

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

In the Matter of the Second Amended Accusation
Against:

EDDIE'S AUTO WORLD
EDDIE HONARCHIAN, OWNER
1585 N. Blackstone
Fresno, CA 93703-3611

Automotive Repair Dealer Registration
No. ARD 186684
Smog Check, Test-and-Repair, Station License
No. RC 186684

and

EDDIE'S AUTO WORLD
EDDIE HONARCHIAN, OWNER
4889 N. Blackstone
Fresno, CA 93726

Automotive Repair Dealer Registration No.
ARD 259944
Smog Check, Test-and-Repair, Station License
No. RC 259944

and

EDDIE HONARCHIAN
1585 N. Blackstone
Fresno, CA 93703-3611

Advanced Emission Specialist Technician
License No. EA 622792 (to be redesignated
upon renewal as EO 622792 and/or EI
622792)

Respondents.

Case No. 79/13-43

OAH No. 2013030565

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the Proposed Decision are corrected as follows:

1. Page 3, paragraph 1 under Factual Findings, lines 6 and 7: The expiration date of "December 31, 2013" of Automotive Repair Dealer Registration Number ARD 186684 is corrected read "December 31, 2014."
2. Page 3, paragraph 2 under Factual Findings, line 6: The expiration date of "December 31, 2013" of Smog Check Station License Number RC 186684 is corrected read "December 31, 2014."
3. Page 3, paragraph 3 under Factual Findings, line 4: The expiration date of "November 30, 2013" of Automotive Repair Dealer Registration Number ARD 259944 is corrected read "November 30, 2014."
4. Page 3, paragraph 4 under Factual Findings, line 4: The expiration date of "November 30, 2013" of Smog Check Station License Number RC 259944 is corrected read "November 30, 2014."

This Decision shall become effective March 3, 2014.

DATED: MAR 27 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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Respondents.

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 5, 2013, in Fresno, California.

Karen R. Denvir, Deputy Attorney General, represented Patrick Dorais (complainant), Acting Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

James M. Makasian, Attorney at Law, represented Eddie Honarchian (respondent), owner of Eddie's Auto World.

Evidence was received on November 5, 2013. The record was left open to allow complainant to submit a copy of a prior citation against respondents, and for respondents to submit a response. On November 12, 2013, complainant submitted a copy of Citation No. C2011-0075, the Proposed Decision in OAH No. 2010110768, and the Decision, together with related documents, which were marked for identification as Exhibit 42. On December 3, 2013, respondent submitted a response, which was marked for identification as Exhibit A. On December 3, 2013, complainant submitted a reply, which was marked for identification as Exhibit 43.

In his response (Exhibit A), respondent objected to the additional evidence offered by complainant (Exhibit 42) on the grounds of hearsay and lack of foundation. Complainant replied (Exhibit 43) that the additional evidence is admissible under Government Code sections 11513, subdivision (c), and 11515.¹ Respondent's objections are sustained in part

¹ Government Code section 11513, subdivision (c), provides:

The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

Government Code section 11515 provides:

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed

and overruled in part. Pursuant to Government Code section 11515, official notice is taken of the Citation, Proposed Decision, and Decision included in Exhibit 42. The remainder of Exhibit 42 is not admitted.

In the reply (Exhibit 43), complainant objected to the additional argument included in respondent's response (Exhibit A). Complainant's objection is sustained.

The record closed and this matter was submitted for decision on December 3, 2013.

FACTUAL FINDINGS

1. On December 20, 1995, Automotive Repair Dealer Registration Number ARD 186684 was issued to respondent, doing business as In & Out Smog & Automotive Repair (In & Out Smog), located at 1585 N. Blackstone, Fresno, California. On or about July 30, 2013, respondent's business name was changed to Eddie's Auto World. Respondent's Automotive Repair Dealer Registration Number ARD 186684 was in full force and effect at all times relevant to the charges alleged in this matter, and will expire on December 31, 2013, unless renewed or revoked.

2. On December 17, 2008, Smog Check Station License Number RC 186684 was issued to respondent, doing business as In & Out Smog, located at 1585 N. Blackstone, Fresno, California. On or about July 30, 2013, respondent's business name was changed to Eddie's Auto World. Respondent's Smog Check Station License Number RC 186684 was in full force and effect at all times relevant to the charges alleged in this matter, and will expire on December 31, 2013, unless renewed or revoked.

3. On November 12, 2009, Automotive Repair Dealer Registration Number ARD 259944 was issued to respondent, doing business as Eddie's Auto World, located at 4889 N. Blackstone, Fresno, California. Respondent's Automotive Repair Dealer Registration Number ARD 259944 will expire on November 30, 2013, unless renewed or revoked.

4. On May 6, 2010, Smog Check Station License Number RC 259944 was issued to respondent, doing business as Eddie's Auto World, located at 4889 N. Blackstone, Fresno, California. Respondent's Smog Check Station License Number RC 259944 will expire on November 30, 2013, unless renewed or revoked.

5. In 1998, Advanced Emission Specialist Technician License Number EA 622792 (technician license) was issued to respondent. Respondent's technician license is

matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the agency.

due to expire on January 31, 2014. Upon renewal, respondent's technician license will be redesignated as EO 622792 and/or EI 622792.

Consumer Complaint (Lewis): 1996 Toyota Camry

6. In February 2010, Gwenda Lewis took her 1996 Toyota Camry to In & Out Smog for diagnosis, repairs and a smog inspection after it had failed a previous smog inspection. Thereafter, a consumer complaint was filed with the Bureau regarding this vehicle.² Jack Lewis, a Bureau Program Representative I, investigated the consumer complaint. Mr. Lewis obtained the invoice In & Out Smog prepared with regard to Ms. Lewis's vehicle. He also obtained the BAR97 Test Detail regarding the smog inspection of this vehicle. The information on the BAR97 Test Detail was inputted into the Bureau's data base by the technician who conducted the smog inspection. The BAR97 Test Detail for Ms. Lewis's 1996 Toyota Camry showed that the smog inspection was conducted by Henry's Automotive, a test-only station, and not by In & Out Smog.

7. On August 10, 2010, Mr. Lewis met with respondent regarding this complaint. Mr. Lewis discussed with respondent sending Ms. Lewis's vehicle to a test-only station for a smog inspection. Mr. Lewis told respondent that he could not sublet a smog inspection to another smog check facility.

8. At hearing, respondent admitted that he sublet the smog inspection of Ms. Lewis's vehicle.

Consumer Complaint (Soto): 1979 Chevrolet Truck

9. In March 2011, Carlos Soto took his 1979 Chevrolet truck to In & Out Smog for emission-related repairs because the vehicle had failed a smog inspection. Thereafter, Mr. Soto filed a complaint with the Bureau.³ On March 28, 2011, Mr. Lewis obtained: (1) In & Out Smog's Service Order 51570 (Soto invoice) made out to Mr. Soto in the amount of \$475; (2) Service Order No. 1663 from Henry's Smog relating to Mr. Soto's vehicle; and (3) a Smog Check Vehicle Inspection Report (Soto VIR).

10. Early Fuel Evaporation (EFE) Actuator Rod. On the Soto invoice, written in the area for "Needed Repairs," were four repairs. The first listed repair stated, "EFE actuator modified – Rod lengthened by welding extra piece of rod – We need to cut to length [and] weld." On April 4, 2011, Mr. Lewis spoke to respondent about this repair. Respondent

² There are no charges alleged against respondent in the Second Amended Accusation arising from the allegations made in the consumer complaint regarding this vehicle.

³ There are no charges alleged against respondent in the Second Amended Accusation arising from the allegations made in the consumer complaint regarding this vehicle.

explained that someone had added a piece to the EFE actuator rod in Mr. Soto's vehicle, and In & Out Smog just removed the piece that was added.

