

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

In the Matter of the Accusation Against:

PRIORITY AUTOMOTIVE INC.,
dba CALIFORNIA SMOG & REPAIR,
JOHN A. BURGER, PRES.
GURMUKH SINGH BOORA, TR.
ELIZABETH BURGER, SEC.,
Automotive Repair Dealer Registration No.
ARD 258368,
Smog Check Station License No. RC 258368,
Lamp Station License No. LS 258368,
Brake Station License No. BS 258368,

JOHN A. BURGER,
Advanced Emission Specialist Technician
License No. EA 037383 (to be designated upon
renewal as EO 037383 and/or EI 037383),
Brake Adjuster License No. BA 037383,
Lamp Adjuster License No. LA 037383,
Training Instructor Certification No. CI 037383,
Certified Training Institute No. 991504,

RYAN JAMES HUNLEY,
Smog Check Inspector License No. EO 630326,
Smog Check Repair Technician Number
EI 630326 (formerly Advanced Emission
Specialist Technician License No.
EA 630326),

Respondents.

Case No. 79/13-73

OAH No. 2013070527

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective August 19, 2014.

DATED: June 18, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
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(formerly Advanced Emission Specialist Technician License

No. EA 630326),

Respondents.

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on May 14, 2014, in Los Angeles, California. Complainant was represented by Michael Brown, Deputy Attorney General (DAG). John A. Burger, individually (Respondent Burger), was present and represented by Kimberly J. Savage, Attorney at Law. Ryan Hunley (Respondent Hunley) was present and represented

himself. There was no appearance on or behalf of Priority Automotive, Inc., dba California Smog & Repair.¹

Gurmukh Singh Boora appeared at the beginning of the hearing. However, after confirming that Priority Automotive, Inc. had dissolved and that he would not be representing the corporation at the hearing, Mr. Boora did not participate in the remainder of the hearing. Mr. Boora was not individually named as a respondent, nor were there any additional/individual licenses listed for Mr. Boora in the Accusation. However, the DAG maintained that, even if the corporate officers did not personally commit violations, the Bureau of Automotive Repair could discipline their individual licenses based solely on discipline imposed against the corporation for the acts of its employees/agents. Consequently, the ALJ held the record open to allow Complainant, Respondent Burger, and Mr. Boora to brief the issue of whether the individual licenses of the corporate officers can be disciplined in this case. Mr. Boora timely submitted a written statement, which was marked as Exhibit A and lodged. Complainant timely submitted a "Complainant's Closing Brief and Argument," which was marked as Exhibit 44 and lodged. Respondent Burger failed to submit any closing brief.

In Exhibit 44, Complainant withdrew his argument that he had the authority to revoke the officers' individual licenses based solely on discipline imposed against the corporation. (Exhibit 44, p. 1, lines 16-19.) Consequently, Gurmukh Singh Boora (Treasurer) and Elizabeth Burger (Secretary), who were not individually named as a respondents nor had any allegations leveled against them, are not subject to discipline in this case. Additionally, Respondent Burger is not subject to discipline based solely on the discipline imposed against the corporation. However, he was named individually as a respondent and was alleged to have personally engaged in violations. Therefore, he remains subject to discipline based on the allegations leveled against him individually.

Oral and documentary evidence was received and argument was heard. The record was closed, and the matter was submitted for decision on May 29, 2014.

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¹ Respondent Burger, Gurmukh Singh Boora, and Elizabeth Burger were served as officers of Priority Automotive, Inc., dba California Smog & Repair. Respondents Burger and Hunley were also served individually. Gurmukh Singh Boora filed a Notice of Defense on behalf of the corporation, and Respondents Burger and Hunley each filed a Notice of Defense on his own behalf. At the commencement of the hearing, the Administrative Law Judge was informed that the corporation had dissolved and that California Smog & Repair is no longer doing business. Respondent Burger's counsel, Respondent Burger and Mr. Boora all declined to represent the corporation at the hearing, and there was no other representative of the corporate licensee present. Consequently, the case proceeded by default against Priority Automotive, Inc. dba California Smog & Repair.

FACTUAL FINDINGS

1. On April 29, 2013, Complainant John Wallauch filed the Accusation while acting in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

License Information

Respondent Priority Automotive, Inc., dba California Smog & Repair

2(a). On June 8, 2009, the Bureau issued Automotive Repair Dealer (ARD) Registration Number ARD 258368 to Respondent Priority Automotive, Inc., dba California Smog & Repair (Respondent Station), with Respondent Burger as President, Gurmukh Singh Boora as Treasurer, and Elizabeth Burger as Secretary. The ARD registration was in full force and effect at all relevant times and expired on May 31, 2013.²

2(b). On June 16, 2009, the Bureau issued Smog Check Station License Number RC 258368 to Respondent Station. The smog station license was in full force and effect at all relevant times and expired on May 31, 2013.³

2(c). On December 23, 2009, the Bureau issued Lamp Station License Number LS 258368 to Respondent Station. The lamp station license was in full force and effect at all relevant times and expired on May 31, 2013.⁴

2(d). On December 23, 2009, the Bureau issued Brake Station License Number BS 258368 to Respondent Station. The brake station license was in full force and effect at all relevant times and expired on May 31, 2013.⁵

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² Despite the expiration of the ARD registration, the Bureau retains jurisdiction to proceed with this disciplinary action pursuant to Business and Professions Code section 9884.13.

³ Despite the expiration of the smog station license, the Bureau retains jurisdiction to proceed with this disciplinary action pursuant to Health and Safety Code section 44072.6.

⁴ Despite the expiration of the lamp station license, the Bureau retains jurisdiction to proceed with this disciplinary action pursuant to Business and Professions Code section 9889.7.

⁵ Despite the expiration of the brake station license, the Bureau retains jurisdiction to proceed with this disciplinary action pursuant to Business and Professions Code section 9889.7.

Respondent Burger

3(a). In 1997, the Bureau issued Advanced Emission Specialist (AES) Technician License Number EA 037383 to Respondent Burger. The AES technician license was in full force and effect at all relevant times, and was cancelled on August 29, 2013. On that same date, pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), Respondent Burger's AES technician license was renewed as Smog Check Inspector (EO) License Number EO 37383 and Smog Check Repair Technician (EI) License Number EI 37383. Respondent Burger's smog check inspector license and smog check repair technician license are scheduled to expire on August 31, 2015.

3(b). On September 23, 2009, the Bureau issued Brake Adjuster (BA) License Number 37383, Class C, to Respondent Burger. This BA license expired on August 31, 2013.⁶

3(c). On September 23, 2009, the Bureau issued Lamp Adjuster (LA) License Number 37383, Class A, to Respondent Burger. This LA license expired on August 31, 2013, and was cancelled on October 8, 2013.⁷

3(d). On a date undisclosed by the evidence, the Bureau issued Certified Training Instructor Certificate Number CI 037383 to Respondent Burger. That certificate is scheduled to expire January 31, 2015.

3(e). In 2008, the Bureau issued Certified Training Institution Certificate Number 991504 to California Smog Technical Training, owned and operated by Respondent Burger. That certificate was scheduled to expire on April 30, 2014. Although the evidence did not establish whether that certificate was renewed, the totality of the evidence indicated that Respondent Burger was continuing to operate California Smog Technical Training.

Respondent Ryan James Hunley

4. On July 18, 2008, the Bureau issued Advanced Emission Specialist (AES) Technician License Number EA 630326 to Respondent Hunley. On August 31, 2012, pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), Respondent Hunley's AES technician license was renewed as Smog Check Inspector (EO) License Number EO 630326 and Smog Check Repair Technician (EI) License Number EI

⁶ Despite the expiration of the brake adjuster license, the Bureau retains jurisdiction to proceed with this disciplinary action pursuant to Business and Professions Code section 9889.7.

⁷ Despite the expiration of the lamp adjuster license, the Bureau retains jurisdiction to proceed with this disciplinary action pursuant to Business and Professions Code section 9889.7.

630326: Respondent Hunley's smog check inspector license and smog check repair technician license are scheduled to expire on August 31, 2014.

Undercover Operation #1 - December 28, 2011 (2002 Ford Mustang)

5. On December 28, 2011, an undercover Bureau operator drove a Bureau vehicle, a 2002 Ford Mustang, to Respondent Station and requested brake, lamp and smog inspections.

6. Prior to the release of the Mustang from the Bureau's custody to the operator, a Bureau representative conducted brake, lamp and smog inspections to ensure that the vehicle was capable of operating correctly and passing brake, lamp and smog inspections. The Bureau representative then modified the vehicle by: installing undersized right front and left rear brake rotors; moving the front headlamps so that they were out of adjustment; removing the license plate lamps and housings from their mounted locations; and causing the check engine light to be inoperative. These modifications would cause the vehicle to fail any subsequent brake, lamp, and smog inspections. The Bureau representative also placed tamper indicators on all four wheels and on the headlamp adjusting screws. After the defects were introduced, the Mustang was released for the undercover run.

7(a). When the undercover operator arrived at Respondent Station, an employee completed a repair order and the operator was asked to sign it. There was no estimate amount on the repair order.

7(b). The evidence did not establish whether or when the operator received a copy of the repair order.

7(c). The Accusation, paragraph 31, lines 8-9 alleges that the operator "was not provided with a copy" of the repair order. Additionally, the Accusation, paragraph 36, alleges that Respondent Station "failed to provide the operator with a copy of the estimate as soon as the operator signed the document." Neither the operator's declaration (admitted for all purposes at the administrative hearing) nor his testimony addressed these allegations. Therefore, they were not established by the evidence.

8. The undercover operator watched Respondent Burger perform the brake inspection on the Mustang. A Bureau representative also observed the inspections from a breezeway across the street from Respondent Station. The vehicle was never road tested nor did it leave Respondent Station during the inspection. Respondent Burger raised the vehicle and removed the two driver side wheels; the passenger side wheels were never removed during the inspection. Respondent Burger also inspected the vehicle's lamps.

9(b). Respondent Hunley, who was working at Respondent Station, performed the smog inspection.

9(b). Respondent Hunley was not a paid employee of Respondent Station. Respondent Burger had allowed him to perform smog inspections at Respondent Station using its equipment, including the smog inspection machine, in order to gain more experience and confidence performing smog inspections.

