

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

In the Matter of the Accusation Against:

**ANTONIO RAYA CRUZ**  
1721 Juniper Lane  
Wasco, CA 93280

Advanced Emission Specialist Technician  
License No. EA 144199

Respondents.

Case No. 79/11-48

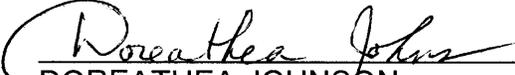
OAH No. L-2011031463

**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 2/10/12.

DATED: December 29, 2011

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 THOMAS L. RINALDI  
Deputy Attorney General  
4 State Bar No. 206911  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 79/11-48

12 **ANTONIO RAYA CRUZ**  
1721 Juniper Lane  
13 Wasco, CA 93280  
Advanced Emission Specialist Technician  
14 License No. EA 144199

OAH No. L-2011031463  
**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Respondent.

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She  
21 brought this action solely in her official capacity and is represented in this matter by Kamala D.  
22 Harris, Attorney General of the State of California, by Thomas L. Rinaldi, Deputy Attorney  
23 General.

24 2. Antonio Raya Cruz (Respondent) is representing himself in this proceeding and has  
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about January 1, 2002, the Bureau of Automotive Repair issued Advanced  
27 Emission Specialist Technician License No. EA 144199 to Respondent. The Advanced Emission  
28

1 Specialist Technician License was in full force and effect at all times relevant to the charges  
2 brought in Accusation No. 79/11-48 and will expire on February 29, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 79/11-48 was filed before the Director of Consumer Affairs  
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
6 Respondent. The Accusation and all other statutorily required documents were properly served  
7 on Respondent on March 17, 2011. Respondent timely filed his Notice of Defense contesting the  
8 Accusation.

9 A copy of Accusation No. 79/11-48 is attached as exhibit A and incorporated herein by  
10 reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands the charges and allegations in  
13 Accusation No. 79/11-48. Respondent has also carefully read, and understands the effects of this  
14 Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
19 the attendance of witnesses and the production of documents; the right to reconsideration and  
20 court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

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

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation  
26 No. 79/11-48.



1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License No. EA  
3 144199 issued to Respondent is revoked. However, the revocation is stayed and Respondent  
4 placed on probation for one (1) year on the following terms and conditions.

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

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

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

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

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

21 6. **Continuing Education Course.** During the period of probation, Respondent shall  
22 attend and successfully complete a sixteen (16) hour citation training course to be completed  
23 within ninety (90) days of the effective date of the decision.

24 7. **Violation of Probation.** Should the Director of Consumer Affairs determine that  
25 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
26 after giving notice and opportunity to be heard temporarily or permanently suspend or revoke the  
27 advanced emission specialist technician license.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License. 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: 11-14-11

*Antonio Cruz*  
ANTONIO RAYA CRUZ  
Respondent

ENDORSEMENT

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

Dated: 12-9-2011

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
*[Signature]*  
THOMAS L. RINALDI  
Deputy Attorney General  
Attorneys for Complainant

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51021035.doc

**Exhibit A**

**Accusation No. 79/11-48**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2520  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

79/11-48

11 In the Matter of the Accusation Against:

Case No.

12 **BILL'S FAST LUBE & SMOG**  
13 **FRANCISCO LULE, PARTNER**  
14 **MELVIN NELSON, PARTNER**  
**305 High Street**  
**Delano, CA 93215**  
15 **Automotive Repair Dealer Reg. No. ARD 248438**  
**Smog Check Station License No. RC 248438**  
16

**A C C U S A T I O N**

**(Smog Check)**

17 **and**

18 **ANTONIO R. CRUZ**  
1721 Juniper Lane  
19 Wasco, CA 93280  
**Advanced Emission Specialist Technician**  
20 **License No. EA 144199**

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 **Bill's Fast Lube & Smog**

27 2. On or about January 4, 2007, the Director of Consumer Affairs ("Director") issued  
28 Automotive Repair Dealer Registration Number ARD 248438 (hereinafter "registration") to Bill's

1 Fast Lube & Smog ("Respondent Bill's"), with Francisco Lule and Melvin Nelson as partners.  
2 Respondent's registration was in full force and effect at all times relevant to the charges brought  
3 herein and will expire on December 31, 2011, unless renewed.

4 3. On or about January 5, 2007, the Director issued Smog Check Station License  
5 Number RC 248438 to Respondent Bill's. Respondent's smog check station license was in full  
6 force and effect at all times relevant to the charges brought herein and will expire on December  
7 31, 2011, unless renewed.