11. Mr. Lewis testified that, because the EFE actuator rod was a smog emissions control component, it was illegal for respondent to cut out the piece that someone else had added to the rod, and weld the rod back together. According to Mr. Lewis, respondent was required to exchange out the EFE actuator rod.

12. At hearing, respondent described the EFE system. He explained the purpose of the EFE actuator rod and how it worked to open and close the valve to which it was attached. Because someone had added a piece to the rod in Mr. Soto's vehicle, the rod was too long and caused the valve to remain closed. Before he made any repairs to the EFE actuator rod, respondent called Mr. Soto, explained what he was going to do, and obtained Mr. Soto's approval. According to respondent, he fixed the rod by returning it to its original condition. After the rod was returned to its original condition, the EFE system worked correctly.

13. Respondent testified that he knew of no law that stated that he could not repair the EFE actuator rod as he did. He was not informed in any of the classes that he has taken that it was illegal for him to repair the rod as he did. According to respondent, he could not have replaced only the EFE actuator rod. He would have had to replace the entire EFE system. The cost to replace the entire EFE system would have been about \$600 to \$700, plus about \$200 in labor.

14. At hearing, complainant did not offer any laws or regulations which state that it is illegal to repair an emissions control device in the manner that respondent repaired Mr. Soto's EFE actuator rod. In the Second Amended Accusation, complainant cited to Health and Safety Code section 44016⁴ and California Code of Regulations, title 16, section 3340.41, subdivision (d),⁵ as the governing law. The regulation refers to "the vehicle

⁴ Health and Safety Code section 44016 states:

The department shall, with the cooperation of the state board and after consultation with the motor vehicle manufacturers and representatives of the service industry, research, establish, and update as necessary, specifications and procedures for motor vehicle maintenance and tuneup procedures and for repair of motor vehicle pollution control devices and systems. Licensed repair stations and qualified mechanics shall perform all repairs in accordance with specifications and procedures so established.

⁵ California Code of Regulations, title 16, section 3340.41, subdivision (d), states:

manufacturer's recommended procedures for emission problem diagnosis and repair" and "emission diagnosis and repair procedures found in industry-standard reference manuals and periodicals published by nationally recognized repair information providers," and requires that smog check stations and smog check technicians "follow the applicable specifications and procedures when diagnosing defects or performing repairs for vehicles that fail a smog check test." Complainant did not offer the vehicle manufacturer's recommended procedures or any industry-standard reference manuals or periodicals to provide direction or guidance on how respondent should have repaired the EFE actuator rod in this case. Consequently, complainant failed to provide sufficient evidence to establish that the manner in which respondent repaired Mr. Soto's EFE actuator rod violated any laws or regulations.

15. Replacement of Exhaust Gas Recirculation (EGR) Thermal Vacuum Switch (TVS). Written on the Soto invoice, under the "Needed Repairs" area is the following: "Performed all above repairs. Did not have to replace cat but had to replace EGR TVS." In the bottom left corner of the invoice, the printed form states: "Additional Repair Authorization." Written on the line under this is "\$475.00." At the bottom middle/right, the invoice contains a box with four compartments, which includes the following:

DATE 3-9-11	TELEPHONE NO. CALLED 470-3813
TIME 1:20	NAME OF PERSON AUTHORIZING Carlos Soto

OK \$475⁰⁰
ON Repairs

Above this box is the signature of Mr. Soto under a printed statement that states, in relevant part:

BY LAW YOU MAY CHOOSE ANOTHER REPAIR FACILITY TO PERFORM ANY NECESSARY REPAIRS

(d) The specifications and procedures required by Section 44016 of the Health and Safety Code shall be the vehicle manufacturer's recommended procedures for emission problem diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard reference manuals and periodicals published by nationally recognized repair information providers. Smog check stations and smog check technicians shall, at a minimum, follow the applicable specifications and procedures when diagnosing defects or performing repairs for vehicles that fail a smog check test.

I THE REGISTERED OWNER AUTHORIZE YOU TO
PERFORM THE REPAIRS AND FURNISH NECESSARY
MATERIALS.

**RECEIPT OF A COPY OF THIS ORDER IS HEREBY
ACKNOWLEDGED.** (Bolding, underlining, and capitalization
in original.)

16. On April 4, 2011, Mr. Lewis spoke to respondent about the EGR TVS. Respondent stated that his technician broke the switch, and that respondent contacted Mr. Soto and told him that they were going to replace the broken switch at no charge. Mr. Lewis informed respondent that he needed to document on the invoice that Mr. Soto was contacted and authorized the repair.

17. At hearing, Mr. Lewis testified that, if a technician recommends additional repairs to a vehicle, the technician must describe on the invoice the additional recommended repairs. If the technician seeks approval of these repairs by telephone, he must note on the invoice the name of the person authorizing the work, the date of the call, the method by which authorization was provided, and the telephone number. Mr. Lewis asserted that the Soto invoice did not include all this information.

18. At hearing, respondent testified that he wrote the phrase "Performed all above repairs. Did not have to replace cat but had to replace EGR TVS" on the invoice after he had completed all the repairs. He asserted that he obtained Mr. Soto's prior authorization to replace the EGR TVS, but did not document that additional repair authorization on the invoice because he did not charge for it. Respondent believed that he did not have to obtain Mr. Soto's signature on the invoice to make this change because there was no additional charge. As set forth in the Legal Conclusions below, the applicable law required respondent to document on the Soto invoice Mr. Soto's authorization for the replacement of the EGR TVS.

19. Sublet of Soto Smog Inspection. The Soto VIR indicated that, on March 11, 2011, Henry's Smog performed a smog inspection on Mr. Soto's vehicle. On Henry's Smog Service Order No. 1663, written in the boxes for the amounts charged for "Smog" and "Smog Certificate" was an "N/C." Written in the area for the "Estimated Cost" was "Per Eddie N/C." On March 28, 2011, Mr. Lewis again advised respondent that he could not sublet a smog check inspection to another facility. Respondent stated that he did not charge Mr. Soto for the inspection. Mr. Lewis told respondent that it did not matter that he did not charge for the inspection; it was still a violation and he could not do it.

20. At hearing, respondent admitted that he sublet the smog inspection of Mr. Soto's vehicle.

Consumer Complaint (Moya): 1997 Ford F-150 Pickup

21. On July 25, 2011, Joseph Moya took his 1997 Ford F-150 pickup to In & Out Smog for repairs after his vehicle had failed a smog inspection. Thereafter, Mr. Moya filed a complaint with the Bureau.⁶ When investigating this complaint, Mr. Lewis obtained from Mr. Moya: (1) Service Order 54822 from In & Out Smog dated July 25, 2011 (Moya invoice); and (2) a Smog Check Vehicle Inspection Report dated July 25, 2011 (Moya VIR). Mr. Lewis also obtained a BAR97 Test Detail relating to the smog inspection conducted on Mr. Moya's vehicle on July 25, 2011.

22. The Moya invoice indicates that In & Out Smog charged Mr. Moya for a smog inspection on July 25, 2011. The Moya VIR indicates that the smog inspection was conducted by Station Number TC224033, but no station name or address is included on that VIR. The BAR97 shows that the smog inspection performed on Mr. Moya's vehicle was performed by Henry's Automotive, whose Station ID is TC224033.

23. On August 4, 2011, Mr. Lewis went to In & Out Smog and discussed this matter with respondent. Mr. Lewis asked respondent if Mr. Moya was told that his vehicle was going to Henry's Automotive, and respondent responded, "probably not." Mr. Lewis informed respondent that it was an "unauthorized sublet," and that respondent knew that he could not "sublet a smog inspection to a test-only station."

