

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

In the Matter of the Accusation Against:

GURPREET SINGH CHAUHAN
1506 N. Blackstone
Fresno, CA 93703

Smog Check Inspector License No. EO
147842

Smog Check Repair Technician License
No. EI 147842 (formerly Advanced
Emission Specialist Technician License
No. EA 147842)

Respondent.

Case No. 79/14-19

OAH No. 2013110704

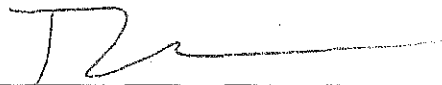
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the Proposed Decision are corrected as follows:

1. Page 2, paragraph 1 under Factual Findings, first sentence: License number "AD 227381" is corrected to "ARD 227381".
2. Page 2, paragraph 2 under Factual Findings, second sentence: License number "AD 227381" is corrected to "ARD 227381".

This Decision shall become effective April 20th, 2016.

DATED: March 14, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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STATE OF CALIFORNIA

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Respondent.

Case No. 79/14-19

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PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter on December 3, 2015, in Sacramento, California.

Deputy Attorney General Phillip L. Arthur represented the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

James M. Makasian, Attorney at Law, represented Gurpreet Singh Chauhan (respondent), who was present.

The matter was submitted for decision on December 3, 2015.

¹ The Accusation actually identifies both Gurpreet Singh Chauhan, as Smog Check Inspector and Smog Check Repair Technician, and Jagdev Singh, as owner of Valley Smog & Repair, as respondents and includes 26 separate causes for discipline. Pursuant to the Order Setting Aside Default Decision Nunc Pro Tunc of Tamara Colson, Assistant General Counsel, Department of Consumer Affairs, this hearing occurred on December 3, 2015, to determine whether Gurpreet Singh Chauhan's licenses are subject to discipline based on allegations in the Accusation.

FACTUAL FINDINGS

1. In June 2003, the Bureau issued Automotive Repair Dealer Registration Number AD 227381 to respondent. In September 2003, the Bureau issued Smog Check Station License Number RC 227381 to respondent. In 2005, the Bureau issued Advanced Emission Specialist Technician License Number 147842 to respondent.

2. On September 24, 2007, the Bureau adopted the Proposed Decision of Administrative Law Judge Julie Cabos-Owen, in the Matter of the Accusation against Valley Smog, Gurpreet Singh Chauhan, Owner, et al., Case Number 79/07-20 (Decision and Order).² The Decision and Order invalidated respondent's Automotive Repair Dealer Registration Number AD 227381 and revoked his Smog Check Station License Number RC 227381. The Decision and Order also revoked respondent's Advanced Emission Specialist Technician License Number 147842. However, the Advanced Emission Specialist Technician license revocation was stayed and respondent was placed on probation for three years upon specified terms and conditions.

3. Effective January 4, 2013, respondent elected to renew his Advanced Emission Specialist Technician License Number 147842 as Smog Check Inspector License Number 147842 and Smog Check Repair Technician License Number 147842. Both licenses will expire on January 31, 2017, unless revoked or renewed.

4. On January 5, 2015, the Bureau issued a Default Decision and Order revoking respondent's Smog Check Inspector license and Smog Check Repair Technician license, based on an Accusation issued against Jagdev Sing, owner, Valley Smog and Repair, and respondent as a Smog Check Inspector and Smog Check Repair Technician. On June 1, 2015, the Default Decision and Order was set aside Nunc Pro Tunc.

5. The Accusation seeks to discipline respondent's licenses based upon allegations that respondent committed dishonest, fraudulent, or deceitful acts whereby another was injured in violation of Health and Safety Code, section 44072.2, subdivision (d).

First Undercover Operation – 2000 Toyota Camry Solara

6. Theresa Hernandez works as an undercover operator for the Bureau. On September 18, 2012, Ms. Hernandez drove a 2000 Toyota Camry Solara (Solara), California License Number [REDACTED] to Valley Smog and Repair, located at 1506 N. Blackstone and was greeted by respondent. At that time, respondent worked as a smog technician for Valley Smog and Repair. Ms. Hernandez told respondent that the air conditioning system in the vehicle was not blowing cold air and requested the \$19.99 air conditioning service advertised

² The business establishment known as "Valley Smog," located in Bakersfield, California, and referenced in Case Number 79/07-20, is a separate and distinct entity from the business establishment known as "Valley Smog and Repair," located in Fresno, California, referenced in the Accusation.

on a banner hanging from the front of the establishment. Respondent told Ms. Hernandez the service would cost "\$19.99 plus \$35.00 for [refrigerant]." He then moved the vehicle into one of the service bays and opened the hood. Respondent did not provide Ms. Hernandez with a written estimate of the work to be performed.

7. After waiting approximately 25 minutes, respondent told Ms. Hernandez that adding refrigerant did not solve the problem and that additional work would need to be performed on the vehicle the following day. The following day, respondent told Ms. Hernandez it would cost an additional \$160 to repair the vehicle and that the repairs would consist of adding 1.5 pounds of refrigerant and replacing the pressure sensor. After being informed that the repairs had been completed, Ms. Hernandez paid respondent an additional \$160 as requested, for a total of \$180 for all services performed. She received a service invoice detailing the repairs described by respondent and left Valley Smog and Repair in the Solara. Respondent is the only person Ms. Hernandez communicated with while the Solara remained at Valley Smog and Repair.

