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

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

Case No. 79/14-72

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

14 **MATTHEW ALBERT HEISCH**
1007 South Ridge Drive
15 Auburn, California 95603

16 **Smog Check Inspector License No. EO**
17 **144523 (formerly Advanced Emission**
Specialist Technician License No. EA
18 **144523)**

19 Respondent.

20
21 Patrick Dorais (“Complainant”) alleges:

22 **PARTIES**

23 1. Complainant brings this Accusation and Petition to Revoke Probation solely in his
24 official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer
25 Affairs.

26 2. On a date uncertain in 2001, the Director of Consumer Affairs (“Director”) issued
27 Advanced Emission Specialist Technician License Number EA 144523 (“Technician License”) to
28 Matthew Albert Heisch (“Respondent”). On August 9, 2012, Respondent’s Technician License

1 was revoked; however, the revocation was stayed and Respondent was placed on probation for
2 three (3) years on terms and conditions. Pursuant to California Code of Regulations, title 16,
3 section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as
4 Smog Check Inspector License No. EO 144523¹. Respondent's Smog Check Inspector License
5 will expire on August 31, 2015, unless renewed.

6 DISCIPLINARY HISTORY

7 3. In a disciplinary action entitled "In the Matter of the First Amended Accusation
8 Against Orangevale Smog, Benjamin Judah Hemmer, Partner and Joseph Lacy Hemmer, Partner;
9 Benjamin Judah Hemmer; and Matthew Albert Heisch," Case No. 79/12-01, the Director adopted
10 the Stipulated Settlement and Disciplinary Order as to Respondent Heisch only, effective August
11 9, 2012. Respondent's Technician License was revoked; however, the revocation was stayed and
12 Respondent's Technician License was placed on probation for three (3) years with certain terms
13 and conditions. The stipulated settlement was based on an Accusation and Respondent's
14 admissions of violating the Motor Vehicle Inspection Program and Dishonesty, Fraud or Deceit.
15 A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

16 JURISDICTION

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

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

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3320.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

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COST RECOVERY

11. Bus. & Prof. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

UNDERCOVER OPERATION – JUNE 14, 2013

12. On or about June 14, 2013, a representative of the Bureau, acting in an undercover capacity (“operator”) drove a Bureau-Documented 2007 Jeep (“Jeep”) to Orangevale Test Only Center, LLC, and requested a smog inspection. The vehicle could not pass the visual portion of a smog inspection because it had an un-approved aftermarket GForce performance chip device installed. The operator signed a work order and received a copy of the estimate. After the inspection was completed, the operator paid the facility \$58 and received a copy of the invoice and Vehicle Inspection Report (“VIR”). The VIR indicated that Respondent had performed the smog inspection on the vehicle. That same day, Electronic Smog Check Certificate of Compliance No. [REDACTED] was issued for the vehicle.

13. On June 19 and 20, 2013, the Bureau inspected the vehicle and found that the GForce performance chip device was still installed.

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

14. Respondent’s Inspector License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to perform a visual inspection on the 2007 Jeep in accordance with procedures prescribed by the department.

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1 **CAUSE TO REVOKE PROBATION**

2 **(Failure to Obey All Laws)**

3 20. Condition 2 of Respondent's probation states that Respondent shall comply with all
4 statutes, regulations and rules governing automotive inspections, estimates and repairs.

5 21. Respondent's probation is subject to revocation in that he failed to comply with all
6 statutes, regulations, and rules governing automotive inspections, as set forth above in paragraphs
7 15 through 16.

8 **OTHER MATTERS**

9 22. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
10 Number EO 144523, issued to Matthew Albert Heisch, is revoked or suspended, any additional
11 license issued under this chapter in the name of said licensee may be likewise revoked or
12 suspended by the Director.

