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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:

Case No. 79/19-18397

13 **NICHOLAS CARL GIBBONS**
14 **DBA RIPON SMOG**

15 447 Parallel Avenue, Suite 6A
Ripon, CA 95366

16 Mailing:

17 16201 Julie Lane
Lathrop, CA 95330

18 **Automotive Repair Dealer Registration**
19 **No. ARD 268840**

20 **Smog Check, Test Only, Station License**
21 **No. TC 268840,**

22 **NICHOLAS CARL GIBBONS**

23 16201 Julie Lane
Lathrop, CA 95330

24 **Smog Check Inspector License**
25 **No. EO 631964**

26 **Smog Check Repair Technician License**
27 **No. EI 631964**

28 and

EDWARD WILLIAM STOUT

216 N McClure Road
Modesto, CA 95357

Smog Check Inspector License
No. EO 637003

Respondents.

1 18. Health & Saf. Code section 44015, subdivision (b), provides that a certificate of
2 compliance shall be issued if a vehicle meets the requirements of the Health & Saf. Code section
3 44012.

4 19. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

9 ...

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

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

13 ...

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

15 ...

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

19 ...

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

22 ...

23 21. Health & Saf. Code section 44024.5, subdivision (a) states:

24 The department shall compile and maintain statistical and emissions profiles
25 and data from motor vehicles that are subject to the motor vehicle inspection
26 program. The department may use data from any source, including remote sensing
data, in use data, and other motor vehicle inspection program data, to develop and
confirm the validity of the profiles, to evaluate the program, and to assess the
performance of smog check stations. The department shall undertake these
requirements directly or seek a qualified vendor for these services.

27 22. Health & Saf. Code section 44037 states, in pertinent part:

28 (a) The department shall compile and maintain records, using the sampling

1 methodology necessary to ensure their scientific validity and reliability, of tests and
2 repairs performed by qualified smog check technicians at licensed smog check
3 stations pursuant to this chapter on all of the following information:

4 (1) The motor vehicle identification information and the test data collected at
5 the station.

6 ...

7 (5) Data received and compiled through the use of the centralized computer
8 database and computer network to be established pursuant to Section 44037.1 , and
9 any other information determined to be essential by the department for program
10 enhancement to achieve greater efficiency, consumer protection, cost-effectiveness,
11 convenience, or emission reductions.

12 ...

13 23. Health & Saf. Code section 44037.1 states, in pertinent part:

14 (a) On or before January 1, 1995, the department shall design and establish the
15 equipment necessary to operate a centralized computer data base and computer
16 network that is readily accessible by all licensed smog check technicians on a real
17 time basis.

18 (b) The centralized computer data base and network shall be designed with all
19 of the following capabilities:

20 ...

21 (2) To provide smog check technicians and the department with information as
22 to the date and result of prior smog check tests performed on each vehicle to
23 discourage vehicle owners from shopping for certificates of compliance and to permit
24 the department to identify smog check stations for further investigation as potential
25 violators of this chapter.

26 (3) To provide the department with data on the failure rates and repair
27 effectiveness for vehicles of each make and model year on a statewide basis, and by
28 smog check station and technician, to facilitate identification of smog check stations
and technicians as potential violators of this chapter.

...

(8) To be compatible with the department's recordkeeping and compilation
requirements established by Section 44037.

...

(c) After January 1, 1995, each smog check station shall transmit vehicle data
emission test results to the department's centralized data base. Each smog check
station shall also transmit vehicle data and emission measurements made before and
after repair. The department shall establish, by regulation, the form, manner, and
frequency of the data transmittals.

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1 **REGULATORY PROVISIONS**

2 24. California Code of Regulations, title 16 (CCR), section 3340.17 states, in pertinent
3 part:

4 . . .

5 (c) Vehicle data and test results from the OBD Inspection System (OIS) shall be
6 transmitted to the Bureau’s centralized database . . .

7 **COST RECOVERY**

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

12 **BACKGROUND**

13 26. On or about March 9, 2015, California's Smog Check Program was updated to keep
14 pace with ever-advancing technology. The program update requires the use of an On-Board
15 Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all
16 areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles
17 and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition
18 Device (DAD), computer, bar code scanner, and printer.

