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

In the Matter of the Accusation Against:

Case Number: 79/16-13904

**LUCY VENTURES
dba SMOG REPAIR AND LUBE
1225 Parkside Dr.
Walnut Creek, CA 94596
Mitchel Scott Bornstein- President/Secretary/Treasurer**

A C C U S A T I O N

**Automotive Repair Dealer No. ARD 282023
Smog Check Station License No. RC282023
Lamp Station License No. LS 282023, Class A
Brake Station License No. BS 282023, Class C**

**LUIS ANTONIO CABRIALES
4613 Knoll Park Circle
Antioch, CA 94531**

**Smog Check Inspector (EO) License No. EO633674
Smog Check Repair Technician (EI) License No. EI633674
Brake Adjuster License No. BA 633674, Class C
Lamp Adjuster License No. LA 633674, Class A**

**RANDY LEE HOWELL
537 Quartz Lane
Vallejo, CA 94589**

Smog Check Inspector (EO) license No. EO633592

**BRANDEN L. EBERHART
3876 Creekside Pl.
Auburn, CA 95602**

Smog Check Inspector (EO) license No. EO636778

Respondents.

1 Complainant alleges:

2 **PARTIES**

3 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
4 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

5 **Automotive Repair Dealer Registration**

6 2. On or about November 16, 2015, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 282023 ("Registration") to Lucy Ventures dba Smog Repair and Lube
8 (Respondent Lucy). Mitchel Scott Bornstein is the President/Secretary/Treasurer of Respondent
9 Lucy. The registration was in full force and effect at all times relevant to the charges brought
10 herein and will expire on November 30, 2017, unless renewed.

11 **Smog Check Station License**

12 3. On or about December 11, 2015, the Bureau issued Smog Check Station License
13 Number RC 282023 ("smog station license") to Respondent Lucy. The smog station license was
14 in full force and effect at all times relevant to the charges brought herein and will expire on
15 November 30, 2017, unless renewed.

16 **Lamp Station License**

17 4. On or about December 11, 2015, the Bureau issued Lamp Station License Number LS
18 282023, Class A ("lamp station license"), to Respondent Lucy. The lamp station license was in
19 full force and effect at all times relevant to the charges brought herein and will expire on
20 November 30, 2017, unless renewed.

21 **Brake Station License**

22 5. On or about December 11, 2015, the Bureau issued Brake Station License Number
23 BS 282023, Class C ("brake station license"), to Respondent Lucy. The brake station license was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 November 30, 2017, unless renewed.

26 **Smog Check Inspector Licenses**

27 6. On or about September 30, 2011, the Director issued Advanced Emission Specialist
28 Technician License Number EA 633674 to Luis Antonio Cabriaes (Respondent Cabriaes).

Respondent Cabrialess advanced emission specialist technician license expired on January 31, 2014 and was cancelled on February 14, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog Check Inspector License EO 633674 and Smog Check Repair Technician (EI) License No. EI633674. Respondent Cabrialess Smog Check Inspector and Smog Check Repair Technician Licenses will expire on January 31, 2018, unless renewed.¹

7. On or about September 08, 2011, the Director issued Advanced Emission Specialist Technician License Number EA 633592 to Randy Lee Howell (Respondent Howell). Respondent Howells advanced emission specialist technician license was due to expire on January 31, 2014, however, was cancelled on January 27, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog Check Inspector License EO 633592. Respondent Howell's Smog Check Inspector will expire on January 31, 2018, unless renewed.

8. On or about April 18, 2014, the Director issued Smog Check Inspector License EO 636778 to Branden L. Eberhart (Respondent Eberhart). Respondent Eberhart's Smog Check Inspector License will expire on December 31, 2017, unless renewed.

Brake Adjuster License

9. On or about January 4, 2016, the Director issued Brake Adjuster License BA 633674, Class C, to Respondent Cabrialess. Respondent Cabrialess Brake Adjuster License will expire on January 31, 2019, unless renewed.

Lamp Adjuster License

10. On or about March 16, 2017, the Director issued Lamp Adjuster License LA 633674, Class A, to Respondent Cabrialess. Respondent Cabrialess Brake Adjuster License will expire on January 31, 2021, unless renewed.

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

11. “Respondents” shall refer to Respondents Lucy, Howell, Cabriaes and Eberhart collectively.

