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

13 In the Matter of the Accusation Against:  
14 **ANDREW KENT TIBBITTS, MEMBER;**  
15 **TIBBITTS SMOG LLC DBA ABC SMOG;**  
16 **1415 S. Santa Fe Ave.**  
17 **Vista, CA 92084**

18 **Automotive Repair Dealer Registration**  
19 **ARD 270689**  
20 **Smog Check, Test Only, Station License No.**  
21 **TC 270689**

22 **ANDREW KENT TIBBITTS, MEMBER;**  
23 **TIBBITTS SMOG LLC DBA ROBERTS**  
24 **SMOG TEST ONLY STATION;**  
25 **28671 Calle Cortez, Unit M**  
26 **Temecula, CA 92590**

27 **Automotive Repair Dealer Registration**  
28 **ARD 271350**  
**Smog Check, Test Only, Station License No.**  
**TC 271350**

**ANDREW KENT TIBBITTS, MEMBER;**  
**TIBBITTS SMOG LLC DBA EL AMIGO**  
**SMOG**  
**2774 Main St.**  
**Riverside, CA 92501**

**Automotive Repair Dealer Registration**  
**ARD 271689**  
**Smog Check, Test Only, Station License No.**  
**TC 271689**

Case No. 79/15-82

OAH No. 2014100709

**A C C U S A T I O N**

**( S M O G C H E C K )**

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**WILLIAM ROBERT MORROW II,  
924 La Fiesta Way  
San Marcos, CA 92078**

**Smog Check Inspector License No. EO  
42947**

**Smog Check Repair Technician License No.  
EI 42947 (formerly Advanced Emission  
Specialist Technician License No. EA 42947)**

Respondents.

Complainant alleges:

**PARTIES**

1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
2. On or about October 26, 2012, the Bureau issued Automotive Repair Dealer Registration No. ARD 270689 to Respondent Andrew Kent Tibbitts, Member; Tibbitts Smog LLC doing business as ABC Smog (ABC Smog). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.
3. On or about November 7, 2012, the Bureau issued Smog Check Test Only Station License No. TC 270689 to ABC Smog. The license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.
4. On or about January 4, 2013, the Bureau issued Automotive Repair Dealer Registration No. ARD 271350 to Respondent Andrew Kent Tibbitts, Member; Tibbitts Smog LLC doing business as Roberts Smog Test Only Station (Roberts Smog Test Only Station). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.
5. On or about January 10, 2013, the Bureau issued Smog Check Test Only Station License No. TC 271350 to Roberts Smog Test Only Station. The license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.



1 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
2 temporarily or permanently.

3 ///

4 12. Section 9884.20 of the Code states:

5 "All accusations against automotive repair dealers shall be filed within three years after the  
6 performance of the act or omission alleged as the ground for disciplinary action, except that with  
7 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,  
8 the accusation may be filed within two years after the discovery, by the bureau, of the alleged  
9 facts constituting the fraud or misrepresentation."

10 13. Section 9884.22 of the Code states:

11 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny  
12 at any time any registration required by this article on any of the grounds for disciplinary action  
13 provided in this article. The proceedings under this article shall be conducted in accordance with  
14 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
15 Code, and the director shall have all the powers granted therein.

16 "..."

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

20 15. Section 44072 of the Health and Safety Code states:

21 "Any license issued under this chapter and the regulations adopted pursuant to it may be  
22 suspended or revoked by the director. The director may refuse to issue a license to any applicant  
23 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted  
24 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
25 of the Government Code, and the director shall have all the powers granted therein."

26 16. Section 44072.4 of the Health and Safety Code states:

27 "The director may take disciplinary action against any licensee after a hearing as provided  
28 in this article by any of the following:



1 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or  
2 other means to engage in a business or profession regulated by this code or referred to in Section  
3 1000 or 3600."

4 22. Section 9884.7 of the Code states:

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

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

13 "...

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

15 "...