13 **PRAYER**

14 **WHEREFORE**, Complainant requests that a hearing be held on the matters alleged in this
15 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
16 Consumer Affairs issue a decision:

17 1. Revoking or suspending Smog Check Inspector License No. EO 144523 (formerly
18 Advanced Emission Specialist Technician EA 144523), issued to Matthew Albert Heisch;

19 2. Revoking probation and reimposing the order of revocation of Smog Check Inspector
20 License No. EO 144523 (formerly Advanced Emission Specialist Technician EA 144523), issued
21 to Matthew Albert Heisch;

22 3. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Matthew Albert Heisch;

24 4. Ordering Matthew Albert Heisch to pay the Director of Consumer Affairs the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3;

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

DATED: December 20, 2013



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

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/12-01

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

In the Matter of the First Amended Accusation
Against:

ORANGEVALE SMOG
BENJAMIN JUDAH HEMMER, Partner
JOSEPH LACY HEMMER, Partner
9200 Greenback Lane
Orangevale, CA 95662
Automotive Repair Dealer Registration
No. ARD 253105
Smog Check, Test Only, Station License
No. TC 253105

and

BENJAMIN JUDAH HEMMER
5745 Raybel Avenue
Sacramento, CA 95841
Advanced Emission Specialist Technician
License No. EA 630550

and

MATTHEW ALBERT HEISCH
1007 South Ridge Drive
Auburn, CA 95603
Advanced Emission Specialist Technician
License No. EA 144523

Respondents.

Case No. 79/12-01

OAH No. 2011100773

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Matthew Albert Heisch, Advanced Emission Specialist Technician License No. EA 144523.

This Decision shall become effective _____

8/9/12

DATED: July 20, 2012



DOREATHA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
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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 First Amended Accusation
Against:

13 **ORANGEVALE SMOG**
14 **9200 Greenback Lane**
Orangevale, CA 95662
15 **BENJAMIN JUDAH HEMMER,**
PARTNER, JOSEPH LACY HEMMER,
16 **PARTNER**
Automotive Repair Dealer Registration No.
ARD 253105
17 **Smog Check Test Only Station License No.**
TC 253105

18 and

19 **BENJAMIN JUDAH HEMMER**
20 **5745 Raybel Avenue**
Sacramento, CA 95841
21 **Advanced Emission Specialist Technician**
License No. EA 630550

22 and

23 **MATTHEW ALBERT HEISCH**
24 **1007 South Ridge Drive**
Auburn, CA 95603
25 **Advanced Emission Specialist Technician**
License No. EA 144523
26 **Smog Check Test Only Station License No.**
TC 253105

27 Respondents.
28

Case No. 79/12-01

OAH No. 2011100773
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

(Respondent Matthew Albert Heisch only)

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

3
4 PARTIES

5 1. Sherry Mehl (Complainant) is the former Chief of the Bureau of Automotive Repair.
6 She brought this action solely in his official capacity. John Wallauch is the current Chief of the
7 Bureau of Automotive Repair and is represented in this matter by Kamala D. Harris, Attorney
8 General of the State of California, by Kent D. Harris, Deputy Attorney General.

9 2. Respondent Matthew Albert Heisch (Respondent) is representing himself in this
10 proceeding and has chosen not to exercise his right to be represented by counsel.

11 3. On a date unknown in 2001, the Bureau of Automotive Repair issued Advanced
12 Emission Specialist Technician License No. EA 144523 to Matthew Albert Heisch (Respondent).
13 The Advanced Emission Specialist Technician License was in full force and effect at all times
14 relevant to the charges brought in First Amended Accusation No. 79/12-01 and will expire on
15 August 31, 2013, unless renewed.

16 JURISDICTION

17 4. First Amended Accusation No. 79/12-01 was filed before the Director of Consumer
18 Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending
19 against Respondent. The First Amended Accusation and all other statutorily required documents
20 were properly served on Respondent on February 15, 2012.

21 5. A copy of First Amended Accusation No. 79/12-01 is attached as exhibit A and
22 incorporated herein by reference.

23 ADVISEMENT AND WAIVERS

24 6. Respondent has carefully read, and understands the charges and allegations in First
25 Amended Accusation No. 79/12-01. Respondent has also carefully read, and understands the
26 effects of this Stipulated Settlement and Disciplinary Order.

