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

13 In the Matter of the Accusation Against:

14 **MID-CITY SMOG CHECK CENTER**
15 **JIMMY SRICHANDR, OWNER**
3085 Madison Ave. #B
San Diego, CA 92116

16 **Automotive Repair Dealer Registration No.**
17 **ARD269271**
Smog Check Station License No. TC269271

18 **and**

19 **JIMMY SRICHANDR**
20 **3085 Madison Ave. #B**
San Diego, CA 92116

21 **Smog Check Inspector License No. EO**
22 **146782 (formerly Advanced Emission**
Specialist Technician License No. EA
23 **146782)**
Smog Check Repair Technician No. EI
24 **146782,**

Respondents.

Case No. **79/16-31**

ACCUSATION
SMOG CHECK

25
26 Complainant alleges:

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1 **PARTIES**

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

4 **Automotive Repair Dealer Registration of Respondent Mid-City**

5 2. On or about May 30, 2012, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 269271 to Mid-City Smog Check Center, Jimmy
7 Srichandr, Owner (Respondent Mid-City). The Automotive Repair Dealer Registration was in
8 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
9 2016, unless renewed.

10 **Smog Check Station License of Respondent Mid-City**

11 3. On or about June 12, 2012, the Bureau of Automotive Repair issued Smog Check-
12 Test Only Station License Number TC 269271 to Mid-City Smog Check Center, Jimmy
13 Srichandr, Owner. The Smog Check-Test Only Station License was in full force and effect at all
14 times relevant to the charges brought herein and will expire on May 31, 2016, unless renewed.

15 **STAR Certification of Respondent Mid-City**

16 4. On June 3, 2012, Respondent Mid-City was certified as a STAR station. The
17 certification will remain active unless the Automotive Repair and/or Smog Station is revoked,
18 cancelled, licenses become delinquent or certification is invalidated.

19 **Smog Check Licenses of Respondent Srichandr**

20 5. In 2003, the Director issued Advanced Emission Specialist Technician License
21 Number EA 146782 to Jimmy Srichandr (Respondent Srichandr). Respondent Srichandr's
22 Advanced Emission Specialist Technician License was due to expire on July 31, 2013. Pursuant
23 to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
24 renewed, in accordance with Respondent Srichandr's election, as Smog Check Inspector License
25 Number EO 146782 and Smog Check Repair Technician License Number EI 146782, effective
26 July 12, 2013 ("licenses").¹ Respondent Srichandr's Smog Check Inspector License Number EO

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced

(continued...)

1 146782 will expire on July 31, 2017, unless renewed. Respondent Srichandr's Smog Check
2 Repair Technician License Number EI 146782 expired on July 31, 2015 and has not been
3 renewed.

4 JURISDICTION

5 6. This Accusation is brought before the Director of Consumer Affairs (Director) for
6 the Bureau of Automotive Repair, under the authority of the following laws. All section
7 references are to the Business and Professions Code (Code) unless otherwise indicated.

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

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

12 8. Code section 118, subdivision (b) states:

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

18
19 9. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
20 "commission," "committee," "department," "division," "examining committee," "program," and
21 "agency." "License" includes certificate, registration or other means to engage in a business or
22 profession regulated by the Code.

23 10. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
24 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
25

26 _____
(...continued)

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 against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating, suspending, or revoking a registration.

3 11. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
4 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
5 Automotive Repair Act.

6 12. Code section 9889.7 provides, in pertinent part, that the expiration or suspension
7 of a license by operation of law or by order or decision of the Director or a court of law, or the
8 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
9 disciplinary proceedings.

10 13. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part,
11 that the Director has all the powers and authority granted under the Automotive Repair Act for
12 enforcing the Motor Vehicle Inspection Program.

13 14. H & S Code section 44072.2 states:

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

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

19 (b) Is convicted of any crime substantially related to the qualifications,
20 functions, or duties of the licensee in question.

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

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

25 (e) Has misrepresented a material fact in obtaining a license.

26 (f) Aids or abets unlicensed persons to evade the provisions of this
27 chapter.

28 (g) Fails to make and keep records showing his or her transactions as a
licensee, or fails to have those records available for inspection by the director or
his or her duly authorized representative for a period of not less than three years
after completion of any transaction to which the records refer, or refuses to
comply with a written request of the director to make the records available for
inspection.

