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

In the Matter of the Accusation Against:

Case No. 79/14-21

**C & F SMOG
SUSAN K. FREASE, OWNER
1805 S. Chester Avenue
Bakersfield, CA 93304
Automotive Repair Dealer Reg. No. ARD 241840
Smog Check Test Only Station License No. TC
241840,**

**DEFAULT DECISION AND ORDER
AS TO RESPONDENT TONY JOHN
CERDA ONLY**

[Gov. Code, §11520]

and

**TONY JOHN CERDA
2109 Westhaven Dr.
Bakersfield, CA 93304
Smog Check Inspector License No. EO 150678
Smog Check Repair Technician License No. EI
150678 (was redesignated upon renewal from
EA150678 to EO 150678 and EI 150678)**

Respondents.

FINDINGS OF FACT

1. On or about September 10, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/14-21 against C&F Smog, Susan K. Frease and Tony John Cerda before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

1
2 **C & F SMOG; Susan K. Frease, Owner**

3 2. On or about October 14, 2005, the Director of Consumer Affairs ("Director") issued
4 Automotive Repair Dealer Registration Number ARD 241840 ("Registration") to Susan K. Frease
5 ("Respondent Frease"), owner of C & F SMOG. Respondent Frease's Registration was in full
6 force and effect at all times relevant to the charges brought herein and will expire on October 31,
7 2014, unless renewed.

8 3. On or about October 27, 2005, the Director issued Smog Check Test Only Station
9 License Number TC 241840 ("Station License") to Respondent Frease. Respondent Frease's
10 Station License was in full force and effect at all times relevant to the charges brought herein and
11 will expire on October 31, 2014, unless renewed.

12 **Tony John Cerda**

13 4. In or about 2005, the Director issued Advanced Emission Specialist Technician
14 License Number EA 150678 to Tony John Cerda ("Respondent Cerda"). Upon timely renewal of
15 the license, the Advanced Emission Specialist Technician License Number EA 150678 was re-
16 designated as Smog Check Inspector License Number EO 150678 and Smog Check Repair
17 Technician License Number EI 150678¹ ("Technician Licenses"). Respondent Cerda's
18 Technician Licenses were in full force and effect at all times relevant to the charges brought
19 herein and will expire on April 30, 2015, unless renewed.

20 5. On or about October 28, 2013, Respondent Frease and Respondent Cerda were served
21 by Certified and First Class Mail copies of the Accusation No. 79/14-21, Statement to
22 Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government
23 Code sections 11507.5, 11507.6, and 11507.7) at their corresponding addresses of record which,
24 pursuant to Business and Professions Code section 136, are required to be reported and
25 maintained with the Bureau. Respondent Frease's address of record was and is:

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 1805 S. Chester Avenue
2 Bakersfield, CA 93304.

3 Respondent Cerda's address of record was and is:

4 2109 Westhaven Drive
5 Bakersfield, CA 93304

6 6. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 7. On or about November 18, 2013, Respondent Frease signed and returned by fax a
10 Notice of Defense.

11 8. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts
14 of the accusation not expressly admitted. Failure to file a notice of defense shall
15 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
16 may nevertheless grant a hearing.

17 9. Respondent Cerda failed to file a Notice of Defense within 15 days after service upon
18 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
19 No. 79/14-21.

20 10. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at the
22 hearing, the agency may take action based upon the respondent's express admissions
23 or upon other evidence and affidavits may be used as evidence without any notice to
24 respondent.

25 11. Pursuant to its authority under Government Code section 11520, the Director after
26 having reviewed the proof of service dated October 28, 2013, signed by Carolina Castillo, and the
27 signed certified mailing receipt indicating that the Accusation was delivered to Respondent
28 Cerda's address of record, finds Respondent Cerda is in default. The Director will take action
without further hearing and, based on Accusation No. 79/14-21, the proof of service and on the
Affidavit of Bureau Representative Ronald Coble, finds that the allegations in Accusation No.
79/14-21 are true.

