

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

In the Matter of the Accusation Against:

EAST BAY SMOG
ERIC MOISES GARCIA, PARTNER
DANIEL GARCIA, PARTNER
DANIEL GARCIA, aka DANIEL GARCIA TORRES,
PARTNER
5660 Main Street, Suite #102
Oakley, CA 94561

Mailing Address:
7258 Brentwood Boulevard
Brentwood, CA 94513
Automotive Repair Dealer Reg. No. ARD 252615
Smog Check, Test Only, Station License
No. TC 252615

and

ERIC MOISES GARCIA
7258 Brentwood Blvd.
Brentwood, CA 94513
Smog Inspector License No. EO 153742
Smog Check Repair Technician License No.
EI 153742 (previously Advanced Emission
Specialist Technician License No. EA
153742)

Respondent.

Case No. 79/11-89

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 July 23, 2014.

DATED: July 2, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 MARETTA WARD
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 79/11-89

12 **EAST BAY SMOG**
13 **ERIC MOISES GARCIA, PARTNER**
14 **DANIEL GARCIA, PARTNER**
15 **DANIEL GARCIA, aka DANIEL GARCIA**
16 **TORRES, PARTNER**
17 **5660 Main Street, Suite #102**
18 **Oakley, CA 94561**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 **Mailing Address:**
17 **7258 Brentwood Boulevard**
18 **Brentwood, CA 94513**
19 **Automotive Repair Dealer Reg. No. ARD**
20 **252615**
21 **Smog Check, Test Only, Station License No.**
22 **TC 252615**

20 and

21 **ERIC MOISES GARCIA**
22 **7258 Brentwood Blvd.**
23 **Brentwood, CA 94513**
24 **Smog Inspector License No. EO 153742 and**
25 **Smog Check Repair Technician License No.**
26 **EI 153742 (previously Advanced Emission**
27 **Specialist Technician License No. EA**
28 **153742)**

Respondent.

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

3 **PARTIES**

4 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Maretta Ward, Deputy Attorney General.

7 2. Respondent Daniel Garcia ("Respondent") is represented in this proceeding by
8 attorney William Ferreira, Esq., whose address is: 582 Market Street, Suite 1608, San Francisco,
9 CA 94104, phone number 415.392.2886.

10 3. Respondent Daniel Garcia aka Daniel Garcia Torres ("Respondent") is represented in
11 this proceeding by attorney William Ferreira, Esq., whose address is: 582 Market Street, Suite
12 1608, San Francisco, CA 94104, phone number 415.392.2886.

13 4. Respondent Eric Moises Garcia ("Respondent") is represented in this proceeding by
14 attorney William Ferreira, Esq., whose address is: 582 Market Street, Suite 1608, San Francisco,
15 CA 94104, phone number 415.392.2886.

16 **East Bay Smog - Daniel Garcia**

17 5. On or about November 21, 2007, the Bureau of Automotive Repair issued
18 Automotive Repair Dealer Registration No. ARD 252615 to Daniel Garcia (Respondent). The
19 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
20 charges brought in Accusation No. 79/11-89 and will expire on October 31, 2014, unless
21 renewed.

22 6. On or about December 19, 2007, the Bureau of Automotive Repair issued Smog
23 Check Test Only Station License No. TC 252615 to Daniel Garcia (Respondent). The Smog
24 Check Test Only Station License was in full force and effect at all times relevant to the charges
25 brought in Accusation No. 79/11-89 and will expire on October 31, 2014, unless renewed.

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East Bay Smog - Daniel Garcia aka Daniel Garcia Torres

7. On or about November 21, 2007, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 252615 to Daniel Garcia aka Daniel Garcia Torres (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-89 and will expire on October 31, 2014, unless renewed.

8. On or about December 19, 2007, the Bureau of Automotive Repair issued Smog Check Test Only Station License No. TC 252615 to Daniel Garcia aka Daniel Garcia Torres (Respondent). The Smog Check Test Only Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-89 and will expire on October 31, 2014, unless renewed.

Eric Moises Garcia

9. On or about November 21, 2007, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 252615 to Eric Moises Garcia (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-89 and will expire on October 31, 2014, unless renewed.

