

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

In the Matter of the Accusation Against:

S.F. SMOG; EMRE ELCI, Owner

and

EMRE ELCI, smog technician

Respondents.

Case No. 79/15-124

OAH No. 2015071332

In the Matter of the Appeal of the Star Certification
Invalidation of:

S.F. SMOG; EMRE ELCI, Owner

Case No. C2014-0154

OAH No. 2015120431

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of Consumer Affairs 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 13, Order section # 2 - Smog check, Test Only Station Licenses No. 249184 is corrected to No. TC 249184.

2. Page 13, Order section #3 – Smog check Repair Technician License No. 152413 is corrected to No. EI 152413.

This Decision shall become effective

July 6, 2016

DATED:

May 31, 2016


TAMARA COLSON

Assistant General Counsel
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

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Case Nos. 79/15-124

OAH No. 2015071332

In the Matter of the Appeal of the Star
Certification Invalidation of:

S.F. SMOG; EMRE ELCI, Owner

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PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 29 and 30, and April 11 and 12, 2016; in Oakland, California.

Deputy Attorney General Char Sachson represented the Bureau of Automotive Repair.

Lewis Romero, Attorney at Law, represented respondent Emre Elci, who was present at the hearing.

The matter was submitted for decision on April 12, 2016.

FACTUAL FINDINGS

1. Respondent Emre Elci is the owner of S.F. Smog in San Francisco. As owner of S.F. Smog, respondent holds Automotive Repair Dealer Registration No. ARD 249184, and Smog Check, Test Only Station License No TC 249184. The facility has been licensed since 2007. The facility has been certified as a STAR Station since July 18, 2013. Respondent is also licensed as a smog check inspector and smog check repair technician. He holds Smog Check Inspector License No. EO 152413 and Smog Check Repair Technician License No. 152413. He has been licensed since 2005.

2. Respondent previously owned Palo Alto Smog Test Only Center. He held Automotive Repair Dealer Registration No. ARD 252141 and Smog Check, Test Only, Station License No. 252141. These licenses were issued in September 2007. The Automotive Repair Dealer Registration expired in 2010 and was not renewed. Respondent sold Palo Alto Smog Test Only Center in 2010. The Smog Check Test Only Station License was revoked in 2013, after an administrative hearing, for failure to pay fines imposed from two different citations that had been issued while respondent owned the station.

Prior Disciplinary Actions – S.F. Smog

3. There have been three citations issued against S.F. Smog:

a. Citation C2010-0480. On November 18, 2009, respondent S.F. Smog was cited for failing to perform a visual/functional check of emission control devices during a vehicle inspection, in violation of Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c). A \$500 penalty was assessed.

b. Citation C2010-1179. On May 13, 2010, respondent S.F. Smog was cited for failing to perform a visual/functional check of emission control devices during a vehicle inspection, in violation of Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c). A \$1,500 penalty was assessed.

c. Citation C2014-0154. On September 6, 2014, respondent S.F. Smog was cited for failing to perform a visual/functional check of emission control devices during a vehicle inspection, in violation of Health and Safety Code section 44012, subdivision (f). A \$1,500 penalty was assessed. Respondent appealed the citation. The citation was upheld after an administrative hearing.

Prior Disciplinary Actions – Palo Alto Smog Test Only Center

4. Three citations were issued to Palo Alto Smog Test Only Center during the time that the facility was owned by respondent:

a. Citation C2010-0395. On October 23, 2009, Palo Alto Smog Test Only Center was cited for issuing a certificate of compliance to a vehicle with a missing thermal air cleaner, in violation of Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c).

b. Citation C2010-0924. On March 17, 2010, Palo Alto Smog Test Only Center was cited for issuing a certificate of compliance to a vehicle with a missing EVAP canister, in violation of Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c).

c. Citation C2011-0073. On July 20, 2010, Palo Alto Smog Test Only Center was cited for issuing a certificate of compliance to a vehicle with a missing pulse secondary air injection system, in violation of Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c).

Prior Disciplinary Action – Emre Elci

5. Citation M2011-0074. On July 20, 2010, respondent was cited for issuing a certificate of compliance to a vehicle with a missing pulse secondary air injection system, in violation of Health and Safety Code section 44032 and California Code of Regulations, title 16, section 3340.30, subdivision (a). Respondent was ordered to complete an eight-hour training course.

Undercover Investigation

6. On December 22, 2013, an individual submitted an online complaint form to the Bureau, stating the following:

I have been visiting some of the clerks in the store, and have noticed that the person doing the Smog Test whose name is Emery [sic], sometimes will have a car pulled in the shop and doing a test and also have another vehicle backed up to the shop garage door and when he goes to put the part of the equipment up the exhaust pipe he uses the vehicle backed up to do on the vehicle inside the shop. I have seen this being done numerous times. This person has defrauded the state.

7. Christopher Cummings, a Program Representative with the Bureau, was assigned to investigate this complaint. Cummings performed video surveillance of S.F. Smog on ten different days in February and April, 2014.

8. S.F. Smog is a small facility located on a property adjacent to a gas station, on the busy corner of Market Street and Castro Street, in San Francisco's Castro neighborhood.

There is one testing bay. Cummings set up his video recording equipment across the street from the facility. From this vantage, all vehicles entering and exiting the testing bay were recorded. Cummings verified the time stamp on the video camera each day when he began recording. He confirmed that it was calibrated within one minute of the Bureau's official time. The Bureau's official time is used to establish the start and end time of smog inspections as well as the start and end time of some of the components of the inspections.

9. All smog inspections are performed using equipment known as the BAR 97. The technician begins an inspection by typing in the vehicle's vehicle identification number (VIN) and license plate number. The BAR 97 prompts the technician to answer a variety of questions during the smog inspection. The BAR 97 is connected to the Bureau's Vehicle Information Database (VID) by means of a dedicated phone line. Smog inspections consist of an emissions test, a functional test, and a visual test. The requirements for these tests vary depending on the make and model of the vehicle being tested. Data pertaining to every smog inspection is maintained in the VID.

10. Most vehicles manufactured between 1976 and 1995 require a fuel evaporative test, known as a LPFET or EVAP test. This test is part of the functional component of a smog inspection. The smog technician must first determine whether the test is required for a vehicle being inspected. If not required, the technician enters "N" into the BAR 97 when prompted, signifying "not applicable." If the LPFET test is required, the technician performs the test using a LPFET testing machine, also known as an EVAP testing machine. This machine is a separate, portable device that is not connected to the BAR 97. The machine houses a tank of nitrogen which is used to test the vehicle's evaporative system. The LPFET machine attaches to the vehicle's fuel tank by means of a hose. The technician connects an adapter to the hose depending on the type of vehicle being tested. The hose is then inserted into the fuel tank and the technician enters the last four digits of the vehicle's vehicle identification number and presses a button on the LPFET machine to perform the test. The test takes a minute or two. The results are displayed on the LPFET machine. The technician then manually enters the result of the LPFET test into the BAR 97, typing either a "P" for pass or an "F" for fail. The data for each LPFET test is stored on the LPFET machine until it is uploaded to the Bureau's database. The LPFET machine prompts the technician to upload the data every 72 hours, or the next time it is used after 72 hours. At this time, the data stored on the machine since the previous upload is transmitted to the Bureau's VID. This data includes the start and stop time as well as the result of each LPFET test performed.

A technician can generate a passing result on the LPFET machine by attaching the hose to substitute vehicle or to the LPFET machine's calibration tank instead of attaching it to the vehicle. This technique is referred to as "clean tanking" and is a violation of the Bureau's regulations.

Videotape Surveillance

11. On February 18, 2014, Cummings videotaped the facility for approximately eight hours. Respondent performed 19 smog inspections on this day; all but two occurred

during the time the video was recorded. Cummings reviewed the LPFET test data and compared it with the video footage. Cummings concluded that two of the vehicles which respondent had reported as having passed the LPFET test had not had a LPFET test performed. Cummings determined this by observing that the LPFET machine was never connected to these vehicles. In the videos, Cummings observed respondent in the vicinity of the LPFET machine at the start time of the video. Cummings inferred that respondent performed the LPFET test by attaching the LPFET machine's hose to the machine's calibration tank rather than attaching it to the vehicles he purported to test.

Respondent issued certificates of compliance for these two vehicles which he claimed had passed the LPFET test when in fact these tests were not performed: a 1993 Honda Accord, license plate #6NQM052 and a 1994 Honda Civic, license plate #6MPG416.

12. On February 19, 2014, Cummings videotaped the facility for approximately nine hours. Cummings did not observe any violations during the review of the video of this day.

13. On February 20, 2014, Cummings videotaped the facility for approximately eight and one-half hours. Nine inspections were performed on this day, all during the time when the video camera was recording. Three vehicles were reported to the BAR as having had LPFET tests performed. Cummings reviewed the video and determined that one vehicle which respondent claimed to have tested was never attached to the LPFET machine.

Respondent issued a certificate of compliance for a 1993 Ford Explorer SUV, License Plate #6XQJ204, after having notified the BAR that the vehicle had passed the LPFET test, when in fact this test was not performed on this vehicle.

14. On February 22, 2014, Cummings videotaped the facility for approximately ten hours. Twenty-three inspections were performed, of which 21 occurred during the videotape period. Three cars were reported to have had LPFET testing performed. Cummings determined that one of these cars, a 1992 Honda Accord, was never connected to the LPFET machine.

Respondent issued a certificate of compliance to the 1992 Honda Accord, license plate #6VMW780, after having notified the BAR that the vehicle had passed the LPFET test, when in fact no LPFET test was performed on the vehicle.

On February 22, 2014, Cummings also observed on the video respondent performing a smog inspection of a green Toyota 4 Runner. On reviewing the BAR's data, Cummings noted that at the time the Toyota 4 Runner was being inspected, the BAR data reflects that the vehicle identification number and license plate number of a 1999 Ford Explorer had been entered into the BAR 97. The Ford Explorer was not present at the facility while it was

reported to have been tested. A certificate of compliance was issued to the Ford Explorer. Cummings concluded that respondent passed the Ford Explorer by means of a technique called "clean piping" in which a substitute vehicle is used to perform the emissions portion of the smog inspection.