27 7. Respondent is fully aware of his legal rights in this matter, including the right to a
28 hearing on the charges and allegations in the First Amended Accusation; the right to be

1 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
2 against him; the right to present evidence and to testify on his own behalf; the right to the
3 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
4 the right to reconsideration and court review of an adverse decision; and all other rights accorded
5 by the California Administrative Procedure Act and other applicable laws.

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

8 CULPABILITY

9 9. Respondent admits the truth of each and every charge and allegation specifically
10 directed towards his license in First Amended Accusation No. 79/12-01 .

11 10. Respondent agrees that his Advanced Emission Specialist Technician License is
12 subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in
13 the Disciplinary Order below.

14 CONTINGENCY

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

25 12. The parties understand and agree that electronic or facsimile copies of this Stipulated
26 Settlement and Disciplinary Order, including electronic or facsimile signatures thereto, shall have
27 the same force and effect as the originals.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 5/21/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General



KENT D. HARRIS
Deputy Attorney General
Attorneys for Complainant

SA2010103063
Stipulation.rtf

Exhibit A

First Amended Accusation No. 79/12-01

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 79/12-01

13 **ORANGEVALE SMOG**
14 **9200 Greenback Lane**
Orangevale, CA 95662
15 **BENJAMIN JUDAH HEMMER, PARTNER,**
JOSEPH LACY HEMMER, PARTNER
16 **Automotive Repair Dealer Registration No.**
ARD 253105
17 **Smog Check Test Only Station License No.**
TC 253105

FIRST AMENDED ACCUSATION
SMOG CHECK

18 and

19 **BENJAMIN JUDAH HEMMER**
5745 Raybel Avenue
20 **Sacramento, CA 95841**
Advanced Emission Specialist Technician
21 **License No. EA 630550**

22 and

23 **MATTHEW ALBERT HEISCH**
1007 South Ridge Drive
24 **Auburn, CA 95603**
Advanced Emission Specialist Technician
25 **License No. EA 144523**

26 Respondents.

27
28 Complainant alleges:

1 **PARTIES**

2 1. Sherry Mehl ("Complainant") brings this First Amended Accusation solely in her
3 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of
4 Consumer Affairs.

5 **Automotive Repair Dealer Registration**

6 2. On or about January 11, 2008, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 253105 ("registration") to Orangevale Smog ("Respondent
8 Orangevale Smog") with Benjamin Judah Hemmer and Joseph Lacy Hemmer as partners. The
9 registration was in full force and effect at all times relevant to the charges brought herein and will
10 expire on November 30, 2012, unless renewed.

11 **Smog Check Test Only Station License**

12 3. On or about January 14, 2008, the Bureau issued Smog Check Test Only Station
13 License Number TC 253105 ("station license") to Respondent Orangevale Smog. The station
14 license was in full force and effect at all times relevant to the charges brought herein and will
15 expire on November 30, 2012, unless renewed.

16 **Advanced Emission Specialist Technician License**

17 4. On or about October 17, 2008, the Bureau issued Advanced Emission Specialist
18 Technician License Number EA 630550 ("technician license") to Benjamin Judah Hemmer
19 ("Respondent Hemmer"). The technician license was in full force and effect at all times relevant
20 to the charges brought herein and will expire on May 31, 2012, unless renewed.

21 **Advanced Emission Specialist Technician License**

22 5. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist
23 Technician License Number EA 144523 ("technician license") to Matthew Albert Heisch
24 ("Respondent Heisch"). The technician license was in full force and effect at all times relevant to
25 the charges brought herein and will expire on August 31, 2013, unless renewed.

26 **STATUTORY PROVISIONS**

27 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
28 part:

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

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

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

12 (4) Any other conduct that constitutes fraud.

13 (b) Except as provided for in subdivision (c), if an automotive repair
14 dealer operates more than one place of business in this state, the director pursuant to
15 subdivision (a) shall only suspend, revoke, or place on probation the registration of
16 the specific place of business which has violated any of the provisions of this chapter.
17 This violation, or action by the director, shall not affect in any manner the right of the
18 automotive repair dealer to operate his or her other places of business.