10. On or about December 19, 2007, the Bureau of Automotive Repair issued Smog Check Test Only Station License No. TC 252615 to Eric Moises Garcia (Respondent). The Smog Check Test Only Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-89 and will expire on October 31, 2014, unless renewed.

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1 11. On or about 2006, the Director issued Advanced Emission Specialist Technician
2 License Number EA 153742 ("technician license") to Eric Moises Garcia ("Respondent Garcia"
3 or "Garcia"). Respondent's technician license was set to expire on April 30, 2014, however was
4 cancelled and renewed pursuant to Respondent's election as Smog Check Inspector License No.
5 EO 153742 and Smog Check Repair Technician License No EI 153742.¹

6
7 **JURISDICTION**

8 12. A copy of Accusation No. 79/11-89 is attached as exhibit A and incorporated herein
9 by reference.

10 **ADVISEMENT AND WAIVERS**

11 13. Respondents have carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 79/11-89. Respondents have also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 14. Respondents are fully aware of their legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 their own expense; the right to confront and cross-examine the witnesses against them; the right
18 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 15. Respondents voluntarily, knowingly, and intelligently waive and give up each and
23 every right set forth above.

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26 ¹ 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.

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CULPABILITY

16. Respondents admit the truth of each and every charge and allegation in Accusation No. 79/11-89.

17. Respondents agree that their Automotive Repair Dealer Registration are subject to discipline and they agree to be bound by the Bureau's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

20. In consideration of the foregoing admissions and stipulations, the parties agree that the Bureau may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 21. **IT IS HEREBY ORDERED THAT** Respondent **Daniel Garcia's** Automotive
3 Repair Dealer Registration is hereby revoked, stayed with three (3) years probation under the
4 following noted terms and conditions. Respondent **Daniel Garcia's** Smog Check Test Only
5 Station License is hereby revoked stayed with three (3) years probation under the following noted
6 terms and conditions.

7 Further, Respondent **Daniel Garcia aka Daniel Garcia Torres'** Automotive Repair Dealer
8 Registration is hereby revoked, stayed with three (3) years probation under the following noted
9 terms and conditions. Respondent **Daniel Garcia aka Daniel Garcia Torres'** Smog Check Test
10 Only Station License is hereby revoked stayed with three (3) years probation under the following
11 noted terms and conditions.

12 Respondent **Eric Moises Garcia's** Automotive Repair Dealer Registration is hereby
13 revoked, stayed with three (3) years probation under the following noted terms and conditions.
14 Respondent **Eric Moises Garcia's** Smog Check Test Only Station License is hereby revoked
15 stayed with three (3) years probation under the following noted terms and conditions.

16 Further, Respondent **Eric Moises Garcia's** Smog Inspector License No. EO 153742 and
17 Smog Check Technician License No. EI 153742 (formerly Advanced Emission Specialist
18 Technician License EA 153742) is hereby revoked stayed with three (3) years probation under the
19 following noted terms and conditions.

20 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 252615
21 issued to Respondent **Daniel Garcia** is suspended for fifteen (15) consecutive days to begin on
22 the effective date of the decision. Smog Check Test Only Station License No. TC 252615 issued
23 to Respondent **Daniel Garcia** is suspended for fifteen (15) consecutive days to begin on the
24 effective date of the decision. Automotive Repair Dealer Registration No. ARD 252615 issued
25 to Respondent **Daniel Garcia aka Daniel Garcia Torres** is suspended for fifteen (15)
26 consecutive days to begin on the effective date of the decision. Smog Check Test Only Station
27 License No. TC 252615 issued to Respondent **Daniel Garcia aka Daniel Garcia Torres** is
28 suspended for fifteen (15) consecutive dates to begin on the effective date of the decision.

1 Automotive Repair Dealer Registration No. ARD 252615 issued to **Eric Moises Garcia** is
2 suspended for fifteen (15) consecutive days to begin on the effective date of the decision. Smog
3 Check Test Only Station License No. TC 252615 issued to **Eric Moises Garcia** is suspended for
4 fifteen (15) consecutive days to begin on the effective date of the decision.

5 Smog Check Inspector License No. EO 153742 and Smog Check Repair Technician
6 License No EI 153742 (previously Advanced Emission Specialist Technician License Number
7 EA 153742) issued to **Eric Moises Garcia** is suspended for fifteen (15) consecutive days to begin
8 on the effective date of the decision.