1 (h) Violates or attempts to violate the provisions of this chapter relating to
2 the particular activity for which he or she is licensed.

3 15. H & S Code section 44072.4 states:

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

6 (a) Imposing probation upon terms and conditions to be set forth by
7 the director.

8 (b) Suspending the license.

9 (c) Revoking the license.

10 16. H & S Code section 44072.6 provides, in pertinent part, that the expiration or
11 suspension of a license by operation of law, or by order or decision of the Director, or a court of
12 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
13 proceed with disciplinary action.

14 17. H & S Code section 44072.7 provides that all accusations against licensees shall be
15 filed within three years after the act or omission alleged as the ground for disciplinary action,
16 except that with respect to an accusation alleging a violation of subdivision (d) of Section
17 44072.2, the accusation may be filed within two years after the discovery by the Bureau of the
18 alleged facts constituting the fraud or misrepresentation prohibited by that section.

19 18. H & S Code section 44072.8 states:

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

23 19. H & S Code section 44072.10 states, in pertinent part:

24

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

. . . .

20. California Code of Regulations, title 16 (Regulations), section 3340.28,
subdivision (e), states that “[u]pon renewal of an unexpired Basic Area Technician license or an

1 Advanced Emission Specialist Technician license issued prior to the effective date of this
2 regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair
3 Technician, or both.”

4 STATUTORY PROVISIONS

5 21. Code section 482 states:

6 Each board under the provisions of this code shall develop criteria to
7 evaluate the rehabilitation of a person when:

8 (a) Considering the denial of a license by the board under Section 480; or

9 (b) Considering suspension or revocation of a license under Section 490.

10 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

11 22. Code section 490 states:

12 (a) In addition to any other action that a board is permitted to take
13 against a licensee, a board may suspend or revoke a license on the ground that the
14 licensee has been convicted of a crime, if the crime is substantially related to the
qualifications, functions, or duties of the business or profession for which the
license was issued.

15 (b) Notwithstanding any other provision of law, a board may exercise
16 any authority to discipline a licensee for conviction of a crime that is independent
17 of the authority granted under subdivision (a) only if the crime is substantially
related to the qualifications, functions, or duties of the business or profession for
which the licensee's license was issued.

18 (c) A conviction within the meaning of this section means a plea or
19 verdict of guilty or a conviction following a plea of *nolo contendere*. Any action
20 that a board is permitted to take following the establishment of a conviction may
be taken when the time for appeal has elapsed, or the judgment of conviction has
21 been affirmed on appeal, or when an order granting probation is made suspending
the imposition of sentence, irrespective of a subsequent order under the provisions
22 of Section 1203.4 of the Penal Code.

23 (d) The Legislature hereby finds and declares that the application of
24 this section has been made unclear by the holding in *Petropoulos v. Department*
25 *of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
26 placed a significant number of statutes and regulations in question, resulting in
27 potential harm to the consumers of California from licensees who have been
convicted of crimes. Therefore, the Legislature finds and declares that this section
28 establishes an independent basis for a board to impose discipline upon a licensee,
and that the amendments to this section made by Senate Bill 797 of the 2007-08
Regular Session do not constitute a change to, but rather are declaratory of,
existing law.

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23. Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

24. Code section 9884.5 provides in pertinent part that a registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration of the three-year period.

25. Code section 9884.7 states, in pertinent part:

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

(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.

....

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

(4) Any other conduct that constitutes fraud.

....

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

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26. H & S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as

determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

....

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

....

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

....

27. H & S Code section 44015 states in pertinent part:

....

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

....

28. H & S Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians

1 shall perform tests of emission control devices and systems in accordance with
2 Section 44012.

3 29. H & S Code section 44059 states:

4 The willful making of any false statement or entry with regard to a
5 material matter in any oath, affidavit, certificate of compliance or noncompliance,
6 or application form which is required by this chapter or Chapter 20.3
(commencing with Section 9880) of Division 3 of the Business and Professions
Code, constitutes perjury and is punishable as provided in the Penal Code.

