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7

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

10  
11 In the Matter of the Accusation Against:  
12 **DONS PRO TECHNOLOGY**  
**AUTOMOTIVE REPAIR;**  
13 **DONALD RAY MITCHAM, OWNER**  
**230 E TEHACHAPI BLVD**  
14 **TEHACHAPI, CA 93561-1733**  
15 **Automotive Repair Dealer Registration No.**  
**ARD 231015**  
16 **Smog Check Station License No. RC 231015,**  
17 **and**  
18 **DONALD RAY MITCHAM**  
**PO BOX 1807**  
19 **TEHACHAPI, CA 93581-1807**  
20 **Smog Check Inspector License No.**  
**EO 3149**  
21 **Smog Check Repair Technician License No.**  
**EI 3149 (formerly Advanced Emission**  
22 **Specialist Technician License No.**  
**EA 3149)**  
23

Case No. 79/15-20  
OAH No. 2015030717  
**FIRST - AMENDED**  
**ACCUSATION**  
(SMOG CHECK)

24 Respondents.

25 Complainant alleges:

26 **PARTIES**

27 1. Patrick Dorais ("Complainant") brings this First Amended Accusation solely in his  
28 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of

1 Consumer Affairs.

2 **Automotive Repair Registration ARD 231015**

3 2. On or about January 30, 2004, the Bureau issued Automotive Repair Dealer  
4 Registration Number ARD 231015 ("ARD Registration") to Donald R. Mitcham, also known as  
5 Donald Ray Mitcham, owner, doing business as Dons Pro Technology Automotive Repair  
6 ("Respondent Dons Pro Technology"). The ARD Registration was in full force and effect at all  
7 times relevant to the charges brought herein and will expire on December 31, 2015, unless  
8 renewed.

9 **Smog Check Station License RC 231015**

10 3. On or about January 26, 2005, the Bureau issued Smog Check Station License  
11 Number RC 231015 ("Station License") to Respondent Dons Pro Technology. The Smog Check  
12 Station License was in full force and effect at all times relevant to the charges brought herein and  
13 will expire on December 31, 2015, unless renewed.

14 **Smog Check Inspector License No. EO 3149 and Smog Check Repair Technician**  
15 **License No. EI 3149.**

16 4. On a date uncertain in 2004, the Bureau issued Advanced Emission Specialist  
17 Technician License No. EA 3149 to Donald Ray Mitcham ("Respondent Mitcham"). Respondent  
18 Mitcham's Advanced Emission Specialist Technician License was due to expire on July 31, 2012.  
19 However, it was cancelled on July 24, 2012. Pursuant to California Code of Regulations, title 16,  
20 section 3340.28, subdivision (e), the license was renewed pursuant Respondent Mitcham's  
21 election, as Smog Check Inspector License No. EO 3149 and Smog Check Repair Technician  
22 License No. EI 3149 (collectively "Technician Licenses"), effective July 24, 2012. Respondent  
23 Mitcham's Technicians Licenses are set to expire on July 31, 2016, unless renewed.<sup>1</sup>

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26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 **JURISDICTION**

2 5. This First Amended Accusation is brought before the Director of Consumer Affairs  
3 ("Director") for the Bureau, under the authority of the following laws.

4 6. Code section 9884.7<sup>2</sup> provides, in part, that the Director may revoke an automotive  
5 repair dealer registration.

6 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
7 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
9 temporarily or permanently.

10 8. Code section 22, subdivision (a) states:

11 "(a) 'Board' as used in any provisions of this Code, refers to the board in  
12 which the administration of the provision is vested, and unless otherwise expressly  
13 provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,'  
14 'examining committee,' 'program,' and 'agency.'

14 9. Code section 477 states:

15 "As used in this division:

16 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,'  
17 'division,' 'examining committee,' 'program,' and 'agency.'

18 "(b) 'License' includes certificate, registration or other means to engage in  
19 a business or profession regulated by this code."

19 10. Health and Safety Code section 44072.8 states:

20 "When a license has been revoked or suspended following a hearing under this article  
21 [Motor Vehicle Inspection Program], any additional license issued under this chapter in the name  
22 of the licensee may be likewise revoked or suspended by the director."

