

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

In the Matter of the Accusation Against:

BILLS FAST LUBE & SMOG
FRANCISCO LULE, Partner
MELVIN NELSON, Partner
305 High Street
Delano, CA 93215

Automotive Repair Dealer Registration
No. ARD 248438
Smog Check Station License
No. RC 248438

Respondents.

Case No. 79/11-48


OAH No. L-2011031463

DECISION

The attached Stipulated Settlement and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 2/6/12.

DATED: December 29, 2011 =


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
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Attorneys for Complainant

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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. 79/11-48

13 **BILLS FAST LUBE & SMOG;**
14 **FRANCISCO LULE, Partner**
15 **MELVIN NELSON, Partner**
16 **305 High Street**
17 **Delano, CA 93215**
18 **Automotive Repair Dealer Registration No.**
19 **ARD 248438**
20 **Smog Check Station License No. RC 248438**

OAH No. L-2011031463
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

Respondents.

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

24 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
25 brought this action solely in her official capacity and is represented in this matter by Kamala D.
26 Harris, Attorney General of the State of California, by Thomas L. Rinaldi, Deputy Attorney
27 General.

28 2. Bills Fast Lube & Smog; Francisco Lule, Partner and Melvin Nelson, Partner
(Respondent) is representing itself in this proceeding and has chosen not to exercise it's right to
be represented by counsel.

3. On or about January 4, 2007, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 248438 to Respondent. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-48 and will expire on December 31, 2011, unless renewed.

4. On or about January 5, 2007, the Bureau of Automotive Repair issued Smog Check Station License No. RC 248438 to Respondent. The Smog Check Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-48 and will expire on December 31, 2011, unless renewed.

JURISDICTION

5. Accusation No. 79/11-48 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 17, 2011. Respondent timely filed its Notice of Defense contesting the Accusation.

A copy of Accusation No. 79/11-48 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 79/11-48. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 79/11-48.

10. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check Station License is subject to discipline and it agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 248438 and Smog Check Station License No. RC 248438, both issued to Respondent, are revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

2. **Reporting.** Respondent or Respondent's authorized representative 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.

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

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

5. **Jurisdiction.** If an accusation is filed against Respondent 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.

6. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate its ARD registration and suspend or revoke the Smog Check Station license.

1 7. **Cost Recovery.** Payment to the Bureau of cost recovery in the amount of \$4,000.00
 2 shall be made in twenty four (24) monthly installments with final payment due twelve (12)
 3 months before the termination of probation." Failure to complete payment of cost recovery within
 4 this time frame shall constitute a violation of probation which may subject Respondent's ARD
 5 Registration and Smog Check Station License to outright revocation; however, the Director or the
 6 Director's Bureau of Automotive Repair designee may elect to continue probation until such time
 7 as reimbursement of the entire cost recovery amount has been made to the Bureau.

8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
 10 stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog
 11 Check Station License. I enter into this Stipulated Settlement and Disciplinary Order
 12 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
 13 Director of Consumer Affairs.

14
 15 DATED: 11/14/11

Melvin Nelson
 16 BILLS FAST LUBE & SMOG; MELVIN NELSON,
 17 Partner
 18 Respondent

19
 20 DATED: 11/14/11

Francisco Lule
 21 BILLS FAST LUBE & SMOG; FRANCISCO LULE,
 22 Partner
 23 Respondent

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Dated:

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

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Exhibit A

Accusation No. 79/11-48

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
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6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

79/11-48

11 In the Matter of the Accusation Against:

Case No.