24. At hearing, respondent admitted that he sublet the smog inspection of Mr. Moya's vehicle.

Consumer Complaint (Lazaroti): 2000 Volkswagen Jetta

25. On April 19, 2012, Diane Lazaroti took her 2000 Volkswagen Jetta to In & Out Smog to diagnose the check engine light that was illuminated. Ms. Lazaroti testified that she initially authorized In & Out Smog to conduct a diagnostic test for \$75. She was thereafter informed that the vehicle needed a new catalytic converter and additional repairs, which she authorized. On April 20, 2013, Ms. Lazaroti paid \$523.96 for the repairs, received Service Order 58936 (Lazaroti invoice), and left with her vehicle. Shortly after she left, the vehicle began smoking under the hood and the check engine light came back on. She returned her vehicle to In & Out Smog to re-check it. She authorized \$100 for this re-check. She informed In & Out Smog that the reason for the initial repair was because she needed a smog inspection.

On April 25, 2012, Ms. Lazaroti returned to In & Out Smog to pick up her vehicle. She was told that the cost was \$160.88. She told the employee at In & Out Smog that she

⁶ There are no charges alleged against respondent in the Second Amended Accusation arising from the allegations made in the consumer complaint regarding this vehicle.

had only authorized \$100. She was informed that the vehicle passed a smog inspection and if she did not pay \$160.88, she would not get the smog inspection report. She paid \$100 and received the smog inspection report.

26. Additional Repairs. The Second Amended Accusation alleges that respondent documented on the Lazaroti invoice that on April 19, 2012, Ms. Lazaroti “had authorized a total of \$563.96 in additional repairs on her Volkswagen Jetta, but failed to specify or describe the additional repairs.”

27. On the Lazaroti invoice, handwritten in the areas for “Qty.,” “Part Description,” and “Amount” are “1 cat converter 276.93.” Handwritten in the area for “Needed Repairs” is:

Diagnosed vehicle found catalyct defective
P0422 and air injection flow malfunction P0411
Est to repair vehicle \$575.⁰⁰ + smog + cert
Needs [illegible] vacuum routing
Customer ordered reroute vacuum lines only est 50.⁰⁰
+ diag [illegible]
Replaced cat converter vehicle needs drive cycle + return for
smog
Est \$40.⁰⁰ for smog + cert.

Handwritten to the left under the “Needed Repairs,” on a line under “Estimated Cost” is “\$125.⁰⁰” Underneath this, handwritten in the box for “Additional Repair Authorization” is “\$563.⁹⁶” Ms. Lazaroti signed the invoice on the line after “Receipt of a copy of this order is hereby acknowledged.” Under her signature to the left, the pre-printing on the invoice states: “I acknowledge notice and oral approval of an increase in the original estimated price.” Handwritten after this statement is “50.⁰⁰” and Ms. Lazaroti’s initials.

Under her signature to the right is a box that includes the following:

DATE 4-19-12	TELEPHONE NO. CALLED 704-8188
TIME 12:22	NAME OF PERSON AUTHORIZING Diane

At the bottom of the invoice is handwriting that is cut off and illegible on the copy admitted into evidence.

28. At hearing, respondent testified that he waited on Ms. Lazaroti and gave her an estimate of \$75 to diagnose why her check engine light was illuminated. He used a scanner to scan for the codes stored in the memory of the vehicle’s computer. There were two codes

in the vehicle's memory: (1) P0422, the code for the catalytic converter; and (2) P0411, the code for an air injection flow malfunction. Respondent estimated that it would cost \$575 to repair the vehicle, and conduct a smog inspection. When respondent informed Ms. Lazaroti of this, she initially authorized and signed for only the rerouting the vacuum lines for \$50, but did not authorize him to replace the catalytic converter. Respondent's technician thereafter spoke to Ms. Lazaroti by telephone at 12:22 p.m. on April 19, 2012, and she authorized the replacement of the catalytic converter for \$563.96.

29. When Ms. Lazaroti picked up the vehicle on April 20, 2012, she paid \$523.96 for the repairs. Respondent informed Ms. Lazaroti that she needed to drive the vehicle for a drive cycle to confirm the repairs, and then return to have the vehicle smogged. After the shop was closed, Ms. Lazaroti returned because her check engine light had come back on. Respondent testified that, when he did the repairs on the vacuum lines and the catalytic converter, there were no codes in the vehicle's computer relating to the engine. When Ms. Lazaroti returned, the computer in her vehicle indicated a cylinder misfire code. Respondent testified that Ms. Lazaroti's vehicle was running "perfect" when it left his shop, but was running "terrible" when she returned. He testified further that the vehicle had 163,725 miles on it, which is "a lot" for a Volkswagen, and that it failed due to "wear and tear." He asserted that he changed the spark plug wires and put in an oil treatment so that the vehicle could pass the smog inspection.

30. William Kevin Nicks is a Program Representative IIs with the Bureau. At hearing, Mr. Nicks testified that the Lazaroti invoice does not state the reason for the additional repairs.⁷

31. Although the Lazaroti invoice makes sense when explained by respondent, the invoice, on its face, is too confusing to understand without respondent's explanation. In particular, there is no clear explanation on the invoice of exactly what additional repairs Ms. Lazaroti authorized for \$563.96. But, in her consumer complaint to the Bureau and at hearing, Ms. Lazaroti did not complain that respondent did not inform her of the nature or costs of the additional repairs that he recommended and she approved.

32. Sublet of Lazaroti Smog Inspection. The Smog Check Vehicle Inspection Report (Lazaroti VIR) that Ms. Lazaroti received from In & Out Smog indicated that the smog inspection was conducted at Super Smog. Ms. Lazaroti did not authorize or give her consent to In & Out Smog to take her vehicle to Super Smog for a smog inspection. She had no knowledge that her vehicle was going to be taken to Super Smog.

⁷ Mr. Nicks testified that the invoice violated California Code of Regulations, title 16, section 3353, subdivision (c). Because the Second Amended Accusation does not charge respondents with a violation of this regulation, no findings are made with regard to it.

33. Mr. Nicks testified that Ms. Lazaroti's vehicle was a "directed" vehicle, which meant that a smog inspection could only be performed by a test-only or Gold Shield station. Super Smog was a test-only station; In & Out Smog was neither a test-only nor a Gold Shield station at that time.

34. Mr. Nicks spoke to respondent about Ms. Lazaroti's smog inspection. Respondent admitted to Mr. Nicks that he had sublet Ms. Lazaroti's vehicle to Super Smog. He asserted that "he was just helping [her] out" and that he knew the sublet violated the regulations.

35. At hearing, respondent admitted that he sublet Ms. Lazaroti's vehicle to Super Smog for a smog inspection.

Respondent's Signs and Advertising

36. On February 21, 2012, Mr. Nicks made a field visit to In & Out Smog and photographed its business signs being displayed. The signs stated that In & Out Smog was a test-only station. In & Out Smog was not a test-only station at that time. It was a test-and-repair station.

37. On March 6, 2012, Mr. Nicks made another field visit to In & Out Smog and again observed that its business signs stated that it was a test-only station. In & Out Smog was not a test-only station at that time. Mr. Nicks informed respondent both verbally and in writing to remove the test-only advertising from In & Out Smog's signs.

38. On March 29, 2012, Mr. Nicks made a follow-up visit to In & Out Smog and found that respondent had not removed any of the test-only advertising from In & Out Smog's signs.

39. On May 7, 2012, Mr. Nicks observed that there was still a sign located at a corner of In & Out Smog's property incorrectly advertising that In & Out Smog was a test-only station.

40. At hearing, respondent testified that In & Out Smog used to be a test-only station, and it had signs to reflect that. When Mr. Nicks told respondent that the test-only signs had to be removed, respondent removed the test-only signs that he could by himself, but left the ones that required a sign company to remove. Respondent called the sign company to remove these signs. The sign company painted over one of the signs, but could not reach the other sign. Respondent called them to come back to remove the remaining test-only sign. According to respondent, that sign was finally removed in May 2012.

