

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

In the Matter of the Accusation Against:

BENJAMIN LEE RUE
aka **BENJAMIN L. RUE**
dba **CALIFORNIA TEST ONLY**
North Highlands, California 95660

Automotive Repair Dealer Registration
No. ARD 208478
Smog Check Test Only Station License
No. TC 208478

BENJAMIN LEE RUE
North Highlands, California 95660

Advanced Emission Specialist Technician
License No. EA 133577
Brake Adjuster License No. BA 133577
Lamp Adjuster License No. LA 133577

LEE SALDIVAR
dba **JAPANESE MOTORS**
North Highlands, California 95660

Automotive Repair Dealer Registration
No. ARD 255520
Smog Check Station License No. RC 255520
Official Lamp Station License No. LS 255520
Official Brake Station License No. BS 255520

Respondents.

Case No. 79/11-06

OAH No. 2010110760

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 10/10/11.

DATED: September 6, 2011


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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133577
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PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on July 19, 2011.

Patrick M. Kenady, Deputy Attorney General, represented Sherry Mehl (complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Benjamin Lee Rue, aka Benjamin L. Rue, dba California Test Only (Respondent Rue) represented himself.

No one appeared for or on behalf of Lee Saldivar dba Japanese Motors (Respondent Saldivar).

Evidence was received, the record was closed, and the matter was submitted for decision on July 19, 2011.

SUMMARY

Complainant seeks to discipline Respondents Rue and Saldivar's respective automotive repair dealer registrations and other licenses based on their participation in an elaborate scheme of fraud and deception designed to hide Respondent Rue's concurrent ownership in adjoining smog check test-only and smog check test-and-repair stations. Because of this scheme, Respondent Rue was allowed to illegally own a smog check test-only and smog check test-and-repair at the same time for more than two years, potentially exposing the public to fraudulently performed smog inspections and smog-related repairs. And this is not the first time Respondent Rue has been caught defrauding the public. His station license has been disciplined on three prior occasions and an individual license on two. The only discipline supported by the evidence is the outright revocation of Respondents Rue and Saldivar's respective registrations and licenses.

PROCEDURAL FINDINGS

1. On August 5, 2010, complainant, acting solely in her official capacity as Chief of the Bureau, filed an accusation seeking discipline against Respondent Rue's registration and licenses on the grounds that he: 1) committed fraud; and 2) owned a smog check test-only station and an adjoining smog check test-and-repair station at the same time. The Accusation also seeks discipline against Respondent Saldivar's registration and licenses on the grounds that he: 1) made or authorized untrue or misleading statements; 2) committed fraud; 3) willfully made a false statement in an application for an automotive repair dealer registration; and 4) willfully made a false statement in an application for an official brake and lamp station license.

2. The Accusation was sent to Respondent Saldivar by certified mail, return receipt requested, on August 23, 2010. On the same date, a duplicate copy of the Accusation was sent to him at the same address by regular mail. The Accusation sent by certified mail was returned by the post office as "unclaimed," whereas the one sent by regular mail was not. Respondent Saldivar was properly served by certified

mail pursuant to Government Code section 11505, subdivision (c).¹ (See, *Bear Creek Master Association v. Edwards* (2005) 130 Cal.App.4th 1470, 1486-1487 [the fact that notice served by regular mail was not returned by the post office but the one sent by certified mail was raises a reasonable inference that the addressee was aware that the certified mail delivered around the same time contained the same notice, and the addressee cannot defeat service by certified mail by refusing to sign the return receipt].)

3. Notice of Hearing was properly served on Respondent Saldivar as evidenced by the "Domestic Return Receipt" that was signed and returned on his behalf on January 27, 2011. This matter was called on the date and at the time and location specified in that Notice. While Respondent Saldivar initially appeared before the hearing had commenced in response to a subpoena issued by complainant, he left the courtroom before the hearing started and did not return. No one else appeared on his behalf. Therefore, the evidentiary hearing as to him was conducted as a default proceeding pursuant to Government Code section 11520.

FACTUAL FINDINGS

Respondent Rue and California Test Only's License History

4. The Bureau issued Respondent Rue Advanced Emission Specialist Technician License No. EA 133577 in 1996. The license expires November 30, 2012, unless renewed or revoked.

5. The Bureau issued Respondent Rue Brake Adjuster License No. BA 133577, Class A, in 1996. The license expires November 30, 2011, unless renewed or revoked.

6. The Bureau issued Respondent Rue Lamp Adjuster License No. LA 133577, Class A, on March 21, 2008. The license expires November 30, 2011, unless renewed or revoked.

7. The Bureau issued Respondent Rue dba California Test Only Automotive Repair Dealer Registration No. ARD 208478 on December 29, 1999. The registration expires December 31, 2011, unless renewed or revoked.

8. The Bureau issued Respondent Rue dba California Test Only Smog Check, Test Only, Station License No. TC 208478 on January 18, 2000. The license expires December 31, 2011, unless renewed or revoked.

¹ Code Civ. Proc., § 11 [service by certified mail deemed same as registered mail].

Respondent Saldivar's Registration and License History

9. The Bureau issued Respondent Saldivar dba Japanese Motors Automotive Repair Dealer Registration No. ARD 255520 on July 15, 2008. The registration was voluntarily surrendered on April 19, 2010, and expired June 30, 2010.²

10. The Bureau issued Respondent Saldivar dba Japanese Motors Smog Check Station License No. RC 255520 on September 29, 2008. The license was voluntarily surrendered on April 19, 2010, and expired June 30, 2010.

11. The Bureau issued Respondent Saldivar dba Japanese Motors Lamp Station License No. LS 255520, Class BI., on January 15, 2009. The license was voluntarily surrendered on April 19, 2010, and expired June 30, 2010.

12. The Bureau issued Respondent Saldivar dba Japanese Motors Brake Station License No. BS 255520, Class C, on January 15, 2009. The license was voluntarily surrendered on April 19, 2010, and expired June 30, 2010.

Ownership and Location of Respondent California Test Only

13. At all times relevant herein since December 3, 1999, Respondent Rue has been the sole owner of California Test Only,³ which is located at 6305 Watt Avenue, Unit 104, North Highlands, California 95660. California Test Only has been licensed as a test-only smog station since January 2000. (Factual Finding 8.) A test-only smog station can only perform smog inspections and cannot perform any automotive repair work.