12 **BILL'S FAST LUBE & SMOG**
13 **FRANCISCO LULE, PARTNER**
14 **MELVIN NELSON, PARTNER**
305 High Street
Delano, CA 93215
15 **Automotive Repair Dealer Reg. No. ARD 248438**
Smog Check Station License No. RC 248438

A C C U S A T I O N

(Smog Check)

16 **and**

17 **ANTONIO R. CRUZ**
18 **1721 Juniper Lane**
Wasco, CA 93280
19 **Advanced Emission Specialist Technician**
20 **License No. EA 144199**

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

24 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
25 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

26 **Bill's Fast Lube & Smog**

27 2. On or about January 4, 2007, the Director of Consumer Affairs ("Director") issued
28 Automotive Repair Dealer Registration Number ARD 248438 (hereinafter "registration") to Bill's

1 Fast Lube & Smog ("Respondent Bill's"), with Francisco Lule and Melvin Nelson as partners.
2 Respondent's registration was in full force and effect at all times relevant to the charges brought
3 herein and will expire on December 31, 2011, unless renewed.

4 3. On or about January 5, 2007, the Director issued Smog Check Station License
5 Number RC 248438 to Respondent Bill's. Respondent's smog check station license was in full
6 force and effect at all times relevant to the charges brought herein and will expire on December
7 31, 2011, unless renewed.

8 **Antonio R. Cruz**

9 4. In or about 2002, the Director issued Advanced Emission Specialist Technician
10 License Number EA 144199 (hereinafter "technician license") to Antonio R. Cruz ("Respondent
11 Cruz" or "Cruz"). Respondent's technician license was in full force and effect at all times
12 relevant to the charges brought herein and will expire on February 29, 2012, unless renewed.

13 **JURISDICTION**

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

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

20 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
21 part, that the Director has all the powers and authority granted under the Automotive Repair Act
22 for enforcing the Motor Vehicle Inspection Program.

23 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
24 suspension of a license by operation of law, or by order or decision of the Director of Consumer
25 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
26 of jurisdiction to proceed with disciplinary action.

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

(2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

(4) Any other conduct that constitutes fraud.

• • • •

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

• • • •

10. Bus. & Prof. Code section 477 provides, in pertinent part, that “Board” includes
au,” “commission,” “committee,” “department,” “division,” “examining committee,”
gram,” and “agency.” “License” includes certificate, registration or other means to engage in
business or profession regulated by the Bus. & Prof. Code.

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

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

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

....

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

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

....

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

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

COST RECOVERY

13. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the 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.

RECORDED UNDERCOVER OPERATION #1

1994 TOYOTA 4X4 4RUNNER PICKUP

14. On August 5, 2009, a representative of the Bureau, acting in an undercover capacity (hereinafter "operator"), took the Bureau's 1994 Toyota 4x4 4Runner pickup to Respondent Bill's facility and requested a smog inspection. The throttle position sensor ("TPS") on the Bureau-documented vehicle was defective, causing excessive tailpipe emissions and the malfunction indicator lamp ("MIL") to illuminate on the dashboard. The operator was given a quote of \$70 for the smog inspection. The operator signed a written estimate, but was not given a copy of the

1 document at that time. Later, Respondent Cruz informed the operator that the vehicle failed the
2 inspection and requested the operator's authorization to perform a diagnosis on the vehicle for
3 \$70. The operator authorized the work, received a copy of the written estimate, then left the
4 facility.

5 15. At approximately 11:00 hours that same day, Cruz called the operator and requested
6 his authorization to replace the TPS on the vehicle for an additional \$255.76. The operator
7 authorized the repair.

8 16. At approximately 13:30 hours, the operator returned to the facility, paid Cruz
9 \$325.76, and received copies of an invoice, a vehicle inspection report ("VIR") dated August 5,
10 2009, with a time of 08:33 hours (the failed inspection), and a VIR dated August 5, 2009, with a
11 time of 13:19 hours. The second VIR identified Cruz as the repair technician. That same day,
12 electronic smog Certificate of Compliance No. WB768934C was issued for the vehicle.

