

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

In the Matter of the Accusation Against:

FIRE HOUSE SMOG; REID VENTURES, MITCHEL SCOTT BORNSTEIN, PRESIDENT

2900 Lone Tree way

Antioch, CA 94509

Automotive Repair Dealer Registration No. ARD 279070

Smog Check Test Only Station License No. TC 279070

and

RANDY LEE HOWELL

537 Quartz Lane

Vallejo, CA 94589

Smog Check Inspector License No. EO 366592

and

DOMINIC BONIFACIO DUCUT

94 Jimno Avenue

Pittsburg, CA 94565

Smog Check Inspector License No. EO 631156

and

JUAN M. CASTANEDA

1870 Solider Mountain Court

Antioch, CA 94531

Smog Check Inspector License No. EO 634732

Respondents.

Case No. 79/17-2297


OAH No. 2019070829

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on April 7, 2020.

IT IS SO ORDERED this 21 day of February, 2020.



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

**FIRE HOUSE SMOG, operated by REID VENTURES,
(Mitchel Scott Bornstein, President),**

**Automotive Repair Dealer Registration No. ARD 279070,
Smog Check Station License No. TC 279070;**

**RANDY LEE HOWELL,
Smog Check Inspector License No. EO 633592;**

**DOMINIC BONIFACIO DUCUT,
Smog Check Inspector License No. EO 631156;**

**JUAN M. CASTANEDA,
Smog Check Inspector License No. EO 634732**

Respondents.

Agency Case No. 79/17-2297

OAH No. 2019070829

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 7 and 8, 2020, in Oakland, California.

Deputy Attorney General Maretta Ward represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair.

Attorney William Ferreira represented respondents Reid Ventures, Dominic Ducut, and Juan M. Castaneda. Reid Ventures was present for the hearing through its president, Mitchel Scott Bornstein; Ducut and Castaneda also were present.

The caption on the accusation in this matter identifies Randy Lee Howell, Smog Check Inspector License No. EO 633592, as a respondent, but alleges no cause for discipline against this person. He did not appear.

The record was held open for respondents Reid Ventures, Ducut, and Castaneda to submit an additional document. They provided the document on time, and complainant did not object to its admission. The document was marked as Exhibit Y and admitted into evidence.

The matter was submitted for decision on January 10, 2020.

FACTUAL FINDINGS

1. In January 2015, the Bureau of Automotive Repair registered respondent Reid Ventures as an Automotive Repair Dealer (Registration No. ARD 279070), doing business using the name Fire House Smog. In February 2015, the Bureau also licensed

Reid Ventures, doing business as Fire House Smog, as a Smog Check, Test Only, Station (License No. TC 279070). Finally, in April 2015, the Bureau certified Fire House Smog as a STAR Station. As of February 27, 2017, this registration, license, and certificate were scheduled to expire on January 31, 2018. As of the hearing date, the evidence did not establish when the registration, license, and certificate were scheduled to expire.

2. Mitchel Scott Bornstein is the president of respondent Reid Ventures. Bornstein acts as the business's manager, and is responsible for ensuring that Reid Ventures follows all laws and regulations governing the registration and license described in Finding 1.

3. In July 2009, the Bureau licensed respondent Dominic Bonifacio Ducut as an Advanced Emissions Specialist Technician. The Bureau renewed this license as a Smog Check Inspector license (License No. EO 631156) in September 2013. As of February 27, 2017, this license was scheduled to expire on September 30, 2017. As of the hearing date, the evidence did not establish when this license was scheduled to expire.

4. In September 2012, the Bureau licensed respondent Juan M. Castaneda as an Advanced Emissions Specialist Technician. The Bureau renewed this license as a Smog Check Inspector license (License No. EO 634732) in May 2014. As of February 27, 2017, this license was scheduled to expire on May 31, 2018. As of the hearing date, the evidence did not establish when this license was scheduled to expire.

5. On August 24, 2018, acting in his official capacity as Chief of the Bureau, complainant Patrick Dorais signed the accusation initiating this matter. The accusation seeks discipline against Reid Ventures's automotive repair dealer registration and

smog check station license for Fire House Smog, on the ground that Fire House Smog issued certificates of compliance for vehicles no licensed smog inspector actually had inspected. The accusation also seeks discipline against Ducut's and Castaneda's smog check inspector licenses, on the ground that they were the inspectors who had caused Fire House Smog to issue some of the false certificates of compliance.

6. Reid Ventures, Ducut, and Castaneda requested a hearing.

Basis for Discipline

7. Between December 29, 2015, and November 20, 2016, Fire House Smog issued certificates of compliance for 10 vehicles that no licensed smog inspector actually had inspected.

8. Of the 10 inspections described in Finding 7, Randy Lee Howell performed four (one on Saturday, October 8, 2016; one on Saturday, October 15, 2016; and two on Saturday, October 22, 2016). In each of these four cases, Howell purposely misidentified the test vehicle to the test device, resulting in issuance of a certificate of compliance for a vehicle he had not inspected.

9. Of the 10 inspections described in Finding 7, respondent Ducut performed four (one on Tuesday, December 29, 2015; one on Saturday, May 28, 2016; one on Tuesday, June 28, 2016; and one on Wednesday, September 14, 2016). On each of these four occasions, Ducut should have known that he had not actually inspected the vehicle he had identified to the test device, and for which his inspection caused Fire House Smog to issue a false certificate of compliance. The evidence did not establish, however, that Ducut knew in any of these four cases that he had misidentified the test vehicle to the test device, resulting in issuance of a certificate of compliance for a vehicle he had not inspected.

10. Of the 10 inspections described in Finding 7, respondent Castaneda performed two (one on Sunday, January 31, 2016; and one on Sunday, November 20, 2016).

a. Castaneda should have known on January 31, 2016, that he had not actually inspected the vehicle he had identified to the test device, and for which his inspection caused Fire House Smog to issue a false certificate of compliance. The evidence did not establish, however, that Castaneda knew on this date that he had misidentified a test vehicle to the test device, resulting in issuance of a certificate of compliance for a vehicle he had not inspected.

b. Castaneda should have known before he caused Fire House Smog to issue the false certificate of compliance described above in Finding 7 on November 20, 2016, that he had not actually inspected the vehicle he had identified to the test device. Instead, Castaneda realized only after completing the inspection that the customer-supplied documentation he had used to identify the test vehicle to the test device described a 2016 Nissan Altima, but that the customer had brought in a 2006 Nissan Altima for inspection. Castaneda then re-inspected the customer's 2006 Nissan Altima, identifying it to the test device by scanning the vehicle's Vehicle Identification Number (VIN) directly from the vehicle. He could not withdraw or revise the false certificate he already had caused Fire House Smog to issue for the 2016 Nissan Altima, however, because the Bureau's test devices and software offer smog check inspectors no opportunity to withdraw or revise certificates of compliance after completing inspections.

