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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:

KENDALL J. ALLEN
2185 Stanley Drive
Oroville, CA 95966

**Smog Check Inspector License No. EO
144378**
**Smog Check Repair Technician License No.
EI 144378 (formerly Advanced Emission
Specialist Technician License No. EA
144378)**

Respondents.

Case No. 79/14-102

OAH No. 2014040230

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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FINDINGS OF FACT

1. On or about March 12, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/14-102 against Carfinders; Michael Gary Abouzeid, Owner; Kendall J. Allen, Technician (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. In or about 2001, the Director issued Advanced Emission Specialist Technician License Number EA 144378 to Kendall J. Allen ("Respondent Allen"). Respondent's advanced emission specialist technician license expired on February 28, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO 144378 and Smog Check Repair Technician License Number EI 144378 ("technician licenses"), effective March 5, 2013.¹ The technician licenses expired on February 28, 2015, and have not yet been renewed. This lapse

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¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced 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 in licensure, however, pursuant to Business and Professions Code section 118(b) and/or Health &
2 Safety Code section 44072.6 does not deprive the Bureau of its authority to institute or continue
3 this disciplinary proceeding.

4 3. On or about March 13, 2014, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 79/14-102, Statement to Respondent, Notice of Defense,
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
7 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
8 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
9 address of record was and is: 2185 Stanley Drive, Oroville, CA 95966

10 4. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 5. On or about March 18, 2014, Respondent signed and returned a Notice of Defense,
14 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
15 address of record and at Deuel Vocational Institution, the California State Prison where
16 Respondent is currently incarcerated, and it informed him that an administrative hearing in this
17 matter was scheduled for May 20, 2015. Respondent failed to appear at that hearing.

18 6. Respondent was notified on several occasions that he could appear telephonically at
19 the hearing, and that he should request to do so. Respondent made no such request. On May 20,
20 2015, despite Respondent's failure to request telephonic appearance, the Administrative Law
21 Judge assigned to hear the matter attempted to call Respondent at Deuel Vocational Institution on
22 a telephone number previously set up for said telephonic appearance. Respondent failed to
23 appear on the telephone.

24 7. Government Code section 11506 states, in pertinent part:

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

1 8. California Government Code section 11520 states, in pertinent part:

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

6 9. Pursuant to its authority under Government Code section 11520, the Director after
7 having reviewed the proof of service dated March 13, 2014, signed by Nickell Mosely, finds
8 Respondent is in default. The Director will take action without further hearing and, based on
9 Accusation, No. 79/14-102, proof of service and on the Affidavit of Bureau Representative Kelly
10 Renihan, finds that the allegations in Accusation are true.

11 **DETERMINATION OF ISSUES**

12 1. Based on the foregoing findings of fact, Respondent Kendall J. Allen has subjected
13 his Smog Check Inspector License Number EO 144378 and Smog Check Repair Technician
14 License Number EI 144378 to discipline.

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

16 3. The Director of Consumer Affairs is authorized to revoke Respondent's Smog Check
17 Inspector License and Smog Check Repair Technician License based upon the following
18 violations alleged in the Accusation which are supported by the evidence contained in the
19 affidavit of Bureau Representative Kelly Renihan in this case.:

20 a. Health & Safety Code section 44072.2, subdivision (a), in that Respondent failed to
21 comply with section 44012 of that Code by "clean-piping" a 2005 Volkswagen Jetta. Respondent
22 failed to perform the emission control tests on the Jetta in accordance with procedures prescribed
23 by the department. The Jetta was not in Respondent's presence at the time that the emission
24 control test was allegedly done.

25 b. Health & Safety Code section 44072.2, subdivision (c), in that Respondent violated
26 section 3340.30, subdivision (a), by failing to inspect and test the 2005 Volkswagen Jetta in
27 accordance with Health & Saf. Code sections 44012 and 44035, and California Code of
28 Regulations, title 16, section 3340.42.

///

1 c. Health & Safety Code section 44072.2, subdivision (c), in that Respondent violated
2 section 3340.41, subdivision (c), by entering false information into the EIS by entering vehicle
3 identification information or emission control system identification data for a vehicle other than
4 the one being tested.