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

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

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

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

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

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

1 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
2 Respondents have failed to comply with the terms and conditions of probation, the Department
3 may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the
4 registration of Respondent(s) and/or suspend or revoke Respondent(s) license(s).

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

8 10. **Continuing Education Courses.** During the period of probation, Respondent Eric
9 Moises Garcia shall attend and successfully complete a Bureau Certified Licensed Inspector
10 Training Course (Level II). Said course shall be completed and proof of completion submitted to
11 the Bureau within 180 days of the effective date of this decision and order. If proof of completion
12 of the course is not furnished to the Bureau within the 180 day period, Respondent' s license shall
13 be immediately suspended until such proof is received.

14 11. **Restrictions.** During the period of probation, Respondents shall not perform any
15 form of smog inspection, or emission system diagnosis or repair, until Respondents have
16 purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR
17 necessary to properly perform such work, and BAR has been given 10 days notice of the
18 availability of the equipment for inspection by a BAR representative.

19 12. **Cost Recovery.** Respondents shall be jointly and severally liable for costs in the
20 amount of \$7,000.00. Payments shall be made in 24 monthly equal installments. Payment to the
21 Bureau of the full amount of cost recovery shall be received no later than 12 months before
22 probation terminates. Failure to complete payment of cost recovery within this time frame shall
23 constitute a violation of probation which may subject Respondents to outright revocation;
24 however, the Director or the Director's Bureau of Automotive Repair designee may elect to
25 continue probation until such time as reimbursement of the entire cost recovery amount has been
26 made to the Bureau.

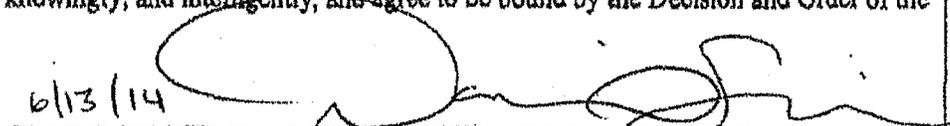
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ACCEPTANCE

I, Daniel Garcia, have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William Ferreira, Esq.. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog Check Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Bureau.

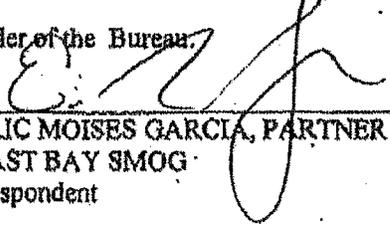
DATED: 6/13/14


DANIEL GARCIA, PARTNER
EAST BAY SMOG
Respondent

ACCEPTANCE

I, Eric Moises Garcia, have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William Ferreira, Esq.. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License, Automotive Repair Dealer Registration, and Smog Check Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Bureau.

DATED: 6/16/14


ERIC MOISES GARCIA, PARTNER
EAST BAY SMOG
Respondent

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ACCEPTANCE

I, Daniel Garcia, aka Daniel Garcia Torres have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William Ferreira, Esq. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License, Automotive Repair Dealer Registration, and Smog Check Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Bureau.

DATED: 6/16/14

DANIEL GARCIA, aka DANIEL GARCIA TORRES,
PARTNER
Respondent

ACKNOWLEDGEMENT

I have read and fully discussed with Respondent Daniel Garcia, Respondent Eric Moises Garcia, and Daniel Garcia, aka Daniel Garcia Torres the terms and conditions and other matters in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/17/14

William Ferreira, Esq
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Bureau of Automotive Repair.

Dated: 6.19.14

MARETTA WARD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/11-89

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
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Attorneys for Complainant

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

79/11-89

12 In the Matter of the Accusation Against:

Case No.

13 **EAST BAY SMOG**
14 **ERIC MOISES GARCIA, PARTNER**
15 **DANIEL GARCIA, PARTNER**
16 **DANIEL GARCIA,**
17 **aka DANIEL GARCIA TORRES, PARTNER**
18 **5660 Main Street, Suite #102**
19 **Oakley, CA 94561**
20 **Mailing Address:**
21 **7258 Brentwood Boulevard**
22 **Brentwood, CA 94513**
23 **Automotive Repair Dealer Reg. No. ARD 252615**
24 **Smog Check, Test Only, Station License No.**
25 **TC 252615**

A C C U S A T I O N

S M O G C H E C K

and

26 **ERIC MOISES GARCIA**
27 **7258 Brentwood Blvd.**
28 **Brentwood, CA 94513**
Advanced Emission Specialist Technician
License No. EA 153742

Respondents.