9(c). Based on Respondent Hunley's smog inspection, Respondent Station issued electronic Certificate of Compliance Number [REDACTED] certifying that the vehicle was in compliance with applicable laws and regulations.

10. When the inspections were completed, the undercover operator paid \$155 in cash and was given an invoice, a brake certificate (# [REDACTED]) a lamp certificate (# [REDACTED]) and a vehicle inspection report (VIR) for the smog inspection.

11. On January 25, 2012, a Bureau representative re-inspected the Mustang and found that the right front and left rear brake rotors remained undersized. The previously installed tamper indicators on the right side wheels were intact, indicating that these wheels had not been removed for inspection. The tamper indicators he had installed on the left side wheels were missing, indicating that those wheels had been removed. He also found that, while both front headlamps appeared to have been adjusted from the pre-undercover run placement, both front headlamps were still out of specification. Additionally, the license plate lamps and housings were still missing from their mounted locations, and the check engine light remained inoperative, indicating that they had not been inspected. Following his post-undercover run inspection, the Bureau representative concluded that the Mustang was not in a condition to pass a brake inspection, a lamp inspection, or a bona fide California smog check inspection. Consequently, the Bureau representative concluded that the Mustang should not have been issued a brake certification or lamp certification. He also concluded that the Mustang should have failed the visual/functional portion of the smog inspection due to the inoperative check engine light, and therefore should not have been issued a certificate of compliance.

12(a). Respondent Burger signed brake certificate # [REDACTED] under penalty of perjury, certifying that a brake system inspection was performed, including a road test. However, as evidenced by his failure to remove the passenger side wheels, his failure to road-test the vehicle, and by the remaining undersized rotors, Respondent Burger did not inspect the brake system as required.

12(b). Respondent Burger certified under penalty of perjury on brake certificate # [REDACTED] that the brake rotors were in satisfactory condition, when in fact the right front and left rear brake rotors were undersized.

13. Respondent Burger certified under penalty of perjury on lamp certificate # [REDACTED] that he had performed a lamp inspection and adjustment. However, as evidenced by the missing license plate lamps and housings and the fact that both headlamps were out of adjustment, Respondent Burger did not inspect and adjust the lamp system as required.

14(a). Respondent Hunley signed the VIR under penalty of perjury, indicating that he “performed the inspection in accordance with all [B]ureau requirements and that the information listed on this [VIR] is true and accurate.” (Exhibit 10.) The visual inspection portion of the VIR indicated that Hunley had conducted a visual/functional inspection of the malfunction indicator light (MIL)/check engine light and that it had passed inspection. However, as evidenced by the fact that the check engine light remained inoperative after his inspection, Respondent Hunley did not inspect the vehicle in accordance with Bureau requirements and the information in the VIR was not accurate.

14(b). At the administrative hearing, Respondent Hunley admitted that he “improperly passed” the Mustang because he “missed the check engine light.” However, he had no intention of defrauding the “customer.” This asserted lack of fraudulent intent was credible.

15. The Accusation, paragraph 35, alleges that Respondent Station committed gross negligence through Respondent Burger’s failure to properly inspect the vehicle’s brake and lamp systems. There was no testimony to establish that Respondent Burger’s omissions constituted gross negligence.

Undercover Operation #2 – January 25, 2012 (2001 Ford Focus)

16. On January 25, 2012, an undercover Bureau operator drove a Bureau vehicle, a 2001 Ford Focus, to Respondent Station and requested brake, lamp and smog inspections.

17. Prior to the release of the Ford Focus from the Bureau’s custody to the operator, a Bureau representative conducted brake, lamp, and smog inspections to ensure that the vehicle was capable of operating correctly and passing brake, lamp, and smog inspections. The Bureau representative then modified the vehicle by: installing an undersized left front brake rotor and an oversized right rear brake drum; moving the front headlamps so that they were out of adjustment; and causing the check engine light to be illuminated. These modifications would cause the vehicle to fail any subsequent brake, lamp, and smog inspections. The Bureau representative also placed tamper indicators on all four wheels and on the headlamp adjusting screws. After the defects were introduced, the Ford Focus was released for the undercover run.

18. When the undercover operator arrived at Respondent Station, an employee completed a repair order and the operator was asked to sign it. There was no estimate amount on the repair order, and the document was not given to the operator until after completion of the inspections.

19. The undercover operator watched Respondent Burger perform the brake inspection on the Ford Focus. A Bureau representative also observed the inspections from a breezeway across the street from Respondent Station. The vehicle was never road tested nor

did it leave Respondent Station during the inspection. Respondent Burger raised the vehicle and removed two wheels. He also inspected the vehicle's lamps.

20. Gurmukh Boora took the vehicle and performed the smog check inspection. Mr. Boora told the operator that the vehicle would not pass the smog check inspection due to the defective light on the dashboard (the illuminated check engine light). Consequently no Certificate of Compliance was issued.

21. When the inspections were completed, the undercover operator paid \$106.75 in cash and was given copies of an estimate, an invoice, a brake certificate [REDACTED] a lamp certificate [REDACTED] and a vehicle inspection report (VIR) for the smog inspection.

22. On March 5, 2012, a Bureau representative re-inspected the Ford Focus and found that the left front brake rotor remained undersized and the right rear brake drum remained oversized. Additionally, the previously installed tamper indicators on the right front and left rear wheels were intact, indicating that these wheels had not been removed for inspection. He also found that, while both front headlamps appeared to have been adjusted from the pre-undercover run placement, both front headlamps were still out of specification. Following his post-undercover run inspection, the Bureau representative concluded that the Ford Focus was not in a condition to pass a brake inspection, a lamp inspection, or a bona fide California smog check inspection. Consequently, the Bureau representative concluded that the Ford Focus should not have been issued a brake certification or lamp certification. He also concluded that the vehicle had correctly failed the smog inspection due to the faulty MIL lamp.

23(a). Respondent Burger signed brake certificate [REDACTED] under penalty of perjury, certifying that a brake system inspection was performed, including a road test. However, as evidenced by his failure to remove two of the wheels, his failure to road-test the vehicle, and by the remaining undersized rotor and oversized drum, Respondent Burger did not inspect the brake system as required.

23(b). Respondent Burger certified under penalty of perjury on brake certificate [REDACTED] that the brake drums/rotors were in satisfactory condition, when in fact the left front brake rotor was undersized and the right rear drum was oversized.

24. Respondent Burger certified under penalty of perjury on lamp certificate [REDACTED] that he had performed a lamp inspection and adjustment. However, given that both headlamps were out of adjustment, Respondent Burger did not inspect and adjust the lamp system as required.

25. The Accusation, paragraph 55, alleges that Respondent Station committed gross negligence through Respondent Burger's failure to properly inspect the vehicle's brake and lamp systems. There was no testimony to establish that Respondent Burger's omissions constituted gross negligence.

Undercover Operation #3 – March 27, 2012 (2000 Pontiac Trans-Am)

26. On March 27, 2012, an undercover Bureau operator drove a Bureau vehicle, a 2000 Pontiac Trans-Am, to Respondent Station and requested brake, lamp, and smog inspections.

27. Prior to the release of the Trans-Am from the Bureau's custody to the operator, a Bureau representative conducted brake, lamp, and smog inspections to ensure that the vehicle was capable of operating correctly and passing brake, lamp, and smog inspections. The Bureau representative then modified the vehicle by: installing undersized right front and left rear brake rotors; moving the front high beam and low beam headlamps so that they were out of adjustment; and removing the air injection system (AIR), which was a required emission component. These modifications would cause the vehicle to fail any subsequent brake, lamp, and smog inspections. The Bureau representative also placed tamper indicators on all four wheels and on the high beam and low beam headlamp adjusting screws. After the defects were introduced, the Trans-Am was released for the undercover run.

28. When the undercover operator arrived at Respondent Station, an employee completed a repair order and the operator was asked to sign it. There was no estimate amount on the repair order, and the document was not given to the operator after she signed it.

29. The undercover operator watched Respondent Burger perform the brake inspection on the Trans-Am. A Bureau representative also observed the inspections from a breezeway across the street from Respondent Station. The vehicle was never road tested nor did it leave Respondent Station during the inspection. Respondent Burger also inspected the vehicle's lamps.

30. Gurmukh Boora took the vehicle and performed the smog check inspection. Mr. Boora told the operator that the vehicle would not pass the smog check inspection because the AIR pipe and hose were missing. Mr. Boora told her that he would abort the smog inspection and that she did not have to pay for it. Consequently no Certificate of Compliance was issued.

31. When the inspections were completed, the undercover operator paid \$80 in cash and was given copies of an invoice, a brake certificate [REDACTED] a lamp certificate [REDACTED] and a vehicle inspection report (VIR) for the smog inspection.

32. On April 6, 2012, a Bureau representative re-inspected the Trans-Am and found that the right front and left rear brake rotors remained undersized. Additionally, the previously installed tamper indicators on all of the wheels were intact, indicating that none of the wheels had been removed for inspection. He also found that the previously installed tamper indicators on the high beam headlamps remained intact, and those headlamps remained out of specification, indicating that those headlamps had not been inspected or

adjusted. While both low beam headlamps appeared to have been adjusted from the pre-undercover run placement, both front low beam headlamps were still out of specification. Following his post-undercover run inspection, the Bureau representative concluded that the Trans-Am was not in a condition to pass a brake inspection, a lamp inspection, or a bona fide California smog check inspection. Consequently, the Bureau representative concluded that the Trans-Am should not have been issued a brake certification or lamp certification. He also concluded that the vehicle had correctly failed the smog inspection due to the missing emission components.

33(a). Respondent Burger signed brake certificate [REDACTED] under penalty of perjury, certifying that a brake system inspection was performed, including a road test. However, as evidenced by his failure to remove any of the wheels, his failure to road-test the vehicle, and by the remaining undersized rotors, Respondent Burger did not inspect the brake system as required.

33(b). Respondent Burger certified under penalty of perjury on brake certificate [REDACTED] that the brake drums/rotors were in satisfactory condition, when in fact the right front and left rear brake rotors were undersized.

34. Respondent Burger certified under penalty of perjury on lamp certificate [REDACTED] that he had performed a lamp inspection and adjustment. However, given that both the high beam and low beam headlamps were out of adjustment, and that the tamper indicators on the high beam headlamps remained intact, Respondent Burger did not inspect and adjust the lamp system as required.