8. The parties stipulated as follows, regarding the services needed or performed on the Solara while the vehicle was at Valley Smog and Repair: (a) The only service required to repair the Solara's inoperative air conditioning system was to replace a defective magnetic clutch relay in the under hood number five panel relay; (b) The pressure sensor on the Solara was not replaced; and (c) refrigerant was added to the vehicle but was not needed. Because the Solara did not require refrigerant or a new pressure sensor to repair the inoperative air conditioning system, respondent's statements that these repairs were required were not true or accurate. Respondent's statements that the Solara's pressure sensor was replaced were also not true or accurate, as that part was not replaced during service.

Second Undercover Operation – 1995 Chevrolet 1500 Pick-Up Truck

9. Laura Perez works as an undercover operator for the Bureau. On November 7, 2012, Ms. Perez drove a 1995 Chevrolet 1500 Pick-Up Truck (Chevy Truck), California License Number [REDACTED] to Valley Smog and Repair, located at 1506 N. Blackstone and was greeted by respondent. At that time, respondent worked as a smog technician for Valley Smog and Repair. Ms. Perez requested a smog inspection. Respondent took the keys from Ms. Perez and instructed her to complete and sign a repair order and wait while her car was serviced. After approximately 90 minutes, respondent returned to Ms. Perez and told her that the Chevy Truck did not pass the smog inspection. He charged her \$49.75 for the inspection, which Ms. Perez paid in cash. She did not receive an invoice for the service at that time.

10. Respondent advised Ms. Perez that the vehicle could pass the smog inspection if a diagnostic was performed to identify the problem and repairs were completed. Ms. Perez left the vehicle at Valley Smog and Repair for the diagnostic to be completed. After the diagnostic was performed, respondent told Ms. Perez that the Chevy Truck needed a tune up, an oxygen sensor, and a fuel injection service for the vehicle to pass the smog inspection. Ms. Perez authorized the repairs and picked the vehicle up on November 13, 2012. She paid an additional \$380 for the repairs and the second smog inspection. At first, respondent only

provided Ms. Perez with the initial repair order reflecting the \$49.75 charge for the initial smog inspection, and the Smog Check Vehicle Inspection Report, dated November 12, 2012, indicating the Chevy Truck had passed the smog inspection.³ At Ms. Perez's request, respondent added each of the repairs he described to the invoice and also provided the initial Smog Check Vehicle Inspection Report, dated November 7, 2012, reflecting that the vehicle initially failed smog inspection. Other than speaking with another employee to check on the status of the vehicle, Ms. Perez communicated exclusively with respondent while the Chevy Truck was at Valley Smog and Repair.

11. The parties stipulated as follows, regarding the services needed or performed on the Chevy Truck while the vehicle was at Valley Smog and Repair:

- a. The only repair required to enable the vehicle to pass the smog inspection was to adjust the number five cylinder spark plug to specifications or to replace that spark plug.
- b. Five spark plugs were replaced, including the number five cylinder spark plug that caused the vehicle to fail the smog inspection. Four spark plugs did not need to be replaced for the vehicle to pass smog inspection.
- c. The distributor cap and spark plug wire set were replaced. These repairs were unnecessary for the vehicle to pass the smog inspection.
- d. The ignition rotor was not replaced as invoiced. Replacement of the ignition rotor was not required for the vehicle to pass the smog inspection.
- e. A fuel injection service was invoiced, but was not required for the vehicle to pass the smog inspection.
- f. The air cleaner housing was removed and reinstalled with only one wingnut securing the housing, where two wingnuts were required.

12. Because the Chevy Truck did not require a new set of spark plugs, new spark plug wires, a new distributor cap, a new ignition rotor, or a fuel injection service to pass the smog inspection, respondent's statements that these repairs were required were not true or accurate. Respondent's statements that the vehicle's ignition rotor was replaced were also not true or accurate, as that part was not replaced during service.

³ The November 12, 2012 Smog Check Vehicle Inspection Report indicates that the second smog inspection was performed by Smog Technician Parminderj Randhawa at Smog Doctor #1, located at 2597 N. Blackstone Avenue, Fresno, California, 93703.

Factors in Aggravation

13. The Bureau submitted the following factors in aggravation:

a. On September 24, 2007, pursuant to the disciplinary action entitled "In the Matter of the Accusation Against: Valley Smog, Gurpreet Singh, Chauhan, Owner," et al., Case Number 79/07-20, the Bureau permanently invalidated (revoked) respondent's Automotive Repair Dealer Registration Number ARD 227381, and revoked his Smog Check Station License Number RC 227381 and Advanced Emission Specialist Technician License Number EA 147842. The revocation of the technician license was stayed and respondent was placed on probation for three years subject to terms and conditions. The technician license was also suspended for 30 days.

b. On July 2, 2012, the Bureau issued Citation Number M2013-0003 against respondent's technician license for violating Health and Safety Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health and Safety Code section 44012). On or about May 22, 2012, respondent issued a Certificate of Compliance to a Bureau undercover vehicle with a missing PCV system. Respondent was directed to complete an eight-hour training course and to submit proof of completion within 30 days from receipt of the Citation. Respondent completed the training on August 26, 2012.