Complainant alleges:

PARTIES/LICENSE INFORMATION

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.

1 **East Bay Smog**

2 2. On or about November 21, 2007, the Director of Consumer Affairs ("Director")
3 issued Automotive Repair Dealer Registration Number ARD 252615 ("registration") to East Bay
4 Smog ("Respondent East Bay Smog"), with Eric Moises Garcia, Daniel Garcia, and Daniel
5 Garcia, also known as Daniel Garcia Torres, as partners. Respondent East Bay Smog's
6 registration was in full force and effect at all times relevant to the charges brought herein and will
7 expire on October 31, 2011, unless renewed.

8 3. On or about December 19, 2007, the Director issued Smog Check, Test Only, Station
9 License Number TC 252615 ("smog check station license") to Respondent East Bay Smog.
10 Respondent's smog check station license was in full force and effect at all times relevant to the
11 charges brought herein and will expire on October 31, 2011, unless renewed.

12 **Eric Moises Garcia**

13 4. In or about 2006, the Director issued Advanced Emission Specialist Technician
14 License Number EA 153742 ("technician license") to Eric Moises Garcia ("Respondent Garcia"
15 or "Garcia"). Respondent's technician license was in full force and effect at all times relevant to
16 the charges brought herein and will expire on April 30, 2012, unless renewed.

17 **JURISDICTION**

18 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
19 the Director may revoke an automotive repair dealer registration.

20 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
21 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
22 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
23 invalidating (suspending or revoking) a registration.

24 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
25 part, that the Director has all the powers and authority granted under the Automotive Repair Act
26 for enforcing the Motor Vehicle Inspection Program.

27 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
28 suspension of a license by operation of law, or by order or decision of the Director of Consumer

1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
2 of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

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

17 (4) Any other conduct that constitutes fraud.

18

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

21

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

27 10. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

28 The automotive repair dealer shall give to the customer a written
estimated price for labor and parts necessary for a specific job. No work shall be
done and no charges shall accrue before authorization to proceed is obtained from the
customer. No charge shall be made for work done or parts supplied in excess of the
estimated price without the oral or written consent of the customer that shall be
obtained at some time after it is determined that the estimated price is insufficient and
before the work not estimated is done or the parts not estimated are supplied. Written
consent or authorization for an increase in the original estimated price may be
provided by electronic mail or facsimile transmission from the customer. The bureau
may specify in regulation the procedures to be followed by an automotive repair
dealer when an authorization or consent for an increase in the original estimated price
is provided by electronic mail or facsimile transmission. If that consent is oral, the
dealer shall make a notation on the work order of the date, time, name of person

1 authorizing the additional repairs and telephone number called, if any, together with a
2 specification of the additional parts and labor and the total additional cost . . .

3 11. Bus. & Prof. Code section 22, subdivision (a), states:

4 "Board" as used in any provision of this Code, refers to the board in
5 which the administration of the provision is vested, and unless otherwise expressly
6 provided, shall include "bureau," "commission," "committee," "department,"
7 "division," "examining committee," "program," and "agency."

8 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
9 "license" includes "registration" and "certificate."

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

11 The director may suspend, revoke, or take other disciplinary action
12 against a license as provided in this article if the licensee, or any partner, officer, or
13 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
16 pursuant to it, which related to the licensed activities.

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

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

22 14. Health & Saf. Code section 44072.10 states, in pertinent part:

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24 (c) The department shall revoke the license of any smog check technician
25 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
26 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
27 the following:

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(4) Intentional or willful violation of this chapter or any regulation,
standard, or procedure of the department implementing this chapter . . .

15. 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.