23 **STATUTES**

24 11. Section 9884.7 of the Code states, in pertinent part:

25 "(a) The director, where the automotive repair dealer cannot show there was a bona fide  
26 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair

27 \_\_\_\_\_  
28 <sup>2</sup> All section references are to the Business and Professions Code, unless otherwise noted.

1 dealer for any of the following acts or omissions related to the conduct of the business of the  
2 automotive repair dealer, which are done by the automotive repair dealer or any automotive  
3 technician, employee, partner, officer, or member of the automotive repair dealer.

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

7 . . .

8 "(3) Failing or refusing to give to a customer a copy of any document requiring his or her  
9 signature, as soon as the customer signs the document.

10 "(4) Any other conduct that constitutes fraud.

11 . . .

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

16 12. Health and Safety Code section 44012 states, in pertinent part:

17 "The test at the smog check stations shall be performed in accordance with procedures  
18 prescribed by the department and may require loaded mode dynamometer testing in enhanced  
19 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other  
20 appropriate test procedures as determined by the department in consultation with the state board.  
21 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode  
22 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning  
23 no earlier than January 1, 2013. However, the department, in consultation with the state board,  
24 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed  
25 idle testing for vehicles with onboard diagnostic systems that the department and the state board  
26 determine exhibit operational problems. The department shall ensure, as appropriate to the test  
27 method, the following:

28 . . .

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

5           13. Health and Safety Code section 44015 states, in pertinent part:

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           ...

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

12           14. Health and Safety Code section 44032 states, "No person shall perform, for  
13 compensation, tests or repairs of emission control devices or systems of motor vehicles required  
14 by this chapter unless the person performing the test or repair is a qualified smog check technician  
15 and the test or repair is performed at a licensed smog check station. Qualified technicians shall  
16 perform tests of emission control devices and systems in accordance with Section 44012."

17           15. Health and Safety Code 44072.2 states, in pertinent part:

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

21           (a) Violates any section of this chapter and the regulations adopted pursuant to it, which  
22 related to the licensed activities.

23           ...

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

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

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1 REGULATIONS

2 16. California Code of Regulations, title 16, section 3340.30, in pertinent part:

3 "A licensed smog check inspector and/or repair technician shall comply with the following  
4 requirements at all times while licensed:

5 "(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the  
6 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this  
7 article.."

8 17. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

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

13 "(1) Customers shall be charged the same price for certificates as that paid by the licensed  
14 station; and

15 "(2) Sales tax shall not be assessed on the price of certificates. "

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

17 "Smog check inspection methods are prescribed in the Smog Check Manual,  
18 referenced by section 3340.45.

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

21 "(1) A loaded-mode test shall be the test method used to inspect 1976 -  
22 1999 model-year vehicle, except diesel-powered, registered in the enhanced program  
23 areas of the state. The loaded-mode test shall measure hydrocarbon, carbon  
24 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the  
25 bureau's specifications referenced in subsection (a) of Section 3340.17 of this article.  
26 The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,  
27 including a chassis dynamometer, certified by the bureau.

28 "On and after March 31, 2010, exhaust emissions from a vehicle subject  
to this inspection shall be measured and compared to the emissions standards shown  
in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints)  
Table, dated March 2010, which is hereby incorporated by reference. If the emissions  
standards for a specific vehicle are not included in this table then the exhaust  
emissions shall be compared to the emissions standards set forth in TABLE I or  
TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured  
emissions are less than or equal to the applicable emission standards specified in the  
applicable table.

1           (2) A two-speed idle mode test shall be the test method used to inspect  
2 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program  
3 areas of the state, except in those areas of the state where the enhanced program has  
4 been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon  
5 monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as  
6 contained in the bureau's specifications referenced in subsection (a) of Section  
7 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection  
8 shall be measured and compared to the emission standards set forth in this section and  
9 as shown in Table III. A vehicle passes the two-speed idle mode test if all of its  
10 measured emissions are less than or equal to the applicable emissions standards  
11 specified in Table III.

