

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

In the Matter of the Accusation Against:

AAA TEST ONLY;
WILLIAM FURBUSH – PRESIDENT
DBA AAA TEST ONLY
677 E. 9th Street
San Bernardino, CA 92410

Case No. 79/13-100

OAH No. 2013110641

Automotive Repair Dealer Registration No.
ARD 256890
Smog Check Test Only Station License No.
TC 256890
Advanced Emission Specialist Technician
License No. EA 155036 (to be redesignated
upon renewal as EO 155036 and/or
EI 155036)

and

MICHAEL AUSTIN ROSS, JR.
10130 Cartagena Dr.
Moreno Valley, CA 92557

Advanced Emission Specialist Technician
License No. EA 633510 (to be redesignated
upon renewal as EO 633510 and/or
EI 633510)

Respondents.

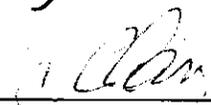
DECISION

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

July 25, 2014

DATED: July 2, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY
Deputy Attorney General
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

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12 **AAA TEST ONLY;**
13 **WILLIAM FURBUSH – PRESIDENT**
14 **DBA AAA TEST ONLY**
677 E. 9th Street
San Bernardino, CA 92410

OAH No. 2013110641

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Automotive Repair Dealer Registration No.
ARD 256890
16 Smog Check Test Only Station License No. TC
256890
17 Advanced Emission Specialist Technician
License No. EA 155036 (to be redesignated
18 upon renewal as EO 155036 and/or EI 155036)

19 and
20

21 **MICHAEL AUSTIN ROSS, JR.**
22 10130 Cartagena Dr.
Moreno Valley, CA 92557

23 Advanced Emission Specialist Technician
24 License No. EA 633510 (to be redesignated
25 upon renewal as EO 633510 and/or EI 633510)

26
27 Respondents.
28

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. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Kevin J. Rigley, Deputy Attorney General.

7 2. Respondents are represented in this proceeding by attorney Juan F. Dotson, whose
8 address is: 2067 W. Whittier Boulevard, La Habra, CA 90631.

9 **Automotive Repair Dealer Registration No. ARD 256890**

10 3. On December 10, 2008, the BAR issued Automotive Repair Dealer Registration
11 Number ARD 256890 (registration) to AAA Test Only, William Furbush - President, dba AAA
12 Test Only (Respondent Furbush). The Registration, which was in full force and effect at all times
13 relevant to the charges brought herein, expired on September 30, 2012, and has not been renewed.

14 **Smog Check, Test Only, Station License Number TC 256890**

15 4. On November 25, 2009, the BAR issued Smog Check - Test Only Station License
16 Number TC 256890 (station license) to Respondent Furbush. The station license, which was in
17 full force and effect at all times relevant to the charges brought herein, expired on September 30,
18 2012, and has not been renewed.

19 **Advanced Emission Specialist Technician License Number EA 155036**

20 5. On a date uncertain in 2007, the BAR issued Advanced Emission Specialist
21 Technician License Number EA 155036 (technician license) to Respondent Furbush. The
22 technician license, which was in full force and effect at all times relevant to the charges brought
23 herein, expired on August 31, 2013, and was not renewed. Upon timely renewal thereof, the
24 technician license will be redesignated as EO 155036 and/or EI 155036.¹

25 ///

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 and court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 11. Respondents voluntarily, knowingly, and intelligently waive and give up each and
4 every right set forth above.

5 **CULPABILITY**

6 12. Respondents admit the truth of each and every charge and allegation in Accusation
7 No. 79/13-100.

8 13. Respondent Furbush agrees that his registration, station license, and technician
9 license are subject to discipline, and he agrees to be bound by the Director's Disciplinary Order
10 below, including the probationary terms as set forth therein.

11 14. Respondent Ross agrees that his technician license is subject to discipline, and he
12 agrees to be bound by the Director's Disciplinary Order below.

13 **CONTINGENCY**

14 15. This stipulation shall be subject to approval by the Director of Consumer Affairs or
15 the Director's designee. Respondents understand and agree that counsel for Complainant and the
16 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
17 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
18 or participation by Respondents or their counsel. By signing the stipulation, Respondents
19 understand and agree that they may not withdraw their agreement or seek to rescind the
20 stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt
21 this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall
22 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
23 between the parties, and the Director shall not be disqualified from further action by having
24 considered this matter.

