

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

In the Matter of the Accusation Against:

O'JAYLAND DEWAYNE BROWN
OFFICIAL SMOG
6613 Fair Oaks Boulevard
Carmichael, CA 95608

Automotive Repair Dealer Registration
No. ARD 248896
Smog Check, Test Only, Station License
No. TC 248896

HENRY ALEXANDER CARMELO
2441 Northglen Street
Sacramento, California 95833

Advanced Emission Specialist Technician
License No. EA 154119

Respondents.

Case No. 79/12-47

OAH No. 2011120508

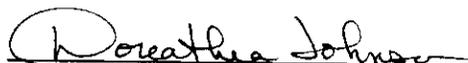
DECISION

The attached Stipulated Settlement and Disciplinary Order (Only as to O'Jayland Dewayne Brown and Official Smog) is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent O'Jayland Dewayne Brown, Official Smog, Automotive Repair Dealer Registration No. 248896 and Smog Check, Test Only, Station License No. TC 248896.

This Decision shall become effective

9/28/12

DATED: September 7, 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 PATRICK M. KENADY
Deputy Attorney General
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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 79/12-47

13 **O'JAYLAND DEWAYNE BROWN**
14 **OFFICIAL SMOG**
6613 Fair Oaks Boulevard
15 Carmichael, CA 95608

OAH No. 2011120508
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
(ONLY AS TO O'JAYLAND DEWAYNE
BROWN and OFFICIAL SMOG)

16 **Automotive Repair Dealer Registration No.**
ARD 248896
17 **Smog Check Test Only Station License No.**
TC 248896

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

22 PARTIES

23 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
24 brought this action solely in his official capacity and is represented in this matter by Kamala D.
25 Harris, Attorney General of the State of California, by Patrick M. Kenady, Deputy Attorney
26 General.

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1 his own expense; the right to confront and cross-examine the witnesses against him; the right to
2 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
3 the attendance of witnesses and the production of documents; the right to reconsideration and
4 court review of an adverse decision; and all other rights accorded by the California
5 Administrative Procedure Act and other applicable laws.

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

8 CULPABILITY

9 10. Respondent understands and agrees that the charges and allegations in Accusation
10 No. 79/12-47, if proven at a hearing, constitute cause for imposing discipline upon his
11 Automotive Repair Dealer Registration as well as for his Smog Check Test Only Station License.

12 11. For the purpose of resolving the Accusation without the expense and uncertainty of
13 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
14 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
15 those charges.

16 12. Respondent agrees that his Automotive Repair Dealer Registration and Smog Check
17 Test Only Station License is subject to discipline and he agrees to be bound by the Director's
18 probationary terms as set forth in the Disciplinary Order below.

19 RESERVATION

20 13. The admissions made by Respondent herein are only for the purposes of this
21 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
22 Automotive Repair, or other professional licensing agency is involved, and shall not be
23 admissible in any other criminal or civil proceeding.

24 CONTINGENCY

25 14. This stipulation shall be subject to approval by the Director of Consumer Affairs or
26 his designee. Respondent understands and agrees that counsel for Complainant and the staff of
27 the Bureau of Automotive Repair may communicate directly with the Director and staff of the
28 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or

1 participation by Respondent or his counsel. By signing the stipulation, Respondent understands
2 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the
3 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
4 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
5 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
6 and the Director shall not be disqualified from further action by having considered this matter.

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

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

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

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 248896
21 issued, and Smog Check Test Only Station License No. TC 248896 to Respondent O'Jayland
22 Dewayne Brown, Official Smog (Respondent) are revoked. However, the revocations are stayed
23 and Respondent is placed on probation for three (3) years on the following terms and conditions.

24 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 248896 Smog
25 Check Test Only Station License No. TC 248896 issued to Respondent O'Jayland Dewayne
26 Brown are suspended for ten (10) consecutive days beginning on the effective date of the
27 decision.

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

3 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
4 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
5 conspicuously displayed in a location open to and frequented by customers and shall remain
6 posted during the entire period of actual suspension.

7 4. **Reporting.** Respondent or Respondent's authorized representative must report in
8 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
9 Bureau, but no more frequently than each quarter, on the methods used and success-achieved in
10 maintaining compliance with the terms and conditions of probation.

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

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

17 7. **Jurisdiction.** If an accusation is filed against Respondent during the term of
18 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
19 until the final decision on the accusation, and the period of probation shall be extended until such
20 decision.

21 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
22 Respondent has failed to comply with the terms and conditions of probation, the Department may,
23 after giving notice and opportunity to be heard suspended or revoked the license and registration.

24 9. **Restrictions.** During the period of probation, Respondent shall not perform any form
25 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
26 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
27 properly perform such work, and BAR has been given 10 days notice of the availability of the
28 equipment for inspection by a BAR representative.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 7/24/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General


PATRICK M. KENADY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/12-47

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2 ARTHUR D. TAGGART
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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/12-47

13 **OFFICIAL SMOG**
14 **O'JAYLAND DEWAYNE BROWN, Owner**
6613 Fair Oaks Blvd.
Carmichael, California 95608
15 **Automotive Repair Dealer Registration No. ARD 248896**
16 **Smog Check Test Only Station License No. TC 248896**

A C C U S A T I O N

SMOG CHECK

17 **HENRY ALEXANDER CARMELO**
2441 Northglen Street
18 Sacramento, California 95833
19 **Advanced Emission Specialist Technician License No.**
EA 154119

20 Respondents.

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22 Sherry Mehl ("Complainant") alleges:

23 **PARTIES**

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

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

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

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

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

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

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

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

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

23 9. Section 44072.8 of the Health and Safety Code states:

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

27 COST RECOVERY

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

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

3 b. **Section 3340.41(c):** Respondent Carmelo entered false information into the
4 Emission Inspection System unit by entering "Pass" for the fuel evaporative controls inspection
5 when, in fact, the EVAP canister was missing.