12           (3) An OBD-focused test, shall be the test method used to inspect  
13 gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles  
14 1998 model-year and newer. The OBD test failure criteria are specified in section  
15 3340.42.2.

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

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

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

23           (c) The bureau may require any combination of the inspection methods  
24 in sections (a) and (b) under any of the following circumstances:

25           (1) Vehicles that the department randomly selects pursuant to Health and  
26 Safety Code section 44014.7 as a means of identifying potential operational problems  
27 with vehicle OBD systems.

28           (2) Vehicles identified by the bureau as being operationally or physically  
incompatible with inspection equipment.

          (3) Vehicles with OBD systems that have demonstrated operational  
problems.

          (d) Pursuant to section 39032.5 of the Health and Safety Code, gross  
polluter standards are as follows:

          (1) A gross polluter means a vehicle with excess hydrocarbon, carbon  
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions  
standards included in the tables described in subsection (a), as applicable.

          (2) Vehicles with emission levels exceeding the emission standards for  
gross polluters during an initial inspection will be considered gross polluters and the  
provisions pertaining to gross polluting vehicles will apply, including, but not limited  
to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

          (3) A gross polluting vehicle shall not be passed or issued a certificate of  
compliance until the vehicle's emissions are reduced to or below the applicable  
emissions standards for the vehicle included in the tables described in subsection (a),  
as applicable. However, the provisions described in section 44017 of the Health and

1 Safety Code may apply.

2 "(4) This subsection applies in all program areas statewide to vehicles  
3 requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety  
4 Code."

4 **COST RECOVERY**

5 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
10 included in a stipulated settlement.

11 **UNDERCOVER OPERATION #1: 1990 HONDA**

12 20. On or about August 13, 2013 an undercover operator for the Bureau (operator) took  
13 the Bureau's 1990 Honda to Respondent Dons Pro Technology and requested a smog inspection.  
14 The ignition timing specification of the 1990 Honda is required to be 15 degrees Before Top Dead  
15 Center (BTDC) with a 2 degree plus or minus tolerance. The ignition timing had been adjusted to  
16 3 degrees BTDC which is beyond specification, thereby rendering the vehicle incapable of  
17 passing a smog inspection.

18 21. The operator signed a written estimate for the smog check, but was not given a copy  
19 of the written estimate. Respondent Mitcham performed the smog inspection and issued  
20 Certificate of Compliance [REDACTED]. After the smog inspection was complete, the operator  
21 was informed that the vehicle passed the smog inspection. The operator paid Respondent  
22 Mitcham \$60.95 and was provided with a copy of the Certificate of Compliance, the invoice  
23 [REDACTED], and a Vehicle Inspection Report.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Fraud – Respondent Dons Pro Technology)**

3 22. Respondent Dons Pro Technology's ARD Registration is subject to disciplinary action  
4 under Code section 9884.7, subdivision (a)(4) and Respondent Dons Pro Technology's Station  
5 License is subject to disciplinary action under Health and Safety Code section 44072.2,  
6 subdivision (d) in that on or about August 13, 2013, Respondent Dons Pro Technology committed  
7 fraud when the shop knowingly received and retained payment for a smog check that was not  
8 performed properly. Complainant incorporates by reference Paragraphs 20 through 21, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Violation of the Automotive Repair Act – Respondent Dons Pro Technology)**

11 23. Respondent Dons Pro Technology's ARD Registration is subject to disciplinary  
12 action under Code section 9884.7, subdivision (a)(3) in that Respondent Dons Pro Technology  
13 failed to provide the operator of the Bureau's 1990 Honda with a copy of the signed estimate for  
14 the smog check as soon as it was signed. Complainant incorporates by reference Paragraphs 20  
15 through 21, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of the Motor Vehicle Inspection Program – Respondent Dons Pro Technology)**

18 24. Respondent Dons Pro Technology's Station License is subject to disciplinary action  
19 under Health and Safety Code section 44072.2, subdivision (a) in that on or about August 13,  
20 2013, Respondent Dons Pro Technology failed to comply with provisions of the Motor Vehicle  
21 Inspection Program. The facts and circumstances, which include by reference Paragraphs 20  
22 through 21, are as follows:

23 (a) **Health and Safety Code section 44012, subdivision (f):** Respondent failed to  
24 perform a functional test of the ignition timing on the Bureau's 1990 Honda.