JURISDICTION

12. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

STATUTORY AND REGULATORY PROVISIONS

13. Section **9884.7** of the Business and Professions Code (“Code”) states, in pertinent part:

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

(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 by the exercise of reasonable care should be known, to be untrue or misleading.

• • •

(4) Any other conduct that constitutes fraud.

• • •

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

• • •

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or 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.

“The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

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

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

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

...

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

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

...

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

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

22. Section **44072.8** of the Health and Safety Code states:

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

23. California Code of Regulations, title 16, section **3340.24**, states:

“ . . .(c) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance. . .”

24. California Code of Regulations, title 16, section **3340.30**, states, in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

25. California Code of Regulations, title 16, section **3340.41(c)**, states:

“No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.”

26. California Code of Regulations, title 16, section **3340.42**, states, in pertinent part that “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.”

27. California Code of Regulations, title 16, section **3340.45**, states:

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual shall become effective on or after January 1, 2013.

FACTUAL SUMMARY

28. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and hybrid vehicles.

1 29. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
2 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
3 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
4 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
5 vehicle. The bar code scanner is used to input technician information, the vehicle identification
6 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
7 Reports.

8 30. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
9 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
10 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
11 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
12 number of specific data values each PCM uses related to emissions controls.

13 31. As part of the BAR-OIS smog inspections, the technician also performs a visual and
14 functional test on the vehicle being inspected. The visual inspection of the emission control
15 components verifies the required emission control devices are present and properly connected and
16 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
17 makes the determination whether or not the vehicle passes the inspection based on the results of
18 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
19 compliance is issued. The information from the smog inspection is then transmitted to the
20 Vehicle Information Data (VID).

21 32. The Bureau can access the VID to view test data on smog check inspections
22 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
23 particular vehicle which has been tested.

24 33. The Bureau has become aware of several methods used by Smog Check stations and
25 Smog Check technicians to issue improper/fraudulent smog certificates of compliance. One
26 method is known as clean plugging. Clean plugging involves using another vehicle's properly
27 functioning OBD II system, or another source, to generate passing diagnostic readings for the
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1 purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog
2 compliance and/or are not present for testing.

3 34. The Bureau initiated an investigation of Respondent Lucy's smog station, Smog
4 Repair and Lube. Beginning on or about September 26, 2016 and continuing until about January
5 26, 2017, Respondents² were found to have performed ten fraudulent smog inspections using
6 clean-plugging methods. Clean-plugging is the practice of testing one OBD II system (a system
7 that would pass the smog inspection), for the purpose of fraudulently issuing a smog certificate of
8 compliance to another vehicle that would not pass the smog inspection and/or is not present for
9 testing. The vehicle receiving the certificate of compliance is not actually tested during the smog
10 inspection.

11 35. A Bureau representative reviewed data for vehicles inspected by Respondents
12 Howell, Cabriales and Eberhart and certified by Respondent Lucy. The data revealed that the ten
13 vehicles that were purportedly tested by Respondents were not and could not have been
14 connected to the DAD when they were being certified because the OBD-II data purportedly
15 transmitted by those vehicles could not have been transmitted by those vehicles.

16 36. Respondents clean plugged and issued fraudulent certificates of compliance to the
17 following ten vehicles:

18 a) Clean Plug #1- 2003 BMW 530i Automatic, VIN WBADT63413CK29197, License No.
19 5UGR094:

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Certificate #	eVIN	Protocol	PID count
QE561390C			
Fraudulent Passing Inspection (9/26/2016)	WBAPH7C5XAA176134	ICAN11bt500	<u>45/11</u>
Expected OBDII Value	Not Usually Reported	I914	<u>23/1 or 24/1</u>

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27 ² Respondents Howell, Cabriales and Eberhart performed the smog tests on behalf of
28 Respondent Lucy.

b) Clean Plug #2- 2002 Chevrolet Trailblazer, VIN 1GNDS13S622189217, License No. 4TLP175:

Certificate #	eVIN	Protocol	PID count
QE624203C			
Fraudulent Passing Inspection (9/26/2016)	3GCEK13328G119560	ICAN11bt500	<u>43/7</u>
Expected OBDII Value	1GNDS13S622189217	JVPW	<u>18</u>

c) Clean Plug #3- 2002 Chrysler Sebring LXI, VIN 1C3EL55R22N322926 License No. 4XIU777:

