

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

In the Matter of the Accusation Against:

ARBI BAGHDANIAN,

Respondent.

Case No.: 79/09-58

OAH No. 2009070976

DECISION

The attached Proposed Decision of the Administrative Law Judge 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 July 19, 2010.

IT IS SO ORDERED June 10, 2010.

rfm



DORÉATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

The hearing in the above-captioned matter took place on March 10, 2010, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Shawn P. Cook, Deputy Attorney General. Respondent Arbi Baghdanian appeared and represented himself.

Evidence was received and the case was argued on the hearing date. The record was held open for 10 days to allow Complainant's counsel to file documentation pertaining to another license held by Respondent. A letter from Mr. Cook, along with a license certificate, were received on March 22, 2010. They are made part of the record as Exhibit 8. The record was closed and the matter deemed submitted for decision on March 22, 2010. The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Sherry Mehl brought the action in the above-captioned matter while acting in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau).

2. (A) Respondent Arbi Baghdanian was licensed by the Bureau as a smog check technician by the Bureau in 1998. Specifically, he received an Advanced Emission Specialist (EA) license in 1998, number EA 138989, which was due to expire March 31, 2010, unless renewed. That license was inactive from April 1, 2008, to June 27, 2008.

(B) Respondent formerly held an Automotive Repair Dealer (ARD) Registration, number AE 210415, and a Smog Check Station License (SCSL), number TE 210415. Both were operated under the fictitious business name "Smog City" in Canoga Park. The ARD and SCSL were both cancelled on October 19, 2007, and each expired on May 31, 2008. Respondent sold the Smog City business to Girmai Gabremadhin in October 2007. That person received an ARD and SCSL to operate under that fictitious name, in the same Canoga Park location as Respondent had operated from, on October 18 and October 24, 2007, respectively.

(C) Respondent now operates a smog check station, test only, under the fictitious name Thousand Oaks Smog Test Only (Thousand Oaks). His ARD number for that station is number ARD 246371. His smog test license number is TC 246371. The ARD was issued on August 14, 2006, and the smog check license issued the next day.

3. Respondent filed a notice of defense, and sought a hearing in this matter. All jurisdictional requirements have been met.

4. The Accusation alleges that Respondent conducted a smog check on March 19, 2008, at the Smog City location, using the name and access code of Mr. Gabremadhin, and that in performing the smog check, he failed to detect that the crankcase ventilation system was missing components. Respondent denied performing the smog check in question.

The March 19, 2008 Undercover Operation

5. On March 19, 2008, a Bureau employee using the alias Matthew Fulton drove a 2000 Chrysler Cirrus automobile to Smog City for a smog inspection. The Bureau, through its staff of mechanics, had modified the vehicle so that it should fail the visual inspection provisions of the smog check. Specifically, the Bureau mechanics had modified the Positive Crankcase Ventilation (PCV) system so that it was missing components—all of them. This should have been an obvious defect in the vehicle's emission control system.

6. Respondent performed the smog check, but he accessed the machine using the personal access code assigned to Mr. Gabremadhin. Respondent "passed" the vehicle, and he caused a certificate of compliance, number MY 799945, to be issued for the car. In the course of performing the inspection, he entered information in the Emission Inspection System (EIS) including that the vehicle had passed the visual inspection part of the test, and the entire test. However, because it did not have the required PCV system, the car should have failed the visual inspection portion of the

smog test, and no certificate of compliance should have issued. A Vehicle Inspection Report (VIR) was also generated, which indicated that PCV system had passed. (See Attachment J to Exhibit 7.)

7. After the March 19, 2008 undercover operation, Bureau investigators met with Respondent and Mr. Gabremadhin; the meeting took place on March 24, five days after the inspection. Mr. Gabremadhin stated he didn't test the car or recall the car. Respondent stated he had been at the smog check station and had tested some cars, but didn't recall the Chrysler in question. When shown the VIR that was generated, Mr. Gabremadhin denied that the signature thereon, purporting to be his, was actually his.