Ownership of Japanese Motors

14. From at least February 2008 through June 9, 2010, Respondent Rue was the sole owner of Japanese Motors, which at all times relevant herein was located at 6305 Watt Avenue, Unit 102, North Highlands, California 95660, immediately adjacent to California Test Only.⁴ At all times relevant herein, Japanese Motors

² The voluntary surrender or expiration of a registration or license does not terminate the Bureau's jurisdiction to discipline that registration or license. (Bus. & Prof. Code, § 9889.7; Health & Saf. Code, § 44072.6.)

³ He has used the business names "California Test Only" and "California Test Only Center" interchangeably to refer to the same business. All future references to California Test Only include California Test Only Center.

⁴ The customer waiting area for Japanese Motors occupies a corner of the building. Immediately to the right of the waiting area as you face the building are

operated as a smog check test-and-repair station. A test-and-repair station may perform smog inspections and smog-related repairs.

15. Respondent Rue sold Japanese Motors to his brother, Emile, on June 10, 2010.

Incorporation of California Test and Repair, Inc.

16. In May 2008, Respondent Rue made plans to start a corporation with the intention of transferring ownership of California Test Only and Japanese Motors to the corporation. He hired Incorp. Services, Inc., to prepare and file the necessary paperwork. On August 7, 2009, he signed Articles of Incorporation for California Test and Repair, Inc. Those Articles were later filed with the California Secretary of State's Office on September 14, 2009. He also signed a Fictitious Business Name Statement which listed the corporation as the owner of California Test Only and Japanese Motors. The Statement was filed with the Sacramento County Clerk/Recorder on October 13, 2009.

Respondent Rue testified that he had asked his girlfriend at the time to handle the creation of the corporation. He claimed he did not know that the Articles of Incorporation had been filed until a Bureau representative handed him a copy several months after they were filed. He did not recall whether he had filed any annual statements required for California corporations. He explained that he never transferred ownership of California Test Only or Japanese Motors to the corporation. In his opinion, the Fictitious Business Statement merely expressed his intent to conduct business under the fictitious name, rather than an affirmative representation that he was conducting business under that name.

There is insufficient evidence to establish that ownership of California Test Only or Japanese Motors was actually transferred to California Test and Repair, Inc. Therefore, complainant did not meet her burden of proving that ownership of those two businesses was transferred to the corporation.

Respondent Rue's Scheme to Defraud and Deceive the Bureau

17. On May 12, 2008, Carl Holmes, a Program Representative II – Specialist employed by the Bureau, went to Japanese Motors to perform a Gold Shield Qualification Inspection. Ghodrat Soltani, the person identified as the owner of Japanese Motors in the Bureau's records, had applied for Gold Shield designation for Japanese Motors. Mr. Soltani was not at the business when Mr. Holmes arrived,

Japanese Motor's two vehicle repair bays. Immediately to the right of the last repair bay is the waiting area for California Test Only (which actually has two entrances and two different suite numbers) and then its vehicle repair bay.

but Respondent Rue was. Respondent Rue said Mr. Soltani would be back the next day. Mr. Holmes told Respondent Rue that the Bureau had received information that Respondent Rue was the actual owner of Japanese Motors. Mr. Holmes also told Respondent Rue that it is illegal for the owner of a test-only station to have an ownership interest in a test-and-repair station that is located within a 50 mile geographical radius of the owner's test-only station. Respondent Rue declined to talk to Mr. Holmes at that time and said he would talk to him the next day when Mr. Soltani was there. Respondent Rue handed Mr. Holmes an application to convert California Test Only from a test-only station to a test-and-repair station.

18. The evidence that Respondent Rue owned Japanese Motors to which Mr. Holmes was referring consisted of declarations signed under penalty of perjury by John Weaver and Thomas Zito. Mr. Weaver declared, in relevant part:

On or about March 13, 2008, I visited Japanese Motor [sic] and participated in an employment interview at Japanese Motor [sic] with a person named Ben Rue. During the course of the interview, Rue told me that he is the owner of Japanese Motor [sic]. Rue told me at least three other times during my employment that he was the owner. Rue conducted the interview and offered me a job as a Smog Check Technician at Japanese Motor [sic]. I accepted the position. Rue then explained that he also owns the Test Only center located next to Japanese Motor [sic] known as California Test Only Center. Rue went on to explain that he has worked out a "deal" with the licensed owner of Japanese Motor [sic] Ghodrat Soltani to circumvent the law regarding test only and Test and Repair ownership. Rue described to me that Soltani would maintain his license of record with the Bureau of Automotive Repair but Rue would actually own and operate the business. I then began working as a Smog Check Technician at Japanese Motor [sic].

During the course of my continued employment at Japanese Motor [sic], I received regular weekly paychecks. The paychecks were from California Test Only Center and were signed by Rue. . . .

Mr. Zito declared:

On or about 2-29-08 I applied for a job at Japanese Motors on 6305 Watt Ave # 102.

I had an interview with the owner Ben at 5:30 p.m. He wanted to hire me to do smog & repair & to work at his test only shop next door for 15.00 hr cash.

I told him that he couldn't have a test only shop & a test & repair so close together & he told me that he got around that by saying some one [sic] else owns the test & repair shop. I said How [sic] could you have the same guy smog a car at one shop then 5 min later have him smog a car in another shop without the bar [sic] knowing. He said he never smogs in two shops on the same day. And he would never force me to smog cars in the shop in one day if I didn't feel comfortable. I told him that I would think about it then called Carl at the bar [sic] & told him what was going on. I really don't want to be involved but I don't like people that take advantage of customers. I talked to Ben for about 1 hr. & I feel him & his mechanics [sic] are the type to lie to unknowing customers & to take advantage of them.

19. Mr. Holmes returned to Japanese Motors on May 13, 2008, and spoke with Mr. Soltani and Respondent Rue. Mr. Soltani and Respondent Rue stated that Respondent Rue was in the process of buying Japanese Motors. Mr. Holmes advised Mr. Rue that he could not perform any smog inspections at Japanese Motors until he obtained an automotive repair dealer registration for that location. Respondent Rue provided Mr. Holmes with applications for an automotive repair dealer registration, a "test and repair" smog station license, and a lamp/brake station license in his name as the owner of Japanese Motors.

20. The Bureau denied Respondent Rue's application to convert California Test Only from a test-only station into a test-and-repair station on June 2, 2008. The Bureau also denied his applications for an automotive repair dealer registration, test-and-repair smog station license, and lamp/brake station license as the owner of Japanese Motors on the same day.