7 REGULATORY PROVISIONS

8
9 30. CCR section 3340.30 states in pertinent part:

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

12 (a) Inspect, test and repair vehicles, as applicable, in accordance with
13 section 44012 of the Health and Safety Code, section 44035 of the Health and
14 Safety Code, and section 3340.42 of this article.

15

16 31. CCR section 3340.41, subdivision (c), states:

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

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

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

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

27 (1) A loaded-mode test shall be the test method used to inspect 1976 -
28 1999 model-year vehicle, except diesel-powered, registered in the enhanced program
areas of the state. The loaded-mode test shall measure hydrocarbon, carbon
monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the
bureau's specifications referenced in subsection (a) of Section 3340.17 of this article.
The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to
this inspection shall be measured and compared to the emissions standards shown in
the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints)
Table, dated March 2010, which is hereby incorporated by reference. If the emissions

standards for a specific vehicle are not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

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

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

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

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

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

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

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

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

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

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

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

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited

1 to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

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

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

10 2. California Code of Regulations, title 16, section 3353, states:

11 No work for compensation shall be commenced and no charges shall
12 accrue without specific authorization from the customer in accordance with the
13 following requirements:

14 (a) Estimate for Parts and Labor. Every dealer shall give to each
15 customer a written estimated price for labor and parts for a specific job.

16 (b) Estimate for Auto Body or Collision Repairs. Every dealer, when
17 doing auto body or collision repairs, shall give to each customer a written estimated
18 price for parts and labor for a specific job. Parts and labor shall be described
19 separately and each part shall be identified, indicating whether the replacement part is
20 new, used, rebuilt or reconditioned. The estimate shall also describe replacement
21 crash parts as original equipment manufacturer (OEM) crash parts or non-OEM
22 aftermarket crash parts.

23 (c) Additional Authorization. The dealer shall obtain the customer's
24 authorization before any additional work not estimated is done or parts not estimated
25 are supplied. This authorization shall be in written, oral, or electronic form, and shall
26 describe additional repairs, parts, labor and the total additional cost.

27 (d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For
28 purposes of this article, to Tear down@ shall mean to disassemble, and Ateardown@
shall mean the act of disassembly. If it is necessary to tear down a vehicle component
in order to prepare a written estimated price for required repair, the dealer shall first
give the customer a written estimated price for the teardown. This price shall include
the cost of reassembly of the component. The estimated price shall also include the
cost of parts and necessary labor to replace items such as gaskets, seals and O rings
that are normally destroyed by teardown of the component. If the act of teardown
might prevent the restoration of the component to its former condition, the dealer
shall write that information on the work order containing the teardown estimate
before the work order is signed by the customer.

The repair dealer shall notify the customer orally and conspicuously in
writing on the teardown estimate the maximum time it will take the repair dealer to
reassemble the vehicle or the vehicle component in the event the customer elects not
to proceed with the repair or maintenance of the vehicle and shall reassemble the
vehicle within that time period if the customer elects not to proceed with the repair or
maintenance. The maximum time shall be counted from the date of authorization of
teardown.

1 After the teardown has been performed, the dealer shall prepare a written
2 estimated price for labor and parts necessary for the required repair. All parts required
3 for such repair shall be listed on the estimate. The dealer shall then obtain the
4 customer's authorization for either repair or reassembly before any further work is
5 done.

6 (e) Revising an Itemized Work Order. If the customer has authorized
7 repairs according to a work order on which parts and labor are itemized, the dealer
8 shall not change the method of repair or parts supplied without the written, oral,
9 electronic authorization of the customer. The authorization shall be obtained from the
10 customer as provided in subsection (c) and Section 9884.9 of the Business and
11 Professions Code.

12 (f) Unusual Circumstances; Authorization Required. When the customer
13 is unable to deliver the motor vehicle to the dealer during business hours or if the
14 motor vehicle is towed to the dealer without the customer during business hours, and
15 the customer has requested the dealer to take possession of the motor vehicle for the
16 purpose of repairing or estimating the cost of repairing the motor vehicle, the dealer
17 shall not undertake the diagnosing or repairing of any malfunction of the motor
18 vehicle for compensation unless such dealer has complied with all of the following
19 conditions:

20 (1) The dealer has prepared a work order stating the written estimated
21 price for labor and parts as specified in subsection (a) or (b), necessary to repair the
22 motor vehicle; and

23 (2) By telephone, fax or e-mail, the customer has been given all of the
24 information on the work order and the customer has approved the work order; and

25 (3) The customer has given oral, written, or electronic authorization to
26 the dealer to make the repairs and the dealer has documented the authorization as
27 provided in subsection (c) and Section 9884.9 of the Business and Professions Code.