25 16. The parties understand and agree that Portable Document Format (PDF) and facsimile
26 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
27 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

28 ///

1 conspicuously displayed in a location open to and frequented by customers and shall remain
2 posted during the entire period of actual suspension.

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

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

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

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

17 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
18 Respondent Furbush has failed to comply with the terms and conditions of probation, the
19 Department may, after giving notice and opportunity to be heard temporarily or permanently
20 invalidate the registration.

21 9. **Restrictions.** During the period of probation, Respondent shall not perform any form
22 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
23 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
24 properly perform such work, and BAR has been given 10 days notice of the availability of the
25 equipment for inspection by a BAR representative. In addition, Respondent Furbush shall not
26 apply for any smog-related licenses during the entire period of probation.

27 10. **Cost Recovery.** Respondent Furbush's payment to the Bureau of the full amount of
28 cost recovery (\$5,500.00) shall be received no later than twelve (12) months before probation

1 terminates. Failure to complete payment of cost recovery within this time frame shall constitute a
2 violation of probation which may subject Respondent Furbush's registration to outright
3 permanent invalidation; however, the Director or the Director's Bureau of Automotive Repair
4 designee may elect to continue probation until such time as reimbursement of the entire cost
5 recovery amount has been made to the Bureau.

6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with my attorney, Juan F. Dotson. I understand the stipulation and the effect it will
9 have on my Automotive Repair Dealer Registration, Smog Check, Test-Only, Station License,
10 and/or Advanced Emissions Specialists Technician License. I enter into this Stipulated
11 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
12 bound by the Decision and Order of the Director of Consumer Affairs.

13
14 DATED: _____
15 MICHAEL AUSTIN ROSS, JR.
16 Respondent Ross

17 DATED: _____
18 AAA TEST ONLY; WILLIAM FURBUSH
19 Respondent Furbush

20 I have read and fully discussed with Respondent Furbush and Respondent Ross the terms
21 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
22 Order. I approve its form and content.

23
24 DATED: _____
25 Juan F. Dotson
26 Attorney for Respondents

27 ///

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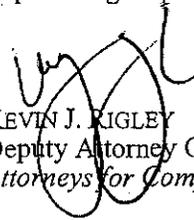
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ENDORSEMENT

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

Dated: 6/2/14

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General


KEVIN J. RIGLEY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/13-100

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUIE
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3 KEVIN J. RIGLEY
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4 State Bar No. 131800
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E-mail: Kevin.Rigley@doj.ca.gov
7 *Attorneys for Complainant.*

8
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11 **STATE OF CALIFORNIA**

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14 **WILLIAM FURBUSH - PRESIDENT**
15 **DBA AAA TEST ONLY**
677 E. 9th Street
16 San Bernardino, CA 92410

ACCUSATION

17 Automotive Repair Dealer Registration No.
ARD 256890
18 Smog Check Test Only Station License No.
TC 256890
19 Advanced Emission Specialist Technician
License No. EA 155036 (to be redesignated
20 upon renewal as EO 155036 and/or EI
155036)

21 and

22 **MICHAEL AUSTIN ROSS, JR.**
23 10130 Cartagena Dr.
Moreno Valley, CA 92557

24 Advanced Emission Specialist Technician
25 License No. EA 633510 (to be redesignated
26 upon renewal as EO 633510 and/or EI
633510)

27 Respondents.
28

ACCUSATION

1 Complainant alleges:

2 **PARTIES**

3 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as
4 the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

5 **Automotive Repair Dealer Registration No. ARD 256890**

6 2. On December 10, 2008, the BAR issued Automotive Repair Dealer Registration
7 Number ARD 256890 (Registration) to AAA Test Only, William Furbush - President, dba AAA
8 Test Only (Respondent AAA). The Registration, which was in full force and effect at all times
9 relevant to the charges brought herein, expired on September 30, 2012, and has not been renewed.

