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

11 In the Matter of the Accusation Against:

Case No. **79/17-12749**

12 **A 1 SMOG TEST ONLY, DAVID P.**
13 **GREGOR (OWNER)**

OAH No.

14 2100 Westwood Blvd.
Los Angeles, CA 90025

A C C U S A T I O N

15 Automotive Repair Dealer Registration No.
ARD 255877
16 Smog Check, Test Only, Station License No.
TC 255877

17 **and**

18 **DAVID GREGOR**
2100 Westwood Blvd.
19 Los Angeles, CA 90025

20 Mailing Address:
2434 N. Myers St.
21 Burbank, CA 91504-2632

22 Smog Check Inspector License No. EO 131363
23 Smog Check Repair License No. EI 131363

24 Respondents..

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about August 19, 2008, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 255877 to David P. Gregor ("Respondent Gregor") dba A 1 Smog
7 Test Only. The Automotive Repair Dealer Registration was in full force and effect at all times
8 relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

9 3. On or about October 1, 2008, the Bureau issued Smog Check, Test Only, Station
10 License Number TC 255877 to Respondent Gregor dba A 1 Smog Test Only. The Smog Check,
11 Test Only, Station License was in full force and effect at all times relevant to the charges brought
12 herein and will expire on August 31, 2018, unless renewed.

13 4. On or about February 25, 2013, the Bureau issued STAR Certification to A 1 Smog
14 Test Only. The STAR Station Certification was in full force and effect at all times relevant to the
15 charges brought herein and will remain active unless the ARD registration and/or the Smog
16 Check Station license issued to Respondent Gregor is revoked, cancelled, or the licenses become
17 delinquent or certification is invalidated.

18 5. In 1996, the Bureau issued Advanced Emission Specialist License No. EA 131363 to
19 Respondent Gregor. Said license was renewed pursuant to Respondent Gregor's election as a
20 Smog Check Inspector (EO) License No. 131363 and Smog Check Repair Technician (EI)
21 License No. 131363, effective February 13, 2013.¹ The Smog Check Inspector (EO) and Smog
22 Check Repair Technician (EI) licenses were in full force and effect at all times relevant to the
23 charges brought herein, and will expire on April 30, 2019, unless renewed.

24 **JURISDICTION**

25 6. This Accusation is brought before the Director of the Department of Consumer
26 Affairs (Director) for the Bureau, under the authority of the following laws.

27 _____
28 ¹ Pursuant to California Code of Regulations, title 16 section 3340.28, subdivision (e).

7. Business and Professions Code ("Bus. & Prof. Code") section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

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

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

STATUTORY PROVISIONS

10. Bus. & Prof. 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 refuse to validate, or may invalidate temporarily or permanently, 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.

• • • •

(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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(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.

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1 11. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes
2 "bureau," "commission," "committee," "department," "division," "examining committee,"
3 "program," and "agency." "License" includes certificate, registration or other means to engage in
4 a business or profession regulated by the Bus. & Prof. Code.

5 12. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog
6 check stations shall be performed in accordance with procedures prescribed by the department.

7 13. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate
8 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
9 44012.

10 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

19 15. Health & Saf. Code section 44072.10 states, in pertinent part:

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

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

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

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STATEMENT OF FACTS

23. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring the use of an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in addition to communication protocol (the language used to communicate) and Parameter ID (PID) differences with vehicles that have been certified correctly that are the same make and model vehicles.

24. A Bureau representative initiated an investigation and reviewed OIS test data for A 1 Smog Test Only from January 26, 2016 through August 7, 2017. The investigation revealed that the data related to certain vehicles certified by A 1 Smog Test Only contained a pattern of unmistakable discrepancies between the information transmitted during the inspections and documented information known about the subject vehicles. Specifically, a comparison of the data received from the certified vehicles to data from vehicles of the same year, make, and model determined that the data from at least four (4) of the certified vehicles contained the following unmistakable discrepancies: (1) incorrect vehicle communication protocols and/or (2) incorrect PID counts. Furthermore, the certified vehicles transmitted incorrect eVINs (eVINs were for different vehicles). These documented discrepancies confirm that the vehicles receiving smog certificates from A 1 Smog Test Only were fraudulently tested during the smog inspection using the "clean plugging" method.²

25. Moreover, the OIS test Data showed that Smog Check technician David Gregor (EO 131363) performed all four (4) of the fraudulent inspections.