Prior Citations

8. Respondent has been cited for non-compliance with the laws and regulations governing smog checks on three occasions before the March 19, 2008 inspection.

9. (A) On November 30, 2006, he was cited for failing to perform a visual/functional test on a vehicle, and for issuing a certificate of compliance to an improperly tested vehicle. In that case, the ignition timing on the vehicle in question was not adjusted to proper specifications. The ARD, station license, and Respondent's technician license, were cited.

(B) Civil penalties of \$500 were imposed, and Respondent was ordered to complete an eight hour training course. Respondent complied with those terms in February 2007.

10. (A) On March 24, 2007, the Bureau issued citations against Respondent's ARD, station license, and technician's license, for once again, failing to perform a proper visual/functional inspection of an emission control system, and for issuing a certificate of compliance for a vehicle that had not been properly inspected, and which should not have passed inspection. In that case the car was missing a pulse air injection system.

(B) The Bureau imposed civil penalties of \$1,000 and required Respondent to complete a 16-hour training course. Respondent appealed the citations, but they were upheld following a hearing before Eric Sawyer, Administrative Law Judge, in September 2007. Respondent complied with the citations in January 2007.

11. (A) On July 27, 2007, the Bureau cited Respondent's ARD, station license, and technician's license for failure to perform a visual/functional inspection and for issuing a certificate of compliance for a vehicle that should not have passed inspection. In that case, the vehicle was missing a positive crankcase ventilation system.

(B) Respondent appealed the citations, which imposed civil penalties of \$2,000 and required him to complete a clean air course. The citations were upheld by a default decision against Respondent. However, did not comply with the citations.

Respondent's Contentions

12. Respondent denied that he was performing smog checks at Smog City on March 19, 2008. He testified he had done some work at the site for some two months after he sold the business, but he denied performing the smog check in question.

13. Respondent testified that opened the Thousand Oaks location in 2006. He attested that he has passed undercover operations conducted at that facility, and there is no evidence of any citations against that facility, or against Respondent while he has been in business there.

14. Respondent's sole source of income is his technician's license and the station he operates in Thousand Oaks. He has been licensed for approximately 14 years.

Costs

15. The Bureau has incurred costs of investigation and prosecution totaling \$9,324.72. Under all the circumstances, the costs are reasonable, although to pay them in one lump sum may present a hardship to the owner of a small business such as a smog check station.

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LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to Health and Safety Code section 44072.2¹ was established, based on Factual Findings 1 through 3. Further, if discipline is ordered against Respondent's technician license, it may be ordered against his license to operate 1000 Oaks Smog, pursuant to section 44072.8.

2. (A) Section 44032 requires smog check technicians to perform smog tests in compliance with section 44012. Section 44012, subdivision (f), provides that a visual or functional check must be made of emission control devices specified by the Department, and in compliance with procedures prescribed by the Department. Section 44012, subdivision (a), provides that all emission control devices and systems required by law must be installed and functioning properly.

(B) Respondent violated sections 44012, subdivisions (a) and (f), and thereby violated section 44032, by failing to properly inspect the Chrysler vehicle on March 19, 2008, in that he failed to detect a missing emission control system, the PCV system. This Conclusion is based on Factual Findings 5 through 7.

(C) Respondent willfully made false entries for a certificate of compliance that he issued in connection with the inspection of the Chrysler vehicle on March 19, 2008, in violation of section 44059, based on Factual Findings 5 through 7.

(D) Based on all the foregoing, Respondent's technician's license is subject to discipline pursuant to section 44072.2, subdivision (a).

3. (A) Based on Factual Findings 5 through 7, Respondent violated applicable regulations that govern the inspection of vehicle emission control systems, as described below.

(B) He violated California Code of Regulations (CCR), title 16, section 3340.24, subdivision (c),² by falsely issuing a certificate of compliance on a vehicle that was missing its entire PCV system, a system required to be installed on the car's engine.

