

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

In the Matter of the Accusation Against:

JAMES ROBERT MITCHELL, OWNER,
dba JIM'S SMOG CENTER
5825 E. Imperial Hwy
South Gate, CA 90280-7623

Automotive Repair Dealer Reg. No.
ARD 117271
Smog Check, Test Only, Station License
No. TC 117271
Smog Check Inspector License No.
EO 100240

Respondents.

Case No. 79/14-136

OAH Case No. LA2014080124

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

April 1, 2015

DATED:

March 13, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
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Attorneys for Complainant
7

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

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11 In the Matter of the Accusation Against:
12 **JAMES ROBERT MITCHELL, OWNER,**
dba JIM'S SMOG CENTER
13 5825 E. Imperial Hwy
South Gate, CA 90280-7623
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15 Automotive Repair Dealer Reg. No. ARD
117271
16 Smog Check, Test Only, Station License No.
TC 117271
17 Smog Check Inspector License No. EO 100240
18 Respondents.

Case No. 79/14-136
OAH Case No. LA2014080124
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 PARTIES

- 22 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair,
23 Department of Consumer Affairs, State of California (the Bureau). He brought this action solely
24 in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of
25 the State of California, by Helene E. Swanson, Deputy Attorney General.
- 26 2. Respondent James Robert Mitchell dba Jim's Smog Center (Respondent) is
27 represented in this proceeding by attorney Michael B. Levin, Esq., whose address is: 3727
28 Camino del Rio South, Suite 200, San Diego, CA 92108.

1 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
2 shall not be disqualified from further action by having considered this matter.

3 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
5 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 117271
17 and Smog Check, Test Only, Station License No. TC 117271, issued to Respondent James Robert
18 Mitchell dba Jim's Smog Center, and Smog Check Inspector EO License No. 100240 issued to
19 James Robert Mitchell (Respondent) are revoked. However, the revocation is stayed and
20 Respondent is placed on probation for three (3) years on the following terms and conditions:

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

23 2. **Reporting.** Respondent or Respondent's authorized representative must report in
24 person or in writing as prescribed by the Bureau, on a schedule set by the Bureau, but no more
25 frequently than each quarter, on the methods used and success achieved in maintaining
26 compliance with the terms and conditions of probation.

27 3. **Report Financial Interest.** Within 30 days of the effective date of this action, report
28 any financial interest which any partners, officers, or owners of the Respondent facility may have

1 in any other business required to be registered pursuant to Section 9884.6 of the Business and
2 Professions Code.

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

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

9 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
10 Respondent has failed to comply with the terms and conditions of probation, the Department may,
11 after giving notice and opportunity to be heard suspend or revoke Automotive Repair Dealer
12 Registration No. ARD 117271, Smog Check, Test Only, Station License No. TC 117271, and
13 Smog Check Inspector EO License No. 100240.

14 7. **Continuing Education Course.** Respondent shall attend and successfully complete
15 the 68-hour Basic Clean Air Car Course training course. Said course shall be completed and
16 proof of completion submitted to the Bureau within 60 days of the effective date of this decision
17 and order. If proof of completion of the course is not furnished to the Bureau within the 60-day
18 period, Respondent's Smog Check Inspector EO License shall be immediately suspended until
19 such proof is received.

20 8. **Cost Recovery.** Respondent agrees to pay \$6,022.53 in costs to the Bureau, which is
21 seventy-five percent (75%) of the Bureau's total costs of investigation and prosecution of
22 \$8,030.05. Said amount shall be paid in 24 equal monthly payments, to be paid in full no later
23 than 12 months before probation terminates. Failure to complete payment of cost recovery within
24 this time frame shall constitute a violation of probation which may subject Respondent's
25 automotive repair dealer registration, Smog Check, Test Only, Station License and Smog Check
26 Inspector License to outright revocation; however, the Director or the Director's Bureau designee
27 may elect to continue probation until such time as reimbursement of the entire cost recovery
28 amount has been made to the Bureau.

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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: January 26, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General



HELENE E. SWANSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-136

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
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3 HELENE E. SWANSON
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9 **BEFORE THE**
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10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *79/14-136*

13 **JIMS SMOG CENTER**
JAMES ROBERT MITCHELL, OWNER
14 **5825 E. Imperial Highway**
South Gate, CA 90280
15 **Automotive Repair Dealer Reg. No. ARD 117271**
Smog Check, Test Only, Station License No.
16 **TC 117271**

ACCUSATION

17 and

18 **JAMES ROBERT MITCHELL**
5825 E. Imperial Highway
19 **South Gate, CA 90280**
Smog Check Inspector License No. EO 100240
20 **(formerly Advanced Emission Specialist**
Technician License No. EA 100240)

21 Respondents.

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23 Complainant alleges:

24 **PARTIES**

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

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

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

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

....