Cummings reviewed BAR data pertaining to the Ford Explorer and discovered that it had failed a smog inspection performed by respondent on February 18. Because Cummings had performed videotape surveillance that day, he was able to review the time period during which the Ford Explorer had been inspected. He viewed the video and observed that the Ford Explorer is red in color. According to the BAR's data, the Explorer failed the emissions portion of the February 18 inspection and was identified as a "gross polluter."

Respondent issued a certificate of compliance to the Ford Explorer, license plate #5WZU631, after having performed the smog inspection on a Toyota 4 Runner. Respondent was aware that the Ford Explorer was a gross polluter and had failed a smog inspection.

15. On April 14, 2014, Cummings videotaped the facility for approximately nine hours. He did not observe any violations.

16. On April 15, 2014, Cummings videotaped the facility for approximately ten hours. Thirteen inspections were performed, all of which were recorded. Cummings determined that respondent reported that a LPFET test was performed on a 1995 Chevrolet Blazer when in fact the Blazer was never connected to the LPFET test machine.

Respondent issued a certificate of compliance to a 1995 Chevrolet Blazer, license plate #6THV579, after having falsely reported that the vehicle passed the LPFET test.

17. On April 16, 2014, Cummings videotaped the facility for approximately eight hours. Respondent performed 14 smog inspections on this date, twelve during the period of time that was recorded on video. Comparing the video with the BAR's data, Cummings observed that respondent reported that a 1993 Toyota Camry passed the LPFET test when in fact the vehicle was never connected to the LPFET machine. Respondent issued a certificate of compliance to the 1993 Toyota Camry, license plate # 3E1U640, after having falsely reported that the vehicle passed the LPFET test.

18. On April 17, 2014, Cummings videotaped the facility for approximately nine hours. Fourteen vehicles were inspected on this day, all during the time period that was recorded on video. Comparing the video with the BAR's data, Cummings observed that respondent reported that a 1987 Dodge Ram 50 passed the LPFET test when in fact the vehicle was never connected to the LPFET machine.

Respondent issued a certificate of compliance to the Dodge Ram 50, license plate #5Z87804, after having falsely reported that the vehicle passed the LPFET test.

19. On April 18, 2014, Cummings videotaped the facility for approximately ten and one-half hours. Respondent performed 23 inspections on this date, all of which were recorded on video. By viewing the video and comparing it with the BAR's test data, Cummings determined that respondent reported that three vehicles passed the LPFET test which were never connected to the LPFET machine.

Respondent issued certificates of compliance to the following three vehicles, after falsely reporting that the vehicles had passed the LPFET test: a 1987 Toyota Corolla, license plate #2FAF215, a 1993 Toyota T100 truck, license plate #56331B1, and a 1992 Audi 100, license plate #5NQP589 .

20. On April 19, 2014, Cummings videotaped the facility for approximately ten hours. Upon review, he did not discover any violations.

21. In summary, on seven of the ten days of video surveillance, Cummings observed respondent committing violations of the Bureau's regulations involving the smog inspections of eleven different vehicles. Cummings also observed respondent correctly performing the LPFET test on some vehicles. Cummings's testimony regarding the results of the video surveillance was credible in all respects.

VID Data Review

22. In addition to performing videotape surveillance, Cummings performed an audit of the facility's VID data pertaining to OBD II tests. Vehicles manufactured in 1996 and later feature the OBD II system. The OBD II system on the vehicle identifies fault codes generated by the vehicle's monitors and stores this data for varying periods of time. A test of the OBD II is required as part of the functional test of vehicles that have this system. During a smog inspection of an OBD II-equipped vehicle, the technician attaches the BAR 97 to the vehicle's OBD II. Data is transmitted to the Bureau's VID. Certain fault codes can result in the vehicle not passing the smog inspection. In order to pass vehicles with failing fault codes, technicians can employ an unlawful technique known as "clean plugging" by which they connect the BAR 97 into a substitute vehicle's OBD II.

23. In his audit, Cummings noticed that respondent performed a smog inspection of a 2002 BMW 325i Sport Wagon on March 2, 2014. The test results showed that the vehicle had fault code P1250 stored in its OBD II. Cummings reviewed online BMW technical information and two online industry publications, All Data and Mitchell Pro Demand, which describe fault codes for various vehicles. The fault code P1250 does not appear as a code that occurs in this particular make and model of vehicle in the three resources consulted by Cummings. Cummings concluded that respondent had used another vehicle to pass the test by means of clean plugging.

24. Cummings's testimony regarding his audit of the OBD II data was credible and persuasive. It was established that the March 2, 2014, inspection of the 2002 BMW 325i

Sport Wagon was performed by "clean plugging" and that respondent issued a certificate of compliance to the vehicle without having performed the OBD II test on the vehicle.

STAR Invalidation

25. On January 23, 2015, the Bureau notified respondent that it would be invalidating respondent's STAR certification effective February 6, 2015, in light of the fact that respondent was issued citation number C2014-154 on September 6, 2013. Respondent appealed from the proposed invalidation of his STAR certification and requested an administrative hearing.

Respondent's Evidence

26 Respondent is a native of Istanbul, Turkey. He immigrated to the United States thirteen years ago. Respondent's wife is a United States citizen and is a teacher. They reside in Alameda.

Respondent became a smog technician at the urging of a friend who owned a station. He initially worked at his friend's facility in Oakland, before opening up S.F. Smog and Palo Alto Smog Test Only in 2007.

Respondent acknowledged that his facilities were cited in the past and attributed these citations to difficulties he had operating two busy facilities and having to hire technicians who did not always perform well. He had two technicians working for him in Palo Alto and three in San Francisco. The citations involved undercover vehicles sent by the Bureau. Respondent wanted to "simplify," so he sold his Palo Alto facility and is now the only technician working at S.F. Smog. Respondent enjoys serving the Castro community. He has good relationships with police officers and other business owners and working people in the community.

27. Respondent noted that his shop is in a small location and he has to be quick because he does not have a lot of space to park cars. He has performed as many as 48 smog inspections during one day. Parking is also scarce in the neighborhood.

28. Respondent believes that the consumer complaint that resulted in the investigation of his shop was submitted by a homeless, demented man who frequents the Castro neighborhood. Respondent has asked this man not to come on his property and has called the police twice to complain when he was bothering him. Respondent saw this man with Cummings during the time that Cummings was videotaping the facility. Respondent believes that he is the victim of a "bribery" and is angry about this.

29. Respondent expressed animosity towards the Bureau. He feels that he has been targeted unfairly. He was exceedingly critical of Cummings and does not believe

Cummings to be knowledgeable about smog inspections. Respondent is also angry at the Bureau for always changing its rules and for sending this matter to the district attorney for criminal prosecution.

30. Respondent stated that there are lots of smog shops that are run dishonestly. People operate these shops under other people's names and respondent suggested that he could do that as well if the Bureau tries to put him out of business, because he "knows a lot of people."

31. Respondent explained that the Bureau keeps data on certain criteria to measure performance. He testified that his facility's statistics were generally below or just "a little over" state averages. Respondent added that the Bureau accepts a certain number of mistakes and that "you are allowed to be under ten percent" in terms of failing to perform the LPFET test on vehicles that require it. Respondent stated that "there is no such thing as clean tanking." And added, "why would I do fake EVAP tests? You are allowed to put "N" [for not applicable] on ten percent and you can still pass." He does not believe that Cummings could discern whether he was performing the tests from across the street.

32. Respondent denied "clean plugging" the BMW and stated that P1250 is a code for fuel sensor and that "all cars" use this code. He testified that he does not clean pipe cars.

33. Respondent stated that he formerly had a good relationship with people at the Bureau. He wants to do things legally and comply with the rules. In 2007, he reported suspicious activity by a technician at a shop across the street from his shop and that he assisted the Bureau's investigation into that shop. Respondent stated that he would be willing to follow whatever restrictions that the Bureau placed on him in order to keep his licenses. He offered to have a camera in his shop recording him performing smog inspections.

34. Respondent argued that the evidence did not establish that the vehicles that were not LPFET-tested would have failed the LPFET test had it been performed.

Ultimate Finding

35. A preponderance of the evidence established that between February 18 and April 19, 2014, respondent failed to properly inspect 12 vehicles, falsely claimed that complete and legitimate inspections were performed on these vehicles, and issued certificates of compliance to them.

Costs

36. In connection with the prosecution of this accusation, the Department of Justice has billed the Bureau \$7,747.50 for legal services. These charges are supported by a declaration that complies with the requirements of California Code of Regulations, title 1, section 1042. In addition, the Bureau submitted a declaration certifying investigation costs

in the amount of \$24,398.36. The total cost sought is \$32,145.86. This amount is deemed to be reasonable, in light of the scope of the investigation and number of violations alleged.

LEGAL CONCLUSIONS

Untrue/Misleading Statements (First, Ninth, Seventeenth, Twenty-Fifth, Thirty-Third, Forty-First, Forty-Ninth, and Fifty-Seventh Causes for Discipline)

1. Business and Professions Code section 9884.7, subdivision (a)(7), authorizes the Bureau to suspend or revoke the registration of an automotive repair dealer if it made or authorized statements which are untrue or misleading. By certifying that he had performed smog inspections of 12 vehicles which he had not properly inspected, respondent made untrue and misleading statements. Therefore cause exists to suspend or revoke respondent's automotive repair dealer registration in light of the matters set forth in Findings 11-24 and 35.

Fraud (Second, Tenth, Eighteenth, Twenty-Sixth, Thirty-Fourth, Forty-Second, Fiftieth, and Fifty-Eighth Causes for Discipline)

2. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes the Bureau to suspend or revoke the registration of an automotive repair dealer if it commits acts constituting fraud. Respondent's conduct of certifying that he had performed smog inspections of 12 vehicles which he had not properly inspected constituted fraud. Therefore cause exists to suspend or revoke respondent's automotive repair dealer registration in light of the matters set forth in Findings 11-24 and 35.