Prior Citations and Disciplinary Actions

11. During his ten-year smog inspection career, Ducut has received two citations from the Bureau.

a. Ducut received a citation in December 2010, for causing issuance of a certificate of compliance in November 2010 to a vehicle that should have failed smog inspection because its ignition timing was adjusted incorrectly.

b. Ducut also received a citation in August 2015, for inspecting a vehicle in April 2015 using an incorrect test device.

12. Reid Ventures has received one citation since beginning to operate Fire House Smog, for Ducut's error described above in Finding 11.b.

13. Between late 2015 and mid-2017, Bornstein was the person responsible for operating and managing a smog check station in Walnut Creek called Smog Repair & Lube. Effective February 7, 2018, the Director of the Department of Consumer Affairs reprovved the license holder for this smog check station (a business organization called Lucy Ventures) because three smog check inspectors there had caused Smog Repair & Lube to issue 10 certificates of compliance between September 2016 and January 2017 for vehicles that no licensed smog inspector actually had inspected.

14. Howell was one of the three inspectors whose actions resulted in the reproval described in Finding 13.

Reid Ventures's Current Business Practices

15. In addition to Fire House Smog, business entities Bornstein controls operate two other smog check stations (Berkeley Smog Test Only Center and Seven

Days a Week Smog). Bornstein no longer owns any interest in the station described in Finding 13 (Smog Repair & Lube), but a business entity he controls bought Seven Days a Week Smog in 2019.

16. Bornstein had no experience or education in the automotive repair or inspection industry before investing in his first smog check station. He holds no personal registrations or licenses with the Bureau.

17. Bornstein's business entities bought the smog check stations described in Finding 15 as going concerns. Both Ducut and Castaneda worked at Fire House Smog before Reid Ventures bought the business.

18. During the eleven-month time period described in Finding 7, inspectors at Fire House Smog performed almost 1,000 smog check inspections each month.

19. Ducut is Fire House Smog's lead inspector. He usually works weekdays, performing 25 to 40 inspections per day.

20. Castaneda usually works at Fire House Smog only on weekends. Some days he performs only a "handful" of inspections but other days he does 20 to 40.

21. At the time the 10 inspections described in Findings 7 through 10 occurred, Bornstein neither actually knew nor reasonably should have known that Howell, Ducut, and Castaneda had caused Fire House Smog to issue certificates of compliance for vehicles that they had not inspected.

22. In July 2017, Bornstein received service of a petition for an interim suspension order regarding Smog Repair & Lube, the business described in Finding 13, alleging in part that Howell had caused that business to issue false certificates of

compliance. Because Howell also worked at Fire House Smog, Bornstein feared that similar inspection errors or fraud might have occurred at Fire House Smog.

23. After receiving service of the petition described in Finding 22, Bornstein conferred with his smog inspection staff at Fire House Smog as well as at Smog Repair & Lube and at Berkeley Smog Test Only Center. He concluded that issuance of a certificate of compliance for a vehicle the inspector had not inspected could result from a smog check inspector's dishonesty, but also could result from a smog check inspector's carelessness. No evidence contradicted this conclusion.

24. After receiving service of the petition described in Finding 22, and as a result of his consultation with the smog check inspectors at his smog check stations, Bornstein made several changes in his businesses' practices. His goal for each of these changes was to discourage both dishonesty and negligence among the smog inspection staff, and to enable Bornstein and other management staff members more readily to identify smog inspection errors and to take appropriate corrective action.

a. Reid Ventures replaced the existing surveillance camera system in the smog inspection area at Fire House Smog with one that permits remote monitoring at all times.

b. Bornstein reviews Vehicle Inspection Reports (VIR's) and invoices from Fire House Smog at least weekly, to ensure that smog check inspectors have recorded customer information for, and charged for, every inspection.

c. Bornstein also spot-checks these VIR's and invoices against the surveillance video, to detect any discrepancies between the vehicles identified on VIR's and the vehicles actually inspected.

d. Reid Ventures receives monthly reports from the Bureau regarding some (but not all) smog inspection errors the Bureau has detected among Reid Ventures's smog check inspectors. Bornstein meets regularly with each inspector to review these reports and to discuss how to avoid repeating similar errors. He occasionally has used surveillance camera video footage in these meetings, permitting both him and the smog check inspector to review an inspection and pinpoint the inspector's error (if any).

e. Each smog check inspector at Fire House Smog has acknowledged the monitoring and review policies described in Findings 24.a through 24.d.

25. The smog inspection device the smog check inspectors at Fire House Smog use most commonly, and that they used for the inspections described in Finding 7, prompts a smog check inspector either to scan the test vehicle for its VIN, or to type the test vehicle's VIN into the software by copying it from a label on the vehicle. The software permits the inspector to skip this step, however, and to rely for vehicle identification solely on documents that accompany the vehicle.

26. Ducut testified credibly that he understands his responsibilities as a smog check inspector to include confirming that any documentation a customer provides to him about a vehicle matches the vehicle the customer has brought to him. The evidence did not establish that Ducut ever has intentionally identified one vehicle to the test device as the test vehicle but then connected a different vehicle to the test device. He has done so through carelessness, however, including as described above in Finding 9.

27. Castaneda also testified credibly that he understands his responsibilities as a smog check inspector to include confirming that any documentation a customer

provides to him about a vehicle matches the vehicle the customer has brought to him. The evidence did not establish that Castaneda ever has intentionally identified one vehicle to the test device as the test vehicle but then connected a different vehicle to the test device. He has done so through carelessness, however, including as described above in Finding 10.

28. Bornstein testified credibly that he has never condoned, let alone encouraged, dishonesty among the smog inspection staff members at the smog check stations his business entities own. He recognizes that his best business strategy for Reid Ventures is to conduct as many smog inspections as possible, but to conduct them carefully and accurately enough to maintain Fire House Smog's STAR Station certification.

References

29. Respondents offered testimony from three witnesses (Jesse Lewis Kent, Damien Rochells, and Kevin McGilbra) who have worked as smog check inspectors for Bornstein's businesses, and who have worked alongside Ducut and Castaneda. These witnesses confirmed that Bornstein has strengthened his supervisory practices since mid-2017, and that he has counseled inspectors specifically to work carefully without cutting corners. These witnesses also confirmed both Ducut's and Castaneda's reputations among Bornstein's businesses' inspection staff as careful, honest smog check inspectors.

30. The previous owner of Fire House Smog, Paul Clifford, testified that he employed both Ducut and Castaneda before selling the business to Reid Ventures. Unlike Bornstein, Clifford also was a smog check inspector and sometimes worked alongside either Ducut or Castaneda in the smog check station. Clifford testified

credibly that both Ducut and Castaneda were careful and professional, and that he had no reason during his business relationship with them to suspect their dishonesty.

31. Reid Ventures offered testimony from three witnesses (Fred Lurmann, Michael Perlis, and Allan McCall) regarding Bornstein's personal character. Each witnesses described Bornstein as an honest person who understands that his or his employees' dishonesty in smog inspection would jeopardize his investment in his smog check station businesses.