35. The Accusation, paragraph 69, alleges that Respondent Station committed gross negligence through Respondent Burger's failure to properly inspect the vehicle's brake and lamp systems. There was no testimony to establish that Respondent Burger's omissions constituted gross negligence.

Additional Evidence re: Respondent Burger

36. On February 19, 2013, in a Kern County criminal case, Respondent Burger stipulated to the entry of a Final Judgment and Permanent Injunction against him wherein he agreed to surrender his brake and lamp adjuster licenses to the Bureau. Accordingly, Respondent Burger did not renew his brake and lamp adjuster licenses in 2013. (See also Factual Findings 3(b) and 3(c).) Respondent Burger also agreed to pay \$7,650 in penalties and costs, which he has paid in full.

37. Respondent Burger no longer has an ownership interest in any smog check station. Since the February 2013 entry of judgment in the criminal case, Respondent Burger has not conducted any smog inspections. However, he was not required, nor does he desire, to surrender his smog check inspector and smog check technician licenses. His purpose for maintaining these licenses is that they are required for him to continue as a Bureau-certified instructor at his Bureau-certified school, California Smog Technical Training.

38. Respondent Burger has been teaching smog technicians for many years and enjoys it. He has taught approximately 1000 students, referred to his school by various entities, including the California Department of Rehabilitation, the California Employment Development Department, and the Veteran's Administration. He is very familiar with the Bureau-set curriculum which he teaches, while also increasing the number of required instruction hours in order to give his students additional training. He would like to continue training new smog technicians and needs his smog licenses to do so.

Additional Evidence re: Respondent Hunley

39. Respondent Hunley testified credibly that his improper certification of the Mustang on December 28, 2011 was a "rookie" mistake from which he has learned and has not repeated. At the time, he lacked experience as a technician, but since then he has performed over 1000 smog inspections and has worked at several smog check stations. He is currently working at a STAR certified station and has been employed there for over a year. Following his 2011 violation, Respondent Hunley has gained experience, knowledge and proficiency in smog inspections and proper diagnostics. He is "a lot more cautious now and more confident," and makes sure to "take his time and double check everything."

40. Respondent Hunley took full responsibility for his 2011 violations and insisted that Respondent Station was not responsible for his actions. He asserted that, at the time he worked at Respondent Station, he was "practicing under [his] own license," and that "each smog technician is responsible for his own test."

41. Although he admitted his mistake, Respondent Hunley believes that the discipline being sought (revocation of his license) is severe in response to the violations he committed. Respondent Hunley provides financial support for his family, which includes four small children. He fears that the loss of his ability to work in a STAR certified station would create a hardship for him and his family.

Costs

42(a). Complainant submitted as evidence of the costs of prosecution of this matter a Certification of Prosecution costs, Declaration of Michael Brown, certifying that the Department of Justice, Office of the Attorney General billed the Bureau \$12,340 for legal services provided through May 9, 2014.

42(b). There was no evidence that any of the costs were unreasonable.

42(d). The evidence established that Complainant incurred total costs of \$12,340, all of which are deemed reasonable.

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LEGAL CONCLUSIONS

Undercover Operation #1 - December 28, 2011 (2002 Ford Mustang)

1. First Cause for Discipline: Cause exist to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1), for its employee's (Respondent Burger's) making statements he knew, or should have known, to be untrue or misleading, as set forth in Factual Findings 5 through 14.
2. Second Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4), for its employee's (Respondent Burger's) fraud in issuing brake and lamp certificates containing false statements, as set forth in Factual Findings 5 through 14.
3. Third Cause for Discipline: Cause does not exist to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(5), in that Complainant failed to establish that Respondent Station or its employee committed gross negligence, as set forth in Factual Findings 5 through 15.
4. Fourth Cause for Discipline: Cause does not exist to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(3), in that Complainant failed to establish that Respondent Station failed to provide a customer with a copy of an estimate as soon as he signed the document, as set forth in Factual Findings 5 through 14.
5. Fifth Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for its employee's failure to comply with provisions of the Business and Professions Code, i.e. sections 9884.9, subdivision (a) (employee's failure to give the customer a written estimated price) and 9889.16 (Respondent Burger's issuing brake and lamp certificates even though the inspections and lamp adjustments did not conform with Bureau instructions and the vehicle did not meet Vehicle Code requirements), as set forth in Factual Findings 5 through 14.
6. Sixth Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for its employee's failure to comply with provisions of title 16 of the California Code of Regulations, i.e., sections 3305, subdivision (a) (Respondent Burger's failure to perform brake and lamp inspections in accordance with standards, specifications, instructions and Bureau directives), 3316, subdivision (d)(2)(Respondent Burger's issuing a lamp certificate certifying that the vehicle's lamp system had been inspected and was in compliance with legal requirements, when it was not), and 3321, subdivision (c)(2)(Respondent Burger's issuing a brake certificate certifying that the vehicle's brake system had been inspected and was in compliance with legal requirements, and that the vehicle was road tested, when it was not), as set forth in Factual Findings 5 through 14.

7. Seventh Cause for Discipline: Cause exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (a), for its violations of the Business and Professions Code, as set forth in Factual Findings 5 through 14, and Legal Conclusions 1, 2 and 5.

8. Eighth Cause for Discipline: Cause exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (c), for its violations of provisions of title 16 of the California Code of Regulations, as set forth in Factual Findings 5 through 14, and Legal Conclusion 6.

9. Ninth Cause for Discipline: Cause does not exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (d), in that Complainant did not establish that the fraud, dishonesty and deceit committed by Respondent Station's employees in the issuance of the brake and lamp certificates resulted in someone being "injured," as set forth in Factual Findings 5 through 14. While the undersized brake rotors and maladjusted headlamps may create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that these defective conditions resulted in someone being injured.

10. Tenth Cause for Discipline: Cause exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (a), for his violations of the Business and Professions Code, as set forth in Factual Findings 5 through 14, and Legal Conclusions 1, 2 and 5.

11. Eleventh Cause for Discipline: Cause exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (c), for his violations of provisions of title 16 of the California Code of Regulations, as set forth in Factual Findings 5 through 14, and Legal Conclusion 6.

12. Twelfth Cause for Discipline: Cause does not exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (d), in that Complainant did not establish that Respondent Burger's fraud, dishonesty and deceit resulted in someone being "injured," as set forth in Factual Findings 5 through 14. While the undersized brake rotors and maladjusted headlamps may create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that these defective conditions resulted in someone being injured.

13(a). Thirteenth Cause for Discipline: Cause exists to revoke or suspend Respondent Station's smog check station license under Health and Safety Code section 44072.2, subdivision (a), for failure to comply with Health and Safety Code sections 44012 (failure to perform required emission control tests on a vehicle) and 44015 (issuing a Certificate of Compliance for a vehicle without proper testing and inspection), as set forth in Factual Findings 2 through 14.

13(b). Respondent Hunley argued that Respondent Station should not be held responsible for his actions because he was not a paid employee. Since Respondent Station defaulted, it made no argument on this point. Although Respondent Hunley made a gracious attempt to accept full responsibility for his actions, which also demonstrated his rehabilitation (discussed below), his argument was not persuasive.

13(c). For public protection purposes, courts have imposed liability on licensees for the unlawful acts of their employees and agents while engaged in the operation of a regulated and licensed business. (*Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179, 192 (licensed pharmacy responsible for wrongdoing of employees who were licensed pharmacists); see also *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793; *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) The *Arenstein* Court held that, “if a licensee elects to operate his business through employees, he must be responsible to the licensing authority for their conduct in the exercise of his license,” and this holds true even if the licensee “does not authorize the unlawful acts and did not have actual knowledge of the activities.” (265 Cal.App.2d 179, 192-193.) The Court noted, “This would be particularly true of a corporate permittee which could act only through its officers, agents or employees.” (*Id.*)

13(d). In this case, Respondent Station could act only through its officers, agents or employees. Although Respondent Hunley was not paid for his services, Respondent Station allowed Respondent Hunley to conduct smog inspections at Respondent Station using equipment and facilities owned and operated by Respondent Station. Moreover, the Certificate of Compliance following Respondent Hunley’s inspection was issued by Respondent Station from a machine it owned. Any customers coming to Respondent Station and having Respondent Hunley performing their smog inspections on its premises with Respondent Station’s permission could reasonably infer that Respondent Hunley was an agent of Respondent Station.⁸ Respondent Station had a duty to ensure compliance with the laws and regulations governing its licensed business, and it was responsible for its ostensible agent Respondent Hunley’s violations committed in the exercise of its license. As with *Arenstein*, this holds true even if Respondent Station did not authorize the unlawful acts or have actual knowledge of them. Consequently, the Bureau may discipline the license of Respondent Station for the violations of its ostensible agent, Respondent Hunley, while conducting smog inspections at Respondent Station.

⁸“Agency . . . ‘can be founded on ostensible authority, that is, some intentional conduct or neglect on the part of the alleged principal creating a belief in the minds of third persons that an agency exists, and a reasonable reliance thereon by such third persons.’” (*Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, 1133, (citing *Flores v. Evergreen at San Diego, LLC* (2007) 148 Cal.App.4th 581, 587-588).) “In any application of either ostensible agency or ostensible authority . . . ‘there must be evidence of conduct by the principal which causes a third party reasonably to believe the agent has [such] authority.’ [Citations.]” (*Id.* at 1134.)

14. Fourteenth Cause for Discipline: Cause exists to revoke or suspend Respondent Station's smog check station license under Health and Safety Code section 44072.2, subdivision (c), for failure to comply with California Code of Regulations, title 16, sections 3340.35, subdivision (c) (issuance of a Certificate of Compliance without proper inspection), and 3340.42 (failure to conduct required inspection), as set forth in Factual Findings 2 through 14, and Legal Conclusions 13(c) and 13(d).