10 **Smog Check, Test Only, Station License Number TC 256890**

11 3. On November 25, 2009, the BAR issued Smog Check - Test Only Station License
12 Number TC 256890 (Smog Check Station License) to Respondent AAA. The Smog Check
13 Station License, which was in full force and effect at all times relevant to the charges brought
14 herein, expired on September 30, 2012, and has not been renewed.

15 **Advanced Emission Specialist Technician License Number EA 155036**

16 4. On a date uncertain in 2007, the BAR issued Advanced Emission Specialist
17 Technician License Number EA 155036 (technician license) to William Furbush (Respondent
18 Furbush). The Technician License was in full force and effect at all times relevant to the charges
19 brought herein. Respondent Furbush's technician license is due to expire on August 31, 2014.
20 Upon timely renewal thereof, the technician license will be redesignated as EO 155036 and/or EI
21 155036.¹

22 **Advanced Emission Specialist Technician License Number EA 633510**

23 5. On August 15, 2011, the BAR issued Advanced Emission Specialist Technician
24 License Number EA 633510 (technician license) to Michael Austin Ross Jr. (Respondent Ross
25 Jr.). The Technician License was in full force and effect at all times relevant to the charges

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 brought herein. Respondent Ross Jr's technician license is due to expire on July 31, 2014. Upon
2 timely renewal thereof, the technician license will be redesignated as EO 633510 and/or EI
3 633510.²

4 JURISDICTION

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

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

11 8. Section 44002 of the Health and Safety Code provides, in pertinent party, that the
12 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
13 the Motor Vehicle Inspection Program.

14 9. California Code of Regulations, title 16, section 3340.28, subdivision (e) states that
15 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
16 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
17 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

18 STATUTORY PROVISIONS

19 10. Section 9884.7 of the Code states, in pertinent part:

20 "(a) The director, where the automotive repair dealer cannot show there was a bona
21 fide error, may deny, suspend, revoke, or place on probation the registration of an
22 automotive repair dealer for any of the following acts or omissions related to the conduct of
23 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.

24 (1) Making or authorizing in any manner or by any means whatever any statement
25 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.

26 ² Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

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(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.

"(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

"(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."

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

12. Section 477 of the Code 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 Code.

13. Section 118(b) of the Code states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

15. 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 16. Section 44072.8 of the Health and Safety Code states:

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

4 VID DATA REVIEW

5 17. In or about June 2012, the BAR initiated an investigation of Respondents based on a
6 review of information from the BAR's vehicle information database (VID), which indicated that
7 Respondents may be engaging in fraudulent smog check inspections.

8 18. Beginning in May of 2012, a representative of the BAR conducted a detailed review
9 of VID data for all smog inspections performed at Respondent AAA's automotive repair
10 dealership for the period of March 19, 2012, through May 30, 2012. The review of the OBD II
11 functional tests³ showed a pattern of the same OBD II diagnostic trouble codes (either P1514 or
12 P0304 and P1514) stored in the memory of the power train control module (PCM) on thirty two
13 different vehicles that received smog certificates in the two month period. The BAR specifically
14 examined the VID data, in detail, for ten of the vehicles that were certified from March 22, 2012,
15 to May 22, 2012, and it was determined that none of them support the P1514 OBD II code.
16 Vehicles 1 through 10, set forth in Table 1 in paragraph 18 below, were all certified with a
17 pending P1514 code stored in the PCM memory while the original equipment manufacturer
18 (OEM) service information shows these vehicles do not support a P1514 diagnostic trouble code.

19 19. The VID data also showed that the inspections on two of the vehicles were performed
20 under the technician license of Respondent Furbush and that inspections on eight of the vehicles
21 were performed by Respondent Ross Jr. The BAR concluded that Respondents performed the
22 smog inspections on the vehicles using a different vehicle(s) during the OBD II tests, a method

23
24 ³ The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
25 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
26 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
27 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
28 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

1 known as "clean plugging,"⁴ resulting in the issuance of fraudulent certificates of compliance for
 2 the vehicles that were tested as outlined in the following table.