19 27. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
20 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
21 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used
22 to input technician information, the vehicle identification number, and the Department of Motor
23 Vehicle (DMV) renewal information. The vehicle identification number (VIN) that is physically
24 present on all vehicles is required to be programmed into the vehicle's On-Board Diagnostics —
25 Generation II (OBD II) on 2005 and newer vehicles, and on many occasions was programmed
26 into the OBD II computer in earlier model-years. The electronically programmed VIN is referred
27 to as the “eVIN”, is captured by the Bureau during a smog check inspection, and should match
28 the physical VIN on the vehicle. The printer is used to provide a vehicle inspection report, which

1 shows the inspection results and the Smog Check Certificate of Compliance Number for passing
2 vehicles. Data retrieved and recorded during an OIS smog check includes the eVIN, the
3 communication protocol¹, and the number of Parameter Identifications (PID).²

4 **REVIEW OF OIS TEST DATA FOR RIPON SMOG**

5 28. Bureau representative I.E. reviewed OIS test data pertaining to smog inspections
6 conducted at Respondent Gibbons' facility, Ripon Smog. I.E. found that the facility's smog
7 check technician, Respondent Stout, performed smog inspections on four (4) vehicles identified
8 below using a method of "clean plugging,"³

9 **Vehicle 1**

10 29. The OIS test data showed that on March 3, 2017, Respondent Stout performed a smog
11 inspection on a 2006 Saturn Vue (Vehicle 1), resulting in the issuance of electronic Smog
12 Certificate of Compliance Number QI064435C. The OIS test details for Vehicle 1 showed that
13 the eVIN reported does not match the physical VIN on the vehicle. I.E. reviewed the
14 Comparative OIS Test Data for 2006 Saturn Vue vehicles and found that the communication
15 protocol and PID count recorded during the inspection on Vehicle 1 was not consistent with the
16 communication protocol and PID count for that make and model vehicle. I.E. concluded that the
17 DAD was not connected to Vehicle 1 during inspection.

18 30. The OIS test data showed that on June 14, 2018, a subsequent test was performed by
19 another smog facility on Vehicle 1 and it passed the inspection. I.E. found that the eVIN was
20 reported during the inspection and that the communication protocol and PID count recorded
21

22
23 ¹ The OBD II communication protocol describes the specified communication "language"
24 used by the OBD II computer to communication to scan tools and other devices such as the BAR-
25 OIS. The communication protocol is programmed into the vehicle's on-board computer during
26 manufacture and does not change.

25 ² PIDs are data points reported by the vehicle's on-board computer to a scan tool or BAR-
26 OIS, such as engine speed, vehicle speed, engine temperature, etc. The PID count is the number
27 of data points reported by the vehicle's on-board computer and is programmed during
28 manufacture

27 ³ Clean-plugging is a method by which another vehicle's properly functioning OBD II
28 system, or other source, is used to generate passing data readings or diagnostic information for the
purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance
and/or not present during testing.

1 during the inspection matched the communication protocol and PID count for 2006 Saturn Vue
2 vehicles.

3 31. Further, OIS test data showed that on October 20, 2017, a smog test was performed
4 on a 2002 Ford F-150 at a another facility and that the eVIN transmitted to Bureau's Vehicle
5 Information Database (VID) was the same eVIN that was recorded during the smog inspection on
6 Vehicle 1 on March 3, 2017. In addition, the communication protocol and PID count recorded
7 during the inspection on the 2002 Ford F-150 were consistent with the communication protocol
8 and PID count recorded during the March 3, 2017 inspection on Vehicle 1. I.E. concluded that
9 Respondent Stout used the 2002 Ford F-150's properly functioning OBD II system during the
10 March 3, 2017, smog inspection on Vehicle 1, resulting in the issuance of a fraudulent certificate
11 of compliance for the vehicle.

12 **Vehicle 2**

13 32. The OIS test data showed that on January 24, 2018, Respondent Stout performed a
14 smog inspection on a 2000 Chevrolet Tahoe K1500 (Vehicle 2), resulting in the issuance of
15 electronic Smog Certificate of Compliance Number HN290608C. The OIS test details for
16 Vehicle 2 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E.
17 reviewed the Comparative OIS Test Data for 2000 Chevrolet Tahoe K1500 vehicles and found
18 that the eVIN is not recorded during the inspection (i.e., transmitted to the Bureau's VID) and that
19 the communication protocol and the PID count recorded during the inspection on Vehicle 2 were
20 not consistent with the communication protocol and PID count for that make and model vehicle.
21 I.E. concluded that the DAD was not connected to Vehicle 2 during inspection.

22 33. The OIS test data showed that on March 6, 2018, a subsequent test was performed at
23 another facility on Vehicle 2 and found that the eVIN is not reported and the communication
24 protocol and PID count recorded during the inspection matched the communication protocol and
25 PID count recorded for 2000 Chevrolet Tahoe K1500 vehicles.

