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

12 In the Matter of the Petition to Revoke Probation
13 Against,

Case No. **79/15-83**

14 **XSMOG, INC., dba XSMOG,**
15 **TAI TAN HO, President and Secretary,**
16 **TAO TOM HO, Vice President and Treasurer**
4645 University Avenue
San Diego, CA 92105

PETITION TO REVOKE PROBATION

17 Automotive Repair Dealer Registration No.
ARD 225965
18 Smog Check-Test Only Station License No.
TC 225965

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

23 1. Patrick Dorais (Complainant) brings this Petition to Revoke Probation solely in
24 his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer
25 Affairs.

26 2. On February 24, 2003, the Bureau of Automotive Repair (BAR) issued
27 Automotive Repair Dealer Registration Number ARD 225965 to XSMOG, Inc., doing business
28 as XSMOG, with Tai Tan Ho, as President and Secretary, and Tao Tom Ho, as Vice President

1 and Treasurer (Respondent). The Automotive Repair Dealer Registration expired on January 31,
2 2013, and has not been renewed.

3 3. On March 20, 2003, the BAR issued Smog Check-Test Only Station License
4 Number TC 225965 to Respondent. The Smog Check-Test Only Station License expired on
5 January 31, 2013, and has not been renewed.

6 **PRIOR DISCIPLINARY ACTION**

7 4. In a disciplinary action entitled "In the Matter of the Accusation Against
8 XSMOG, Inc.," Case No. 79/10-68, the Director of Consumer Affairs (Director), adopted a
9 decision, effective May 11, 2012, in which Respondent's Automotive Repair Dealer Registration
10 No. ARD 225965 and Smog Check Test Only Station License No. TC 225965 were revoked.
11 However, the revocation was stayed and Respondent's Automotive Repair Dealer Registration
12 and Smog Check Test Only Station License were placed on probation for a period of three years
13 with certain terms and conditions. A copy of that decision is attached as Exhibit A and is
14 incorporated by reference.

15 **JURISDICTION**

16 5. This Petition to Revoke Probation is brought before the Director under the
17 authority of the following laws. All section references are to the Business and Professions Code
18 (Code) unless otherwise indicated.

19 6. Code section 118, subdivision (b) states:

20 The suspension, expiration, or forfeiture by operation of law of a license
21 issued by a board in the department, or its suspension, forfeiture, or cancellation
22 by order of the board or by order of a court of law, or its surrender without the
23 written consent of the board, shall not, during any period in which it may be
24 renewed, restored, reissued, or reinstated, deprive the board of its authority to
institute or continue a disciplinary proceeding against the licensee upon any
ground provided by law or to enter an order suspending or revoking the license or
otherwise taking disciplinary action against the licensee on any such ground.

25 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
26 registration shall not deprive the Director of the Department Consumer Affairs (Director)
27 jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to
28 render a decision temporarily or permanently invalidating, suspending, or revoking a registration.

1 8. Health and Safety Code section 44002 provides, in pertinent part, that the Director
2 has all the powers and authority granted under the Automotive Repair Act for enforcing the
3 Motor Vehicle Inspection Program.

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

8 10. This Petition to Revoke Probation is brought under Condition 8 of the Disciplinary
9 Order that adopted the decision in Case No. 79/10-68, referenced in paragraph 4, above, which
10 states:

11 **Violation of Probation.**

12 Should the Director of Consumer Affairs determine that Respondent has
13 failed to comply with the terms and conditions of probation, the Department may,
14 after giving notice and opportunity to be heard, temporarily or permanently
15 invalidate the Automotive Repair Dealer Registration and/or suspend or revoke
16 the Smog Check Test Only Station License.

17 **CAUSE TO REVOKE PROBATION**

18 **(Failure to Pay Costs)**

19 11. At all times after the effective date of Respondent's probation, Probation Term 10
20 stated:

21 **Cost Recovery.**

22 Respondent shall pay to the Bureau costs associated with its investigation
23 and enforcement pursuant to Business and Professions Code section 125.3 in the
24 reduced amount of \$6,942.45. Payment to the Bureau to be made in twenty-four
25 (24) equal installments with the full amount of cost recovery being received no
26 later than twelve (12) months before probation terminates. Failure to complete
27 payment of cost recovery within this time frame shall constitute a violation of
28 probation which may subject Respondent's Automotive Repair Dealer
Registration and/or Smog Check Test Only Station License to invalidation,
suspension, or revocation; however, the Director or the Director's Bureau of
Automotive Repair designee may elect to continue probation until such time as
reimbursement of the entire cost recovery amount has been made to the Bureau.