Violations of the Motor Vehicle Inspection Program – Facility (Third, Eleventh, Nineteenth, Twenty-Seventh, Thirty-Fifth, Forty-Third, Fifty-First, and Fifty-Ninth Causes for Discipline)

3. Health and Safety Code section 44072.2, subdivision (a), authorizes the Bureau to suspend or revoke the license of a licensee who fails to comply with provisions of that Code. By failing to perform LPFET tests on the two vehicles, issuing certificates of compliance to the vehicles without having performed the proper testing, making false statements on the certificates of compliance and committing dishonest, deceitful and fraudulent acts in connection with the testing of these vehicles, respondent S.F. Smog failed to comply with Health and Safety Code sections 44012, 44012, subdivision (f), 44015, subdivision (b), 44059, and 44072.2, subdivision (d). Therefore cause exists to suspend or revoke respondent's smog check station license, in light of the matters set forth in Findings 11-24 and 35.

Failure to Comply with Regulations – Facility (Fourth, Twelfth, Twentieth, Twenty-Eighth, Thirty-Sixth, Forty-Fourth, Fifty-Second, and Sixtieth Causes for Discipline)

4. Health and Safety Code section 44072.2, subdivision (c), authorizes the Bureau to suspend or revoke the license of a licensee who fails to comply with provisions of the California Code of Regulations pertaining to smog inspections. By issuing certificates of compliance to vehicles that had not been properly inspected, creating false and misleading certificates of compliance, and failing to conduct emissions tests in accordance with the proper procedures, respondent S.F. Smog failed to comply with California Code of Regulations, title 16, sections 3340.35, subdivision (c), 3373, and 3340.45. Therefore cause exists to suspend or revoke respondent's smog check station license, in light of the matters set forth in Findings 11-24 and 35.

Dishonesty, Fraud, or Deceit (Fifth, Thirteenth, Twenty-First, Twenty-Ninth, Thirty-Seventh, Forty-Fifth, Fifty-Third, and Sixty-First Causes for Discipline)

5. Health and Safety Code section 44072.2, subdivision (d), authorizes the Bureau to suspend or revoke the license of a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured. By issuing certificates of compliance to vehicles without first properly performing smog inspections, respondent S.F. Smog committed dishonest, fraudulent, and deceitful acts which injured the public for whose protection smog inspections are required. Therefore cause exists to suspend or revoke respondent's smog check station license, in light of the matters set forth in Findings 11-24 and 35.

Failure to Comply with the Automotive Repair Act (Sixth, Fourteenth, Twenty-Second, Thirtieth, Thirty-Eighth, Forty-Sixth, Fifty-Fourth, and Sixty-Second Causes for Discipline)

6. Business and Professions Code section 9884.7, subdivision (a)(6), authorizes the Bureau to suspend or revoke the registration of an automotive repair dealer who fails to comply with the Automotive Repair Act. By failing to perform required tests on 12 vehicles, issuing certificates of compliance to the vehicles without having performed the proper testing, making false statements on the certificates of compliance, and committing dishonest, deceitful and fraudulent acts in connection with the testing of these vehicles, respondent committed violations of the Automotive Repair Act. Therefore cause exists to suspend or revoke respondent's automotive repair dealer registration, in light of the matters set forth in Findings 11-24 and 35.

Violations of the Motor Vehicle Inspection Program – Technician (Seventh, Fifteenth, Twenty-Third, Thirty-First, Thirty-Ninth, Forty-Seventh, Fifty-Fifth, and Sixty-Third Causes for Discipline)

7. Health and Safety Code section 44072.2, subdivision (a), authorizes the Bureau to suspend or revoke the license of a licensee who fails to comply with provisions of that Code. By failing to perform required tests on 12 vehicles, issuing certificates of

compliance to the vehicles without having performed the proper testing, making false statements on the certificates of compliance, and committing dishonest, deceitful and fraudulent acts in connection with the testing of these vehicles, respondent Emre Elci failed to comply with Health and Safety Code sections 44012, 44012, subdivision (f), 44032, 44059, and 44072.2, subdivision (d). Therefore cause exists to suspend or revoke respondent's smog check inspector and smog check repair technician licenses, in light of the matters set forth in Findings 11-24 and 35.

Failure to Comply with Regulations– Technician (Eighth, Sixteenth, Twenty-Fourth, Thirty-Second, Fortieth, Forty-Eighth, Fifty-Sixth, and Sixty-Fourth Causes for Discipline)

8. Health and Safety Code section 44072.2, subdivision (c), authorizes the Bureau to suspend or revoke the license of a licensee who fails to comply with provisions of the California Code of Regulations pertaining to smog inspections. By failing to conduct emissions tests in accordance with the proper procedures, respondent Emre Elci failed to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.45. Therefore cause exists to suspend or revoke respondent's smog check inspector and smog check repair technician licenses, in light of the matters set forth in Findings 11-24 and 35.

STAR Invalidation

9. California Code of Regulations, title 16, section 3392.5.1, subdivision (a)(1), authorizes the Bureau to invalidate the STAR certification of a facility if the facility, manager or any licensed technician employed by the station receives an order of suspension, probationary order, or a citation that is final and non-appealable for a violation of any of the following sections: Health and Safety Code sections 44012, 44015, subdivisions (a) and (b), 44016, and 44032, California Code of Regulations, title 16, sections 3340.17, 3340.30, subdivision (a), 3340.35, 3340.41, subdivisions (b) and (c), 3340.42, 3340.42.2, and 3340.45.

10. Respondent's facility received citation C2014-154, which alleged that the facility violated Health and Safety Code section 44012, subdivision (f). This citation was appealed and upheld after an administrative hearing. Therefore, cause for invalidating respondent's STAR certification has been established by means of the matters set forth in Finding 3.

Appropriate Disposition

11. Respondent committed numerous, egregious violations of the laws pertaining to smog inspections. Over the course of ten days of video surveillance, respondent engaged in fraud in the performance of the smog inspections of eleven different vehicles. It is apparent that respondent's conduct was ongoing and that it was his common practice not to perform LPFET testing. Whether respondent engaged in this practice to help vehicles pass

that would have failed, or whether respondent was merely cutting corners, respondent's conduct undermined the state's smog inspection program.

Although it could not be established whether the vehicles that were "clean tanked" would have failed the LPFET test, it was established that the vehicle which was "clean piped" was in fact a gross polluter. In addition, it was established that respondent engaged in "clean plugging" of yet another vehicle.

Respondent did not admit wrongdoing and expressed no remorse. Instead, respondent disparaged the Bureau's investigator and depicted himself as unfairly persecuted. Respondent has a history of non-compliance with the Bureau's regulations. A previous license was revoked after respondent failed to pay citation fines. Respondent has no respect for the Bureau and its regulations and is unwilling to abide by the law. In fact, he bragged about the ease in which he could continue to violate the law by operating under someone else's name. Respondent cannot be trusted to comply with the laws governing smog inspections. Protection of the public compels invalidation of his STAR certification and revocation of his Automotive Repair Dealer Registration and Smog Check, Test Only Station, Smog Check Inspector, and Smog Check Technician licenses.

Costs

11. Business and Professions Code section 125.3 authorizes the Bureau to recover its reasonable costs of investigation and enforcement. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court sets forth standards by which a licensing board must exercise its discretion to reduce or eliminate costs awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Considering these factors, there is no basis to reduce the costs in this matter.

ORDER

1. Automotive Repair Dealer Registration No. ARD 249184, issued to Emre Elci, owner, doing business as S.F. Smog, is revoked. Any other automotive repair dealer registration issued to Emre Elci is revoked.

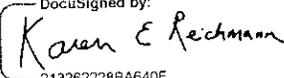
2. Smog Check, Test Only Station License No 249184, issued to S.F. Smog, Emre Elci, owner, doing business as S.F. Smog, is revoked.

3. Smog Check Inspector License No. EO 152413 and Smog Check Repair Technician License No. 152413, issued to Emre Elci, are revoked.

4. The STAR certification issued to respondent Emre Elci, doing business as S.F. Smog, Automotive Repair Dealer Registration No. ARD 249184, and Smog Check, Test Only Station License No. TC 249184, is invalidated.

5. Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$32,145.86. Respondent shall be permitted to pay these costs in a payment plan approved by the Bureau.

DATED: April 19, 2016

DocuSigned by:

213262228BA640F

KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/15-124

13 **SF SMOG**
14 **EMRE ELCI, OWNER**
15 **2399 Market Street**
16 **San Francisco, CA 94114**
17 **Automotive Repair Dealer Reg. No. ARD**
18 **249184**
19 **Smog Check Test Only Station License No.**
20 **TC 249184**

ACCUSATION

(SMOG CHECK)

21 and

22 **EMRE ELCI**
23 **2001 Shoreline Drive, Apt. 304**
24 **Alameda, CA 94501**
25 **Smog Check Inspector License No. EO**
26 **152413**
27 **Smog Check Repair Technician License No.**
28 **EI152413**

Respondents.

Complainant alleges:

PARTIES

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

1 (5) Conduct constituting gross negligence.

2 (6) Failure in any material respect to comply with the provisions of this chapter or
3 regulations adopted pursuant to it.

4 (7) Any willful departure from or disregard of accepted trade standards for good and
5 workmanlike repair in any material respect, which is prejudicial to another without consent of the
6 owner or his or her duly authorized representative.

7 (8) Making false promises of a character likely to influence, persuade, or induce a customer
8 to authorize the repair, service, or maintenance of automobiles.

9 (9) Having repair work done by someone other than the dealer or his or her employees
10 without the knowledge or consent of the customer unless the dealer can demonstrate that the
11 customer could not reasonably have been notified.

12 (10) Conviction of a violation of Section 551 of the Penal Code.

13 Upon denying of registration, the director shall notify the applicant thereof, in writing, by
14 personal service or mail addressed to the address of the applicant set forth in the application, and
15 the applicant shall be given a hearing under Section 9884.12 if, within 30 days thereafter, he or
16 she files with the bureau a written request for hearing, otherwise the denial is deemed affirmed.

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

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

26 13. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
27 "commission," "committee," "department," "division," "examining committee," "program," and

28

1 "agency." "License" includes certificate, registration or other means to engage in a business or
2 profession regulated by the Code.

3 14. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
4 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
5 the Motor Vehicle Inspection Program.

6 15. Section 44072.2 of the Health and Safety Code states:

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

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

13 "(b) Is convicted of any crime substantially related to the qualifications, functions, and
14 duties of the licenseholder in question.