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

24 7. Code section 118, subdivision (b) states:

25 The suspension, expiration, or forfeiture by operation of law of a license
26 issued by a board in the department, or its suspension, forfeiture, or cancellation by
27 order of the board or by order of a court of law, or its surrender without the written
28 consent of the board, shall not, during any period in which it may be renewed,
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.

8. Code section 9884.9 states, in pertinent part:

(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 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

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

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

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

9 "I acknowledge notice and oral approval of an increase in the original
10 estimated price.

11 _____
12 (signature or initials)"

13 9. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
14 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
15 proceeding against an automotive repair dealer or to render a decision invalidating a registration
16 temporarily or permanently.

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

21 11. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
22 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
23 the Motor Vehicle Inspection Program.

24 12. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

28 (a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Saf. Code, § 44000, et seq.)] 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.

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

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1 13. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
2 expiration or suspension of a license by operation of law, or by order or decision of the Director
3 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
4 the Director of jurisdiction to proceed with disciplinary action.

5 14. Section 44072.8 of the Health and Safety Code states:

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

8 **COST RECOVERY**

9 15. Code section 125.3 provides, in pertinent part, that a Board may request the
10 administrative law judge to direct a licensee found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 **UNDERCOVER OPERATION – MARCH 29, 2010**

14 16. On or about March 29, 2010, a Bureau undercover operator drove a Bureau-
15 documented 1990 Chevrolet Corsica to Respondent Orangevale Smog's facility and requested a
16 smog inspection. The vehicle could not pass the visual portion of a smog inspection because the
17 vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a
18 work order/estimate and was provided with a copy of that document prior to the smog inspection.
19 Respondent Heisch performed the smog inspection and issued electronic Certificate of
20 Compliance No. [REDACTED] for that vehicle. The operator paid \$68 for the smog inspection and
21 received a copy of an invoice dated March 29, 2010 and the Vehicle Inspection Report ("VIR").

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Misleading Statements)**

24 17. Respondent Orangevale Smog has subjected its registration to discipline under Code
25 section 9884.7, subdivision (a)(1), in that on or about March 29, 2010, it made statements which
26 it knew or which by exercise of reasonable care it should have known were untrue or misleading
27 when it issued electronic Certificate of Compliance No. [REDACTED] for the 1990 Chevrolet

28 ///

1 Corsica, certifying that the vehicle was in compliance with applicable laws and regulations when,
2 in fact, the vehicle's PCV system was missing.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 18. Respondent Orangevale Smog has subjected its registration to discipline under Code
6 section 9884.7, subdivision (a)(4), in that on or about March 29, 2010, it committed acts which
7 constitute fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 1990
8 Chevrolet Corsica, without performing a bona fide inspection of the emission control devices and
9 systems on that vehicle, thereby depriving the People of the State of California of the protection
10 afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 19. Respondent Orangevale Smog has subjected its station license to discipline under
14 Health and Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2010,
15 regarding the 1990 Chevrolet Corsica, it violated sections of that Code, as follows:

16 a. **Section 44012, subdivision (a):** Respondent Orangevale Smog failed to determine
17 that all emission control devices and systems required by law were installed and functioning
18 correctly in accordance with test procedures.

19 b. **Section 44012, subdivision (f):** Respondent Orangevale Smog failed to perform
20 emission control tests on that vehicle in accordance with procedures prescribed by the
21 department.

22 c. **Section 44015, subdivision (b):** Respondent Orangevale Smog issued electronic
23 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle to
24 determine if it was in compliance with section 44012 of that Code.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

27 20. Respondent Orangevale Smog has subjected its station license to discipline under
28 Health and Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2010,

1 regarding the 1990 Chevrolet Corsica, it violated sections of the California Code of Regulations,
2 title 16, as follows:

3 a. **Section 3340.35, subdivision (c):** Respondent Orangevale Smog issued electronic
4 Certificate of Compliance No. [REDACTED] even though that vehicle had not been inspected in
5 accordance with section 3340.42 of that Code.