28 Any charge for parts or labor in excess of the original written estimated
price must be separately authorized by the customer and documented by the dealer, as
provided in Section 9884.9 of the Business and Professions Code.

3. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an
estimate, invoice, or work order, or record required to be maintained by section
3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
information which will cause any such document to be false or misleading, or where
the tendency or effect thereby would be to mislead or deceive customers, prospective
customers, or the public.

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1 **COST RECOVERY**

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

8 **BACKGROUND**

9 34. Based on a review of the Bureau's smog check data from the Bureau's database,
10 on August 1, 2014, the Bureau of Automotive Repair (BAR) performed a station inspection of
11 Mid-City Smog Check Station (Respondent Mid-City) which included a calibration of the Low
12 Pressure Fuel Evaporative Tester (LPFET).² The inspection ensured that the LPFET equipment
13 was calibrated and in good working condition and verified that the information (tests results)
14 from the LPFET equipment was being transmitted to the Data Depot, where the test results are
15 stored.

16 35. On August 26, 2014, and September 23, 2014, the Bureau conducted two separate
17 undercover operations at Mid-City. In each instance, the Bureau representative created a leak in
18 the Fuel Evaporative system. This condition would cause the vehicle to fail a Low Pressure Fuel
19 Evaporative Test. Before the undercover operations, the Bureau Representative performed a
20 smog check on the undercover vehicles, and, as expected, they failed the functional test of the
21 LPFET and failed the overall test.

22 36. As a smog check inspector, Jimmy Srichandr (Respondent Srichandr) is required
23 to properly smog test a vehicle to ensure that it is in good operating condition and meets
24 emissions standards. Yet, at each undercover operation, Respondent Srichandr fraudulently
25 issued a Certificate of Compliance to the undercover vehicles at Mid-City Smog Check Station

26 _____
27 ² The LPFET functional test is performed on most 1995 and older vehicles. The
28 technician is required to follow the procedures set forth in the Bureau's Smog Check Inspection
Procedures Manual to determine if the vehicle requires an LPFET test.

1 that should have failed the smog test inspection, because they both failed the Low Pressure Fuel
2 Evaporative Test.

3 **VEHICLE #1**

4 **Undercover Operation August 26, 2014**

5 37. On August 26, 2014, an undercover operator drove a 1990 Toyota to Respondent
6 Mid-City for a smog check. Between August 14 and August 15, 2014, in preparation for the
7 undercover operation, the 1990 Toyota's emission control systems had been tested, then a leak
8 was intentionally created in the Fuel Evaporative System by installing a defective Fuel
9 Evaporative Hose, which would cause the vehicle to fail the Low Pressure Fuel Evaporative Test
10 portion of the smog test. Prior to the undercover operation, the vehicle was smog tested and
11 failed the Low Pressure Fuel Evaporative Test portion of the test as well as the smog test.

12 38. On August 26, 2014, an under cover operator drove the 1990 Toyota to Mid-City,
13 presented the DMV Registration Document, and requested a smog check. Respondent
14 Srichandr, the owner of Mid-City and the only licensed smog check technician at Mid-City,
15 greeted the undercover operator and gave him a work order to sign, but he did not give the
16 operator a copy of the estimate. The operator had seen a photograph of Respondent Srichandr
17 prior to the operation. However, the operator observed another man perform the smog check on
18 the 1990 Toyota while Respondent Srichandr remained at the front counter. After the inspection
19 was completed, the operator paid \$60.00 and Respondent Srichandr issued the smog Certificate
20 of Compliance. He then gave the undercover operator a copy of an estimate, an invoice, a
21 Vehicle Inspection Report, and the DMV Registration Document.