Costs

32. Through January 6, 2020, the Bureau had incurred \$19,857.50 in costs for legal services provided to complainant by the Department of Justice in this matter. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivisions (b)(2) and (b)(3). The evidence did not establish that these costs were unnecessary, or unreasonable for the tasks described in the declaration.

LEGAL CONCLUSIONS

First, Second, and Third Causes for Discipline Against Reid Ventures's Registration

1. The Bureau may discipline Reid Ventures's automotive repair dealer registration upon proof that Reid Ventures or any of its employees has made any untrue or misleading statement in the course of business. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) The matters stated in Finding 7 constitute cause for discipline under this statutory subdivision.

2. The Bureau may discipline Reid Ventures's automotive repair dealer registration upon proof that Reid Ventures or any of its employees has committed fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) The matters stated in Findings 7 and 8 constitute cause for discipline under this statutory subdivision.

3. The Bureau may discipline Reid Ventures's automotive repair dealer registration upon proof that Reid Ventures has violated the Automotive Repair Act. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) The violations stated in Legal Conclusions 1 and 2 also constitute cause for discipline against Reid Ventures's registration under this statutory subdivision.

Fourth and Fifth Causes for Discipline Against Reid Ventures's Smog Check Station License

4. The Bureau may discipline any smog check station license upon proof that the licensee or any of its partners, officers, or directors has committed fraud in the smog check program. (Health & Saf. Code, § 44072.2, subd. (d).) Because of the matters stated in Findings 2 and 21, the matters stated in Findings 7 and 8 do not constitute cause for discipline against Reid Ventures under this statute.

5. The Bureau may discipline the smog check station license held by Reid Ventures upon proof that Reid Ventures or any of its partners, officers, or directors has violated any of the laws and regulations governing the smog check program. (Health & Saf. Code, §§ 44072.2, subds. (a), (c).) These laws and regulations require, in pertinent part, that Reid Ventures's licensed smog check station issue certificates of compliance only to vehicles that its inspectors have tested in accordance with the

Bureau's testing specifications. (Health & Saf. Code, §§ 44012, 44015;¹ Cal. Code Regs., tit. 16, §§ 3340.35, subd. (c), 3340.42, subd. (b)(2), 3340.45, subd. (a)(2), 3373.) The matters stated in Finding 7 constitute cause for discipline against Reid Ventures under these statutes and regulations.

Sixth and Seventh Causes for Discipline Against Ducut's Smog Check Inspector License

6. The Bureau may discipline Ducut's smog check inspector license upon proof that Ducut has committed "any act involving dishonesty, fraud, or deceit whereby another is injured."² (Health & Saf. Code, § 44072.2, subd. (d).) The matters stated in Findings 7, 9, and 26 do not constitute cause for discipline against Ducut under this statute.

7. The Bureau may discipline Ducut's smog check inspector license upon proof that Ducut has violated any of the laws and regulations governing the smog check program. (Health & Saf. Code, §§ 44072.2, subds. (a), (c).) These laws and regulations require, in pertinent part, that Ducut conduct inspections in accordance

¹ Complainant alleged that Reid Ventures violated Health and Safety Code sections 44059 and 44072.10 by knowingly issuing false certificates of compliance. The matters stated in Findings 2 and 21 refute this allegation.

² Using the shorthand "fraud," complainant alleged that Health and Safety Code section 44072.2 authorizes discipline for statements "which [Ducut] knew or which by exercise of reasonable care he should have known were untrue or misleading." Statements that are negligently but not deliberately false are not fraud.

with the Bureau's testing specifications. (Health & Saf. Code, §§ 44012, 44032;³ Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a), 3340.41, subd. (c), 3340.42, subd. (b)(2) 3340.45, subd. (a)(2).) The matters stated in Findings 9 and 26 constitute cause for discipline against Ducut under these statutes.

Eighth and Ninth Causes for Discipline Against Castaneda's Smog Check Inspector License

8. The Bureau may discipline Castaneda's smog check inspector license upon proof that Castaneda has committed "any act involving dishonesty, fraud, or deceit whereby another is injured."⁴ (Health & Saf. Code, § 44072.2, subd. (d).) The matters stated in Findings 7, 10, and 27 do not constitute cause for discipline against Castaneda under this statute.

9. The Bureau may discipline Castaneda's smog check inspector license upon proof that Castaneda has violated any of the laws and regulations governing the smog check program. (Health & Saf. Code, §§ 44072.2, subds. (a), (c).) These laws and regulations require, in pertinent part, that Castaneda conduct inspections in accordance with the Bureau's testing specifications. (Health & Saf. Code, §§ 44012,

³ Complainant alleged that Ducut violated Health and Safety Code section 44059 by knowingly causing Fire House Smog to issue false certificates of compliance. The matters stated in Findings 9 and 26 refute this allegation.

⁴ As for Ducut, complainant alleged using the shorthand "fraud" that Health and Safety Code section 44072.2 authorizes discipline for statements "which [Castaneda] knew or which by exercise of reasonable care he should have known were untrue or misleading." Statements that are negligently but not deliberately false are not fraud.

44032;⁵ Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a), 3340.41, subd. (c), 3340.42, subd. (b)(2) 3340.45, subd. (a)(2).) The matters stated in Findings 10 and 27 constitute cause for discipline against Castaneda under these statutes.

Other Matters

10. Upon proof of a course of repeated and willful violations of the laws governing automotive repair dealers, the Bureau may discipline any other automotive repair dealer registrations Reid Ventures⁶ holds. (Bus. & Prof. Code, § 9884.7, subd. (c).) Although the matters stated in Findings 7 through 10 establish repeated violations at Fire House Smog of the laws governing automotive repair dealers, the matters stated in Findings 21 and 28 establish that these violations were not willful on Reid Ventures's part. Moreover, the matters stated in Findings 1 and 2 did not establish that Reid Ventures holds a registration for any other automotive repair facility.

11. If the Bureau disciplines Ducut's smog check inspector license, it also may discipline any other smog check license Ducut holds. (Health & Saf. Code,

⁵ Complainant alleged that Castaneda violated Health and Safety Code section 44059 by knowingly causing Fire House Smog to issue false certificates of compliance. The matters stated in Findings 10 and 27 refute this allegation.

⁶ Complainant alleged that Business and Professions Code section 9884.7, subdivision (c), would authorize discipline against "all places of business operated in this state by" Bornstein. The matters stated in Findings 1 and 2 establish that Reid Ventures, not Bornstein, is a Bureau registrant.

§ 44072.8.) The matters stated in Finding 3 did not establish that Ducut holds any other smog check licenses.

12. If the Bureau disciplines Castaneda's smog check inspector license, it also may discipline any other smog check license Castaneda holds. (Health & Saf. Code, § 44072.8.) The matters stated in Finding 4 did not establish that Castaneda holds any other smog check licenses.