(C) Respondent violated section 3340.30, subdivision (a), by failing to comply with section 44012, as determined in Legal Conclusion 2(B).

¹ All further statutory references shall be to the Health and Safety Code, unless otherwise noted.

² All further references to the CCR are to title 16 thereof.

(D) Respondent entered false information in the EIS when he showed the Chrysler as passing the visual inspection on March 19, 2008, in violation of CCR section 3340.41, subdivision (c).

(E) Respondent failed to conduct require smog checks, by failing to find the missing PCV system, in violation of section 3340.42.

(F) Respondent's violations of the applicable regulations constitute cause to discipline his technician's license pursuant to section 44072.2, subdivision (c).

4. Respondent's technician's license is subject to discipline pursuant to section 44072.2, subdivision (d), for dishonesty, fraud, or deceit, based on all the foregoing, because he issued a certificate of compliance without performing a bona fide inspection of the Chrysler vehicle on March 19, 2008.

5. The Bureau is entitled to recover its costs of investigation and prosecution pursuant to Business and Professions Code section 125.3, based on Legal Conclusions 1 through 4. The reasonable amount of the costs is \$9,324.72, based on Factual Finding 15. However, as noted in that finding, for a small business such as Respondent's to pay that amount in a lump sum would constitute a hardship, and such should be paid in installments.

5. The Bureau has developed guidelines for use in determining what sort of discipline should flow from violations of the statutes and regulations that it is charged with enforcing. The guidelines are incorporated into the regulations, at section 3395.4 (hereafter Guidelines). The Guidelines list a number of factors in aggravation, and many apply to Respondent. Among the most pertinent are: prior warnings from the Bureau, in that the previous citations amount to warnings; prior history of citations, and evidence that the unlawful act was part of a pattern of practice.

6. The Guidelines call for minimum discipline in the form of stayed orders of revocation, 30 to 60 days of suspension, and at least two years probation. While Respondent has not been cited for any improper inspections at his Thousand Oaks facility, and has not been cited for any other improper inspections for two years, the fact remains that on four straight occasions he issued certificates of compliance on vehicles that should have failed the visual inspections. Indeed, his last citation and this matter pertain to the failure to detect missing PCV systems.

7. The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) In order to protect the public, some change in Respondent's way of performing

inspections must be brought about. Based on all the foregoing, it must be concluded that only a significant disciplinary order will bring about change of a lasting nature. Therefore, Respondent should be placed on probation, and his licenses suspended for thirty days, so that he might learn that he must strictly comply with the laws pertaining to smog checks.

ORDER

The license and licenses issued to Respondent Arbi Baghdanian, including his smog check technician's license, number EA 138989; his ARD, number ARD 246371; and, his smog check station license, number TC 246371, are hereby revoked or invalidated, and that revocation or invalidation stayed, on the following terms and conditions:

1. Respondent's licenses shall be placed on probation for a period of three years from the effective date of this order.
2. Respondents' licenses, and each of them, shall be suspended for a period of 30 days beginning on the effective date of this order.
3. If Respondent fully complies with probation, at the end of the three-year period, his licenses shall be fully restored.
4. Respondent shall pay costs in the amount of \$9,324.72, in monthly installments of \$275 per month, until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.
5. During the period of probation, Respondent shall:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
 - b. Post a prominent sign where he operates his smog check station and ARD, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
 - c. 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.

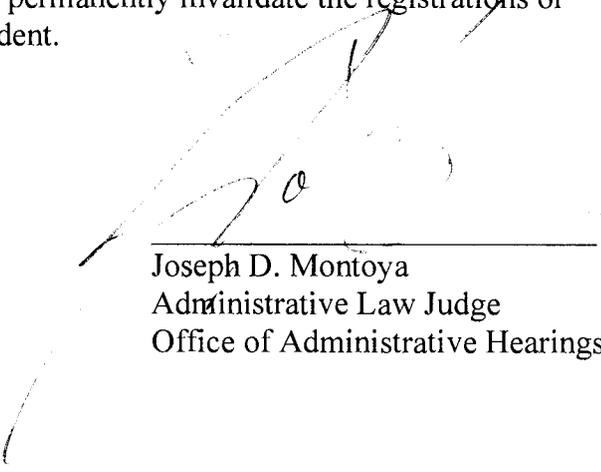
d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

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

f. 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.

g. 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 registrations or licenses held by Respondent.