5 d. Health & Safety Code section 44072.2, subdivision (c), in that Respondent violated
6 section 3340.42 by failing to conduct the required smog tests on the 2005 Volkswagen Jetta in
7 accordance with the Bureau's specifications.

8 e. Health & Safety Code section 44072.2, subdivision (d), in that Respondent committed
9 a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
10 certificate of compliance for the 2005 Volkswagen Jetta without performing a bona fide
11 inspection of the emission control devices and systems on the vehicle.

12 f. Health & Safety Code section 44072.2, subdivision (a), in that Respondent failed to
13 comply with section 44012 of that Code, in that Respondent failed to perform the emission
14 control tests on a Mitsubishi Eclipse, Lincoln Town Car, Audi A4 Quattro, Pontiac Sunfire, and
15 Ford F450, in accordance with procedures prescribed by the department.

16 g. Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to
17 comply with provisions of California Code of Regulations, title 16, section 3340.30, subdivision
18 (a), by failing to inspect the Mitsubishi Eclipse, Lincoln Town Car, Audi A4 Quattro, Pontiac
19 Sunfire, and Ford F450, in accordance with Health & Safety Code sections 44012 and 44035, and
20 California Code of Regulations, title 16, section 3340.42.

21 h. Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to
22 comply with provisions of California Code of Regulations, title 16, section 3340.41, subdivision
23 (c), in that Respondent entered false information into the EIS for the Mitsubishi Eclipse, Lincoln
24 Town Car, Audi A4 Quattro, Pontiac Sunfire, and Ford F450.

25 i. Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to
26 comply with provisions of California Code of Regulations, title 16, section 3340.42, by failing to
27 conduct the required smog tests on the Mitsubishi Eclipse, Lincoln Town Car, Audi A4 Quattro,
28 Pontiac Sunfire, and Ford F450, in accordance with the Bureau's specifications.

1 j. Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
2 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
3 certificates of compliance for the Mitsubishi Eclipse, Lincoln Town Car, Audi A4 Quattro,
4 Pontiac Sunfire, and Ford F450, without performing bona fide inspections of the emission control
5 devices and systems on the vehicles

6 **ORDER**

7 IT IS SO ORDERED that Smog Check Inspector License Number EO 144378 and Smog
8 Check Repair Technician License Number EI 144378 heretofore issued to Respondent Kendall J.
9 Allen, is revoked.

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

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17 This Decision shall become effective on April 22, 2016.

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19 It is so ORDERED March 29, 2016

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23 TAMARA COLSON
24 Assistant General Counsel
25 Division of Legal Affairs
26 Department of Consumer Affairs

27 11884003.DOC
28 DOJ Matter ID:SA2014114264

Attachment:
Exhibit A: Jurisdictional Packet
Exhibit B: Notice of Hearing

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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. 79/14-102

12 **CARFINDERS**
13 **MICHAEL GARY ABOUZEID, OWNER**
14 1819 Mangrove Avenue
Chico, CA 95926

ACCUSATION

15 **Automotive Repair Dealer Reg. No. ARD 258462**
16 **Smog Check Station License No. RC 258462**

17 and

18 **KENDALL J. ALLEN**
2185 Stanley Drive
19 Oroville, CA 95966

20 **Smog Check Inspector License No. EO 144378**
Smog Check Repair Technician License
21 **No. EI 144378 (formerly Advanced Emission-**
Specialist Technician License No. EA 144378)

22 Respondents.

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24 Complainant alleges:

25 **PARTIES**

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

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12. Bus. & Prof. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

14. Health & Saf. Code section 44072.2 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 Saf. Code § 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. Health & Saf. Code section 44072.10 states, in pertinent part:

....

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

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

....