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1 COST RECOVERY

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

6 UNDERCOVER OPERATION: 2001 CHRYSLER 300M

7 17. On May 28, 2010, an undercover operator with the Bureau ("operator") took the
8 Bureau's 2001 Chrysler 300M to Respondent East Bay Smog's facility and requested a smog
9 inspection. The positive crankcase ventilation (PCV) valve had been removed from the Bureau-
10 documented vehicle and the PCV hose was disconnected. Respondent Garcia had the operator
11 sign and fill in the customer information on a work order, but did not provide her with a copy or a
12 written estimate for the inspection. After the inspection was completed, the operator paid Garcia
13 \$67 and received copies of an invoice and a vehicle inspection report. The vehicle inspection
14 report indicated that Garcia had performed the smog inspection on the vehicle. That same day,
15 electronic smog Certificate of Compliance No. [REDACTED] was issued for the vehicle.

16 18. On June 7, 2010, the Bureau inspected the vehicle and found that the PCV valve was
17 still missing and the PCV hose was still disconnected.

18 FIRST CAUSE FOR DISCIPLINE

19 (Untrue or Misleading Statements)

20 19. Respondent East Bay Smog's registration is subject to disciplinary action pursuant to
21 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
22 statement which it knew or in the exercise of reasonable care should have known to be untrue or
23 misleading, as follows: Respondent East Bay Smog's technician, Respondent Garcia, certified
24 under penalty of perjury on the vehicle inspection report that the Bureau's 2001 Chrysler 300M
25 had passed the inspection and was in compliance with applicable laws and regulations. In fact,
26 the PCV valve was missing and the PCV hose was disconnected, and as such, the vehicle would
27 not pass the inspection required by Health & Saf. Code section 44012.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

20. Respondent East Bay Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent East Bay Smog's technician, Respondent Garcia, failed to provide the operator with a copy of the work order as soon as the operator signed the document.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

21. Respondent East Bay Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

22. Respondent East Bay Smog's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent East Bay Smog's technician, Respondent Garcia, failed to provide the operator with a written estimate for the smog inspection on the Bureau's 2001 Chrysler 300M.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

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

6 a. Section 44012: Respondent failed to ensure that the emission control tests were
7 performed on the Bureau's 2001 Chrysler 300M in accordance with procedures prescribed by the
8 department.

9 b. Section 44015: Respondent issued an electronic smog certificate of compliance for
10 the Bureau's 2001 Chrysler 300M without properly testing and inspecting the vehicle to
11 determine if it was in compliance with Health & Saf. Code section 44012.

12 SIXTH CAUSE FOR DISCIPLINE

13 (Failure to Comply with Regulations Pursuant
14 to the Motor Vehicle Inspection Program)

15 24. Respondent East Bay Smog's smog check station license is subject to disciplinary
16 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
17 to comply with provisions of California Code of Regulations, title 16, as follows:

18 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued an
19 electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M.

20 b. Section 3340.35, subdivision (c): Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 2001 Chrysler 300M even though the vehicle had not been
22 inspected in accordance with section 3340.42.

23 c. Section 3340.42: Respondent failed to ensure that the required smog tests were
24 conducted on the Bureau's 2001 Chrysler 300M in accordance with the Bureau's specifications.

25 SEVENTH CAUSE FOR DISCIPLINE

26 (Dishonesty, Fraud or Deceit)

27 25. Respondent East Bay Smog's smog check station license is subject to disciplinary
28 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent

1 committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing an
2 electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M without
3 performing a bona fide inspection of the emission control devices and systems on the vehicle,
4 thereby depriving the People of the State of California of the protection afforded by the Motor
5 Vehicle Inspection Program.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 26. Respondent Garcia's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
10 provisions of that Code in the following material respects:

11 a. **Section 44012:** Respondent failed to perform the emission control tests on the
12 Bureau's 2001 Chrysler 300M in accordance with procedures prescribed by the department.

13 b. **Section 44059:** Respondent willfully made a false entry on the vehicle inspection
14 report, as set forth in paragraph 19 above.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

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

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
22 electronic smog certificate of compliance for the Bureau's 2001 Chrysler 300M.

23 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
24 2001 Chrysler 300M in accordance with Health & Saf. Code sections 44012 and 44035, and
25 California Code of Regulations, title 16, section 3340.42.

26 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
27 Bureau's 2001 Chrysler 300M in accordance with the Bureau's specifications.