41. Upon cross examination, respondent testified that he believed In & Out Smog was a test-only station from about 2000 to 2004. Respondent testified that he could not

remember whether the test-only signs had been up for eight years after In & Out Smog ceased being a test-only station, but that is the only logical conclusion that can be reached from the evidence that was presented.

First Undercover Operation – March 29, 2012 – 2002 Ford Mustang

42. On March 29, 2012, Robert Perez, working as an undercover operator for the Bureau under the assumed name of Robert Garcia, brought a 2002 Ford Mustang (Mustang) owned by the Bureau to In & Out Smog for a smog inspection. The Mustang was designated as a directed vehicle that could only be inspected at a test-only facility or a Gold Shield station. Mr. Perez left the vehicle with In & Out Smog and returned later to pick it up. When Mr. Perez picked up the Mustang at In & Out Smog, he received Service Order [REDACTED] (Mustang invoice) and a Vehicle Inspection Report (Mustang VIR). The Mustang invoice was on In & Out Smog's form and indicated that the Mustang passed the smog inspection. There was no indication on that invoice that the smog inspection was performed at any location other than In & Out Smog. But the Mustang VIR indicated that the smog inspection was performed by Henry's Smog. At the time when Mr. Perez took the Mustang to In & Out Smog for a smog inspection, In & Out Smog had signs that advertised it as a test-only station, although it was not then a test-only or Gold Shield station.

43. At hearing, respondent admitted that he sublet the Mustang to Henry's Smog for a smog inspection.

Second Undercover Operation – May 7, 2012 – 2000 Toyota Solara

44. On May 7, 2012, Mr. Perez did another undercover run to In & Out Smog. This time he drove a 2000 Toyota Solara (Solara) owned by the Bureau and used the assumed name of Robert Ramos. The Solara was designated as a directed vehicle that could only be tested at a test-only facility or a Gold Shield station. Mr. Perez asked In & Out Smog for a smog inspection, left the Solara at In & Out Smog, and returned later to pick it up. When he returned to pick up the Solara at In & Out Smog, he received Service Order [REDACTED] (Solara invoice) and a Vehicle Inspection Report (Solara VIR). The Solara invoice was on In & Out Smog's form. There was no indication on that invoice that the smog inspection was conducted anywhere other than In & Out Smog. But the Solara VIR indicated that the smog inspection was conducted at Henry's Smog. At the time when Mr. Perez took the Solara to In & Out Smog for a smog inspection, In & Out Smog had signs that advertised it as a test-only station, although it was not then a test-only or Gold Shield station.

45. At hearing, respondent admitted that he sublet the Solara to Henry's Smog for a smog inspection.

Factors in Aggravation, Mitigation and Rehabilitation

46. As a factor in aggravation, the Bureau offered Citation No. C2011-0075 (Citation), dated July 27, 2010, which cited respondent with violating Health and Safety Code section 44036, subdivision (b), and California Code of Regulations, title 16, section 3340.17, subdivision (e), for unlawful modifications to respondent's STI zero air gas generator. Respondent appealed from the Citation. On December 8, 2011, an administrative hearing was held on respondent's appeal in OAH No. 2010110768. On December 15, 2011, a proposed decision was issued, which found that respondent had "intentionally used shop air instead of the zero-air gas" required under California Code of Regulations, title 16, section 3340.17, subdivision (e), and that use of "shop air instead of BAR-approved zero-air gas directly affected the accuracy of exhaust readings." On January 18, 2012, the Department adopted the proposed decision as its decision, effective February 23, 2012.

47. Respondent testified that he sublet the smog inspections because he was under "severe pressure" from customers to conduct the inspections, and they did not want to take their vehicles to Henry's Smog. He also testified that sometimes In & Out Smog's smog machine was broken and he would send the vehicle to Henry's Smog. He asserted that "most" of the time, he sent his customers to Henry's Smog, but sometimes, he took the vehicles himself.

48. Respondent admitted that he had been told numerous times by Bureau representatives that it was illegal to sublet smog inspections to other stations, but he did not realize that it was such a "serious offense" from the way in which the representatives orally notified him. He asserted that subletting smog inspections was not a "frequent practice," and he only did it when he was "under pressure" from customers. He also asserted that he would tell customers that he was going to take their vehicles across the street for the smog inspection before doing so, especially those vehicles that could only be inspected at a test-only or Gold Shield station. He specifically testified that he told this to Ms. Lazaroti before he sublet her vehicle's smog inspection. As set forth in Finding 32, Ms. Lazaroti had no knowledge that her vehicle was going to be taken to Super Smog for a smog inspection.

49. Respondent testified that his brother owned Henry's Smog, that respondent did not have any financial interest in that business, and that respondent did not receive financial compensation for the sublets. But respondent was the manager of Henry's Smog, worked there about five hours a week, and was paid \$8 per hour for his work. In addition, respondent's brother Henry worked at In & Out Smog three days a week performing smog inspections, and was paid \$10 per hour for his work. According to respondent, because Henry is often in Los Angeles, the responsibility for running Henry's Smog fell primarily on respondent.

Discussion

50. Respondent knowingly continued to sublet smog inspections after having been informed repeatedly by Bureau representatives to stop doing so because subletting was illegal. By subletting smog inspections for vehicles that could only be tested at test-only or Gold Shield stations, respondent received payment for inspections that In & Out Smog, as a test-and-repair station, could not otherwise have performed. Thus, by subletting smog inspections, respondent gained an unfair advantage over other test-and-repair stations and test-only facilities. In addition, respondent's failed to remove his test-only signs after repeatedly being told to do. These signs advertised a service respondent could not provide, thereby also giving respondent an unfair competitive advantage over other test-and-repair stations and test-only facilities.

51. At hearing, respondent argued that the allegations that were alleged in this matter were not substantive enough to give rise to an accusation seeking revocation of respondent's licenses, but instead were better suited to the citation process. While the errors respondent made on the Soto and Lazaroti invoices, standing alone, might have lent themselves to the citation process, respondent's subletting of smog inspections and advertising In & Out Smog as a test-only station raise concerns relating respondent's honesty and willingness to comply with the law, which are proper subjects for the disciplinary process followed by the Bureau in this case. The Bureau must be able to trust its licensees to obey all statutory and regulatory requirements. Respondent flouted the clear directions he was given by Bureau staff regarding his illegal subletting of smog inspections and his false advertising as a test-only station.

52. The Bureau has issued Guidelines for Disciplinary Penalties and Terms of Probation (Disciplinary Guidelines), which set forth the factors in aggravation and mitigation to be considered when determining the proper penalty. The factors in aggravation include prior warnings from the Bureau, prior notices of violations, prior history of citations, evidence that the unlawful act was part of a pattern of practice, failure to comply with Bureau requests for corrective action, and any other conduct that constitutes fraud or gross negligence. The factors in mitigation include evidence that respondent accepted the Bureau's suggested resolutions of consumer complaints, and evidence that respondent has taken specific steps to minimize recurrence.

53. In aggravation, respondent was repeatedly warned to cease his smog inspection subletting and false advertising. Given the number of times respondent sublet smog inspections, it was evident that they were part of a pattern of practice, notwithstanding respondent's testimony to the contrary. Respondent's subletting and false advertising gave him an unfair advantage over his competitors. Respondent received an earlier citation for conduct that was found to be intentionally wrongful. In mitigation, from the investigative reports complainant submitted, it appears that respondent worked with Bureau representatives to resolve the consumer complaints filed against respondent. In addition,

respondent eventually removed his false advertising and asserted that he no longer sublets smog inspections.

54. When all the applicable factors in aggravation and mitigation are considered in light of respondent's wrongdoing, in order to protect the public, respondent's licenses should be placed on probation for three years under the terms and conditions set forth below.

