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7

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

12 In the Matter of the Accusation Against:

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

Case No. 79/13-73
ACCUSATION
(SMOG CHECK)

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

Respondents.

9 John Wallauch ("Complainant") alleges:

10 **PARTIES**

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

13 **LICENSE INFORMATION**

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

15 **Automotive Repair Dealer Registration**

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

22 **Smog Check Station License**

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

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1 **Lamp Station License**

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

5 **Brake Station License**

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

9 **John A. Burger**

10 **Advanced Emission Specialist Technician License**

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

16 **Brake Adjuster License**

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

21 **Lamp Adjuster License**

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

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

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

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

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

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

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

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

17 **STATUTORY PROVISIONS**

18 18. Section 9884.7 states, in pertinent part:

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

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

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

27 (4) Any other conduct which constitutes fraud.

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1 (5) Conduct constituting gross negligence.

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

3 (b) Except as provided in subdivision (c), if an automotive repair
4 dealer operates more than one place of business in this state, the director pursuant to
5 subdivision (a) shall only suspend, revoke, or place on probation the registration of
6 the specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

7 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
8 place on probation the registration for all places of business operated in this state by
an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

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

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

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

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

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

17 20. Section 9889.1 of the Code states:

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

21 21. Section 9889.9 of the Code states:

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

25 22. Section 9889.16 of the Code states:

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

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

23. Section 9884.9 of the Code states:

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

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

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

16 I acknowledge notice and oral approval of an increase in the original
17 estimated price.

17 _____
(signature or initials)

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

24. Section 9889.7 of the Code states:

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

25. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

8 **REGULATORY PROVISIONS**

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

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

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

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

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

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

26 **COST RECOVERY**

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

29 **BACKGROUND INFORMATION**

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

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

5 c. Respondent California certified under penalty of perjury on Brake Certificate Number
6 [REDACTED] that the right front and left rear brake rotors were in satisfactory condition when, in
7 fact, they were undersized.

8 d. Respondent California certified under penalty of perjury on Lamp Certificate Number
9 [REDACTED] that the applicable adjustments had been performed on the lamp system when, in
10 fact, both headlamps were out of adjustment. In addition, the license plate lamps and housings
11 were missing from their mounting locations.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 34. Respondent California's registration is subject to discipline pursuant to Code section
15 9884.7(a)(4), in that on or about December 28, 2011, regarding the 2002 Ford Mustang,
16 Respondent California committed acts that constitute fraud, as follows:

17 a. Respondent California issued electronic Certificate of Compliance No. [REDACTED]
18 without performing a bona fide inspection of the emission control devices and systems on the
19 vehicle, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 b. Respondent California obtained payment from the operator for performing the
22 applicable inspections and adjustments on the vehicle's brake and lamp system as specified by the
23 Bureau and in accordance with the Vehicle Code when, in fact, Respondent California failed to
24 perform the necessary inspections, as more particularly set forth above in paragraph 30.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Gross Negligence)**

27 35. Respondent California's registration is subject to discipline under Code section
28 9884.7(a)(5), in that on or about December 28, 2011, regarding the 2002 Ford Mustang,

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

6 **FOURTH CAUSE FOR DISCIPLINE**

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

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

12 **FIFTH CAUSE FOR DISCIPLINE**

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

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

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

20 b. **Section 9889.16:**

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

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

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SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

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

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

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

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

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

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

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

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

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NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

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

TENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

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

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

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

TWELFTH CAUSE FOR DISCIPLINE

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

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

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

11 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

23 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

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

4 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

14 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

22 **NINETEENTH CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

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

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

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

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

11 **TWENTIETH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

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

20 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

21 **(Gross Negligence)**

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

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

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

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

10 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

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

16 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

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

22 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

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

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1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

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

7 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

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

13 **THIRTIETH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

8 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

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

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

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

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

24 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

25 **(Fraud)**

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

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

5 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

6 **(Gross Negligence)**

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

14 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

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

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

20 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

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

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

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

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

5 **FORTY-THIRD CAUSE FOR DISCIPLINE**

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

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

11 **OTHER MATTERS**

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

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

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

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

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

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

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

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

15 87. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
16 License No. EO 630326 and Smog Check Repair Technician License Number EI 630326
17 (formerly Advanced Emission Specialist Technician License Number EA 630326), issued to
18 Ryan Hunley, is revoked or suspended, any additional license issued under this chapter in the
19 name of said licensee may be likewise revoked or suspended by the director.

20 **PRAYER**

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

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

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

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

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

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

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

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

10 DATED: 4/29/13

John Wallauch by Doug Balatti

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

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