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

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

17 "(e) Has misrepresented a material fact in obtaining a license.

18 "(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

19 "(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to
20 have those records available for inspection by the director or his or her duly authorized
21 representative for a period of not less than three years after completion of any transaction to which
22 the records refer, or refuses to comply with a written request of the director to make the records
23 available for inspection.

24 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
25 activity for which he or she is licensed."

26 16. California Code of Regulations, title 16, section 3340.35, states:
27
28

1 "(a) A licensed station shall purchase certificates of compliance and noncompliance from
2 the bureau or an authorized agent of the bureau only, and under the following terms and
3 conditions:

4 "(1) A certificate of compliance or noncompliance shall be purchased by a licensed station
5 for a fee determined pursuant to section 3340.35.1 of these regulations; and

6 "(2) Full payment is required at the time the certificates are ordered.

7 "(b) A licensed station shall not sell or otherwise transfer unused certificates to another
8 licensed station, to a new owner of the business, or to any person other than a customer whose
9 vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this
10 article.

11 "(c) A licensed station shall issue a certificate of compliance or noncompliance to the
12 owner or operator of any vehicle that has been inspected in accordance with the procedures
13 specified in section 3340.42 of this article and has all the required emission control equipment
14 and devices installed and functioning correctly. The following conditions shall apply:

15 "(1) Customers shall be charged the same price for certificates as that paid by the licensed
16 station; and

17 "(2) Sales tax shall not be assessed on the price of certificates.

18 "(d) No person shall sell, issue, cause or permit to be issued any certificate purported to be
19 a valid certificate of compliance or noncompliance unless duly licensed to do so.

20 "(e) A repair cost waiver or an economic hardship extension shall be the same fee as a
21 certificate of compliance or noncompliance."

22 17. California Code of Regulations, title 16, section 3340.42, states:

23 "Smog check stations and smog check technicians shall conduct tests and inspections in
24 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in
25 subsections (a) and (b) of Section 3340.17 and the following:

26 "(a) There shall be two test procedures as follows:

27 (1) The loaded-mode test method shall be the primary test method used in the enhanced
28 program areas of the state. The loaded-mode test method shall measure hydrocarbon, carbon

1 monoxide, carbon dioxide and oxides of nitrogen emissions. The loaded-mode test equipment
2 shall be Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer,
3 certified by the bureau. The loaded-mode test procedures, including the preconditioning
4 procedure, shall only be conducted according to the bureau approved procedures specified in this
5 section and include the following:

6 (A) Place the vehicle's driving wheels on a chassis dynamometer and properly restrain the
7 vehicle prior to commencing the test.

8 (B) Exhaust emissions shall be tested and compared to the emission standards set forth in
9 this section and as shown in Table I or Table II, as applicable.

10 (C) With the vehicle operating, sample the exhaust system in the following sequence:

11 1. Accelerate the vehicle to the cruise condition as specified by the test procedures.

12 2. Operate the vehicle long enough to stabilize emission levels.

13 3. Measure and record emissions (hydrocarbon, carbon monoxide, carbon dioxide, and
14 oxides of nitrogen).

15 (2) The two-speed idle mode test method shall be used in all program areas of the state,
16 other than the enhanced program areas. The two-speed idle mode test method shall measure
17 hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle
18 RPM, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17
19 of this article. Exhaust emissions from a vehicle subject to inspection shall be tested and
20 compared to the emission standards set forth in this section and as shown in Table III.

21 (3) All tests shall be performed with the engine at its normal operating temperature.

22 (4) All loaded mode testing shall be conducted in a manner which does not induce excess
23 emissions to the test.

24 "(b) There shall be a liquid fuel leak inspection as follows:

25 (1) As used in this section, "Liquid fuel leak" means any fuel emanating from a vehicle's
26 fuel delivery, metering, or evaporation systems in liquid form that has created a visible drop or
27 more of fuel on a component of a vehicle's fuel delivery, metering, or evaporation system or has
28

1 created a fuel puddle on, around, or under a component of a vehicle's fuel delivery, metering, or
2 evaporation system.

3 (2) With the engine running, the smog check technician shall visually inspect the following
4 components of the vehicle, if they are exposed and visually accessible, for liquid fuel leaks:

5 (A) Gasoline fuel tanks.

6 (B) Gasoline fill pipes, associated hoses and fuel tank connections.

7 (C) Gas caps.

8 (D) External fuel pumps.

9 (E) Fuel delivery and return lines and hoses.

10 (F) Fuel filters.

11 (G) Carburetors.

12 (H) Fuel injectors.

13 (I) Fuel pressure regulators.

14 (J) Charcoal canisters.

15 (K) Fuel vapor hoses.

16 (L) Any valves connected to any other fuel evaporative component.

17 (3) If a smog check technician detects a liquid fuel leak, the technician shall enter "F"
18 (Defective) in the "Fuel Evaporative Controls" category of the visual inspection when prompted
19 by the emissions inspection system and the vehicle shall fail the inspection.

20 (4) Smog check technicians shall indicate on the vehicle inspection report the location of
21 any liquid fuel leak.

22 (5) The liquid fuel leak inspection required by this section is a visual inspection only. Smog
23 check technicians are not required to perform any disassembly of the vehicle to inspect for liquid
24 fuel leaks. No special tools or equipment, other than a flashlight and mirror, are required and no
25 raising, hoisting or lifting of the vehicle is required.

26 (6) Expenditures for repairs made at a licensed smog check station to correct liquid fuel
27 leaks detected during a smog check inspection shall be credited toward the repair cost waiver
28 expenditure specified in Section 44017 of the Health and Safety Code, or applied to the repair

1 assistance program co-payment specified in Section 44062.1 of the Health and Safety Code and
2 Section 3394.4 of this chapter.

3 (7) Nothing in the subsection shall prohibit a technician from refusing to inspect a vehicle
4 or from aborting an inspection if a liquid fuel leak presents a safety hazard.

5 (8) This subsection shall not apply to vehicles fueled exclusively by compressed natural gas
6 (CNG), liquid natural gas (LNG), or liquid petroleum gas (LPG).

7 "(c) On and after November 1, 2007, all motor vehicles subject to the program, except as
8 provided in paragraph (1) of this subsection, shall be given a low-pressure test of the fuel
9 evaporative control system as part of a smog check inspection.

10 (1) The following vehicles are exempt from the low-pressure fuel evaporative test, and
11 when inspecting these vehicles, the Smog Check technician shall enter "N" (Not Applicable) at
12 the EIS "Fuel Evaporative Test" prompt:

13 (A) 1996 and newer model-year vehicles that are equipped with a Series II On-Board
14 Diagnostic (OBD II) system with the capability to perform a self-diagnosis of the vehicle's fuel
15 evaporative system;

16 (B) Vehicles for which there are no fuel tank filler neck adapters;

17 (C) Vehicles powered exclusively by compressed natural gas (CNG), Liquid natural gas
18 (LNG), or liquid petroleum gas (LPG);

19 (D) Vehicles not originally equipped, and not required by state or federal law to be
20 equipped, with a fuel evaporation control system;

21 (E) Vehicles with two or more fully operational fuel tanks; and (F) Vehicles, in their
22 original factory configuration, with a fuel evaporative canister and fuel vapor hoses that are not
23 accessible or would require the partial dismantling of the vehicle in order to gain access to them
24 for testing. If the fuel evaporative system pressure test is infeasible pursuant to this subparagraph,
25 the technician shall note the location of the canister on the vehicle inspection report provided to
26 the consumer pursuant to Section 3340.41 of this article.

27 (2) Smog Check stations and Smog Check technicians shall perform the low-pressure test
28 of a vehicle's fuel evaporative systems, using a BAR-certified low-pressure fuel evaporative tester

1 (LPFET). The test shall be performed in accordance with the test procedures and specifications
2 contained in the LPFET instruction manual provided by the tester's manufacturer, and following ,
3 as applicable:

4 (A) If components related to the vehicle's fuel evaporative system are missing, modified, or
5 disconnected, enter 'F' at the EIS "Fuel Evaporative Test" prompt. If the vehicle's fuel
6 evaporation system components are not missing, modified, or disconnected, proceed with the test.

7 (B) If, at the conclusion of the test, the LPFET displays a "P" (pass), enter "P" in the EIS at
8 the "Fuel Evaporative Test" prompt.

9 (C) If, at the conclusion of the test the LPFET displays an "F" (fail), perform a seal check in
10 accordance with the procedures and specifications contained in the LPFET instruction manual
11 provided by the tester's manufacturer.

12 1. If, after completion of the appropriate seal check, the system is found to be properly
13 sealed, enter "F" (fail) in the EIS at the "Fuel Evaporative Test" prompt.

14 2. If, after completion of the appropriate seal check, the system is found not to be properly
15 sealed follow the applicable procedures and specifications contained in the LPFET instruction
16 manual provided by the tester's manufacturer to correct the leaks and effect proper seals.

17 (D) After all leaks have been corrected, a verification test shall be performed in accordance
18 with the procedures and specifications contained in the LPFET instruction manual provided by
19 the tester's manufacturer.

20 1. If, at the conclusion of the verification test, the LPFET displays a "P" (pass), enter "P" in
21 the EIS at the "Fuel Evaporative Test" prompt.

22 2. If, at the conclusion of the verification test the LPFET displays an "F" (fail), enter "F" in
23 the EIS at the "Fuel Evaporative Test" prompt.

24 (E) At the completion of the test and any necessary verification test, following the
25 procedures and specifications contained in the LPFET instruction manual provided by the tester's
26 manufacturer, depressurize the evaporative system, remove the tester and return the fuel
27 evaporative system to its original configuration.

28

1 (3) Nothing in this subsection shall excuse a station or a technician from completing the
2 visual inspection of the vehicle as required by Section 3340.17 or the liquid fuel leak inspection
3 as required by subsection (b) of this section.

4 "(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are
5 as follows:

6 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides
7 of nitrogen emissions pursuant to the gross polluter emissions standards included in TABLES I, II
8 or III.

9 (2) Vehicles with emission levels exceeding the emission standards for gross polluters
10 during an initial inspection will be considered gross polluters and the provisions pertaining to
11 gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, 44017
12 and 44081 of the Health and Safety Code.