26 34. Further, OIS test data showed that on January 26, 2018, Respondent Stout performed
27 a smog test on a 2009 Nissan Murano S and that the eVIN transmitted to VID was the same eVIN
28 that was recorded during the smog inspection on Vehicle 2 on January 24, 2018. In addition, the

1 communication protocol and PID count recorded during the January 26, 2018, inspection on the
2 2009 Nissan Murano S were consistent with the communication protocol and PID count recorded
3 during the January 24, 2018, inspection on Vehicle 2. I.E. concluded that Respondent Stout used
4 the 2009 Nissan Murano S's properly functioning OBD II system during the smog inspection on
5 Vehicle 2, resulting in the issuance of a fraudulent certificate of compliance for the vehicle.

6 **Vehicle 3**

7 35. The OIS test data showed that on June 28, 2018, Respondent Stout performed a smog
8 inspection on a 2012 Honda Odyssey Touring (Vehicle 3), resulting in the issuance of electronic
9 Smog Certificate of Compliance Number QK108681C. The OIS test details for Vehicle 3
10 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E. reviewed the
11 Comparative OIS Test Data and found that the eVIN is correctly reported for similar vehicles and
12 PID count recorded during the inspection was not consistent with the PID count for that make and
13 model vehicle. I.E. concluded that the DAD was not connected to Vehicle 3 during inspection.

14 36. OIS test data for Vehicle 3 also showed that on November 15, 2018, a subsequent test
15 was performed by another smog facility on Vehicle 3. I.E. found that the eVIN reported during
16 the November 15, 2018, inspection matched the physical VIN of Vehicle 3 (different from the
17 VIN recorded on the June 28, 2018 inspection) and that the communication protocol and PID
18 count recorded during the inspection matched the communication protocol and PID count for
19 2012 Honda Odyssey Touring vehicles.

20 37. Further, OIS test data showed that on September 4, 2018, Respondent Stout
21 performed a smog test on a 2012 Honda Ridgeline RTL and that the eVIN transmitted to VID was
22 the same eVIN that was recorded during the June 28, 2018, smog inspection on Vehicle 3. In
23 addition, the communication protocol and PID count recorded during the September 4, 2018,
24 inspection on the 2012 Honda Ridgeline RTL were consistent with the communication protocol
25 and PID count recorded during the June 28, 2018, inspection on Vehicle 3. I.E. concluded that
26 Respondent Stout used the 2012 Honda Ridgeline RTL's properly functioning OBD II system
27 during the June 28, 2018, smog inspection on Vehicle 3, resulting in the issuance of a fraudulent
28 certificate of compliance for the vehicle.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud – Respondent Gibbons)**

3 41. Respondent Gibbons’ Ripon’s registration is subject to disciplinary action under Code
4 section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by
5 issuing smog certificates of compliance for Vehicles 1 through 4, identified in paragraphs 29
6 through 39 above, without ensuring that bona fide inspections were performed of the emission
7 control devices and systems on the vehicles, thereby depriving the People of the State of
8 California of the protections afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program – Respondent Gibbons)**

11 42. Respondent Gibbons’ Ripon station license is subject to disciplinary action under
12 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
13 following sections of that Code:

14 a. **Section 44012:** Respondent failed to ensure that the emission control tests
15 were performed on Vehicles 1 through 4, identified in paragraphs 29 through 39 above, in
16 accordance with procedures prescribed by the department.

17 b. **Section 44015:** Respondent issued electronic smog certificates of compliance
18 for Vehicles 1 through 4, identified in paragraphs 29 through 39 above, without ensuring that the
19 vehicles were properly tested and inspected to determine if they were in compliance with Health
20 & Saf. Code section 44012.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
23 **Respondent Gibbons)**

24 43. Respondent Gibbons Ripon station license is subject to disciplinary action under
25 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
26 provisions of title 16, California Code of Regulations, as follows:

27 ///

28 ///

1 a. **Section 3340.35, subdivision (c)**: Respondent issued electronic smog
2 certificates of compliance for Vehicles 1 through 4, identified in paragraphs 29 through 39 above,
3 even though the vehicles had not been inspected in accordance with section 3340.42.