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

16. California Code of Regulations, title 16, section 3340.42.2 states:

(a) Effective until the implementation of subsection (c), Smog Check stations and Smog Check technicians shall conduct tests and inspections in accordance with the Bureau's BAR-97 Emissions Inspection System Specifications referenced in subsections (a) and (b) of Section 3340.17. All applicable 1996 and newer model-year spark ignition passenger vehicles and trucks under 14,001 Gross Vehicle Weight Rating (GVWR) shall be given a test of the On-Board Diagnostic (OBDII) systems. The OBDII test consists of a visual check of the Malfunction

1 Indicator Light (MIL) and a functional test of the readiness indicators and fault code
retrieval system.

2 (b) Effective until the implementation of subsection (c), model-year 1996
3 through 2000 vehicles having more than two (2) incomplete emissions related
4 readiness monitors, and vehicle model-years 2001 and newer having more than one
5 (1) incomplete emissions related readiness monitor shall fail the OBDII portion of the
inspection. All vehicle model-years 1996 and newer having more than two (2)
incomplete emissions related readiness monitors shall fail the OBDII portion of the
inspection.

6 (c) Starting on or after January 1, 2013, OBD equipped vehicles shall fail
7 the OBD inspection if any one of the following conditions occurs as applicable to the
vehicle:

8 (1) The vehicle's MIL does not illuminate when the ignition is on and the
9 engine is off;

10 (2) The vehicle's MIL illuminates continuously or flashes with the engine
running;

11 (3) The vehicle's OBD system reports the MIL as commanded on;

12 (4) The vehicle's OBD system reports a Diagnostic Trouble Code (DTC);

13 (5) The vehicle's OBD system data indicates the system has not yet been
14 sufficiently operated to determine the presence or absence of a DTC;

15 (6) The vehicle's OBD system does not communicate with the EIS or
OIS;

16 (7) The vehicle's OBD system data is inappropriate for the vehicle being
17 tested;

18 (8) The vehicle's OBD system data does not match the original equipment
19 manufacturer (OEM) or an Air Resources Board (ARB) exempted OBD software
configuration;

20 (9) The vehicle's OBD system reports incomplete readiness monitor(s) as
specified below:

21 (A) Gasoline-powered vehicles model-years 1996 through 1999 with
22 more than one (1) incomplete monitor,

23 (B) Gasoline-powered vehicles model-years 2000 and newer with any
incomplete monitors, excluding the evaporative system monitor;

24 (C) Diesel-powered vehicles model-years 1998 through 2006 with any
25 incomplete monitors;

26 (D) Diesel-powered vehicles model-years 2007 and newer with any
incomplete monitors, excluding the particulate filter system monitor.

27 (d) For the purposes of this section:

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1 (1) On-Board Diagnostics (OBD) means a system of vehicle component
2 and condition monitors controlled by an on-board computer designed to alert the
3 motorist when emission control components or vehicle emission systems are not
4 functioning properly.

5 (2) Readiness monitor(s) are a status indicator reported by the OBD
6 system that indicates whether or not monitors of specific emission control devices or
7 systems have run a self-diagnostic test.

8 (3) Diagnostic Trouble Code (DTC) is an alphanumeric code which is set
9 in a vehicle's on-board computer when the OBD system detects an emission control
10 device or system failure.

11 (4) Malfunction Indicator Light (MIL) is illuminated on the dashboard
12 when the OBD system has detected an emission control device or system failure.
13 Alternatives may include a "Service Engine Soon" or "Check Engine" message, or an
14 unlabeled picture of an engine.

15 COST RECOVERY

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

20 CONSUMER COMPLAINT (RUSSELL): 2005 VOLKSWAGEN JETTA

21 18. On or about October 17, 2012, Dayna Russell ("Russell") purchased a 2005
22 Volkswagen Jetta from Best Choice Auto ("BCA"), a used car dealer located in Redding,
23 California. BCA informed Russell that the vehicle had not passed the smog inspection yet and
24 the MIL (malfunction indicator light) was illuminated. BCA told Russell that they were waiting
25 on a part and would handle the smog certificate later.

26 19. On or about November 1, 2012, Russell returned the vehicle to BCA due to a problem
27 with the rear brake. Russell received the vehicle back on November 3, 2012.