6 b. **Section 3340.42:** Respondent Orangevale Smog failed to conduct the required smog
7 tests and inspections on that vehicle in accordance with the Bureau's specifications.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 21. Respondent Orangevale Smog has subjected its station license to discipline under
11 Health and Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2010,
12 regarding the 1990 Chevrolet Corsica, it committed acts involving dishonesty, fraud or deceit
13 whereby another was injured by issuing electronic Certificate of Compliance No. [REDACTED] for
14 that vehicle without performing a bona fide inspection of the emission control devices and system
15 on the vehicle, thereby depriving the People of the State of California of the protection afforded
16 by the Motor Vehicle Inspection Program.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 22. Respondent Heisch has subjected his technician license to discipline under Health and
20 Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2010, regarding the
21 1990 Chevrolet Corsica, he violated sections of that Code, as follows:

22 a. **Section 44012, subdivision (a):** Respondent Heisch failed to determine that all
23 emission control devices and systems required by law were installed and functioning correctly in
24 accordance with test procedures.

25 b. **Section 44012, subdivision (f):** Respondent Heisch failed to perform emission
26 control tests on that vehicle in accordance with procedures prescribed by the department.

27 c. **Section 44032:** Respondent Heisch failed to perform tests of the emission control
28 devices and systems on that vehicle in accordance with section 44012 of that Code.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 23. Respondent Heisch has subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2010, regarding the
5 1990 Chevrolet Corsica, he violated sections of the California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Heisch failed to inspect and test that
8 vehicle in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent Heisch entered false information into
10 the Emission Inspection System ("EIS") for electronic Certificate of Compliance [REDACTED]
11 by entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could
12 not pass the visual inspection because the vehicle's PCV system was missing.

13 c. **Section 3340.42:** Respondent Heisch failed to conduct the required smog tests and
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **EIGHTH CAUSE FOR DISCIPLINE**

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

17 24. Respondent Heisch has subjected his technician license to discipline under Health and
18 Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2010, regarding the
19 1990 Chevrolet Corsica, he committed acts involving dishonesty, fraud or deceit whereby another
20 was injured by issuing electronic Certificate of Compliance No. [REDACTED] without performing a
21 bona fide inspection of the emission control devices and systems on that vehicle, thereby
22 depriving the People of the State of California of the protection afforded by the Motor Vehicle
23 Inspection Program.

24 **UNDERCOVER OPERATION – AUGUST 26, 2010**

25 25. On or about August 26, 2010, a Bureau undercover operator drove a Bureau-
26 documented 1995 Chevrolet Impala to Respondent Orangevale Smog's facility and requested a
27 smog inspection. The vehicle could not pass the visual portion of a smog inspection because the
28 vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a

1 work order/estimate but was not provided with a copy of that document prior to the smog
2 inspection. Respondent Hemmer performed the smog inspection and issued electronic Certificate
3 of Compliance No. [REDACTED] for that vehicle. The operator paid \$68 for the smog inspection
4 and received a copy of an invoice dated August 26, 2010 and the Vehicle Inspection Report.

5 **NINTH CAUSE FOR DISCIPLINE**

6 **(Misleading Statements)**

7 26. Respondent Orangevale Smog has subjected its registration to discipline under Code
8 section 9884.7, subdivision (a)(1), in that on or about August 26, 2010, it made statements which
9 it knew or which by exercise of reasonable care it should have known were untrue or misleading
10 when it issued electronic Certificate of Compliance No. [REDACTED] for the 1995 Chevrolet
11 Impala, certifying that the vehicle was in compliance with applicable laws and regulations when,
12 in fact, the vehicle's PCV system was missing.

13 **TENTH CAUSE FOR DISCIPLINE**

14 **(Failed to Provide a Copy of a Signed Document)**

15 27. Respondent Orangevale Smog has subjected its registration to discipline under Code
16 section 9884.7, subdivision (a)(3), in that on or about August 26, 2010, it failed to provide the
17 operator with a copy of the work order as soon as he signed the document.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 28. Respondent Orangevale Smog has subjected its registration to discipline under Code
21 section 9884.7, subdivision (a)(4), in that on or about August 26, 2010, it committed acts which
22 constitute fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 1995
23 Chevrolet Impala, without performing a bona fide inspection of the emission control devices and
24 systems on that vehicle, thereby depriving the People of the State of California of the protection
25 afforded by the Motor Vehicle Inspection Program.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide a Written Estimate)**

3 29. Respondent Orangevale Smog has subjected its registration to discipline under Code
4 section 9884.7, subdivision (a)(6), in that on or about August 26, 2010, it failed to comply with
5 Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated
6 price for parts and labor for a specific job regarding the smog inspection.