3 **OBDII Clean Plug Table No. 1**

4 #	Test Date Start-End	Year	Make	Model	License #	Unsupported Code	Certificate #	Tech. Id. #
5 1	3/22/2012 1229-1237	2002	Kia	Rio	5CCR407	P1514	XF222399C	633510
6 2	3/23/2012 1554-1606	1996	Honda	Civic	3POZ166	P1514	XF407215C	633510
7 3	3/23/2012 1637-1650	1998	Honda	Civic	6REM231	P1514	XF407217C	633510
8 4	3/27/2012 1647-1656	2002	Toyota	Camry	4WSJ898	P1514	XF407231C	633510
9 5	4/6/2012 1623-1632	2001	Toyota	Tacoma	6L30103	P1514	XF657166C	633510
10 6	4/7/2012 1044-1055	2000	Toyota	Tacoma	6F53406	P1514	XF657167C	633510
11 7	4/26/2012 1752-1802	1998	Ford	Escort	4APJ985	P1514	XF933376C	155036
12 8	4/26/2012 1807-1817	1999	Toyota	4Runner	4FKA397	P1514	XF933377C	155036
13 9	5/21/2012 1102-1130	1998	Toyota	Corolla	E2WZ030899	P1514	XH371555C	633510
14 10	5/22/2012 1818-1834	1997	Acura	Integra	5JYA023	P1514	XH371564C	633510

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 24 ⁴ Clean-plugging is the use of the OBD II readiness monitor status and stored code status
 25 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
 26 is not in compliance due to the noncompliant vehicle's failure to complete the minimum number
 27 of self tests, known as monitors, or due to the presence of a stored fault code that indicates an
 28 emission control system or component failure. Clean plugging occurs during the inspection of a
 vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters
 information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD II
 system connector from the EIS into another vehicle that has a properly functioning OBD II
 system for the purpose of obtaining a "Passing" OBD II functional test result.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Misleading Statements)

3 20. Respondent AAA's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1) in that he made statements which he knew or which
5 by exercise of reasonable care he should have known were untrue or misleading when he issued
6 electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that
7 those vehicles were in compliance with applicable laws and regulations when, in fact, those
8 vehicles had not been so inspected.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Fraud)

11 21. Respondent AAA's registration is subject to disciplinary action under pursuant to
12 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent AAA committed acts
13 that constitute fraud by issuing electronic smog certificates of compliance for the vehicles 1
14 through 10, identified in Table 1 of paragraph 18 above, without performing bona fide inspections
15 of the emission control devices and systems on the vehicles, thereby depriving the People of the
16 State of California of the protection afforded by the Motor Vehicle Inspection Program.

17 **THIRD CAUSE FOR DISCIPLINE**

18 (Material Violation of Automotive Repair Act)

19 22. Respondent AAA's registration is subject to disciplinary action pursuant to Bus. &
20 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent AAA failed in a "material
21 respect to comply with the provisions of this chapter or regulations adopted pursuant to it" when
22 Respondent AAA issued electronic certificates of compliance for the vehicles set forth in Table 1
23 of paragraph 18 above, without performing bona fide inspections of the emission control devices
24 and systems on those vehicles, thereby depriving the people of the State of California of the
25 protection afforded by the Motor Vehicle Inspection Program.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent AAA's registration is subject to disciplinary action pursuant to Health &
4 Safety Code section 44072.2, subdivision (a), in that Respondent AAA failed to comply with the
5 following sections of that Code:

6 a. Section 44012: Respondent AAA failed to ensure that all emission control devices and
7 systems required by law for vehicles 1 through 10, identified in Table 1 of paragraph 18 above,
8 were installed and functioning correctly in accordance with test procedures.

9 b. Section 44012, subdivision (f): Respondent AAA failed to ensure that the emission
10 control tests were performed on vehicles 1 through 10, identified in Table 1 of paragraph 18
11 above, in accordance with procedures prescribed by the department.

12 c. Section 44015, subdivision (b): Respondent AAA issued electronic smog certificates of
13 compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above, without
14 ensuring that the vehicles were properly tested and inspected to determine if they were in
15 compliance with Health & Safety Code section 44012.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

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

21 a. Section 3340.24, subdivision (c): Respondent AAA falsely or fraudulently issued
22 electronic smog certificates of compliance for vehicles 1 through 10, identified in Table 1 of
23 paragraph 18 above.