8 **Antonio R. Cruz**

9 4. In or about 2002, the Director issued Advanced Emission Specialist Technician  
10 License Number EA 144199 (hereinafter "technician license") to Antonio R. Cruz ("Respondent  
11 Cruz" or "Cruz"). Respondent's technician license was in full force and effect at all times  
12 relevant to the charges brought herein and will expire on February 29, 2012, unless renewed.

13 **JURISDICTION**

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

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

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

23 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
24 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
25 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
26 of jurisdiction to proceed with disciplinary action.

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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 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.

(2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

....

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

....

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation 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.

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1 11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

8 . . . .

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

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

13 . . . .

14 (f) Aids or abets unlicensed persons to evade the provisions of this  
15 chapter . . .

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

19 **COST RECOVERY**

20 13. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
21 the administrative law judge to direct a licentiate found to have committed a violation or  
22 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
23 and enforcement of the case.

24 **RECORDED UNDERCOVER OPERATION #1**

25 **1994 TOYOTA 4X4 4RUNNER PICKUP**

26 14. On August 5, 2009, a representative of the Bureau, acting in an undercover capacity  
27 (hereinafter "operator"), took the Bureau's 1994 Toyota 4x4 4Runner pickup to Respondent Bill's  
28 facility and requested a smog inspection. The throttle position sensor ("TPS") on the Bureau-  
documented vehicle was defective, causing excessive tailpipe emissions and the malfunction  
indicator lamp ("MIL") to illuminate on the dashboard. The operator was given a quote of \$70  
for the smog inspection. The operator signed a written estimate, but was not given a copy of the

1 document at that time. Later, Respondent Cruz informed the operator that the vehicle failed the  
2 inspection and requested the operator's authorization to perform a diagnosis on the vehicle for  
3 \$70. The operator authorized the work, received a copy of the written estimate, then left the  
4 facility.

5 15. At approximately 11:00 hours that same day, Cruz called the operator and requested  
6 his authorization to replace the TPS on the vehicle for an additional \$255.76. The operator  
7 authorized the repair.

8 16. At approximately 13:30 hours, the operator returned to the facility, paid Cruz  
9 \$325.76, and received copies of an invoice, a vehicle inspection report ("VIR") dated August 5,  
10 2009, with a time of 08:33 hours (the failed inspection), and a VIR dated August 5, 2009, with a  
11 time of 13:19 hours. The second VIR identified Cruz as the repair technician. That same day,  
12 electronic smog Certificate of Compliance No. WB768934C was issued for the vehicle.

13 17. On August 6, 2009, the Bureau inspected the vehicle and found that the TPS had been  
14 replaced. The videotape of the undercover operation revealed that Respondent's partner, Melvin  
15 Nelson ("Nelson"), had repaired the vehicle although he was not a licensed smog check  
16 technician. The videotape also revealed that Cruz had failed to perform the required functional  
17 ignition timing check and functional low pressure fuel evaporative test ("LPFET") during the  
18 second smog inspection on the vehicle.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 18. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
22 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements  
23 which it knew or in the exercise of reasonable care should have known to be untrue or  
24 misleading, as follows:

25 a. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on  
26 the second VIR that he performed the smog inspection on the Bureau's 1994 Toyota 4x4 4Runner  
27 pickup in accordance with all Bureau requirements. In fact, Respondent Cruz failed to perform  
28 the required functional ignition timing test and functional LPFET test on the vehicle.

1 b. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on  
2 the second VIR that he performed the repair on the Bureau's 1994 Toyota 4x4 4Runner pickup,  
3 the replacement of the TPS. In fact, Respondent Bill's partner, Nelson, an unlicensed technician,  
4 had performed that emission related repair on the vehicle.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Record Odometer Reading and Repairs Requested by the Customer)**

7 19. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
8 Prof. Code section 9884.7, subdivision (a)(2), in that Respondent caused or allowed the operator  
9 to sign the written estimate which did not state the odometer reading of the Bureau's 1994 Toyota  
10 4x4 4Runner pickup or the initial service requested by the operator; i.e., the smog inspection.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Provide Customer with Copy of Signed Document)**

13 20. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
14 Prof. Code section 9884.7, subdivision (a)(3), in that Respondent failed to ensure that the operator  
15 was provided with a copy of the written estimate as soon as the operator signed the document.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 21. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
19 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which  
20 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1994  
21 Toyota 4x4 4Runner pickup without performing a bona fide inspection of the emission control  
22 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
23 protection afforded by the Motor Vehicle Inspection Program.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program)**

3 22. Respondent Bill's smog check station license is subject to disciplinary action  
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
5 comply with provisions of that Code in the following material respects:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
7 performed on the Bureau's 1994 Toyota 4x4 4Runner pickup in accordance with procedures  
8 prescribed by the department.