25 (b) **Health and Safety Code section 44015, subdivision (b):** Respondent issued  
26 electronic Certificate of Compliance No. [REDACTED] to the Bureau's 1990 Honda without  
27 properly inspecting the ignition timing.

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1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Comply with Regulations – Respondent Dons Pro Technology)**

3 25. Respondent Dons Pro Technology's Station License is subject to disciplinary action  
4 under Health and Safety Code section 44072.2, subdivision (c) in that on or about August 13,  
5 2013, Respondent Dons Pro Technology failed to comply with following regulations adopted  
6 pursuant to the Motor Vehicle Inspection Program:

7 (a) **California Code of Regulations, title 16, section 3340.42:** Respondent failed  
8 to perform properly a functional test of the ignition timing on the Bureau's 1990 Honda prior to  
9 issuing a Certificate of Compliance. Complainant incorporates by reference Paragraphs 20  
10 through 21, above.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Violation of the Motor Vehicle Inspection Program – Respondent Mitcham)**

13 26. Respondent Mitcham's Technician Licenses are subject to disciplinary action under  
14 Health and Safety section 44072.2, subdivision (c) in that on or about August 13, 2013,  
15 Respondent Mitcham failed to comply with provisions of the Motion Vehicle Inspection Program.  
16 The facts and circumstances, which include by reference Paragraphs 20 through 21, are as  
17 follows:

18 (a) **Health and Safety Code section 44032:** Respondent Mitcham fail to perform  
19 properly the test of the emission control devices and systems of the Bureau's 1990 Honda in  
20 accordance with Health and Safety Code section 44012 when he failed to perform properly the  
21 functional test of the ignition timing prior to issuing a Certificate of Compliance.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations – Respondent Mitcham)**

24 27. Respondent Mitcham's Technician Licenses are subject to disciplinary action under  
25 Health and Safety section 44072.2, subdivision (c), in that on or about August 13, 2013,  
26 Respondent failed to comply with the following regulations adopted pursuant to the Motor  
27 Vehicle Inspection Program:

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1 (a) **California Code of Regulations, title 16, section 3340.30, subdivision (a):**  
2 Respondent Mitcham failed to inspect, test, or repair a vehicle in accordance with Health and  
3 Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section  
4 3340.42 because he because failed to perform properly the functional test portion the smog check  
5 by failing to check the ignition timing on the Bureau's 1990 Honda prior to issuing a Certificate of  
6 Compliance. Complainant incorporates by reference Paragraphs 20 through 21, above.

7 **UNDERCOVER OPERATION #2: 1992 CHEVROLET**

8 28. On or about October 16, 2013, an undercover operator for the Bureau (operator) took  
9 the Bureau's 1992 Chevrolet to Respondent Dons Pro Technology and requested a smog  
10 inspection. The ignition timing specification of the 1992 Chevrolet is required to be 10 degrees  
11 Before Top Dead Center (BTDC) with a 3 degree plus or minus tolerance. The ignition timing  
12 had been adjusted to 20 degrees BTDC which is beyond specification, thereby rendering the  
13 vehicle incapable of passing a smog inspection.

14 29. The operator signed a written estimate for the smog check, but was not given a copy  
15 of the written estimate. Respondent Mitcham performed the smog inspection and issued  
16 Certificate of Compliance [REDACTED]. After the smog inspection was complete, the operator  
17 was informed that the vehicle passed the smog inspection. The operator paid Respondent  
18 Mitcham \$70.95 and was provided with a copy of the Certificate of Compliance, the invoice  
19 [REDACTED], and a Vehicle Inspection Report.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 **(Fraud – Respondent Dons Pro Technology)**