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² "Clean plugging" refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

26. The following chart illustrates the documented clean plugging activities of Respondents A 1 Smog Test Only and Gregor from January 26, 2016 to August 7, 2017:

Test Date	Vehicle Certified & VIN	Certificate No.	Technician License No.	OIS Test Data Details
01/26/16	2002 Honda Accord EX JHMC66022C006384	YX178979C	EO131363 (Respondent Gregor)	Comm. Protocol: JVPW (expected: I914) PID Count: 22 (expected: 16) eVIN: Expected, but incorrectly transmitted as 1GKEC13T13R171952 ³ (a 2003 GMC Yukon)
06/10/16	2008 Audi TT Quattro 3.2 AWD ⁴ TRUDD38J381029024	ZF476948C	EO131363 (Respondent Gregor)	Comm. Protocol: ICAN11bt5 (expected: ICAN11bt5) PID Count: 48 10 (expected: 43 or 43 14) eVIN: Expected, but incorrectly transmitted as WAUSGAFXCXCN030283 ⁵ (a 2012 Audi A7 Prestige)

³ The OIS Test Data shows that a 2003 GMC Yukon, VIN 1GKEC13T13R171952, was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2002 Honda Accord EX. The 2003 GMC Yukon was certified under Respondent Gregor at A 1 Smog Test Only on the same day, January 26, 2016, and the data transmitted matches that of the OIS test data for the fraudulent inspection of the 2002 Honda Accord EX.

⁴ This vehicle was previously tested on May 1, 2016. The OIS Test Detail for that test indicated the vehicle reported the correct eVIN, reported the communication protocol as ICAN11bt5, and reported a PID count of 43|14, all as expected. Then on May 3, 2017, a subsequent Smog Check test again indicated the vehicle reported the correct eVIN, reported the communication protocol as ICAN11bt5, and reported a PID count of 43|14, all as expected.

⁵ Bureau and DMV records indicate that #WAUSGAFXCXCN030283 is the permanent identification number assigned to a 2012 Audi A7 Prestige.

09/25/16	2004 Chevrolet Silverado C2500 HD ⁶ 1GCHC23U84F247466	QE450423C	EO131363 (Respondent Gregor)	Comm. Protocol: JPWM (expected: JVPW) PID Count: 23 (expected: 22) eVIN: Expected, but incorrectly transmitted as 1FMYU60E63UB17306 ⁷ (a 2003 Ford Explorer Sport)
08/07/17	2001 Audi A8 L Quattro WAUML54DX1N008059 ⁸	HD309162C	EO131363 (Respondent Gregor)	Comm. Protocol: ICAN11bt5 (expected: I914) PID Count: 43 4 (expected: 21 5) eVIN: Not expected, but incorrectly transmitted as 5NPEC4AC4BH119883 ⁹ (a 2011 Hyundai Sonata SE)

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⁶ This vehicle was subsequently tested on November 20, 2016. The OIS Test Detail for that test indicated the vehicle reported the correct eVIN, reported the communication protocol as JVPW, and reported a PID count of 22, all as expected.

⁷ The OIS Test Data shows that a 2003 Ford Explorer Sport, VIN 1FMYU60E63UB17306, was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2004 Chevrolet Silverado C2500 HD. The 2003 Ford Explorer Sport was certified under Respondent Gregor at A 1 Smog Test Only on the same day, September 25, 2016, and the data transmitted matches that of the OIS test data for the fraudulent inspection of the 2004 Chevrolet Silverado C2500 HD.

⁸ This vehicle was previously tested on May 18, 2017. The OIS Test Detail for that test indicated the vehicle did not transmit the eVIN, the communication protocol was reported as I914, and the PID count was 21|5, all as expected.

⁹ The OIS Test Data shows that a 2011 Hyundai Sonata SE, VIN 5NPEC4AC4BH119883, was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2001 Audi A8 L Quattro. The 2011 Hyundai Sonata SE was certified under Respondent Gregor at A 1 Smog Test Only on the same day, August 7, 2017, and the data transmitted matches that of the OIS test data for the fraudulent inspection of the 2001 Audi A8 L Quattro.