May 25, 2010



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 79/09-58

13 **ARBI BAGHDANIAN**
7955 Vicky Avenue
West Hills, California 91304

A C C U S A T I O N

S M O G C H E C K

14 Advanced Emission Specialist Technician License
No. EA 138989

15 Respondent.

16
17 Sherry Mehl ("Complainant") alleges:

18 **PARTIES**

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

21 **CURRENT LICENSE**

22 **Advanced Emission Specialist Technician License**

23 2. On a date uncertain in 1998, the Bureau issued Advanced Emission
24 Specialist Technician License Number EA 138989 ("technician license") to Arbi Baghdanian
25 ("Respondent"). The technician license was inactive from March 31, 2004, to April 20, 2004.
26 The technician license will expire on March 31, 2010.

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

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

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

7 **COST RECOVERY**

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

12 **UNDERCOVER OPERATION - MARCH 19, 2008**

13 11. On or about March 19, 2008, a Bureau undercover operator using the alias
14 Mathew Fulton (“operator”) drove a Bureau documented 2000 Chrysler Cirrus, California
15 License Plate No. 4PDN605, to Smog City¹ for a smog inspection. The vehicle could not pass
16 the visual portion of the smog inspection because the positive crankcase ventilation system
17 (“PCV”) was missing various components. Respondent performed the smog inspection using the
18 personal access code of Girmai Gabremadhin. Respondent issued electronic Certificate of
19 Compliance No. MY799945, certifying that he had tested and inspected the 2000 Chrysler Cirrus
20 and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle
21 could not have passed the visual portion of the smog inspection because the vehicle’s PCV
22 system was missing various components.

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26 1. On October 18, 2007, Automotive Repair Dealer Registration No. ARD 252181 and
27 Smog Check Test Only Station License No. TC 252181 were issued to Girmai Gabremadhin as
28 the new owner of Smog City. As a result of the undercover operation on March 19, 2008, first
level citations were issued against Girmai Gabremadhin’s registration and station license.

1 c. **Section 3340.41, subdivision (c):** Respondent entered false information
2 into the Emission Inspection System (“EIS”) by entering “Pass” for the visual portion of the
3 smog inspection when, in fact, the vehicle could not pass the visual portion of the smog
4 inspection because the vehicle’s PCV system was missing various components.

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

7 **THIRD CAUSE FOR DISCIPLINE**

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

9 14. Respondent has subjected his technician license to discipline under Health
10 and Safety Code section 44072.2, subdivision (d), in that on or about March 19, 2008, he
11 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
12 electronic Certificate of Compliance No. MY799945 for the 2000 Chrysler Cirrus without
13 performing a bona fide inspection of the emission control devices and systems on that vehicle,
14 thereby depriving the People of the State of California of the protection afforded by the Motor
15 Vehicle Inspection Program.

16 **PRIOR CITATIONS**

17 15. To determine the degree of discipline, if any, to be imposed on
18 Respondent, Complainant alleges while the owner of Automotive Repair Dealer Registration No.
19 ARD 210415, Smog Check Station License No. TE 210415, and Advanced Emission Specialist
20 Technician License No. EA 138989, the Bureau issued the following citations to Respondent:

21 a. On or about November 30, 2006, the Bureau issued Citation No.
22 C07-0333 against Respondent’s registration and station licenses for violations of Health & Safety
23 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
24 control devices according to procedures prescribed by the department), and California Code of
25 Regulations, title 16, section (“Regulation”) 3340.35, subdivision (c) (issuing a certificate of
26 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
27 Bureau undercover vehicle with the ignition timing adjusted beyond manufacturer’s

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1 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the
2 violations. Respondent complied with this citation on February 7, 2007.

