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

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

Case No. 79/14-72

MATTHEW ALBERT HEISCH
1007 South Ridge Drive
Auburn, California 95603

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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

Respondent.

FINDINGS OF FACT

1. On or about December 20, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation and Petition to Revoke Probation No. 79/14-72 against Matthew Albert Heisch (“Respondent”) before the Director of Consumer Affairs (“Director”). (Accusation and Petition to Revoke Probation attached as Exhibit A.)

1 2. On a date uncertain in 2001, the Director issued Advanced Emission Specialist
2 Technician License Number EA 144523 to Matthew Albert Heisch (“Respondent”). On August
3 9, 2012, Respondent’s Technician License was revoked; however, the revocation was stayed and
4 Respondent was placed on probation for three (3) years on terms and conditions. Pursuant to
5 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
6 renewed, pursuant to Respondent’s election, as Smog Check Inspector License No. EO 144523¹.
7 Respondent’s Smog Check Inspector License was in full force and effect at all times relevant to
8 the charges brought in Accusation/Petition to Revoke Probation No. 79/14-72 and will expire on
9 August 31, 2015, unless renewed.

10 3. On or about December 23, 2013, Respondent was served by Certified and First Class
11 Mail copies of the Accusation and Petition to Revoke Probation No. 79/14-72, Statement to
12 Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government
13 Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant
14 to Business and Professions Code section 136, is required to be reported and maintained with the
15 Bureau. Respondent's address of record was and is:

16 1007 South Ridge Drive
17 Auburn, California 95603.

18 4. Service of the Accusation/Petition to Revoke Probation was effective as a matter of
19 law under the provisions of Government Code section 11505, subdivision (c) and/or Business &
20 Professions Code section 124.

21 5. No documents were returned by the U.S. Postal Service marked undeliverable.

22 6. Government Code section 11506 states, in pertinent part:

23 (c) The respondent shall be entitled to a hearing on the merits if the respondent
24 files a notice of defense, and the notice shall be deemed a specific denial of all parts
25 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

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.

1 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
2 of the Accusation and Petition to Revoke Probation, and therefore waived his right to a hearing on
3 the merits of Accusation and Petition to Revoke Probation No. 79/14-72.

4 8. California Government Code section 11520 states, in pertinent part:

5 (a) If the respondent either fails to file a notice of defense or to appear at the
6 hearing, the agency may take action based upon the respondent's express admissions
7 or upon other evidence and affidavits may be used as evidence without any notice to
8 respondent.

9 9. Pursuant to its authority under Government Code section 11520, the Director after
10 having reviewed the proof of service dated December 23, 2013, signed by Tracy Cortez, finds
11 Respondent is in default. The Director will take action without further hearing and, based on
12 Accusation and Petition to Revoke Probation, No. 79/14-72 and proof of service, and on the
13 Affidavit of Bureau Representative Tim Bowden, finds that the allegations in Accusation and
14 Petition to Revoke Probation No. 79/14-72 are true.

DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, Respondent Matthew Albert Heisch has
16 subjected his Smog Check Inspector License No. EO 144523 to discipline.

17 2. The agency has jurisdiction to adjudicate this case by default.

18 3. The Director is authorized to revoke Respondent's Smog Check Inspector License
19 No. EO 144523 based upon the following violations alleged in the Accusation and Petition to
20 Revoke Probation which are supported by the evidence contained in the affidavit of Bureau
21 Representative Tim Bowden in this case:

Accusation

22 a. Respondent's Smog Check Inspector License is subject to disciplinary action
23 pursuant to Health & Safety Code ("Health & Saf. Code") section 44072.2, subdivision (a), in
24 that Respondent failed to comply with section 44012 of that Code in a material respect, as
25 follows: Respondent failed to perform a visual inspection on the 2007 Jeep in accordance with
26 procedures prescribed by the department.
27
28

1 b. Respondent's Smog Check Inspector License is subject to disciplinary action
2 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
3 comply with provisions of California Code of Regulations, title 16, as follows:

4 i. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
5 the 2007 Jeep in accordance with Health & Saf. Code sections 44012 and 44035, and California
6 Code of Regulations, title 16, section 3340.42.