15. Fifteenth Cause for Discipline: Cause does not exist to revoke or suspend Respondent Station's smog check station license under Health and Safety Code section 44072.2, subdivision (d), as set forth in Factual Findings 5 through 14, in that Complainant did not establish that Respondent Station (i.e. its agent Respondent Hunley) engaged in dishonesty, deceit or fraud. Moreover, Complainant did not establish that Respondent Station's actions resulted in someone being "injured." While the inoperative check engine light may arguably create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that this defective condition resulted in someone being injured.⁹

16. Sixteenth Cause for Discipline: Cause exists to revoke or suspend Respondent Hunley's smog check inspector and smog check repair technician licenses under Health and Safety Code section 44072.2, subdivision (a), for failure to comply with Health and Safety Code sections 44012 (failure to perform required emission control tests on a vehicle) and 44032 (failure to perform tests in compliance with Health and Safety Code section 44012), as set forth in Factual Findings 2 through 14.

17. Seventeenth Cause for Discipline: Cause exists to revoke or suspend Respondent Hunley's smog check inspector and smog check repair technician licenses under Health and Safety Code section 44072.2, subdivision (c), for failure to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a) (failure to perform tests in compliance with Health and Safety Code section 44012), and 3340.42 (failure to conduct required inspection), as set forth in Factual Findings 2 through 14.

18. Eighteenth Cause for Discipline: Cause does not exist to revoke or suspend Respondent Hunley's smog check inspector and smog check repair technician licenses under Health and Safety Code section 44072.2, subdivision (d), as set forth in Factual Findings 5 through 14, in that Complainant did not establish that Respondent Hunley engaged in dishonesty, deceit or fraud. Moreover, Complainant did not establish that Respondent Hunley's actions resulted in someone being "injured." While the inoperative check engine light may arguably create a risk of harm (although this was not addressed at the

⁹ There was no evidence to establish that this scenario is similar to a situation where a licensee fraudulently certifies a vehicle without conducting a tailpipe emissions test and then allows that vehicle back on the road where its unchecked emissions cause harmful pollution.

administrative hearing), there was no evidence to establish that this defective condition resulted in someone being injured.¹⁰

Undercover Operation #2 – January 25, 2012 (2001 Ford Focus)

19. Nineteenth Cause for Discipline: Cause exist to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1), for its employee's (Respondent Burger's) making statements he knew, or should have known, to be untrue or misleading, as set forth in Factual Findings 16 through 24.

20. Twentieth Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4), for its employee's (Respondent Burger's) fraud in issuing brake and lamp certificates containing false statements, as set forth in Factual Findings 16 through 24.

21. Twenty-first Cause for Discipline: Cause does not exist to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(5), in that Complainant failed to establish that Respondent Station or its employee committed gross negligence, as set forth in Factual Findings 16 through 25.

22. Twenty-second Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(3), for Respondent Station's failure to provide a customer with a copy of an estimate when she signed the document, as set forth in Factual Findings 16 through 24.

23. Twenty-third Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for its employee's failure to comply with provisions of the Business and Professions Code, i.e. sections 9884.9, subdivision (a) (employee's failure to give the customer a written estimated price) and 9889.16 (Respondent Burger's issuing brake and lamp certificates even though the inspections and lamp adjustments did not conform with Bureau instructions and the vehicle did not meet Vehicle Code requirements), as set forth in Factual Findings 16 through 24.

24. Twenty-fourth Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for its employee's failure to comply with provisions of title 16 of the California Code of Regulations, i.e., sections 3305, subdivision (a) (Respondent Burger's failure to perform brake and lamp inspections in accordance with standards, specifications, instructions and Bureau directives), 3316, subdivision (d)(2)(Respondent Burger's issuing a lamp certificate

¹⁰ There was no evidence to establish that this scenario is similar to a situation where a licensee fraudulently certifies a vehicle without conducting a tailpipe emissions test and then allows that vehicle back on the road where its unchecked emissions cause harmful pollution.

certifying that the vehicle's lamp system had been inspected and was in compliance with legal requirements, when it was not), and 3321, subdivision (c)(2)(Respondent Burger's issuing a brake certificate certifying that the vehicle's brake system had been inspected and was in compliance with legal requirements, and that the vehicle was road tested, when it was not), as set forth in Factual Findings 16 through 24.

25. Twenty-fifth Cause for Discipline: Cause exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (a), for its violations of the Business and Professions Code, as set forth in Factual Findings 16 through 24, and Legal Conclusions 19, 20, 22 and 23.

26. Twenty-sixth Cause for Discipline: Cause exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (c), for its violations of provisions of title 16 of the California Code of Regulations, as set forth in Factual Findings 16 through 24, and Legal Conclusion 24.

27. Twenty-seventh Cause for Discipline: Cause does not exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (d), in that Complainant did not establish that the fraud, dishonesty and deceit committed by Respondent Station's employee in the issuance of the brake and lamp certificates resulted in someone being "injured," as set forth in Factual Findings 16 through 24. While the undersized brake rotor, oversized drum, and maladjusted headlamps may create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that these defective conditions resulted in someone being injured.

28. Twenty-eighth Cause for Discipline: Cause exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (a), for his violations of the Business and Professions Code, as set forth in Factual Findings 16 through 24, and Legal Conclusions 19, 20, and 23.

29. Twenty-ninth Cause for Discipline: Cause exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (c), for his violations of provisions of title 16 of the California Code of Regulations, as set forth in Factual Findings 16 through 24, and Legal Conclusion 24.

30. Thirtieth Cause for Discipline: Cause does not exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (d), in that Complainant did not establish that Respondent Burger's fraud, dishonesty and deceit resulted in someone being "injured," as set forth in Factual Findings 16 through 24. While the undersized brake rotor, oversized brake drum, and maladjusted headlamps may create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that these defective conditions resulted in someone being injured.

Undercover Operation #3 – March 27, 2012 (2000 Pontiac Trans-Am)

31. Thirty-first Cause for Discipline: Cause exist to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1), for its employee's (Respondent Burger's) making statements he knew, or should have known, to be untrue or misleading, as set forth in Factual Findings 26 through 34.

32. Thirty-second Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4), for its employee's (Respondent Burger's) fraud in issuing brake and lamp certificates containing false statements, as set forth in Factual Findings 26 through 34.

33. Thirty-third Cause for Discipline: Cause does not exist to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(5), in that Complainant failed to establish that Respondent Station or its employee committed gross negligence, as set forth in Factual Findings 26 through 35.

34. Thirty-fourth Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(3), for Respondent Station's failure to provide a customer with a copy of an estimate when she signed the document, as set forth in Factual Findings 26 through 34.

35. Thirty-fifth Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for its employee's failure to comply with provisions of the Business and Professions Code, i.e. sections 9884.9, subdivision (a) (employee's failure to give the customer a written estimated price) and 9889.16 (Respondent Burger's issuing brake and lamp certificates even though the inspections and lamp adjustments did not conform with Bureau instructions and the vehicle did not meet Vehicle Code requirements), as set forth in Factual Findings 26 through 34.

36. Thirty-sixth Cause for Discipline: Cause exists to discipline Respondent Station's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for its employee's failure to comply with provisions of title 16 of the California Code of Regulations, i.e., sections 3305, subdivision (a) (Respondent Burger's failure to perform brake and lamp inspections in accordance with standards, specifications, instructions and Bureau directives), 3316, subdivision (d)(2)(Respondent Burger's issuing a lamp certificate certifying that the vehicle's lamp system had been inspected and was in compliance with legal requirements, when it was not), and 3321, subdivision (c)(2)(Respondent Burger's issuing a brake certificate certifying that the vehicle's brake system had been inspected and was in compliance with legal requirements, and that the vehicle was road tested, when it was not), as set forth in Factual Findings 26 through 34.

37. Thirty-seventh Cause for Discipline: Cause exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section

9889.3, subdivision (a), for its violations of the Business and Professions Code, as set forth in Factual Findings 26 through 34, and Legal Conclusions 31, 32, 34 and 35.

38. Thirty-eighth Cause for Discipline: Cause exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (c), for its violations of provisions of title 16 of the California Code of Regulations, as set forth in Factual Findings 26 through 34, and Legal Conclusion 36.

39. Thirty-ninth Cause for Discipline: Cause does not exist to discipline Respondent Station's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (d), in that Complainant did not establish that the fraud, dishonesty and deceit committed by Respondent Station's employee in the issuance of the brake and lamp certificates resulted in someone being "injured," as set forth in Factual Findings 26 through 34. While the undersized brake rotors and maladjusted headlamps may create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that these defective conditions resulted in someone being injured.

40. Fortieth Cause for Discipline: Cause exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (a), for his violations of the Business and Professions Code, as set forth in Factual Findings 26 through 34, and Legal Conclusions 31, 32 and 35.

41. Forty-first Cause for Discipline: Cause exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (c), for his violations of provisions of title 16 of the California Code of Regulations, as set forth in Factual Findings 26 through 34, and Legal Conclusion 36.

42. Forty-second Cause for Discipline: Cause does not exist to discipline Respondent Burger's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivision (d), in that Complainant did not establish that Respondent Burger's fraud, dishonesty and deceit resulted in someone being "injured," as set forth in Factual Findings 26 through 34. While the undersized brake rotors and maladjusted headlamps may create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that these defective conditions resulted in someone being injured.

43. Forty-third Cause for Discipline: Cause does not exist to revoke or suspend Respondent Burger's smog check inspector and smog check repair technician licenses under Health and Safety Code section 44072.2, subdivision (d), for dishonesty/deceit causing injury to another in that Complainant did not establish that Respondent Burger's fraud, dishonesty and deceit resulted in someone being "injured," as set forth in Factual Findings 26 through 34. While the undersized brake rotors and maladjusted headlamps may create a risk of harm (although this was not addressed at the administrative hearing), there was no evidence to establish that these defective conditions resulted in someone being injured.

Costs

44(a). Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of prosecution of this matter in the amount of \$12,340, as set forth in Factual Finding 42.

44(b). Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Bureau must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Bureau] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Bureau, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and whether or not the licensee has raised a colorable defense. The Bureau must also consider the licensee's ability to make payment.

44(c). Considering all of the *Zuckerman* factors, there are reasons to apportion the costs and to reduce the award of costs against Respondent Hunley. In this case, three of the 43 causes for discipline were leveled against Respondent Hunley (although that is arguably increased to six since three of the causes for discipline against Respondent Station were based on Respondent Hunley's violations). Only two of those causes for discipline were sustained against Respondent Hunley (and two correspondingly sustained against Respondent Station). Given that just under 15 percent of the case involved allegations against Respondent Hunley (about \$1,851 of the costs) and only 10 percent of the causes for discipline involving him were sustained, the reasonable costs which Complainant should recover from Respondent Hunley are \$1,234. The remaining causes for discipline involved Respondent Burger and Respondent Station, and those respondents shall, jointly and severally, be responsible for reimbursing the Bureau \$10,489 in prosecution costs.