Certificate #	eVIN	Protocol	PID count
QE995703C			
Fraudulent Passing Inspection (10/07/2016)	1J4NF4FB1AD502301	ICAN11bt500	<u>36/13</u>
Expected OBDII Value	Not Reported	JVPW	<u>22/3</u>

d) Clean Plug #4- 2001 Audi A6 2.7T Quattro, VIN WAUED64B71N126074, License No. 6FIV887:

Certificate #	eVIN	Protocol	PID count
ZL231418C			
Fraudulent Passing Inspection (11/23/2016)	WBAUP935X8VF48059	ICAN11bt500	<u>46/11</u>
Expected OBDII Value	Not Reported	I914	<u>20, 21/5, 22 or 23/5</u>

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e) Clean Plug #5- 2001 Volkswagen New Beetle GLS, VIN
3VWCK21C31M464570, License No. 5SZV492:

Certificate # ZL324874C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (11/28/2016)	5TDBT44A65S251281	ICAN11bt500	<u>45</u>
Expected OBDII Value	Not Reported	I914	<u>17/5, 18, or 18/5</u>

f) Clean Plug #6- 2002 Chevrolet Trailblazer, VIN 1GNDDT13S622199727, License
No. 4UBF458:

Certificate # ZL559456C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (12/5/2016)	Not Reported	I9140808	<u>17</u>
Expected OBDII Value	1GNDDT13S622199727	JVPW	<u>18</u>

g) Clean Plug #7- 2007 Audi Q7 3.6 Quattro Premium, VIN
WA1BY74L77D027465, License No. 7RAZ401:

Certificate # ZN466939C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (01/09/2017)	1FTZR14U46PA53560	JPWM1850	<u>22</u>
Expected OBDII Value	WA1BY74L77D027465	ICAN11bt5	<u>43 or 43/14</u>

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h) Clean Plug #8- 2004 BMW 745 LI, VIN WBAGN63464DS48895, License No. 5YAC670:

Certificate # ZN826428C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (01/20/2017)	2HKYF18535H540346	I9140808	<u>24</u>
Expected OBDII Value	WBAGN63464DS48895	KWPF	<u>23/1 or 23/7</u>

i) Clean Plug #9- 2004 BMW 745 LI, VIN WBAGN63494DS51273, License No. 7LXF416:

Certificate # ZN620158C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (1/24/2017)	WA1DKAFP3BA058598	ICAN11bt500	<u>44/10</u>
Expected OBDII Value	WBAGN63494DS51273	KWPF	<u>23/1 or 23/7</u>

j) Clean Plug #10- 2000 GMC Yukon Denali, VIN 1GKEK13R7YR123144, License No. 4PPY674:

Certificate # ZP025253C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (1/26/2017)	2B3LA53H38H202803	ICAN11bt500	<u>43/12</u>
Expected OBDII Value	Not Reported	JVPW	<u>22, or 23</u>

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements - Registration)

37. Respondent Lucy has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that it made statements which it knew or which by exercise of

1 reasonable care she should have known were untrue or misleading, as set forth above in
2 paragraphs 34-36, above. Respondents fraudulently purported to test the 10 vehicles, and
3 certified that the 10 vehicles passed inspection and were in compliance with applicable laws and
4 regulations. In fact, Respondents conducted the inspections on those vehicles using clean-
5 plugging methods.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud - Registration)**

8 38. Respondent Lucy has subjected its registration to discipline under Code sections 494
9 and 9884.7, subdivision (a)(4), in that she committed acts which constitute fraud, as set forth
10 above in paragraphs 33-35, above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violation of the Motor Vehicle Inspection Program – Smog Station License)**

13 39. Respondent Lucy has subjected its station license to discipline under Health and
14 Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that it violated sections
15 of that Code and applicable regulations, as set forth above in paragraphs 34-36, as follows:

16 a. **Section 44012:** Respondent Lucy failed to ensure that the emission control tests were
17 performed on those vehicles in accordance with procedures prescribed by the department.

18 b. **Section 3340.24, subdivision (c):** Respondent Lucy falsely or fraudulently issued
19 electronic certificates of compliance for those vehicles without performing bona fide inspections
20 of the emission control devices and systems on the vehicles as required by Health and Safety
21 Code section 44012.