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

20 23. Section 44012 of the Health and Safety Code states:

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

1 idle testing for vehicles with onboard diagnostic systems that the department and the state board  
2 determine exhibit operational problems. The department shall ensure, as appropriate to the test  
3 method, the following:

4 “(a) Emission control systems required by state and federal law are reducing excess  
5 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of  
6 Section 44013.

7 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of  
8 the vehicle's emission control system.

9 “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of  
10 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded  
11 mode are tested in accordance with procedures prescribed by the department. In determining how  
12 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure  
13 that the emission reduction targets for the enhanced program are met.

14 “(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and  
15 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic  
16 compound emissions, in accordance with procedures prescribed by the department.

17 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices  
18 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the  
19 department, that may include, but are not limited to, onboard diagnostic testing. The test may  
20 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon  
21 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

26 “(g) A determination as to whether the motor vehicle complies with the emission standards  
27 for that vehicle's class and model-year as prescribed by the department.

28

1           “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a  
2 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would  
3 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or  
4 would have passed a tailpipe test.

5           “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle  
6 that would be unsafe to test, or that cannot physically be inspected, as specified by the department  
7 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle  
8 from compliance with all applicable requirements of this chapter.”

9           24. Section 44015 of the Health and Safety Code states:

10           “(a) A licensed smog check station shall not issue a certificate of compliance, except as  
11 authorized by this chapter, to any vehicle that meets the following criteria:

12           “(1) A vehicle that has been tampered with.

13           “(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of  
14 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision  
15 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error  
16 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,  
17 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a  
18 referee or another smog check station.

19           “(3) A vehicle that, prior to repairs, has been initially identified by the smog check station  
20 as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated  
21 test-only facility, or a test-and-repair station that is both licensed and certified pursuant to  
22 Sections 44014 and 44014.2.

23           “(4) A vehicle described in subdivision (c).

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

26           “(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity  
27 authorized to perform referee functions for a vehicle that has been properly tested but does not  
28 meet the applicable emission standards when it is determined that no adjustment or repair can be

1 made that will reduce emissions from the inspected motor vehicle without exceeding the  
2 applicable repair cost limit established under Section 44017 and that every defect specified by  
3 paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision  
4 (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph  
5 shall be accepted in lieu of a certificate of compliance for the purposes of compliance with  
6 Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No  
7 repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the  
8 applicable repair cost limit specified in Section 44017.

9 “(2) An economic hardship extension shall be issued, upon request of a qualified low-  
10 income motor vehicle owner, by an entity authorized to perform referee functions, for a motor  
11 vehicle that has been properly tested but does not meet the applicable emission standards when it  
12 is determined that no adjustment or repair can be made that will reduce emissions from the  
13 inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant  
14 to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section  
15 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that  
16 the low-income vehicle owner would suffer an economic hardship if the extension is not issued,  
17 and that all appropriate emissions-related repairs up to the amount of the applicable repair cost  
18 limit in Section 44017.1 have been performed.

19 “(d) No repair cost waiver or economic hardship extension shall be issued under any of the  
20 following circumstances:

21 “(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in  
22 the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship  
23 extension may be issued to a motor vehicle owner only once for a particular motor vehicle  
24 belonging to that owner. However, a repair cost waiver or economic hardship extension may be  
25 issued for a motor vehicle that participated in a previous waiver or extension program prior to  
26 January 1, 1998, as determined by the department. For waivers or extensions issued in the  
27 program operative on or after January 1, 1998, a waiver or extension may be issued for a motor  
28 vehicle only once per owner.

1           “(2) Upon initial registration of all of the following:

2           “(A) A direct import motor vehicle.

3           “(B) A motor vehicle previously registered outside this state.

4           “(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

5           “(D) A motor vehicle that has had an engine change.

6           “(E) An alternate fuel vehicle.

7           “(F) A specially constructed vehicle.

8           “(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance  
9 shall be valid for 90 days.