Discipline Considerations

45. Respondent Hunley's violations involved a careless mistake rather than intentional fraud. Following his violations, Respondent Hunley has demonstrated significant rehabilitation. He has demonstrated remorse, has accepted full responsibility for his violations and has attempted to shield Respondent Station from bearing the responsibility for his actions. Following his 2011 violations, Respondent Hunley conducted over 1000 inspections and gained sufficient experience and proficiency to be employed at a STAR certified station. Respondent Hunley has learned from his mistake and now conducts his inspections with more caution, including taking time to "double check everything." The totality of the evidence indicates that the likelihood of recidivism is very low. Consequently, revocation and even probation would be unduly punitive. Instead, the Accusation should be dismissed, and in its place a Citation should be issued, retroactively effective on the date of

the filing of the Accusation, April 29, 2013,¹¹ citing Respondent Hunley for his violations set forth in Legal Conclusions 16 and 17. The Citation shall include an order for payment of \$1,234 in costs to the Bureau.

46. Respondent Burger has accepted responsibility for his violations and, pursuant to his stipulation in the criminal case, has not renewed his brake and lamp adjuster licenses in 2013. He also paid in full the \$7,650 in penalties and costs from the criminal case. Respondent Burger wishes to retain his smog inspector and smog check technician licenses solely as means for continuing as a Bureau-certified instructor at, and owner/operator of, his Bureau-certified school, California Smog Technical Training. He has committed no violations using his smog inspector and smog check technician licenses. However, Respondent Burger failed to provide any explanation for why he engaged in the violations, including fraud on several occasions. His dishonesty is concerning even if the deceit was not accomplished specifically using his smog licenses. Nevertheless, there was no evidence that any of his licenses had been disciplined previously, and given his lengthy and law-abiding history in the smog inspection industry, revocation is not warranted. A probationary period with appropriate conditions should sufficiently protect the public safety and welfare.

ORDERS

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

I. Orders re: Respondent Priority Automotive, Inc., dba California Smog & Repair

1. Automotive Repair Dealer Registration Number ARD 258368 to issued to Respondent Priority Automotive, Inc., dba California Smog & Repair, is hereby revoked.

2. Pursuant to Business and Professions Code section 9884.7, any additional registrations issued to Priority Automotive, Inc., dba California Smog & Repair, are hereby revoked.

3. Smog Check Station License Number RC 258368, issued to Respondent Priority Automotive, Inc., dba California Smog & Repair, is hereby revoked.

4. Pursuant to Health and Safety Code section 44072.8, any additional licenses issued to Respondent Priority Automotive, Inc., dba California Smog & Repair, are hereby revoked.

¹¹ This retroactive effect contemplates Respondent Hunley's continued employment at the STAR certified station. Pursuant to California Code of Regulations, title 16, section 3392.3.1, subdivision (a)(5), a STAR certified station cannot employ a licensed Smog Check technician who has received a citation within the preceding one-year period for violations including Health and Safety Code sections 44012 and 44032, and California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.42.

5. Lamp Station License Number LS 258368, issued to Respondent Priority Automotive, Inc., dba California Smog & Repair, is hereby revoked.

6. Brake Station License Number BS 258368, issued to Respondent Priority Automotive, Inc., dba California Smog & Repair, is hereby revoked.

7. Pursuant to Business and Professions Code section 9889.9, any additional licenses issued to Priority Automotive, Inc., dba California Smog & Repair, are hereby revoked.

8. If Respondent Priority Automotive, Inc., dba California Smog & Repair, later applies for a new registration or license or reinstatement of the revoked registration and/or licenses, Respondent Priority Automotive, Inc., dba California Smog & Repair shall reimburse the Bureau \$10,489 for its prosecutorial costs in this case, prior to reinstatement or issuance of any registration or license, or as the Bureau in its discretion may otherwise order.

II. Orders re: Respondent Ryan Hunley

1. The Accusation against Respondent Ryan Hunley is hereby dismissed, and in its place a Citation is hereby issued, effective April 29, 2013, for Respondent Ryan Hunley's sustained violations of Health and Safety Code sections 44012 and 44032, and California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.42.

2. Within 90 days of the effective date of this Decision and Order, or pursuant to any payment plan which the Bureau in its discretion may otherwise order, Respondent Ryan Hunley shall reimburse the Bureau \$1,234 for its prosecutorial costs in this case.

III. Orders re: Respondent John Burger

1. Brake Adjuster License Number 37383, issued to Respondent John Burger, is hereby revoked.

2. Lamp Adjuster License Number 37383, issued to Respondent John Burger, is hereby revoked.

3. Pursuant to Business and Professions Code section 9889.9, any additional licenses issued to Priority Automotive, Inc. are hereby revoked.

4. Smog Check Inspector License Number EO 37383, Smog Check Repair Technician License Number EI 37383, Instructor's Certification Number CI037383, and Certified Training Institution Number 991504, issued to Respondent John Burger, are hereby revoked. However, the revocations shall be stayed and Respondent John Burger shall be placed on probation for three years, subject to the following terms and conditions:

a. Respondent Burger shall comply with all statutes, regulations and rules governing automotive/smog inspections, estimates and repairs.

b. Respondent Burger must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 90 days of the effective date of this Decision and Order, or pursuant to any payment plan which the Bureau in its discretion may otherwise order, Respondent Burger shall reimburse the Bureau \$10,489 for its prosecutorial costs in this case.

d. If an accusation is filed against Respondent Burger during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

e. Should the Director of Consumer Affairs determine that Respondent Burger has failed to comply with the terms and conditions of probation, the Department of Consumer Affairs may, after giving notice and opportunity to be heard, suspend or revoke Respondent Burger's license.

DATED: June 3, 2014



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

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7

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

12 In the Matter of the Accusation Against:

13 **PRIORITY AUTOMOTIVE INC.**
14 **dba CALIFORNIA SMOG & REPAIR**
15 **JOHN A. BURGER, PRES.**
16 **GURMUKH SINGH BOORA, TR.**
17 **ELIZABETH BURGER, SEC.**
18 **6901 White Lane**
19 **Bakersfield, California 93309**
20 **Automotive Repair Dealer Registration No.**
21 **ARD 258368**
22 **Smog Check Station License No. RC 258368**
23 **Lamp Station License No. LS 258368**
24 **Brake Station License No. BS 258368**
25 **JOHN A. BURGER**
26 **2341 Pictoria Dr.**
27 **Bakersfield, California 93306-4640**
28 **Advanced Emission Specialist Technician**
License No. EA 037383 (to be designated upon
renewal as EO 037383 and/or EI 037383)
Brake Adjuster License No. BA 037383
Lamp Adjuster License No. LA 037383
Training Instructor Certification No. CI 037383
Certified Training Institute No. 991504

Case No. 79/13-73

ACCUSATION

(SMOG CHECK)

1 **RYAN JAMES HUNLEY**
2 **3824 Harvard Drive**
3 **Bakersfield, California 93306**
4 **Smog Check Inspector License No. EO 630326**
5 **Smog Check Repair Technician Number**
6 **EI 630326**
7 **(formerly Advanced Emission Specialist**
8 **Technician License No. EA 630326)**

Respondents.

9 John Wallauch ("Complainant") alleges:

10 **PARTIES**

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

13 **LICENSE INFORMATION**

14 **Priority Automotive Inc., dba California Smog & Repair**

15 **Automotive Repair Dealer Registration**

16 2. On or about June 8, 2009, the Bureau issued Automotive Repair Dealer
17 Registration Number ARD 258368 ("registration") to Priority Automotive Inc., doing business as
18 California Smog & Repair ("Respondent California"), with John A. Burger as President,
19 Gurmukh Singh Boora as Treasurer, and Elizabeth Burger as Secretary. The registration was in
20 full force and effect at all times relevant to the charges brought herein and will expire on
21 May 31, 2013, unless renewed.

22 **Smog Check Station License**

23 3. On or about June 16, 2009, the Bureau issued Smog Check Station Number RC
24 258368 ("station license") to Respondent California. The station license was in full force and
25 effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless
26 renewed.

27 ///

28 ///

1 **Lamp Station License**

2 4. On or about December 23, 2009, the Bureau issued Lamp Station License Number
3 LS 258368 to Respondent California. The lamp station license was in full force and effect at all
4 times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

5 **Brake Station License**

6 5. On or about December 23, 2009, the Bureau issued Brake Station License Number
7 BS 258368 to Respondent California. The brake station license was in full force and effect at all
8 times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

9 **John A. Burger**

10 **Advanced Emission Specialist Technician License**

11 6. In or about 1997, the Bureau issued Advanced Emission Specialist Technician
12 License Number EA 037383 (“technician license”) to John A. Burger (“Respondent Burger”).
13 Respondent Burger’s technician license was in full force and effect at all times relevant to the
14 charges brought herein and will expire on August 31, 2013, unless renewed. Upon timely
15 renewal of the license, the license will be redesignated as EO 037383 and/or EI 037383.¹

16 **Brake Adjuster License**

17 7. On or about September 23, 2009, the Bureau issued Brake Adjuster License Number
18 BA 037383 to Respondent Burger. Respondent Burger’s brake adjuster license was in full force
19 and effect at all times relevant to the charges brought herein and will expire on August 31, 2013,
20 unless renewed.

21 **Lamp Adjuster License**

22 8. On or about September 22, 2009, the Bureau issued Lamp Adjuster License Number
23 LA 037383 to Respondent Burger. Respondent Burger’s lamp adjuster license was in full force
24 and effect at all times relevant to the charges brought herein and will expire on August 31, 2013,
25 unless renewed.

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 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 14. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
4 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
5 the Motor Vehicle Inspection Program.

6 15. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
7 expiration or suspension of a license by operation of law, or by order or decision of the
8 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not
9 deprive the Director of jurisdiction to proceed with disciplinary action.