Disciplinary Considerations

13. The matters stated in Findings 7 through 10 and 26 through 28 do not demonstrate that Reid Ventures, Ducut, and Castaneda participated in or condoned deliberate misrepresentations in the smog check program. Complainant did not establish that revocation of any of these respondents' smog check licenses is necessary to protect the smog check program's integrity.

14. At the same time, the matters stated in Findings 7, 9, 10, and 11 did demonstrate that Ducut and Castaneda made careless errors on Reid Ventures's behalf. Although the matters stated in Findings 18 through 20 show that these errors represent only a small fraction of these inspectors' inspections over the relevant time period, these errors reflect significant inattention to inspection detail and imply strongly that both Ducut and Castaneda have made other inattentive errors that the Bureau did not detect.

15. The Bureau has adopted disciplinary guidelines. (Cal. Code Regs., tit. 16, § 3395.4.) These guidelines call for the Bureau to consider mitigation evidence, including "retraining and . . . steps to minimize recurrence." (Guidelines for Disciplinary Orders and Terms of Probation, rev. March 2016, at p. 3.) The matters stated in Findings 23 through 27 describe such steps, and the matters stated in Findings 28

through 31 show that the Bureau reasonably can expect Reid Ventures, Ducut, and Castaneda to comply with any probationary terms. A moderate probation term of three years is appropriate in this matter.

16. The optional probation conditions listed in the Bureau's disciplinary guidelines that might apply to Reid Ventures's automotive repair dealer registration or smog check station license are optional terms 6 and 7.

a. Optional term 6 would prevent Reid Ventures from operating Fire House Smog as a STAR Station, but complainant did not seek this remedy in the accusation and did not give notice to Reid Ventures as the STAR program regulations would require. (See Cal. Code Regs., tit. 16, § 3392.6.1.)

b. Optional term 7 would limit Reid Ventures's ability to delegate supervision of its smog inspectors to others. This term is inappropriate for a licensee that is a corporation or limited liability company, because such a licensee can act only through natural persons as its agents.

17. The optional probation conditions listed in the Bureau's disciplinary guidelines that might apply to Ducut's and Castaneda's smog check inspector licenses are optional terms 3a and 4. These terms are appropriate in this matter.

Costs

18. A licensee found to have committed a violation of the statutes and regulations governing automotive repair may be required to pay the Bureau the reasonable costs of its investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3.) As set forth in Finding 32, the total reasonable costs proven in this matter were \$10,000.

19. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards, to ensure that the board does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.* at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Last, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

20. All of these matters have been considered. Although the evidence in this matter established cause for discipline against Reid Ventures, Ducut, and Castaneda, it did not establish the Bureau's most serious allegations of fraud. Moreover, the Bureau's prosecution costs of nearly \$20,000 represent a grossly excessive use of resources for a matter that is routine for the Bureau and its counsel. Limitation of the Bureau's prosecution cost recovery to \$10,000 is appropriate. Because of their differing positions and responsibilities in the Fire House Smog business, these costs shall be divided among respondents. Ducut shall be responsible for \$1,000; Castaneda shall be responsible for \$500; and Reid Ventures shall be responsible for the remaining \$8,500.

ORDER

1. Automotive Repair Dealer Registration No. ARD 279070, held by respondent Reid Ventures, is revoked. The revocation is stayed, however, and

respondent Reid Ventures is placed on probation for three years on the conditions stated in paragraph 3, below.

2. Smog Check Test Only Station License No. TC 279070, held by respondent Reid Ventures, is revoked. The revocation is stayed, however, and respondent Reid Ventures is placed on probation for three years on the conditions stated in paragraph 3, below.

3. During the three years while Automotive Repair Dealer Registration No. ARD 279070 and Smog Check Test Only Station License No. TC 279070 are on probation, the following conditions shall apply:

A. Obey All Laws

During the period of probation, Reid Ventures shall comply with all federal and state statutes, regulations, and rules governing all Bureau registrations and licenses it holds.

B. Quarterly Reporting

During the period of probation, Reid Ventures shall report either by personal appearance or in writing, as determined by the Bureau on a schedule set by the Bureau but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

C. Report Financial Interests

Reid Ventures shall, within 30 days after the effective date of the decision and within 30 days after the date of any request by the Bureau during the period of

probation, report any financial interest which it or any business partners, officers, or co owners may have in any other business required to be registered under Business and Professions Code section 9884.6.

D. Access to Examine Vehicles and Records

Reid Ventures shall provide unrestricted access to Bureau representatives to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including at the point of completion. Reid Ventures shall also provide Bureau representatives unrestricted access to all records in accordance with Bureau laws and regulations.

E. Tolling of Probation

If, during probation, Reid Ventures leaves the jurisdiction of California to reside or do business elsewhere, or ceases to do business in the jurisdiction of California, Reid Ventures shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All terms and conditions of probation other than cost reimbursement requirements and the requirement that Reid Ventures obey all laws shall be held in abeyance during any period of time of 30 days or longer in which Reid Ventures is not residing or engaging in business within the jurisdiction of California. All terms and conditions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more during which Reid Ventures is not residing or engaging in business within the jurisdiction of California shall not apply to reduce this probationary period. Tolling is not available if business

or work relevant to the probationary license or registration is conducted or performed during the tolling period.

F. Violation of Probation

If Reid Ventures violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in this decision. Once Reid Ventures receives notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

G. Maintain Valid License

Reid Ventures shall, at all times while on probation, maintain current and active registration and license with the Bureau, including during any period while probation is tolled. If Reid Ventures's registration or license expires during the term of probation, by operation of law or otherwise, then upon renewal Reid Ventures's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain current and active registration or license during the period of probation shall also constitute a violation of probation.

H. Cost Recovery

Reid Ventures shall pay the Bureau \$8,500 for the reasonable costs of the investigation and enforcement of Bureau Case Number 79/17-2297. Reid Ventures shall complete such payment six months before the end of the term of probation, in a lump sum or in a payment plan approved by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six

months before the end of the term of probation. Reid Ventures shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for Case Number 79/17-2297. Any order for payment of cost recovery, including any payment schedule, shall remain in effect whether or not probation is tolled. Probation shall not end until full cost recovery payment has been made. The Bureau reserves the right to pursue any lawful measures to collect costs ordered and past due, in addition to taking action based on the violation of probation.

I. Completion of Probation

Upon successful completion of probation, Reid Ventures's automotive repair dealer registration and smog check test only station license will be fully restored or issued without restriction, if Reid Ventures meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

J. License Surrender

Following the effective date of this decision and order, if Reid Ventures ceases business operations or becomes otherwise unable to satisfy the terms and conditions of probation, Reid Ventures may request that the stay be vacated. Any such request shall be made in writing to the Bureau. The Director and the Bureau Chief reserve the right to evaluate any such request and to exercise discretion whether to grant the request or to take any other action that is appropriate and reasonable under the circumstances. Upon formal granting of a request to vacate the stay, the Director will vacate the stay order and carry out the disciplinary order.