///

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Cerda has subjected his Smog
3 Check Inspector License No. EO 150678 and Smog Check Repair Technician License No. EI
4 150678 to discipline.

5 2. The agency has jurisdiction to adjudicate this case by default.

6 3. The Director of Consumer Affairs is authorized to revoke Respondent's Technician
7 Licenses based upon the following violations alleged in the Accusation which are supported by
8 the evidence contained in the affidavit of Bureau Representative Ronald Coble in this case:

9 a. Respondent Cerda's Technician Licenses are subject to disciplinary action pursuant to
10 Health & Safety Code section 44072.2, subdivision (a), in that Respondent Cerda failed to
11 comply with Health and Safety Code sections 44012 and 44059 by failing to properly perform
12 emission control tests and making false entries into the Emissions Inspection System. The
13 conduct is described with greater specificity in Accusation No. 79/14-21, which is hereby
14 incorporated by reference.

15 b. Respondent Cerda's Technician Licenses are subject to disciplinary action pursuant to
16 Health & Safety Code section 44072.2, subdivision (c), in that Respondent Cerda failed to
17 comply with provisions of California Code of Regulations, title 16, sections 3340.24, subdivision
18 (c), 3340.30, subdivision (a), section 3340.41, subdivision (c) and section 3340.42. The conduct
19 is described with greater specificity in Accusation No. 79/14-21, which is hereby incorporated by
20 reference.

21 c. Respondent Cerda's Technician Licenses are subject to disciplinary action pursuant to
22 Health & Safety Code section 44072.2, subdivision (d), in that Respondent Cerda committed a
23 dishonest, fraudulent or deceitful act whereby another is injured by issuing electronic smog
24 certificates of compliance without performing a bona fide inspection of the emission control
25 devices and systems on the vehicles, thereby depriving the People of the State of California of the
26 protection afforded by the Motor Vehicle Inspection Program. The conduct is described with
27 greater specificity in Accusation No. 79/14-21, which is hereby incorporated by reference.

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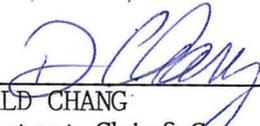
ORDER

IT IS SO ORDERED that Smog Check Inspector License No. EO 150678 and Smog Check Repair Technician License No. EI 150678 issued to Respondent Tony John Cerda, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent Cerda may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent Cerda. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Boulevard, Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 14, 2014.

It is so ORDERED JAN 24 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

51422521.DOC
DOJ Matter ID:LA2013510036

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation (with service documentation)

1 KAMALA D. HARRIS
Attorney General of California
2 Marc D. Greenbaum
Supervising Deputy 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

7 *Attorneys for Complainant*

8
9 **BEFORE THE**
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. 79/14-21

13 **C & F SMOG**
SUSAN K. FREASE, OWNER
14 **1805 S. Chester Avenue**
Bakersfield, CA 93304
15 **Automotive Repair Dealer Reg. No. ARD 241840**
Smog Check Test Only Station License No. TC
16 **241840,**

A C C U S A T I O N
(Smog Check)

17 and

18 **TONY JOHN CERDA**
19 **2109 Westhaven Dr.**
Bakersfield, CA 93304
20 **Smog Check Inspector License No. EO 150678**
Smog Check Repair Technician License No. EI
21 **150678 (was redesignated upon renewal from**
EA150678 to EO 150678 and EI 150678)

22 Respondents.

23
24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

26 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
27 as the Acting Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
28 Affairs.

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

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

7

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

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

12

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

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

16

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

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

22

23 (4) Intentional or willful violation of this chapter or any regulation,
24 standard, or procedure of the department implementing this chapter . . .

25 **REGULATORY PROVISIONS**

26 14. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),
27 states:

28 "The bureau may suspend or revoke the license of or pursue other legal action against a
licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
certificate of noncompliance."

15. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section

1 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
2 3340.42 of this article.”

3 16. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
4 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
5 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
6 this article and has all the required emission control equipment and devices installed and
7 functioning correctly.”

