basic clean car  
12 course. Respondent Fenton appealed this citation on October 5, 2007; however, Respondent  
13 Fenton withdrew the appeal on July 2, 2008. Respondent Fenton complied with this citation on  
14 October 18, 2007.

15 j. On December 29, 2008, the Bureau issued Citation No. M09-0764 to Respondent  
16 Fenton against his technician license for violations of Health and Safety Code section 44032,  
17 (qualified technicians shall perform tests of emission control systems and devices in accordance  
18 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")  
19 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
20 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
21 3340.42). Respondent Fenton issued a certificate of compliance to a Bureau vehicle with the  
22 ignition timing adjusted beyond the manufacturer's specifications. Respondent Fenton was  
23 required to attend an 8-hour training course. Respondent Fenton complied with this citation on  
24 March 9, 2009.

25 k. On August 18, 2009, the Bureau issued Citation No. M2010-0140 to Respondent  
26 Fenton against his technician license for violations of Health and Safety Code section 44032,  
27 (qualified technicians shall perform tests of emission control systems and devices in accordance  
28 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")

1 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
2 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
3 3340.42). Respondent Fenton issued a certificate of compliance to a Bureau vehicle with the  
4 ignition timing adjusted beyond the manufacturer's specifications. Respondent Fenton was  
5 required to attend a 16-hour training course. Respondent Fenton complied with this citation on  
6 November 4, 2009.

#### 7 OTHER MATTERS

8 23. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
9 or permanently or refuse to validate, the registrations for all places of business operated in this  
10 state by to Another Smog Test Only Center, upon a finding that it has, or is, engaged in a course  
11 of repeated and willful violations of the laws and regulations pertaining to an automotive repair  
12 dealer.

13 24. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
14 License Number TC 236899, issued to Another Smog Test Only Center, is revoked or suspended,  
15 any additional license issued under this chapter in the name of said licensee may likewise be  
16 suspended or revoked.

17 25. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist  
18 Technician License Number EA 138504, issued to Richard Daniel Fenton, is revoked or  
19 suspended, any additional license issued under this chapter in the name of said licensee may  
20 likewise be suspended or revoked.

#### 21 PRAYER

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

24 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
25 Registration Number ARD 236899, issued to Another Smog Test Only Center;

26 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
27 registration issued in the name Another Smog Test Only Center;

28

1           3.    Revoking or suspending Smog Check Test Only Station License Number TC 236899,  
2 issued to Another Smog Test Only Center;

3           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
4 and Safety Code in the name of Another Smog Test Only Center;

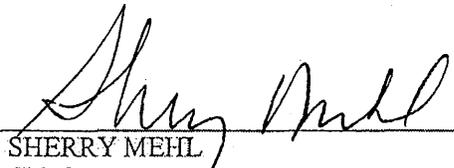
5           5.    Revoking or suspending Advanced Emission Specialist Technician License Number  
6 EA 138504, issued to Richard Daniel Fenton;

7           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
8 and Safety Code in the name of Richard Daniel Fenton;

9           7.    Ordering Another Smog Test Only Center and Richard Daniel Fenton to pay the  
10 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this  
11 case, pursuant to Business and Professions Code section 125.3; and,

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

13  
14  
15 DATED: 1/7/11

  
16 \_\_\_\_\_  
17 SHERRY MEHL  
18 Chief  
19 Bureau of Automotive Repair  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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