Costs

55. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$19,799.26. This amount consists of the following:

(a) Complainant has requested costs for the investigation and enforcement work of the Office of the Attorney General in the total amount of \$13,692.50, which consists of \$13,012.50 of time already billed, plus a good faith estimate of an additional \$680. In support of its cost request, complainant has submitted a computer printout detailing the general tasks performed, the time spent on each task, and the hourly rate charged for the investigation and enforcement work performed by the Deputy Attorney General and paralegal. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).) When all the supporting evidence is reviewed, complainant demonstrated that, given the allegations made in this matter, the costs requested for the investigation and enforcement work performed by the Office of the Attorney General were reasonable.

(b) Complainant has requested additional investigative and other costs in the total amount of \$6,106.76. This amount consists of: (1) 56 hours of time spent by a Program Representative II in the 11/12 fiscal year at the rate of \$76.06 per hour (\$4,259.36); (2) 20 hours of time spend by a Program Representative II in the 12/13 fiscal year at the rate of \$77.87 per hour (\$1,557.40); (3) two days of operator fees at \$100 per day (\$200); and (4) "evidence" costs of \$90. Pursuant to California Code of Regulations, title 1, section 1042, subdivision (b)(1), in order to receive costs for the services of an agency employee, complainant must submit a declaration describing "the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service." The information submitted by complainant for the investigative and other costs requested for agency employees does not comply with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(1). Consequently, these costs may not be awarded against respondent.

LEGAL CONCLUSIONS

1. Health and Safety Code section 44072.2, states that a smog check station license may be disciplined if the licensee:

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

[¶] ... [¶]

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

2. Health and Safety Code section 44072.8 states:

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.

3. Business and Professions Code section 9884.7, subdivision (a), in relevant part, states that the registration of an automotive repair dealer may be disciplined for:

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

[¶] ... [¶]

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

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

In addition, Business and Professions Code section 9884.7 states:

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

4. At all times relevant to the allegations in the Second Amended Accusation, California Code of Regulations, title 16, section 3340.15, subdivision (i), in relevant part, stated that:

A licensed smog check station shall not sublet inspections ...
required as part of the Smog Check Program ...

5. California Code of Regulations, title 16, section 3371, in relevant part, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading.

6. Respondent's Smog Check Station License Number RC 186684 is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that respondent violated California Code of Regulations, title 16, section 3340.15, subdivision (i), by subletting the smog inspections on Ms. Lewis's 1996 Toyota Camry, Mr. Soto's 1979 Chevrolet truck, Mr. Moya's 1997 Ford F150 pickup, Ms. Lazaroti's 2000 Volkswagen Jetta, and the Bureau's 2002 Ford Mustang and 2000 Toyota Solara. (Findings 8, 20, 24, 35, 43, and 45.)

7. The Bureau did not establish that respondent's Automotive Repair Dealer Registration Number ARD 186684 is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(7), or that his Smog Check Station License Number RC 186684 is subject to disciplinary action under Health and Safety Code section 44072.2, subdivisions (a) and (c), for modifying Mr. Soto's EFE actuator rod. (Finding 14.) Consequently, these charges are dismissed.

8. Business and Professions Code section 9884.9, subdivision (a), in relevant part, states:⁸

(a) 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

⁸ During the hearing, Mr. Lewis referred to California Code of Regulations, title 16, section 3356, subdivision (a), but since this regulation was not referenced in the Second Amended Accusation, and no motion was made to amend the Second Amended Accusation to include it, no legal conclusions can be reached with regard to this regulation.

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 if 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 authorizing the additional repairs, and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

“I acknowledge notice and oral approval of an increase in the original estimated price.

(signature or initials)”

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

9. Respondent's Automotive Repair Dealer Registration Number ARD 186684 is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(6), in that respondent failed to comply with Business and Professions Code section 9884.9, subdivision (a), by failing to document on the Soto invoice Mr. Soto's authorization for the replacement of the EGR TVS. (Finding 18.)

10. Respondent's Automotive Repair Dealer Registration Number ARD 186684 is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(6), in that respondent failed to comply with Business and Professions Code section 9884.9, subdivision (a), by failing to specify or describe on the Lazaroti invoice the additional repairs Ms. Lazaroti authorized. (Finding 31.)

11. Respondent's Automotive Repair Dealer Registration Number ARD 186684 is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(1), for representing on the Mustang and Solara invoices that In & Out Smog had performed the smog inspections of the Bureau's Mustang and Solara, when respondent had unlawfully sublet those inspections. (Findings 42 and 44.)

12. Respondent's Automotive Repair Dealer Registration Number ARD 186684 is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(6), in that respondent violated California Code of Regulations, title 16, section 3371, by falsely representing on his business signs that In & Out Smog was a test-only station when it was licensed as a test-and-repair station. (Findings 36 through 41.)

13. Pursuant to Business and Professions Code section 9884.7, subdivision (c), all places of businesses operated in this state by respondent, including, but not limited to, Automotive Repair Dealer Registration Number ARD 259944, are subject to disciplinary action because respondent has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

14. Pursuant to Health and Safety Code section 44072.8, any additional licenses issued to respondent under the Motor Vehicle Inspection Program, Health and Safety Code section 44000 et seq., are subject to disciplinary action, including, but not limited to, respondent's Smog Check Station License Number RC 259944 and Advanced Emission Specialist Technician License Number EA 622792, which will be redesignated as EO 622792 and/or EI 622792 upon renewal.

15. As set forth in Finding 54, when all the applicable factors in aggravation and mitigation are considered, in order to protect the public, all of respondent's Bureau licenses, including, but not limited to, his Automotive Repair Dealer Registration Number ARD 186684, Smog Check Station License Number RC 186684, Automotive Repair Dealer Registration Number ARD 259944, Smog Check Station License Number RC 259944, and Advanced Emission Specialist Technician License Number EA 622792, which will be redesignated as EO 622792 and/or EI 622792 upon renewal, should be placed on probation for three years under the terms and conditions set forth below

Costs

16. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good

faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

17. As set forth in Finding 55, there was sufficient evidence to substantiate that \$13,692.50 in costs charged by the Office of the Attorney General office were reasonable in light of the allegations set forth in the Second Amended Accusation. Respondent was successful in getting three of the charges included in the Second Amended Accusation relating to Mr. Soto's EFE actuator rod dismissed. Respondent was also successful in getting complainant's request for revocation reduced to a three-year suspension. Respondent therefore established that these costs should be reduced. Based upon all the factors set forth in *Zuckerman*, respondent should be ordered to pay the Bureau \$10,000 in costs. The Bureau may establish a payment schedule for the payment of these costs over the period of probation.

ORDER

All of the registrations and licenses issued by the Bureau of Automotive Repair to respondent Eddie Honarchian, owner of Eddie's Auto World, are revoked, including, but not limited to Automotive Repair Dealer Registration Number ARD 186684, Smog Check Station License Number RC 186684, Automotive Repair Dealer Registration Number ARD 259944, Smog Check Station License Number RC 259944, and Advanced Emission Specialist Technician License Number EA 622792, which will be redesignated as EO 622792 and/or EI 622792 upon renewal; provided, however, that these revocations are stayed and the registrations and licenses are placed on probation for three (3) years on the following terms and conditions:

1. During the period of probation, respondent shall:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
 - b. Respondent or respondent's authorized representative shall report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
 - c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

e. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and opportunity to be heard, temporarily or permanently invalidate respondent's registrations and suspend or revoke respondent's licenses.

g. Because the accusation involved false and misleading advertising, during the period of probation, respondent shall submit all proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

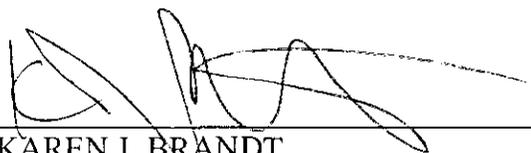
2. During the period of probation, respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondent's technician license shall be immediately suspended until such proof is received.