22 39. According to the Vehicle Information Database, the 1990 Toyota was smog tested
23 between [REDACTED] and [REDACTED] hours and passed the test. Subsequent to the operation, BAR printed out
24 the BAR97 Test Detail for the 1990 Toyota, which reflected that Respondent Srichandr
25 (Technician Number E0146782) had performed the inspection and issued Certificate of
26 Compliance [REDACTED]. The BAR97 Test Detail also reflected that the 1990 Toyota passed all
27 conditions of the smog check inspection, including the inspection for the Low Pressure Fuel
28

1 Evaporative Test. Upon return, the 1990 Toyota was reinspected and the fuel evaporative system
2 still had the leak.

3 **VEHICLE #2**

4 **Videotaped Undercover Operation September 23, 2014**

5 40. On September 23, 2014, an undercover operator drove a 1988 Toyota to
6 Respondent Mid-City for a smog check. On September 3, 2014, in preparation for the
7 undercover operation, the 1988 Toyota's emission control systems were tested, then the fuel
8 neck was intentionally damaged so the 1988 Toyota would fail the functional check for the Low
9 Pressure Fuel Evaporative Test portion of the smog test. Prior to the undercover operation, the
10 vehicle failed that portion of the test and failed the smog test as expected.

11 41. On September 23, 2014, an under cover operator drove the 1988 Toyota to Mid-
12 City, presented the DMV Registration Document, and requested a smog check. The 1988
13 Toyota had a recording device which was active during the undercover operation. Respondent
14 Srichandr, the owner of Mid-City and the only licensed smog Check Technician at Mid-City,
15 greeted the undercover operator and gave him a work order to sign, but he did not give the
16 operator a copy of the estimate. The operator had seen a photograph of Respondent Srichandr
17 prior to the operation. The undercover operator observed Respondent Srichandr perform the
18 smog check on the 1988 Toyota. After the inspection was completed, the operator paid \$60.00
19 and Respondent Srichandr issued the smog Certificate of Compliance. He then gave the
20 undercover operator a copy of an estimate, an invoice, a Vehicle Inspection Report, and the
21 DMV Registration Document.

22 42. The video tape of the undercover operation shows that during the inspection,
23 Respondent Srichandr did remove the fuel cap from the fuel neck of the vehicle but did not
24 connect the LPFET Fuel Adapter to the fuel neck, thus not performing the LPFET. Also, there
25 was no timing light presented during the course of the inspection and thus the functional check of
26 the vehicle's ignition timing was not performed.

27 43. According to the Vehicle Information Database, the 1988 Toyota was smog tested
28 between [REDACTED] and [REDACTED] hours and passed the test. Subsequent to the operation, BAR printed out

1 the BAR97 Test Detail for the 1988 Toyota, which reflected that Respondent Srichandr
2 (Technician Number E0146782) had performed the inspection and issued the Certificate of
3 Compliance [REDACTED]. The BAR97 Test Detail also reflected that the 1988 Toyota passed all
4 conditions of the smog check inspection, including the functional check for the LPFET. Upon
5 return, the 1988 Toyota was reinspected and the fuel neck was still damaged.

6 **FIRST CAUSE FOR DISCIPLINE**
7 **Automotive Repair Dealer Registration**
8 **(Untrue or Misleading Statements)**

9 44. Respondent Mid-City's Automotive Repair Dealer Registration is subject to
10 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
11 Respondent made or authorized statements which it knew or in the exercise of reasonable care
12 should have known to be untrue or misleading, by certifying that the vehicles as set forth under
13 paragraphs 34 to 43, above, had passed inspection and were in compliance with applicable laws
14 and regulations.

15 **SECOND CAUSE FOR DISCIPLINE**
16 **Automotive Repair Dealer Registration**
17 **(Failure to Provide Customer with Copy of Signed Document)**

18 45. Respondent Mid-City's Automotive Repair Dealer Registration is subject to
19 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that
20 Respondent failed to give the operator a copy of the estimate that the operator was asked to sign,
21 as soon as the operator signed the document, as required by the Code, during both undercover
22 operations referenced in paragraphs 34 to 43, above.