9 b. **Section 44014:** Respondent allowed Nelson, an unlicensed technician, to perform an  
10 emission related repair on the Bureau's 1994 Toyota 4x4 4Runner pickup, the replacement of the  
11 TPS.

12 c. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
13 the Bureau's 1994 Toyota 4x4 4Runner pickup without ensuring that the vehicle was properly  
14 tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

15 d. **Section 44016:** Respondent failed to ensure that the repairs were performed on the  
16 Bureau's 1994 Toyota 4x4 4Runner pickup in accordance with established specifications and  
17 procedures in that Respondent allowed Nelson, an unlicensed technician, to replace the TPS on  
18 the vehicle.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

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

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
26 electronic smog certificate of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup  
27 without ensuring that a bona fide inspection was performed of the emission control devices and  
28 systems on the vehicle as required by Health & Saf. Code section 44012.



1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program)**

3 26. Respondent Cruz's technician license is subject to disciplinary action pursuant to  
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
5 provisions of that Code in the following material respects:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the  
7 Bureau's 1994 Toyota 4x4 4Runner pickup in accordance with procedures prescribed by the  
8 department.

9 b. **Section 44059:** Respondent willfully made false entries on the second VIR regarding  
10 the smog inspection on the Bureau's 1994 Toyota 4x4 4Runner pickup, as set forth in paragraph  
11 18 above.

12 **TENTH CAUSE FOR DISCIPLINE**

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

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

18 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
19 electronic smog certificate of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup, as  
20 set forth in paragraph 18 above.

21 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's  
22 1994 Toyota 4x4 4Runner pickup in accordance with Health & Saf. Code sections 44012 and  
23 44035, and California Code of Regulations, title 16, section 3340.42.

24 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the  
25 Bureau's 1994 4x4 4Runner pickup in accordance with the Bureau's specifications.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent Cruz's technician license is subject to disciplinary action pursuant to  
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed an act  
5 involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic smog  
6 certificate of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup when, in fact, a bona  
7 fide inspection was not performed of the emission control devices and systems on the vehicle,  
8 thereby depriving the People of the State of California of the protection afforded by the Motor  
9 Vehicle Inspection Program.

10 **RECORDED UNDERCOVER OPERATION #2: 1994 TOYOTA CELICA**

11 29. On October 6, 2009, a representative of the Bureau, acting in an undercover capacity  
12 (hereinafter "operator"), took the Bureau's 1994 Toyota Celica to Respondent Bill's facility and  
13 requested a smog inspection. The coolant temperature sensor ("CTS") on the Bureau-documented  
14 vehicle was defective, causing the MIL to illuminate on the dashboard. The operator was given a  
15 quote of \$70 for the smog inspection. The operator signed a written estimate, but was not given a  
16 copy of the document at that time. Later, Respondent Bill's partner, Francisco Lule ("Lule"),  
17 informed the operator that the vehicle failed the inspection and requested the operator's  
18 authorization to perform a diagnosis on the vehicle. The operator signed and received a copy of a  
19 written estimate authorizing the facility to perform the diagnosis for \$70, a timing adjustment for  
20 \$20, and a smog inspection for \$51.75. The estimate also included a fee of \$8.25 for a smog  
21 certificate and an "ELT" fee of \$10. The operator left the facility.

22 30. At approximately 16:00 hours that same day, the operator went to the facility to  
23 retrieve the vehicle. Lule told the operator that he needed to order a CTS for the vehicle, which  
24 would cost \$62.12, and that the operator needed to bring the vehicle back another day for the  
25 repair. The operator authorized the work and received copies of Invoice No. 144208 (the initial  
26 written estimate) and a VIR for the failed smog inspection. The operator left the facility.

27 31. On October 8, 2009, the operator returned the vehicle to the facility and told Lule that  
28 he was there to have the smog repairs completed. The operator observed a technician with the

1 name tag "Gonzalo" replace the CTS on the vehicle. After Gonzalo completed the repair, Nelson  
2 asked him if he "took care of it." Gonzalo responded that he had. The operator observed Cruz  
3 drive the vehicle into the facility. Later, Lule informed the operator that the vehicle passed the  
4 smog inspection. The operator paid the cashier \$217.12 and received copies of Invoice No.  
5 144209 and a VIR dated October 8, 2009. The VIR identified Cruz as the repair technician. That  
6 same day, electronic smog Certificate of Compliance No. WD 672079C was issued for the  
7 vehicle.