28 20. Several weeks went by, and Russell contacted BCA and asked about the smog
inspection that still needed to be done on the vehicle. BCA told Russell that they were "working
on it". A few days later, Russell went to the DMV to find out about the registration for the
vehicle. A clerk informed Russell that the vehicle had passed the smog inspection on December
8, 2012. Russell told the clerk that the inspection could not have been performed as she had sole
possession of the vehicle on that date. Russell returned to BCA and confronted them with the

1 information. Russell asked that someone accompany her to the DMV so they could explain how
2 the inspection could have been done while Russell had the vehicle at work. BCA refused
3 Russell's request and would not discuss the issue any further.

4 21. On or about January 18, 2013, Russell filed a complaint with the Bureau.

5 22. On or about January 30, 2013, Bureau Representative C. W. called Russell and
6 requested copies of her records on the vehicle. Later, Russell provided C. W. with copies of a
7 sales contract from BCA and an invoice from Jiffy Lube in Red Bluff, California, showing the
8 service history on the vehicle. The odometer reading of the vehicle was listed on the invoice as
9 106,106 on November 30, 2012, and 109,256 on December 20, 2012. C. W. searched the
10 Bureau's Vehicle Information Database ("VID") and obtained information showing that on
11 December 8, 2012, Respondent Allen ("Allen") performed a smog inspection on the vehicle, on
12 behalf of Respondent Abouzeid ("Abouzeid"), resulting in the issuance of electronic smog
13 Certificate of Compliance No. OS110278C. The VID data also showed that Allen had entered the
14 engine size as 1.8 liters, the odometer reading as 101,508 (this was the same odometer reading
15 listed on the BCA sales contract), and the air injection system as not applicable.²

16 23. On or about March 7, 2013, C. W. met with Russell at the State of California Referee
17 Center located in Redding, California. Qualified Technician J. S. performed a smog inspection
18 on the vehicle. The vehicle failed all three portions of the inspection, the visual inspection,
19 functional check, and emissions test. The vehicle inspection report issued by J. S. showed that
20 the air injection system had failed the visual inspection, and that the engine size on the vehicle
21 was 2.0 liters.

22 24. On or about May 8, 2013, Bureau Representatives K. R. and M. J. went to
23 Abouzeid's facility and met with Abouzeid and Allen. K. R. informed Allen that the engine size
24 and smog check equipment he entered for the vehicle was incorrect and that the buyer (Russell)

25
26 ² The entry, "not applicable", may only be used when the vehicle is not originally
27 equipped with the particular emissions control component being inspected, or when a particular
28 test cannot be performed due to vehicle incompatibility with inspection equipment.

1 had possession of the vehicle at the time Allen allegedly performed the smog inspection. Allen
2 admitted that he had not performed a proper inspection, but denied clean piping³ the vehicle.
3 Allen claimed that he might have taken information from paperwork provided by BCA and
4 inspected another vehicle they had brought in that was the same make and model as Russell's
5 vehicle.

6 25. On or about May 9, 2013, K. R. and M. J. met with Russell at her residence. K. R.
7 inspected the vehicle and confirmed that the vehicle's VIN (vehicle identification number)
8 matched the VIN that was entered by Allen during the December 8, 2012, smog inspection. K. R.
9 also found that the engine size of the vehicle was 2.0 liters, that the vehicle had an air injection
10 system, which was a required emission control component for the vehicle, and that the air
11 injection system pump intake hose was disconnected.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 26. Respondent Abouzeid's registration is subject to disciplinary action pursuant to Bus.
15 & Prof. Code section 9884.7, subdivision (a)(1); in that Respondent made or authorized
16 statements which he knew or in the exercise of reasonable care should have known to be untrue or
17 misleading, as follows:

18 a. Respondent Abouzeid's technician, Respondent Allen, certified that the 2005
19 Volkswagen Jetta had passed inspection and was in compliance with applicable laws and
20 regulations. In fact, Allen used clean piping methods in order to issue a certificate for the vehicle
21 and did not test or inspect the vehicle as required by Health & Saf. Code section 44012. Further,
22 the air injection system pump intake hose was disconnected. As such, the vehicle would not pass
23 the inspection required by Health & Saf. Code section 44012.