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

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

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

REGULATORY PROVISIONS

14. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c), states: "The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance."

15. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article."

16. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check 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."

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1 17. CCR, title 16, section 3340.41, subdivision (c), provides:

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

6 18. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
7 procedures which apply to all vehicles inspected in the State of California.

8 19. CCR, title 16, section 3340.28, subdivision (e), states that "[u]pon renewal of an
9 unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license
10 issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog
11 Check Inspector, Smog Check Repair Technician, or both."

12 **COST RECOVERY**

13 20. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
14 the administrative law judge to direct a licensee found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 **UNDERCOVER OPERATION: 1999 TOYOTA**

18 21. On or about November 5, 2013, an undercover operator with the Bureau ("operator")
19 took the Bureau's 1999 Toyota to Respondent's facility and requested a smog inspection. Missing
20 from the Bureau-documented vehicle was the EGR valve. The operator signed a work order, and
21 received an estimate copy. After the inspection was completed, the operator paid the facility \$72
22 and received copies of invoice [REDACTED] and a vehicle inspection report (VIR). The vehicle
23 inspection report indicated that the vehicle passed the inspection, resulting in the issuance of
24 electronic smog Certificate of Compliance No. [REDACTED] and that Respondent conducted the
25 inspection.

26 22. After completion of the undercover operation, on or about November 5, 2013, the
27 Bureau re-inspected the vehicle and found that the EGR valve on the vehicle was still missing.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 23. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
5 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows:

7 a. Respondent certified that the Bureau's 1999 Toyota had passed the smog inspection
8 and was in compliance with applicable laws and regulations. In fact, the EGR valve on the
9 vehicle was missing. As such, the vehicle would not pass the inspection required by Health &
10 Saf. Code section 44012.

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 24. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
14 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes
15 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the
16 Bureau's 1999 Toyota without performing a bona fide inspection of the emission control devices
17 and systems on the vehicle, thereby depriving the People of the State of California of the
18 protection afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

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

21 25. Respondent's smog check station license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
23 following sections of that Code:

24 a. **Section 44012, subdivision (f)**: Respondent failed to perform the functional tests of
25 the emission control systems and devices on the Bureau's 1999 Toyota in accordance with
26 procedures prescribed by the department.

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28 ///

1 of the emission control systems and devices on the Bureau's 1999 Toyota in accordance with
2 procedures prescribed by the department.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant**
5 **to the Motor Vehicle Inspection Program)**

6 29. Respondent's technician license is subject to disciplinary action pursuant to Health &
7 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
8 of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
10 1999 Toyota in accordance with Health & Saf. Code sections 44012 and 44035, and California
11 Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
13 Bureau's 1999 Toyota in accordance with the Bureau's specifications.

14 **EIGHTH CAUSE FOR DISCIPLINE**

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

16 30. Respondent's technician license is subject to disciplinary action pursuant to Health &
17 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent,
18 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
19 for the Bureau's 1999 Toyota without performing a bona fide inspection of the emission control
20 devices and systems on the vehicle, thereby depriving the People of the State of California of the
21 protection afforded by the Motor Vehicle Inspection Program.

22 **MATTERS IN AGGRAVATION**

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

25 a. On or about October 18, 2010, the Bureau issued Citation No. C2011-0468 against
26 Respondent, in his capacity as owner of Jims Smog Center, for violations of Health & Saf. Code
27 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
28 devices according to procedures prescribed by the department); and California Code of

1 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
2 compliance to a vehicle with a missing PCV system). On or about September 20, 2010,
3 Respondent issued a certificate of compliance to a Bureau undercover vehicle with a missing
4 Positive Crankcase Ventilation (PCV) system. The Bureau assessed civil penalties totaling \$1000
5 against Respondent for the violations. Respondent paid the fine on August 24, 2011.