21. Three days after Respondent Rue was denied registration and licenses for Japanese Motors, he convinced Respondent Saldivar to apply for the same registration and licenses as the owner of Japanese Motors even though Respondent Rue was still the sole owner. The licenses referred to in Factual Findings 9 through 12 were issued in response to Respondent Saldivar's applications.

On April 15, 2010, Respondent Saldivar admitted to Bureau representatives that he was not the owner of Japanese Motors when he applied for his registration and licenses, and that he has never had an ownership interest in the business. He explained that he applied for his registration and licenses as the owner of Japanese

Motors because Respondent Rue had just bought the business, his applications for a registration and licenses were denied, and he (Respondent Rue) needed to continue to operate the business.

22. On April 19, 2010, Respondent Rue submitted applications to the Bureau for an automotive repair dealer registration and a lamp/brake station license for Japanese Motors. He also submitted an application for a smog test-and-repair station license for California Test Only. Two days later, he submitted an application for a smog test-and-repair station license for Japanese Motors. In each of these applications, he identified himself as the owner of the business for which he was seeking the license.

23. On April 19, 2010, Respondent Rue also filled out and submitted to the Bureau applications for an automotive repair dealer registration and a smog check test-only station license for California Test Only. He listed Stephen Curtis Belden as the owner of the business on both applications. Six months later, Mr. Belden signed a declaration under penalty of perjury stating that Respondent Rue had filled out and submitted the applications in Mr. Belden's name. Mr. Belden withdrew those applications.

Mr. Belden testified pursuant to a subpoena issued by complainant. It was obvious from his demeanor that he was not testifying willingly since Respondent Rue is his current employer. This fact made Mr. Belden's testimony credible. He admitted that he signed the applications that Respondent Rue had filled out and submitted to the Bureau. Around that time, they had engaged in informal discussions about the possibility of Mr. Belden purchasing California Test Only. He has been an employee of Respondent Rue's on an on-and-off basis since 2005 or 2006. The parties did not reach an agreement about a purchase price or the specific property that would be included in the sale. Mr. Belden changed his mind about wanting to buy the business after Respondent Rue submitted the applications, and that is why he decided to withdraw his applications. He testified emphatically that he did not own the business at the time he signed the applications.

Evaluation of the Evidence

24. Respondent admitted that the Bureau's case "for the most part has been truthful." He made no attempt to dispute the Bureau's evidence that he was the owner of Japanese Motors no later than February 2008. (Factual Finding 18; Evid. Code, § 413 [party's failure to rebut incriminating evidence raises an inference that he cannot].) Instead, he testified that as of May 13, 2008, his purchase of Japanese Motors had not been completed. But he admitted that on that date he had handed Mr. Holmes applications for an automotive repair dealer registration, smog check test-and-repair station license, and a lamp/brake station license in his name as the owner of Japanese Motors. Respondent's Rue's testimony that he had not completed his

purchase of Japanese Motors as of May 13, 2008, is contrary to the weight of the evidence and not credible.

25. With regard to the evidence that Respondent Saldivar was never the owner of Japanese Motors (Factual Finding 21), Respondent Rue explained that he and Respondent Saldivar made an oral agreement whereby he turned over ownership to Respondent Saldivar in exchange for Respondent Saldivar making the loan payments for Respondent Rue's original purchase from Mr. Soltani. Respondent Saldivar did not pay any money for the business because it was a temporary arrangement and Respondent Rue would some day take the business back. His explanation was not credible. Neither was his testimony that he was going to "give" California Test Only to Mr. Belden because Respondent Rue was tired of dealing with the Bureau.

26. Respondent Rue owned a smog check test-only station (California Test Only) and a smog check test-and-repair station (Japanese Motors) at the same time. (Factual Findings 13, 14, 18, 19, and 21-25.) The two businesses could not have been physically closer to one another without being at the same location. (Factual Findings 13 and 14.) In an effort to hide his concurrent ownership of these two businesses from the Bureau, he engaged in an elaborate scheme of fraud and deception whereby he convinced Respondent Saldivar to pose as the owner of Japanese Motors and apply for an automotive repair dealer registration, smog check station license, and a lamp/brake station license, even though Respondent Rue never relinquished ownership. (Factual Finding 21.) The applications were approved, and the registration and licenses were issued. (Factual Findings 9-12.)

Respondent Saldivar eventually confessed to Bureau representatives about his participation in this ruse and voluntarily surrendered his registration and licenses. (Factual Finding 21.) Fearing that his scheme would be exposed, Respondent Rue applied for an automotive repair dealer registration, a smog check test-and-repair station license, and a lamp/brake station license as the owner of Japanese Motors within a few weeks of Saldivar's surrender of his registration and licenses. He also applied for a smog check test-and-repair station license for California Test Only, also as the owner. (Factual Finding 22.) He convinced Mr. Belden to apply for an automotive repair dealer registration and smog check test-only station license for California Test Only in his (Mr. Belden's) name as the owner. (Factual Finding 23.) But Mr. Belden never had an ownership interest in California Test Only. (*Ibid.*)

Factors in Aggravation, Mitigation, and Rehabilitation

27. Complainant alleged the following previous disciplinary actions against Respondent Rue individually and dba California Test Only as matters in aggravation:

a. On December 14, 2006, the Bureau issued Citation No. C07-0385 to California Test Only and Citation No. M07-0386 to Respondent Rue because

Respondent Rue had issued a certificate of compliance to a Bureau undercover vehicle with a missing air injection system reed valve. Respondent Rue paid a civil penalty in the amount of \$500 and completed an eight-hour training course.

b. On April 25, 2007, the Bureau issued Citation No. C07-0789 to California Test Only and Citation M07-0790 to Respondent Rue because Respondent Rue had issued a certificate of compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation system. Respondent Rue paid a civil penalty in the amount of \$1,000 and completed a 16-hour training course.

c. On September 14, 2007, the Bureau issued Citation No. C08-0239 to California Test Only because Respondent Rue had issued a certificate of compliance to a Bureau undercover vehicle with a non-functional EGR system. Respondent Rue paid a civil penalty in the amount of \$2,000.