22 30. Respondent Dons Pro Technology's ARD Registration is subject to disciplinary action  
23 under Code section 9884.7, subdivision (a)(4) and Respondent Dons Pro Technology's Station  
24 License is subject to disciplinary action under Health and Safety Code section 44072.2,  
25 subdivision (d) in that on or about October 16, 2013, Respondent Dons Pro Technology  
26 committed fraud when the shop knowingly received and retained payment for a smog check that  
27 was not performed properly. Complainant incorporates by reference Paragraphs 28 through 29,  
28 above.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Violation of the Automotive Repair Act – Respondent Dons Pro Technology)**

3 31. Respondent Dons Pro Technology's ARD Registration is subject to disciplinary  
4 action under Code section 9884.7, subdivision (a)(3) in that Respondent Dons Pro Technology  
5 failed to provide the operator of the Bureau's 1992 Chevrolet with a copy of the signed estimate as  
6 soon as it was signed. Complainant incorporates by reference Paragraphs 28 through 29, above.

7 **NINTH CAUSE FOR DISCIPLINE**

8 **(Violations of the Motor Vehicle Inspection Program – Respondent Dons Pro Technology)**

9 32. Respondent Dons Pro Technology's Station License is subject to disciplinary action  
10 under Health and Safety Code section 44072.2, subdivision (a) in that on or about October 16,  
11 2013, Respondent Dons Pro Technology failed to comply with provisions of the Motor Vehicle  
12 Inspection Program. The facts and circumstances, which include by reference Paragraphs 28  
13 through 29, are as follows:

14 (a) **Health and Safety Code section 44012, subdivision (f):** Respondent failed to  
15 perform a functional test of the ignition timing of the Bureau's 1992 Chevrolet.

16 (b) **Health and Safety Code section 44015, subdivision (b):** Respondent issued  
17 electronic Certificate of Compliance No. [REDACTED] to the Bureau's 1992 Chevrolet without  
18 properly inspecting the ignition timing.

19 **TENTH CAUSE OF ACTION**

20 **(Failure to Comply with Regulations – Respondent Dons Pro Technology)**

21 33. Respondent Dons Pro Technology's Station License is subject to disciplinary action  
22 under Health and Safety Code section 44072.2, subdivision (c) in that on or about October 16,  
23 2013, Respondent Dons Pro Technology failed to comply with following regulations adopted  
24 pursuant to the Motor Vehicle Inspection Program:

25 (a) **California Code of Regulations, title 16, section 3340.42:** Respondent failed  
26 to perform properly a functional test of the ignition timing on the Bureau's 1992 Chevrolet prior to  
27 issuing a Certificate of Compliance. Complainant incorporates by reference Paragraphs 28  
28 through 29, above.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program – Respondent Mitcham)**

3 34. Respondent Mitcham's Technician Licenses are subject to disciplinary action under  
4 Health and Safety section 44072.2, subdivision (c) in that on or about October 16, 2013,  
5 Respondent Mitcham failed to comply with provisions of the Motor Vehicle Inspection Program.  
6 The facts and circumstances, which include by reference Paragraphs 28 through 29, are as  
7 follows:

8 (a) **Health and Safety Code section 44032:** Respondent Mitcham fail to perform  
9 properly the test of the emission control devices and systems of the Bureau's 1992 Chevrolet in  
10 accordance with Health and Safety Code section 44012 when he failed to perform properly the  
11 functional test of the ignition timing prior to issuing a Certificate of Compliance.

12 **TWELFTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Regulations – Respondent Mitcham)**

14 35. Respondent Mitcham's Technician Licenses are subject to disciplinary action under  
15 Health and Safety section 44072.2, subdivision (c) in that on or about October 16, 2013,  
16 Respondent failed to comply with the following regulations adopted pursuant to the Motor  
17 Vehicle Inspection Program:

18 (a) **California Code of Regulations, title 16, section 3340.30, subdivision (a):**  
19 Respondent Mitcham failed to inspect, test, or repair a vehicle in accordance with Health and  
20 Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section  
21 3340.42 because he because failed to perform properly the functional test portion the smog check  
22 by failing to check the ignition timing on the Bureau's 1992 Chevrolet prior to issuing a  
23 Certificate of Compliance. Complainant incorporates by reference Paragraphs 28 through 29,  
24 above.