7 ii. **Section 3340.42:** Respondent failed to conduct the required smog tests
8 on the 2007 Jeep in accordance with the Bureau's specifications.

9 c. Respondent's Smog Check Inspector License is subject to disciplinary action
10 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
11 dishonest, fraudulent or deceitful act whereby another is injured by issuing a smog certificate of
12 compliance for the 2007 Jeep without performing a bona fide inspection of the emission control
13 devices and systems on the vehicle, thereby depriving the People of the State of California of the
14 protection afforded by the Motor Vehicle Inspection Program.

15 **Petition to Revoke Probation**

16 d. Condition 2 of Respondent's probation states that Respondent shall comply
17 with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
18 Respondent's probation is subject to revocation in that he failed to comply with all statutes,
19 regulations, and rules governing automotive inspections, as set forth above in sub-paragraphs a.
20 through c.

21 **ORDER**

22 IT IS SO ORDERED that Smog Check Inspector License No. EO 144523, heretofore
23 issued to Respondent Matthew Albert Heisch, is revoked.

24 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
25 written motion requesting that the Decision be vacated and stating the grounds relied on within
26 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
27 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
28

1 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing
2 on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on April 9, 2014.

4 It is so ORDERED MAR 21 2014

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DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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DOJ Matter ID:SA2013112327

Attachment:
Exhibit A: Accusation and Petition to Revoke Probation No. 79/14-72

Exhibit A

Accusation and Petition to Revoke Probation No. 79/14-72

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STEPHANIE ALAMO-LATIF
Deputy Attorney General
4 State Bar No. 283580
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-6819
Facsimile: (916) 327-8643
7 E-mail: Stephanie.AlamoLatif@doj.ca.gov
Attorneys for Complainant

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

11
12 In the Matter of the Accusation and Petition to
Revoke Probation Against:
13
14 **MATTHEW ALBERT HEISCH**
1007 South Ridge Drive
15 Auburn, California 95603
16 **Smog Check Inspector License No. EO**
144523 (formerly Advanced Emission
17 **Specialist Technician License No. EA**
144523)
18
19 Respondent.

Case No. 79/14-72
ACCUSATION AND PETITION TO
REVOKE PROBATION

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.

1 COST RECOVERY

2 11. Bus. & Prof. Code section 125.3 provides, in pertinent part, that the Board may
3 request 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.

6 UNDERCOVER OPERATION – JUNE 14, 2013

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

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

18 ACCUSATION

19 FIRST CAUSE FOR DISCIPLINE

20 (Violations of the Motor Vehicle Inspection Program)

21 14. Respondent’s Inspector License is subject to disciplinary action pursuant to Health &
22 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
23 44012 of that Code in a material respect, as follows: Respondent failed to perform a visual
24 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*

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

SA2013112327
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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

Case No. 79/12-01

OAH No. 2011100773

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.

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 Hensch, 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

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS
Deputy Attorney General
4 State Bar No. 144804
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

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

Case No. 79/12-01

13 **ORANGEVALE SMOG**
9200 Greenback Lane
14 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

OAH No. 2011100773
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

(Respondent Matthew Albert Heisch only)

18 and

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

22 and

23 **MATTHEW ALBERT HEISCH**
1007 South Ridge Drive
24 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

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.
28

1 until the final decision on the accusation, and the period of probation shall be extended until such
2 decision.

3 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
4 Respondent has failed to comply with the terms and conditions of probation, the Department may,
5 after giving notice and opportunity to be heard, suspend or revoke the license.

6 7. **Continuing Education Courses.** During the period of probation, Respondent shall
7 attend and successfully complete the Bureau Certified Licensed Inspector Training Course.

8 Said course shall be completed and proof of completion submitted to the Bureau within
9 180 days of the effective date of this decision and order. If proof of completion of the course is
10 not furnished to the Bureau within the 180-day period, Respondents' license shall be immediately
11 suspended until such proof is received.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Advanced Emission Specialist Technician License, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 05/21/2012

Matthew A. Heisch
MATTHEW ALBERT HEISCH
Respondent

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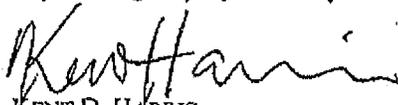
ENDORSEMENT

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

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Stipulation.rtf