Respondent's Testimony

14. At hearing, respondent testified that he worked at Valley Smog and Repair as a smog technician when the Solara and Chevy Truck were serviced. The shop owner was Jagdev Singh. Respondent testified that he worked at Valley Smog and Repair with Mario Ramos and Gabe Gonzales, and that his duties were limited to performing vehicle smog inspections and helping out at the front desk, by writing up service orders and receiving customers. He asserted that he did not perform vehicle repairs or service vehicle air conditioners while working at Valley Smog and Repair. According to respondent, Mr. Ramos worked as a mechanic and also performed vehicle air conditioning service and repairs for Valley Smog and Repair during the time the Solara and Chevy Truck were serviced. Respondent also testified that Mr. Gonzales performed the vehicle diagnostic work and also completed vehicle repairs at that time. He stated that his only involvement with the Solara and Chevy Truck was to essentially conduct vehicle intake, convey information from the mechanics to the customers, and process payment for services. He also performed the initial smog inspection on the Chevy Truck—which was correctly performed. Respondent testified that he believed the repair information he conveyed to Mses. Hernandez and Perez was accurate, as he had no reason to believe otherwise. He also testified that he believes he is responsible for making sure the information he receives from the mechanics and conveys to customers is accurate.

Discussion

15. Respondent worked as a smog technician when the Solara and Chevy Truck were serviced at Valley Smog and Repair. He was not the owner of the business establishment. Despite his stated belief, respondent is not responsible for ensuring the accuracy of statements made by other Valley Smog and Repair employees. Respondent is responsible for his own conduct. He told Mses. Hernandez and Perez that their vehicles required repairs that were not needed, and that repairs were performed that never occurred. However, respondent testified credibly that he believed the statements were true when he made them, as it is what was told to him by the mechanics who serviced the vehicles. There was little evidence offered to refute respondent's assertion. Ms. Hernandez testified that she saw respondent "start to work on the [Solara]," but could not recall with specificity any "work" respondent actually performed on the vehicle beyond moving it into the service bay and opening the hood. There was no evidence that respondent performed any of the unnecessary repairs on either vehicle and no evidence that he claimed to have performed repairs not completed. There was no evidence of any misrepresentation or improper billing for the smog inspection respondent performed on the Chevy Truck.

16. The Bureau has the burden of establishing cause to discipline respondent's licenses for committing dishonest, fraudulent, or deceitful acts in violation of Health and Safety Code section 44072.2, subdivision (d), as alleged in the Accusation. The Health and Safety Code does not define "dishonest, fraudulent, or deceitful act." However, it is fundamental that dishonesty and fraud must be committed intentionally. To engage in an act of dishonesty an individual must know their assertion is untrue.⁴ Similarly, to engage in fraudulent or deceitful conduct requires an awareness of the deceptive nature of the offensive behavior.⁵ There was no reliable evidence that respondent knew or should have known that the statements he made to Mses. Hernandez and Perez regarding the vehicle repairs were untrue or deceptive. The evidence did not establish that respondent knowingly and intentionally engaged in dishonesty, fraud or deceit. The Bureau did not meet its burden to establish cause to discipline respondent's licenses.

⁴ In Black's Law Dictionary (5th ed. 1979), at page 421, "Dishonesty" is defined as "Disposition to lie, cheat or defraud; untrustworthiness; lack of integrity."

⁵ In Black's Law Dictionary (5th ed. 1979), at page 594, "Fraud" is defined as "An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right." At page 365, "Deceit" is defined as "A fraudulent and deceptive misrepresentation ... used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. To constitute 'deceit,' the statement must be untrue, made with knowledge of its falsity or with reckless and conscious ignorance thereof"

Costs

17. The Bureau has requested costs of investigation and enforcement in the total amount of \$41,544.26, pursuant to Business and Professions Code section 125.3. As the Bureau did not establish that respondent committed dishonest, fraudulent, or deceitful acts, as alleged in the Accusation, respondent will not be directed to pay reasonable costs of investigation and enforcement.

LEGAL CONCLUSIONS

1. In administrative proceedings, as in civil actions, the party asserting the affirmative generally has the burden of proof by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.) Once the party bearing the burden of proof has made a prima facie case, the burden shifts to respondent, who has the burden of proof of any affirmative defenses. (*Whetstone v. Board of Dental Examiners* (1972) 87 Cal.App. 156.) In this matter, the Bureau had the burden of proving that cause exists to discipline respondent's licenses, based on the information alleged in the Accusation and evidence admitted at hearing.

2. Pursuant to Health and Safety Code section 44072.2, subdivision (d), a license may be suspended, revoked or otherwise disciplined if the licensee "[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured." The evidence did not establish that respondent engaged in acts involving dishonesty, fraud, or deceit. Cause, therefore, does not exist to suspend, revoke or otherwise discipline respondent's Smog Check Inspector License or Smog Check Repair Technician License pursuant to Health and Safety Code section 44072.2, subdivision (d).

3. Business and Professions Code section 125.3 authorizes the Bureau to recover its reasonable costs of investigation and enforcement from a respondent whose license is disciplined. As the Bureau did not establish cause to discipline respondent's licenses, there is no basis to direct respondent to pay any costs of investigation and enforcement.

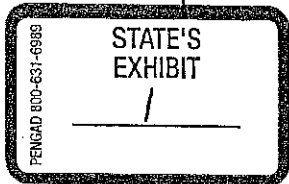
ORDER

The Accusation against Gurpreet Singh Chauhan, seeking the revocation or suspension of his Smog Check Inspector License Number EO 147842 and Smog Check Repair Technician License Number EI 147842, is dismissed.