8 32. On October 12, 2009, the Bureau inspected the vehicle and found that the CTS had  
9 been replaced; however, the ignition timing was improperly adjusted to 15 degrees BTDC (before  
10 top dead center). The videotape of the undercover operation revealed that Gonzalo had replaced  
11 the CTS on the vehicle and that Cruz had failed to perform the required functional ignition timing  
12 check and functional LPFET during the second smog inspection on the vehicle.

13 33. On February 4, 2010, the Bureau determined during their continued investigation of  
14 the facility that Gonzalo's full name was Gonzalo Martinez ("Martinez") and that Martinez was  
15 not a licensed smog check technician.

16 **TWELFTH CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 34. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
19 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements  
20 which it knew or in the exercise of reasonable care should have known to be untrue or  
21 misleading, as follows:

22 a. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on  
23 the VIR dated October 8, 2009, that the Bureau's 1994 Toyota Celica had passed inspection and  
24 was in compliance with applicable laws and regulations, and that he performed the inspection in  
25 accordance with all Bureau requirements. In fact, the ignition timing on the vehicle was  
26 improperly adjusted to 15 degrees BTDC (the manufacturer's specifications are 10 degrees  
27 BTDC) and the vehicle would not pass the inspection required by Health & Saf. Code section

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1 44012. Further, Cruz failed to perform the required functional ignition timing test and functional  
2 LPFET test on the vehicle.

3 b. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on  
4 the VIR dated October 8, 2009, that he performed the repair on the Bureau's 1994 Toyota Celica,  
5 the replacement of the CTS. In fact, Respondent Bill's employee, Martinez, an unlicensed  
6 technician, had performed that emission related repair on the vehicle.

7 c. Respondent Bill's represented on Invoice No. 144209 that the ignition timing on the  
8 Bureau's 1994 Toyota Celica had been adjusted to 10 degrees BTDC when, in fact, the ignition  
9 timing had been improperly adjusted to 15 degrees BTDC.

10 d. Respondent Bill's represented on Invoice No. 144209 that on October 8, 2009, at  
11 07:45 hours, the operator had authorized \$62.12 in additional repairs on the Bureau's 1994 Toyota  
12 Celica, the replacement of the CTS. In fact, the operator had authorized the additional repair on  
13 October 6, 2009, at approximately 16:00 hours.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Provide Customer with Copy of Signed Document)**

16 35. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
17 Prof. Code section 9884.7, subdivision (a)(3), in that Respondent failed to ensure that the operator  
18 was provided with a copy of the initial written estimate as soon as the operator signed the  
19 document.

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 36. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
23 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which  
24 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1994  
25 Toyota Celica without performing a bona fide inspection of the emission control devices and  
26 systems on the vehicle, thereby depriving the People of the State of California of the protection  
27 afforded by the Motor Vehicle Inspection Program.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 37. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
4 Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
5 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
6 owner or the owner's duly authorized representative, in a material respect, as follows:  
7 Respondent improperly adjusted the ignition timing on the Bureau's 1994 Toyota Celica to 15  
8 degrees BTDC when the manufacturer's specifications are 10 degrees BTDC.

9 **SIXTEENTH CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations)**

11 38. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &  
12 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with California  
13 Code of Regulations, title 16, section 3356, subdivision (a)(2)(A), in a material respect, as  
14 follows: Respondent failed to describe or identify on Invoice No. 144209 all repair work  
15 performed on the Bureau's 1994 Toyota Celica in that Respondent recorded the additional repair  
16 as "R&R Coolant Temperature Sensor" without defining the term "R&R".

17 **SEVENTEENTH CAUSE FOR DISCIPLINE**

18 **(Violations of the Motor Vehicle Inspection Program)**

19 39. Respondent Bill's smog check station license is subject to disciplinary action  
20 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
21 comply with provisions of that Code in the following material respects:

22 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
23 performed on the Bureau's 1994 Toyota Celica in accordance with procedures prescribed by the  
24 department.

25 b. **Section 44014:** Respondent allowed Martinez, an unlicensed technician, to perform  
26 an emission related repair on the Bureau's 1994 Toyota Celica, the replacement of the CTS.

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1 c. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
2 the Bureau's 1994 Toyota Celica without ensuring that the vehicle was properly tested and  
3 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

4 d. **Section 44016:** Respondent failed to ensure that the repairs were performed on the  
5 Bureau's 1994 Toyota Celica in accordance with established specifications and procedures in that  
6 Respondent allowed Martinez, an unlicensed technician, to replace the CTS on the vehicle.  
7 Further, Respondent failed to properly adjust the ignition timing on the vehicle, as set forth  
8 above.