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

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

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

17 **STATUTORY PROVISIONS**

18 18. Section 9884.7 states, in pertinent part:

19 (a) The director, where the automotive repair dealer cannot show there
20 was a bona fide error, may deny, suspend, revoke, or place on probation the
21 registration of an automotive repair dealer for any of the following acts or omissions
22 related to the conduct of the business of the automotive repair dealer, which are done
by the automotive repair dealer or any automotive technician, employee, partner,
officer, or member of the automotive repair dealer.

23 (1) Making or authorizing in any manner or by any means whatever any
24 statement written or oral which is untrue or misleading, and which is known, or which
by the exercise of reasonable care should be known, to be untrue or misleading.

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

27 (4) Any other conduct which constitutes fraud.

1 (5) Conduct constituting gross negligence.

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

3 (b) Except as provided for in subdivision (c), if an automotive repair
4 dealer operates more than one place of business in this state, the director pursuant to
5 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
6 automotive repair dealer to operate his or her other places of business.

7 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
8 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
9 adopted pursuant to it.

10 19. Section 9889.3 of the Code states, in pertinent part:

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

13 (a) Violates any section of the Business and Professions Code that relates
to his or her licensed activities.

14 (c) Violates any of the regulations promulgated by the director pursuant
15 to this chapter.

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

17 20. Section 9889.1 of the Code states:

18 Any license issued pursuant to Articles 5 and 6, may be suspended or
19 revoked by the director. The director may refuse to issue a license to any applicant
20 for the reasons set forth in Section 9889.2. The proceedings under this article shall be
conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1
of Division 3 of Title 2 of the Government Code, and the director shall have all the
21 powers granted therein.

22 21. Section 9889.9 of the Code states:

23 When any license has been revoked or suspended following a hearing
24 under the provisions of this article, any additional license issued under Articles 5 and
6 of this chapter in the name of the licensee may be likewise revoked or suspended by
the director.

25 22. Section 9889.16 of the Code states:

26 Whenever a licensed adjuster in a licensed station upon an inspection or
27 after an adjustment, made in conformity with the instructions of the bureau,
determines that the lamps or the brakes upon any vehicle conform with the
28 requirements of the Vehicle Code, he shall, when requested by the owner or driver of
the vehicle, issue a certificate of adjustment on a form prescribed by the director,

1 which certificate shall contain the date of issuance, the make and registration number
2 of the vehicle, the name of the owner of the vehicle, and the official license of the
3 station.

4 23. Section 9884.9 of the Code states:

5 (a) The automotive repair dealer shall give to the customer a written
6 estimated price for labor and parts necessary for a specific job. No work shall be done
7 and no charges shall accrue before authorization to proceed is obtained from the
8 customer. No charge shall be made for work done or parts supplied in excess of the
9 estimated price without the oral or written consent of the customer that shall be
10 obtained at some time after it is determined that the estimated price is insufficient and
11 before the work not estimated is done or the parts not estimated are supplied. Written
12 consent or authorization for an increase in the original estimated price may be
13 provided by electronic mail or facsimile transmission from the customer. The bureau
14 may specify in regulation the procedures to be followed by an automotive repair
15 dealer when an authorization or consent for an increase in the original estimated price
16 is provided by electronic mail or facsimile transmission. If that consent is oral, the
17 dealer shall make a notation on the work order of the date, time, name of person
18 authorizing the additional repairs and telephone number called, if any, together with a
19 specification of the additional parts and labor and the total additional cost, and shall
20 do either of the following:

21 (1) Make a notation on the invoice of the same facts set forth in the
22 notation on the work order.

23 (2) Upon completion of repairs, obtain the customer's signature or initials
24 to an acknowledgment of notice and consent, if there is an oral consent of the
25 customer to additional repairs, in the following language:

26 I acknowledge notice and oral approval of an increase in the original
27 estimated price.

28 _____
(signature or initials)

Nothing in this section shall be construed as requiring an automotive
repair dealer to give a written estimated price if the dealer does not agree to perform
the requested repair.

24 24. Section 9889.7 of the Code states:

25 The expiration or suspension of a license by operation of law or by order
26 or decision of the director or a court of law, or the voluntary surrender of a license by
27 a licensee shall not deprive the director of jurisdiction to proceed with any
28 investigation of or action or disciplinary proceedings against such licensee, or to
render a decision suspending or revoking such license.

25. 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:

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

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

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

8 REGULATORY PROVISIONS

9 26. California Code of Regulations, title 16, section 3305 states, in pertinent part:

10 (a) Performance Standards. All adjusting, inspecting, servicing, and
11 repairing of brake systems and lamp systems shall be performed in official stations in
12 accordance with current standards, specifications, instructions, and directives issued
13 by the bureau and by the manufacturer of the device or vehicle.

14 27. California Code of Regulations, title 16, section 3316 states, in pertinent part:

15 (d)(2) Inspection of the Entire Lighting System. Where all of the lamps,
16 lighting equipment, and related electrical systems on a vehicle have been inspected
17 and found in compliance with all requirements of the Vehicle Code and bureau
18 regulations, the certificate shall certify that the entire system meets all such
19 requirements.

20 28. California Code of Regulations, title 16, section 3321 states, in pertinent part:

21 (c)(2) Inspection of the Entire Brake System. Where the entire brake
22 system on any vehicle has been inspected or tested and found in compliance with all
23 requirements of the Vehicle Code and bureau regulations, and the vehicle has been
24 road-tested, the certificate shall certify that the entire system meets all such
25 requirements.

26 COST RECOVERY

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

29 BACKGROUND INFORMATION

30 30. On or about November 15, 2011, the Bureau reviewed the smog check inspection
31 data which showed that Respondent California was performing very quick smog check
32 inspections and had a high number of aborted smog check inspections. As a result, the Bureau
33 initiated an investigation into Respondent California's business practices.

1 Respondent California committed acts constituting gross negligence, in that Respondent's
2 technician, Respondent Burger, failed to properly inspect the vehicle's brake and lamp systems
3 and issued Brake Certificate [REDACTED] and Lamp Certificate Number [REDACTED] indicating
4 that the vehicle's brake and lamp systems were in satisfactory condition and were in accordance
5 with the Vehicle Code when, in fact, they were not.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Failure to Provide a Copy of a Signed Document)**

8 36. Respondent California's registration is subject to discipline under Code section
9 9884.7(a)(3), in that on or about December 28, 2011, regarding the 2002 Ford Mustang,
10 Respondent California failed to provide the operator with a copy of the estimate as soon as the
11 operator signed the document.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with the Code)**

14 37. Respondent California's registration is subject to discipline pursuant to Code section
15 9884.7(a)(6), in that on or about December 28, 2011, regarding the 2002 Ford Mustang,
16 Respondent California failed to comply with provisions of that Code in the following material
17 respects:

18 a. **Section 9884.9(a):** Respondent California failed to provide the operator with a
19 written estimated price for parts and labor for a specific job.

20 b. **Section 9889.16:**

21 i. Respondent Burger issued Brake Certificate Number [REDACTED] for the
22 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
23 the Vehicle Code, in that the right front and left rear brake rotors were undersized.

24 ii. Respondent Burger issued Lamp Certificate Number [REDACTED] for the
25 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
26 the Vehicle Code, in that both headlamps were out of adjustment. In addition, the license plate
27 lamps and housings were missing from their mounting locations.

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SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

38. Respondent California's registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about December 28, 2011, regarding the 2002 Ford Mustang, Respondent California failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305(a)**: Respondent Burger failed to perform a brake and lamp inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the Bureau.

b. **Section 3316(d)(2)**: Respondent Burger issued Lamp Certificate Number [REDACTED] certifying that the vehicle's lamp system had been inspected and was in satisfactory condition when, in fact, it was not.

c. **Section 3321(c)(2)**: Respondent Burger issued Brake Certificate Number [REDACTED] certifying that the vehicle's brake system had been inspected and was in satisfactory condition when, in fact, it was not.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

39. Respondent California's brake and lamp station licenses are subject to discipline under Code section 9889.3(a), in that on or about December 28, 2011, regarding the 2002 Ford Mustang, Respondent California violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraph 35.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

40. Respondent California's brake and lamp station licenses are subject to discipline under Code section 9889.3(c), in that on or about December 28, 2011, regarding the 2002 Ford Mustang, Respondent California failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 36.

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NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

41. Respondent California's brake and lamp station licenses are subject to discipline pursuant to Code section 9889.3(d), in that on or about December 28, 2011, regarding the 2002 Ford Mustang, Respondent California committed acts involving dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in paragraphs 31 and 32.

TENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

42. Respondent Burger's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(a), in that on or about December 28, 2011, regarding the 2002 Ford Mustang, Respondent Burger violated sections of the Code, relating to his licensed activities, as more particularly set forth above in paragraph 35(b).

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

43. Respondent Burger's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(c), in that on or about December 28, 2011, regarding the 2002 Ford Mustang, Respondent Burger failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 36.

TWELFTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit - Adjuster Licenses)

44. Respondent Burger's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3(d), in that on or about December 28, 2011, regarding the 2002 Ford Mustang, Respondent Burger committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED], certifying that the brake and lamp systems were in satisfactory condition and in accordance with the Vehicle Code, when, in fact, they were not.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 45. Respondent California's smog check station license is subject to discipline pursuant
4 to Health and Safety Code section 44072.2(a), in that regarding the 2002 Ford Mustang,
5 Respondent California failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent California failed to perform the emission control tests on
7 the vehicle in accordance with procedures prescribed by the department.

8 b. **Section 44015:** Respondent California issued electronic smog Certificate of
9 Compliance Number [REDACTED] for the vehicle without properly testing and inspecting the
10 vehicle to determine if it was in compliance with Health and Safety Code section 44012.

11 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

14 46. Respondent California's smog check station license is subject to discipline pursuant
15 to Health and Safety Code section 44072.2(c), in that regarding the 2002 Ford Mustang,
16 Respondent California failed to comply with the provisions of California Code of Regulations,
17 title 16, as follows:

18 a. **Section 3340.35(c):** Respondent California issued electronic smog Certificate of
19 Compliance Number [REDACTED] for the vehicle even though the vehicle had not been inspected in
20 accordance with California Code of Regulations, title 16, section 3340.42.

21 b. **Section 3340.42:** Respondent California failed to conduct the required smog tests on
22 the vehicle in accordance with the Bureau's specifications.