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

In the Matter of the Accusation Against:

XSMOG, INC.
4645 University Avenue
San Diego, CA 92105

Automotive Repair Dealer Registration
No. ARD 225965
Smog Check, Test Only, Station License
No. TC 225965

**TAI TAN HO, Chief Executive Officer and
Secretary**
4645 University Avenue
San Diego, CA 92105

Advanced Emission Specialist Technician
License No. EA 146165

and

TAO TOM HO, Chief Financial Officer
4645 University Avenue
San Diego, CA 92105

Advanced Emission Specialist Technician
License No. EA 146425

Respondents.

Case No. 79/10-68

OAH No. 2010110662

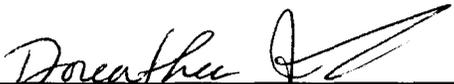
DECISION

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 _____

5/11/12

DATED: April 4, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ERIN M. SUNSERI
Deputy Attorney General
4 State Bar No. 207031
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:
13 **XSMOG, INC.,**
4645 University Avenue
14 San Diego, CA 92105
Automotive Repair Dealer Registration
15 No. ARD 225965
Smog Check Test Only Station License
16 No. TC 225965;
17 **TAI TAN HO, CHIEF EXECUTIVE**
OFFICER and SECRETARY,
18 4645 University Avenue
San Diego, CA 92105
19 Advanced Emission Specialist Technician
License No. EA 146165;
20
21 and
22 **TAO TOM HO, CHIEF FINANCIAL**
OFFICER
4645 University Avenue
23 San Diego, CA 92105
Advanced Emission Specialist Technician
24 License No. EA 146425;
25
26 Respondents.

Case No. 79/10-68
OAH No. 2010110662
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

1 **PARTIES**

2 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
3 brought this action solely in her official capacity and is represented in this matter by Kamala D.
4 Harris, Attorney General of the State of California, by Erin M. Sunseri, Deputy Attorney General.

5 2. Respondent XSmog, Inc.; Tai Tan Ho, President (Respondent) is represented in this
6 proceeding by attorney Michael Levin, whose address is: 3727 Camino del Rio South, Suite 200,
7 San Diego, CA 92108.

8 3. On or about January 24, 2003, the Bureau of Automotive Repair issued Automotive
9 Repair Dealer Registration No. ARD 225965 to Respondent. The Automotive Repair Dealer
10 Registration was in full force and effect at all times relevant to the charges brought in First
11 Amended Accusation No. 79/10-68 and will expire on January 31, 2012, unless renewed.

12 4. On or about March 20, 2003, the Bureau of Automotive Repair issued Smog Check
13 Test Only Station License No. TC 225965 to Respondent. The Smog Check Test Only Station
14 License was in full force and effect at all times relevant to the charges brought in First Amended
15 Accusation No. 79/10-68 and will expire on January 31, 2012, unless renewed.

16 **JURISDICTION**

17 5. First Amended Accusation No. 79/10-68 was filed before the Director of Consumer
18 Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending
19 against Respondent. The First Amended Accusation and all other statutorily required documents
20 were properly served on Respondent on January 3, 2012. Respondent timely filed its Notice of
21 Defense contesting the Accusation. A copy of First Amended Accusation No. 79/10-68 is
22 attached as Exhibit "A" and incorporated herein by reference.

23 **ADVISEMENT AND WAIVERS**

24 6. Respondent has carefully read, fully discussed with counsel, and understands the
25 charges and allegations in First Amended Accusation No. 79/10-68. Respondent has also
26 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
27 Settlement and Disciplinary Order.

28

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

3 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
4 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
5 effect as the originals.

6 14. 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 15. 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 225965,
17 and Smog Check Test Only Station License No. TC 225965, issued to Respondent XSmog, Inc.;
18 Tai Tan Ho, President (Respondent) is revoked. However, the revocation is stayed and
19 Respondent is placed on probation for three (3) years on the following terms and conditions.

20 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 225965 and
21 Smog Check Test Only Station License No. TC 225965 are suspended for fifteen (15)
22 consecutive days, to be served beginning on the effective date of the Decision and Order.

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

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

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

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

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

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

15 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
16 Respondent has failed to comply with the terms and conditions of probation, the Department may,
17 after giving notice and opportunity to be heard, temporarily or permanently invalidate the
18 Automotive Repair Dealer Registration and/or suspend or revoke the Smog Check Test Only
19 Station License.

