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

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

13 **EAST BAY SMOG**
14 **ERIC MOISES GARCIA, PARTNER**
15 **DANIEL GARCIA, PARTNER**
16 **DANIEL GARCIA, aka DANIEL GARCIA**
17 **TORRES, PARTNER**
18 **5660 Main Street, Suite #102**
19 **Oakley, CA 94561**

20 **Mailing Address:**

21 **7258 Brentwood Boulevard**
22 **Brentwood, CA 94513**
23 **Automotive Repair Dealer Reg. No. ARD**
24 **252615; Smog Check, Test Only, Station**
25 **License No. TC 252615**

26 **ERIC MOISES GARCIA**
27 **7258 Brentwood Blvd.**
28 **Brentwood, CA 94513**
Smog Check Inspector EO 153742; Smog
Check Repair Technician EI 153742

HUGO CAMACHO
4237 PACIFIC VIEW LANE
STOCKTON, CA 95206

Smog Check Inspector License No. EO
636787

Respondents.

Case No. 79/15-98

ACCUSATION AND PETITION TO
REVOKE PROBATION

1 Complainant alleges:

2 **PARTIES**

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

6 **East Bay Smog**

7 2. On or about November 21, 2007, the Bureau of Automotive Repair issued
8 Automotive Repair Dealer Registration Number ARD 252615 to East Bay Smog ("Respondent
9 East Bay Smog") with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as
10 Daniel Garcia Torres, as partners. Respondent East Bay Smog's registration was in full force and
11 effect at all times relevant to the charges brought herein and will expire on October 31, 2017,
12 unless renewed.

13 3. On or about December 19, 2007, the Bureau of Automotive Repair issued Smog
14 Check, Test Only, Station License Number TC 252615 to Respondent East Bay Smog.
15 Respondent's Smog Check State License was in full force and effect at all times relevant to the
16 charges brought herein and times relevant to the charges brought herein and will expire on
17 October 31, 2017, unless renewed.

18 4. On or about May 31, 2013, the Bureau of Automotive Repair issued a STAR Station
19 Certification to East Bay Smog (Respondent). The STAR Station Certification was in full force
20 and effect at all times relevant to the charges brought herein. However, the Star Certification was
21 invalidated on August 26, 2016 as a result of the final decision in case number 79/11-89.

22 **Eric Moises Garcia**

23 5. In or about 2006, the Bureau of Automotive Repair issued Advanced Emission
24 Specialist Technician License Number EA 153742 to Eric Moises Garcia ("Respondent Garcia or
25 Garcia"). Respondent Garcia's Advance Emission Specialist Technician License was due to
26 expire on April 30, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28,
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subdivision (e)¹, the license was renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EI 153742 and Smog Check Repair Technician License Number EO 153742, effective April 30, 2014. Respondent Garcia's licenses expired on April 30, 2016.

Hugo Camacho

6. On or about April 21, 2014, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 636787 to Hugo Camacho ("Respondent Camacho"). The Smog Check Inspector License was in full force and effect always relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

DECISION AND ORDER

7. In a disciplinary action entitled "In the Matter of the Accusation Against East Bay Smog," Case No. 79/11-89, the Bureau of Automotive Repair issued a Decision and Order effective July 23, 2014, in which Respondent East Bay Smog's Automotive Repair Dealer Registration, with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as Daniel Garcia Torres, as partners was revoked, stayed with three (3) years probation with certain terms and conditions. Additionally, Respondent East Bay Smog's Smog Check Test Only Station License with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as Daniel Garcia Torres, as partners, was revoked, stayed with three (3) years probation with certain terms and conditions. Further, Respondent Eric Moises Garcia's Smog Inspector License No. EO 153742 and Smog Check Technician License No EI 153742 (formerly Advanced Emissions Specialist Technician License EA 153742) was revoked, stayed with three (3) years probation with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

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¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 **JURISDICTION AND STATUTORY PROVISIONS FOR ACCUSATION**

2 8. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

4 **STATUTORY PROVISIONS**

5 9. Section 9884.7 of the Code states:

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

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

14 (2) Causing or allowing a customer to sign any work order that does not state the repairs
15 requested by the customer or the automobile's odometer reading at the time of repair.