22 c. **Section 3340.42:** Respondent Lucy failed to conduct the required smog tests and
23 inspections on those vehicles in accordance with the Bureau's specifications.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud or Deceit – Smog Station License)**

26 40. Respondent Lucy subjected its station license to discipline under Health and Safety
27 Code sections 44072.10 and 44072.2, subdivision (d), in that it committed acts involving
28 dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of

1 compliance for vehicles without performing bona fide inspections of the emission control devices
2 and systems on the vehicles, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program, as set forth above in paragraphs
4 34-36, above.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Dishonesty, Fraud or Deceit – Brake Station License)**

7 41. Respondent Lucy subjected its Brake Station License to discipline under Code
8 Section 9889.3, subdivision (d), in that it committed acts involving dishonesty, fraud or deceit,
9 whereby another was injured by issuing electronic certificates of compliance for vehicles without
10 performing bona fide inspections of the emission control devices and systems on the vehicles,
11 thereby depriving the People of the State of California of the protection afforded by the Motor
12 Vehicle Inspection Program, as set forth above in paragraphs 34-36, above.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud or Deceit – Lamp Station License)**

15 42. Respondent Lucy subjected its Lamp Station License to discipline under Code
16 Section 9889.3, subdivision (d), in that it committed acts involving dishonesty, fraud or deceit,
17 whereby another was injured by issuing electronic certificates of compliance for vehicles without
18 performing bona fide inspections of the emission control devices and systems on the vehicles,
19 thereby depriving the People of the State of California of the protection afforded by the Motor
20 Vehicle Inspection Program, as set forth above in paragraphs 34-36, above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

23 43. Respondent Cabriaes has subjected his Smog Check Inspector license and Smog
24 Check Repair Technician license to discipline under Health and Safety Code sections 44072.10
25 and 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable
26 regulations, as set forth above in paragraphs 34-36, as follows:

27 a. **Section 44012:** Respondent Cabriaes failed to ensure that the emission control tests
28 were performed on those vehicles in accordance with procedures prescribed by the department.

1 b. **Section 44059:** Respondent Cabriales willfully made false entries for the electronic
2 certificates of compliance by certifying that those vehicles had been inspected as required when,
3 in fact, they had not.

4 c. **Section 3340.24, subdivision (c):** Respondent Cabriales falsely or fraudulently
5 issued electronic certificates of compliance for those vehicles without performing bona fide
6 inspections of the emission control devices and systems on the vehicles as required by Health and
7 Safety Code section 44012.

8 d. **Section 3340.30, subdivision (a):** Respondent Cabriales failed to inspect and test
9 those vehicles in accordance with Health and Safety Code section 44012 and California code of
10 Regulations title 16, section 3340.42.

11 e. **Section 3340.41, subdivision (c):** Respondent Cabriales entered vehicle
12 identification information for a vehicle other than the one being tested into the emissions
13 inspection system. Respondent Cabriales knowingly entered false information about the vehicle
14 being tested into the emissions inspection system.

15 f. **Section 3340.42:** Respondent Cabriales failed to conduct the required smog tests and
16 inspections on those vehicles in accordance with the Bureau's specifications.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud or Deceit – Smog Check License)**

19 44. Respondent Cabriales subjected his Smog Check Inspector license and Smog Check
20 Repair Technician license to discipline under Health and Safety Code sections 44072.10 and
21 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby
22 another was injured by issuing electronic certificates of compliance for vehicles without
23 performing bona fide inspections of the emission control devices and systems on the vehicles,
24 thereby depriving the People of the State of California of the protection afforded by the Motor
25 Vehicle Inspection Program, as set forth above in paragraphs 34-36.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit – Brake Adjuster License)**

3 45. Respondent Cabriaes subjected his Brake Adjuster license to discipline under Section
4 9889.3, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby
5 another was injured by issuing electronic certificates of compliance for vehicles without
6 performing bona fide inspections of the emission control devices and systems on the vehicles,
7 thereby depriving the People of the State of California of the protection afforded by the Motor
8 Vehicle Inspection Program, as set forth above in paragraphs 34-36, above.