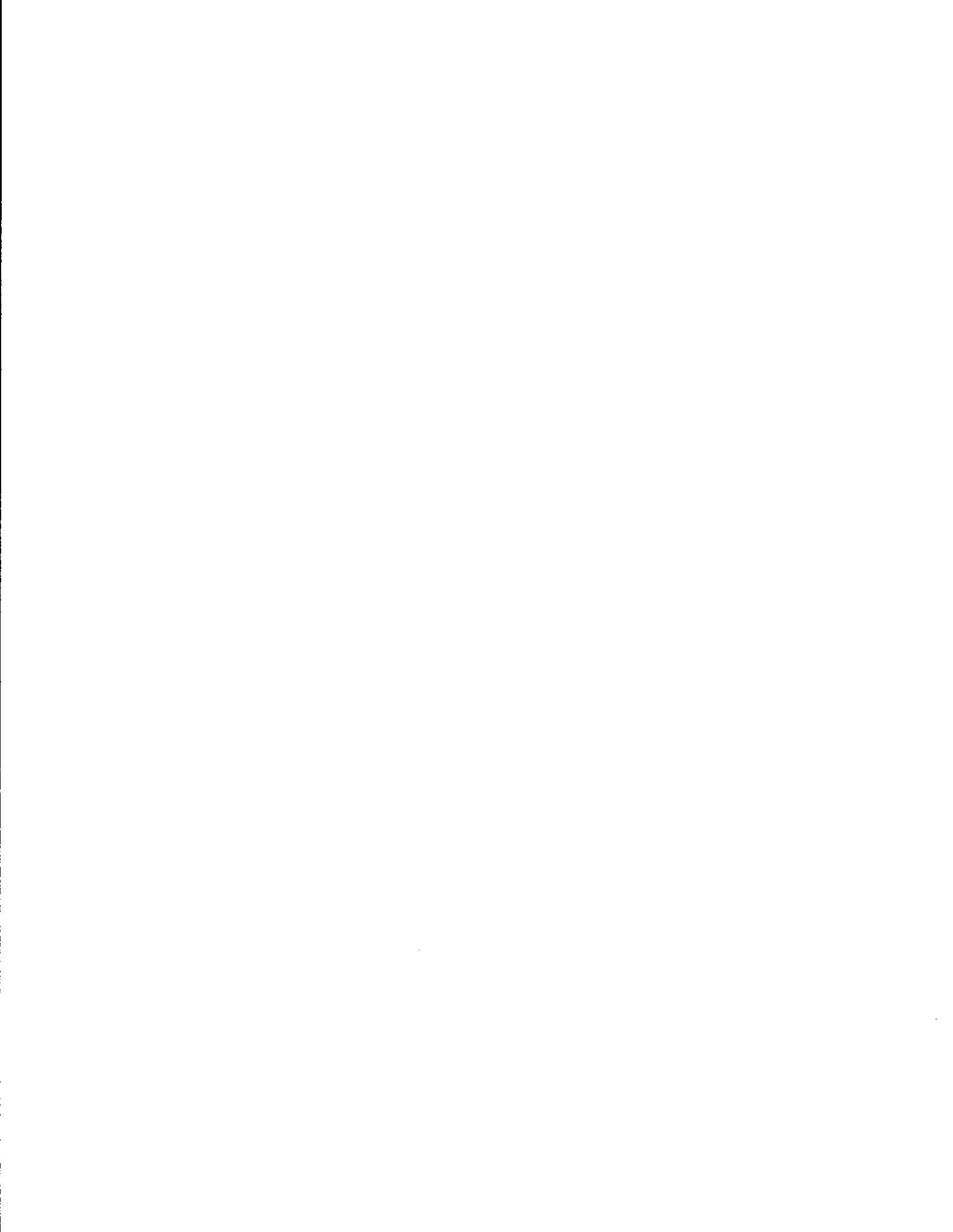
3. During the period of probation, respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by Bureau necessary to properly perform such work, and Bureau has been given 10 days' notice of the availability of the equipment for inspection by a Bureau representative.

4. Respondent shall pay to the Bureau of Automotive Repair \$10,000 as the reasonable costs of investigation and prosecution of this case. The Bureau may establish a payment schedule for the payment of these costs over the period of probation.

5. Upon successful completion of probation, respondent's registrations and licenses shall be fully restored.

DATED: December 27, 2013


KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings



1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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 Second Amended Accusation
Against:

13 **EDDIE'S AUTO WORLD**
14 **EDDIE HONARCHIAN, OWNER**
15 **1585 N. Blackstone**
16 **Fresno, CA 93703-3611**

17 **Automotive Repair Dealer Reg. No. ARD 186684**
18 **Smog Check, Test-and-Repair, Station License No.**
19 **RC 186684,**

20 **EDDIE'S AUTO WORLD**
21 **EDDIE HONARCHIAN, OWNER**
22 **4889 N. Blackstone**
23 **Fresno, CA 93726**

24 **Automotive Repair Dealer Reg. No. ARD 259944**
25 **Smog Check, Test-and-Repair, Station License No.**
26 **RC 259944,**

27 and

28 **EDDIE HONARCHIAN**
1585 N. Blackstone Avenue
Fresno, CA 93703

Advanced Emission Specialist Technician License
No. EA 622792 (to be re-designated upon renewal as
EO 622792 and/or EI 622792)

Respondents.

Case No. 79/13-43

OAH No. 2013030565

SECOND AMENDED
ACCUSATION

(Smog Check)

1 Complainant alleges:

2 **PARTIES**

3 1. Patrick Dorais ("Complainant") brings this Second Amended Accusation solely in his
4 official capacity as the Acting Chief of the Bureau of Automotive Repair ("Bureau"), Department
5 of Consumer Affairs. This Second Amended Accusation replaces in its entirety First Amended
6 Accusation No. 79/13-43 previously filed on January 28, 2013.

7 **Eddie's Auto World; Eddie Honarchian, Owner (Registration No. ARD 186684)**

8 2. On or about December 20, 1995, the Director of Consumer Affairs ("Director")
9 issued Automotive Repair Dealer Registration Number ARD 186684 ("Registration No. ARD
10 186684") to Eddie Honarchian ("Respondent"), owner of In & Out Smog & Automotive Repair.
11 On or about July 30, 2013, Respondent's business name was changed to Eddie's Auto World.
12 Respondent's automotive repair dealer registration was in full force and effect at all times relevant
13 to the charges brought herein and will expire on December 31, 2013, unless renewed.

14 3. On or about December 17, 2008, the Director issued Smog Check, Test-and-Repair¹,
15 Station License Number RC 186684 ("smog check station license") to Respondent. Respondent's
16 smog check station license was in full force and effect at all times relevant to the charges brought
17 herein and will expire on December 31, 2013, unless renewed.

18 **Eddie's Auto World; Eddie Honarchian, Owner (Registration No. ARD 259944)**

19 4. On or about November 12, 2009, the Director issued Automotive Repair Dealer
20 Registration Number ARD 259944 to Respondent, owner of Eddie's Auto World. Respondent's
21 automotive repair dealer registration will expire on November 30, 2013, unless renewed.

22 5. On or about November 16, 2009, the Director issued Smog Check, Test-and-Repair,
23 Station License Number RC 259944 ("smog check station license") to Respondent. Respondent's
24 smog check station license will expire on November 30, 2013, unless renewed.

25 ///

26 ¹ Test and repair stations are licensed by the state to provide smog check tests and repairs
27 to most vehicles. Test and repair stations are prohibited from certifying repaired "gross polluters"
28 or vehicles that have been directed to test only stations for inspection. Only test only stations and
gold shield stations are able to certify repaired gross polluter vehicles.