13 17. On August 6, 2009, the Bureau inspected the vehicle and found that the TPS had been
14 replaced. The videotape of the undercover operation revealed that Respondent's partner, Melvin
15 Nelson ("Nelson"), had repaired the vehicle although he was not a licensed smog check
16 technician. The videotape also revealed that Cruz had failed to perform the required functional
17 ignition timing check and functional low pressure fuel evaporative test ("LPFET") during the
18 second smog inspection on the vehicle.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 18. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
22 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
23 which it knew or in the exercise of reasonable care should have known to be untrue or
24 misleading, as follows:

25 a. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on
26 the second VIR that he performed the smog inspection on the Bureau's 1994 Toyota 4x4 4Runner
27 pickup in accordance with all Bureau requirements. In fact, Respondent Cruz failed to perform
28 the required functional ignition timing test and functional LPFET test on the vehicle.

1 b. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on
2 the second VIR that he performed the repair on the Bureau's 1994 Toyota 4x4 4Runner pickup,
3 the replacement of the TPS. In fact, Respondent Bill's partner, Nelson, an unlicensed technician,
4 had performed that emission related repair on the vehicle.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Record Odometer Reading and Repairs Requested by the Customer)**

7 19. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
8 Prof. Code section 9884.7, subdivision (a)(2), in that Respondent caused or allowed the operator
9 to sign the written estimate which did not state the odometer reading of the Bureau's 1994 Toyota
10 4x4 4Runner pickup or the initial service requested by the operator; i.e., the smog inspection.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Provide Customer with Copy of Signed Document)**

13 20. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
14 Prof. Code section 9884.7, subdivision (a)(3), in that Respondent failed to ensure that the operator
15 was provided with a copy of the written estimate as soon as the operator signed the document.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 21. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
19 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which
20 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1994
21 Toyota 4x4 4Runner pickup without performing a bona fide inspection of the emission control
22 devices and systems on the vehicle, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Bill's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with provisions of that Code in the following material respects:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the Bureau's 1994 Toyota 4x4 4Runner pickup in accordance with procedures
8 prescribed by the department.

9 b. **Section 44014:** Respondent allowed Nelson, an unlicensed technician, to perform an
10 emission related repair on the Bureau's 1994 Toyota 4x4 4Runner pickup, the replacement of the
11 TPS.

12 c. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
13 the Bureau's 1994 Toyota 4x4 4Runner pickup without ensuring that the vehicle was properly
14 tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

15 d. **Section 44016:** Respondent failed to ensure that the repairs were performed on the
16 Bureau's 1994 Toyota 4x4 4Runner pickup in accordance with established specifications and
17 procedures in that Respondent allowed Nelson, an unlicensed technician, to replace the TPS on
18 the vehicle.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

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

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
26 electronic smog certificate of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup
27 without ensuring that a bona fide inspection was performed of the emission control devices and
28 systems on the vehicle as required by Health & Saf. Code section 44012.

1 b. Section 3340.35, subdivision (c): Respondent issued an electronic smog certificate
2 of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup even though the vehicle had not
3 been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

4 c. Section 3340.41, subdivision (d): Respondent failed to follow applicable
5 specifications and procedures when performing the repairs on the Bureau's 1994 Toyota 4x4
6 4Runner pickup, as set forth in subparagraph 22 (d) above.

7 d. Section 3340.42: Respondent failed to ensure that the required smog tests were
8 conducted on the Bureau's 1994 Toyota 4x4 4Runner pickup in accordance with the Bureau's
9 specifications.

10 **SEVENTH CAUSE FOR DISCIPLINE**

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

12 24. Respondent Bill's smog check station license is subject to disciplinary action pursuant
13 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed an act
14 involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic smog
15 certificate of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup when, in fact, a bona
16 fide inspection was not performed of the emission control devices and systems on the vehicle,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Aiding or Abetting Unlicensed Person)**

21 25. Respondent Bill's smog check station license is subject to disciplinary action pursuant
22 to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and abetted
23 Nelson, an unlicensed technician, to evade the provisions of the Motor Vehicle Inspection by
24 allowing Nelson to perform an emission related repair on the Bureau's 1994 Toyota 4x4 4Runner
25 pickup, the replacement of the TPS.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 26. Respondent Cruz's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
5 provisions of that Code in the following material respects:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 Bureau's 1994 Toyota 4x4 4Runner pickup in accordance with procedures prescribed by the
8 department.