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1                                   **2003 CHEVROLET K2500HD (MISSING CATALYTIC CONVERTER)**

2           36.   On or about July 28, 2014, a Bureau Representative received an anonymous tip that  
3 an individual wearing an “Ashmore Motors” t-shirt was offering \$400.00 for an illegal smog  
4 inspection on a 2003 Chevrolet Silverado K2500HD diesel truck, California License 7E98565,  
5 with a missing catalytic converter.

6           37.   On or about August 19, 2014, a Bureau Representative determined that the vehicle  
7 had been issued Certificate of Compliance number PK171513C, at 1:18 p.m. on August 15, 2104.  
8 The Bureau Representative reviewed the vehicle’s OBDII Inspection System (OIS) Test Detail  
9 from the Bureau’s Vehicle Information Database (VID) and emission reference materials and  
10 determined that this vehicle was required to be equipped with a catalytic converter if it was  
11 California certified.

12           38.   On or about August 19, 2014, Bureau Representatives went to Ashmore Motors, in  
13 Tehachapi, California and found the vehicle parked in the sales lot. Bureau Representatives spoke  
14 with the owner of Ashmore Motors, Mr. Marlon Ashmore, and conducted an emission control  
15 inspection of several vehicles, including the 2003 Chevrolet K2500HD. The Bureau  
16 representatives determined that the 2003 Chevrolet K2500HD diesel truck was no in compliance  
17 with the California Pollution Control Laws. The vehicle was missing its catalytic converter. The  
18 Bureau Representatives reviewed the vehicle’s Service Parts Identification tag located in the  
19 glove box and found it listed NC1 and YF5 codes. These codes represent the vehicle as being  
20 California Certified for emission control components. The vehicle was found to have a heat  
21 shield in place for a catalytic converter. Based on the amount of rust, and absence of recent marks  
22 on the nuts mounting the exhaust flange to the turbo, the Bureau Representatives determined that  
23 the exhaust system had not been tampered with in the prior five days. Furthermore, the rust on  
24 the welds connecting the sections of the exhaust system indicated the catalytic converter had not  
25 been recently removed. The exhaust system appeared to have been installed several years prior to  
26 the Bureau’s inspection and remained untouched. As a result of the inspection, Bureau  
27 Representatives placed a “NOT FOR SALE” tag on the vehicle and explained to the owner that  
28 the tag would not be removed until the vehicle was issued a valid certificate of compliance. Mr.

1 Marlon Ashmore stated that he had purchased the vehicle from a private party on or about June  
2 14, 2014. Mr. Marlon Ashmore indicated that he had not performed any repairs, or have any  
3 repairs performed, to the vehicle's exhaust system or catalytic converter from the time of the  
4 purchase to the time of the Bureau's inspection of the vehicle on August 19, 2014.

5 39. On or about August 19, 2014, Bureau Representatives interviewed Brandon Ashmore  
6 regarding the 2003 Chevrolet K2500HD. Mr. Brandon Ashmore indicated that on or about July  
7 24, 2014, he took the vehicle to Protech Auto Service in Tehachapi, California for a smog  
8 inspection. The vehicle failed the smog test for a missing catalytic converter. Mr. Brandon  
9 Ashmore indicated that on July 24, 2014, he went to Three Way Chevrolet in Bakersfield,  
10 California to inquire about the price for the vehicle's catalytic converter. He received an estimate  
11 of \$1,193.14 for the converter, gasket, and mounting plate. Mr. Brandon Ashmore did not  
12 purchase the converter or any other related parts. Mr. Brandon Ashmore stated that the vehicle  
13 also failed a smog inspection at City Smog, in Bakersfield, California for a missing catalytic  
14 converter. On August 15, 2014, Mr. Brandon Ashmore took the 2003 Chevrolet K2500HD to  
15 Dons Pro Technology Automotive Repair, in Tehachapi, California and requested a smog  
16 inspection. Mr. Brandon Ashmore indicated that he left the vehicle for inspection and later  
17 received a telephone call that the vehicle had passed the smog inspection. Mr. Brandon Ashmore  
18 stated that he paid \$50.00 and received a Vehicle Inspection Report. He further stated that he did  
19 not perform any repairs, or have any repairs performed, to the vehicle's exhaust system or  
20 catalytic converter. Mr. Brandon Ashmore indicated that the vehicle remained in the same  
21 condition from the time of purchase to the date of the Bureau's inspection on August 19, 2014.