24 b. Section 3340.35, subdivision (c): Respondent AAA issued electronic smog certificates
25 of compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above, even though
26 the vehicles had not been inspected in accordance with section 3340.42.

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1 c. Section 3340.42: Respondent AAA failed to ensure that the required smog tests were
2 conducted on vehicles 1 through 10, identified in Table 1 of paragraph 18 above, in accordance
3 with the BAR's specifications.

4 **FIFTH CAUSE FOR DISCIPLINE**

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

6 25. Respondent AAA's smog check station license is subject to disciplinary action
7 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that Respondent AAA
8 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic
9 smog certificates of compliance for the vehicles 1 through 10, identified in Table 1 of paragraph
10 18 above, without performing bona fide inspections of the emission control devices and systems
11 on the vehicles, thereby depriving the People of the State of California of the protection afforded
12 by the Motor Vehicle Inspection Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 26. Respondent Furbush's technician license is subject to disciplinary action pursuant to
16 Health & Safety Code section 44072.2, subdivision (a), in that Respondent Furbush failed to
17 comply with the following sections of that Code:

18 a. Section 44012, subdivision (a): Respondent Furbush failed to ensure that all emission
19 control devices and systems required by law for vehicles 7 and 8, identified in Table 1 of
20 paragraph 18 above, were installed and functioning correctly in accordance with test procedures.

21 b. Section 44012, subdivision (f): Respondent Furbush failed to perform the emission
22 control tests on vehicles 7 and 8, identified in Table 1 of paragraph 18 above, in accordance with
23 procedures prescribed by the department.

24 c. Section 44059: Respondent Furbush willfully made false entries for electronic
25 certificates of compliance for vehicles 7 and 8, identified in Table 1 of paragraph 18 above, by
26 certifying that the vehicles had been inspected as required when, in fact, they had not.

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1 SEVENTH CAUSE FOR DISCIPLINE

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

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

6 a. Section 3340.24, subdivision (c): Respondent Furbush falsely or fraudulently issued
7 electronic smog certificates of compliance for vehicles 7 and 8, identified in Table 1 of paragraph
8 18 above.

9 b. Section 3340.30, subdivision (a): Respondent Furbush failed to inspect and test
10 vehicles 7 and 8, identified in Table 1 of paragraph 18 above, in accordance with Health & Safety
11 Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

12 c. Section 3340.41, subdivision (c): Respondent Furbush entered into the emissions
13 inspection system vehicle identification information or emission control system identification
14 data for a vehicle other than the one being tested for vehicles 7 and 8, identified in Table 1 of
15 paragraph 18 above.

16 d. Section 3340.42: Respondent Furbush failed to conduct the required smog tests on
17 vehicles 7 and 8, identified in Table 1 of paragraph 18 above, in accordance with the Bureau's
18 specifications.

19 EIGHTH CAUSE FOR DISCIPLINE

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

21 28. Respondent Furbush's technician license is subject to disciplinary action pursuant to
22 Health & Safety Code section 44072.2, subdivision (d), in that Respondent Furbush committed
23 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
24 certificates of compliance for the vehicles 7 and 8, identified in Table 1 of paragraph 18 above,
25 without performing bona fide inspections of the emission control devices and systems on the
26 vehicles, thereby depriving the People of the State of California of the protection afforded by the
27 Motor Vehicle Inspection Program.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 29. Respondent Ross Jr's technician license is subject to disciplinary action pursuant to
4 Health & Safety Code section 44072.2, subdivision (a), in that Respondent Ross Jr failed to
5 comply with the following sections of that Code:

6 a. Section 44012, subdivision (a): Respondent Ross Jr failed to ensure that all emission
7 control devices and systems required by law for vehicles 1 through 6 and 9 through 10, identified
8 in Table 1 of paragraph 18 above, were installed and functioning correctly in accordance with test
9 procedures.

10 b. Section 44012, subdivision (f): Respondent Ross Jr failed to perform the emission
11 control tests on vehicles 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18
12 above, in accordance with procedures prescribed by the department.