DATED: January 5, 2016

DocuSigned by:
Ed Washington
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ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings



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

11 In the Matter of the Accusation Against:

Case No. **79/14-19**

12 **VALLEY SMOG & REPAIR**
 13 **JAGDEV SINGH, OWNER**
 1506 N. Blackstone
 14 Fresno, CA 93703

ACCUSATION

(Smog Check)

15 Automotive Repair Dealer Reg. No. ARD 248173
 16 Smog Check Station License No. RC 248173

17 and

18 **GURPREET SINGH CHAUHAN**
 1506 N. Blackstone
 19 Fresno, CA 93703

20 Smog Check Inspector License No. EO 147842
 Smog Check Repair Technician License No. EI
 21 147842 (formerly Advanced Emission Specialist
 Technician License No. EA 147842)

22 Respondents.

23
 24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

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

1 **Valley Smog & Repair; Jagdev Singh, Owner**

2 2. On or about December 4, 2006, the Director of Consumer Affairs ("Director") issued
3 Automotive Repair Dealer Registration Number ARD 248173 ("registration") to Jagdev Singh
4 ("Respondent Singh"), owner of Valley Smog & Repair. Respondent Singh's registration was in
5 full force and effect at all times relevant to the charges brought herein and will expire on or about
6 November 30, 2013, unless renewed.

7 3. On or about December 7, 2006, the Director issued Smog Check Station License
8 Number RC 248173 to Respondent Singh. Respondent Singh's smog check station license was in
9 full force and effect at all times relevant to the charges brought herein and will expire on
10 November 30, 2013, unless renewed.

11 **Gurpreet Singh Chauhan**

12 4. On or about June 25, 2003, the Director issued Automotive Repair Dealer
13 Registration Number ARD 227381 ("registration") to Gurpreet Singh Chauhan ("Respondent
14 Chauhan"). On September 24, 2007, Respondent Chauhan's registration was revoked, as set forth
15 in subparagraph 59 (b) below.

16 5. On or about September 9, 2003, the Director issued Smog Check Station License
17 Number RC 227381 to Respondent Chauhan. On September 24, 2007, Respondent Chauhan's
18 smog check station license was revoked, as set forth in subparagraph 59 (b) below.

19 6. On or about February 17, 2005, the Director issued Advanced Emission Specialist
20 Technician License Number EA 147842 to Respondent Chauhan. On September 24, 2007,
21 Respondent Chauhan's advanced emission specialist technician license was revoked; however, the
22 revocation was stayed and Respondent was placed on probation for three (3) years on terms and
23 conditions, as set forth in subparagraph 59 (b) below. The license was also suspended for 30 days
24 effective September 24, 2007. Respondent Chauhan's advanced emission specialist technician
25 license was due to expire on January 31, 2013. Pursuant to California Code of Regulations, title
26 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Chauhan's
27 election, as Smog Check Inspector License Number EO 147842 and Smog Check Repair
28

1 Technician License Number EI 147842 ("technician licenses"), effective January 31, 2013.¹
2 Respondent Chauhan's technician licenses will expire on January 31, 2015, unless renewed.

3 **JURISDICTION**

4 7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
5 the Director may revoke an automotive repair dealer registration.

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

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

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

17 11. Health & Saf. Code section 44072.8 states that when a license has been revoked or
18 suspended following a hearing under this article, any additional license issued under this chapter
19 in the name of the licensee may be likewise revoked or suspended by the director.

20 12. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
21 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
22 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
23 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

24 ///
25 ///

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
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 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 . . .

3 15. Bus. & Prof. Code section 22, subdivision (a), states:

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

8 16. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
9 "license" includes "registration" and "certificate."

10 17. 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
13 director thereof, does any of the following:

14

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

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

19 18. California Code of Regulations, title 16, section ("Regulation") 3340.15, subdivision
20 (i), states, in pertinent part, that "[a] licensed smog check station shall not sublet inspections or
21 repairs required as part of the Smog Check Program . . ."

22 19. Regulation 3356 states, in pertinent part:

23 (a) All invoices for service and repair work performed, and parts
24 supplied, as provided for in Section 9884.8 of the Business and Professions Code,
25 shall comply with the following:

26

27 (2) The invoice shall separately list, describe and identify all of the
28 following:

. . . .

(B) Each part supplied, in such a manner that the customer can
understand what was purchased . . .

20. Regulation section 3366 states:

(a) Except as provided in subsection (b) of this section, any automotive
repair dealer that advertises or performs, directly or through a sublet contractor,
automotive air conditioning work and uses the words service, inspection, diagnosis,

1 top off, performance check or any expression or term of like meaning in any form of
2 advertising or on a written estimate or invoice shall include and perform all of the
3 following procedures as part of that air conditioning work:

4 (1) Exposed hoses, tubing and connections are examined for damage or
5 leaks;

6 (2) The compressor and clutch, when accessible, are examined for
7 damage, missing bolts, missing hardware, broken housing and leaks;

8 (3) The compressor is rotated to determine if it is seized or locked up;

9 (4) Service ports are examined for missing caps, damaged threads and
10 conformance with labeling;

11 (5) The condenser coil is examined for damage, restrictions or leaks;