9 b. **Section 44059:** Respondent willfully made false entries on the second VIR regarding
10 the smog inspection on the Bureau's 1994 Toyota 4x4 4Runner pickup, as set forth in paragraph
11 18 above.

12 **TENTH CAUSE FOR DISCIPLINE**

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

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

18 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
19 electronic smog certificate of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup, as
20 set forth in paragraph 18 above.

21 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
22 1994 Toyota 4x4 4Runner pickup in accordance with Health & Saf. Code sections 44012 and
23 44035, and California Code of Regulations, title 16, section 3340.42.

24 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
25 Bureau's 1994 4x4 4Runner pickup in accordance with the Bureau's specifications.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent Cruz's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed an act
5 involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic smog
6 certificate of compliance for the Bureau's 1994 Toyota 4x4 4Runner pickup when, in fact, a bona
7 fide inspection was not performed of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **RECORDED UNDERCOVER OPERATION #2: 1994 TOYOTA CELICA**

11 29. On October 6, 2009, a representative of the Bureau, acting in an undercover capacity
12 (hereinafter "operator"), took the Bureau's 1994 Toyota Celica to Respondent Bill's facility and
13 requested a smog inspection. The coolant temperature sensor ("CTS") on the Bureau-documented
14 vehicle was defective, causing the MIL to illuminate on the dashboard. The operator was given a
15 quote of \$70 for the smog inspection. The operator signed a written estimate, but was not given a
16 copy of the document at that time. Later, Respondent Bill's partner, Francisco Lule ("Lule"),
17 informed the operator that the vehicle failed the inspection and requested the operator's
18 authorization to perform a diagnosis on the vehicle. The operator signed and received a copy of a
19 written estimate authorizing the facility to perform the diagnosis for \$70, a timing adjustment for
20 \$20, and a smog inspection for \$51.75. The estimate also included a fee of \$8.25 for a smog
21 certificate and an "ELT" fee of \$10. The operator left the facility.

22 30. At approximately 16:00 hours that same day, the operator went to the facility to
23 retrieve the vehicle. Lule told the operator that he needed to order a CTS for the vehicle, which
24 would cost \$62.12, and that the operator needed to bring the vehicle back another day for the
25 repair. The operator authorized the work and received copies of Invoice No. 144208 (the initial
26 written estimate) and a VIR for the failed smog inspection. The operator left the facility.

27 31. On October 8, 2009, the operator returned the vehicle to the facility and told Lule that
28 he was there to have the smog repairs completed. The operator observed a technician with the

1 name tag "Gonzalo" replace the CTS on the vehicle. After Gonzalo completed the repair, Nelson
2 asked him if he "took care of it." Gonzalo responded that he had. The operator observed Cruz
3 drive the vehicle into the facility. Later, Lule informed the operator that the vehicle passed the
4 smog inspection. The operator paid the cashier \$217.12 and received copies of Invoice No.
5 144209 and a VIR dated October 8, 2009. The VIR identified Cruz as the repair technician. That
6 same day, electronic smog Certificate of Compliance No. WD 672079C was issued for the
7 vehicle.

8 32. On October 12, 2009, the Bureau inspected the vehicle and found that the CTS had
9 been replaced; however, the ignition timing was improperly adjusted to 15 degrees BTDC (before
10 top dead center). The videotape of the undercover operation revealed that Gonzalo had replaced
11 the CTS on the vehicle and that Cruz had failed to perform the required functional ignition timing
12 check and functional LPFET during the second smog inspection on the vehicle.

13 33. On February 4, 2010, the Bureau determined during their continued investigation of
14 the facility that Gonzalo's full name was Gonzalo Martinez ("Martinez") and that Martinez was
15 not a licensed smog check technician.