13 (3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until
14 the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle
15 as indicated in TABLES I, II, or III. However, the provisions described in section 44017 of the
16 Health and Safety Code may apply.

17 (4) This subsection applies in all program areas statewide to vehicles requiring inspection
18 pursuant to sections 44005 and 44011 of the Health and Safety Code.

19 (5) The gross polluter emission standards in TABLE III shall be used to determine if a
20 vehicle shall be designated as a gross polluter.

21 "(e)(1) In the enhanced program areas, heavy-duty vehicles shall be tested using the
22 loaded-mode testing method as provided in paragraph (1) of subsection (a) of this section, unless:

23 (A) The vehicle has a drive axle weight that exceeds 5,000 pounds when the vehicle is
24 unloaded, or

25 (B) The vehicle is classified by the Department of Motor Vehicles as a motorhome, or

26 (C) The vehicle has a body and/or chassis configuration or modification made for business
27 purposes that renders the vehicle incompatible with loaded-mode testing, or
28

1 (D) The emission inspection system prompts the technician to perform the two-speed idle
2 test.

3 (2) For the purposes of this subsection, the term "unloaded" shall mean that the vehicle is
4 not currently transporting loads for delivery or is not carrying items of a temporary nature, but
5 excludes items that have been welded, bolted or otherwise permanently affixed to the vehicle, and
6 tools, supplies, parts, hardware, equipment or devices of a similar nature that are routinely carried
7 in or on the vehicle in the performance of the work for, which the vehicle is primarily used.

8 (3) For the purposes of this subsection, modifications that render a vehicle incompatible
9 with loaded-mode testing shall not include any tire, wheel, body or chassis modifications made
10 for other than business purposes.

11 (4) If it is determined that a heavy-duty vehicle cannot be subjected to a loaded-mode test
12 for any of the reasons set forth in subparagraphs (A) through (D) of paragraph (1) of this
13 subsection, the technician shall perform a two-speed idle test. The technician shall also note on
14 the final invoice the justification for the performance of a two-speed idle test."

15 18. California Code of Regulations, title 16, section 3373, states:

16 "No automotive repair dealer or individual in charge shall, in filling out an estimate,
17 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
18 withhold therefrom or insert therein any statement or information which will cause any such
19 document to be false or misleading, or where the tendency or effect thereby would be to mislead
20 or deceive customers, prospective customers, or the public."

21 **COST RECOVERY**

22 19. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

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1 without performing bona fide inspections of the emission control devices and systems on the
2 vehicles, thereby depriving the People of the State of California of the protection afforded by the
3 Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Violations of the Motor Vehicle Inspection Program)

6 23. Respondent SF Smog's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent failed to comply with
8 provisions of that Code, as follows:

9 a. **Section 44012:** Respondent SF Smog failed to perform emission control tests on the
10 vehicles identified in paragraph 20 above in accordance with procedures prescribed by the
11 department.

12 b. **Section 44012(f):** Respondent SF Smog failed to perform visual and/or functional
13 checks of required emission control devices on the vehicles listed in paragraph 20 above.

14 c. **Section 44015(b):** Respondent SF Smog issued electronic smog certificates of
15 compliance for the vehicles identified in paragraph 20 above without properly testing and
16 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
17 44012.

18 d. **Section 44059:** Respondent SF Smog made false statements on Certificates of
19 Compliance for the vehicles listed in paragraph 20 above.

20 e. **Section 44072.2(d):** Respondent SF Smog committed dishonest, deceitful, and/or
21 fraudulent acts with regard to the vehicles listed in paragraph 20 above.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

25 24. Respondent SF Smog's smog check station license is subject to disciplinary action
26 pursuant to Health & Saf. Code section 44072.2(c), in that it failed to comply with provisions of
27 California Code of Regulations, title 16, as follows:
28

1 a. **Section 3340.35(c)**: Respondent SF Smog issued electronic smog certificates of
2 compliance for the vehicles identified in paragraph 20 above, even though those vehicles had not
3 been inspected in accordance with section 3340.42.

4 b. **Section 3373**: Respondent SF Smog created records which were false and misleading
5 when it issued electronic smog certificates of compliance for the vehicles identified in paragraph
6 20 above.

7 c. **Section 3340.45**: Respondent SF Smog failed to conduct emissions tests in
8 accordance with the EIS prompts and procedures prescribed by the Department of Consumer
9 Affairs.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 (Dishonesty, Fraud or Deceit)

12 25. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
13 pursuant to Health & Saf. Code section 44072.2(d), in that it committed dishonest, fraudulent or
14 deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for
15 the vehicles identified in paragraph 20 above, without performing bona fide inspections of the
16 emission control devices and systems on the vehicles, thereby depriving the People of the State of
17 California of the protection afforded by the Motor Vehicle Inspection Program.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 (Failure to Comply with the Automotive Repair Act)

20 26. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
21 pursuant to Code section 9884.7(a)(6) in that it failed to comply with the Automotive Repair Act.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 (Violations of the Motor Vehicle Inspection Program)

24 27. Respondent Elci's Smog Check Inspector license and Smog Check Repair Technician
25 license are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2(a), in
26 that Respondent failed to comply with provisions of that Code, as follows:
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1 a. **Section 44012:** Respondent Elci failed to perform emission control tests on the
2 vehicles identified in paragraph 20 above, in accordance with procedures prescribed by the
3 department.

4 b. **Section 44012(f):** Respondent Elci failed to perform visual and/or functional checks
5 of required emission control devices on the vehicles listed in paragraph 20 above.

6 c. **Section 44032:** Respondent Elci failed to conduct tests in accordance with Health
7 and Safety Code section 44012 for the vehicles listed in paragraph 20 above.

8 d. **Section 44059:** Respondent Elci willfully made false entries in the EIS, resulting in
9 the issuance of fraudulent certificates of compliance for the vehicles identified in paragraph 20
10 above.

11 e. **Section 44027.2(d):** Respondent Elci committed dishonest, deceitful and fraudulent
12 acts when he certified the vehicles listed in paragraph 20 above.

13 **EIGHTH CAUSE FOR DISCIPLINE**

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

16 28. Respondent Elci's Smog Check Inspector license and Smog Check Repair Technician
17 license are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2(c), in
18 that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.30(a):** Respondent Elci failed to inspect and test the vehicles identified
20 in paragraph 20 above, in accordance with Health & Saf. Code sections 44012 and 44035, and
21 California Code of Regulations, title 16, section 3340.42.

22 b. **Section 3340.45:** Respondent Elci failed to conduct emissions tests in accordance
23 with the EIS prompts and procedures prescribed by the Department of Consumer Affairs.

24 **VIDEO SURVEILLANCE OPERATION OF FEBRUARY 20, 2014**

25 29. On February 20, 2014, a representative of the Bureau conducted a video surveillance
26 operation of Respondent SF Smog's smog check facility. The surveillance video and information
27 obtained from the Bureau's VID revealed that Respondents issued an electronic smog certificate
28 of compliance, certifying that Respondent Elci had tested and inspected the vehicle identified

1 below and that the vehicle was in compliance with applicable laws and regulations. In fact,
 2 Respondent Elci conducted the inspection by certifying a LPFET on a vehicle that was not present
 3 at Respondent SF Smog's smog check facility, resulting in the issuance of a fraudulent certificate
 4 of compliance for the vehicle. The vehicle was not present at Respondent SF Smog's facility at
 5 the time the inspection was performed.

Time of Inspection	Vehicle Certified and License No.	Certificate of Compliance No.
1. 18:47 – 18:55	1993 Ford Explorer, Lic # 6XQJ204	YD331991C

8 **NINTH CAUSE FOR DISCIPLINE**

9 (Untrue/Misleading Statements)

10 30. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
 11 & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in
 12 the exercise of reasonable care should have known, to be untrue or misleading, as follows:
 13 Respondent SF Smog certified that the vehicle identified in paragraph 29 above had passed
 14 inspection and was in compliance with applicable laws and regulations. In fact, Respondent SF
 15 Smog certified the LPFET test on a vehicle not located at its facility in order to issue a certificate
 16 for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section
 17 44012.

18 **TENTH CAUSE FOR DISCIPLINE**

19 (Fraud)

20 31. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
 21 & Prof. Code section 9884.7(a)(4), in that it committed acts which constitute fraud by issuing an
 22 electronic smog certificate of compliance for the vehicle identified in paragraph 29 above without
 23 performing a bona fide inspection of the emission control devices and systems on the vehicle,
 24 thereby depriving the People of the State of California of the protection afforded by the Motor
 25 Vehicle Inspection Program.

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1 c. **Section 44032**: Respondent Elci failed to conduct tests in accordance with Health
2 and Safety Code section 44012 for the vehicle listed in paragraph 29 above.

3 d. **Section 44059**: Respondent Elci willfully made false entries in the EIS, resulting in
4 the issuance of a fraudulent certificate of compliance for the vehicle identified in paragraph 29
5 above.

6 e. **Section 44027.2(d)**: Respondent Elci committed dishonest, deceitful and fraudulent
7 acts when he certified the vehicle listed in paragraph 29 above.

8 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

11 37. Respondent Elci's technician license is subject to disciplinary action pursuant to
12 Health & Saf. Code section 44072.2(c), in that he failed to comply with provisions of California
13 Code of Regulations, title 16, as follows:

14 a. **Section 3340.30(a)**: Respondent Elci failed to inspect and test the vehicle identified
15 in paragraph 29 above, in accordance with Health & Saf. Code sections 44012 and 44035, and
16 California Code of Regulations, title 16, section 3340.42.

17 b. **Section 3340.45**: Respondent Elci failed to conduct emissions tests in accordance
18 with the EIS prompts and procedures prescribed by the Department of Consumer Affairs.

19 **VIDEO SURVEILLANCE OPERATION OF FEBRUARY 22, 2014**

20 38. On February 22, 2014, a representative of the Bureau conducted a video surveillance
21 operation of Respondent SF Smog's smog check facility. The surveillance video and information
22 obtained from the Bureau's VID revealed that Respondent Elci issued electronic smog certificates
23 of compliance, certifying that he had tested and inspected the vehicles identified below and that
24 the vehicles were in compliance with applicable laws and regulations, as listed in the table below.