8 17. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall enter into
9 the emissions inspection system any vehicle identification information or emission control system
10 identification data for any vehicle other than the one being tested. Nor shall any person
11 knowingly enter into the emissions inspection system any false information about the vehicle
12 being tested.”

13 18. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
14 procedures which apply to all vehicles inspected in the State of California.

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

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

22 COST RECOVERY

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

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1 VIDEO SURVEILLANCE OPERATION OF NOVEMBER 10, 2012

2 22. Between November 10, 2012 and November 19, 2012, representatives of the Bureau
3 conducted a video surveillance operation of Respondent Frease's smog check facility. The
4 surveillance video and information obtained from the Bureau's vehicle information database
5 ("VID") showed that Respondent Cerda employed a method commonly known as clean piping²
6 during the following smog inspections, resulting in the issuance of fraudulent certificates of
7 compliance for the following vehicles:

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 11/12/2012 11:43-11:51	1997 Honda Civic;	XN656769C
2. 11/13/2012 09:02-09:08	2006 Dodge Charger; License No. 3QCX753	XN656773C
3. 11/13/2012 14:53-14:58	2002 Chrysler Concorde License No. 6KSW707	XN656783C
4. 11/14/2012 11:55-12:00	1991 GMC C3500 Sierra License No. 4Y98087	XN656793C
5. 11/14/2012 12:03-12:09	1998 Chevrolet C1500 Suburban License No. 6HAX522	XN656794C
6. 11/14/2012 12:13-12:19	1998 Ford Expedition License No. 3XLF349	XN656795C
7. 11/14/2012 12:23-12:33	1979 Chevrolet El Camino License No. 1R83450	XN656796C
8. 11/15/2012 10:05-10:19	1995 Nissan Maxima License No. 3KFL207	XN656800C
9. 11/15/2012 10:23-10:30	1998 Nissan Quest License No. 5KKA182	XN756751C
10. 11/15/2012 10:50-10:56	1997 Honda Accord License No. 6FEV009	XN756753C
11. 11/15/2012 11:25-11:35	2003 Mitsubishi Lancer License No. 6HYA922	XN756754C
12. 11/16/2012 08:28-08:38	1992 Mercedes 500SL License No. 3CGD131	XN756763C
13. 11/17/2012 15:12-15:18	2001 Chevrolet C1500 Tahoe License No. 4NGT401	XN756779C

26
27 ² Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),
28 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to
cause the EIS to issue a certificate of compliance for another vehicle.

1 FIRST CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 23. Respondent Frease's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement
5 which she knew or in the exercise of reasonable care should have known to be untrue or
6 misleading, as follows: Respondent Frease's inspector, Respondent Cerda, certified that the
7 vehicles identified in paragraph 22 above had passed inspection and were in compliance with
8 applicable laws and regulations. In fact, Respondent Cerda used clean piping methods in order to
9 issue certificates for those vehicles and did not test or inspect the vehicles as required by Health
10 & Saf. Code section 44012.

11 SECOND CAUSE FOR DISCIPLINE

12 (Fraud)

13 24. Respondent Frease's registration is subject to disciplinary action pursuant to Bus. &
14 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
15 constitutes fraud by issuing electronic smog certificates of compliance for the vehicles identified
16 above in paragraph 22 without ensuring that a bona fide inspection was performed of the emission
17 control devices and systems on the vehicles, thereby depriving the People of the State of
18 California of the protection afforded by the Motor Vehicle Inspection Program.

19 THIRD CAUSE FOR DISCIPLINE

20 (Violations of the Motor Vehicle Inspection Program)

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

24 a. Section 44012: Respondent Cerda failed to ensure that emission control tests were
25 performed on the vehicles identified above in paragraph 22 in accordance with procedures
26 prescribed by the department.

27 b. Section 44015: Respondent Cerda issued an electronic smog certificate of
28 compliance for the vehicles identified above in paragraph 22 without ensuring that the vehicles

1 were properly tested and inspected to determine if they were in compliance with Health & Saf.
2 Code section 44012.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

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

9 a. **Section 3340.24, subdivision (c)**: Respondent Cerda falsely or fraudulently issued
10 electronic smog certificates of compliance for the vehicles identified in paragraph 22 above.