9 **TENTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit – Lamp Adjuster License)**

11 46. Respondent Cabriaes subjected his Lamp Adjuster license to discipline under Section
12 9889.3, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby
13 another was injured by issuing electronic certificates of compliance for vehicles without
14 performing bona fide inspections of the emission control devices and systems on the vehicles,
15 thereby depriving the People of the State of California of the protection afforded by the Motor
16 Vehicle Inspection Program, as set forth above in paragraphs 34-36, above.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

19 47. Respondent Howell has subjected his Smog Check Inspector license to discipline
20 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
21 violated sections of that Code and applicable regulations, as set forth above in paragraphs 34-36,
22 as follows:

23 a. **Section 44012:** Respondent Howell failed to ensure that the emission control tests
24 were performed on those vehicles in accordance with procedures prescribed by the department.

25 b. **Section 44059:** Respondent Howell willfully made false entries for the electronic
26 certificates of compliance by certifying that those vehicles had been inspected as required when,
27 in fact, they had not.

1 c. **Section 3340.24, subdivision (c):** Respondent Howell falsely or fraudulently issued
2 electronic certificates of compliance for those vehicles without performing bona fide inspections
3 of the emission control devices and systems on the vehicles as required by Health and Safety
4 Code section 44012.

5 d. **Section 3340.30, subdivision (a):** Respondent Howell failed to inspect and test those
6 vehicles in accordance with Health and Safety Code section 44012 and California code of
7 Regulations title 16, section 3340.42.

8 e. **Section 3340.41, subdivision (c):** Respondent Howell entered vehicle identification
9 information for a vehicle other than the one being tested into the emissions inspection system.
10 Respondent Howell knowingly entered false information about the vehicle being tested into the
11 emissions inspection system.

12 f. **Section 3340.42:** Respondent Howell failed to conduct the required smog tests and
13 inspections on those vehicles in accordance with the Bureau's specifications.

14 **TWELFTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud or Deceit – Smog Check License)**

16 48. Respondent Howell subjected his Smog Check Inspector License to discipline under
17 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
18 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
19 certificates of compliance for vehicles without performing bona fide inspections of the emission
20 control devices and systems on the vehicles, thereby depriving the People of the State of
21 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
22 in paragraphs 34-36.

23 **THIRTEENTH CAUSE FOR DISCIPLINE**

24 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

25 49. Respondent Eberhart has subjected his Smog Check Inspector license to discipline
26 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
27 violated sections of that Code and applicable regulations, as set forth above in paragraphs 34-36,
28 as follows:

1 a. **Section 44012:** Respondent Eberhart failed to ensure that the emission control tests
2 were performed on those vehicles in accordance with procedures prescribed by the department.

3 b. **Section 44059:** Respondent Eberhart willfully made false entries for the electronic
4 certificates of compliance by certifying that those vehicles had been inspected as required when,
5 in fact, they had not.

6 c. **Section 3340.24, subdivision (c):** Respondent Eberhart falsely or fraudulently issued
7 electronic certificates of compliance for those vehicles without performing bona fide inspections
8 of the emission control devices and systems on the vehicles as required by Health and Safety
9 Code section 44012.

10 d. **Section 3340.30, subdivision (a):** Respondent Eberhart failed to inspect and test
11 those vehicles in accordance with Health and Safety Code section 44012 and California code of
12 Regulations title 16, section 3340.42.

13 e. **Section 3340.41, subdivision (c):** Respondent Eberhart entered vehicle identification
14 information for a vehicle other than the one being tested into the emissions inspection system.
15 Respondent Eberhart knowingly entered false information about the vehicle being tested into the
16 emissions inspection system.

17 e. **Section 3340.42:** Respondent Eberhart failed to conduct the required smog tests and
18 inspections on those vehicles in accordance with the Bureau's specifications.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**

20 **(Dishonesty, Fraud or Deceit – Smog Check License)**

21 50. Respondent Eberhart subjected her Smog Check Inspector License to discipline under
22 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
23 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
24 certificates of compliance for vehicles without performing bona fide inspections of the emission
25 control devices and systems on the vehicles, thereby depriving the People of the State of
26 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
27 in paragraphs 34-36.