12 (6) The expansion device, if accessible, is examined for physical damage
13 or leaks;

14 (7) The accumulator receiver dryer and in-line filter have been checked
15 for damage, missing or loose hardware or leaks;

16 (8) The drive belt system has been checked for damaged or missing
17 pulleys or tensioners and for proper belt routing, tension, alignment, excessive wear
18 or cracking;

19 (9) The fan clutch has been examined for leakage, bearing wear and
20 proper operation;

21 (10) The cooling fan has been checked for bent or missing blades;

22 (11) Accessible electrical connections have been examined for loose,
23 burnt, broken or corroded parts;

24 (12) The refrigerant in use has been identified and checked for
25 contamination;

26 (13) The system has been checked for leakage at a minimum of 50-PSI
27 system pressure;

28 (14) The compressor clutch, blower motor and air control doors have
been checked for proper operation;

(15) High and low side system operating pressures, as applicable, have
been measured and recorded on the final invoice; and,

(16) The center air distribution outlet temperature has been measured and
recorded on the final invoice.

(b) Whenever the automotive air conditioning work being advertised or
performed does not involve opening the refrigerant portion of the air conditioning
system, refrigerant evacuation, or full or partial refrigerant recharge, the procedures
specified in subsection (a) need be performed only to the extent required by accepted
trade standards.

1 was taken to Respondent Singh's facility and the vehicle was not in need of any refrigerant or a
2 refrigerant service.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Provide Customer with Copy of Signed Document)**

5 30. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
6 Prof. Code section 9884.7, subdivision (a)(3), in that Respondent Singh's technician, Respondent
7 Chauhan, failed to provide the undercover operator with a copy of the written estimate as soon as
8 she signed the document.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 31. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
12 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting
13 fraud, as follows: Respondent obtained payment from the undercover operator for adding Freon
14 to the A/C system on the Bureau's 1997 Chevrolet as part of the A/C service. In fact, Respondent
15 had no basis for selling Freon to the undercover operator or adding Freon to the A/C system in
16 that the refrigerant in use on the vehicle had not been identified and checked for contamination by
17 the facility as required by Regulation section 3366, subdivision (a)(12). Further, the A/C system
18 had been recharged with refrigerant prior to the time the vehicle was taken to Respondent's
19 facility, and the vehicle was not in need of any refrigerant or a refrigerant service.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Violations of the Bus. & Prof. Code)**

22 32. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section
24 9884.9, subdivision (a), of that Code in the following material respects:

25 a. Respondent Singh's technician, Respondent Chauhan, exceeded the estimate price of
26 \$54.99 for the A/C service and the addition of Freon on the Bureau's 1997 Chevrolet without the
27 operator's oral or written consent.

28 ///

1 \$30, and that the labor charges would be \$90. The operator told Chauhan that she would call him
2 back after speaking with her husband. The operator called Chauhan later and authorized the
3 repairs.

4 36. On September 19, 2012, the operator returned to Respondent Singh's facility to
5 retrieve the vehicle, paid Chauhan \$160 (for total payments on the repairs of \$180), and received
6 a copy of Invoice [REDACTED].

7 37. On September 20, 2012, the Bureau inspected the vehicle using the invoice for
8 comparison. The Bureau found that Respondent Singh's facility had not repaired the vehicle as
9 invoiced, had performed unnecessary repairs, and had failed to properly repair the A/C system,
10 constituting gross negligence, as set forth below.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 38. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
14 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
15 which he knew or in the exercise of reasonable care should have known to be untrue or
16 misleading, as follows:

17 a. Respondent Singh's technician, Respondent Chauhan, represented to the undercover
18 operator that Freon would be added to the A/C system on the Bureau's 2000 Toyota as part of the
19 A/C service. In fact, Chauhan had no basis for recommending or selling Freon to the undercover
20 operator or adding Freon to the A/C system in that the refrigerant in use on the vehicle had not
21 been identified and checked for contamination by the facility as required by Regulation section
22 3366, subdivision (a)(12). Further, the A/C system had been recharged with refrigerant prior to
23 the time the vehicle was taken to Respondent Singh's facility, the refrigerant in use on the vehicle
24 was not contaminated, and the vehicle was not in need of any refrigerant or a refrigerant service.

25 b. Respondent Singh's technician, Respondent Chauhan, represented to the undercover
26 operator that the Bureau's 2000 Toyota needed a pressure switch. In fact, the pressure switch was
27 in good serviceable condition, was free from damage, and was not in need of replacement at the
28 time the vehicle was taken to Respondent Singh's facility.

1 c. Respondent Singh represented on the invoice that the pressure switch on the Bureau's
2 2000 Toyota was replaced. In fact, that part was not replaced on the vehicle as invoiced.

3 SEVENTH CAUSE FOR DISCIPLINE

4 (Fraud)

5 39. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
6 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting
7 fraud, as follows:

8 a. Respondent Singh obtained payment from the undercover operator for adding Freon
9 to the A/C system on the Bureau's 2000 Toyota as part of the A/C service. In fact, Respondent
10 had no basis for selling Freon to the undercover operator or adding Freon to the A/C system in
11 that the refrigerant in use on the vehicle had not been identified and checked for contamination by
12 the facility as required by Regulation section 3366, subdivision (a)(12). Further, the A/C system
13 had been recharged with refrigerant prior to the time the vehicle was taken to Respondent's
14 facility, the refrigerant in use on the vehicle was not contaminated, and the vehicle was not in
15 need of any refrigerant or a refrigerant service.