25 In fact, Respondent Elci conducted the inspections by certifying a LPFET on a 1992 Honda
26 Accord that was not connected to the LPFET tester unit, and by clean-piping¹ a Ford Explorer,

27 ¹ "Clean-piping" is a method used to fraudulently certify vehicles that will not pass a
28 Smog Check test on their own, or in some instances, are not even present during the time the test
(continued...)

1 resulting in the issuance of fraudulent certificates of compliance for the vehicles. The Ford
2 Explorer was not present at Respondent SF Smog's facility at the time the inspections were
3 performed.

Time of Inspection	Vehicle Certified and License No.	Certificate of Compliance No.
1. 13:02-13:10	1992 Honda Accord, Ca. license #6VMW780 (LPFET)	YD497063C
2. 18:39-18:54	1999 Ford Explorer, Ca. license #4KEP927 (CLEAN-PIPE)	YD497078C

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8 **SEVENTEENTH CAUSE FOR DISCIPLINE**

9 (Untrue/Misleading Statements)

10 39. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
11 & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in
12 the exercise of reasonable care should have known, to be untrue or misleading, as follows:
13 Respondent SF Smog certified that the vehicles identified in paragraph 38 above had passed
14 inspection and were in compliance with applicable laws and regulations. In fact, Respondent Elci
15 certified the LPFET test on a vehicle not connected to the LPFET tester unit, and clean-piped
16 another vehicle, in order to issue a certificates for the vehicles and did not test or inspect the
17 vehicles as required by Health & Saf. Code section 44012.

18 **EIGHTEENTH CAUSE FOR DISCIPLINE**

19 (Fraud)

20 40. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
21 & Prof. Code section 9884.7(a)(4), in that it committed acts which constitute fraud by issuing an
22 electronic smog certificate of compliance for the vehicles identified in paragraph 38 above
23 without performing a bona fide inspection of the emission control devices and systems on the
24 vehicles, thereby depriving the People of the State of California of the protection afforded by the
25 Motor Vehicle Inspection Program.

26 (...continued)
27 is performed. To clean-pipe, the technician uses a "clean" exhaust gas sample that will pass the
28 Smog Check emissions test, while entering data into the analyzer for the vehicle to be
fraudulently certified.

1 **NINETEENTH CAUSE FOR DISCIPLINE**

2 (Violations of the Motor Vehicle Inspection Program)

3 41. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent SF Smog failed to comply
5 with provisions of that Code, as follows:

6 a. **Section 44012:** Respondent SF Smog failed to perform emission control tests on the
7 vehicles identified in paragraph 38 above in accordance with procedures prescribed by the
8 department.

9 b. **Section 44012(f):** Respondent SF Smog failed to perform visual and/or functional
10 checks of required emission control devices on the vehicles listed in paragraph 38 above.

11 c. **Section 44015(b):** Respondent SF Smog issued electronic smog certificates of
12 compliance for the vehicles identified in paragraph 38 above without properly testing and
13 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
14 44012.

15 d. **Section 44059:** Respondent SF Smog made false statements on the Certificate of
16 Compliance for the vehicles listed in paragraph 38 above.

17 e. **Section 44072.2(d):** Respondent SF Smog committed dishonest, deceitful, and/or
18 fraudulent acts with regard to the vehicles listed in paragraph 38 above.

19 **TWENTIETH CAUSE FOR DISCIPLINE**

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

22 42. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
23 pursuant to Health & Saf. Code section 44072.2(c), in that Respondent SF Smog failed to comply
24 with provisions of California Code of Regulations, title 16, as follows:

25 a. **Section 3340.35(c):** Respondent SF Smog issued electronic smog certificates of
26 compliance for the vehicles identified in paragraph 38 above, even though the vehicles had not
27 been inspected in accordance with section 3340.42.
28

1 c. **Section 44032:** Respondent Elci failed to conduct tests in accordance with Health
2 and Safety Code section 44012 for the vehicles listed in paragraph 38 above.

3 d. **Section 44059:** Respondent Elci willfully made false entries in the EIS, resulting in
4 the issuance of fraudulent certificates of compliance for the vehicles identified in paragraph 38
5 above.

6 e. **Section 44027.2(d):** Respondent Elci committed dishonest, deceitful and fraudulent
7 acts when he certified the vehicles listed in paragraph 38 above.

8 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

11 46. Respondent Elci's Smog Check Inspector license and Smog Check Repair Technician
12 license are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2(c), in
13 that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

14 a. **Section 3340.30(a):** Respondent Elci failed to inspect and test the vehicles identified
15 in paragraph 38 above, in accordance with Health & Saf. Code sections 44012 and 44035, and
16 California Code of Regulations, title 16, section 3340.42.

17 b. **Section 3340.41 (c):** Respondent Elci falsely entered information into the EIS for
18 vehicles other than the ones being tested.

19 c. **Section 3340.45:** Respondent Elci failed to conduct emissions tests in accordance
20 with the EIS prompts and procedures prescribed by the Department of Consumer Affairs.

21 **VIDEO SURVEILLANCE OPERATION OF APRIL 15, 2014**

22 47. On April 15, 2014, a representative of the Bureau conducted a video surveillance
23 operation of Respondent SF Smog's smog check facility. The surveillance video and information
24 obtained from the Bureau's VID revealed that Respondent Elci issued an electronic smog
25 certificate of compliance, certifying that he had tested and inspected the vehicle identified below
26 and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent
27 Elci conducted the inspection by certifying a LPFET on a vehicle that was not present at
28 Respondents' smog check facility, resulting in the issuance of a fraudulent certificate of

1 compliance for the vehicle. The vehicle was not present at Respondent SF Smog's facility at the
2 time the inspection was performed.

Time of Inspection	Vehicle Certified and License No.	Certificate of Compliance No.
1. 17:00-17:12	1995 Chevrolet S10 Blazer, Ca. license #6THV579	PG340623C

5 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

6 (Untrue/Misleading Statements)

7 48. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
8 & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in
9 the exercise of reasonable care should have known, to be untrue or misleading, as follows:
10 Respondent Elci certified that the vehicle identified in paragraph 47 above had passed inspection
11 and was in compliance with applicable laws and regulations. In fact, Respondent Elci certified
12 the LPFET test on a vehicle not located at its facility in order to issue a certificate for the vehicle
13 and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

15 (Fraud)

16 49. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
17 & Prof. Code section 9884.7(a)(4), in that it committed acts which constitute fraud by issuing an
18 electronic smog certificate of compliance for the vehicle identified in paragraph 47 above without
19 performing a bona fide inspection of the emission control devices and systems on the vehicle,
20 thereby depriving the People of the State of California of the protection afforded by the Motor
21 Vehicle Inspection Program.

22 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

23 (Violations of the Motor Vehicle Inspection Program)

24 50. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent SF Smog failed to comply
26 with provisions of that Code, as follows:
27
28

1 a. **Section 44012:** Respondent SF Smog failed to perform emission control tests on the
2 vehicle identified in paragraph 47 above in accordance with procedures prescribed by the
3 department.

4 b. **Section 44012(f):** Respondent SF Smog failed to perform visual and/or functional
5 checks of required emission control devices on the vehicle listed in paragraph 47 above.

6 c. **Section 44015(b):** Respondent SF Smog issued an electronic smog certificate of
7 compliance for the vehicle identified in paragraph 47 above without properly testing and
8 inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section
9 44012.

10 d. **Section 44059:** Respondent SF Smog made false statements on the Certificate of
11 Compliance for the vehicle listed in paragraph 47 above.

12 e. **Section 44072.2(d):** Respondent SF Smog committed dishonest, deceitful, and/or
13 fraudulent acts with regard to the vehicle listed in paragraph 47 above.

14 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

17 51. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2(c), in that Respondent SF Smog failed to comply
19 with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.35(c):** Respondent SF Smog issued an electronic smog certificate of
21 compliance for the vehicle identified in paragraph 47 above, even though that vehicle had not
22 been inspected in accordance with section 3340.42.

23 b. **Section 3373:** Respondent SF Smog created records which were false and misleading
24 when it issued an electronic smog certificate of compliance for the vehicle identified in paragraph
25 47 above.

26 c. **Section 3340.45:** Respondent SF Smog failed to conduct emissions tests in
27 accordance with the EIS prompts and procedures prescribed by the Department of Consumer
28 Affairs.

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

2 (Dishonesty, Fraud or Deceit)

3 52. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2(d), in that it committed dishonest, fraudulent or
5 deceitful acts whereby another is injured by issuing an electronic smog certificate of compliance
6 for the vehicle identified in paragraph 47 above, without performing bona fide inspections of the
7 emission control devices and systems on the vehicle, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **THIRTIETH CAUSE FOR DISCIPLINE**

10 (Failure to Comply with the Automotive Repair Act)

11 53. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
12 pursuant to Code section 9884.7(a)(6) in that it failed to comply with the Automotive Repair Act.

13 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

14 (Violations of the Motor Vehicle Inspection Program)

15 54. Respondent Elci's Smog Check Inspector license and Smog Check Repair Technician
16 license are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2(a), in
17 that Respondent failed to comply with provisions of that Code, as follows:

18 a. **Section 44012:** Respondent Elci failed to perform emission control tests on the
19 vehicle identified in paragraph 47 above, in accordance with procedures prescribed by the
20 department.

21 b. **Section 44012(f):** Respondent Elci failed to perform visual and/or functional checks
22 of required emission control devices on the vehicle listed in paragraph 47 above.

23 c. **Section 44032:** Respondent Elci failed to conduct tests in accordance with Health
24 and Safety Code section 44012 for the vehicle listed in paragraph 47 above.

25 d. **Section 44059:** Respondent Elci willfully made false entries in the EIS, resulting in
26 the issuance of a fraudulent certificate of compliance for the vehicle identified in paragraph 47
27 above.

28

1 e. **Section 44027.2(d):** Respondent Elci committed dishonest, deceitful and fraudulent
2 acts when he certified the vehicle listed in paragraph 47 above.