Reid Ventures may not petition the Director for reinstatement of the surrendered registration or license, or apply for a new registration or license under the Bureau's jurisdiction, at any time before the date of the originally scheduled completion of probation. If Reid Ventures applies to the Bureau for a registration or license at any time after that date, Reid Ventures must meet all current requirements for registration or licensure and must pay any fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

4. Smog Check Inspector License No. 631156, held by respondent Dominic Bonifacio Ducut, is revoked. The revocation is stayed, however, and respondent Ducut is placed on probation for three years on the conditions stated in paragraph 6, below.

5. Smog Check Inspector License No. 634732, held by respondent Juan M. Castaneda, is revoked. The revocation is stayed, however, and respondent Castaneda is placed on probation for three years on the conditions stated in paragraph 6, below.

6. During the three years while Smog Check Inspector License No. 631156 and Smog Check Inspector License No. 634732 are on probation, the following conditions shall apply:

A. Obey All Laws

During the period of probation, respondents Ducut and Castaneda shall comply with all federal and state statutes, regulations, and rules governing their Bureau registrations and licenses.

B. Quarterly Reporting

During the period of probation, respondents Ducut and Castaneda shall report either by personal appearance or in writing, as determined by the Bureau on a

schedule set by the Bureau but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

C. Report Financial Interests

Respondents Ducut and Castaneda shall, within 30 days after the effective date of the decision and within 30 days after the date of any request by the Bureau during the period of probation, report any financial interests which they or any business partners, officers, or co-owners may have in any other business required to be registered under Business and Professions Code section 9884.6.

D. Access to Examine Vehicles and Records

Respondents Ducut and Castaneda shall provide unrestricted access to Bureau representatives to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including at the point of completion. Respondents Ducut and Castaneda shall also provide Bureau representatives unrestricted access to all records in accordance with Bureau laws and regulations.

E. Tolling of Probation

If, during probation, respondent Ducut or respondent Castaneda leaves the jurisdiction of California to reside or do business elsewhere, or ceases to do business in the jurisdiction of California, he shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All terms and conditions of probation other than cost reimbursement requirements and the requirement to obey all laws shall be held in abeyance during

any period of time of 30 days or longer in which Ducut or Castaneda is not residing or engaging in business within the jurisdiction of California. All terms and conditions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more during which Ducut or Castaneda is not residing or engaging in business within the jurisdiction of California shall not apply to reduce this probationary period. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

F. Violation of Probation

If Ducut or Castaneda violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in this decision. Once Ducut or Castaneda receives notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

G. Maintain Valid License

Respondents Ducut and Castaneda shall, at all times while on probation, maintain current and active registrations and licenses with the Bureau, including during any period while probation is tolled. If a registration or license expires during the term of probation, by operation of law or otherwise, then upon renewal the registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration or license during the period of probation shall also constitute a violation of probation.

H. Cost Recovery

Respondent Ducut shall pay the Bureau \$1,000 for the reasonable costs of the investigation and enforcement of Bureau Case Number 79/17-2297. Respondent Castaneda shall pay the Bureau \$500 for the reasonable costs of the investigation and enforcement of Bureau Case Number 79/17-2297.

Respondents Ducut and Castaneda shall complete these payments six months before the end of the term of probation, in a lump sum or in a payment plan approved by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six months before the end of the term of probation. Respondents shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the checks or money orders that they are for cost recovery payment for Case Number 79/17-2297. Any order for payment of cost recovery, including any payment schedule, shall remain in effect whether or not probation is tolled. Probation shall not end until full cost recovery payment has been made. The Bureau reserves the right to pursue any lawful measures to collect costs ordered and past due, in addition to taking action based on the violation of probation.

I. Completion of Probation

Upon successful completion of probation, respondents' smog check inspector licenses will be fully restored or issued without restriction, if respondents meet all current requirements for registration or licensure and have paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

J. License Surrender

Following the effective date of this decision and order, if respondent Ducut or Castaneda ceases business operations or becomes otherwise unable to satisfy the terms and conditions of probation, that respondent may request that the stay be vacated. Any such request shall be made in writing to the Bureau. The Director and the Bureau Chief reserve the right to evaluate any such request and to exercise discretion whether to grant the request or to take any other action that is appropriate and reasonable under the circumstances. Upon formal granting of a request to vacate the stay, the Director will vacate the stay order and carry out the disciplinary order.

Respondents may not petition the Director for reinstatement of a surrendered registration or license, or apply for a new registration or license under the Bureau's jurisdiction, at any time before the date of the originally scheduled completion of probation. If a respondent applies to the Bureau for a registration or license at any time after that date, the respondent must meet all current requirements for registration or licensure and must pay any fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

K. Training Course

During the period of probation, respondents Ducut and Castaneda each must complete a Bureau-specified and Bureau-approved training course in inspection and diagnosis of emission system failures, applicable to the class(es) of license each respondent holds. Each respondent shall provide proof to the Bureau of enrollment in the course within 30 days after the effective date of this decision, and proof of successful course completion within 180 days after the effective date of this decision. Failure to provide proof of enrollment and completion within these time limits shall

constitute a probation violation, and the respondent in violation shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received..

L. Notification to Employers

When performing services within the scope of a Bureau license during the term of probation, respondents Ducut and Castaneda shall provide each of his current and future employers with a copy of this decision and the accusation in this matter before beginning employment. Notification to current employers must occur no later than the effective date of this decision. Respondents shall submit to the Bureau, upon request, satisfactory proof of compliance with this condition.

DATE: January 31, 2020

DocuSigned by:
Juliet E. Cox
9409C8FCAB7C4CE...
JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
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Attorneys for Complainant

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:

Case No. 79117-2297

13 **FIRE HOUSE SMOG**
14 **REID VENTURES, MITCHEL SCOTT**
15 **BORNSTEIN, PRESIDENT**
2900 Lone Tree Way
16 Antioch, CA 94509

ACCUSATION

17 Automotive Repair Dealer Registration No.
ARD 279070 and Smog Check Station
18 License No. TC 279070

19 and

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

22 Smog Check Inspector License No. EO
633592 (Revoked 2.16.18)

23 and

24 **DOMINIC BONIFACIO DUCUT**
94 Jimno Avenue
25 Pittsburg, CA 94565

26 Smog Check Inspector License No. EO
631156

27 and

28 **JUAN M. CASTANEDA**
1870 Soldier Mountain Court

1 Antioch, CA 94531

2 Smog Check Inspector License No. EO
3 634732

4 Respondent.

5
6
7 Complainant alleges:

8 **PARTIES**

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

11 **Automotive Repair Dealer Registration**

12 2. On or about January 26, 2015, the Bureau of Automotive Repair issued Automotive
13 Repair Dealer Registration Number ARD 279070 to Mitchel Scott Bornstein, President of Reid
14 Ventures, dba Fire House Smog (Respondent). The Automotive Repair Dealer Registration was
15 in full force and effect at all times relevant to the charges brought herein and will expire on
16 January 31, 2019, unless renewed.