28. Respondent Rue provided no credible evidence of his rehabilitation. The evidence established that he engaged in an elaborate scheme of fraud and deception in an effort to hide his concurrent ownership of California Test Only and Japanese Motors from the Bureau. (Factual Finding 26.) Respondent Saldivar knowingly and willingly helped perpetuate the fraud and deception. (*Ibid.*) While he later contacted the Bureau, confessed to his fraud, and voluntarily surrendered his registration and licenses, his ignoring complainant's subpoena and leaving the courtroom before the hearing reflects negatively on any rehabilitation he may have undergone. (Factual Finding 3.)

The automotive repair industry is one in which the public relies upon the honesty and integrity of automotive repair dealers and technicians. If Respondents Rue and Saldivar are willing to defraud and deceive the Bureau, it is safe to assume that they are willing to do the same to the public. Respondents each pose a danger to public health, safety, and welfare. The only discipline supported by the evidence is the outright revocation of their respective registrations and licenses.

Costs of Investigation and Enforcement

29. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$12,860.10. This amount consists of costs incurred directly by the Bureau (\$3,425.10), as well as costs incurred by the Office of the Attorney General and billed to the Bureau (\$9,435). At the hearing, complainant submitted, without objection, a Certification of Investigative and Other Costs in support of the investigation costs incurred directly by the Bureau. But the Certification provides no information about the general tasks performed or the amount of time spent on each task. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1) [cost declarations must include or attach sufficient information to "describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. . . ."])

There is no factual

basis for determining whether the costs incurred directly by the Bureau are reasonable. Consequently, the requested costs of \$3,425.10 cannot be awarded.

Complainant also submitted, without objection, a Certification of Prosecution Costs; Declaration of Patrick M. Kenady, which requests costs in the amount of \$9,435. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which shows that the Bureau has incurred costs in the amount of \$9,435 for work performed by the Attorney General's Office in this matter. This evidence creates a rebuttable presumption that the costs were reasonable. Neither respondent introduced any evidence to rebut the presumption.

The costs the Bureau incurred for the time spent by the Office of the Attorney General are reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 14 below.

LEGAL CONCLUSIONS

Cause to Discipline Respondent Rue and California Test Only's Registration and Licenses

1. An automotive repair dealer registration may be invalidated if the Bureau determines that any of the material information on the application for the registration is no longer current. (Bus. & Prof. Code, § 9884.4.) The name of the owner of the business to whom the registration is issued is material information. (Cal. Code Regs., tit. 16, § 3351.1, subd. (c).) Automotive Repair Dealer Registration No. ARD 208478 was issued to Respondent Rue as the owner of California Test Only on December 29, 1999. (Factual Finding 7.) Complainant failed to meet her burden of proving that there has been a change in ownership of California Test Only. (Factual Findings 13 and 16.) Therefore, there is no legal cause for invalidating Automotive Repair Dealer Registration No. ARD 208478 pursuant to Business and Professions Code section 9884.4.

2. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has committed fraud while conducting the business of the dealer. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) Respondent Rue engaged in an elaborate scheme to defraud and deceive the Bureau in an effort to hide his concurrent ownership of California Test Only and Japanese Motors. (Factual Finding 26.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 208478 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

3. A smog check station license may be disciplined if the licensee violates any regulations adopted by the Department. (Health & Saf. Code, § 44072.2, subd. (c).) California Code of Regulations, title 16, section 3340.16, subdivision (f),

provides: "A smog check test-only station shall not have ownership in, corporate interest in, nor any financial interest in a smog check test-and-repair station within a geographical radius of 50 statute miles of the test-only station." Respondent Rue violated this regulation by owning California Test Only, a test-only smog station, and Japanese Motors, a test-and-repair station, at the same time. (Factual Finding 26.) The two stations could not be located physically closer to one another without occupying the same location. (*Ibid.*) Therefore, cause exists to discipline Smog Check, Test Only, Station License No. TC 208478 pursuant to Health and Safety Code section 44072.2, subdivision (c), as that statute relates to California Code of Regulations, title 16, section 3340.16, subdivision (f).

4. Business and Professions Code section 9889.9 provides that the discipline of any license constitutes grounds for discipline of all other licenses issued to the same licensee pursuant to Articles 5 and 6 of the Automotive Repair Act (Bus. & Prof. Code, div. 3, ch. 20.3, § 9880 et seq.). Health and Safety Code section 44072.8 provides the same with regard to any license issued pursuant to the Motor Vehicle Inspection Program (Health & Saf. Code, div. 26, pt. 5, ch. P, § 44000 et seq.). For the reasons discussed in Legal Conclusions 2 and 3, legal cause exists pursuant to Business and Professions Code section 9889.9 and Health and Safety Code section 44072.8 to discipline all other licenses issued to Respondent Rue, including, but not limited to, Advanced Emission Specialist Technician License No. EA 133577; Brake Adjuster License No. BA 133577, Class A; and Lamp Adjuster License No. LA 133577, Class A.

Cause to Discipline Respondent Saldivar's Registration and Licenses

5. There is legal cause pursuant to Business and Professions Code section 9884.4 to invalidate Automotive Repair Dealer Registration No. ARD 255520 issued to Respondent Saldivar on July 15, 2008. (Factual Finding 9.) He wrote on his application for registration that he was the owner of Japanese Motors. (Factual Finding 21.) However, he has never had an ownership interest in Japanese Motors and the information on the application is no longer current. (Factual Finding 21.) Therefore, Automotive Repair Dealer Registration No. ARD 255520 is invalidated pursuant to Business and Professions Code section 9884.4.

6. An automotive repair dealer registration may be disciplined if the dealer or a technician, employee, partner, officer, or member of the dealer makes or authorizes a false or misleading statement which he knows or should have known was false or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Respondent Saldivar made false statements when he wrote that he was the owner of Japanese Motors on his applications for an automotive repair dealer registration, smog check station license, and lamp/brake station license knowing that he has never had an ownership interest in the business. (Factual Finding 26.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 255520 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

7. For the reasons discussed in Legal Conclusion 6, cause exists to discipline Automotive Repair Dealer Registration No. ARD 255520 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), based on Respondent Saldivar's participation in a scheme to defraud the Bureau as discussed in Factual Finding 26.

8. An automotive repair dealer registration may be disciplined if the dealer or a technician, employee, partner, officer, or member of the dealer fails in a material respect to comply with the Automotive Repair Act or any regulation adopted pursuant to the Act. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Business and Professions Code section 9889.22 forbids the willful making of a false statement about a material matter in an application. For the reasons discussed in Legal Conclusion 6, cause exists to discipline Automotive Repair Dealer Registration No. ARD 255520 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to Business and Professions Code section 9889.22.