7 **THIRTEENTH CAUSE FOR DISCIPLINE**

8 **(Violation of the Motor Vehicle Inspection Program)**

9 30. Respondent Orangevale Smog has subjected its station license to discipline under
10 Health and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2010,
11 regarding the 1995 Chevrolet Impala, it violated sections of that Code, as follows:

12 a. **Section 44012, subdivision (a):** Respondent Orangevale Smog failed to determine
13 that all emission control devices and systems required by law were installed and functioning
14 correctly in accordance with test procedures.

15 b. **Section 44012, subdivision (f):** Respondent Orangevale Smog failed to perform
16 emission control tests on that vehicle in accordance with procedures prescribed by the
17 department.

18 c. **Section 44015, subdivision (b):** Respondent Orangevale Smog issued electronic
19 Certificate of Compliance No. [REDACTED] without properly testing and inspecting the vehicle to
20 determine if it was in compliance with section 44012 of that Code.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

23 31. Respondent Orangevale Smog has subjected its station license to discipline under
24 Health and Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010,
25 regarding the 1995 Chevrolet Impala, it violated sections of the California Code of Regulations,
26 title 16, as follows:

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1 a. **Section 3340.35, subdivision (c):** Respondent Orangevale Smog issued electronic
2 Certificate of Compliance No. [REDACTED] even though that vehicle had not been inspected in
3 accordance with section 3340.42 of that Code.

4 b. **Section 3340.42:** Respondent Orangevale Smog failed to conduct the required smog
5 tests and inspections on that vehicle in accordance with the Bureau's specifications.

6 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

8 32. Respondent Orangevale Smog has subjected its station license to discipline under
9 Health and Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2010,
10 regarding the 1995 Chevrolet Impala, it committed acts involving dishonesty, fraud or deceit
11 whereby another was injured by issuing electronic Certificate of Compliance No. [REDACTED] for
12 that vehicle without performing a bona fide inspection of the emission control devices and system
13 on the vehicle, thereby depriving the People of the State of California of the protection afforded
14 by the Motor Vehicle Inspection Program.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

17 33. Respondent Hemmer has subjected his technician license to discipline under Health
18 and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2010, regarding
19 the 1995 Chevrolet Impala, he violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondent Hemmer failed to determine that all
21 emission control devices and systems required by law were installed and functioning correctly in
22 accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent Hemmer failed to perform emission
24 control tests on that vehicle in accordance with procedures prescribed by the department.

25 c. **Section 44032:** Respondent Hemmer failed to perform tests of the emission control
26 devices and systems on that vehicle in accordance with section 44012 of that Code.

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1 **SEVENTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 34. Respondent Hemmer has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010, regarding
5 the 1995 Chevrolet Impala, he violated sections of the California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Hemmer failed to inspect and test that
8 vehicle in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent Hemmer entered false information
10 into the Emission Inspection System for electronic Certificate of Compliance No. [REDACTED] by
11 entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could not
12 pass the visual inspection because the vehicle's PCV system was missing.

13 c. **Section 3340.42:** Respondent Hemmer failed to conduct the required smog tests and
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

17 35. Respondent Hemmer has subjected his technician license to discipline under Health
18 and Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2010, regarding
19 the 1995 Chevrolet Impala, he committed acts involving dishonesty, fraud or deceit whereby
20 another was injured by issuing electronic Certificate of Compliance No. [REDACTED] without
21 performing a bona fide inspection of the emission control devices and systems on that vehicle,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program.