16 **TWELFTH CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 34. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
19 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
20 which it knew or in the exercise of reasonable care should have known to be untrue or
21 misleading, as follows:

22 a. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on
23 the VIR dated October 8, 2009, that the Bureau's 1994 Toyota Celica had passed inspection and
24 was in compliance with applicable laws and regulations, and that he performed the inspection in
25 accordance with all Bureau requirements. In fact, the ignition timing on the vehicle was
26 improperly adjusted to 15 degrees BTDC (the manufacturer's specifications are 10 degrees
27 BTDC) and the vehicle would not pass the inspection required by Health & Saf. Code section

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1 44012. Further, Cruz failed to perform the required functional ignition timing test and functional
2 LPFET test on the vehicle.

3 b. Respondent Bill's technician, Respondent Cruz, certified under penalty of perjury on
4 the VIR dated October 8, 2009, that he performed the repair on the Bureau's 1994 Toyota Celica,
5 the replacement of the CTS. In fact, Respondent Bill's employee, Martinez, an unlicensed
6 technician, had performed that emission related repair on the vehicle.

7 c. Respondent Bill's represented on Invoice No. 144209 that the ignition timing on the
8 Bureau's 1994 Toyota Celica had been adjusted to 10 degrees BTDC when, in fact, the ignition
9 timing had been improperly adjusted to 15 degrees BTDC.

10 d. Respondent Bill's represented on Invoice No. 144209 that on October 8, 2009, at
11 07:45 hours, the operator had authorized \$62.12 in additional repairs on the Bureau's 1994 Toyota
12 Celica, the replacement of the CTS. In fact, the operator had authorized the additional repair on
13 October 6, 2009, at approximately 16:00 hours.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Provide Customer with Copy of Signed Document)**

16 35. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
17 Prof. Code section 9884.7, subdivision (a)(3), in that Respondent failed to ensure that the operator
18 was provided with a copy of the initial written estimate as soon as the operator signed the
19 document.

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 36. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which
24 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 1994
25 Toyota Celica without performing a bona fide inspection of the emission control devices and
26 systems on the vehicle, thereby depriving the People of the State of California of the protection
27 afforded by the Motor Vehicle Inspection Program.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 37. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or
5 disregarded accepted trade standards for good and workmanlike repair without the consent of the
6 owner or the owner's duly authorized representative, in a material respect, as follows:
7 Respondent improperly adjusted the ignition timing on the Bureau's 1994 Toyota Celica to 15
8 degrees BTDC when the manufacturer's specifications are 10 degrees BTDC.

9 **SIXTEENTH CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations)**

11 38. Respondent Bill's registration is subject to disciplinary action pursuant to Bus. &
12 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with California
13 Code of Regulations, title 16, section 3356, subdivision (a)(2)(A), in a material respect, as
14 follows: Respondent failed to describe or identify on Invoice No. 144209 all repair work
15 performed on the Bureau's 1994 Toyota Celica in that Respondent recorded the additional repair
16 as "R&R Coolant Temperature Sensor" without defining the term "R&R".

17 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

19 39. Respondent Bill's smog check station license is subject to disciplinary action
20 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
21 comply with provisions of that Code in the following material respects:

22 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
23 performed on the Bureau's 1994 Toyota Celica in accordance with procedures prescribed by the
24 department.

25 b. **Section 44014:** Respondent allowed Martinez, an unlicensed technician, to perform
26 an emission related repair on the Bureau's 1994 Toyota Celica, the replacement of the CTS.

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1 c. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
2 the Bureau's 1994 Toyota Celica without ensuring that the vehicle was properly tested and
3 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

4 d. **Section 44016:** Respondent failed to ensure that the repairs were performed on the
5 Bureau's 1994 Toyota Celica in accordance with established specifications and procedures in that
6 Respondent allowed Martinez, an unlicensed technician, to replace the CTS on the vehicle.
7 Further, Respondent failed to properly adjust the ignition timing on the vehicle, as set forth
8 above.