9. An official brake station license may be disciplined if the licensee violates any statute in the Business and Profession Code governing his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (a).) Business and Professions Code section 9889.22 forbids the willful making of a false statement about a material matter in an application. For the reasons discussed in Legal Conclusion 6, cause exists to discipline Brake Station License No. BS 255520, Class C, pursuant to Business and Professions Code section 9889.3, subdivision (a), as that statute relates to Business and Professions Code section 9889.22.

10. An official lamp station license may be disciplined if the licensee violates any statute in the Business and Profession Code governing his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (a).) Business and Professions Code section 9889.22 forbids the willful making of a false statement about a material matter in an application. For the reasons discussed in Legal Conclusion 6, cause exists to discipline Lamp Station License No. LS 255520, Class BL, pursuant to Business and Professions Code section 9889.3, subdivision (a), as that statute relates to Business and Professions Code section 9889.22.

11. A smog check station license may be disciplined if the licensee has misrepresented a material fact in obtaining his license. (Health & Saf. Code, § 44072.2, subd. (e).) For the reasons discussed in Legal Conclusion 6, cause exists to discipline Smog Check Station License No. RC 255520 pursuant to Health and Safety Code section 44072.2, subdivision (e).

12. For the reasons discussed in Legal Conclusions 6 through 11, cause exists pursuant to Business and Professions Code section 9889.9 and Health and Safety Code section 44072.8 to discipline all other licenses issued Respondent Saldivar pursuant to Articles 5 and 6 of the Automotive Repair Act and the Motor Vehicle Inspection Program.

13. Cause exists to discipline Respondent Rue's registration and licenses for the reasons discussed in Legal Conclusions 2 through 4, jointly and severally. Cause exists to discipline Respondent Saldivar's registration and licenses for the reasons discussed in Legal Conclusions 5 through 12, jointly and severally. When all of the evidence is considered, the only appropriate discipline is the outright revocation of Respondents Rue and Saldivar's respective registrations and licenses for the reasons discussed in Factual Finding 28. Therefore, each of those registrations and licenses is revoked.

Cost Recovery

14. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) whether the licensee has been successful at hearing in getting charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his or her position; 3) whether the licensee has raised a colorable challenge to the proposed discipline; 4) the financial ability of the licensee to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Factual Finding 29, complainant failed to present sufficient details to support her request for investigation costs incurred directly by the Bureau in the amount of \$3,425.10. Complainant did, however, submit sufficient proof to establish that prosecution costs incurred by the Office of the Attorney General and billed to the Bureau in the amount of \$9,435 are reasonable. Neither respondent was successful in getting any charges dismissed, raised a colorable challenge to the proposed discipline, or offered any evidence of his inability to pay costs. Therefore, complainant's request for prosecution costs in the amount of \$9,435 is reasonable and is awarded against Respondents Rue and Saldivar, jointly and severally, as set forth in the Order below.

ORDER

1. Advanced Emission Specialist Technician License No. EA 133577 issued to Respondent Benjamin Lee Rue is REVOKED.
2. Brake Adjuster License No. BA 133577, Class A, issued to Respondent Rue is REVOKED.
3. Lamp Adjuster License No. LA 1333577, Class A, issued to Respondent Rue is REVOKED.

4. All other licenses issued to Respondent Rue pursuant to Articles 5 or 6 of the Automotive Repair Act or the Motor Vehicle Inspection Program are REVOKED.

5. Automotive Repair Dealer Registration No. ARD 208478 issued to Respondent Rue dba California Test Only is REVOKED.

6. Smog Check, Test Only, Station License No. TC 208478 issued to Respondent Rue dba California Test Only is REVOKED.

7. Automotive Repair Dealer Registration No. ARD 255520 issued to Respondent Lee Saldivar dba Japanese Motors is REVOKED.

8. Automotive Repair Dealer Registration No. ARD 255520 issued to Respondent Saldivar dba Japanese Motors is INVALIDATED.

9. Smog Check Station License No. RC 255520 issued to Respondent Saldivar dba Japanese Motors is REVOKED.

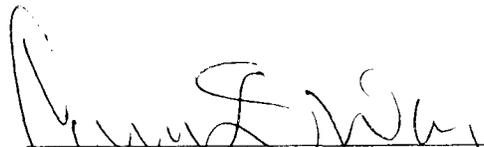
10. Lamp Station License No. LS 255520, Class BL, issued to Respondent Saldivar dba Japanese Motors is REVOKED.

11. Brake Station License No. BS 255520, Class C, issued to Respondent Saldivar dba Japanese Motors is REVOKED.

12. All other licenses issued to Respondent Saldivar pursuant to Articles 5 or 6 of the Automotive Repair Act or the Motor Vehicle Inspection Program are REVOKED.

13. Respondents Rue and Saldivar, jointly and severally, shall reimburse the Bureau the sum of \$9,435 for costs incurred while investigating and prosecuting this matter. Respondents may pay these costs according to a payment plan approved by the Bureau or its designee.

DATED: August 17, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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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:
13 **CALIFORNIA TEST ONLY**
14 **BENJAMIN LEE RUE,**
15 **a.k.a. BENJAMIN L. RUE, OWNER**
16 **6305 Watt Avenue, Unit 104**
North Highlands, CA 95660
Automotive Repair Dealer Reg. No. ARD 208478
Smog Check, Test Only, Station License No. TC
208478,
17 **BENJAMIN LEE RUE**
18 **6305 Watt Avenue, Unit 104**
19 **North Highlands, CA 95660**
Advanced Emission Specialist Technician License
No. EA 133577,
20 **and**
21 **JAPANESE MOTORS**
22 **LEE SALDIVAR, OWNER**
23 **6305 Watt Avenue, Unit 102**
North Highlands, CA 95660
24 **Automotive Repair Dealer Reg. No. ARD 255520**
Smog Check Station License No. RC 255520
25 **Official Lamp Station License No. LS 255520**
Official Brake Station License No. BS 255520
26 Respondents.