20 9. **False and Misleading Advertising.** If the accusation involves false and misleading
21 advertising, during the period of probation, Respondent shall submit any proposed advertising
22 copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

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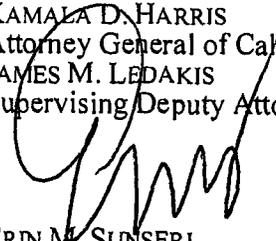
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ENDORSEMENT

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

Dated: 3/2/2012

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

ERIN M. SUNSERI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/10-68

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Special Assistant Attorney General
3 LINDA K. SCHNEIDER
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/10-68

13 **XSMOG, INC.,**
4645 University Avenue
14 San Diego, CA 92105
Automotive Repair Dealer Registration
15 No. ARD 225965
Smog Check Test Only Station License
16 No. TC 225965;

**FIRST AMENDED
ACCUSATION**

SMOG CHECK

17 **TAI TAN HO, CHIEF EXECUTIVE**
OFFICER and SECRETARY,
18 4645 University Avenue
San Diego, CA 92105
19 Advanced Emission Specialist Technician
License No. EA 146165;

20 and

21 **TAO TOM HO, CHIEF FINANCIAL**
OFFICER
22 4645 University Avenue
23 San Diego, CA 92105
Advanced Emission Specialist Technician
24 License No. EA 146425;

25 Respondents.
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Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On or about February 24, 2003, the Bureau issued Automotive Repair Dealer Registration Number ARD 225965 ("registration") to XSmog, Inc.; Tai Tan Ho, President and Chief Executive Officer ("Respondent XSmog"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

Smog Check Test Only Station License

3. On or about March 20, 2003, the Bureau issued Smog Check Test Only Station License Number TC 225965 ("station license") to Respondent XSmog. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

Advanced Emission Specialist Technician Licenses

4. In or about 2003, the Bureau issued Advanced Emission Specialist Technician License No. EA 146165 ("EA license") to Respondent Tai Tan Ho (Respondent Tai Ho). The EA license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

5. In or about 2003, the Bureau issued Advanced Emission Specialist Technician License No. EA 146425 ("EA license") to Respondent Tao Tom Ho (Respondent Tao Ho). The EA license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

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1 REGULATORY PROVISION

2 9. California Code of Regulations, title 16, section 3356, states, in pertinent part:

3 (a) All invoices for service and repair work performed, and parts
4 supplied, as provided in Section 9884.8 of the Business and Professions Code, shall
comply with the following:

5 (1) The invoice shall show the automotive repair dealer's registration
6 number and the corresponding business name and address as shown in the Bureau's
7 records. If the automotive repair dealer's telephone number is shown, it shall comply
with the requirements of subsection (b) of Section 3371 of this chapter.

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

11 11. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

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

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

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

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1 COST RECOVERY

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

6 UNDERCOVER OPERATION – AUGUST 4, 2009

7 15. On or about August 4, 2009, a Bureau undercover operator drove a Bureau-
8 documented 1986 Chevrolet Astro Van to Respondent's facility and requested a smog inspection.
9 The vehicle could not pass the visual portion of a smog inspection because the vehicle's air
10 injection system was missing. The operator signed and received a written estimate prior to the
11 smog inspection. Leslie Loc Nguyen, a licensed technician, performed the smog inspection and
12 issued electronic Certificate of Compliance No. [REDACTED] certifying that he had tested and
13 inspected the 1986 Chevrolet Astro Van and that the vehicle was in compliance with applicable
14 laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog
15 inspection because the vehicle's air injection system was missing.

16 FIRST CAUSE FOR DISCIPLINE

17 (Misleading Statements)

18 16. Respondents have subjected their licenses and registration to discipline under Code
19 section 9884.7, subdivision (a)(1), in that on or about August 4, 2009, they made statements
20 which they knew or which by exercise of reasonable care they should have known were untrue or
21 misleading when they issued electronic Certificate of Compliance No. [REDACTED] for the 1986
22 Chevrolet Astro Van, certifying that the vehicle was in compliance with applicable laws and
23 regulations when, in fact, the vehicle could not have passed the visual portion of the smog
24 inspection because the vehicle's air injection system was missing.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 (Fraud)

3 17. Respondents have subjected their licenses and registration to discipline under Code
4 section 9884.7, subdivision (a)(4), in that on or about August 4, 2009, they committed acts which
5 constitute fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 1986
6 Chevrolet Astro Van without performing a bona fide inspection of the emission control devices
7 and systems on that vehicle, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Failure to Comply with Invoice Requirements)

11 18. Respondents have subjected their licenses and registration to discipline pursuant to
12 Code section 9884.7, subdivision (a)(6), in that they failed to comply with section 3356,
13 subdivision (a)(1) of the California Code of Regulations, title 16, by failing to set forth their
14 business name and address as shown in the Bureau's records.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 (Violation of the Motor Vehicle Inspection Program)

17 19. Respondents have subjected their licenses and registration to discipline under Health
18 and Safety Code section 44072.2, subdivision (a), in that on or about August 4, 2009, regarding
19 the 1986 Chevrolet Astro Van, they violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondents failed to determine that all emission
21 control devices and systems required by law were installed and functioning correctly in
22 accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondents failed to perform emission control tests
24 on that vehicle in accordance with procedures prescribed by the department.