17 **Smog Check Station License**

18 3. On or about February 6, 2015, the Bureau of Automotive Repair issued Smog Check
19 Station License Number TC 279070 to Mitchel Scott Bornstein, President of Reid Ventures, dba
20 Fire House Smog (Respondent). The Smog Check Station License was in full force and effect at
21 all times relevant to the charges brought herein and will expire on January 31, 2019, unless
22 renewed.

23 **Star Station Certification**

24 4. On or about April 20, 2015, the Bureau of Automotive Repair issued a STAR Station
25 Certificate to Mitchel Scott Bornstein, President of Reid Ventures, dba Fire House Smog
26 (Respondent). The Star Station Certificate was in full force and effect at all times relevant to the
27 charges brought herein.

28 / /

1 **Smog Check Technician License**

2 5. On September 8, 2011, Advanced Emissions Specialist (EA) Technician License No.
3 633592 was issued to Randy Lee Howell, under SB 1997, the biennial Smog Check Program
4 implemented January 1, 1990. License number EA 633592 was due to expire on January 31,
5 2014, however, was cancelled on January 27, 2014. Pursuant to California Code of Regulations,
6 title 16, section 3340.28, subdivision (e)¹, said license was renewed pursuant to Randy Lee
7 Howell's election as a Smog Check Inspector (EO) License No. 633592, effective January 27,
8 2014. The Smog Check Inspector License was in full force and effect at all times relevant to the
9 charges brought herein and expired on January 21, 2018. The license was revoked on February
10 16, 2018.

11 **Smog Check Technician License**

12 6. On July 9, 2009, Advanced Emissions Specialist (EA) Technician License No.
13 631156 was issued to Dominic Bonifacio Ducut, under SB 1997, the biennial Smog Check
14 Program implemented January 1, 1990. License number EA 631156 was due to expire on
15 September 30, 2013, however was cancelled on September 12, 2013. Pursuant to California
16 Code of Regulations, title 16, section 3340.28, subdivision (e), said license was renewed pursuant
17 to Dominic Bonifacio Ducut's election as Smog Check Inspector (EO) License No. 631156,
18 effective September 12, 2013. The Smog Check Technician License was in full force and effect at
19 all times relevant to the charges brought herein and will expire on September 30, 2019, unless
20 renewed.

21 **Smog Check Technician License**

22 7. On September 6, 2012 Advanced Emissions Specialist (EA) Technician License No,
23 634732 was issues to Juan M. Castaneda, under SB 1997, the biennial Smog Check Program
24 implemented January 1, 1990. License number EA 634732 was due to expire on May 31, 2014,
25 however was cancelled on May 28, 2014. Pursuant to California code of Regulations, title 16,

26 _____
27 ¹ Effective August 1, 2012, an Amendment to Sections 3340.28, 3340.29 and 3340.30, of
28 Article 2, Chapter, Division 33, title 16, CCR implemented a License restructure of Smog Check
 Technician (EA/EB) license types to Smog Check Inspector (EO) license and Smog Check Repair
 Technician (EI) license.

1 section 3340.28, subdivision (e), said license was renewed pursuant to Juan M. Castaneda's
2 election as Smog Check Inspector (EO) License No. 632732, effective May 28, 2014. The Smog
3 Check Inspector License was in full force and effect at all times relevant to the charges brought
4 herein and will expire on May 31, 2020, unless renewed.

5 JURISDICTION

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

9 STATUTORY PROVISIONS

10 9. Section 9884.7 of the Code states:

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

16 / /

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

20 . . .

21 (4) Any other conduct which constitutes fraud.

22 . . .

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

25 10. Section 44012 of the Health and Safety Code states:

26 "The test at the smog check stations shall be performed in accordance with procedures
27 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
28

1 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
2 and shall ensure all of the following:

3 "(a) Emission control systems required by state and federal law are reducing excess
4 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
5 Section 44013.

6 "(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
7 the vehicle's emission control system.

8 "(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
9 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
10 mode are tested in accordance with procedures prescribed by the department. In determining
11 how loaded mode and evaporative emissions testing shall be conducted, the department shall
12 ensure that the emission reduction targets for the enhanced program are met.

13 "(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
14 crankcase ventilation system are tested to reduce any no exhaust sources of volatile organic
15 compound emissions, in accordance with procedures prescribed by the department.

16 "(e) For diesel-powered vehicles, if the department determines that the inclusion of those
17 vehicles is technologically and economically feasible, a visual inspection is made of emission
18 control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in
19 accordance with procedures prescribed by the department. The test may include testing of
20 emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of
21 applicable standards, measurement of emissions of smoke or particulates, or both.

22 "(f) A visual or functional check is made of emission control devices specified by the
23 department, including the catalytic converter in those instances in which the department
24 determines it to be necessary to meet the findings of Section 44001. The visual or functional
25 check shall be performed in accordance with procedures prescribed by the department.

26 "(g) A determination as to whether the motor vehicle complies with the emission standards
27 for that vehicle's class and model-year as prescribed by the department.

28

1 "(h) The test procedures may authorize smog check stations to refuse the testing of a
2 vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the
3 department by regulation. The refusal to test a vehicle for those reasons shall not excuse or
4 exempt the vehicle from compliance with all applicable requirements of this chapter."

5 11. Section 44015 of the Health and Safety Code states:

6 "(a) A licensed smog check station shall not issue a certificate of compliance, except as
7 authorized by this chapter, to any vehicle that meets the following criteria:

8 "(1) A vehicle that has been tampered with.

9 "(2) A vehicle that, prior to repairs, has been initially identified by the smog check station
10 as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated
11 test-only facility, or a test-and-repair station that is both licensed and certified pursuant to
12 Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph
13 (B) of paragraph (2) of subdivision (g) of Section 44014.5.

14 "(3) A vehicle described in subdivision (c).

15 "(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
16 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

17 ...

18 12. Section 44032 of the Health and Safety Code states:

19 No person shall perform, for compensation, tests or repairs of emission control devices or
20 systems of motor vehicles required by this chapter unless the person performing the test or repair
21 is a qualified smog check technician and the test or repair is performed at a licensed smog check
22 station. Qualified technicians shall perform tests of emission control devices and systems in
23 accordance with Section 44012.

24 13. Section 44059 of the Health and Safety Code states:

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

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 3340.30, states:

"A smog check technician shall comply with the following requirements at all times while licensed.

"(a) A licensed technician shall inspect, test and repair vehicles 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.

15. California Code of Regulations, title 16, section 3340.35, states:

"(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. The following conditions shall apply:

16. California Code of Regulations, title 16, section 3340.41, states:

"(c) 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.

17. California Code of Regulations, title 16, section 3340.42, states:

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

1 (1) A visual inspection of emission control components and systems to verify the vehicle's
2 emission control systems are properly installed.

3 (2) A functional inspection of emission control systems as specified in the Smog Check
4 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
5 operation.