1 27. The data analysis conducted on A 1 Smog Test Only shows that Respondents
2 participated in a scheme to perform at least four (4) fraudulent Smog Check inspections resulting
3 in the issuance of four (4) fraudulent electronic Smog Check Certificates of Compliance between
4 January 26, 2016 and August 7, 2017.

5 **CAUSES FOR DISCIPLINE SUBJECTING ARD REGISTRATION TO DISCIPLINARY**

6 **ACTION:**

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 28. Respondent Gregor's Automotive Repair Dealer Registration is subject to
10 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he
11 made or authorized statements which he knew or in the exercise of reasonable care should have
12 known to be untrue or misleading, as follows: Respondent certified that the four (4) vehicles
13 identified in paragraph 26 above had passed smog inspection and were in compliance with
14 applicable laws and regulations. In fact, Respondent used clean plugging methods for the four (4)
15 vehicles identified in paragraph 26 above. Respondent substituted or used a different vehicle(s),
16 or another source, during the OBD II functional tests in order to issue smog certificates of
17 compliance for the vehicles. Respondent did not properly test or inspect any of the four (4)
18 vehicles as required by Health & Saf. Code section 44012. Complainant refers to, and by this
19 reference incorporates, the allegations contained in paragraphs 23 through 27, above, as though
20 set forth fully herein.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 29. Respondent Gregor's Automotive Repair Dealer Registration is subject to
24 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he
25 committed acts that constitute fraud by issuing electronic smog certificates of compliance for the
26 four (4) vehicles identified in paragraph 26 above, without performing bona fide inspections of
27 the emission control devices and systems on the vehicles, thereby depriving the People of the
28 State of California of the protection afforded by the Motor Vehicle Inspection Program.

1 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs
2 23 through 27, above, as though set forth fully herein.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Material Violation of Automotive Repair Act)**

5 30. Respondent Gregor's Automotive Repair Dealer Registration is subject to
6 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he
7 failed in a material respect to comply with the provisions of this chapter or regulations adopted
8 pursuant to it when he issued electronic certificates of compliance for the four (4) vehicles
9 identified in paragraph 26 above, without performing bona fide inspections of the emission
10 control devices and systems on those vehicles, thereby depriving the People of the State of
11 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
12 refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through
13 27, above, as though set forth fully herein.

14 **CAUSES FOR DISCIPLINE SUBJECTING SMOG CHECK TEST ONLY STATION**

15 **LICENSE TO DISCIPLINARY ACTION:**

16 **FOURTH CAUSE FOR DISCIPLINE**

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

18 31. Respondent Gregor's Smog Check Test Only Station License is subject to
19 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he
20 failed to comply with the following sections of that Code:

21 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
22 performed on the four (4) vehicles identified in paragraph 26 above, in accordance with
23 procedures prescribed by the department.

24 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for the
25 four (4) vehicles identified in paragraph 26 above, without ensuring that the vehicles were
26 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
27 section 44012.

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1 Complainant refers to, and by this reference incorporates, the allegations contained in
2 paragraphs 23 through 27, above, as though set forth fully herein.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

6 32. Respondent Gregor's Smog Check Test Only Station License is subject to
7 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he
8 failed to comply with provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
10 electronic smog certificates of compliance for the four (4) vehicles identified in paragraph 26
11 above.

12 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
13 compliance for the four (4) vehicles identified in paragraph 26 above, even though the vehicles
14 had not been inspected in accordance with section 3340.42.

15 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
16 into the emissions inspection system for the four (4) vehicles identified in paragraph 26 above.

17 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
18 conducted on the four (4) vehicles identified in paragraph 26 above, in accordance with the
19 Bureau's specifications.

20 Complainant refers to, and by this reference incorporates, the allegations contained in
21 paragraphs 23 through 27, above, as though set forth fully herein.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 33. Respondent Gregor's Smog Check Test Only Station License is subject to
25 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he
26 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing
27 electronic smog certificates of compliance for the four (4) vehicles identified in paragraph 26
28 above, without performing bona fide inspections of the emission control devices and systems on

1 the vehicles, thereby depriving the People of the State of California of the protection afforded by
2 the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates,
3 the allegations contained in paragraphs 23 through 27, above, as though set forth fully herein.