22 40. On or about August 28, 2014, a Bureau Representative met with Mr. Brandon  
23 Ashmore at the Bakersfield location of the California Smog Referee. There, Mr. Brandon  
24 Ashmore provided documentation indicating that he purchased and installed a catalytic converter  
25 on the 2003 Chevrolet K2500HD. The Smog Referee performed a smog inspection on the  
26 vehicle, which passed. The Smog Referee provided a copy of the VIR and the Bureau  
27 Represented removed the "NOT FOR SALE" tag.

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1 (a) **Health and Safety Code section 44012, subdivision (f):** Respondent failed to  
2 perform a visual check of the emission control devices, to wit, the vehicle's catalytic converter.

3 (b) **Health and Safety Code section 44015, subdivision (a)(1):** Respondent issued  
4 electronic Certificate of Compliance No. PK171513C to a 2003 Chevrolet K2500HD when the  
5 vehicle's emission control devices had been tampered with, to wit, the vehicle's catalytic  
6 converter was missing.

7 (b) **Health and Safety Code section 44015, subdivision (b):** Respondent issued  
8 electronic Certificate of Compliance No. PK171513C to a 2003 Chevrolet K2500HD that did not  
9 meet the requirements of Health and Safety Code section 44012 because the vehicle was missing  
10 its catalytic converter.

11 **SIXTEENTH CAUSE OF ACTION**

12 **(Failure to Comply with Regulations – Respondent Dons Pro Technology)**

13 45. Respondent Dons Pro Technology's Station License is subject to disciplinary action  
14 under Health and Safety Code section 44072.2, subdivision (c) in that on or about August 15,  
15 2014, Respondent Dons Pro Technology failed to comply with following regulations adopted  
16 pursuant to the Motor Vehicle Inspection Program, and more fully described by Paragraphs 36  
17 through 41, above, incorporated here by reference:

18 (a) **California Code of Regulations, title 16, section 3340.35, subdivision (c):**  
19 Respondent issued electronic Certificate of Compliance No. PK171513C to a 2003 Chevrolet  
20 K2500HD that was not properly inspected and was missing its catalytic converter.

21 (b) **California Code of Regulations, title 16, section 3340.42:** Respondent failed  
22 to properly inspect the 2003 Chevrolet K2500HD diesel truck in accordance with the OBD  
23 Inspection System (OIS) specifications, when technician John Mahoney failed to properly identify  
24 and enter into the OIS that the vehicle was missing its catalytic converter, and instead issued a  
25 Certificate of Compliance.

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1 **DISCIPLINE CONSIDERATIONS: PRIOR CITATIONS**

2 46. To determine the degree of discipline, if any, to be imposed on Respondent,  
3 Complainant alleges the following:

4 (a) On or about October 11, 2010, the Bureau issued Citation No C2011-0424 to  
5 Respondent Dons Pro Technology for violating Health and Safety Code section 44012,  
6 subdivision (f) [failure to determine that emission control devices and systems required by State  
7 and Federal law are installed and functioning correctly in accordance with test procedures] and  
8 California Code of Regulations, title 16, section 3340.35, subdivision (c) [issuing a Certificate of  
9 Compliance to a vehicle that was improperly tested]. The basis for the Citation was that on or  
10 about September 21, 2010, Respondent Dons Pro Technology issued a Certificate of Compliance  
11 to a Bureau undercover vehicle with a missing Air Injection System. The Bureau assessed civil  
12 penalties totaling \$1,000.00. Respondent Dons Pro Technology appealed the Citation and the  
13 Citation was sustained on or about July 23, 2012 with the penalties reduced to \$500.00. The  
14 Citation was paid on January 24, 2013.