1 licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or
2 both.

3 **STATUTORY AND REGULATORY PROVISIONS**

4 13. 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.

14

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

17 (7) Any willful departure from or disregard of accepted trade standards
18 for good and workmanlike repair in any material respect, which is prejudicial to
19 another without consent of the owner or his or her duly authorized representative.

20

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

26 14. Bus. & Prof. Code section 17200 states:

27 As used in this chapter, unfair competition shall mean and include any
28 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
misleading advertising and any act prohibited by Chapter 1 (commencing with
Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

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

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

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

1 17. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

8

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

11 18. Regulation 3340.15, subdivision (h), states:

12 A licensed smog check station shall not sublet inspections or repairs
13 required as part of the Smog Check Program, except for the following:

14 (1) Repairs of a vehicle's exhaust system which are normally performed
15 by muffler shops, provided that the malfunction has been previously diagnosed by the
16 specific smog check station originally authorized by the customer to perform repairs
17 to the vehicle.

18 (2) Repairs of those individual components that have been previously
19 diagnosed as being defective and that have been removed by the specific smog check
20 station originally authorized by the customer to perform repairs to the vehicle.

21 (3) Repairs of diesel-powered vehicles provided the specific smog check
22 station has obtained authorization from the customer to sublet repairs to the vehicle.

23 (4) Repairs to a vehicle's transmission provided the specific smog check
24 station has obtained authorization from the customer to sublet repairs to the vehicle.

25 (5) Corrections to the vehicle's on-board computer systems' software
26 provided that the malfunction has been previously diagnosed by the specific smog
27 check station originally authorized by the customer to perform repairs to the vehicle.

28 19. Regulation 3372 states:

In determining whether any advertisement, statement, or representation is
false or misleading, it shall be considered in its entirety as it would be read or heard
by persons to whom it is designed to appeal. An advertisement, statement, or
representation shall be considered to be false or misleading if it tends to deceive the
public or impose upon credulous or ignorant persons.

20. Regulation 3371 states, in pertinent part:

No dealer shall publish, utter, or make or cause to be published, uttered,
or made any false or misleading statement or advertisement which is known to be
false or misleading, or which by the exercise of reasonable care should be known to
be false or misleading . . .

1 COST RECOVERY

2 21. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
3 the administrative law judge to direct a licensee 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 CONSUMER COMPLAINT (GREEN/LEWIS): 1996 TOYOTA CAMRY

7 22. On or about February 19, 2010, Gwenda Lewis ("Lewis") took her 1996 Toyota
8 Camry to Respondent's facility, In & Out Smog & Automotive Repair, for a smog inspection.
9 The facility informed Lewis that the vehicle needed certain repairs in order to pass the inspection,
10 which Lewis authorized.

11 23. On or about March 1, 2010, Lewis and Jessie Green ("Green") went to the facility to
12 retrieve the vehicle and paid \$1,194.73 for the repairs. Later, when Lewis was driving the
13 vehicle, she noticed that it was making various noises. Lewis contacted the facility and reported
14 the problem to Respondent. Respondent told Lewis that he would have one of his mechanics look
15 at the vehicle. A few days later, Respondent's mechanic met with Lewis at her home and
16 inspected the vehicle. The mechanic told Lewis that the engine was "gone" and offered to repair
17 the vehicle for an additional cost.

18 24. On or about July 15, 2010, Green filed a complaint with the Bureau on behalf of
19 Lewis.

20 25. On or about July 23, 2010, a Bureau representative obtained information from the
21 Bureau's Vehicle Information Database ("VID"), indicating that on February 22, 2010, Henry's
22 Automotive, a test only facility³ located in Fresno, California, had performed a smog inspection
23 on the vehicle.

24 ///

25 ///

26 _____
27 ³ Test only facilities are licensed smog check stations that, by law, are only allowed to test
28 vehicles; they cannot repair them. Any needed repairs must be performed at either a smog check
station designated as a test and repair facility or a "gold shield" station.

1 **FIFTH CAUSE FOR DISCIPLINE**

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

4 36. 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 3340.15, subdivision (h)**: Respondent sublet the smog inspection on Soto's
8 1979 Chevrolet truck to Henry's Automotive.

9 b. **Section 3340.41, subdivision (d)**: Respondent failed to follow applicable
10 specifications and procedures when repairing Soto's 1979 Chevrolet truck, as set forth in
11 paragraph 33 above.

12 **CONSUMER COMPLAINT (MOYA): 1997 FORD F150 PICKUP**

13 37. On or about July 22, 2011, Joe Moya ("Moya") had Michel's Smog Check perform a
14 smog inspection on his 1997 Ford F150 pickup. The vehicle failed the inspection for excessive
15 NOx (Oxides of Nitrogen).

16 38. On or about July 25, 2011, Moya took the vehicle to In & Out Smog & Automotive
17 Repair for emission-related repairs. The facility performed a diagnosis of the vehicle and
18 informed Moya that it needed an EGR BPFE sensor and the monitors run to completion. Moya
19 authorized the work. The facility charged Moya a total of \$317.76 for the repairs and a smog
20 inspection and gave him copies of an invoice and VIR.

21 39. On or about July 26, 2011, Moya filed a complaint with the Bureau.

22 40. On or about August 3, 2011, Moya faxed the Bureau representative copies of the
23 above invoice and VIR.

24 41. On or about August 4, 2011, the representative reviewed the VIR and found that it
25 had been issued by Henry's Automotive. The representative obtained information from the
26 Bureau's VID, showing that Henry's Automotive had performed a smog inspection on the vehicle
27 on July 25, 2011. The representative went to In & Out Smog & Automotive Repair and met with

28 ///

1 Respondent. The representative told Respondent yet again that he could not sublet smog
2 inspections to another smog check facility.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

6 42. Respondent's smog check station license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
8 Regulation 3340.15, subdivision (h), by subletting the smog inspection on Moya's 1997 Ford
9 F150 pickup to Henry's Smog.

10 **CONSUMER COMPLAINT (LAZAROTI): 2000 VOLKSWAGEN JETTA**

11 43. On or about April 19, 2012, Diane Lazaroti ("Lazaroti") took her 2000 Volkswagen
12 Jetta to In & Out Smog & Automotive Repair for a diagnosis because the "check engine" light
13 was illuminated. Lazaroti was informed that the catalytic converter was defective and the
14 vacuum lines needed to be re-routed. Lazaroti authorized the facility to repair the vehicle for
15 \$523.96.

16 44. On or about April 20, 2012, Lazaroti went to the facility to retrieve the vehicle, paid
17 \$523.96 for the repairs, and received a copy of Invoice #58963. When Lazaroti left the facility,
18 she noticed that the vehicle was not operating correctly and the check engine light was on.

19 45. On or about April 25, 2012, Lazaroti took the vehicle back to the facility and
20 authorized them to re-check it and perform a smog inspection for \$100. When Lazaroti returned
21 to the facility to pick up the vehicle, she was informed by an employee that the total charges were
22 \$160.88. Lazaroti told the employee that she only authorized \$100 for the work. The employee
23 told Lazaroti that if she refused to pay the \$160.88, she would not "get the smog" (VIR). Lazaroti
24 paid the employee \$100 in cash and took the VIR. The VIR indicated that on April 25, 2012,
25 Super Smog, a test only facility located in Fresno, California, had performed a smog inspection
26 on the vehicle.

27 46. On or about May 4, 2012, Lazaroti filed a complaint with the Bureau.