6 b. On or about May 16, 2011, the Bureau issued Citation No. C2011-1337 against
7 Respondent, in his capacity as owner of Jims Smog Center, for a violation of Health & Saf. Code
8 section 44012, subdivision (f) (failure to determine that emission control devices and systems
9 required by State and Federal law are installed and functioning correctly in accordance with test
10 procedures). On or about May 3, 2011, Respondent issued a certificate of compliance to a Bureau
11 undercover vehicle with a missing fuel evaporative canister. The Bureau assessed civil penalties
12 totaling \$1,500 against Respondent for the violations. Respondent paid the fine on March 13,
13 2012.

14 c. On or about October 20, 2011, the Bureau issued Citation No. C2012-0318 against
15 Respondent, in his capacity as owner of Jims Smog Center, for violation of Health & Saf. Code
16 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
17 devices according to procedures prescribed by BAR.) On or about September 14, 2011,
18 Respondent issued a certificate of compliance to a Bureau undercover vehicle with the ignition
19 timing adjusted beyond manufacturer specifications. The Bureau assessed civil penalties totaling
20 \$1,500 against Respondent for the violations. Respondent paid the fine on March 13, 2012.

21 d. On or about October 18, 2010, the Bureau issued Citation No. M2011-0469 against
22 Respondent as to his technician license for violations of Health & Saf. Code sections 44032
23 (qualified technicians shall perform tests of emission control systems and devices in accordance
24 with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified
25 technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections
26 44012 and 44035 and Regulation 3340.42). On or about September 20, 2010, Respondent had
27 issued a certificate of compliance to a Bureau undercover vehicle with a missing Positive
28 Crankcase Ventilation (PCV) system. Respondent was directed to complete an 8-hour training

1 course and to submit proof of completion to the Bureau within 30 days from receipt of the
2 citation. Respondent completed the training on November 16, 2010.

3 e. On or about May 16, 2011, the Bureau issued Citation No. M2011-1338 against
4 Respondent as to his technician license for violation of Health & Saf. Code section 44032
5 (qualified technicians shall perform tests of emission control systems and devices in accordance
6 with Health & Saf. Code section 44012). On or about May 3, 2011, Respondent had issued a
7 certificate of compliance to a Bureau undercover vehicle with a missing fuel evaporative
8 cannister. Respondent was directed to complete a 16-hour training course and to submit proof of
9 completion to the Bureau within 30 days from receipt of the citation. Respondent completed the
10 training on February 20, 2012.

11 f. On or about October 20, 2011, the Bureau issued Citation No. M2012-0319 against
12 Respondent as to his technician license for violation of Health & Saf. Code section 44032
13 (qualified technicians shall perform tests of emission control systems and devices in accordance
14 with Health & Saf. Code section 44012). On or about September 14, 2011, Respondent issued a
15 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
16 manufacturer specifications. Respondent was directed to complete a 68-hour Basic Clean Air Car
17 Course with proof of completion submitted to BAR and that he shall perform no smog inspection
18 or repair until training is completed. Respondent completed the training on February 17, 2012.

19 **OTHER MATTERS**

20 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
21 suspend, revoke, or place on probation the registration for all places of business operated in this
22 state by Respondent James Robert Mitchell, owner of Jims Smog Center, upon a finding that
23 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
24 regulations pertaining to an automotive repair dealer.

25 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
26 License Number TC 11727t, issued to Respondent James Robert Mitchell, owner of Jims Smog
27 Center, is revoked or suspended, any additional license issued under this chapter in the name of
28 said licensee may be likewise revoked or suspended by the director.

1 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
2 ("technician license") Number EO 100240 (prviously EA 100240), issued to Respondent James
3 Robert Mitchell, is revoked or suspended, any additional license issued under this chapter in the
4 name of said licensce may be likewise revoked or suspended by the director.

5 PRAYER

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

- 8 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
9 117271, issued to James Robert Mitchell, owner of Jims Smog Center;
- 10 2. Revoking or suspending any other automotive repair dealer registration issued to
11 James Robert Mitchell;
- 12 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
13 117271, issued to James Robert Mitchell, owner of Jims Smog Center;
- 14 4. Revoking or suspending Smog Check Inspector License Number EO 100240
15 (previously EA 100240), issued to James Robert Mitchell;
- 16 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of James Robert Mitchell;
- 18 6. Ordering James Robert Mitchell, individually, and as owner of Jims Smog Center, to
19 pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of
20 this case, pursuant to Business and Professions Code section 125.3; and
- 21 7. Taking such other and further action as deemed necessary and proper.

22
23 DATED: May 30, 2014

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

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