24 **DISCIPLINARY CONSIDERATIONS**

25 **Prior Citations**

26 36. To determine the degree of penalty, if any, to be imposed upon Respondents
27 Orangevale Smog and Hemmer, Complainant alleges as follows:

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1 a. On June 29, 2009, the Bureau issued Citation No. C09-1432 to Respondent
2 Orangevale Smog against its registration and station licenses for violations of Health and Safety
3 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
4 control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35,
5 subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent
6 Orangevale Smog issued a certificate of compliance to a Bureau vehicle with a missing fuel
7 evaporative storage canister. The Bureau assessed a civil penalty of \$500. Respondent
8 Orangevale Smog complied with this citation on September 3, 2009.

9 b. On September 28, 2009, the Bureau issued Citation No. C2010-0256 to Respondent
10 Orangevale Smog against its registration and station licenses for violations of Health and Safety
11 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
12 control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of
13 compliance to a vehicle improperly tested). Respondent Orangevale Smog issued a certificate of
14 compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty
15 of \$1,000. Respondent Orangevale Smog complied with this citation on December 17, 2009.

16 c. On June 29, 2009, the Bureau issued Citation No. M09-1433 to Respondent Hemmer
17 against his technician license for violations of Health and Safety Code section 44032, (qualified
18 technicians shall perform tests of emission control systems and devices in accordance with
19 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
20 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
21 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
22 3340.42). Respondent Hemmer issued a certificate of compliance to a Bureau vehicle with a
23 missing fuel evaporative storage canister. Respondent Hemmer was required to attend an 8-hour
24 training course. Respondent Hemmer complied with this citation on September 17, 2009.

25 **Additional Undercover Operations**

26 37. Between February 23, 2010, and April 30, 2010, in the course of undercover
27 operations conducted by the Bureau, Respondent Heisch identified a 2001 Chrysler, a 1990

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1 Plymouth, and a 1986 Oldsmobile as Bureau of Automotive Repair ("BAR") undercover vehicles
2 and refused to perform smog inspections of those vehicles.

3 38. On or about April 30, 2010, the Bureau conducted an undercover operation at
4 Respondent Orangevale Smog's facility using a 1994 Ford Ranger with a tampered emission
5 control system. The operator spoke with Respondent Heisch and requested a smog inspection.
6 The vehicle was in the service bay for approximately 50 minutes. Respondent Heisch informed
7 the undercover operator that his vehicle failed the smog inspection. During the course of this
8 undercover operation, another Bureau undercover operator brought a 1999 Mazda B3000 to
9 Respondent Orangevale Smog's facility and requested a smog inspection. The undercover
10 operator spoke with Respondent Heisch and inquired about the length of time it took to perform
11 the smog inspection on the 1994 Ford Ranger. Respondent Heisch told the undercover operator
12 that he had identified the Ford Ranger as a BAR car. Respondent Heisch then told the undercover
13 operator that it would not take very long to smog his vehicle because he had passed the BAR test
14 and should be good for a couple of months. The smog inspection of the 1999 Mazda B3000 was
15 then performed by Respondent Hemmer. After Respondent Hemmer started the smog inspection,
16 the undercover operator heard Respondent Heisch tell Respondent Hemmer about catching 1994
17 Ford Ranger as a BAR car. Respondent Hemmer asked Respondent Heisch if he had checked the
18 current vehicle and Respondent Heisch told Respondent Hemmer that it was not a BAR car.
19 Respondents Heisch and Hemmer subsequently failed the 1999 Mazda B3000.

20 OTHER MATTERS

21 39. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
22 or permanently or refuse to validate, the registrations for all places of business operated in this
23 state by Orangevale Smog, upon a finding that it has, or is, engaged in a course of repeated and
24 willful violations of the laws and regulations pertaining to an automotive repair dealer.

25 40. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
26 License Number TC 253105, issued to Orangevale Smog, is revoked or suspended, any additional
27 license issued under this chapter in the name of said licensee may be likewise revoked or
28 suspended by the director.

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9. Ordering Orangevale Smog, Benjamin Judah Hemmer, and Matthew Albert Heisch to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 2/9/12

Sherry Mehl by [Signature]
SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DONG BALATT
Asst. Chief

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