3 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

6 55. Respondent Elci's Smog Check Inspector license and Smog Check Repair Technician
7 license are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2(c), in
8 that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30(a):** Respondent Elci failed to inspect and test the vehicle identified
10 in paragraph 47 above, in accordance with Health & Saf. Code sections 44012 and 44035, and
11 California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.45:** Respondent Elci failed to conduct emissions tests in accordance
13 with the EIS prompts and procedures prescribed by the Department of Consumer Affairs.

14 **VIDEO SURVEILLANCE OPERATION OF APRIL 16, 2014**

15 56. On April 16, 2014, a representative of the Bureau conducted a video surveillance
16 operation of Respondent SF Smog's smog check facility. The surveillance video and information
17 obtained from the Bureau's VID revealed that Respondent Elci issued an electronic smog
18 certificate of compliance, certifying that he had tested and inspected the vehicle identified below
19 and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent
20 Elci conducted the inspection by certifying a LPFET on a vehicle that was not connected to the
21 LPFET tester unit, resulting in the issuance of a fraudulent certificate of compliance for the
22 vehicle.

23

Time of Inspection	Vehicle Certified and License No.	Certificate of Compliance No.
1. 14:04-14:20	1993 Toyota Camry, Ca. license #3E1U640	PG340629C

24

25 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

26 (Untrue/Misleading Statements)

27 57. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
28 & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in

1 the exercise of reasonable care should have known, to be untrue or misleading, as follows:
2 Respondent Elci certified that the vehicle identified in paragraph 56 above had passed inspection
3 and was in compliance with applicable laws and regulations. In fact, Respondent Elci certified
4 the LPFET test on a vehicle not connected to the LPFET tester unit in order to issue a certificate
5 for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section
6 44012.

7 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

8 (Fraud)

9 58. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
10 & Prof. Code section 9884.7(a)(4), in that it committed acts which constitute fraud by issuing an
11 electronic smog certificate of compliance for the vehicle identified in paragraph 56 above without
12 performing a bona fide inspection of the emission control devices and systems on the vehicle,
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program.

15 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

16 (Violations of the Motor Vehicle Inspection Program)

17 59. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent SF Smog failed to comply
19 with provisions of that Code, as follows:

20 a. **Section 44012:** Respondent SF Smog failed to perform emission control tests on the
21 vehicle identified in paragraph 56 above in accordance with procedures prescribed by the
22 department.

23 b. **Section 44012(f):** Respondent SF Smog failed to perform visual and/or functional
24 checks of required emission control devices on the vehicle listed in paragraph 56 above.

25 c. **Section 44015(b):** Respondent SF Smog issued an electronic smog certificate of
26 compliance for the vehicle identified in paragraph 56 above without properly testing and
27 inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section
28 44012.

1 d. **Section 44059:** Respondent SF Smog made false statements on the Certificate of
2 Compliance for the vehicle listed in paragraph 56 above.

3 e. **Section 44072.2(d):** Respondent SF Smog committed dishonest, deceitful, and/or
4 fraudulent acts with regard to the vehicle listed in paragraph 56 above.

5 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

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

8 60. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2(c), in that Respondent SF Smog failed to comply
10 with provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.35(c):** Respondent SF Smog issued an electronic smog certificate of
12 compliance for the vehicle identified in paragraph 56 above, even though that vehicle had not
13 been inspected in accordance with section 3340.42.

14 b. **Section 3373:** Respondent SF Smog created records which were false and misleading
15 when it issued an electronic smog certificate of compliance for the vehicle identified in paragraph
16 56 above.

17 c. **Section 3340.45:** Respondent SF Smog failed to conduct emissions tests in
18 accordance with the EIS prompts and procedures prescribed by the Department of Consumer
19 Affairs.

20 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

21 (Dishonesty, Fraud or Deceit)

22 61. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
23 pursuant to Health & Saf. Code section 44072.2(d), in that it committed dishonest, fraudulent or
24 deceitful acts whereby another is injured by issuing an electronic smog certificate of compliance
25 for the vehicle identified in paragraph 56 above, without performing bona fide inspections of the
26 emission control devices and systems on the vehicle, thereby depriving the People of the State of
27 California of the protection afforded by the Motor Vehicle Inspection Program.

28 ///

1 a. **Section 3340.30(a):** Respondent Elci failed to inspect and test the vehicle identified
2 in paragraph 56 above, in accordance with Health & Saf. Code sections 44012 and 44035, and
3 California Code of Regulations, title 16, section 3340.42.

4 b. **Section 3340.45:** Respondent Elci failed to conduct emissions tests in accordance
5 with the EIS prompts and procedures prescribed by the Department of Consumer Affairs.

6 **VIDEO SURVEILLANCE OPERATION OF APRIL 17, 2014**

7 65. On April 17, 2014, a representative of the Bureau conducted a video surveillance
8 operation of Respondent SF Smog's smog check facility. The surveillance video and information
9 obtained from the Bureau's VID revealed that Respondent Elci issued an electronic smog
10 certificate of compliance, certifying that he had tested and inspected the vehicle identified below
11 and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent
12 Elci conducted the inspection by certifying a LPFET on a vehicle that was not present at
13 Respondents' smog check facility, resulting in the issuance of a fraudulent certificate of
14 compliance for the vehicle. The vehicle was not present at Respondent SF Smog's facility at the
15 time the inspection was performed.

16

Time of Inspection	Vehicle Certified and License No.	Certificate of Compliance No.
17 1. 15:51-16:03	1987 Dodge Ram 50, Ca. license #5Z87804	PG340644C

18 **FORTY-FIRST CAUSE FOR DISCIPLINE**

19 (Untrue/Misleading Statements)

20 66. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
21 & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in
22 the exercise of reasonable care should have known, to be untrue or misleading, as follows:
23 Respondent Elci certified that the vehicle identified in paragraph 65 above had passed inspection
24 and was in compliance with applicable laws and regulations. In fact, Respondent Elci certified
25 the LPFET test on a vehicle not located at its facility in order to issue a certificate for the vehicle
26 and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

27 ///

28 ///

1 **FORTY-SECOND CAUSE FOR DISCIPLINE**

2 (Fraud)

3 67. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
4 & Prof. Code section 9884.7(a)(4), in that it committed acts which constitute fraud by issuing an
5 electronic smog certificate of compliance for the vehicle identified in paragraph 65 above without
6 performing a bona fide inspection of the emission control devices and systems on the vehicle,
7 thereby depriving the People of the State of California of the protection afforded by the Motor
8 Vehicle Inspection Program.

9 **FORTY-THIRD CAUSE FOR DISCIPLINE**

10 (Violations of the Motor Vehicle Inspection Program)

11 68. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent SF Smog failed to comply
13 with provisions of that Code, as follows:

14 a. **Section 44012:** Respondent SF Smog failed to perform emission control tests on the
15 vehicle identified in paragraph 65 above in accordance with procedures prescribed by the
16 department.

17 b. **Section 44012(f):** Respondent SF Smog failed to perform visual and/or functional
18 checks of required emission control devices on the vehicle listed in paragraph 65 above.

19 c. **Section 44015(b):** Respondent SF Smog issued an electronic smog certificate of
20 compliance for the vehicle identified in paragraph 65 above without properly testing and
21 inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section
22 44012.

23 d. **Section 44059:** Respondent SF Smog made false statements on the Certificate of
24 Compliance for the vehicle listed in paragraph 65 above.

25 e. **Section 44072.2(d):** Respondent SF Smog committed dishonest, deceitful, and/or
26 fraudulent acts with regard to the vehicle listed in paragraph 56 above.

27 ///

28 ///

1 **VIDEO SURVEILLANCE OPERATION OF APRIL 18, 2014**

2 74. On April 18, 2014, a representative of the Bureau conducted a video surveillance
3 operation of Respondent SF Smog's smog check facility. The surveillance video and information
4 obtained from the Bureau's VID revealed that Respondent Elci issued electronic smog certificates
5 of compliance, certifying that he had tested and inspected the vehicles identified below and that
6 the vehicles were in compliance with applicable laws and regulations, as listed in the table below.

7 In fact, Respondent Elci conducted the inspections by certifying LPFET's on vehicles that were
8 not present at Respondent SF Smog's smog check facility, resulting in the issuance of fraudulent
9 certificates of compliance for the vehicles. None of the vehicles was present at Respondent SF
10 Smog's facility at the time the inspections were performed.

11

Time of Inspection	Vehicle Certified and License No.	Certificate of Compliance No.
1. 17:38-17:52	1987 Toyota Corolla, Ca. license #2FAF215	PG403162C
2. 18:38-18:50	1993 Toyota T100, Ca. license #56331B1	PG403163C
3. 18:56-19:06	1992 Audo 100, Ca. license #5NQP589	PG403164C

12
13

14 **FORTY-NINTH CAUSE FOR DISCIPLINE**

15 (Untrue/Misleading Statements)

16 75. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
17 & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in
18 the exercise of reasonable care should have known, to be untrue or misleading, as follows:
19 Respondent Elci certified that the vehicles identified in paragraph 74 above had passed inspection
20 and were in compliance with applicable laws and regulations. In fact, Respondent Elci certified
21 LPFET tests on vehicles not located at its facility in order to issue certificates for the vehicles and
22 did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

23 **FIFTIETH CAUSE FOR DISCIPLINE**

24 (Fraud)

25 76. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
26 & Prof. Code section 9884.7(a)(4), in that it committed acts which constitute fraud by issuing
27 electronic smog certificates of compliance for the vehicles identified in paragraph 74 above
28

1 without performing bona fide inspections of the emission control devices and systems on the
2 vehicles, thereby depriving the People of the State of California of the protection afforded by the
3 Motor Vehicle Inspection Program.

4 **FIFTY-FIRST CAUSE FOR DISCIPLINE**

5 (Violations of the Motor Vehicle Inspection Program)

6 77. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent failed to comply with
8 provisions of that Code, as follows:

9 a. **Section 44012:** Respondent SF Smog failed to perform emission control tests on the
10 vehicles identified in paragraph 74 above in accordance with procedures prescribed by the
11 department.

12 b. **Section 44012(f):** Respondent SF Smog failed to perform visual and/or functional
13 checks of required emission control devices on the vehicles listed in paragraph 74 above.