16 b. Respondent Singh's technician, Respondent Chauhan, made a false or misleading
17 representation to the undercover operator regarding the A/C system on the Bureau's 2000 Toyota,
18 as set forth in subparagraph 38(b) above, in order to induce the operator to purchase an
19 unnecessary repair on the vehicle, then sold the operator the unnecessary repair—the replacement
20 of the pressure switch.

21 c. Respondent Singh obtained payment from the undercover operator for replacing the
22 pressure switch on the Bureau's 2000 Toyota. In fact, that part was not replaced on the vehicle as
23 invoiced.

24 EIGHTH CAUSE FOR DISCIPLINE

25 (Gross Negligence)

26 40. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
27 Prof. Code section 9884.7, subdivision (a)(5), in that Respondent committed acts constituting
28 gross negligence, as follows: Respondent removed the defective magnetic clutch relay on the

1 Bureau's 2000 Toyota and switched it with one of the existing engine cooling fan relays, i.e.,
2 switched the positions of the two relays. As a result, the engine cooling fans are not operating
3 properly or to manufacturer specifications, exposing the engine to potential damage from
4 overheating.

5 **NINTH CAUSE FOR DISCIPLINE**

6 **(Departure from Trade Standards)**

7 41. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
8 Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or
9 disregarded accepted trade standards for good and workmanlike repair without the consent of the
10 owner or the owner's duly authorized representative, in a material respect, as follows:

11 Respondent failed to record on the invoice the center air distribution outlet temperature of the AC
12 system on the Bureau's 2000 Toyota, as required by Regulation section 3366, subdivision (a)(16).

13 **TENTH CAUSE FOR DISCIPLINE**

14 **(Violations of the Bus. & Prof. Code)**

15 42. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
16 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section
17 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent Singh's
18 technician, Respondent Chauhan, failed to provide the undercover operator with a written
19 estimate for the A/C service on the Bureau's 2000 Toyota.

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 **(Misleading Price Advertising)**

22 43. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
23 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent Singh failed to comply with
24 Regulation section 3372.1 by advertising the A/C service at a price which was misleading, as
25 follows: Respondent Singh represented on the banner/advertisement, described in paragraph 32
26 above, that the A/C service would be \$19.99. In fact, Respondent Singh did not intend to sell the
27 advertised service for \$19.99, but intended to entice the consumer into a more costly transaction,
28 as follows: Respondent Singh's technician, Respondent Chauhan, represented to the undercover

1 operator that the A/C service on the Bureau's 2000 Chevrolet would be \$19.99 plus \$35 for
2 Freon, and that Freon was needed on the vehicle since it was "the stuff" that made the A/C "blow
3 cold air". In fact, Respondent Chauhan had no basis for recommending or selling Freon to the
4 undercover operator or adding Freon to the A/C system in that the refrigerant in use on the
5 vehicle had not been identified and checked for contamination by the facility as required by
6 Regulation section 3366, subdivision (a)(12). Further, the A/C system had been evacuated and
7 charged with refrigerant prior to the time the vehicle was taken to Respondent Singh's facility,
8 the refrigerant in use on the vehicle was not contaminated, and the vehicle was not in need of any
9 refrigerant or a refrigerant service. In addition, the only repair needed on the A/C system was the
10 replacement of the defective magnetic clutch relay.

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 (Dishonesty, Fraud or Deceit)

13 44. Respondent Singh's smog check station license is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
15 dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 38,
16 39, and 43 above.

17 **THIRTEENTH CAUSE FOR DISCIPLINE**

18 (Dishonesty, Fraud or Deceit)

19 45. Respondent Chauhan's technician licenses are subject to disciplinary action pursuant
20 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
21 fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 38(a) and (b),
22 39(b), and 43 above.

23 **UNDERCOVER OPERATION #3: 1995 CHEVROLET**

24 46. On November 7, 2012, an undercover operator with the Bureau ("operator") took the
25 Bureau's 1995 Chevrolet to Respondent Singh's facility. The spark plug gap on the number five
26 cylinder spark plug on the Bureau-documented vehicle had been set to zero, causing the engine to
27 misfire and the vehicle to fail a smog test due to excessive tailpipe emissions. The operator met
28 with Respondent Chauhan and requested a smog inspection. Chauhan told the operator that he

1 would perform the inspection after he was done with another customer's vehicle. Chauhan had
2 the operator sign a blank repair order. Approximately one and a half hours later, Chauhan came
3 into the office and informed the operator that her vehicle failed the inspection. The operator paid
4 Chauhan \$49.75, but was not given any documentation on the vehicle. Chauhan told the operator
5 that he could repair the vehicle, but would have to diagnose it first. Chauhan also stated that he
6 would not be able to perform the work until the following day. The operator left the vehicle at
7 Respondent Singh's facility for the diagnosis.

8 47. On November 8, 2012, Respondent Chauhan called the operator and told her that he
9 was finished with the diagnosis and that the vehicle needed multiple repairs, including a tune-up
10 and a fuel injection service, at a total estimated cost of \$345. The operator asked Chauhan if the
11 vehicle needed all of these services in order to pass the smog test. Chauhan said "Yes." The
12 operator told Chauhan that she would check with her husband and call him back. That same day,
13 the operator called Respondent Singh's facility and authorized the repairs.