23 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

25 47. Respondent California's smog check station license is subject to discipline pursuant
26 to Health and Safety Code section 44072.2(d), in that on or about December 28, 2011,
27 Respondent California committed a dishonest, fraudulent, or deceitful act whereby another was
28 injured by issuing electronic smog Certificate of Compliance Number [REDACTED] for the 2002

1 Ford Mustang without performing a bona fide inspection of the emission control devices and
2 systems on the vehicle, thereby depriving the People of the State of California of the protection
3 afforded by the Motor Vehicle Inspection Program.

4 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

6 48. Respondent Hunley's inspector license and repair technician license are subject to
7 discipline pursuant to Health and Safety Code section 44072.2(a), in that on or about
8 December 28, 2011, regarding the 2002 Ford Mustang, Respondent Hunley failed to comply with
9 the following sections of that Code:

10 a. **Section 44012:** Respondent Hunley failed to perform the emission control tests on
11 the vehicle in accordance with procedures prescribed by the department.

12 b. **Section 44032:** Respondent Hunley failed to perform a test of the emission control
13 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

14 **SEVENTEENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations)**

16 49. Respondent Hunley's inspector license and repair technician license are subject to
17 discipline under Health and Safety Code section 44072.2(c), in that on or about
18 December 28, 2011, regarding the 2002 Ford Mustang, he failed to comply with provisions of
19 California Code of Regulations, title 16, as follows:

20 a. **Section 3340.30(a):** Respondent Hunley failed to inspect and test the vehicle in
21 accordance with Health and Safety Code section 44012.

22 b. **Section 3340.42:** Respondent Hunley failed to conduct the required smog tests and
23 inspections on the vehicle in accordance with the Bureau's specifications.

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

26 50. Respondent Hunley's inspector license and repair technician license are subject to
27 discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about
28

1 December 28, 2011, Respondent Hunley committed a dishonest, fraudulent, or deceitful act
2 whereby another was injured by issuing electronic smog Certificate of Compliance Number
3 [REDACTED] for the 2002 Ford Mustang without performing a bona fide inspection of the emission
4 control devices and systems on the vehicle, thereby depriving the People of the State of California
5 of the protection afforded by the Motor Vehicle Inspection Program.

6 **UNDERCOVER OPERATION NO. 2: 2001 FORD FOCUS**

7 51. On or about January 25, 2012, an undercover Bureau operator ("operator") drove a
8 Bureau documented 2001 Ford Focus to Respondent California's facility and requested a brake,
9 lamp, and smog inspection. The vehicle defect included an undersized left front brake rotor, an
10 oversized right rear brake drum, both front headlamps were out of adjustment, and the check
11 engine light was illuminated. When the operator arrived at Respondent California's facility, the
12 operator completed and signed a repair order. The repair order did not have an estimated amount
13 for the repairs, and the operator was not provided with a copy. Respondent Burger performed the
14 brake and lamp inspections and issued brake and lamp certificates. Another employee performed
15 the smog inspection and the vehicle failed due to the illuminated check engine light. The operator
16 paid Respondent California \$106.75 and was provided with a copy of Invoice No. [REDACTED] Brake
17 Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED]

18 52. On or about March 5, 2012, a Bureau representative re-inspected the vehicle and
19 found that the left front brake rotor remained undersized, the right rear brake drum remained
20 oversized, both front headlamps were out of specification, and the right front and left rear wheels
21 had not been removed.

22 **NINETEENTH CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 53. Respondent California's registration is subject to discipline under Code section
25 9884.7(a)(1), in that on or about January 25, 2012, regarding the 2001 Ford Focus, Respondent
26 California made or authorized statements which it knew or in the exercise of reasonable care
27 should have known to be untrue or misleading, as follows:

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1 a. Respondent California certified under penalty of perjury on Brake Certificate Number
2 [REDACTED] that the applicable inspection was performed on the brake system when, in fact,
3 Respondent California's technician, Respondent Burger, failed to inspect the brake system on the
4 vehicle, as evidenced by his failure to remove the right front and left rear wheels.

5 b. Respondent California certified under penalty of perjury on Brake Certificate Number
6 [REDACTED] that the left front brake rotor and right rear brake drum were in satisfactory condition
7 when, in fact, they were not.

8 c. Respondent California certified under penalty of perjury on Lamp Certificate Number
9 [REDACTED] that the applicable adjustments had been performed on the lamp system when, in
10 fact, both headlamps were out of adjustment.

11 **TWENTIETH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 54. Respondent California's registration is subject to discipline pursuant to Code section
14 9884.7(a)(4), in that on or about January 25, 2012, regarding the 2001 Ford Focus, Respondent
15 California committed acts that constitute fraud, in that Respondent California obtained payment
16 from the operator for performing the applicable inspections on the vehicle's brake and lamp
17 system as specified by the Bureau and in accordance with the Vehicle Code when, in fact,
18 Respondent California failed to perform the necessary inspections, as more particularly set forth
19 above in paragraph 50.

20 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

21 **(Gross Negligence)**

22 55. Respondent California's registration is subject to discipline under Code section
23 9884.7(a)(5), in that on or about January 25, 2012, regarding the 2001 Ford Focus, Respondent
24 California committed acts constituting gross negligence, in that Respondent's technician,
25 Respondent Burger, failed to properly inspect the vehicle's brake and lamp systems and issued
26 Brake Certificate [REDACTED] and Lamp Certificate Number [REDACTED] indicating that the
27 vehicle's brake and lamp systems were in satisfactory condition and were in accordance with the
28 Vehicle Code when, in fact, they were not.

1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Provide a Copy of a Signed Document)**

3 56. Respondent California's registration is subject to discipline under Code section
4 9884.7(a)(3), in that on or about January 25, 2012, regarding the 2001 Ford Focus, Respondent
5 California failed to provide the operator with a copy of the estimate as soon as the operator signed
6 the document.

7 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code)**

9 57. Respondent California's registration is subject to discipline pursuant to Code section
10 9884.7(a)(6), in that on or about January 25, 2012, regarding the 2001 Ford Focus, Respondent
11 California failed to comply with provisions of that Code in the following material respects:

12 a. **Section 9884.9(a):** Respondent California failed to provide the operator with a
13 written estimated price for parts and labor for a specific job.

14 b. **Section 9889.16:**

15 i. Respondent Burger issued Brake Certificate Number [REDACTED] for the
16 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
17 the Vehicle Code, in that the left front brake rotor was undersized and the right rear brake drum
18 was oversized.

19 ii. Respondent Burger issued Lamp Certificate Number [REDACTED] for the
20 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
21 the Vehicle Code, in that both headlamps were out of adjustment.

22 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations)**

24 58. Respondent California's registration is subject to discipline pursuant to Code
25 section 9884.7(a)(6), in that on or about January 25, 2012, regarding the 2001 Ford Focus,
26 Respondent California failed to comply with provisions of California Code of Regulations, title
27 16, in the following material respects:

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1 a. **Section 3305(a)**: Respondent Burger failed to perform a brake and lamp
2 inspection in accordance with the vehicle's manufacturer standards and/or current standards,
3 specifications, recommended procedures, and/or directives issued by the Bureau.

4 b. **Section 3316(d)(2)**: Respondent Burger issued Lamp Certificate Number
5 [REDACTED] certifying that the vehicle's lamp system had been inspected and was in satisfactory
6 condition when, in fact, it was not.

7 c. **Section 3321(c)(2)**: Respondent Burger issued Brake Certificate Number
8 [REDACTED] certifying that the vehicle's brake system had been inspected and was in satisfactory
9 condition when, in fact, it was not.

10 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with the Code)**

12 59. Respondent California's brake and lamp station licenses are subject to discipline
13 under Code section 9889.3(a), in that on or about January 25, 2012, regarding the 2001 Ford
14 Focus, Respondent California violated sections of the Code, relating to its licensed activities, as
15 more particularly set forth above in paragraph 55.

16 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations)**

18 60. Respondent California's brake and lamp station licenses are subject to discipline
19 under Code section 9889.3(c), in that on or about January 25, 2012, regarding the 2001 Ford
20 Focus, Respondent California failed to comply with provisions of California Code of Regulations,
21 title 16, as more particularly set forth above in paragraph 56.

22 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

24 61. Respondent California's brake and lamp station licenses are subject to discipline
25 pursuant to Code section 9889.3(d), in that on or about January 25, 2012, regarding the 2001 Ford
26 Focus, Respondent California committed acts involving dishonesty, fraud, or deceit whereby
27 another was injured, as more particularly set forth above in paragraphs 51 and 52.

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1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Code)**

3 62. Respondent Burger's brake and lamp adjuster licenses are subject to discipline
4 under Code section 9889.3(a), in that on or about January 25, 2012, regarding the 2001 Ford
5 Focus, Respondent Burger violated sections of the Code, relating to his licensed activities, as
6 more particularly set forth above in paragraph 55.

7 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations)**

9 63. Respondent Burger's brake and lamp adjuster licenses are subject to discipline
10 under Code section 9889.3(c), in that on or about January 25, 2012, regarding the 2001 Ford
11 Focus, Respondent Burger failed to comply with provisions of California Code of Regulations,
12 title 16, as more particularly set forth above in paragraph 56.

13 **THIRTIETH CAUSE FOR DISCIPLINE**

14 **(Acts Involving Dishonesty, Fraud, or Deceit)**

15 64. Respondent Burger's brake and lamp adjuster licenses are subject to discipline under
16 Code section 9889.3(d), in that on or about January 25, 2012, regarding the 2001 Ford Focus,
17 Respondent Burger committed acts involving dishonesty, fraud, or deceit, by issuing Brake
18 Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED] certifying that the
19 brake and lamp systems were in satisfactory condition and in accordance with the Vehicle Code,
20 when, in fact, they were not.