6 . . .

7 18. California Code of Regulations, title 16, section 3340.45, states:

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

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

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

14 19. California Code of Regulations, title 16, section 3373, states:

15 "No automotive repair dealer or individual in charge shall, in filling out an estimate,
16 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
17 withhold therefrom or insert therein any statement or information which will cause any such
18 document to be false or misleading, or where the tendency or effect thereby would be to mislead
19 or deceive customers, prospective customers, or the public."

20 21 COSTS

22 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.

28 / /

FACTUAL BACKGROUND

21. On February 14, 2017, a Bureau representative initiated an investigation into Fire House Smog's smog check inspection practices. OIS Test Data was reviewed and compared to abnormalities in the data to similar vehicles tested statewide. It was found that Respondent Fire House Smog issued fraudulent Smog Check Certificates to certain vehicles. For purposes of the investigation and report, the following data was referenced: DMV VIN – VIN of the vehicle entered or scanned by the Smog Check Inspectors; Cert ID – Smog Check Certificate number issues; eVIN – Digitally stored VIN in the vehicle PCM and identified by the OIS; Protocol – the "type" of communication that was established with the vehicle by the OIS; PID Count – the number of Parameter Identification (PID's) available from the vehicle computer(s) used for diagnostic data received by the OIS; Similar Vehicle OIS Test Data – Data for similar vehicles is derived and compiled from tests conducted statewide on vehicles that have specific matching VIN characters.

22. The investigation determined that Respondent Fire House Smog issued ten (10) fraudulent Smog Check Certificates of Compliance using Clean Plugging methods to the following vehicles as listed below:^{2 3}

Clean Plug One – December 29, 2015

Certificate # YV363123C	eVin	Protocol	PID Count
Pass Inspection 12.29.15	1D7HA18206S624699	ICAN11bt500	44/8
Expected Value ⁴	4T1BK36B27U240470	ICAN11bt5	46

² Clean piping refers to using another vehicle's clean tail pipe emissions and RPM for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance and/or not present for testing.

³ Clean plugging refers to using another vehicle's properly functioning On Board Diagnostic, generation II, (OBDII) system or using another source to generate passing diagnostic readings for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance and/or not present for testing.

⁴ "Expected Value" is the value recorded for "like vehicles" inspected.

Clean Plug Two – January 31, 2016

Certificate # YX379006C	eVin	Protocol	PID Count
Passing Insp. 1.31.16	Not Reported	I9140808	20
Expected Value	1HGCM66536A028614	I914	24

Clean Plug Three – May 28, 2016

Certificate # ZF054085C	eVin	Protocol	PID Count
Passing Insp. 5.28.16	JTDKN3DU6A0133131	ICAN11bt500	39/24
Expected Value	JTDKB20U967078889	ICAN11bt5	38/21/5 or 38/21/17

Clean Plug Four – June 28, 2016

Certificate # QC918166C	eVin	Protocol	PID Count
Passing Insp. 6.28.16	2C3LA63H96H453928	ICAN11bt500	43/6
Expected Value	3GNDA33P27S559567	ICAN11bt5	38 or 38/7

Clean Plug Five – September 14, 2016

Certificate # QE119097C	eVin	Protocol	PID Count
Passing Insp. 9.14.16	Not Reported	ICAN11bt500	10/3/1
Expected Value	1GC4K0E8XFF108562	ICAN11bt5	50/5/6 or 50/6/6

Clean Plug Six – October 8, 2016

Certificate # QE989306C	eVin	Protocol	PID Count
Passing Insp. 10.8.16	KMH DN56D66U199868	KWPF8FEF	17/1
Expected Value	Not Reported	I914	16 or 16/1

Clean Plug Seven – October 15, 2016

Certificate #	eVin	Protocol	PID Count
Passing Insp. 10.15.16	2GCEK19T821381056	JVPW1850	22
Expected Value	1GNES13H072165978	ICAN11bt5	43/7

Clean Plug Eight – October 22, 2016

Certificate #	eVin	Protocol	PID Count
Passing Insp. 10.22.16	1FMRU15W14LA75384	JPWM1850	22
Expected Value	1FAFP48YX3F333482	JPWM	21 or 23

Clean Plug Nine – October 22, 2016

Certificate #	eVin	Protocol	PID Count
Passing Insp. 10.22.16	WBAEV53484KM33138	19140808	22/1
Expected Value	WBANB33565CN65204	KWPF	22/7

Clean Plug Ten – November 20, 2016

Certificate #	eVin	Protocol	PID Count
Passing Insp. 11.20.16	1N4AL11D76N437370	19140808	18
Expected Value	1N4AL3AP9GC242423	ICAN11bt5	39/16

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements - Registration)

23. Respondent Fire House Smog has subjected its registration to discipline under section 9884.7, subdivision (a)(1), in that Respondent Fire House Smog made statements which were untrue or misleading, in that Respondent fraudulently purported to test the ten (10) vehicles, and certified that the ten (10) vehicles passed inspection and were following applicable laws and

1 regulations. In fact, Respondent conducted the inspections on those vehicles using clean plugging
2 methods.

3
4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud - Registration)**

6 24. Respondent Fire House Smog has subjected its registration to discipline under section
7 9884.7, subdivision (a)(4), in that Respondent Fire House Smog committed acts which constitute
8 fraud, in that Respondent fraudulently purported to test the ten (10) vehicles, and certified that the
9 ten (10) vehicles passed inspection and were in compliance with applicable laws and regulations.
10 In fact, Respondent conducted the inspections on those vehicles using clean plugging methods.

11
12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Automotive Repair Act)**

14 25. Respondent Fire House Smog has subjected its registration to discipline under section
15 9884.7, subdivision (a)(6), in that Respondent Fire House Smog failed to comply with provisions
16 of the chapter and regulations when it issued ten (10) fraudulent certificates of compliance on
17 vehicles which had been clean plugged.

18
19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 26. Respondent Fire House Smog has subjected its license to discipline under section
22 44072.2, in that he made statements which he knew or which by exercise of reasonable care he
23 should have known were untrue or misleading in that Respondent fraudulently purported to test
24 ten (10) vehicles, and certified that ten (10) vehicles passed inspection and were in compliance
25 with applicable laws and regulations. In fact, Respondent conducted the inspections on those
26 vehicles using clean plugging methods.

