

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

In the Matter of the Petition to Revoke Probation
Against:

Case No. 79/10-68

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

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

Respondent.

DECISION

The attached Stipulated Revocation of License and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter; except that the following typographical errors are corrected as follows:

1. Page 1, case caption, line 12; page 2, lines 13, 18, and 21; page 3, line 7; page 4, line 26: "Case No. 79/10-68" is corrected to "Case No. 79/15-83."

This Decision shall become effective July 16, 2015.

DATED: June 25, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ERIN M. SUNSERI
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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 Petition to Revoke
Probation Against,

Case No. 79/10-68

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

**STIPULATED REVOCATION OF
LICENSE AND ORDER**

17 Automotive Repair Dealer Registration No.
ARD 225965
18 Smog Check-Test Only Station License No.
TC 225965
19

20 Respondent.
21

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

24 **PARTIES**

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

28 ///

1 the right to reconsideration and court review of an adverse decision; and all other rights accorded
2 by the California Administrative Procedure Act and other applicable laws.

3 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 **CULPABILITY**

6 9. Respondent admits the truth of each and every charge and allegation in Petition to
7 Revoke Probation No. 79/10-68, agrees that cause exists for discipline and hereby stipulates to
8 the revocation of both his Automotive Repair Dealer Registration No. ARD 225965 and his Smog
9 Check- Test Only Station License No. TC 225965 for the Bureau's formal acceptance.

10 10. Respondent understands that by signing this stipulation he enables the Director to
11 issue his order accepting the stipulated revocation of both his Automotive Repair Dealer
12 Registration and his Smog Check-Test Only Station License without further process.

13 **CONTINGENCY**

14 11. This stipulation shall be subject to approval by the Director or the Director's designee.
15 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of
16 Automotive Repair may communicate directly with the Director and staff regarding this
17 stipulation and revocation, without notice to or participation by Respondent. By signing the
18 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
19 to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director
20 fails to adopt this stipulation as the Decision and Order, the Stipulated Revocation and
21 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
22 in any legal action between the parties, and the Director shall not be disqualified from further
23 action by having considered this matter.

24 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
25 copies of this Stipulated Revocation of License and Order, including Portable Document Format
26 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

27 13. This Stipulated Revocation of License and Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Revocation of License and Order
3 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
4 executed by an authorized representative of each of the parties.

5 14. In consideration of the foregoing admissions and stipulations, the parties agree that
6 the Director may, without further notice or formal proceeding, issue and enter the following
7 Order:

8 **ORDER**

9 IT IS HEREBY ORDERED that both Automotive Repair Dealer Registration No. ARD
10 225965, and Smog Check-Test Only Station License No. TC 225965, both issued to Respondent
11 XSMOG, Inc., dba XSMOG, Tai Tan Ho, President, Tao Tom Ho, Vice Pres./Treasurer, Tai Ho,
12 Secretary, are revoked by stipulation and accepted by the Director of Consumer Affairs.

13 1. The stipulated revocation of Respondent's Automotive Repair Dealer Registration
14 and Smog Check-Test Only Station License by the Bureau shall constitute the imposition of
15 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
16 become a part of Respondent's license history with the Bureau of Automotive Repair.

17 2. Respondent shall lose all rights and privileges as an Automotive Repair Dealership
18 and Smog Check-Test Only Station in California as of the effective date of the Director's
19 Decision and Order.

20 3. Respondent shall cause to be delivered to the Bureau its pocket license(s) and, if one
21 was issued, its wall certificates on or before the effective date of the Decision and Order.

22 4. If Respondent ever files an application for licensure or a petition for reinstatement in
23 the State of California, the Bureau shall treat it as an application for a new license. Respondent
24 must comply with all the laws, regulations and procedures for application of a new license in
25 effect at the time the application is filed, and all of the charges and allegations contained in
26 Petition to Revoke Probation No. 79/10-68 shall be deemed to be true, correct and admitted by
27 Respondent when the Director determines whether to grant or deny the application.
28

1 5. Respondent shall pay the agency its costs of investigation and enforcement in the
2 amount of \$6,942.45 prior to reapplication for any registration or license the Bureau issues.

3 ACCEPTANCE

4 I have carefully read the Stipulated Revocation of License and Order. I understand the
5 stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog
6 Check-Test Only Station License. I enter into this Stipulated Revocation of License and Order
7 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
8 Director of Consumer Affairs.

9
10 DATED:

2-24-2015

 , Treasurer

11 TAO TOM HO, authorized agent for
12 XSMOG, INC., DBA XSMOG, TAI TAN HO,
13 PRESIDENT, TAO TOM HO, VICE
14 PRES./TREASURER, TAI HO, SECRETARY
Respondent

15 ENDORSEMENT

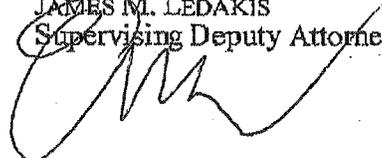
16 The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted
17 for consideration by the Director of Consumer Affairs.

18 Dated:

3/30/15

Respectfully submitted,

19 KAMALA D. HARRIS
Attorney General of California
20 JAMES M. LEDAKIS
Supervising Deputy Attorney General


21 ERIN M. SUNSERI
22 Deputy Attorney General
23 Attorneys for Complainant
24

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26 SD2014707981
XSMOG final stip.docx
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Exhibit A

Petition to Revoke Probation No. 79/10-68

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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.

16 **CAUSE TO REVOKE PROBATION**

17 **(Failure to Pay Costs)**

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

20 **Cost Recovery.**

21 Respondent shall pay to the Bureau costs associated with its investigation
22 and enforcement pursuant to Business and Professions Code section 125.3 in the
23 reduced amount of \$6,942.45. Payment to the Bureau to be made in twenty-four
24 (24) equal installments with the full amount of cost recovery being received no
25 later than twelve (12) months before probation terminates. Failure to complete
26 payment of cost recovery within this time frame shall constitute a violation of
27 probation which may subject Respondent's Automotive Repair Dealer
28 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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1 12. Respondent's probation is subject to revocation because Respondent failed to
2 comply with Probation Term No. 10 in that Respondent failed to pay any of the investigation and
3 enforcement costs as required on or before May 11, 2014.

4 **PRAYER**

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

7 1. Revoking the probation that was granted by the Bureau of Automotive Repair in
8 Case No. 79/10-68 and imposing the disciplinary order that was stayed thereby revoking
9 Automotive Repair Dealer Registration No. ARD 225965 and Smog Check-Test Only Station
10 License No. TC 225965 issued to XSMOG, Inc., doing business as XSMOG, with Tai Tan Ho,
11 as President and Secretary, and Tao Tom Ho, as Vice President and Treasurer;

12 2. Revoking Automotive Repair Dealer Registration No. ARD 225965 and Smog
13 Check-Test Only Station License No. TC 225965, issued to XSMOG, Inc., doing business as
14 XSMOG, with Tai Tan Ho, as President and Secretary, and Tao Tom Ho, as Vice President and
15 Treasurer; and

16 3. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: December 4, 2014



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

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