Case No. 79/11-06
A C C U S A T I O N
SMOG CHECK

27 ///
28 ///

1 Complainant alleges:

2 **PARTIES**

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

5 **California Test Only**

6 2. On or about December 29, 1999, the Director of Consumer Affairs ("Director")
7 issued Automotive Repair Dealer ("ARD") Registration Number ARD 208478 to Benjamin Lee
8 Rue, also known as Benjamin L. Rue ("Respondent Rue" or "Rue"), owner of California Test
9 Only. Respondent's ARD registration will expire on December 31, 2010, unless renewed.

10 3. On or about January 18, 2000, the Director issued Smog Check, Test Only, Station
11 License Number TC 208478 (hereinafter "smog check station license") to Respondent Rue.
12 Respondent's smog check station license will expire on December 31, 2010, unless renewed.

13 **Benjamin Lee Rue**

14 4. In or about 1996, the Director issued Advanced Emission Specialist Technician
15 License Number EA 133577 (hereinafter "technician license") to Respondent Rue. Respondent's
16 technician license will expire on November 30, 2010, unless renewed.

17 **Japanese Motors**

18 5. On or about July 15, 2008, the Director issued ARD Registration Number ARD
19 255520 to Lee Saldivar ("Respondent Saldivar" or "Saldivar"), owner of Japanese Motors.
20 Respondent's ARD registration expired on June 30, 2010.

21 6. On or about September 29, 2008, the Director issued Smog Check Station License
22 Number RC 255520 to Respondent Saldivar. Respondent's smog check station license expired on
23 June 30, 2010.

24 7. On or about January 15, 2009, the Director issued Official Lamp Station License
25 Number LS 255520 to Respondent Saldivar. Respondent's official lamp station license expired
26 on June 30, 2010.

27 ///

28 ///

1 15. Bus. & Prof. Code section 118, subdivision (b), states:

2 The suspension, expiration, or forfeiture by operation of law of a license
3 issued by a board in the department, or its suspension, forfeiture, or cancellation by
4 order of the board or by order of a court of law, or its surrender without the written
5 consent of the board, shall not, during any period in which it may be renewed,
6 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the licensee on any such ground.

7 16. Health and Safety Code (“Health & Saf. Code”) section 44002 provides, in pertinent
8 part, that the Director has all the powers and authority granted under the Automotive Repair Act
9 for enforcing the Motor Vehicle Inspection Program.

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

14 18. California Code of Regulations, title 16, section (“Regulation”) 3306 states, in
15 pertinent part:

16

17 (c) Replacement License . . . In the event of a change of ownership of a
18 licensed business, a new application and a fee of \$10 shall be submitted to the bureau.
In determining whether a fee is required, the following shall apply:

19 (1) Change of Ownership. “Change of ownership” means any change in
20 legal ownership of the license or the licensed business, including . . . change of the
21 business entity by incorporation of the business or a change in the corporate status
that requires a new corporate number as issued by the Secretary of State . . .

22 19. Regulation 3340.10 states, in pertinent part:

23 A registered automotive repair dealer may be licensed as a smog check
24 station in accordance with the following:

25

26 (e) Replacement License. In determining whether a fee is required for a
27 replacement license, the definitions given in section 3306(c)(1) and (2) of this chapter
shall apply.

28

1 (2) In the event of a change of ownership of a licensed business, a new
application and a license fee of \$100.00 shall be submitted to the bureau.

2

3 (f) No person shall operate a smog check station unless a license to do so
4 has been issued by the department.

5 20. Regulation 3351.1 states, in pertinent part:

6

7 (c) Change of Ownership. A new registration shall be required of the new
8 owner in the event of a change of ownership, as defined in Section 3306(c)(1) of
these regulations, and an application for registration accompanied by the initial
9 registration fee in the amount of \$ 200 shall be submitted to the bureau for such
registration . . .

10 **STATUTORY AND REGULATORY PROVISIONS**

11 21. Bus. & Prof. Code section 9884.7 states, in pertinent part:

12 (a) The director, where the automotive repair dealer cannot show there
13 was a bona fide error, may refuse to validate, or may invalidate temporarily or
permanently, the registration of an automotive repair dealer for any of the following
14 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,
15 employee, partner, officer, or member of the automotive repair dealer.

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

18

19 (4) Any other conduct which constitutes fraud.

20

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

22 22. Bus. & Prof. Code section 9889.3 states, in pertinent part:

23 The director may suspend, revoke, or take other disciplinary action
24 against a license as provided in this article [Article 7 (commencing with section
9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or
25 director thereof:

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

27 ///

28 ///

1 23. Bus. & Prof. Code section 9889.22 states:

2 The willful making of any false statement or entry with regard to a
3 material matter in any oath, affidavit, certificate of compliance or noncompliance, or
4 application form which is required by this chapter [the Automotive Repair Act] or
Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health
and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

5 24. Bus. & Prof. Code section 9889.9 states that “[w]hen any license has been revoked or
6 suspended following a hearing under the provisions of this article [Article 7 (commencing with
7 section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and
8 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
9 director.”

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

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

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

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

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

19

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

22

23 (e) Has misrepresented a material fact in obtaining a license . . .

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

27 ///

28 ///

1 an ARD registration and smog check, test and repair, station license, designating Rue as the
2 owner of Japanese Motors.

3 33. On June 2, 2008, the Bureau denied Rue's applications to convert California Test
4 Only to a test and repair station and for an ARD registration and smog check station license as
5 owner of Japanese Motors due, in part, to the fact that Rue failed to disclose his prior citations
6 issued by the Bureau, set forth in paragraph 48 below.

7 34. On or about June 6, 2008, the Bureau received an application for ARD registration
8 from Lee Saldivar ("Saldivar"), designated as the sole owner of Japanese Motors. The
9 application stated, in pertinent part, as follows:

10 7. List all owners, Partners, or Corporate Officers, and Directors . . .
11 Under Business and Professions Code Section 9884, an automotive repair dealer shall
12 identify the owners, directors, officers, partners, managers and other persons who
13 directly or indirectly control or conduct the business . . .

14 35. On or about July 15, 2008, Saldivar was issued ARD Registration No. ARD 255520
15 as owner of Japanese Motors.

16 36. On April 15, 2010, Saldivar met with representatives of the Bureau. Saldivar
17 admitted that he was *not* the owner of Japanese Motors, and that Rue was the true owner of
18 Japanese Motors and had been since Saldivar submitted his application for ARD registration to
19 the Bureau in June 2008. Saldivar also admitted that he applied for his ARD registration and
20 smog check station, official brake station, and lamp station licenses after Rue told him that the
21 applications he (Rue) submitted to the Bureau had been denied, and that Rue had just purchased
22 Japanese Motors and needed to continue operating the business.