27 / /

28 / /

FIFTH CAUSE FOR DISCIPLINE

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

27. Respondent Fire House Smog has subjected its station license to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that Respondent violated sections of that Code and applicable regulations, as follows:

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

b. **Section 44012 (f):** Respondent Fire House Smog failed to perform a visual and/or functional check of required equipment.

c. **Section 44015 (b):** Respondent Fire House Smog issued a Certificate of Compliance to a vehicle that did not meet the requirements of section 44102.

d. **Section 44059:** Respondent Fire House Smog knowingly made a false statement resulting in the issuance of ten (10) fraudulent Certificates of Compliance to ten (10) vehicles.

e. **Section 3340.35(c):** Respondent Fire House Smog failed to inspect vehicles in accordance with section 3340.42 and issued fraudulent Certificates of Compliance to vehicles that were not connected to the BAR-OIS when they were being certified.

f. **Section 3340.42(b)(2):** Respondent Fire House Smog failed to conduct tests on the ten (10) vehicles in accordance with the BAR Onboard Inspections System Specifications.

g. **Section 3340.45(a)(2):** Respondent Fire House Smog failed to perform smog check inspections in accordance with requirements and procedures prescribed in the Smog Check Inspection Manual.

h. **Section 3373:** Respondent Fire House Smog created false records when they issued ten (10) fraudulent Certificated of Compliance.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 28. Respondent Duct has subjected his Smog Check Technician license to discipline
4 under section 44072.2, in that he made statements which he knew or which by exercise of
5 reasonable care he should have known were untrue or misleading in that Respondent fraudulently
6 purported to test ten (10) vehicles, and certified that ten (10) vehicles passed inspection and were
7 in compliance with applicable laws and regulations. In fact, Respondent conducted the
8 inspections on those vehicles using clean plugging methods.

9
10 SEVENTH CAUSE FOR DISCIPLINE

11 (Violation of the Motor Vehicle Inspection Program)

12 29. Respondent Ducut has subjected his license to discipline under Health and Safety
13 Code sections 44012 in that he violated sections of that Code and applicable regulations, as
14 follows:

15 a. Section 44012(f): Respondent Ducut failed to perform a visual and/or functional
16 check of the required equipment when he failed to connect four (4) Vehicles to the BAR-OIS at
17 the time they were certified.

18 b. Section 44032: Respondent Ducut failed to inspect, test or repair vehicles in
19 accordance with section 44012 when she failed to connect four (4) vehicles to the BAR-OIS at
20 the time they were certified.

21 c. Section 44059: Respondent Ducut knowingly made a false statement resulting in
22 the issuance of twenty-nine fraudulent Certificates of Compliance to four (4) vehicles.

23 d. Section 3340.30(a): Respondent Ducut failed to follow test procedures when he
24 failed to connect four (4) vehicles to the Bar 97 EIS or the BAR-OIS for inspection.

25 e. Section 3340.41(c): Respondent Ducut entered into the test analyzer system vehicle
26 identification and test or emission system information for a vehicle other than the one being tested
27 when she entered false information regarding the vehicles being tested.

1 f. **Section 3340.42(b)(2):** Respondent Ducut failed to conduct tests on the four (4)
2 vehicles in accordance with the BAR Onboard Inspections System Specifications.

3 g. **Section 3340.45(a)(2):** Respondent Ducut failed to perform smog check inspections in
4 accordance with requirements and procedures prescribed in the Smog Check Inspection Manual.
5

6 **EIGHTH CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 30. Respondent Castaneda has subjected his license to discipline under section 44072.2 in
9 that he made statements which he knew or which by exercise of reasonable care he should have
10 known were untrue or misleading in that Respondent fraudulently purported to test two (2)
11 vehicles, and certified that two (2) vehicles passed inspection and were in compliance with
12 applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles
13 using clean plugging methods.
14

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Violation of the Motor Vehicle Inspection Program)**

17 31. Respondent Castaneda has subjected his license to discipline under Health and Safety
18 Code sections 44012 in that he violated sections of that Code and applicable regulations, as
19 follows:

20 a. **Section 44012(f):** Respondent Castaneda failed to perform a visual and/or functional
21 check of the required equipment when he failed to connect two (2) Vehicles to the BAR-OIS at
22 the time they were certified.

23 b. **Section 44032:** Respondent Castaneda failed to inspect, test or repair vehicles in
24 accordance with section 44012 when she failed to connect two (2) vehicles to the BAR-OIS at the
25 time they were certified.

26 c. **Section 44059:** Respondent Castaneda knowingly made a false statement resulting
27 in the issuance of twenty-nine fraudulent Certificates of Compliance to two (2) vehicles.
28

1 d. **Section 3340.30(a):** Respondent Castaneda failed to follow test procedures when he
2 failed to connect four (4) vehicles to the Bar 97 EIS or the BAR-OIS for inspection.

3 e. **Section 3340.41(c):** Respondent Castaneda entered into the test analyzer system
4 vehicle identification and test or emission system information for a vehicle other than the one
5 being tested when she entered false information regarding the vehicles being tested.

6 f. **Section 3340.42(b)(2):** Respondent Castaneda failed to conduct tests on the two (2)
7 vehicles in accordance with the BAR Onboard Inspections System Specifications.

8 g. **Section 3340.45(a)(2):** Respondent Castaneda failed to perform smog check
9 inspections in accordance with requirements and procedures prescribed in the Smog Check
10 Inspection Manual.

11
12 **OTHER MATTERS**

13 32. Under Business and Professions Code section 9884.7, subdivision (c), the Director
14 may suspend, revoke, or place on probation the registration for all places of business operated in
15 this state by Mitchel Scott Bornstein upon a finding that Mitchell Scott Bornstein engaged in a
16 course of repeated and willful violations of the laws and regulations pertaining to an automotive
17 repair dealer.

18 33. Under Health and Safety Code section 44072.8, if Dominic Bonifacio Ducut's smog
19 check inspector license is revoked or suspended, any additional license issued under Chapter 5,
20 Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the
21 Director.

22 34. Under Health and Safety Code section 44072.8, if Juan M. Castaneda's smog check
23 inspector license is revoked or suspended, any additional license issued under Chapter 5, Part 5,
24 Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

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PRIOR CITATIONS

35. To determine the degree of penalty, if any to be imposed upon Respondent, Complainant alleges as follows:

a. On August 26, 2015, the Bureau issued Citation No. C2015-1637 to Respondent Fire House Smog against the Smog Check Station License for violations of Health and Safety Code section 44012, (Failure to perform smog inspection in accordance with procedures prescribed by the department) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle using a BAR97 Emission Inspection System (EIS) when use of an OBD Inspection System (OIS) was required. The Bureau assessed a penalty of Order of Abatement. August 26, 2015, the Bureau issued Citation No. M2015-1638 to Respondent Ducut against his Smog Check Technician License for violations of Health and Safety Code section 44012, subdivision (f) (Failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.5, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle using a BAR97 Emission Inspection System (EIS) when use of an OBD Inspection System (OIS) was required. The Bureau issued an Order of Abatement. A Citation Conference was held on September 14, 2015. The Citation is now final.

b. On December 3, 2010, the Bureau issued Citation No. M2011-0670 to Respondent Ducut against his Smog Check Technician License for violations of Health and Safety Code section 44012, subdivision (f) (Failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.5, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with ignition timing adjusted beyond specification. The Bureau assessed an 8 Hour Training Course. A Citation Service Conference was held on December 23, 2010. The Citation is now final.

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

DATED: August 14, 2018 Patrick Dorais

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2017203746