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

12 In the Matter of the Accusation Against,

13 **JIM'S SMOG CENTER**
5825 E. Imperial Hwy
South Gate, CA 90280
14 **JAMES ROBERT MITCHELL, Owner**
Automotive Repair Dealer Registration
15 No. ARD 117271
Smog Check, Test Only, Station License
16 No. TC 117271

17 **and**

18 **JAMES ROBERT MITCHELL**
5825 E. Imperial Hwy
South Gate, CA 90280
19 Smog Check Inspector License No. EO 100240
(formerly Advanced Emission Specialist
20 Technician License No. EA100240)

21 Respondents.

Case No. 79/16-87

PETITION TO REVOKE PROBATION

22 Complainant alleges:

23 **PARTIES**

24 1. Patrick Dorais (Complainant) brings this Petition to Revoke Probation solely in his
25 official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of
26 Consumer Affairs.
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1 **LICENSE HISTORY**

2 **Automotive Repair Registration**

3 2. In 1985, the Bureau issued Automotive Repair Dealer Registration No. ARD 117271
4 to Jim's Smog Center; James Robert Mitchell, Owner (Respondent). The Automotive Repair
5 Dealer Registration was in effect at all times relevant to the charges brought herein and will expire
6 on April 30, 2016, unless renewed.

7 **Smog Check, Test Only, Station License**

8 3. On or about September 4, 2007, the Bureau of Automotive Repair issued Smog
9 Check, Test Only, Station License No. TC 117271 to Respondent. The Smog Check, Test Only,
10 Station License was in effect at all times relevant to the charges brought herein and will expire on
11 April 30, 2016, unless renewed.

12 **Smog Check Inspector License**

13 4. In or about 1997, the Bureau of Automotive Repair issued Advanced Emission
14 Specialist (EA) Technician License No. EA100240 to Respondent. The EA Technician License
15 was due to expire on December 31, 2013, but was cancelled on December 30, 2013. Effective
16 December 30, 2013, said License was renewed, pursuant to Respondent's election, as Smog
17 Check Inspector (EO) License No. 100240¹. The EO License was in full force and effect at all
18 times relevant to the charges brought herein and will expire on December 31, 2017, unless
19 renewed.

20 **DISCIPLINARY HISTORY**

21 5. In a disciplinary action entitled "*In the Matter of Accusation Against James Robert*
22 *Mitchell, Owner dba Jim's Smog Center*," Case No. 79/14-136, the Director of Consumer Affairs
23 (Director) for the Bureau, issued a decision, effective April 1, 2015, in which Respondent's
24 Automotive Repair Dealer Registration, Smog check, Test Only Station Licensee, and Smog
25 Check Inspector License were revoked. However, the revocation was stayed and Respondent's

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

1 Automotive Repair Dealer Registration was placed on probation for a period of three (3) years
2 with certain terms and conditions. A copy of that decision is attached as Exhibit A and is
3 incorporated by reference.

4 **JURISDICTION**

5 6. This Petition to Revoke Probation is brought before the Bureau under Probation Term
6 and Condition 6 of the Decision and Order "*In the Matter of Accusation Against James Robert*
7 *Mitchell, Owner dba Jim's Smog Center,*" Case No. 79/14-13. That term and condition states:

8 **Violation of Probation**

9 Should the Director of Consumer Affairs determine that Respondent has failed to comply
10 with the terms and conditions of probation, the Department may, after giving notice and
11 opportunity to be heard, permanently revoke Respondent's Automotive Repair Dealer
12 Registration No. ARD 117271, Smog Check, Test Only, Station License No. TC 117271,
and Smog Check Inspector License No. EO 100240.

13 7. Grounds exist to revoke Respondent's probation and reimpose the order of revocation
14 of his Automotive Repair Dealer Registration, Smog Check, Test Only Station License and Smog
15 Check Inspector License in that he has violated a term and condition of his probation.

16 **CAUSE TO REVOKE PROBATION**

17 **(Failure to Comply with all Statutes, Regulations, and Rules Governing Automotive**
18 **Inspections, Estimates, and Repairs)**

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20 8. At all times after the effective date of Respondent's probation, Condition 1 stated:

21 **Obey all Laws.**

22 Comply with all statutes, regulations, and rules governing automotive inspections, estimates,
23 and repairs.

24 9. Respondent's probation is subject to revocation because he failed to obey all laws.

25 The facts and circumstances are as follows:

26 a. On or about November 30, 2015, a Bureau Representative reviewed a BAR Station
27 Test Data Summary Report for Respondent's tests performed on November 27, 2015. The
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1 summary showed that Respondent initiated and subsequently aborted a BAR OIS² inspection of a
2 diesel powered 1998 Ford F-350, license No. 6N85690. The test was followed by a BAR 97
3 inspection which resulted in the issuance of Certificate of Compliance No. YV254206C. Since the
4 Smog inspection was not performed through the use of the Bar OIS, the certificate of compliance
5 should not have been issued.

6 **OTHER MATTERS**

7 10. Pursuant to code section 9884.7, subdivision (c), the director may suspend, revoke, or
8 place on probation the registrations for all places or business operated in this state by James
9 Robert Mitchell, upon a finding that he has, or is, engaged in a course of repeated and willful
10 violations of the laws and regulations pertaining to an automotive repair dealer.

11 11. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,
12 Station License No. TC 117271, issued to James Robert Mitchell, is revoked or suspended, any
13 additional license issued under this chapter in the name of said licensee may be likewise revoked or
14 suspended by the director.

15 12. Pursuant to Health and Safety Code section 44072.8, if Respondent James Robert
16 Mitchell's smog check inspector license no. EO 100240 is revoked or suspended, any additional
17 license issued under this chapter in the name of said licensee may be likewise revoked or
18 suspended by the director.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Director issue a decision:

22 1. Revoking the probation that was granted by the Bureau in Case No. 79/14-136 and
23 imposing the disciplinary order that was stayed thereby revoking Automotive Repair Dealer
24 Registration No. ARD 117271 issued to Jim's Smog Center; James Robert Mitchell;

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27 ² Beginning May 9, 2015, California's Smog Check Program was updated and requires the
28 use of an On-Board Diagnostic Inspection System (BAR OIS) when inspecting 2000 model year
and newer gasoline powered vehicles, and 1998 and newer diesel vehicles.

1 2. Revoking the probation that was granted by the Bureau in Case No. 79/14-136 and
2 imposing the disciplinary order that was stayed thereby revoking Smog Check, Test Only, Station
3 License No. TC 117271, issued to Jim's Smog Center; James Robert Mitchell;

4 3. Revoking the probation that was granted by the Bureau in Case No. 79/14-136 and
5 imposing the disciplinary order that was stayed thereby revoking Smog Check Inspector License
6 No. EO 100240 issued to James Robert Mitchell; and

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

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DATED: 3-16-16

Patrick Dorais by [Signature]
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Doug Balatt

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/14-136