21 **UNDERCOVER OPERATION NO. 3: 2000 PONTIAC TRANS-AM**

22 65. On or about March 27, 2012, an undercover Bureau operator ("operator") drove a
23 Bureau documented 2000 Pontiac Trans-Am to Respondent California's facility and requested a
24 brake, lamp, and smog inspection. The vehicle defect included an undersized right front brake
25 rotor, undersized left rear brake rotor, both front headlamps were out of adjustment, and the air
26 injection system was removed. When the operator arrived at Respondent California's facility, the
27 operator completed and signed a repair order. The repair order did not have an estimated amount
28 for the repairs, and the operator was not provided with a copy. Respondent Burger performed the

1 brake and lamp inspections and issued brake and lamp certificates. Another employee performed
2 the smog inspection and failed to vehicle due to the missing air injection system. The operator
3 paid Respondent California \$80 and was provided with a copy of Invoice No. [REDACTED]. Brake
4 Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED]

5 66. On or about April 6, 2012, a Bureau representative re-inspected the vehicle and
6 found that the right front brake rotor and left rear brake rotor remained undersized, both front
7 headlamps were out of specification, and all four wheels had not been removed.

8 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 67. Respondent California's registration is subject to discipline under Code section
11 9884.7(a)(1), in that on or about March 27, 2012, regarding the 2000 Pontiac Trans-Am,
12 Respondent California made or authorized statements which it knew or in the exercise of
13 reasonable care should have known to be untrue or misleading, as follows:

14 a. Respondent California certified under penalty of perjury on Brake Certificate Number
15 [REDACTED] that the applicable inspection was performed on the brake system when, in fact,
16 Respondent California's technician, Respondent Burger, failed to inspect the brake system on the
17 vehicle, as evidenced by his failure to remove any of the vehicle's wheels.

18 b. Respondent California certified under penalty of perjury on Brake Certificate Number
19 [REDACTED] that the right front brake rotor and the left rear brake rotor were in satisfactory
20 condition when, in fact, they were not.

21 c. Respondent California certified under penalty of perjury on Lamp Certificate Number
22 [REDACTED] that the applicable adjustments had been performed on the lamp system when, in
23 fact, both headlamps were out of adjustment.

24 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 68. Respondent California's registration is subject to discipline pursuant to Code section
27 9884.7(a)(4), in that on or about March 27, 2012, regarding the 2000 Trans-Am, Respondent
28 California committed acts that constitute fraud, in that Respondent California obtained payment

1 from the operator for performing the applicable inspections on the vehicle's brake and lamp
2 system as specified by the Bureau and in accordance with the Vehicle Code when, in fact,
3 Respondent California failed to perform the necessary inspections, as more particularly set forth
4 above in paragraph 65.

5 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

6 **(Gross Negligence)**

7 69. Respondent California's registration is subject to discipline under Code section
8 9884.7(a)(5), in that on or about March 27, 2012, regarding the 2000 Trans-Am, Respondent
9 California committed acts constituting gross negligence, in that Respondent's technician,
10 Respondent Burger, failed to properly inspect the vehicle's brake and lamp systems and issued
11 Brake Certificate [REDACTED] and Lamp Certificate Number [REDACTED] indicating that the
12 vehicle's brake and lamp systems were in satisfactory condition and were in accordance with the
13 Vehicle Code when, in fact, they were not.

14 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Provide a Copy of a Signed Document)**

16 70. Respondent California's registration is subject to discipline under Code section
17 9884.7(a)(3), in that on or about March 27, 2012, regarding the 2000 Trans-Am, Respondent
18 California failed to provide the operator with a copy of the estimate as soon as the operator signed
19 the document.

20 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Code)**

22 71. Respondent California's registration is subject to discipline pursuant to Code section
23 9884.7(a)(6), in that on or about March 27, 2012, regarding the 2000 Trans-Am, Respondent
24 California failed to comply with provisions of that Code in the following material respects:

25 a. **Section 9884.9(a):** Respondent California failed to provide the operator with a
26 written estimated price for parts and labor for a specific job.

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1 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 74. Respondent California's brake and lamp station licenses are subject to discipline
4 under Code section 9889.3(c), in that on or about March 27, 2012, regarding the 2000 Trans-Am,
5 Respondent California failed to comply with provisions of California Code of Regulations, title
6 16, as more particularly set forth above in paragraph 72.

7 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

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

9 75. Respondent California's brake and lamp station licenses are subject to discipline
10 pursuant to Code section 9889.3(d), in that on or about March 27, 2012, regarding the 2000
11 Trans-Am, Respondent California committed acts involving dishonesty, fraud, or deceit whereby
12 another was injured, as more particularly set forth above in paragraphs 67 and 68.

13 **FORTIETH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Code)**

15 76. Respondent Burger's brake and lamp adjuster licenses are subject to discipline
16 under Code section 9889.3(a), in that on or about March 27, 2012, regarding the 2000 Trans-Am,
17 Respondent Burger violated sections of the Code, relating to his licensed activities, as more
18 particularly set forth above in paragraphs 67 and 68.

19 **FORTY-FIRST CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

21 77. Respondent Burger's brake and lamp adjuster licenses are subject to discipline
22 under Code section 9889.3(c), in that on or about March 27, 2012, regarding the 2000 Trans-Am,
23 Respondent Burger failed to comply with provisions of California Code of Regulations, title 16,
24 as more particularly set forth above in paragraph 70.

25 **FORTY-SECOND CAUSE FOR DISCIPLINE**

26 **(Acts Involving Dishonesty, Fraud, or Deceit)**

27 78. Respondent Burger's brake and lamp adjuster licenses are subject to discipline under
28 Code section 9889.3(d), in that on or about March 27, 2012, regarding the 2000 Trans-Am,

1 Respondent Burger committed acts involving dishonesty, fraud, or deceit, by issuing Brake
2 Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED], certifying that the
3 brake and lamp systems were in satisfactory condition and in accordance with the Vehicle Code,
4 when, in fact, they were not.

5 **FORTY-THIRD CAUSE FOR DISCIPLINE**

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

7 79. Respondent Burger's technician license(s) is subject to discipline pursuant to Health
8 and Safety Code section 44072.2(d), in that on or about December 28, 2011, January 25, 2012,
9 and March 27, 2012, Respondent Burger committed dishonest, fraudulent, or deceitful acts
10 whereby another was injured, as set forth above in paragraphs 31, 32, 51, 52, 65, and 66.

11 **OTHER MATTERS**

12 80. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
13 probation the registrations for all places of business operated in this state by Priority Automotive
14 Inc., doing business as California Smog & Repair, upon a finding that it has, or is, engaged in a
15 course of repeated and willful violation of the laws and regulations pertaining to an automotive
16 repair dealer.

17 81. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
18 License Number RC 258368, issued to Priority Automotive Inc., doing business as California
19 Smog & Repair, is revoked or suspended, any additional license issued under this chapter in the
20 name of said licensee may be likewise revoked or suspended by the director.

21 82. Pursuant to Code section 9889.9, if Lamp Station License Number LS 258368,
22 issued to Priority Automotive Inc., doing business as California Smog & Repair, is revoked or
23 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
24 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
25 director.

26 83. Pursuant to Code section 9889.9, if Brake Station License Number BS 258368,
27 issued to Priority Automotive Inc., doing business as California Smog & Repair, is revoked or
28 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business

1 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
2 director.

3 84. Pursuant to Health and Safety Code section 44072.8, if Respondent John A. Burger's
4 technician license(s), currently designated as EA 037383 and as redesignated upon timely renewal
5 as EO 037383 and/or EI 037383, is/are revoked or suspended, any additional license issued under
6 this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

7 85. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 037383,
8 issued to John A. Burger, is revoked or suspended, any additional license issued under Articles 5
9 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
10 likewise revoked or suspended by the director.

11 86. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 037383,
12 issued to John A. Burger, is revoked or suspended, any additional license issued under Articles 5
13 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 87. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
16 License No. EO 630326 and Smog Check Repair Technician License Number EI 630326
17 (formerly Advanced Emission Specialist Technician License Number EA 630326), issued to
18 Ryan Hunley, is revoked or suspended, any additional license issued under this chapter in the
19 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
22 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

23 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
24 Registration No. ARD 258368, issued to Priority Automotive Inc., doing business as California
25 Smog & Repair;

26 2. Revoking, suspending, or placing on probation any other automotive repair dealer
27 registration issued to Priority Automotive Inc., doing business as California Smog & Repair;

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- 1 3. Revoking or suspending Smog Check Station License Number RC 258368, issued
2 to Priority Automotive Inc., doing business as California Smog & Repair;
- 3 4. Revoking or suspending any additional license issued under chapter 5, of the
4 Health and Safety Code in the name of Priority Automotive Inc., doing business as California
5 Smog & Repair;
- 6 5. Revoking or suspending Lamp Station License Number LS 258368, issued to
7 Priority Automotive Inc., doing business as California Smog & Repair;
- 8 6. Revoking or suspending Brake Station License Number BS 258368, issued to
9 Priority Automotive Inc., doing business as California Smog & Repair;
- 10 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
11 Chapter 20.3 of the Business and Professions Code in the name of Priority Automotive Inc.,
12 doing business as California Smog & Repair;
- 13 8. Revoking or suspending Certified Training Institution Certification Number
14 991504, issued to John A. Burger;
- 15 9. Revoking or suspending John a. Burger's smog technician license(s), currently
16 designated as EA 037383 and as redesignated upon his timely renewal as EO 037383 and/or EI
17 037383;
- 18 10. Revoking or suspending Lamp Adjuster License Number LA 037383, issued to
19 John A. Burger;
- 20 11. Revoking or suspending Brake Adjuster License Number BA 037383, issued to
21 John A. Burger;
- 22 12. Revoking or suspending Instructor's Certification Number C1 037383, issued to
23 John A. Burger;
- 24 13. Revoking or suspending any additional license issued under Chapter 5 of the
25 Health and Safety Code in the name of John A. Burger;
- 26 14. Revoking or suspending Smog Check Repair Technician License Number EI
27 630326 (formerly Advanced Emission Specialist Technician License Number EA 630326), issued
28 to Ryan Hunley;

1 15. Revoking or suspending Smog Check Inspector License Number EO 630326
2 (formerly Advanced Emission Specialist Technician License Number EA 630326), issued to
3 Ryan Hunley;

4 16. Revoking or suspending any additional license issued under Chapter 5 of the
5 Health and Safety Code in the name of Ryan Hunley;

6 17. Ordering Priority Automotive Inc., doing business as California Smog & Repair,
7 John A. Burger, and Ryan Hunley to pay the Director of Consumer Affairs the reasonable costs of
8 the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

10 DATED: 4/29/13

John Wallauch by Doug Balatti

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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