15 (b) On or about October 11, 2010, the Bureau issued Citation No. M2011-0425 to  
16 Respondent Mitcham for violating Health and Safety Code section 44032 [qualified technicians  
17 shall perform tests of emission control systems and devices in accordance with section 44012  
18 H&S] and California Code of Regulations, title 16, section 3340.30, subdivision (a) [qualified  
19 technicians shall inspect, test, and repair vehicles in accordance with 44012 H&S, 44035 H&S,  
20 and 3340.42 CCR]. The basis for the Citation was that on or about September 21, 2010,  
21 Respondent Mitcham issued a Certificate of Compliance to a Bureau undercover vehicle with a  
22 missing Air Injection System. The Bureau directed Respondent Mitcham to attend an 8 hour  
23 training course. The Citation training was completed on December 5, 2010. Respondent  
24 Mitcham appealed the Citation and the Citation was sustained on or about July 23, 2012.

25 (c) On or about June 9, 2011, the Bureau issued Citation No C2011-1471 to Respondent  
26 Dons Pro Technology for violating Health and Safety Code section 44012, subdivision (f) [failure  
27 to determine that emission control devices and systems required by State and Federal law are  
28 installed and functioning correctly in accordance with test procedures] and California Code of

1 Regulations, title 16, section 3340.35, subdivision (c) [issuing a Certificate of Compliance to a  
2 vehicle that was improperly tested]. The basis for the Citation was that on or about May 18 2011,  
3 Respondent Dons Pro Technology issued a Certificate of Compliance to a Bureau undercover  
4 vehicle with a missing Exhaust Gas Recirculation Valve. The Bureau assessed civil penalties  
5 totaling \$1,500.00. The Citation was paid on September 6, 2011.

6 (d) On or about June 9, 2011, the Bureau issued Citation No. M2011-1472 to Respondent  
7 Mitcham for violating Health and Safety Code section 44032 [qualified technicians shall perform  
8 tests of emission control systems and devices in accordance with section 44012 H&S] and  
9 California Code of Regulations, title 16, section 3340.30, subdivision (a) [qualified technicians  
10 shall inspect, test, and repair vehicles in accordance with 44012 H&S, 44035 H&S, and 3340.42  
11 CCR]. The basis for the Citation was that on or about May 18 2011, Respondent Dons Pro  
12 Technology issued a Certificate of Compliance to a Bureau undercover vehicle with a missing  
13 Exhaust Gas Recirculation Valve. The Bureau directed Respondent Mitcham to attend a 16 hour  
14 training course. The Citation training was completed on August 28, 2011.

#### 15 **OTHER MATTERS**

16 47. Pursuant to section 9884.7, subdivision (c), the director may suspend, revoke, or place  
17 on probation the registrations for all places of business operated in this state by Donald Ray  
18 Mitcham, owner, doing business as Dons Pro Technology Automotive Repair upon a finding that  
19 Donald Ray Mitcham has, or is, engaged in a course of repeated and willful violations of the laws  
20 and regulations pertaining to an automotive repair dealer.

21 48. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License  
22 Number RC 231015, issued to Donald Ray Mitcham, owner, doing business as Dons Pro  
23 Technology Automotive Repair, is revoked or suspended, any additional license issued under this  
24 chapter in the name of said licensees may be likewise revoked or suspended by the director.

25 49. Pursuant to Health and Safety Code section 44072.8, if Respondent Donald Ray  
26 Mitcham's Technician Licenses, currently designated as EO 3149 and EI 3149, are revoked or  
27 suspended, any additional license issued under this chapter in the name of said licensee may be  
28 likewise revoked or suspended by the director.

**PRAYER**

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 231015, issued to Donald Ray Mitcham, owner, doing business as Don's Pro Technology Automotive Repair.
2. Revoking or suspending Smog Check Station License Number RC 231015, issued to Donald Ray Mitcham, owner, doing business as Don's Pro Technology Automotive Repair;
3. Revoking or suspending Smog Check Inspector License Number EO 3149, issued to Donald Ray Mitcham;
4. Revoking or suspending Smog Check Repair Technician License Number EI 3149, issued to Donald Ray Mitcham;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Donald Ray Mitcham;
6. Ordering Donald Ray Mitcham to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
7. Taking such other and further action as deemed necessary and proper.

DATED: August 13, 2015 

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