9 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

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

15 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
16 electronic smog certificate of compliance for the Bureau's 1994 Toyota Celica without ensuring
17 that a bona fide inspection was performed of the emission control devices and systems on the
18 vehicle as required by Health & Saf. Code section 44012.

19 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
20 of compliance for the Bureau's 1994 Toyota Celica even though the vehicle had not been
21 inspected in accordance with California Code of Regulations, title 16, section 3340.42.

22 c. **Section 3340.41, subdivision (d):** Respondent failed to follow applicable
23 specifications and procedures when performing the repairs on the Bureau's 1994 Toyota Celica,
24 as set forth in above.

25 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
26 conducted on the Bureau's 1994 Toyota Celica in accordance with the Bureau's specifications.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

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

3 41. Respondent Bill's smog check station license is subject to disciplinary action pursuant
4 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed an act
5 involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic smog
6 certificate of compliance for the Bureau's 1994 Toyota Celica when, in fact, a bona fide
7 inspection was not performed of the emission control devices and systems on the vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **TWENTIETH CAUSE FOR DISCIPLINE**

11 **(Aiding or Abetting Unlicensed Person)**

12 42. Respondent Bill's smog check station license is subject to disciplinary action pursuant
13 to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and abetted
14 Martinez, an unlicensed technician, to evade the provisions of the Motor Vehicle Inspection by
15 allowing Martinez to perform an emission related repair on the Bureau's 1994 Toyota Celica, the
16 replacement of the CTS.

17 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

19 43. Respondent Cruz's technician license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
21 provisions of that Code in the following material respects:

22 a. **Section 44012:** Respondent failed to perform the emission control tests on the
23 Bureau's 1994 Toyota Celica in accordance with procedures prescribed by the department.

24 b. **Section 44059:** Respondent willfully made false entries on the VIR dated October 8,
25 2009, as set forth in paragraph 34 above.

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1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
8 electronic smog certificate of compliance for the Bureau's 1994 Toyota Celica, as set forth in
9 paragraph 34 above.

10 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
11 1994 Toyota Celica in accordance with Health & Saf. Code sections 44012 and 44035, and
12 California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
14 Bureau's 1994 Celica in accordance with the Bureau's specifications.

15 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

17 45. Respondent Cruz's technician license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed an act
19 involving dishonesty, fraud, or deceit whereby another is injured by issuing an electronic smog
20 certificate of compliance for the Bureau's 1994 Toyota Celica when, in fact, a bona fide
21 inspection was not performed of the emission control devices and systems on the vehicle, thereby
22 depriving the People of the State of California of the protection afforded by the Motor Vehicle
23 Inspection Program.

24 **OTHER MATTERS**

25 46. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
26 suspend, revoke, or place on probation the registration for all places of business operated in this
27 state by Respondent Bill's Fast Lube & Smog, upon a finding that Respondent has, or is, engaged

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1 in a course of repeated and willful violations of the laws and regulations pertaining to an
2 automotive repair dealer.

3 47. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
4 Number RC 248438, issued to Respondent Bill's Fast Lube & Smog, is revoked or suspended,
5 any additional license issued under this chapter in the name of said licensee may be likewise
6 revoked or suspended by the Director.

7 48. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
8 Technician License Number EA 144199, issued to Respondent Antonio R. Cruz, is revoked or
9 suspended, any additional license issued under this chapter in the name of said licensee may be
10 likewise revoked or suspended by the Director.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 248438, to Bill's Fast Lube & Smog;

16 2. Revoking or suspending any other automotive repair dealer registration issued to
17 Bill's Fast Lube & Smog;

18 3. Revoking or suspending Smog Check Station License Number RC 248438, issued to
19 Bill's Fast Lube & Smog;

20 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Bill's Fast Lube & Smog;

22 5. Revoking or suspending Advanced Emission Specialist Technician License Number
23 EA 144199, issued to Antonio R. Cruz;

24 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Antonio R. Cruz;

26 7. Ordering Respondents Bill's Fast Lube & Smog and Antonio R. Cruz to pay the
27 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
28 case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/15/10


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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