23 37. On April 19, 2010, Saldivar voluntarily surrendered his ARD registration and smog
24 check station, official brake station, and official lamp station licenses to the Bureau. That same
25 day, during a station visit at Japanese Motors, a representative of the Bureau reminded Rue that
26 the owner of a smog check, test only, station could not own or have a financial interest in a smog
27 check test-and-repair station within a geographical radius of 50 miles of the test-only station.

28 38. The Bureau received information indicating that there was a change in ownership of
both California Test Only and Japanese Motors in that the businesses were owned by California

1 Test and Repair, Inc., as follows: On September 14, 2009, California Test and Repair was
2 incorporated in the State of California. On or about October 8, 2009, Rue filed an application for
3 a general business license on behalf of California Test and Repair with the County of Sacramento.
4 Rue stated on the application that he was the chief executive officer ("CEO") of the corporation
5 and that the street address of the corporation was 6305 Watt Avenue, Suite 104, North Highlands,
6 California, the address of record for California Test Only. On or about October 13, 2009, Rue
7 filed a Fictitious Business Name Statement with the County of Sacramento. Rue certified that he
8 was the CEO of California Test and Repair, Inc. and that he would be conducting business under
9 the fictitious business names California Test Only Center and Japanese Motors.

10 39. On April 20, 2010, the Bureau received applications for an ARD registration and
11 smog check, test and repair, station license from Rue as sole owner of Japanese Motors and an
12 application for ARD registration and smog check, test only, station license from Stephen Curtis
13 Belden ("Belden") as sole proprietor of California Test Only.

14 40. On May 18, 2010, the Bureau received information from Belden that he was
15 employed as a smog technician at California Test Only, that applications in Belden's name as sole
16 proprietor of California Test Only were mailed to the Bureau, and that the applications were filled
17 out and sent to the Bureau by Rue, the true owner of California Test Only and Japanese Motors.
18 Belden requested that the applications for California Test Only be withdrawn.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 41. Respondent Rue's ARD registration is subject to disciplinary action pursuant to Bus.
22 & Prof. Code section 9884.7, subdivision (a)(4), Respondent committed acts which constitute
23 fraud, as follows: Respondent Rue conspired with Respondent Saldivar to defraud the Bureau in
24 that Rue had Saldivar obtain an ARD registration and smog check station, official brake station,
25 and lamp station licenses as the owner of Japanese Motors when, in fact, Rue was the true owner
26 of the business, and knew that it was unlawful to have ownership in or a corporate or financial
27 interest in Japanese Motors since the smog check test-and-repair station was within a
28 geographical radius of 50 miles of Rue's test-only station, California Test Only. Further, after

1 Saldivar voluntarily surrendered his ARD registration and smog check station, official brake
2 station, and official lamp station licenses to the Bureau, Rue completed applications for an ARD
3 registration and smog check, test only, station license in the name of Stephen Curtis Belden as
4 sole proprietor of California Test Only and submitted them to the Bureau in another attempt to
5 circumvent the laws and regulations of the Motor Vehicle Inspection Program.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Regulations Pursuant**
8 **to the Motor Vehicle Inspection Program)**

9 42. Respondent Rue's smog check station license is subject to disciplinary action
10 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with
11 Regulation 3340.16, subdivision (f), in a material respect, as follows: Respondent had ownership
12 in, a corporate interest in, and/or a financial interest in Japanese Motors, a smog check test-and-
13 repair station which was within a geographical radius of 50 statute miles of Respondent's test-
14 only station, California Test Only.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 43. Respondent Saldivar's ARD registration is subject to disciplinary action pursuant to
18 Bus. & Prof. Code section 9884.7, subdivision (a)(1), Respondent made or authorized a statement
19 which he knew or in the exercise of reasonable care should have known to be untrue or
20 misleading, as follows: On or about June 5, 2008, Respondent certified under penalty of perjury
21 on the application for ARD registration that he was the sole owner of Japanese Motors and that
22 there were no other owners, directors, officers, partners, managers, or other persons who directly
23 or indirectly controlled or conducted the business. In fact, the true owner of Japanese Motors was
24 Benjamin Lee Rue.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 44. Respondent Saldivar's ARD registration is subject to disciplinary action pursuant to
28 Bus. & Prof. Code section 9884.7, subdivision (a)(4), Respondent committed acts which

1 constitute fraud, as follows: Respondent Saldivar conspired with Respondent Rue to defraud the
2 Bureau by obtaining an ARD registration and smog check station, official brake station, and lamp
3 station licenses as the owner of Japanese Motors when, in fact, Rue was the true owner of the
4 business.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with the Bus. & Prof. Code)**

7 45. Respondent Saldivar's ARD registration is subject to disciplinary action pursuant to
8 Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
9 Bus. & Prof. Code section 9889.22 in a material respect, as follows: Respondent willfully made a
10 false statement on his application for ARD registration as set forth in paragraph 43 above.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with the Bus. & Prof. Code)**

13 46. Respondent Saldivar's official brake and lamp station licenses are subject to
14 disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (a), in that
15 Respondent violated Bus. & Prof. Code section 9889.22, as set forth in paragraph 45 above.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Misrepresentation of a Material Fact in Obtaining a License)**

18 47. Respondent Saldivar's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (e), in that Respondent
20 misrepresented a material fact in obtaining his ARD registration, as set forth in paragraph 43
21 above.

22 **DISCIPLINE CONSIDERATIONS**

23 48. To determine the degree of discipline, if any, to be imposed on Respondent Rue,
24 Complainant alleges as follows:

25 a. On or about December 14, 2006, the Bureau issued Citation No. C07-0385 against
26 Respondent as owner of California Test Only for violations of Health & Saf. Code section 44012,
27 subdivision (f) (failure to perform a visual/functional check of emission control devices according
28 to procedures prescribed by the department), and Regulation 3340.35, subdivision (c) (issuing a

1 certificate of compliance to a vehicle that was improperly tested). Respondent had issued a
2 certificate of compliance to a Bureau undercover vehicle with a missing air injection system reed
3 valve. The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
4 Respondent complied with the citation and paid the civil penalty on February 21, 2007.