23 **THIRD CAUSE FOR DISCIPLINE**
24 **Automotive Repair Dealer Registration**
25 **(Fraud)**

26 46. Respondent Mid-City's Automotive Repair Dealer Registration is subject to
27 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
28 Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of
compliance for the vehicles referenced in paragraphs 34 to 43, above, without performing a bona
fide inspection of the emission control devices and systems on the vehicle, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program (H & S Code section 44000, et seq.).

3 **FOURTH CAUSE FOR DISCIPLINE**
4 **Automotive Repair Dealer Registration**
5 **(Failure to Comply with BAR Laws and Statutes)**

6 47. Respondent Mid-City's Automotive Repair Dealer Registration is subject to
7 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
8 Respondent failed to comply with the Bureau of Automotive Repair's statues and regulations in
9 the smog inspections performed on the vehicles referenced in paragraphs 34 to 43 as described in
10 paragraphs 44 to 46 above.

11 **FIFTH CAUSE FOR DISCIPLINE**
12 **Smog Check Station License**
13 **(Violations of the Motor Vehicle Inspection Program)**

14 48. Respondent Mid-City's smog check station license is subject to disciplinary action
15 pursuant to H & S Code section 44072.2, subdivision (a), in that Respondent failed to comply
16 with the following sections of that Code:

17 a. **Section 44012**: Respondent failed to follow prescribed test procedures and/or failed
18 to perform a complete Smog Check test on the vehicles referenced in paragraphs 34 to 43.

19 b. **Section 44012, subdivision (d)**: Respondent failed to ensure the vehicles' referenced
20 in paragraphs 34 to 43 evaporative systems were tested in accordance with procedures prescribed
21 by the department.

22 c. **Section 44012, subdivision (f)**: Respondent failed to perform the functional tests of
23 the emission control systems and devices on the vehicles referenced in paragraphs 34 to 43 in
24 accordance with procedures prescribed by the department.

25 d. **Section 44015, subdivision (b)**: Respondent issued an electronic smog certificate of
26 compliance for the vehicles' referenced in paragraphs 34 to 43 without properly testing and
27 inspecting the vehicles to determine if they were in compliance with H & S Code section 44012.

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EIGHTH CAUSE FOR DISCIPLINE
Smog Check Technician Licenses
(Violations of the Motor Vehicle Inspection Program)

51. Respondent Srichandr's Smog Check Technician Licenses are subject to disciplinary action under H & S Code section 44072.2, subdivision (a), in that as set forth in paragraphs 34 to 43, above, Respondent failed to materially comply with the following Health and Safety Code sections:

a. **Section 44012:** Respondent failed to follow prescribed test procedures and/or failed to perform a complete Smog Check test on the vehicles referenced in paragraphs 34 to 43.

b. **Section 44012, subdivision (f):** Respondent failed to perform a visual/functional check of emission control devices on the vehicles referenced in paragraphs 34 to 43, in accordance with procedures prescribed by the department.

c. **Section 44032:** Respondent failed to follow prescribed test and/or repair procedures on the vehicles referenced in paragraphs 34 to 43 above, in accordance with section 44012 of that Code, in that the vehicles passed inspection despite having a defective Fuel Evaporative Systems.

d. **Section 44059:** Respondent willfully made false entries for electronic Certificates of Compliance, certifying that the vehicles referenced in paragraphs 34 to 43, had been inspected as required when, in fact, they had not.

NINTH CAUSE FOR DISCIPLINE
Smog Check Technician Licenses
(Violations of Regulations)

21. Respondent Srichandr's Smog Check Technician Licenses are subject to discipline under Health and Safety Code section 44072.2, subdivision (c), in that he violated sections of the California Code of Regulations, Title 16, as follows:

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the vehicles referenced in paragraphs 34 to 43, above, in accordance with Health and Safety Code section 44012.

1 3. Revoking or suspending the Smog Check Inspector Certification No. EO 146782
2 issued to Jimmy Srichandr;

3 4. Revoking or suspending the Smog Check Repair Technician Certification No. EI
4 146782 issued to Jimmy Srichandr;

5 5. Ordering Jimmy Srichandr to pay the Bureau of Automotive Repair the reasonable
6 costs of the investigation and enforcement of this case, pursuant to Business and Professions
7 Code section 125.3;

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

9
10 DATED: September 28, 2015 Patrick Dorais

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

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