10           “(f) Excluding any vehicle whose transfer of ownership and registration is described in  
11 subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in  
12 Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle  
13 dealer shall be responsible for having a smog check inspection performed on, and a certificate of  
14 compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate  
15 issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle  
16 is sold and registered to a retail buyer, whichever occurs first.

17           “(g) A test may be made at any time within 90 days prior to the date otherwise required.”

18           25. Section 44035 of the Health and Safety Code states:

19           “(a) A smog check station's license or a qualified smog check technician's qualification may  
20 be suspended or revoked by the department, after a hearing, for failure to meet or maintain the  
21 standards prescribed for qualification, equipment, performance, or conduct. The department shall  
22 adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses  
23 and qualifications and the conduct of the hearings.

24           “(b) The department or its representatives, including quality assurance inspectors, shall be  
25 provided access to licensed stations for the purpose of examining property, station equipment,  
26 repair orders, emissions equipment maintenance records, and any emission inspection items, as  
27 defined by the department.”

28           26. Section 44072.2 of the Health and Safety Code states:

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

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

7 "...

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

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

10 "..."

11 27. Section 44072.10 of the Health and Safety Code states:

12 "...

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

16 "(1) Clean piping, as defined by the department.

17 "(2) Tampering with a vehicle emission control system or test analyzer system.

18 "(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or  
19 falsely fail an inspection.

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

## 22 REGULATORY PROVISIONS

23 28. California Code of Regulations, title 16, section 3340.1. states:

24 "...

25 "'Clean piping,' for the purposes of Health and Safety Code section 44072.10(c)(1), means  
26 the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in  
27 order to cause the EIS to issue a certificate of compliance for the test vehicle.

28 "..."

1           29. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
2 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
3 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
4 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

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

6           “... ”

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

11           “(1) Customers shall be charged the same price for certificates as that paid by the licensed  
12 station; and

13           “(2) Sales tax shall not be assessed on the price of certificates.

14           “... ”

15           31. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

16           “... ”

17           “(c) No person shall enter into the emissions inspection system any vehicle identification  
18 information or emission control system identification data for any vehicle other than the one being  
19 tested. Nor shall any person knowingly enter into the emissions inspection system any false  
20 information about the vehicle being tested.

21           “... ”

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

23           “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by  
24 section 3340.45.

25           “(a) All vehicles subject to a smog check inspection, shall receive one of the following test  
26 methods:

27           “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year  
28 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-

1 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen  
2 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section  
3 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test  
4 equipment, including a chassis dynamometer, certified by the bureau.

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

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

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

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

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



1           36. On June 10 and 24 and July 22, 2014, a Bureau representative conducted video  
2 surveillance at ABC Smog. The Bureau representative used a vehicle that was equipped with a  
3 video camera and video recording equipment. Before the surveillance began, the Bureau  
4 representative verified that the clock of the video recording equipment was in sync with the  
5 Vehicle Information Database clock. When the recorded stopped for the day, the Bureau  
6 representative created several DVDs from the video surveillance. After the Bureau representative  
7 made copies of the DVDs, the Bureau representative placed the originals in an envelope that was  
8 sealed and tagged. The Bureau representative transferred custody of the envelope containing the  
9 DVDs to another Bureau representative, who then secured the envelope with the DVDs in an  
10 evidence locker at the Bureau's San Diego field office.

11           37. Clean Pipe 1 – Smart For Two

12           The BAR97 Test Detail from the Vehicle Information Database shows that on June 10,  
13 2014, from 1057 hours to 1108 hours, ABC Smog and Morrow performed a smog check  
14 inspection on a 2005 Smart, For Two, CA License #6NHC580, VIN #WME4503321J253812  
15 (Smart). The Smart was issued Certificate of Compliance #YH048654C.

16           38. On the video surveillance of June 10, 2014, at 1101 hours Morrow drives a Honda  
17 Accord, CA license No. 4BIX288 (Accord) into the smog bay at ABC Smog's smog station.  
18 Morrow goes to the Emissions Inspection System and temporarily sits in the driver seat of the  
19 Accord to move it. At 1102 hours, Morrow installs the Emissions Inspection System tailpipe  
20 probe into the Accord's tailpipe. At 1105 hours, Morrow removes the probe from the Accord's  
21 tailpipe. At 1106 hours, he drives the Accord out of the smog bay. The Accord is in the smog  
22 bay with the Emissions Inspection System tailpipe probe in the tailpipe during the record time of  
23 the Smart's certified smog inspection.

24           39. The Smart is never observed in the smog bay of ABC Smog's smog station during the  
25 recorded time of the smog check inspection and did not receive the required tailpipe emissions  
26 inspection. ABC Smog and Morrow clean piped the Smart by using the exhaust sample of the  
27 Accord.

28           ///

1           40. Clean Pipe 2 – Chevrolet Chevette

2           The BAR97 Test Detail from the Vehicle Information Database shows that on June 24,  
3 2014, from 1028 hours to 1038 hours, ABC Smog and Morrow performed a smog check  
4 inspection on a 1979 Chevrolet Chevette, CA License #1MAR510, VIN #1B0809Y219249  
5 (Chevette). The Chevette was issued Certificate of Compliance #YH240517C.

6           41. On the video surveillance of June 24, 2014, at 1027 hours an unidentified person  
7 drives a Honda Accord (Accord) into ABC Smog's smog bay. At 1030 hours, Morrow drives the  
8 Accord deeper into the smog bay. At 1032 hours, he installs a tailpipe probe into the Accord's  
9 tailpipe. Morrow sits in the Accord's driver's seat and at 1034 hours he removes the tailpipe  
10 probe. At 1040 hours, Morrow drives the Accord out of the smog bay. The Accord is the only  
11 vehicle in the smog bay during the recorded time of the Chevette's inspection.

12           42. However, the Chevette was never observed in the smog bay during the recorded time  
13 of the smog check inspection and did not receive the required tailpipe emissions inspection. ABC  
14 Smog and Morrow clean piped the Chevette using the exhaust sample of the Accord.

15           43. Clean Pipe 3 – Chevrolet C1500 Pickup

16           The BAR97 Test Detail from the Vehicle Information Database shows that on June 24,  
17 2014, from 1051 hours to 1056 hours, ABC Smog and Morrow performed a smog check  
18 inspection on a 1998 Chevrolet C1500 Pickup, CA License #7Z87379, VIN  
19 #1GCEK19RXWE149809 (the C1500). The C1500 was issued Certificate of Compliance  
20 #YH240519C.

21           44. On the video surveillance of June 24, 2014, at 1041 hours, Morrow drives a green  
22 Chevrolet Blazer (Blazer) into ABC Smog's smog bay. At 1050 hours the Blazer is still in ABC  
23 Smog's smog bay. Morrow gets in and out of the driver seat operating the Blazer. At 1056 hours,  
24 he drives the Blazer out of the smog bay. The Blazer is in the smog bay during the recorded time  
25 of the C1500's smog inspection.

26           45. However, the C1500 was never observed in the smog bay during the recorded time of  
27 the smog check inspection and did not receive the required tailpipe emissions inspection. ABC  
28 Smog and Morrow clean piped the C1500 using the exhaust sample of the Blazer.

1           46. Clean Pipe 4 – Ford F150 Super Cab-Short

2           The BAR97 Test Detail from the Vehicle Information Database shows that on June 24,  
3 2014, from 1101 hours to 1108 hours, ABC Smog and Morrow performed a smog check  
4 inspection on 1993 Ford F150 Super Cab-Short, CA License #5A01658, VIN  
5 #1FTEX15Y2PKA24563 (F150). The F150 was issued Certificate of Compliance #YH240520C.

6           47. On the video surveillance of June 24, 2014, at 1102 hours Morrow drives the Accord  
7 into ABC Smog's smog bay. At 1104 hours Morrow sits in the Accord's driver seat. At 1105  
8 hours Morrow gets out of the Accord. At 1110 hours the Accord is still in the smog bay. The  
9 Accord was the only vehicle observed in the smog bay during the recorded time of the F150's  
10 inspection.

11          48. However, the F150 is never observed in the smog bay during the recorded time of the  
12 smog check inspection and did not receive the required tailpipe emissions inspection. ABC Smog  
13 and Morrow clean piped the F150 using the exhaust sample of the Accord.

14          49. Clean Pipe 5 – Jeep Grand Cherokee

15          The BAR97 Test Detail from the Vehicle Information Database shows that on June 24,  
16 2014, from 1114 hours to 1119 hours, ABC Smog and Morrow performed a smog check  
17 inspection on a 1999 Jeep Grand Cherokee 2WD, CA License #4EEN309, VIN  
18 #1J4G258S7XC612503 (Jeep). The Jeep was issued Certificate of Compliance #YH240521C.

19          50. On the video surveillance of June 24, 2014, at 1102 hours Morrow drives the Accord  
20 into ABC Smog's smog bay. At 1110 hours, the Accord is still in the smog bay. Morrow gets in  
21 and out of the Accord's driver seat. At 1119 hours, he drives the Accord out of the smog bay.  
22 The Accord was the only vehicle observed in the smog bay during the recorded time of the Jeep's  
23 inspection.

24          51. However, the Jeep is never observed in the smog bay during the recorded time of the  
25 smog check inspection and did not receive the required tailpipe emissions inspection. ABC Smog  
26 and Morrow clean piped the Jeep using the exhaust sample of the Accord.

27        ///

28        ///

1           52. Clean Pipe 6 – Mercedes-Benz C320

2           The BAR97 Test Detail from the Vehicle Information Database shows that on July 22,  
3 2014, from 0945 hours to 0953 hours, ABC Smog and Morrow performed a smog check  
4 inspection on a 2003 Mercedes-Benz C320, CA License #6LFX543, VIN  
5 #WDBRN40JX3A493594 (C320). The C320 was issued Certificate of Compliance  
6 #YH748406C.

7           53. On the video surveillance of July 22, 2014, at 0941 hours an unidentified person  
8 drives a Mercedes-Benz CLK, CA License # 6YFY940 (CLK) into ABC Smog's smog bay.  
9 Morrow is periodically at the Emissions Inspection System. At 0945 hours, Morrow drives the  
10 CLK deeper into the smog bay. At 0947 hours, he installs the tailpipe probe into the CLK  
11 tailpipe. Morrow gets in and out of the CLK driver seat. At 0951 hours, he removes the tailpipe  
12 probe from the CLK tailpipe. At 0953 hours, Morrow drives the CLK out of the smog bay. The  
13 CLK was the only vehicle observed in the smog bay during the recorded time of the C320's  
14 inspection.

15           54. However, the C320 is never observed in the smog bay during the recorded time of the  
16 smog check inspection and did not receive the required tailpipe emissions inspection. ABC Smog  
17 and Morrow clean piped the C320 using the exhaust sample of the CLK.

18           55. Clean Pipe 7 – Kia Rio

19           The BAR97 Test Detail from the Vehicle Information Database shows that on July 22,  
20 2014, from 1123 hours to 1128 hours, ABC Smog and Morrow performed a smog check  
21 inspection on a 2003 Kia Rio, CA License #5BHG337, VIN #KNADC165136143541 (Rio). The  
22 Rio was issued Certificate of Compliance #YH748408C.

23           56. On the video surveillance of July 22, 2014, at 1121 hours there is a silver Toyota  
24 Camry with no license plate (Camry) in ABC Smog's smog bay. At 1126 hours, Morrow installs  
25 the tailpipe probe into the Camry's tailpipe. Morrow gets in the Camry and operates it on the  
26 dynamometer. At 1127 hours, he removes the tailpipe probe from the Camry's tailpipe. Morrow  
27 is periodically at the Emissions Inspection System. At 1131 hours, he drives the Camry out of  
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1 the smog bay. The Camry was the only vehicle observed in the smog bay during the recorded  
2 time of the Rio's inspection.

3 57. However, the Rio is never observed in the smog bay during the recorded time of the  
4 smog check inspection and did not receive the required tailpipe emissions inspection. ABC Smog  
5 and Morrow clean piped the Rio using the exhaust sample of the Camry.

6 58. Clean Pipe 8 – Ford E350 Super Van

7 The BAR97 Test Detail from the Vehicle Information Database shows that on July 22,  
8 2014, from 1221 hours to 1229 hours, ABC Smog and Morrow performed a smog check  
9 inspection on a 1994 Ford E350 Super Van, CA License #4W68774, VIN  
10 #1FDKE37GXRHB31543 (E350). The E350 was issued Certificate of Compliance  
11 #YH748409C.

12 59. On the video surveillance of July 22, 2014, at 1223 hours Morrow drives a white Jeep  
13 Grand Cherokee, CA License No. 5ZRY421 (Grand Cherokee) into ABC Smog's smog bay. At  
14 1225 hours, he installs the tailpipe probe into the Grand Cherokee's tailpipe. Morrow  
15 periodically gets in and out of the Grand Cherokee driver seat area and goes to the Emissions  
16 Inspection System. At 1232 hours, he removes the tailpipe probe from the Grand Cherokee  
17 tailpipe. The Grand Cherokee was the only vehicle observed in the smog bay during the recorded  
18 time of the E350's inspection.

19 60. However, the E350 is never observed in the smog bay during the recorded time of the  
20 smog check inspection and did not receive the required tailpipe emissions inspection. ABC Smog  
21 and Morrow clean piped the E350 using the exhaust sample of the Grand Cherokee.

22 61. Clean Pipe 9 – Land Rover Discovery SER II

23 The BAR97 Test Detail from the Vehicle Information Database shows that on July 22,  
24 2014, from 1322 hours to 1331 hours, ABC Smog and Morrow performed a smog check  
25 inspection on a 2000 Land Rover Discovery SER II, CA License #5DYP150, VIN  
26 #SALTY1546YA275765 (Discovery). The Discovery was issued Certificate of Compliance  
27 #YH748410C.

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1           62. On the video surveillance of July 22, 2014, at 1327 hours a Toyota Tacoma, License  
2 #55690F1 (Tacoma) is inside of ABC Smog's smog bay. Morrow installs the tailpipe probe into  
3 the Tacoma's tailpipe. Morrow goes in and out of the Tacoma driver seat and Emissions  
4 Inspection System. At 1331 hours, Morrow removes the tailpipe probe from the Tacoma tailpipe.  
5 At 1335 hours, the Tacoma is still in the smog bay. The Tacoma was the only vehicle observed  
6 in the smog bay during the recorded time of the Discovery's inspection.

7           63. However, the Discovery is never observed in the smog bay during the recorded time  
8 of the smog check inspection and did not receive the required tailpipe emissions inspection. ABC  
9 Smog and Morrow clean piped the Discovery using the exhaust sample of the Tacoma.

10          64. Clean Pipe 10 – Nissan Murano  
11           The BAR97 Test Detail from the Vehicle Information Database shows that on July 22,  
12 2014, from 1335 hours to 1339 hours, ABC Smog and Morrow performed a smog check  
13 inspection on a 2006 Nissan Murano, CA License #5ZBG089, VIN #JN8AZ08W16W515604  
14 (Murano). The Murano was issued Certificate of Compliance #YH748411C.

15          65. On the video surveillance of July 22, 2014, at 1335 hours the Tacoma is still in ABC  
16 Smog's smog bay. At 1337 hours, Morrow installs the tailpipe probe into the Tacoma tailpipe.  
17 Morrow goes to the Tacoma driver seat and the Emissions Inspection System. At 1339 hours, he  
18 removes the tailpipe probe from the Tacoma tailpipe. The Tacoma was the only vehicle observed  
19 in the smog bay during the recorded time of the Murano's inspection.

20          66. However, the Murano is never observed in the smog bay during the recorded time of  
21 the smog check inspection and did not receive the required tailpipe emissions inspection. ABC  
22 Smog and Morrow clean piped the Murano using the exhaust sample of the Tacoma.

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1 67. The following chart is a summary of the clean piping performed by ABC Smog and  
 2 Morrow during the time of the surveillance:

	Date & Time of Inspection as Certified in the VID	Information of Certified Vehicle and Smog Certificate of Compliance #	Vehicle certified observed in Smog Bay?	Vehicle Observed in Smog Bay During Time of Inspection
1	June 10, 2014, from 1057 hours to 1108 hours	2005 Smart, For Two; #YH048654C	No	Honda Accord
2	June 24, 2014, from 1028 hours to 1038 hours	1979 Chevrolet Chevette; #YH240517C	No	Honda Accord
3	June 24, 2014, from 1051 hours to 1056 hours	1998 Chevrolet C1500 Pickup; #YH240519C	No	Chevrolet Blazer
4	June 24, 2014, from 1101 hours to 1108 hours	1993 Ford F150 Super Cab-Short; #YH240520C	No	Honda Accord
5	June 24, 2014, from 1114 hours to 1119 hours	1999 Jeep Grand Cherokee 2WD; #YH240521C	No	Honda Accord
6	July 22, 2014, from 0945 hours to 0953 hours	2003 Mercedes-Benz C320; # YH748406C	No	Mercedes-Benz CLK
7	July 22, 2014, from 1123 hours to 1128 hours	2003 Kia Rio; # YH748408C	No	Toyota Camry
8	July 22, 2014, from 1221 hours to 1229 hours	1994 Ford E350 Super Van; #YH748409C	No	Jeep Grand Cherokee
9	July 22, 2014, from 1322 hours to 1331 hours	2000 Land Rover Discovery SER II; #YH748410C	No	Toyota Tacoma
10	July 22, 2014, from 1335 hours to 1339 hours	2006 Nissan Murano; #YH748411C	No	Toyota Tacoma

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Untrue or Misleading Statements)**

26 68. Complainant re-alleges and incorporates by reference the allegations set forth above  
 27 in paragraphs 35-67.  
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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Clean Piping)**

3 76. Complainant re-alleges and incorporates by reference the allegations set forth above  
4 in paragraphs 35-75.

5 77. Respondent ABC Smog's Station license is subject to disciplinary action for clean  
6 piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code  
7 of Regulations, title 16, section 3340.1, in that Respondent ABC Smog used a substitute exhaust  
8 emission sample of one vehicle in place of another vehicle's exhaust emission sample in order to  
9 cause the Emissions Inspection System to issue certificates of compliance for the inspections  
10 described in paragraphs 35-75.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Violation of Motor Vehicle Inspection Program)**

13 78. Complainant re-alleges and incorporates by reference the allegations set forth above  
14 in paragraphs 35-77.

15 79. Respondent Morrow's technician licenses are subject to disciplinary action under  
16 Health and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a), in that he  
17 failed to comply with the following sections of that Code:

18 a. **Section 44012:** Respondent Morrow failed to perform the tests of the emission  
19 control systems and devices on the vehicles described in paragraphs 35-77 in accordance with  
20 procedures prescribed by the Department.

21 b. **Section 44015:** Respondent Morrow issued certificates of compliance for the  
22 vehicles described in paragraphs 35-77 without properly testing and inspecting them to determine  
23 if they were in compliance with Health & Safety Code section 44012.

24 c. **Section 44035:** Respondent Morrow failed to meet or maintain the standards  
25 prescribed for qualification, equipment, performance, or conduct by failing to properly perform  
26 smog inspections on the vehicles described in paragraphs 35-77 or certifying that such tests had  
27 been properly performed, when in fact they were not properly performed.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Clean Piping)**

3 84. Complainant re-alleges and incorporates by reference the allegations set forth above  
4 in paragraphs 35-83.

5 85. Respondent Morrow's technician licenses are subject to disciplinary action under  
6 Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code of  
7 Regulations, title 16, section 3340.1, in that Respondent Morrow used a substitute exhaust  
8 emission sample of one vehicle in place of another vehicle's exhaust emission sample in order to  
9 cause the Emissions Inspection System to issue certificates of compliance for the inspections  
10 described in paragraphs 35-83.

11 **DISCIPLINE CONSIDERATIONS**

12 86. Complainant further alleges that in 2010, the Bureau issued Morrow Citation No.  
13 M2010-1000. It alleged that Morrow issued a certificate of compliance to a Bureau-documented  
14 undercover vehicle with the ignition timing set beyond specifications. The citation directed  
15 Morrow to complete an eight hour training course. On May 13, 2010, Morrow completed the  
16 training. That Citation is now final and is incorporated by reference as if fully set forth.

17 87. Complainant further alleges that in 2012, the Bureau issued Morrow Citation No.  
18 M2012-1268. It alleged that Morrow issued a certificate of compliance to a Bureau-documented  
19 undercover vehicle with the ignition timing set beyond specifications. The citation directed  
20 Morrow to complete a sixteen hour training course. On October 15, 2013, Morrow completed the  
21 training. That Citation is now final and is incorporated by reference as if fully set forth.

22 **OTHER MATTERS**

23 88. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke, or  
24 place on probation the registration for all places of business operated in this State by Respondent  
25 ABC Smog upon a finding that Respondent ABC Smog has, or is, engaged in a course of repeated  
26 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

27 89. Under Health & Safety Code section 44072.8, if Respondent ABC Smog's Station  
28 License is revoked or suspended, the Director may likewise revoke or suspend any additional

1 license issued under Chapter 5 of the Health and Safety Code in the name of Respondent ABC  
2 Smog, including the licenses of Roberts Smog Test Only Station and El Amigo Smog.

3 90. Under Health & Safety Code section 44072.8, if Respondent Morrow's technician  
4 licenses are revoked or suspended, the Director may likewise revoke or suspend any additional  
5 license issued under Chapter 5 of the Health and Safety Code in the name of Respondent Morrow.

6 **PRAYER**

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

9 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 270689  
10 issued to Respondent Andrew Kent Tibbitts, Member; Tibbitts Smog LLC doing business as ABC  
11 Smog;

12 2. Revoking or suspending Smog Check Test Only Station License No. TC 270689  
13 issued to Respondent Andrew Kent Tibbitts, Member; Tibbitts Smog LLC doing business as ABC  
14 Smog;

15 3. Revoking or suspending Smog Check Inspector License No. EO 42947, and Smog  
16 Check Repair Technician License No. EI 42947 (formerly Advanced Emission Specialist (EA)  
17 Technician License No. 42947) issued to William Robert Morrow II;

18 4. Revoking or suspending the registration for all places of business operated in this  
19 state by Respondent Andrew Kent Tibbitts, Member; Tibbitts Smog LLC doing business as ABC  
20 Smog, including Roberts Smog Test Only Station and El Amigo Smog;

21 5. Revoking or suspending any additional license issued under Chapter 5 of the Health  
22 and Safety Code in the name of Respondent Andrew Kent Tibbitts, Member; Tibbitts Smog LLC  
23 doing business as ABC Smog, including Roberts Smog Test Only Station and El Amigo Smog;

24 6. Revoking or suspending any additional license issued under Chapter 5 of the Health  
25 and Safety Code in the name of William Robert Morrow II;

26 7. Ordering Respondent Andrew Kent Tibbitts, Member; Tibbitts Smog LLC doing  
27 business as ABC Smog; and William Robert Morrow II to pay the Bureau of Automotive Repair  
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the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: December 1, 2014 

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

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