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1 47. On or about May 21, 2012, a Bureau representative went to In & Out Smog &
2 Automotive Repair and discussed the complaint with Respondent. Respondent admitted that he
3 sublet the vehicle to Super Smog for the inspection, in violation of law.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Provisions of the Bus. & Prof. Code)**

6 48. Respondent's Registration No. ARD 186684 is subject to disciplinary action pursuant
7 to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
8 section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent
9 documented on Invoice #58963 that on April 19, 2012, at 12:22 hours, Lazaroti had authorized a
10 total of \$563.96 in additional repairs on her 2000 Volkswagen Jetta, but failed to specify or
11 describe the additional repairs.

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

15 49. Respondent's smog check station license is subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
17 Regulation 3340.15, subdivision (h), by subletting the smog inspection on Lazaroti's 2000
18 Volkswagen Jetta to Super Smog.

19 **UNDERCOVER OPERATION #1: 2002 FORD MUSTANG**

20 50. On or about February 21, 2012, a representative of the Bureau went to In & Out
21 Smog & Automotive Repair and took photographs of Respondent's business signs. Respondent
22 was advertising his facility as a "Test Only" station when, in fact, the facility is licensed as a *test*
23 *and repair* station.

24 51. On or about March 6, 2012, the representative met with Respondent at the facility and
25 instructed him to remove his "Test Only" business signs.

26 52. On or about March 29, 2012, an undercover operator with the Bureau ("operator")
27 took the Bureau's 2002 Ford Mustang to In & Out Smog & Automotive Repair. The vehicle was
28 designated as a directed vehicle and could only be smog tested at a test only facility or gold shield

1 station. The operator told Respondent's employee that he needed a smog inspection. The
2 employee had the operator sign a written estimate in the amount of \$45 and gave him a copy.
3 The operator left the facility. At approximately 1400 hours, the operator returned to the facility,
4 paid \$45 for the inspection, and received copies of an invoice and VIR. The VIR indicated that
5 Henry's Automotive had performed the inspection on the vehicle. That same day, the Bureau
6 representative took photographs of Respondent's business signs. Respondent was still advertising
7 the facility as a test only station.

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 53. Respondent's Registration No. ARD 186684 is subject to disciplinary action pursuant
11 to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
12 statement which he knew or in the exercise of reasonable care should have known to be untrue or
13 misleading, as follows: Respondent represented on the invoice that his facility, In & Out Smog &
14 Automotive Repair, had performed the smog inspection on the Bureau's 2002 Ford Mustang. In
15 fact, Respondent unlawfully sublet the smog inspection on the vehicle to Henry's Automotive,
16 without the knowledge or consent of the undercover operator.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant**
19 **to the Motor Vehicle Inspection Program)**

20 54. Respondent's smog check station license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
22 Regulation 3340.15, subdivision (h), by subletting the smog inspection on the Bureau's 2002 Ford
23 Mustang to Henry's Automotive. As a consequence thereof, Respondent gained an unfair
24 advantage over other competitors (test and repair stations and test only facilities).

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1 ELEVENTH CAUSE FOR DISCIPLINE

2 (False Advertising)

3 55. Respondent's Registration No. ARD 186684 is subject to disciplinary action pursuant
4 to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
5 Regulation 3371 by publishing, uttering, or making or causing to be published, uttered, or made
6 false or misleading statements or advertising which Respondent knew or in the exercise of
7 reasonable care should have known to be false or misleading, as follows: Respondent falsely
8 represented on his business signs that In & Out Smog & Automotive Repair was a test only
9 station when, in fact, the facility is licensed as a test and repair station. As a consequence thereof,
10 Respondent gained an unfair advantage over other competitors (test and repair stations and test
11 only facilities).

12 UNDERCOVER OPERATION #2: 2000 TOYOTA SOLARA

13 56. On or about May 7, 2012, an undercover operator with the Bureau ("operator") took
14 the Bureau's 2000 Toyota Solara to In & Out Smog & Automotive Repair. The vehicle was
15 designated as a directed vehicle and could only be smog tested at a test only facility or gold shield
16 station. The operator told Respondent's employee that he needed a smog inspection. The
17 employee had the operator sign a written estimate in the amount of \$45 and gave him a copy.
18 The operator left the facility. At approximately 1145 hours, the operator returned to the facility,
19 paid \$45 for the inspection, and received copies of an invoice and VIR. The VIR indicated that
20 Henry's Automotive had performed the inspection on the vehicle. That same day, the Bureau
21 representative took photographs of Respondent's business signs. Respondent was still advertising
22 the facility as a test only station.

23 TWELFTH CAUSE FOR DISCIPLINE

24 (Untrue or Misleading Statements)

25 57. Respondent's Registration No. ARD 186684 is subject to disciplinary action pursuant
26 to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
27 statement which he knew or in the exercise of reasonable care should have known to be untrue or
28 misleading, as follows: Respondent represented on the invoice that his facility, In & Out Smog &

1 Automotive Repair, had performed the smog inspection on the Bureau's 2000 Toyota Solara. In
2 fact, Respondent unlawfully sublet the smog inspection on the vehicle to Henry's Automotive,
3 without the knowledge or consent of the undercover operator.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

7 58. Respondent's smog check station license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
9 Regulation 3340.15, subdivision (h), by subletting the smog inspection on the Bureau's 2000
10 Toyota Solara to Henry's Automotive. As a consequence thereof, Respondent gained an unfair
11 advantage over other competitors (test and repair stations and test only facilities).

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

13 **(False Advertising)**

14 59. Respondent's Registration No. ARD 186684 is subject to disciplinary action pursuant
15 to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
16 Regulation 3371 by publishing, uttering, or making or causing to be published, uttered, or made
17 false or misleading statements or advertising which Respondent knew or in the exercise of
18 reasonable care should have known to be false or misleading, as follows: Respondent falsely
19 represented on his business signs that In & Out Smog & Automotive Repair was a test only
20 station when, in fact, the facility is licensed as a test and repair station. As a consequence thereof,
21 Respondent gained an unfair advantage over other competitors (test and repair stations and test
22 only facilities).

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1 OTHER MATTERS

2 60. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 suspend, revoke, or place on probation the registration for all places of business operated in this
4 state by Respondent Eddie Honarchian, owner of Eddie's Auto World, including, but not limited
5 to, Automotive Repair Dealer Registration Number ARD 259944, upon a finding that Respondent
6 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
7 pertaining to an automotive repair dealer.

8 61. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test-and-Repair,
9 Station License Number RC 186684, issued to Respondent Eddie Honarchian, owner of Eddie's
10 Auto World, is revoked or suspended, any additional license issued under this chapter in the name
11 of said licensee, including, but not limited to, Respondent's Smog Check, Test-and-Repair,
12 Station License Number RC 259944 and technician license, currently designated as EA 622792,
13 but upon renewal will be re-designated as EO 622792 and/or EI 622792, may be likewise revoked
14 or suspended by the Director.

15 PRAYER

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

- 18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
19 186684, issued to Eddie Honarchian, owner of Eddie's Auto World;
- 20 2. Revoking or suspending any other automotive repair dealer registration issued to
21 Eddie Honarchian, including, but not limited to, Automotive Repair Dealer Registration Number
22 ARD 259944;
- 23 3. Revoking or suspending Smog Check, Test-and-Repair, Station License Number RC
24 186684, issued to Eddie Honarchian, owner of Eddie's Auto World;
- 25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 and Safety Code in the name of Eddie Honarchian, including, but not limited to, Respondent's
27 Smog Check, Test-and-Repair, Station License Number RC 259944 and technician license,

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1 currently designated as EA 622792, but which, upon renewal, will be re-designated as EO 622792
2 and/or EI 622792;

3 5. Ordering Eddie Honarchian, owner of Eddie's Auto World, to pay the Director of
4 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant
5 to Business and Professions Code section 125.3;

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

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8 DATED: 10-8-13

Pat Dorais by [Signature]

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

DOUG BASILATTI

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