14 48. On November 9, 2012, the operator called Respondent Singh's facility to check on
15 the status of the vehicle. Respondent Chauhan told the operator that he was still working on the
16 vehicle, but it should be ready the following day. The operator asked Chauhan if the vehicle
17 would be "smogged" as well. Chauhan said "Yes."

18 49. On November 13, 2012, the operator returned to Respondent Singh's facility to
19 retrieve the vehicle and paid Respondent Chauhan \$380 in cash for the repairs. Chauhan gave the
20 operator a vehicle inspection report ("VIR") dated November 12, 2012. The VIR showed that the
21 vehicle had passed the smog inspection and that the inspection had been performed by Smog
22 Doctor, a test only facility located in Fresno.² The operator requested the VIR for the first (failed)

23 ² Test only facilities are licensed smog check stations, that by law, are only allowed to test
24 vehicles; they cannot repair them. Any needed repairs must be performed at either a smog check
25 station designated as a test and repair facility or a STAR-certified Test and Repair station. Test-
26 and-repair stations are licensed by the state to provide smog check tests and repairs to most
27 vehicles. Under current law, test-and-repair stations are prohibited from certifying repaired
28 "gross polluters" or vehicles that have been directed to test-only stations for inspection. Only
test-only stations and STAR-certified Test and Repair station are able to certify repaired gross
polluter vehicles. Pursuant to Health & Saf. Code section 39032.5, "gross polluter" means a
vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen (NOX) emissions as
established by the department in consultation with the state board.

1 inspection as well as an invoice. Chauhan gave the operator the repair order she had signed on
2 November 7, 2012. The operator noticed that there was only one charge on the repair order, and
3 asked Chauhan to write down all of the repairs he had performed on the vehicle. Chauhan made
4 various notations on the repair order, then gave the operator the invoice copy, Invoice No. [REDACTED]
5 and a VIR dated November 7, 2012. The VIR indicated that the vehicle had failed the smog
6 inspection as a gross polluter.

7 50. On November 16, 2012, the Bureau inspected the vehicle using the invoice for
8 comparison and found that Respondent Singh's facility had properly repaired the malfunction in
9 the ignition system by replacing the number five cylinder spark plug. The Bureau also found that
10 Respondent Singh's facility performed unnecessary repairs, failed to repair the vehicle as
11 invoiced, and departed from accepted trade standards in a material respect, as set forth below.

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 51. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
15 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
16 which he knew or in the exercise of reasonable care should have known to be untrue or
17 misleading, as follows:

18 a. Respondent Singh's technician, Respondent Chauhan, represented to the undercover
19 operator that the Bureau's 1995 Chevrolet needed a tune-up and a fuel injection service and that
20 the repairs or services were needed for the vehicle to pass the smog inspection. In fact, the only
21 repair(s) needed on the vehicle was the adjustment of the number five cylinder spark plug gap to
22 specifications or the replacement of the spark plug, and replacement of the oxygen sensor.
23 Further, the spark plug wires, distributor cap, and ignition rotor were new and were not in need of
24 replacement, and the fuel injectors were not in need of servicing or repair at the time the vehicle
25 was taken to Respondent Singh's facility.

26 b. Respondent Singh represented on the invoice that the ignition rotor on the Bureau's
27 1995 Chevrolet was replaced. In fact, that part was not replaced on the vehicle as invoiced.

28 ///

1 c. Respondent Singh represented on the invoice that only one spark plug was replaced
2 on the Bureau's 1995 Chevrolet. In fact, five spark plugs were replaced on the vehicle, including
3 the number five cylinder spark plug.

4 **FIFTEENTH CAUSE FOR DISCIPLINE**

5 (Fraud)

6 52. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
7 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting
8 fraud, as follows:

9 a. Respondent Singh's technician, Respondent Chauhan, made false or misleading
10 representations to the undercover operator regarding the Bureau's 1995 Chevrolet, as set forth in
11 subparagraph 51(a) above, in order to induce the operator to purchase unnecessary repairs on the
12 vehicle, sold the operator the unnecessary repairs, including the replacement of the spark plug
13 wires, four sparks plugs, the distributor cap, the ignition rotor, and the fuel injection service, and
14 failed to make necessary repairs, including replacement of the oxygen sensor.

15 b. Respondent Singh obtained payment from the undercover operator for replacing the
16 ignition rotor on the Bureau's 1995 Chevrolet. In fact, that part was not replaced on the vehicle
17 as invoiced.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

19 (Departure from Trade Standards)

20 53. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
21 Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or
22 disregarded accepted trade standards for good and workmanlike repair without the consent of the
23 owner or the owner's duly authorized representative, in a material respect, as follows:

24 Respondent failed to reinstall one of the two wing nuts in the air cleaner housing cover on the
25 Bureau's 1995 Chevrolet.

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1 **SEVENTEENTH CAUSE FOR DISCIPLINE**

2 (Violations of the Bus. & Prof. Code)

3 54. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section
5 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent Singh's
6 technician, Respondent Chauhan, failed to provide the undercover operator with a written
7 estimate for the smog inspection on the Bureau's 1995 Chevrolet.