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26 ³ California Code of Regulations, title 16, section 3340.1 states, in pertinent part, that
27 "[c]lean piping' for the purposes of Health and Safety Code section 44072.10(c)(1), means the
28 use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order
to cause the EIS to issue a certificate of compliance for the test vehicle".

1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.35, subdivision (c)**: Respondent Abouzeid issued an electronic smog
8 certificate of compliance for the 2005 Volkswagen Jetta even though the vehicle had not been
9 inspected in accordance with section 3340.42.

10 b. **Section 3340.41, subdivision (c)**: Respondent Abouzeid authorized or permitted his
11 technician, Respondent Allen, to enter false information into the Emissions Inspection System
12 ("EIS") by entering vehicle identification information or emission control system identification
13 data for a vehicle other than the one being tested.

14 c. **Section 3340.42**: Respondent Abouzeid failed to ensure that the required smog tests
15 were conducted on the 2005 Volkswagen Jetta in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 (Dishonesty, Fraud or Deceit)

18 30. Respondent Abouzeid's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
20 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
21 certificate of compliance for the 2005 Volkswagen Jetta without ensuring that a bona fide
22 inspection was performed of the emission control devices and systems on the vehicle, thereby
23 depriving the People of the State of California of the protection afforded by the Motor Vehicle
24 Inspection Program.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 (Violations of the Motor Vehicle Inspection Program)

27 31. Respondent Allen's technician licenses are subject to disciplinary action pursuant to
28 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with

1 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
2 emission control tests on the 2005 Volkswagen Jetta in accordance with procedures prescribed by
3 the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

10 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 2005
11 Volkswagen Jetta in accordance with Health & Saf. Code sections 44012 and 44035, and
12 California Code of Regulations, title 16, section 3340.42.

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

16 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the 2005
17 Volkswagen Jetta in accordance with the Bureau's specifications.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 33. Respondent Allen's technician licenses are subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
22 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
23 compliance for the 2005 Volkswagen Jetta without performing a bona fide inspection of the
24 emission control devices and systems on the vehicle, thereby depriving the People of the State of
25 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **Vehicle 3: 2002 Audi A4 Quattro**

2 37. The Bureau's VID data showed that on March 28, 2013, at 10:28 a.m., Allen
3 performed a smog inspection on a 2002 Audi A4 Quattro, License No. 5RZC659. The vehicle
4 failed the OBDII functional test due to too many incomplete OBDII monitors. The VID data also
5 showed that on March 28, 2013, at 11:29 a.m., Allen performed a second smog inspection on the
6 vehicle and bypassed the OBDII functional test, resulting in the issuance of electronic smog
7 Certificate of Compliance No. OU560637C (the test summary showed N/C, indicating that the
8 vehicle's PCM was not scanned by the analyzer).

9 **Vehicle 4: 1997 Pontiac Sunfire**

10 38. The Bureau's VID data showed that on August 7, 2013, at 10:01 a.m., Allen
11 performed a smog inspection on a 1997 Pontiac Sunfire, License No. 3TCJ278. Allen entered
12 (into the EIS) "Biennial" as the inspection reason. The vehicle failed the inspection due to
13 excessive tailpipe emissions. All of the OBDII monitors had run to completion at the time of the
14 inspection; however, a diagnostic trouble code had been stored in the vehicle's PCM.

15 39. The VID data also showed that on August 7, 2013, at 11:37 a.m., Allen performed a
16 second smog inspection on the vehicle, and entered "Change of Ownership" as the inspection
17 reason. The vehicle passed the inspection (it had passing tailpipe emissions), resulting in the
18 issuance of electronic smog Certificate of Compliance No. OY451529C. Allen had bypassed the
19 OBDII functional test during the inspection (the test summary showed N/C, indicating that the
20 vehicle's PCM was not scanned by the analyzer). Allen had not performed an "after repairs" test
21 on the vehicle, and there was no information recorded in the VID indicating what had been done
22 to repair the emissions failure.