25 c. **Section 44015, subdivision (b):** Respondents issued electronic Certificate of
26 Compliance No. [REDACTED] without properly testing and inspecting the vehicle to determine if it
27 was in compliance with section 44012 of that Code.

28

1 d. **Section 44059:** Respondents willfully made false entries for electronic Certificate of
2 Compliance No. [REDACTED] by certifying that the vehicle had been inspected as required when,
3 in fact, it had not.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 20. Respondents have subjected their licenses and registration to discipline under Health
7 and Safety Code section 44072.2, subdivision (c), in that on or about August 4, 2009, regarding
8 the 1986 Chevrolet Astro Van, they violated sections of the California Code of Regulations, title
9 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondents falsely or fraudulently issued
11 electronic Certificate of Compliance No. [REDACTED] without performing a bona fide inspection
12 of the emission control devices and systems on that vehicle as required by Health and Safety
13 Code section 44012.

14 b. **Section 3340.35, subdivision (c):** Respondents issued electronic Certificate of
15 Compliance No. [REDACTED] even though that vehicle had not been inspected in accordance with
16 section 3340.42 of that Code.

17 c. **Section 3340.42:** Respondents failed to conduct the required smog tests and
18 inspections on that vehicle in accordance with the Bureau's specifications.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

21 21. Respondents subjected their licenses and registration to discipline under Health and
22 Safety Code section 44072.2, subdivision (d), in that on or about August 4, 2009, regarding the
23 1986 Chevrolet Astro Van, they committed acts involving dishonesty, fraud or deceit whereby
24 another was injured by issuing electronic Certificate of Compliance No. [REDACTED] without
25 performing a bona fide inspection of the emission control devices and system on that vehicle,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

28

PRIOR CITATIONS

1
2 22. To determine the degree of penalty, if any, to be imposed upon Respondent,
3 Complainant alleges as follows:

4 a. On April 18, 2007, the Bureau issued Citation No. C07-0747 to Respondent Xsmog
5 against its registration and station licenses for violations of Health and Safety Code section
6 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
7 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
8 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
9 certificate of compliance to a Bureau vehicle with a missing EGR system. The Bureau assessed a
10 civil penalty of \$500. Respondent complied with this citation on May 25, 2007.

11 b. On November 30, 2007, the Bureau issued Citation No. C08-0526 to Respondent
12 Xsmog against its registration and station licenses for violations of Health and Safety Code
13 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
14 devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
15 vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle
16 with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed
17 a civil penalty of \$1,000. Respondent complied with this citation on February 6, 2008.

18 c. On August 12, 2008, the Bureau issued Citation No. C09-0151 to Respondent Xsmog
19 against its registration and station licenses for violations of Health and Safety Code section
20 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
21 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
22 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
23 missing PCV system. The Bureau assessed a civil penalty of \$2,000. Respondent appealed this
24 citation on September 15, 2008. The appeal was withdrawn on January 30, 2009, and Respondent
25 complied with this citation on March 13, 2009.

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1 OTHER MATTERS

2 23. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
3 or permanently or refuse to validate, the registrations for all places of business operated in this
4 state by to XSmog, Inc., upon a finding that it has, or is, engaged in a course of repeated and
5 willful violations of the laws and regulations pertaining to an automotive repair dealer.

6 24. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
7 License Number TC 225965, issued to XSmog, Inc., is revoked or suspended, any additional
8 license issued under this chapter in the name of said licensee may be likewise revoked or
9 suspended by the director.

10 PRAYER

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

13 1. Temporarily or permanently invalidating Automobile Repair Dealer Registration
14 Number ARD 225965, issued to XSmog, Inc.;

15 2. Temporarily or permanently invalidating any other automotive repair dealer
16 registration issued to XSmog, Inc.;

17 3. Revoking or suspending Smog Check Test Only Station License Number TC 225965,
18 issued to XSmog, Inc.;

19 4. 6. Revoking or suspending any additional license issued under Chapter 5 of the
20 Health and Safety Code in the name of XSmog, Inc.;

21 7. Ordering Respondent to pay the Bureau of Automotive Repair the reasonable costs of
22 the investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3; and

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

DATED: 12/29/11

Sherry Mehl by 
SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Assist. Chief

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