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1 **TENTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent Garcia's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
5 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
6 compliance for the Bureau's 2001 Chrysler 300M without performing a bona fide inspection of
7 the emission control devices and systems on the vehicle, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program.

9 **MATTERS IN AGGRAVATION**

10 29. To determine the degree of discipline, if any, to be imposed on Respondents,
11 Complainant alleges as follows:

12 **Respondent East Bay Smog**

13 a. On or about January 12, 2009, the Bureau issued Citation No. C09-0819 against
14 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
15 perform a visual/functional check of emission control devices according to procedures prescribed
16 by the department), and California Code of Regulations, title 16, section ("Regulation") 3340.35,
17 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
18 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing
19 pulse air injection reactor system (PAIR). The Bureau assessed civil penalties totaling \$500
20 against Respondent for the violations. Respondent complied with the citation on February 27,
21 2009.

22 b. On or about July 20, 2009, the Bureau issued Citation No. C2010-0063 against
23 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
24 perform a visual/functional check of emission control devices according to procedures prescribed
25 by the department), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
26 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
27 Bureau undercover vehicle with a missing fuel evaporative canister. The Bureau assessed civil

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1 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with the
2 citation on September 24, 2009.

3 c. On or about January 13, 2010, the Bureau issued Citation No. C2010-0669 against
4 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
5 determine that emission control devices and systems required by State and Federal law are
6 installed and functioning correctly in accordance with test procedures), and Regulation 3340.35,
7 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
8 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the
9 ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling
10 \$2,000 against Respondent for the violations. Respondent complied with the citation on March 8,
11 2010.

12 **Respondent Garcia**

13 d. On or about January 12, 2009, the Bureau issued Citation No. M09-0820 against
14 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
15 perform tests of emission control systems and devices in accordance with Health & Saf. Code
16 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
17 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
18 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
19 vehicle with a missing PAIR. Respondent was directed to complete an 8 hour training course and
20 to submit proof of completion to the Bureau within 30 days from receipt of the citation.
21 Respondent complied with the citation and completed the training on February 18, 2009.

22 e. On or about July 20, 2009, the Bureau issued Citation No. M2010-0064 against
23 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
24 perform tests of emission control systems and devices in accordance with Health & Saf. Code
25 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
26 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
27 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
28 vehicle with a missing fuel evaporative canister. Respondent was directed to complete a 16 hour

1 training course and to submit proof of completion to the Bureau within 30 days from receipt of
2 the citation. Respondent complied with the citation and completed the training on September 19,
3 2009.

4 f. On or about January 13, 2010, the Bureau issued Citation No. M2010-0670 against
5 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
6 perform tests of emission control systems and devices in accordance with Health & Saf. Code
7 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
8 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
9 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
10 vehicle with the ignition timing adjusted beyond specifications. Respondent was directed to
11 complete a Clean Air Car Course and to submit proof of completion to the Bureau. Respondent
12 complied with the citation and completed the training on February 28, 2010.

13 **OTHER MATTERS**

14 30. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
15 suspend, revoke or place on probation the registration for all places of business operated in this
16 state by Respondent East Bay Smog upon a finding that said Respondent has, or is, engaged in a
17 course of repeated and willful violations of the laws and regulations pertaining to an automotive
18 repair dealer.

19 31. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
20 License Number TC 252615, issued to Respondent East Bay Smog, is revoked or suspended, any
21 additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee
22 may be likewise revoked or suspended by the Director.

23 32. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
24 Technician License Number EA 153742, issued to Respondent Eric Moises Garcia, is revoked or
25 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name
26 of said licensee may be likewise revoked or suspended by the Director.

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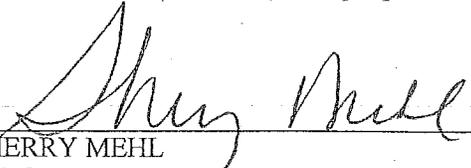
PRAYER

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 252615, issued to East Bay Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to East Bay Smog;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 252615, issued to East Bay Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of East Bay Smog;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 153742, issued to Eric Moises Garcia;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Eric Moises Garcia;
7. Ordering East Bay Smog and Eric Moises Garcia to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
8. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/10/11


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2010202385