11 b. **Section 3340.35, subdivision (c)**: Respondent Cerda issued electronic smog
12 certificates of compliance for the vehicles identified in paragraph 22 above even though the
13 vehicles had not been inspected in accordance with section 3340.42.

14 c. **Section 3340.41, subdivision (c)**: Respondent Frease authorized or permitted her
15 inspector, Respondent Cerda, to enter false information into the EIS by entering vehicle
16 identification information or emission control system identification data for a vehicle other than
17 the one being tested.

18 d. **Section 3340.42**: Respondent Cerda failed to ensure that the required smog tests
19 were conducted on the vehicles identified in paragraph 22 above in accordance with the Bureau's
20 specifications.

21 **FIFTH CAUSE FOR DISCIPLINE**

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

23 27. Respondent Frease's smog check station license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
25 dishonest, fraudulent or deceitful act whereby another is injured by issuing electronic smog
26 certificates of compliance for the vehicles identified in paragraph 22 without ensuring that a bona
27 fide inspection was performed of the emission control devices and systems on the vehicles,
28 thereby depriving the People of the State of California of the protection afforded by the Motor

1 Vehicle Inspection Program.

2 **SIXTH CAUSE FOR DISCIPLINE**

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

4 28. Respondent Cerda's technician licenses are subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
6 provisions of that Code, as follows:

7 a. **Section 44012:** Respondent Cerda failed to perform the emission control tests on the
8 vehicles identified in paragraph 22 above in accordance with procedures prescribed by the
9 department.

10 b. **Section 44059:** Respondent Cerda willfully made false entries in the EIS, resulting in
11 the issuance of fraudulent certificates of compliance for the vehicles identified in paragraph 22
12 above.

13 **SEVENTH CAUSE FOR DISCIPLINE**

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

16 29. Respondent Cerda's technician licenses are subject to disciplinary action pursuant to
17 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
18 provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.24, subdivision (c):** Respondent Cerda falsely or fraudulently issued
20 electronic smog certificates of compliance for the vehicles identified in paragraph 22 above.

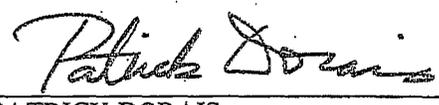
21 b. **Section 3340.30, subdivision (a):** Respondent Cerda failed to inspect and test the
22 vehicles identified in paragraph 22 above in accordance with Health & Saf. Code sections 44012
23 and 44035, and California Code of Regulations, title 16, section 3340.42.

24 c. **Section 3340.41, subdivision (c):** Respondent Cerda entered false information into
25 the EIS by entering vehicle identification information or emission control system identification
26 data for a vehicle other than the one being tested.

27 d. **Section 3340.42:** Respondent Cerda failed to conduct the required smog tests on the
28 vehicles identified in paragraph 22 above in accordance with the Bureau's specifications.

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
- 2 241840, issued to Susan K. Frease, owner of C & F SMOG;
- 3 2. Revoking or suspending any other automotive repair dealer registration issued to
- 4 Susan K. Frease;
- 5 3. Revoking or suspending Smog Check Test Only Station License Number TC 241840,
- 6 issued to Susan K. Frease, owner of C & F SMOG;
- 7 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 8 and Safety Code in the name of Susan K. Frease;
- 9 5. Revoking or suspending Smog Check Inspector License Number EO 150678 and
- 10 Smog Check Repair Technician License No. EI 150678, (formerly Advanced Emission Specialist
- 11 Technician License No. EA 150678) issued to Tony John Cerda;
- 12 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 13 and Safety Code in the name of Tony John Cerda;
- 14 7. Ordering Susan K. Frease, individually, and as owner of C & F SMOG, and Tony
- 15 John Cerda to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
- 16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 8. Taking such other and further action as deemed necessary and proper.

18
19 DATED: September 10, 2013


PATRICK DORAIS
Acting Chief, Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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