9 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

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

15 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
16 electronic smog certificate of compliance for the Bureau's 1994 Toyota Celica without ensuring  
17 that a bona fide inspection was performed of the emission control devices and systems on the  
18 vehicle as required by Health & Saf. Code section 44012.

19 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate  
20 of compliance for the Bureau's 1994 Toyota Celica even though the vehicle had not been  
21 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

22 c. **Section 3340.41, subdivision (d):** Respondent failed to follow applicable  
23 specifications and procedures when performing the repairs on the Bureau's 1994 Toyota Celica,  
24 as set forth in above.

25 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were  
26 conducted on the Bureau's 1994 Toyota Celica in accordance with the Bureau's specifications.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

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

3 41. Respondent Bill's smog check station license is subject to disciplinary action pursuant  
4 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed an act  
5 involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic smog  
6 certificate of compliance for the Bureau's 1994 Toyota Celica when, in fact, a bona fide  
7 inspection was not performed of the emission control devices and systems on the vehicle, thereby  
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
9 Inspection Program.

10 **TWENTIETH CAUSE FOR DISCIPLINE**

11 **(Aiding or Abetting Unlicensed Person)**

12 42. Respondent Bill's smog check station license is subject to disciplinary action pursuant  
13 to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and abetted  
14 Martinez, an unlicensed technician, to evade the provisions of the Motor Vehicle Inspection by  
15 allowing Martinez to perform an emission related repair on the Bureau's 1994 Toyota Celica, the  
16 replacement of the CTS.

17 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

18 **(Violations of the Motor Vehicle Inspection Program)**

19 43. Respondent Cruz's technician license is subject to disciplinary action pursuant to  
20 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
21 provisions of that Code in the following material respects:

22 a. **Section 44012:** Respondent failed to perform the emission control tests on the  
23 Bureau's 1994 Toyota Celica in accordance with procedures prescribed by the department.

24 b. **Section 44059:** Respondent willfully made false entries on the VIR dated October 8,  
25 2009, as set forth in paragraph 34 above.

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1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

4 44. Respondent Cruz's technician license is subject to disciplinary action pursuant to  
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
8 electronic smog certificate of compliance for the Bureau's 1994 Toyota Celica, as set forth in  
9 paragraph 34 above.

10 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's  
11 1994 Toyota Celica in accordance with Health & Saf. Code sections 44012 and 44035, and  
12 California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the  
14 Bureau's 1994 Celica in accordance with the Bureau's specifications.

15 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

17 45. Respondent Cruz's technician license is subject to disciplinary action pursuant to  
18 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed an act  
19 involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic smog  
20 certificate of compliance for the Bureau's 1994 Toyota Celica when, in fact, a bona fide  
21 inspection was not performed of the emission control devices and systems on the vehicle, thereby  
22 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
23 Inspection Program.

24 **OTHER MATTERS**

25 46. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
26 suspend, revoke, or place on probation the registration for all places of business operated in this  
27 state by Respondent Bill's Fast Lube & Smog, upon a finding that Respondent has, or is, engaged

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1 in a course of repeated and willful violations of the laws and regulations pertaining to an  
2 automotive repair dealer.

3 47. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
4 Number RC 248438, issued to Respondent Bill's Fast Lube & Smog, is revoked or suspended,  
5 any additional license issued under this chapter in the name of said licensee may be likewise  
6 revoked or suspended by the Director.

7 48. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
8 Technician License Number EA 144199, issued to Respondent Antonio R. Cruz, is revoked or  
9 suspended, any additional license issued under this chapter in the name of said licensee may be  
10 likewise revoked or suspended by the Director.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
15 248438, to Bill's Fast Lube & Smog;

16 2. Revoking or suspending any other automotive repair dealer registration issued to  
17 Bill's Fast Lube & Smog;

18 3. Revoking or suspending Smog Check Station License Number RC 248438, issued to  
19 Bill's Fast Lube & Smog;

20 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
21 and Safety Code in the name of Bill's Fast Lube & Smog;

22 5. Revoking or suspending Advanced Emission Specialist Technician License Number  
23 EA 144199, issued to Antonio R. Cruz;

24 6. Revoking or suspending any additional license issued under Chapter 5 of the Health  
25 and Safety Code in the name of Antonio R. Cruz;

26 7. Ordering Respondents Bill's Fast Lube & Smog and Antonio R. Cruz to pay the  
27 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this  
28 case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/15/10



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

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