13 c. Section 44059: Respondent Ross Jr willfully made false entries for electronic certificates
14 of compliance for vehicles 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18
15 above, by certifying that the vehicles had been inspected as required when, in fact, they had not.

16 TENTH CAUSE FOR DISCIPLINE

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

18 30. Respondent Ross Jr's technician license is subject to disciplinary action pursuant to
19 Health & Safety Code section 44072.2, subdivision (c), in that Respondent Ross Jr failed to
20 comply with provisions of California Code of Regulations, title 16, as follows:

21 a. Section 3340.24, subdivision (c): Respondent Ross Jr falsely or fraudulently issued
22 electronic smog certificates of compliance for vehicles 1 through 6 and 9 through 10, identified in
23 Table 1 of paragraph 18 above.

24 b. Section 3340.30, subdivision (a): Respondent Ross Jr failed to inspect and test vehicles
25 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18 above, in accordance with
26 Health & Safety Code sections 44012 and 44035, and California Code of Regulations, title 16,
27 section 3340.42.

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1 c. Section 3340.41, subdivision (c): Respondent Ross Jr entered into the emissions
2 inspection system vehicle identification information or emission control system identification
3 data for a vehicle other than the one being tested for vehicles 1 through 6 and 9 through 10,
4 identified in Table 1 of paragraph 18 above.

5 d. Section 3340.42: Respondent Ross Jr failed to conduct the required smog tests on
6 vehicles 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18 above, in accordance
7 with the Bureau's specifications.

8 **ELEVENTH CAUSE FOR DISCIPLINE**

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

10 31. Respondent Ross Jr's technician license is subject to disciplinary action pursuant to
11 Health & Safety Code section 44072.2, subdivision (d), in that Respondent Ross Jr committed
12 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
13 certificates of compliance for the vehicles 1 through 6 and 9 through 10, identified in Table 1 of
14 paragraph 18 above, without performing bona fide inspections of the emission control devices
15 and systems on the vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 **OTHER MATTERS**

18 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
19 suspend, revoke or place on probation the registration for all places of business operated in this
20 state by Respondent, AAA Test Only, William Furbush - President, dba AAA Test Only, upon a
21 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
22 laws and regulations pertaining to an automotive repair dealer.

23 33. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only,
24 Station License Number TC 256890, issued to Respondent, AAA Test Only, William Furbush -
25 President, dba AAA Test Only, is revoked or suspended, any additional license issued under the
26 same chapter in the name of said licensee may be likewise revoked or suspended by the Director.

27 34. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
28 Technician License Number EA 155036 (to be redesignated upon renewal as EO 155036 and/or

1 EI 155036) issued to Respondent William Furbush is revoked or suspended. any additional
2 license issued under the same chapter in the name of said licensee may be likewise revoked or
3 suspended by the Director.

4 35. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
5 Technician License Number EA 633510 (to be redesignated upon renewal as EO 633510 and/or
6 EI 633510) issued to Respondent Michael Austin Ross, Jr. is revoked or suspended, any
7 additional license issued under the same chapter in the name of said licensee may be likewise
8 revoked or suspended by the Director.

9 PRAYER

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

12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 256890, issued to AAA Test Only, William Furbush - President, dba AAA Test Only;

14 2. Revoking or suspending Smog Check - Test Only Station License Number TC
15 256890, issued to AAA Test Only, William Furbush - President, dba AAA Test Only;

16 3. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of AAA Test Only, William Furbush - President, dba AAA Test
18 Only;

19 4. Revoking or suspending Advanced Emission Specialist Technician License Number
20 EA 155036 (to be redesignated upon renewal as EO 155036 and/or EI 155036) issued to William
21 Furbush;

22 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of William Furbush;

24 6. Revoking or suspending Advanced Emission Specialist Technician License Number
25 EA 633510 (to be redesignated upon renewal as EO 633510 and/or EI 633510) issued to Michael
26 Austin Ross, Jr.;

27 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
28 and Safety Code in the name of Michael Austin Ross, Jr.;

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8. Ordering Respondents AAA Test Only, William Furbush - President, dba AAA Test Only, William Furbush and Michael Austin Ross, Jr. to pay the Director the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 6/17/13

John Wallauch by [Signature]
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

DOUG BALAH

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