5 b. On or about April 25, 2007, the Bureau issued Citation No. C07-0789 against
6 Respondent as owner of California Test Only for violations of Health & Saf. Code section 44012,
7 subdivision (f) (failure to perform a visual/functional check of emission control devices according
8 to procedures prescribed by the department), and Regulation 3340.35, subdivision (c) (issuing a
9 certificate of compliance to a vehicle that was improperly tested). Respondent had issued a
10 certificate of compliance to a Bureau undercover vehicle with a missing positive crankcase
11 ventilation (PCV) system. The Bureau assessed civil penalties totaling \$1,000 against
12 Respondent for the violations. Respondent complied with the citation and paid the civil penalty
13 on September 29, 2009.

14 c. On or about September 14, 2007, the Bureau issued Citation No. C08-0239 against
15 Respondent as owner of California Test Only for violations of Health & Saf. Code section 44012,
16 subdivision (f) (failure to determine that emission control devices and systems required by State
17 and Federal law are installed and functioning correctly in accordance with test procedures), and
18 Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was
19 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
20 vehicle with a non-functional EGR system. The Bureau assessed civil penalties totaling \$2,000
21 against Respondent for the violations. Respondent complied with the citation and paid the civil
22 penalty on September 29, 2009.

23 d. On or about December 14, 2006, the Bureau issued Citation No. M07-0386 against
24 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
25 technicians shall perform tests of emission control systems and devices in accordance with Health
26 & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall
27 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
28 and Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau

1 undercover vehicle with a missing air injection system reed valve. Respondent was directed to
2 complete an 8 hour training course, with proof of completion submitted to the Bureau within
3 thirty (30) days from receipt of the citation. Respondent complied with the citation and
4 completed the required training on March 26, 2007.

5 e. On or about April 25, 2007, the Bureau issued Citation No. M07-0790 against
6 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
7 technicians shall perform tests of emission control systems and devices in accordance with Health
8 & Saf. Code section 44012) and Regulation 3340.30, subdivision (a) (qualified technicians shall
9 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
10 and Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau
11 undercover vehicle with a missing PCV system. Respondent was directed to complete a 16 hour
12 training course, with proof of completion submitted to the Bureau within thirty (30) days from
13 receipt of the citation. Respondent complied with the citation and completed the required training
14 on October 14, 2009.

15 OTHER MATTERS

16 49. Pursuant to Bus. & Prof. Code section 9884.4, Automotive Repair Dealer
17 Registration Number ARD 208478, issued to Respondent Benjamin Lee Rue, also known as
18 Benjamin L. Rue, owner of California Test Only, shall cease to be valid upon a finding by the
19 Director that there has been a change in legal ownership of the automotive repair dealer
20 registration or business entity.

21 50. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
22 License Number TC 208478, issued to Respondent Benjamin Lee Rue, also known as Benjamin
23 L. Rue, owner of California Test Only, is revoked or suspended, any additional license issued
24 under Chapter 5 of the Health & Saf. Code in the name of said licensee, including, but not limited
25 to, Advanced Emission Specialist Technician License Number EA 133577, may be likewise
26 revoked or suspended by the Director.

27 51. Pursuant to Bus. & Prof. Code section 9884.4, Automotive Repair Dealer
28 Registration Number ARD 255520, issued to Respondent Lee Saldivar, owner of Japanese

1 Motors, shall cease to be valid upon a finding by the Director that there has been a change in legal
2 ownership of the automotive repair dealer registration or business entity.

3 52. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
4 Number RC 255520, issued to Respondent Lee Saldivar, owner of Japanese Motors, is revoked or
5 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name
6 of said licensee may be likewise revoked or suspended by the Director.

7 53. Pursuant to Bus. & Prof. Code section 9889.9, if Official Lamp Station License
8 Number LS 255520, issued to Respondent Lee Saldivar, owner of Japanese Motors, is revoked or
9 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. &
10 Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

11 54. Pursuant to Bus. & Prof. Code section 9889.9, if Official Brake Station License
12 Number BS 255520, issued to Respondent Lee Saldivar, owner of Japanese Motors, is revoked or
13 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. &
14 Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

15 **PRAYER**

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

18 1. Making a finding that there has been a change in legal ownership of Automotive
19 Repair Dealer Registration Number ARD 208478, issued to Benjamin Lee Rue, also known as
20 Benjamin L. Rue, owner of California Test Only, and of the business entity known as California
21 Test Only;

22 2. Temporarily or permanently invalidating Automotive Repair Dealer Registration
23 Number ARD 208478, issued to Benjamin Lee Rue, also known as Benjamin L. Rue, owner of
24 California Test Only;

25 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
26 208478, issued to Benjamin Lee Rue, also known as Benjamin L. Rue, owner of California Test
27 Only;

28 ///

1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Benjamin Lee Rue, also known as Benjamin L. Rue, including,
3 but not limited to, Advanced Emission Specialist Technician License Number EA 133577;

4 5. Making a finding that there has been a change in legal ownership of Automotive
5 Repair Dealer Registration Number ARD 255520, issued to Lee Saldivar, owner of Japanese
6 Motors, and of the business entity known as Japanese Motors;

7 6. Temporarily or permanently invalidating Automotive Repair Dealer Registration
8 Number ARD 255520, issued to Lee Saldivar, owner of Japanese Motors;

9 7. Revoking or suspending Smog Check Station License Number RC 255520, issued to
10 Lee Saldivar, owner of Japanese Motors;

11 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
12 and Safety Code in the name of Lee Saldivar;

13 9. Revoking or suspending Official Lamp Station License Number LS 255520, issued to
14 Lee Saldivar, owner of Japanese Motors;

15 10. Revoking or suspending Official Brake Station License Number BS 255520, issued to
16 Lee Saldivar, owner of Japanese Motors;

17 11. Revoking or suspending any additional license issued under Articles 5 and 6 of
18 Chapter 20.3 of the Business and Professions Code in the name of Lee Saldivar;

19 12. Ordering Benjamin Lee Rue, also known as Benjamin L. Rue, owner of California
20 Test Only, and Lee Saldivar, owner of Japanese Motors, to pay the Director of Consumer Affairs
21 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 125.3;

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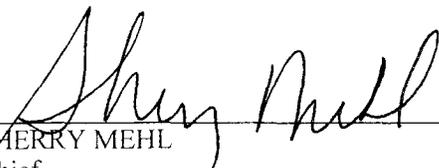
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13. Taking such other and further action as deemed necessary and proper.

DATED: 8/5/10



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

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