6 c. **Section 3340.42:** Respondent Carmelo failed to conduct the required smog tests and
7 inspections on the vehicle in accordance with the Bureau's specifications.

8 **EIGHTH CAUSE FOR DISCIPLINE**

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

10 19. Respondent Carmelo's technician license is subject to discipline under Health and
11 Safety Code section 44072.2(d), in that on or about December 29, 2010, he committed acts
12 involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic
13 Certificate of Compliance No. WR208010 for the 1996 Chevrolet Corsica without performing a
14 bona fide inspection of the emission control devices and systems on the vehicle, thereby
15 depriving the People of the State of California of the protection afforded by the Motor Vehicle
16 Inspection Program.

17 **CONSUMER COMPLAINT – 2001 LINCOLN LS**

18 20. On or about October 25, 2010, the Bureau received a consumer complaint from A.
19 Thorne ("consumer") regarding an improper smog inspection performed at Respondent Brown's
20 facility on or about October 20, 2010. Respondent Carmelo performed the smog inspection on
21 the consumer's vehicle. The test showed that the vehicle failed the functional on-board diagnosis
22 (OBDII) download for not having enough monitors completed when, in fact, the vehicle should
23 have failed due to a non-compliant aftermarket catalytic converter (left) that had been installed by
24 another facility. In addition, the right oxygen sensor was found hanging and not secured into the
25 appropriate bung in the exhaust pipe. No certificate of compliance was issued for the vehicle.

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1 c. **Section 44032:** Respondent Carmelo failed to perform a test of the emission control
2 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

3 **TWELFTH CAUSE FOR DISCIPLINE**

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

5 24. Respondent Carmelo's technician license is subject to discipline under Health and
6 Safety Code section 44072.2(c), in that on or about October 20, 2010, regarding the 2001 Lincoln
7 LS, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

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

12 **PRIOR DISCIPLINE**

13 25. To determine the degree of discipline, if any, Complaint alleges the following:

14 a. On or about July 9, 2007, the Bureau issued Citation No. C08-0024 against
15 Respondent's registration and station licenses for violations of Health and Safety Code section
16 44012(f) (failure to perform a visual/functional check of emission control devices according to
17 procedures prescribed by the department), and California Code of Regulations, title 16, section
18 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
19 issuing a certificate of compliant to a Bureau undercover vehicle with a missing Air Injection
20 System. The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
21 Respondent paid the Citation on August 28, 2007.

22 b. On or about October 12, 2007, the Bureau issued Citation No. C08-0342 against
23 Respondent's registration and station licenses for violations of Health and Safety Code section
24 44012(f) (failure to perform a visual/functional check of emission control devices according to
25 procedures prescribed by the department), and California Code of Regulations, title 16, section
26 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
27 issuing a certificate of compliant to a Bureau undercover vehicle with a missing Positive
28

1 Crankcase Ventilation system. The Bureau assessed civil penalties totaling \$1,000 against
2 Respondent for the violations. Respondent paid the Citation on December 11, 2007.

3 c. On or about October 14, 2010, the Bureau issued Citation No. C2011-0460 against
4 Respondent's registration and station licenses for violations of Health and Safety Code section
5 44012(f) (failure to perform a visual/functional check of emission control devices according to
6 procedures prescribed by the department), and California Code of Regulations, title 16, section
7 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
8 issuing a certificate of compliant to a Bureau undercover vehicle with a missing Positive
9 Crankcase Ventilation system. The Bureau assessed civil penalties totaling \$2,000 against
10 Respondent for the violations. Respondent paid the Citation on December 9, 2010.

11 d. On or about July 9, 2007, the Bureau issued Citation No. M08-0025 against
12 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
13 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
14 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
15 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
16 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
17 undercover vehicle with a missing Air Injection System. Respondent was required to attend an 8-
18 hour training course. On or about October 20, 2007, Respondent completed the required training
19 course.

20 e. On or about October 12, 2007, the Bureau issued Citation No. M08-0343 against
21 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
22 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
23 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
24 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
25 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
26 undercover vehicle with a missing Positive Crankcase Ventilation system. Respondent was
27 required to attend a 16-hour training course. On or about January 19, 2008, Respondent
28 completed the required training course.

1 f. On or about October 14, 2010, the Bureau issued Citation No. M2011-0461 against
2 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
3 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
4 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
5 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
6 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
7 undercover vehicle with a missing Positive Crankcase Ventilation system. Respondent was
8 required to attend a 16-hour training course. On or about December 15, 2010, Respondent
9 completed the required training course.

10 OTHER MATTERS

11 26. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
12 probation the registrations for all places of business operated in this state by O'Jayland Dewayne
13 Brown, upon a finding that he has, or is, engaged in a course of repeated and willful violation of
14 the laws and regulations pertaining to an automotive repair dealer.

15 27. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
16 Station License Number TC 248896, issued to O'Jayland Dewayne Brown, doing business as
17 Official Smog, is revoked or suspended, any additional license issued under this chapter in the
18 name of said licensee may be likewise revoked or suspended by the director.

19 28. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
20 Specialist Technician License Number EA 154119, issued to Henry Alexander Carmelo, is
21 revoked or suspended, any additional license issued under this chapter in the name of said
22 licensee may be likewise revoked or suspended by the director.

23 PRAYER

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

26 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
27 Registration No. ARD 248896, issued to O'Jayland Dewayne Brown, doing business as Official
28 Smog;