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OTHER MATTERS

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

52. Pursuant to Health & Safety Code section 44072.8, if Respondent Lucy's Smog Station License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

53. Pursuant to Code section 9889.9, if Respondent Lucy's Brake Station License is revoked or suspended, any additional license issued under Articles 5 or 6 of Chapter 23.3 of Division 3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

54. Pursuant to Code section 9889.9, if Respondent Lucy's Lamp Station License is revoked or suspended, any additional license issued under Articles 5 or 6 of Chapter 23.3 of Division 3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

55. Pursuant to Health & Safety Code section 44072.8, if Respondent Cabrialess's Smog Check Inspector License or Smog Check Repair Technician License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

56. Pursuant to Code section 9889.9, if Respondent Cabrialess's Lamp Adjuster License is revoked or suspended, any additional license issued under Articles 5 or 6 of Chapter 23.3 of Division 3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

57. Pursuant to Code section 9889.9, if Respondent Cabrialess's Brake Adjuster License is revoked or suspended, any additional license issued under Articles 5 or 6 of Chapter 23.3 of

1 Division 3 of the Business and Professions Code in the name of said licensee may be likewise
2 revoked or suspended by the director.

3 58. Pursuant to Health & Safety Code section 44072.8, if Respondent Howell's Smog
4 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
6 likewise revoked or suspended by the director.

7 59. Pursuant to Health & Safety Code section 44072.8, if Respondent Eberhart's Smog
8 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
9 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
10 likewise revoked or suspended by the director.

11 **PRAYER**

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

- 14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 282023 issued to Lucy Ventures doing business as Smog Repair And Lube;
- 16 2. Revoking or suspending Smog Check Test Only Station License Number TC
17 282023 issued to Lucy Ventures doing business as Smog Repair and Lube;
- 18 3. Revoking or suspending Lamp Station License No. LS 282023, Class A, issued to
19 Lucy Ventures doing business as Smog Repair and Lube;
- 20 4. Revoking or suspending Brake Station License No. BS 282023, Class C, issued to
21 Lucy Ventures doing business as Smog Repair and Lube;
- 22 5. Revoking or suspending any additional Automotive Repair Dealer Registration,
23 Smog Check Station License, Brake Station License, Lamp Station License, Smog Check
24 Inspector License, or Smog Check Repair Technician license, issued to Lucy Ventures;
- 25 6. Ordering Lucy Ventures to pay the Bureau of Automotive Repair the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3;

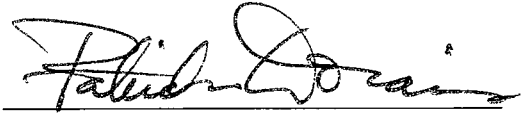
- 1 7. Revoking or suspending Smog Check Inspector (EO) License No. EO633674
- 2 issued to Luis Antonio Cabriaes;
- 3 8. Revoking or suspending Smog Check Repair Technician (EI) License No.
- 4 EO633674 issued to Luis Antonio Cabriaes;
- 5 9. Revoking or suspending Brake Adjuster License No. BA633674, Class C, issued
- 6 to Luis Antonio Cabriaes;
- 7 10. Revoking or suspending Lamp Adjuster License No. LA633674, Class A, issued
- 8 to Luis Antonio Cabriaes;
- 9 11. Revoking or suspending any additional Smog Check Station License, Smog Check
- 10 Inspector License, Smog Check Repair Technician License, Lamp Adjuster License, Brake
- 11 Adjuster License, Brake Station License, or Lamp Station License issued to Luis Antonio
- 12 Cabriaes;
- 13 12. Ordering Luis Antonio Cabriaes to pay the Bureau of Automotive Repair the
- 14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
- 15 Professions Code section 125.3;
- 16 13. Revoking or suspending Smog Check Inspector License EO633592 issued to
- 17 Randy Lee Howell;
- 18 14. Revoking or suspending any additional Smog Check Station License, Smog Check
- 19 Inspector License, or Smog Check Repair Technician License, issued to Randy Lee Howell;
- 20 15. Ordering Randy Lee Howell to pay the Bureau of Automotive Repair the
- 21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
- 22 Professions Code section 125.3;
- 23 16. Revoking or suspending Smog Check Inspector License EO636778 to Branden L.
- 24 Eberhart;
- 25 17. Revoking or suspending any additional Smog Check Station License, Smog Check
- 26 Inspector License, or Smog Check Repair Technician License, issued to Branden L. Eberhart;
- 27
- 28

1 18. Ordering Branden L. Eberhart to pay the Bureau of Automotive Repair the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 19. Taking such other and further action as deemed necessary and proper.

5
6 DATED:

August 14, 2017



PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant