

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

In the Matter of the Accusation Against:

ECHO SMOG; DAVID NEIL GARDNER
1377 S. Lilac # 104
Bloomington, CA 92316

and

8570 Palmetto Avenue,
Fontana, CA 92335

Automotive Repair Dealer Registration No.
ARD 273607
Smog Check, Test Only Station License No.
TC 273607

Respondent.

Case No. 79/14-124

OAH No. 2014080777

DECISION

The attached Stipulated Revocation of Licenses and 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 April 30, 2015.

DATED: April 8, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY
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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**

12 In the Matter of the Accusation Against:

Case No. 79/14-124

13 **ECHO SMOG; DAVID NEIL GARDNER**
1377 S. Lilac # 104
14 Bloomington, CA 92316

OAH No. 2014080777

**STIPULATED REVOCATION OF
LICENSES AND ORDER**

15 and

16 8570 Palmetto Avenue,
Fontana, Ca. 92335

17
18 Automotive Repair Dealer Registration No.
ARD 273607
19 Smog Check, Test Only Station License No.
TC 273607

20
21 Respondent.
22

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

25 PARTIES

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

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

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

5 CULPABILITY

6 9. Respondent understands that the charges and allegations in Accusation No. 79/14-124
7 if proven at a hearing, constitute cause for imposing discipline upon his Automotive Repair
8 Dealer Registration and his Smog Check, Test Only Station License.

9 10. For the purpose of resolving the Accusation without the expense and uncertainty of
10 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
11 basis for the charges in the Accusation and that those charges constitute cause for discipline.
12 Respondent hereby gives up his right to contest that cause for discipline exists based on those
13 charges.

14 11. Respondent understands that by signing this stipulation he enables the Director to
15 issue an order revoking his Automotive Repair Dealer Registration and his Smog Check, Test
16 Only Station License without further process.

17 CONTINGENCY

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

28 ///

1 filed, and all of the charges and allegations contained in Accusation No. 79/14-124 shall be
2 deemed to be true, correct and admitted by Respondent when the Director determines whether to
3 grant or deny the application.

4 5. Respondent shall pay the Bureau its costs of investigation and enforcement in the
5 amount of \$11,454.47 prior to the application of any license issued by the Bureau.

6 ACCEPTANCE

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

12
13 DATED: 3/25/15


14 ECHO SMOG; DAVID NEIL GARDNER
15 Respondent

16 ENDORSEMENT

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

19 Dated:

Respectfully submitted,

20 KAMALA D. HARRIS
21 Attorney General of California
22 LINDA L. SUN
23 Supervising Deputy Attorney General

24 KEVIN J. RIGLEY
25 Deputy Attorney General
26 *Attorneys for Complainant*

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1 filed, and all of the charges and allegations contained in Accusation No. 79/14-124 shall be
2 deemed to be true, correct and admitted by Respondent when the Director determines whether to
3 grant or deny the application.

4 5. Respondent shall pay the Bureau its costs of investigation and enforcement in the
5 amount of \$11,454.47 prior to the application of any license issued by the Bureau.

6 ACCEPTANCE

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

12
13 DATED: _____

14 ECHO SMOG; DAVID NEIL GARDNER
15 Respondent

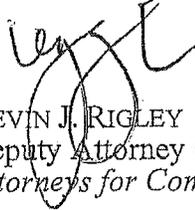
16 ENDORSEMENT

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

19 Dated: 3/10/15

20 Respectfully submitted,

21 KAMALA D. HARRIS
22 Attorney General of California
23 LINDA L. SUN
24 Supervising Deputy Attorney General

25 
26 KEVIN J. RIGLEY
27 Deputy Attorney General
28 *Attorneys for Complainant*

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Exhibit A

Accusation No. 79/14-124

1 KAMALA D. HARRIS
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2 MARC D. GREENBAUM
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/14-124

13 **ECHO SMOG**
DAVID NEIL GARDNER, OWNER
14 1377 South Lilac #104
Bloomington, CA 92316
15 Automotive Repair Dealer Reg. No. ARD 273607
Smog Check, Test Only, Station License No.
16 TC 273607

ACCUSATION

(Smog Check)

17 and

18 8570 Palmetto Avenue,
Fontana, Ca. 92335

19 and

20
21 **DAVID OMAR SANCHEZ**
979 North Elmwood Avenue
22 Rialto, CA 92376
Smog Check Inspector License No. EO 635746
23

24 Respondents.

25 ///

26 ///

27 ///

28 ///

1 Complainant alleges:

2 PARTIES

3 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
4 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

5 **Echo Smog; David Neil Gardner, Owner**

6 2. On or about July 9, 2013, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 273607 ("registration") to David Neil
8 Gardner ("Respondent"), owner, doing business as Echo Smog. Respondent's registration was in
9 full force and effect at all times relevant to the charges brought herein and will expire on July 31,
10 2014, unless renewed.

11 3. On or about July 19, 2013, the Director issued Smog Check, Test Only, Station
12 License Number TC 273607 ("smog check station license") to Respondent. Respondent's smog
13 check station license was in full force and effect at all times relevant to the charges brought herein
14 and will expire on July 31, 2014, unless renewed.

15 **David Omar Sanchez**

16 4. On or about July 11, 2013, the Director issued Smog Check Inspector License
17 Number EO 635746¹ ("inspector license") to Respondent David Omar Sanchez ("Respondent
18 Sanchez"). Respondent Sanchez's inspector license was in full force and effect at all times
19 relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

20 JURISDICTION

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

23 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
24 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary

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

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

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

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

10 **STATUTORY PROVISIONS**

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

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

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

21

22 (4) Any other conduct that constitutes fraud.

23

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

10 10. Bus. & Prof. Code section 118, subdivision (b), states:

11 The suspension, expiration, or forfeiture by operation of law of a license
12 issued by a board in the department, or its suspension, forfeiture, or cancellation by
13 order of the board or by order of a court of law, or its surrender without the written
14 consent of the board, shall not, during any period in which it may be renewed,
15 restored, reissued, or reinstated, deprive the board of its authority to institute or
16 continue a disciplinary proceeding against the licensee upon any ground provided by
17 law or to enter an order suspending or revoking the license or otherwise taking

1 disciplinary action against the licensee on any such ground.

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

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

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

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

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

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

13

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

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

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

18

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

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

23

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

25 15. Health & Saf. Code section 44072.8 states that when a license has been revoked or
26 suspended following a hearing under this article, any additional license issued under this chapter
27 in the name of the licensee may be likewise revoked or suspended by the director.

28 ///

1 REGULATORY PROVISIONS

2 16. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),
3 states: "[T]he bureau may suspend or revoke the license of or pursue other legal action against a
4 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
5 certificate of noncompliance."

6 17. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
7 shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section
8 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
9 3340.42 of this article."

10 18. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
11 station "shall issue a certificate of compliance or noncompliance to the owner or operator of any
12 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
13 this article and has all the required emission control equipment and devices installed and
14 functioning correctly."

15 19. CCR, title 16, section 3340.41, subdivision (c), provides: "No person shall enter into
16 the emissions inspection system any vehicle identification information or emission control system
17 identification data for any vehicle other than the one being tested. Nor shall any person
18 knowingly enter into the emissions inspection system any false information about the vehicle
19 being tested."

20 20. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
21 procedures which apply to all vehicles inspected in the State of California.

22 21. CCR, title 16, section 3340.28, subdivision (e), states that "[u]pon renewal of an
23 unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license
24 issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog
25 Check Inspector, Smog Check Repair Technician, or both."

26 COST RECOVERY

27 22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
28 the administrative law judge to direct a licentiate found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **VIDEO SURVEILLANCE OPERATION OF DECEMBER 19, 2013**

4 23. On or about December 19, 2013, representatives of the Bureau conducted a video
5 surveillance operation of Respondent's smog check facility. The surveillance operation and the
6 information from the Bureau's vehicle identification database ("VID") revealed that Respondent
7 Sanchez issued electronic smog certificates of compliance, certifying that he had tested and
8 inspected the vehicles identified in Table 1 and that the vehicles were in compliance with
9 applicable laws and regulations. In fact, Respondent Sanchez conducted the inspections using the
10 clean piping method², resulting in the issuance of the following fraudulent certificates of
11 compliance for the vehicles:

12 **TABLE 1**

13

14 Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.
15 1. 0855-0914 ³	1991 Toyota Pickup (VIN#JT4VN13D4M5044667)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB446909C
16 2. 1134-1207	1980 Toyota Pickup (VIN#RN37019759)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB446911C
17 3. 1238-1254	1984 Chevrolet Camaro (VIN#1G1AP87H9EL131159)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	None
18 4. 1422-1450	2002 GMC Envoy (VIN#1GKDT13S522226686)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	None
19 5. 1509-1535	1999 BMW 7-Series (VIN#WBAGG8339XDN74157)	1998 Honda Accord (VIN#1HGCG554XWA0022 01)	YB446915C

20
21
22
23
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25

26 ² Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping"
27 means the use of a substitute exhaust emissions sample in place of the actual test vehicle's
28 exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle.

³ All times noted are military times.

1 FIRST CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 24. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
5 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows: Respondent's employee certified that the vehicles identified in Table 1 above, had
7 passed inspection and were in compliance with applicable laws and regulations. In fact,
8 Respondent's employee used clean piping methods in order to issue certificates for the vehicles
9 and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

10 SECOND CAUSE FOR DISCIPLINE

11 (Fraud)

12 25. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
13 Code section 9884.7, subdivision (a)(4), in that Respondent's employee committed acts that
14 constitute fraud by issuing electronic smog certificates of compliance for the vehicles identified in
15 Table 1 above, without performing bona fide inspections of the emission control devices and
16 systems on the vehicles, thereby depriving the People of the State of California of the protection
17 afforded by the Motor Vehicle Inspection Program.

18 THIRD CAUSE FOR DISCIPLINE

19 (Violations of the Motor Vehicle Inspection Program)

20 26. Respondent's smog check station license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
22 provisions of that Code, as follows:

23 a. Section 44012: Respondent's employee failed to perform the emission control tests
24 on the vehicles identified in Table 1 above, in accordance with procedures prescribed by the
25 department.

26 b. Section 44015: Respondent issued electronic smog certificates of compliance for the
27 vehicles identified in Table 1 above, without properly testing and inspecting the vehicles to
28 determine if they were in compliance with Health & Saf. Code section 44012.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 27. Respondent's smog check station license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c)**: Respondent's employee issued electronic smog
8 certificates of compliance for the vehicles identified in Table 1 above, even though those vehicles
9 had not been inspected in accordance with section 3340.42.

10 b. **Section 3340.41, subdivision (c)**: Respondent's employee entered false information
11 into the EIS unit by entering vehicle identification information or emission control system
12 identification data for vehicles other than the ones being tested.

13 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
14 vehicles identified in Table 1 above, in accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 28. Respondent's smog check station license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
19 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
20 compliance for the vehicles identified in Table 1 above, without performing bona fide inspections
21 of the emission control devices and systems on the vehicles, thereby depriving the People of the
22 State of California of the protection afforded by the Motor Vehicle Inspection Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

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

25 29. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Sanchez failed to
27 comply with section 44012 of that Code in a material respect, as follows: Respondent Sanchez
28

1 failed to perform the emission control tests on the vehicles identified in Table 1 above, in
2 accordance with procedures prescribed by the department.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant**
5 **to the Motor Vehicle Inspection Program)**

6 30. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent Sanchez failed to
8 comply with provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent Sanchez failed to inspect and test the
10 vehicles identified in Table 1 above, in accordance with Health & Saf. Code sections 44012 and
11 44035, and California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.41, subdivision (c):** Respondent Sanchez entered false information
13 into the EIS by entering vehicle identification information or emission control system
14 identification data for vehicles other than the ones being tested.

15 c. **Section 3340.42:** Respondent Sanchez failed to conduct the required smog tests on
16 the vehicles identified in Table 1 above, in accordance with the Bureau's specifications.

17 **EIGHTH CAUSE FOR DISCIPLINE**

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

19 31. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Sanchez committed
21 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
22 certificates of compliance for the vehicles identified in Table 1 above, without performing bona
23 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
24 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
25 Program.

26 **VIDEO SURVEILLANCE OPERATION OF JANUARY 7, 2014**

27 32. On or about January 7, 2014, representatives of the Bureau conducted a video
28 surveillance operation of Respondent's smog check facility. The surveillance operation and the

1 information from the Bureau's VID revealed that Respondent Sanchez issued electronic smog
 2 certificates of compliance, certifying that he had tested and inspected the vehicles identified in
 3 Table 2 and that the vehicles were in compliance with applicable laws and regulations. In fact,
 4 Respondent Sanchez conducted the inspections using the clean piping method, resulting in the
 5 issuance of the following fraudulent certificates of compliance for the vehicles:

6 **TABLE 2**

7 Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.
8 1. 0822-0834	2003 KIA Rio (VIN#KNADC125836278327)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB687718C
9 2. 0838-0851	2002 BMW 745LI (VIN#WBAGN63492DR07324)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB687719C
10 3. 0856-0920	1997 BMW 5 Series (VIN#WBADD6323VBW25541)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB687720C
11 4. 1014-1039	1990 Nissan 240SX (VIN#JN1HS36P5LW132940)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB687722C
12 5. 1207-1222	2000 Mitsubishi Mirage (VIN#JA3AY11A9YU062235)	1998 Honda Accord (VIN#1HGCG554XWA002201)	YB687726C

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 33. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
 16 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
 17 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
 18 follows: Respondent's employee certified that the vehicles identified in Table 2 above, had
 19 passed inspection and were in compliance with applicable laws and regulations. In fact,
 20

1 Respondent's employee used the clean piping method in order to issue certificates for the vehicles
2 and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 34. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(4), in that Respondent's employee committed acts that
7 constitute fraud by issuing electronic smog certificates of compliance for the vehicles identified in
8 Table 2 above, without performing bona fide inspections of the emission control devices and
9 systems on the vehicles, thereby depriving the People of the State of California of the protection
10 afforded by the Motor Vehicle Inspection Program.

11 **ELEVENTH CAUSE FOR DISCIPLINE**

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

13 35. Respondent's smog check station license is subject to disciplinary action pursuant to
14 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
15 provisions of that Code, as follows:

16 a. **Section 44012:** Respondent's employee failed to perform the emission control tests
17 on the vehicles identified in Table 2 above, in accordance with procedures prescribed by the
18 department.

19 b. **Section 44015:** Respondent's employee issued electronic smog certificates of
20 compliance for the vehicles identified in Table 2 above, without properly testing and inspecting
21 the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

22 **TWELFTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations Pursuant**
24 **to the Motor Vehicle Inspection Program)**

25 36. Respondent's smog check station license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
27 provisions of California Code of Regulations, title 16, as follows:
28

1 a. Section 3340.35, subdivision (c): Respondent's employee issued electronic smog
2 certificates of compliance for the vehicles identified in Table 2 above, even though those vehicles
3 had not been inspected in accordance with section 3340.42.

4 b. Section 3340.41, subdivision (c): Respondent's employee entered false information
5 into the EIS unit by entering vehicle identification information or emission control system
6 identification data for vehicles other than the ones being tested.

7 c. Section 3340.42: Respondent failed to conduct the required smog tests on the
8 vehicles identified in Table 2 above, in accordance with the Bureau's specifications.

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

11 37. Respondent's smog check station license is subject to disciplinary action pursuant to
12 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
13 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
14 compliance for the vehicles identified in Table 2 above, without performing bona fide inspections
15 of the emission control devices and systems on the vehicles, thereby depriving the People of the
16 State of California of the protection afforded by the Motor Vehicle Inspection Program.

17 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

19 38. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Sanchez failed to
21 comply with section 44012 of that Code in a material respect, as follows: Respondent Sanchez
22 failed to perform the emission control tests on the vehicles identified in Table 2 above, in
23 accordance with procedures prescribed by the department.

24 ///

25 ///

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 39. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent Sanchez failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Sanchez failed to inspect and test the
8 vehicles identified in Table 2 above, in accordance with Health & Saf. Code sections 44012 and
9 44035, and California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.41, subdivision (c):** Respondent Sanchez entered false information
11 into the EIS by entering vehicle identification information or emission control system
12 identification data for vehicles other than the ones being tested.

13 c. **Section 3340.42:** Respondent Sanchez failed to conduct the required smog tests on
14 the vehicles identified in Table 2 above, in accordance with the Bureau's specifications.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

17 40. Respondent Sanchez's inspector license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Sanchez committed
19 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
20 certificates of compliance for the vehicles identified in Table 2 above, without performing bona
21 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
22 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

24 **OTHER MATTERS**

25 41. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
26 suspend, revoke or place on probation the registration for all places of business operated in this
27 state by Respondent David Neil Gardner, owner of Echo Smog, upon a finding that said
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1 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
2 regulations pertaining to an automotive repair dealer.

3 42. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
4 License Number TC 273607, issued to Respondent David Neil Gardner, owner of Echo Smog, is
5 revoked or suspended, any additional license issued under this chapter in the name of said
6 licensee may be likewise revoked or suspended by the Director.

7 43. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
8 Number EO 635746, issued to Respondent David Omar Sanchez, is revoked or suspended, any
9 additional license issued under this chapter in the name of said licensee may be likewise revoked
10 or suspended by the Director.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 273607, issued to David Neil Gardner, owner of Echo Smog;

16 2. Revoking or suspending any other automotive repair dealer registration issued to
17 David Neil Gardner;

18 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
19 273607, issued to David Neil Gardner, owner of Echo Smog;

20 4. Revoking or suspending Smog Check Inspector License Number EO 635746, issued
21 to David Omar Sanchez;

22 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of David Omar Sanchez;

24 6. Ordering David Neil Gardner, individually, and as owner of Echo Smog, and David
25 Omar Sanchez to pay the Bureau of Automotive Repair the reasonable costs of the investigation
26 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

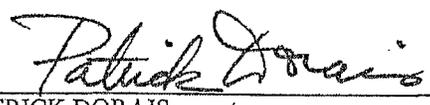
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7. Taking such other and further action as deemed necessary and proper.

DATED: April 22, 2014


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

LA2014511511