14 c. **Section 44015(b):** Respondent SF Smog issued electronic smog certificates of
15 compliance for the vehicles identified in paragraph 74 above without properly testing and
16 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
17 44012.

18 d. **Section 44059:** Respondent SF Smog made false statements on Certificates of
19 Compliance for the vehicles listed in paragraph 74 above.

20 e. **Section 44072.2(d):** Respondent SF Smog committed dishonest, deceitful, and/or
21 fraudulent acts with regard to the vehicles listed in paragraph 74 above.

22 **FIFTY-SECOND CAUSE FOR DISCIPLINE**

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

25 78. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
26 pursuant to Health & Saf. Code section 44072.2(c), in that Respondent failed to comply with
27 provisions of California Code of Regulations, title 16, as follows:
28

1 a. **Section 3340.35(c)**: Respondent SF Smog issued electronic smog certificates of
2 compliance for the vehicles identified in paragraph 74 above, even though those vehicles had not
3 been inspected in accordance with section 3340.42.

4 b. **Section 3373**: Respondent SF Smog created records which were false and misleading
5 when it issued electronic smog certificates of compliance for the vehicles identified in paragraph
6 74 above.

7 c. **Section 3340.45**: Respondent SF Smog failed to conduct emissions tests in
8 accordance with the EIS prompts and procedures prescribed by the Department of Consumer
9 Affairs.

10 **FIFTY-THIRD CAUSE FOR DISCIPLINE**

11 (Dishonesty, Fraud or Deceit)

12 79. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
13 pursuant to Health & Saf. Code section 44072.2(d), in that it committed dishonest, fraudulent or
14 deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for
15 the vehicles identified in paragraph 74 above, without performing bona fide inspections of the
16 emission control devices and systems on the vehicles, thereby depriving the People of the State of
17 California of the protection afforded by the Motor Vehicle Inspection Program.

18 **FIFTY-FOURTH CAUSE FOR DISCIPLINE**

19 (Failure to Comply with the Automotive Repair Act)

20 80. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
21 pursuant to Code section 9884.7(a)(6) in that it failed to comply with the Automotive Repair Act.

22 **FIFTY-FIFTH CAUSE FOR DISCIPLINE**

23 (Violations of the Motor Vehicle Inspection Program)

24 81. Respondent Elci's Smog Check Inspector license and Smog Check Repair Technician
25 license are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2(a), in
26 that Respondent failed to comply with provisions of that Code, as follows:
27
28

1 a. **Section 44012**: Respondent Elci failed to perform emission control tests on the
2 vehicles identified in paragraph 74 above, in accordance with procedures prescribed by the
3 department.

4 b. **Section 44012(f)**: Respondent Elci failed to perform visual and/or functional checks
5 of required emission control devices on the vehicles listed in paragraph 74 above.

6 c. **Section 44032**: Respondent Elci failed to conduct tests in accordance with Health
7 and Safety Code section 44012 for the vehicles listed in paragraph 74 above.

8 d. **Section 44059**: Respondent Elci willfully made false entries in the EIS, resulting in
9 the issuance of fraudulent certificates of compliance for the vehicles identified in paragraph 74
10 above.

11 e. **Section 44027.2(d)**: Respondent Elci committed dishonest, deceitful and fraudulent
12 acts when he certified the vehicles listed in paragraph 74 above.

13 **FIFTY-SIXTH CAUSE FOR DISCIPLINE**

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

16 82. Respondent Elci's Smog Check Inspector license and Smog Check Repair Technician
17 license are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2(c), in
18 that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.30(a)**: Respondent Elci failed to inspect and test the vehicles identified
20 in paragraph 74 above, in accordance with Health & Saf. Code sections 44012 and 44035, and
21 California Code of Regulations, title 16, section 3340.42.

22 b. **Section 3340.45**: Respondent Elci failed to conduct emissions tests in accordance
23 with the EIS prompts and procedures prescribed by the Department of Consumer Affairs.

24 **VID REVIEW OF MARCH 2, 2014**

25 83. A representative of the Bureau conducted a detailed review of VID data of OBDII
26 testing at Respondent SF Smog's facility. The review revealed that on March 2, 2014, there was a
27 pending OBDII code stored in the memory of the vehicle listed below. However, the stored code
28 does not apply to the vehicle listed below. The information obtained from the Bureau's VID

1 revealed that Respondents issued an electronic smog certificate of compliance, certifying that the
2 vehicle listed below had been tested and inspected and was in compliance with applicable laws
3 and regulations. In fact, the vehicle listed below was not tested during the OBD II functional test²
4 and another vehicle was used, constituting clean plugging³.

Time of Inspection	Vehicle Certified and License No.	Certificate of Compliance No.
1. 12:50-13:00	2002 BMW 325i Sport Wagon, Ca. license #5BEC737	PE319664C

7
8 **FIFTY-SEVENTH CAUSE FOR DISCIPLINE**

9 (Untrue/Misleading Statements)

10 84. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
11 & Prof. Code section 9884.7(a)(1), in that it made or authorized statements which it knew, or in
12 the exercise of reasonable care should have known, to be untrue or misleading, as follows:
13 Respondent Elci certified that the vehicle identified in paragraph 83 above had passed inspection
14 and was in compliance with applicable laws and regulations. In fact, Respondent Elci certified
15 the OBDII test on a vehicle other than that identified in paragraph 83 above, in order to issue a
16 certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code
17 section 44012.

18 ///

19 ///

20 ///

21
22 ² The On Board Diagnostics (OBDII) functional test is an automated function of the
23 BAR-97 analyzer. During the OBDII functional test, the technician is required to connect an
24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located
25 inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information
26 from the vehicle's on-board computer about the status of the readiness indicators, trouble codes,
27 and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will
28 fail the overall inspection.

26 ³ Clean plugging is the use of the OBDII readiness monitor status and stored fault code
27 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
28 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

1 FIFTY-EIGHTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 85. Respondent SF Smog's registration is subject to disciplinary action pursuant to Bus.
4 & Prof. Code section 9884.7(a)(4), in that it committed acts which constitute fraud by issuing an
5 electronic smog certificate of compliance for the vehicle identified in paragraph 83 above without
6 performing a bona fide inspection of the emission control devices and systems on the vehicle,
7 thereby depriving the People of the State of California of the protection afforded by the Motor
8 Vehicle Inspection Program.

9 FIFTY-NINTH CAUSE FOR DISCIPLINE

10 (Violations of the Motor Vehicle Inspection Program)

11 86. Respondent SF Smog's Smog Check Station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent SF Smog failed to comply
13 with provisions of that Code, as follows:

14 a. Section 44012: Respondent SF Smog failed to perform emission control tests on the
15 vehicle identified in paragraph 83 above in accordance with procedures prescribed by the
16 department.

17 b. Section 44012(f): Respondent SF Smog failed to perform visual and/or functional
18 checks of required emission control devices on the vehicle listed in paragraph 83 above.

19 c. Section 44015(b): Respondent SF Smog issued an electronic smog certificate of
20 compliance for the vehicle identified in paragraph 83 above without properly testing and
21 inspecting the vehicle to determine if it was in compliance with Health & Saf. Code section
22 44012.

23 d. Section 44059: Respondent SF Smog made false statements on the Certificate of
24 Compliance for the vehicle listed in paragraph 83 above.

25 e. Section 44072.2(d): Respondent SF Smog committed dishonest, deceitful, and/or
26 fraudulent acts with regard to the vehicle listed in paragraph 83 above.

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1 a. **Section 3340.30(a)**: Respondent Elci failed to inspect and test the vehicle identified
2 in paragraph 83 above, in accordance with Health & Saf. Code sections 44012 and 44035, and
3 California Code of Regulations, title 16, section 3340.42.

4 b. **Section 3340.41(c)**: Respondent Elci falsely entered information into the EIS for a
5 vehicle other than the one being tested.

6 c. **Section 3340.42(e)(2)(F)**: Respondent Elci failed to conduct the OBD system tests of
7 the vehicle identified in paragraph 83 above which was undergoing a Smog Check Inspection.

8 **DISCIPLINE CONSIDERATIONS**

9 92. To determine the degree of discipline, if any, to be imposed on Respondents,
10 Complainant alleges that on or about November 18, 2009, in a prior action, the Bureau of
11 Automotive Repair issued Citation Number C2010-0480 to Respondent SF Smog and ordered it
12 to pay a fine in the amount of \$500.00. The fine was paid on December 24, 2009.

13 93. On or about May 13, 2010, Respondent SF Smog was issued Citation Number
14 C2010-1179 and ordered to pay a fine in the amount of \$1,500.00. The fine was paid on May 12,
15 2011.

16 94. On or about September 6, 2013, Respondent SF Smog was issued Citation Number
17 C2014-0154 and ordered to pay a fine in the amount of \$1,500.00. Respondent SF Smog
18 appealed the citation. The citation was upheld by the Director of the Department of Consumer
19 Affairs after an administrative hearing, effective October 22, 2014. The Citations are now final
20 and are incorporated by reference as if fully set forth.

21 95. Complainant further alleges that on or about July 20, 2010, Respondent Elci was
22 issued Citation Number M2011-0074 and ordered to take an eight hour training course. The
23 citation training was completed on December 7, 2011. The Citation is now final and is
24 incorporated by reference as if fully set forth.

25 96. Complainant further alleges that on or about October 23, 2009, Palo Alto Smog Test
26 Only Center (owned by Respondent Elci) was issued Citation Number C2010-0395, and ordered
27 to pay \$500.00. The fine was paid on November 9, 2009.

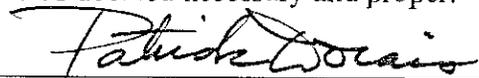
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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 249184, issued to SF Smog, Emre Elci, Owner;
2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Emre Elci;
3. Revoking or suspending Smog Check Test Only, Station License Number TC 249184, issued to Emre Elci;
4. Revoking or suspending Smog Check Inspector License Number EO 152413 and Smog Check Repair Technician License Number EI152413, issued to Emre Elci;
5. Revoking, suspending, or placing on probation any additional license issued under chapter 5, of the Health and Safety Code in the name of Emre Elci;
6. Ordering Respondents 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;
7. Taking such other and further action as deemed necessary and proper.

DATED: May 28, 2015



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

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