4 **CAUSES FOR DISCIPLINE SUBJECTING SMOG CHECK INSPECTOR LICENSE**
5 **AND SMOG CHECK REPAIR TECHNICIAN LICENSE TO DISCIPLINARY ACTION:**

6 **SEVENTH CAUSE FOR DISCIPLINE**

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

8 34. Respondent Gregor's Smog Check Inspector License and Smog Check Repair
9 Technician License are subject to disciplinary action pursuant to Health & Saf. Code section
10 44072.2, subdivision (a), in that he failed to comply with section 44012 of that Code in a material
11 respect, as follows: Respondent failed to perform the emission control tests on the four (4)
12 vehicles identified in paragraph 26 above, in accordance with procedures prescribed by the
13 department. Complainant refers to, and by this reference incorporates, the allegations contained
14 in paragraphs 23 through 27, above, as though set forth fully herein.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

18 35. Respondent Gregor's Smog Check Inspector License and Smog Check Repair
19 Technician License are subject to disciplinary action pursuant to Health & Saf. Code section
20 44072.2, subdivision (c), in that he failed to comply with provisions of California Code of
21 Regulations, title 16, as follows:

22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
23 electronic smog certificates of compliance for the four (4) vehicles identified in paragraph 26
24 above.

25 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the four (4)
26 vehicles identified in paragraph 26 above, in accordance with Health & Saf. Code sections 44012
27 and 44035, and California Code of Regulations, title 16, section 3340.42.

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1 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
2 into the emissions inspection system for the four (4) vehicles identified in paragraph 26 above.

3 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the four
4 (4) vehicles identified in paragraph 26 above, in accordance with the Bureau's specifications.

5 Complainant refers to, and by this reference incorporates, the allegations contained in
6 paragraphs 23 through 27, above, as though set forth fully herein.

7 **NINTH CAUSE FOR DISCIPLINE**

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

9 36. Respondent Gregor's Smog Check Inspector License and Smog Check Repair
10 Technician License are subject to disciplinary action pursuant to Health & Saf. Code section
11 44072.2, subdivision (d), in that he committed dishonest, fraudulent, or deceitful acts whereby
12 another was injured by issuing electronic smog certificates of compliance for the four (4) vehicles
13 identified in paragraph 26 above, without performing bona fide inspections of the emission
14 control devices and systems on the vehicles, thereby depriving the People of the State of
15 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
16 refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through
17 27, above, as though set forth fully herein.

18 **OTHER MATTERS**

19 37. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
20 suspend, revoke, or place on probation the registration for all places of business operated in this
21 state by Respondent Gregor, upon a finding that he has, or is, engaged in a course of repeated and
22 willful violations of the laws and regulations pertaining to an automotive repair dealer.

23 38. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
24 License No. TC 255877, issued to Respondent Gregor is revoked or suspended following a
25 hearing, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and
26 Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

27 39. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
28 No. EO 131363 and/or Smog Check Repair License No. EI 131363 issued to Respondent Gregor

1 is revoked or suspended following a hearing, any additional license issued under Chapter 5 of
2 Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
3 revoked or suspended by the Director.

4 **PRAYER**

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

7 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
8 255877 issued to David P. Gregor dba A 1 Smog Test Only;

9 2. Revoking or suspending any other automotive repair dealer registration issued to
10 David P. Gregor;

11 3. Revoking or suspending Smog Check Test Only Station License No. TC 255877,
12 issued to David P. Gregor dba A 1 Smog Test Only;

13 4. Revoking or suspending Smog Check Inspector License No. EO 131363, issued to
14 David Gregor;

15 5. Revoking or suspending Smog Check Repair License No. EI 131363, issued to David
16 Gregor;

17 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
18 Division 26 of the Health and Safety Code in the name of David Gregor;

19 7. Ordering Respondent David P. Gregor to pay the Bureau the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and

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

DATED: February 2, 2018 Patrick Dorais

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

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