23 **Vehicle 5: 2004 Ford F450**

24 40. The Bureau's VID data showed that on August 8, 2013, Allen performed a smog
25 inspection on a 2004 Ford F450, License No. 7M34061. Allen had entered (into the EIS) the
26 vehicle's gross vehicle weight rating (GVWR) as 9,000 pounds. The vehicle failed the OBDII
27 functional test due to too many incomplete OBDII monitors. The VID data also showed that on
28 August 15, 2013, Allen performed another smog inspection on the vehicle and bypassed the

1 OBDII functional test, resulting in the issuance of electronic smog Certificate of Compliance No.
2 OY546848C (the test summary showed N/C, indicating that the vehicle's PCM was not scanned
3 by the analyzer).

4 41. K. R. obtained additional data showing that Allen had performed two prior smog
5 inspections on the vehicle at Abouzeid's facility. Allen performed the first inspection on July 15,
6 2010, resulting in the issuance of electronic smog Certificate of Compliance No. NU803689C.
7 Allen performed the second inspection on August 15, 2012, resulting in the issuance of electronic
8 smog Certificate of Compliance No. OQ037363C. During both inspections, Allen had entered
9 the vehicle's GVWR as 15,000 pounds and had bypassed the OBDII functional test, which was in
10 compliance with the Bureau's Smog Check Inspection Procedures Manual.

11 42. On October 15, 2013, K. R. went to Abouzeid's facility and requested their smog
12 check records. On October 22 and 30, 2013, K. R. received copies of various documents,
13 including invoices and vehicle inspection reports ("VIR") for vehicles 1 through 5, identified
14 above, as well as an AT&T Service Order pertaining to the smog inspections on vehicle 5, the
15 2004 Ford F450 ("2004 Ford"). The VIR's for the failed inspections on vehicles 1 through 3 and
16 5 stated that the vehicles "failed the MIL/check engine light due to failure to successfully
17 complete all OBD self tests".

18 43. On November 4, 2013, K. R. went to AT&T located in Chico, California, and
19 inspected the 2004 Ford in the presence of their fleet technician, C. K. K. R. found that the
20 vehicle's GVWR was 15,000 pounds as stated on the information label affixed to the vehicle cab
21 on the driver's side. The under hood emission control information label on the 2004 Ford stated
22 that the engine was certified for use only in heavy duty vehicles with a GVWR above 14,000
23 pounds and that it was *OBDI* certified, indicating that the OBDII functional test was not
24 applicable to the vehicle. K. R. also noted that the vehicle did not have an exhaust gas
25 recirculation ("EGR") system. When K. R. reviewed the emission control equipment that was
26 required for the vehicle's engine, he found that it was not equipped with an EGR system. K. R.
27 asked C. K. what they had done after the 2004 Ford failed the August 8, 2013, smog check
28 inspection at Carfinders. C. K. provided K. R. with an AT&T Repair Order, indicating that

1 Carfinders found more monitors needed to run in order for the vehicle to pass the smog
2 inspection. The Repair Order also stated that two oxygen sensors still had not run and that the
3 vehicle had been driven and checked for three days "with no luck". AT&T took the vehicle to the
4 local Ford dealership, Wittmeier Auto Center ("Wittmeier"), for diagnosis. C. K. provided K. R.
5 with an invoice in the amount of \$47.50 that had been issued by Wittmeier for the diagnostic
6 work. K. R. found that Wittmeier verified the vehicle's certification level to be OBDI, indicating
7 that the monitors were not required to run to completion. K. R. also found that Carfinders had
8 caused AT&T to incur unnecessary expenses due to Allen's improper smog inspection on the
9 vehicle.

10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 44. Respondent Abouzeid's registration is subject to disciplinary action pursuant to Bus.
13 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
14 statements which he knew or in the exercise of reasonable care should have known to be untrue or
15 misleading, as follows:

16 a. Respondent Abouzeid's smog check technician, Respondent Allen, certified that
17 vehicles 1 through 4, identified in paragraphs 35 through 38 above, had passed inspection and
18 were in compliance with applicable laws and regulations. In fact, Allen bypassed or failed to
19 perform the required OBDII functional test on the vehicles in order to issue smog certificates of
20 compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf.
21 Code section 44012. Further, Allen previously tested and failed vehicles 1 through 3 due to
22 OBDII functional failures in that the vehicles had two or more emissions related readiness
23 monitors that had not run to completion. As such, the vehicles would not pass the inspection
24 required by Health Saf. Code section 44012.