3 b. On or about November 30, 2006, the Bureau issued Citation No.
4 M07-0334 against Respondent's technician license for violations of Health & Safety Code
5 section 44032, (failure to perform a visual/functional check of emission control devices
6 according to procedures prescribed by the department), and Regulation 3340.30, subdivision (a)
7 (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a
8 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted
9 beyond the manufacturer's specifications. The Bureau directed Respondent to complete an
10 8-hour training course. Respondent complied with this citation on February 7, 2007.

11 c. On or about March 26, 2007, the Bureau issued Citation No. C07-0674
12 against Respondent's registration and station licenses for violations of Health & Safety Code
13 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
14 devices according to procedures prescribed by the department), and Regulation 3340.35,
15 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
16 issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air
17 injection system. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the
18 violations. Respondent appealed this citation on May 24, 2007. Effective November 2, 2007,
19 pursuant to a Decision and Order, the citation was upheld; however, Respondent failed to comply
20 with the citation.

21 d. On or about March 26, 2007, the Bureau issued Citation No. M08-0675
22 against Respondent's technician license for violations of Health & Safety Code section 44032,
23 (failure to perform a visual/functional check of emission control devices according to procedures
24 prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a certificate of
25 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
26 Bureau undercover vehicle with a missing pulse air injection system. The Bureau directed
27 Respondent to complete a 16-hour training course. Respondent appealed this citation on May 24,

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1 2007. Effective November 2, 2007, pursuant to a Decision and Order, the citation was upheld;
2 however, Respondent complied with this citation on January 7, 2008.

3 e. On or about July 27, 2007, the Bureau issued Citation No. C08-0066
4 against Respondent's registration and station licenses for violations of Health & Safety Code
5 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
6 devices according to procedures prescribed by the department), and Regulation 3340.35,
7 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
8 issuing a certificate of compliance to a Bureau undercover vehicle with a missing positive
9 crankcase ventilation system. The Bureau assessed civil penalties totaling \$2,000 against
10 Respondent for the violations. Respondent appealed this citation on October 5, 2007. Effective
11 March 20, 2008, pursuant to a Default Decision and Order, the citation was upheld; however,
12 Respondent failed to comply with the citation.

13 f. On or about July 27, 2007, the Bureau issued Citation No.M08-00067
14 against Respondent's technician license for violations of Health & Safety Code section 44032,
15 (failure to perform a visual/functional check of emission control devices according to procedures
16 prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a certificate of
17 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
18 Bureau undercover vehicle with a missing positive crankcase ventilation system. The Bureau
19 directed Respondent to complete a basic clean air course. Respondent appealed this citation on
20 October 5, 2007. Effective March 20, 2008, pursuant to a Default Decision and Order, the
21 citation was upheld. Respondent complied with this citation on March 30, 2008.

22 **OTHER MATTERS**

23 16. Under Health and Safety Code section 44072.8, if Advanced Emission
24 Specialist Technician License Number EA 138989, issued to Arbi Baghdanian, is revoked or
25 suspended, any additional license issued under this chapter, including but not limited to Smog
26 Check Station License No. TE 210415, or any other license in the name of said licensee may be
27 likewise revoked or suspended by the director.

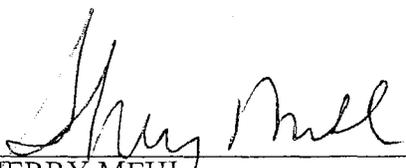
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1 PRAYER

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

- 4 1. Revoking or suspending Advanced Emission Specialist Technician
5 License Number EA 138989, issued to Arbi Baghdanian;
- 6 2. Revoking or suspending any additional license issued under this chapter in
7 the name of Arbi Baghdanian, including but not limited to Smog Check Station License No.
8 TE 210415;
- 9 3. Ordering Arbi Baghdanian to pay the Bureau of Automotive Repair the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
11 125.3; and,
- 12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 12/17/08

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