8 **EIGHTEENTH CAUSE FOR DISCIPLINE**

9 (Violations of the Bus. & Prof. Code)

10 55. Respondent Singh's registration is subject to disciplinary action pursuant to Bus. &
11 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
12 Regulation section 3356, subdivision (a)(2)(B), in a material respect, as follows: Respondent
13 stated on Invoice No. 26691 that only one spark plug was replaced on the Bureau's 1995
14 Chevrolet when, in fact, a total of five spark plugs were replaced on the vehicle.

15 **NINETEENTH CAUSE FOR DISCIPLINE**

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

17 56. Respondent Singh's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
19 comply with Regulation 3340.15, subdivision (i), as follows: Respondent sublet the second smog
20 inspection on the Bureau's 1995 Chevrolet to Smog Doctor, as set forth in paragraph 49 above.

21 **TWENTIETH CAUSE FOR DISCIPLINE**

22 (Dishonesty, Fraud or Deceit)

23 57. Respondent Singh's smog check station license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
25 dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 51
26 and 52 above.

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1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

3 58. Respondent Chauhan's technician licenses are subject to disciplinary action pursuant
4 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
5 fraudulent, or deceitful acts whereby another was injured, as set forth in subparagraphs 51(a) and
6 52(a) above.

7 **MATTERS IN AGGRAVATION**

8 59. To determine the degree of discipline, if any, to be imposed on Respondents Singh
9 and Chauhan, Complainant alleges as follows:

10 **Respondent Singh**

11 a. On or about July 2, 2012, the Bureau issued Citation No. C2013-0002 against
12 Respondent Singh for violating Health & Saf. Code section 44012, subdivision (f) (failure to
13 perform a visual/functional check of emission control devices according to procedures prescribed
14 by the department). On or about May 22, 2012, Respondent Singh had issued a certificate of
15 compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau assessed a
16 civil penalty of \$1,000 against Respondent Singh for the violation. Respondent Singh paid the
17 fine on August 23, 2012.

18 **Respondent Chauhan**

19 b. On September 24, 2007, pursuant to the Proposed Decision of the Administrative
20 Law Judge adopted by the Director as the Decision in the disciplinary action entitled "In the
21 Matter of the Accusation Against: Valley Smog, Gurpreet Singh Chauhan, Owner", et al., Case
22 Number 79/07-20, the Director permanently invalidated (revoked) Automotive Repair Dealer
23 Registration Number ARD 227381, and revoked Smog Check Station License Number RC
24 227381 and Advanced Emission Specialist Technician License Number EA 147842 ("technician
25 license") issued to Respondent Chauhan. The revocation as to Respondent Chauhan's technician
26 license was stayed and Chauhan was placed on probation for three (3) years on terms and
27 conditions. Respondent Chauhan's technician license was also suspended for 30 days effective
28 September 24, 2007.

1 c. On or about July 2, 2012, the Bureau issued Citation No. M2013-0003 against
2 Respondent Chauhan's technician license for violating Health & Saf. Code section 44032
3 (qualified technicians shall perform tests of emission control systems and devices in accordance
4 with Health & Saf. Code section 44012). On or about May 22, 2012, Respondent Chauhan had
5 issued a certificate of compliance to a Bureau undercover vehicle with a missing PCV system.
6 Respondent Chauhan was directed to complete an 8 hour training course and to submit proof of
7 completion to the Bureau within 30 days from receipt of the citation. Respondent Chauhan
8 completed the training on August 26, 2012.

9 **OTHER MATTERS**

10 60. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
11 suspend, revoke or place on probation the registration for all places of business operated in this
12 state by Respondent Jagdev Singh, owner of Valley Smog & Repair, upon a finding that
13 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
14 regulations pertaining to an automotive repair dealer.

15 61. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
16 Number RC 248173, issued to Respondent Jagdev Singh, owner of Valley Smog & Repair, is
17 revoked or suspended, any additional license issued under this chapter in the name of said
18 licensee may be likewise revoked or suspended by the Director.

19 62. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
20 Number EO 147842 and Smog Check Repair Technician License No. EI 147842, issued to
21 Respondent Gurpreet Singh Chauhan, are revoked or suspended, any additional license issued
22 under this chapter in the name of said licensee may be likewise revoked or suspended by the
23 Director.

24 **PRAYER**

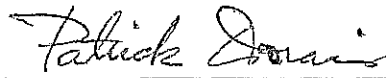
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Director of Consumer Affairs issue a decision:

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 248173, issued to Jagdev Singh, owner of Valley Smog & Repair;

- 1 2. Revoking or suspending any other automotive repair dealer registration issued to
2 Jagdev Singh;
- 3 3. Revoking or suspending Smog Check Station License Number RC 248173, issued to
4 Jagdev Singh, owner of Valley Smog & Repair;
- 5 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Jagdev Singh;
- 7 5. Revoking or suspending Smog Check Inspector License Number EO 147842 and
8 Smog Check Repair Technician License No. EI 147842 issued to Gurpreet Singh Chauhan;
- 9 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
10 and Safety Code in the name of Gurpreet Singh Chauhan;
- 11 7. Ordering Jagdev Singh, owner of Valley Smog & Repair, and Gurpreet Singh
12 Chauhan to pay the Director of Consumer Affairs the reasonable costs of the investigation and
13 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 14 8. Taking such other and further action as deemed necessary and proper.

15
16 DATED:

August 30, 2013



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

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