25 b. Respondent Abouzeid's smog check technician, Respondent Allen, certified that the
26 2004 Ford, vehicle 5 identified in paragraph 40 above, had a GVWR of 9,000 pounds. In fact, the
27 vehicle had a GVWR of 15,000 pounds.

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1 c. Respondent Abouzeid's smog check technician, Respondent Allen, certified under
2 penalty of perjury on the VIR dated August 8, 2013 for the 2004 Ford, vehicle 5 identified in
3 paragraph 40 above, that the vehicle failed the MIL functional test (and the overall inspection)
4 due to the failure to complete all OBD self-tests. In fact, the OBDII functional test was not
5 applicable to the vehicle and the monitors were not required to run to completion.

6 d. Respondent Abouzeid's smog check technician, Respondent Allen, certified under
7 penalty of perjury on the VIR's dated April 8, 2013, and April 15, 2013, for the 2004 Ford,
8 vehicle 5 identified in paragraph 40 above, that the vehicle had passed the visual inspection and
9 functional test of the ERG system. In fact, the vehicle was not equipped with an EGR system.

10 e. Respondent Abouzeid's smog check technician, Respondent Allen, certified under
11 penalty of perjury on the VIR for vehicle 4, identified in paragraph 38 above, specifically, the
12 VIR for the inspection of August 7, 2013, at 10:01 a.m., that the inspection reason was "biennial",
13 yet certified on the VIR for the inspection of August 7, 2013, at 11:37 a.m., that the inspection
14 reason was "change of ownership".

15 **TENTH CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 45. Respondent Abouzeid's registration is subject to disciplinary action pursuant to Bus.
18 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
19 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 4, identified in
20 paragraphs 35 through 38 above, without ensuring that bona fide inspections were performed of
21 the emission control devices and systems on the vehicles, thereby depriving the People of the
22 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 46. Respondent Abouzeid'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 the following sections of that Code:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on vehicles 1 through 5, identified in paragraphs 35 through 38 and 40 above, in
8 accordance with procedures prescribed by the department.

9 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
10 vehicles 1 through 4, identified in paragraphs 35 through 38 above, without ensuring that the
11 vehicles were properly tested and inspected to determine if they were in compliance with Health
12 & Saf. Code section 44012.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant**

15 **to the Motor Vehicle Inspection Program)**

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

19 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
20 compliance for vehicles 1 through 4, identified in paragraphs 35 through 38 above, even though
21 the vehicles had not been inspected in accordance with section 3340.42.

22 b. **Section 3340.41, subdivision (c):** Respondent Abouzeid authorized or permitted his
23 technician, Respondent Allen, to enter false information into the EIS, as set forth above.

24 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
25 conducted on vehicles 1 through 5, identified in paragraphs 35 through 38 and 40 above, in
26 accordance with the Bureau's specifications.

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1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
2 through 5, identified in paragraphs 35 through 38 and 40 above, in accordance with the Bureau's
3 specifications.

4 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

6 51. Respondent Allen's technician license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
8 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
9 compliance for vehicles 1 through 4, identified in paragraphs 35 through 38 above, without
10 performing bona fide inspections of the emission control devices and systems on the vehicles,
11 thereby depriving the People of the State of California of the protection afforded by the Motor
12 Vehicle Inspection Program.

13 **MATTERS IN AGGRAVATION**

14 52. To determine the degree of discipline, if any, to be imposed on Respondents
15 Abouzeid and Allen, Complainant alleges as follows:

16 **Respondent Abouzeid**

17 a. On or about November 5, 2010, the Bureau issued Citation No. C2011-0586 against
18 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
19 determine that emission control devices and systems required by State and Federal law are
20 installed and functioning correctly in accordance with test procedures); and California Code of
21 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
22 compliance to a vehicle that was improperly tested). On or about October 21, 2010, Respondent
23 issued a certificate of compliance to a Bureau undercover vehicle with a non-functional EGR
24 valve. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the violations.
25 Respondent paid the fine on January 10, 2011.