4 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
5 conducted on Vehicles 1 through 4, identified in paragraphs 29 through 39 above, in accordance
6 with Bureau's specifications.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud, Deceit – Respondent Gibbons)**

9 44. Respondent Gibbons' Ripon station license is subject to disciplinary action under
10 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
11 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
12 compliance for Vehicles 1 through 4, identified in paragraphs 29 through 39 above, without
13 ensuring that bona fide inspections were performed of the emissions control devices and systems
14 on the vehicles, thereby depriving the People of the State of California of the protection afforded
15 by the Motor Vehicle Inspection Program.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Violations of the Motor Vehicle Inspection Program – Respondent Stout)**

18 45. Respondent Stout's smog check inspector license is subject to disciplinary action
19 under Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply
20 with section 44012 of that Code in a material respect, as follows: Respondent failed to perform
21 the emission control tests on Vehicles 1 through 4, identified in paragraphs 29 through 39 above,
22 in accordance with procedures by the department.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
25 **Respondent Stout)**

26 46. Respondent Stout's smog check inspector license is subject to disciplinary action
27 under Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
28 of Title 16, California Code of Regulations, as follows:

1 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test Vehicles 1
2 through 4, identified in paragraphs 29 through 39 above, in accordance with Health & Saf. Code
3 section 44012 and 44035, and Title 16, California Code of Regulations, section 3340.42.

4 b. **Section 3340.42**: Respondent failed to conduct required smog tests on Vehicles 1
5 through 4, identified in paragraphs 29 through 39 above, in accordance with the Bureau's
6 specifications.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit – Respondent Stout)**

9 47. Respondent Stout's smog check inspector license is subject to disciplinary action
10 under Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
11 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
12 certificates of compliance for Vehicles 1 through 4, identified in paragraphs 29 through 39 above,
13 without performing bona fide inspections of the emissions control devices and systems on the
14 vehicles, thereby depriving the People of the State of California of the protection afforded by the
15 Motor Vehicle Inspection Program.

16 **MATTERS IN AGGRAVATION**

17 **(Respondent Gibbons)**

18 48. To determine the degree of discipline, if any, to be imposed on Respondent Gibbons,
19 Complainant alleges that on or about May 9, 2016, the Bureau reissued Citation Number C2016-
20 0258 to Respondent Gibbons for violation of Health & Saf. Code section 44012 (using the
21 BAR97 when the OBD Inspection System (OIS) is required). On or about September 2, 2015,
22 Respondent Gibbons issued a Certificate of Compliance to a 1999 Ford F350 using the BAR97
23 when the OBD Inspection System (OIS) was required. The Bureau issued a cease and desist from
24 violating Health and Saf. Code section 44012 against Respondent Gibbons.

25 **MATTERS IN AGGRAVATION**

26 **(Respondent Stout)**

27 49. To determine the degree of discipline, if any, to be imposed on Respondent Stout,
28 Complainant alleges that on or about May 9, 2016, the Bureau reissued Citation Number M2016-

1 0259 to Respondent for violation of Health & Saf. Code section 44032 (qualified technicians shall
2 perform tests of emission control devices and systems in accordance with Health & Saf. Code
3 section 44012). On or about September 2, 2015, Respondent Stout issued a certificate of
4 compliance to a 1999 Ford F350 using the BAR97 when the OBD Inspection System (OIS) was
5 required. The Bureau issued an order to cease and desist from violating Health and Saf. Code
6 section 44032 against Respondent Stout.

7 **OTHER MATTERS**

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

12 51. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
13 License Number TC 268840, issued to Respondent Gibbons, doing business as Ripon Smog, is
14 revoked or suspended, any additional licenses issued under Chapter 5 of Part 5 of Chapter 26 of
15 Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the
16 Director.

17 52. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
18 No. EO 631964 and Smog Check Repair Technician License Number EI 631964, issued to
19 Nicholas Carl Gibbons, are revoked or suspended, any additional license issued under Chapter 5
20 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
21 likewise revoked or suspended by the director.

22 53. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
23 No. EO 637003, issued to Edward William Stout, is revoked or suspended, any additional license
24 issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said
25 licensee may be likewise revoked or suspended by the director.

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28 ///

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 268840, issued to Nicholas Carl Gibbons, doing business as Ripon Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to Nicholas Carl Gibbons;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 268840, issued to Nicholas Carl Gibbons, doing business as Ripon Smog;
4. Revoking or suspending Smog Check Inspector Number EO 631964, issued to Nicholas Carl Gibbons;
5. Revoking or suspending Smog Check Repair Technician License Number EI 631964, issued to Nicholas Carl Gibbons;
6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Nicholas Carl Gibbons;
7. Revoking or suspending Smog Check Inspector Number EO 637003, issued to Edward William Stout;
8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Edward William Stout;
9. Ordering Nicholas Carl Gibbons and Edward William Stout to pay the Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
10. Taking such other and further action as deemed necessary and proper.

DATED: June 23, 2020

Signature on File

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

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