26 b. On or about November 18, 2011, the Bureau issued Citation No. C2012-0486 against
27 Respondent for violating Health & Saf. Code section 44012, subdivision (f) (failure to perform a
28 visual/functional check of emission control devices according to procedures prescribed by the

1 department). On or about October 20, 2011, Respondent issued a certificate of compliance to a
2 Bureau undercover vehicle with a missing AIR pump. The Bureau assessed a civil penalty of
3 \$1,500 against Respondent for the violation. Respondent appealed the citation, but it was upheld
4 with an effective date of January 14, 2013. Respondent paid the fine on February 11, 2013.

5 **Respondent Allen**

6 c. On or about November 27, 2006, the Bureau issued Citation No. M07-0328 against
7 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
8 perform tests of emission control systems and devices in accordance with Health & Saf. Code
9 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
10 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
11 Regulation 3340.42). On or about November 16, 2006, Respondent issued a certificate of
12 compliance to a Bureau undercover vehicle with a missing air injection system. Respondent was
13 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
14 within 30 days from receipt of the citation. Respondent completed the training on February 7,
15 2007.

16 d. On or about November 5, 2010, the Bureau issued Citation No. M2011-0587 against
17 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
18 perform tests of emission control systems and devices in accordance with Health & Saf. Code
19 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
20 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
21 Regulation 3340.42). On or about October 21, 2010, Respondent issued a certificate of
22 compliance to a Bureau undercover vehicle with a non-functional EGR valve. Respondent was
23 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
24 within 30 days from receipt of the citation. Respondent completed the training on January 11,
25 2011.

26 e. On or about November 18, 2011, the Bureau issued Citation No. M2012-0487 against
27 Respondent for violating Health & Saf. Code section 44032 (qualified technicians shall perform
28 tests of emission control systems and devices in accordance with Health & Saf. Code section

1 44012). On or about October 20, 2011, Respondent issued a certificate of compliance to a Bureau
2 undercover vehicle with a missing AIR pump. Respondent was directed to complete a 16 hour
3 training course and to submit proof of completion to the Bureau within 30 days from receipt of
4 the citation. Respondent appealed the citation, but it was upheld with an effective date of January
5 14, 2013. Respondent completed the training on February 21, 2013.

6 **OTHER MATTERS**

7 53. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
8 suspend, revoke or place on probation the registration for all places of business operated in this
9 state by Respondent Michael Gary Abouzeid, owner of Carfinders, upon a finding that
10 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
11 regulations pertaining to an automotive repair dealer.

12 54. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
13 Number RC 258462, issued to Respondent Michael Gary Abouzeid, owner of Carfinders, is
14 revoked or suspended, any additional license issued under this chapter in the name of said
15 licensee may be likewise revoked or suspended by the Director.

16 55. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
17 Number EO 144378 and Smog Check Repair Technician License No. EI 144378, issued to
18 Respondent Kendall J. Allen, are revoked or suspended, any additional license issued under this
19 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 258462, issued to Michael Gary Abouzeid, owner of Carfinders;

25 2. Revoking or suspending any other automotive repair dealer registration issued to
26 Michael Gary Abouzeid;

27 3. Revoking or suspending Smog Check Station License Number RC 258462, issued to
28 Michael Gary Abouzeid, owner of Carfinders;

- 1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 2 and Safety Code in the name of Michael Gary Abouzeid;
- 3 5. Revoking or suspending Smog Check Inspector License Number EO 144378 and
- 4 Smog Check Repair Technician License No. EI 144378 issued to Kendall J. Allen;
- 5 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 6 and Safety Code in the name of Kendall J. Allen;
- 7 7. Ordering Michael Gary Abouzeid, owner of Carfinders, and Kendall J. Allen to pay
- 8 the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
- 9 case, pursuant to Business and Professions Code section 125.3;
- 10 8. Taking such other and further action as deemed necessary and proper.

11
12 DATED: _____ → 3/12/14 PAT DORAIS
13 PATRICK DORAIS by Doug Balash
14 Chief
15 Bureau of Automotive Repair
16 Department of Consumer Affairs
17 State of California
18 Complainant
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