16 ...

17 (4) Any other conduct which constitutes fraud.

18 ...

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

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

24 11. Section 44012 of the Health and Safety Code states:

25 "The test at the smog check stations shall be performed in accordance with procedures
26 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
27 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
28 and shall ensure all of the following:

1 . . .
2 "(f) A visual or functional check is made of emission control devices specified by the
3 department, including the catalytic converter in those instances in which the department
4 determines it to be necessary to meet the findings of Section 44001. The visual or functional
5 check shall be performed in accordance with procedures prescribed by the department.

6 12. Section 44015 of the Health and Safety Code states:

7 . . .

8 (b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
9 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

10 13. Section 44072.2 of the Health and Safety Code states:

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

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

17 . . .

18 REGULATORY PROVISIONS

19 14. California Code of Regulations, title 16, section 3340.35, states:

20 "(c) A licensed station shall issue a certificate of compliance or noncompliance to the
21 owner or operator of any vehicle that has been inspected in accordance with the procedures
22 specified in section 3340.42 of this article and has all the required emission control equipment
23 and devices installed and functioning correctly.

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1 15. California Code of Regulations, title 16, section 3340.42, states:

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

5 (b) In addition to subsection (a), all vehicles subject to the smog check program shall
6 receive the following:

7 (1) A visual inspection of emission control components and systems to verify the vehicle's
8 emission control systems are properly installed.

9 (2) A functional inspection of emission control systems as specified in the Smog Check
10 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
11 operation.

12 16. California Code of Regulations, title 16, section 3340.45, states:

13 (a) All Smog Check inspections shall be performed in accordance with requirements and
14 procedures prescribed in the following:

15 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
16 incorporated by referenced. This manual shall be in effect until subparagraph (2) is implemented.

17 (2) Smog Check Manual dated 2013, which is hereby incorporated by reference. This
18 manual shall become effective on or after January 1, 2013.

19 17. California Code of Regulations, title 16, section 3373, states:

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

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1 **COSTS**

2 18. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6
7 **FACTUAL BACKGROUND**

8 **A. Undercover Operation June 8, 2015**

9 19. On June 8, 2015, an undercover operator for the Bureau (operator) conducted a
10 documented undercover vehicle operation at East Bay Smog to confirm compliance with the
11 terms and conditions of Respondent probation and the Smog Check Program. The Bureau vehicle
12 had the ignition timing adjusted ten degrees further advanced from the factory specification of six
13 degrees Before Top Dead Center (BTDC). A Bureau operator traveled to Respondent East Bay
14 Smog's facility and requested a smog inspection from licensed Smog Check Inspector Hugo
15 Camacho for a 1984 Chevrolet Motor Home. Respondent Camacho had the operator sign and fill
16 in the customer information on a work order. The operator was provided a written estimate. The
17 odometer reading was not listed.

18 20. Respondent Camacho informed the operator he did not have the tools necessary to
19 remove the engine cover to perform the inspection. Respondent Camacho advised that if the
20 operator removed the Motor Home engine cover Respondent Camacho could perform the
21 inspection. The operator left the shop and returned after removing the engine cover from the
22 Motor Home. The operator then observed Respondent Camacho perform the smog inspection on
23 the Motor Home.

24 21. Respondent Camacho informed the operator the Motor Home had failed the smog
25 inspection because the EGR did not work and the EVAP system failed to pass the test,
26 Respondent Camacho informed the operator that the Motor Home probably had a leak in the fuel
27 tank. The operator paid Respondent Camacho \$96.75 and received a copy of Invoice [REDACTED]
28 and a Vehicle Inspection Report.

1 22. Upon re-inspection by the Bureau it was verified that the Motor Home remained in
2 the same condition. The Motor Home still failed a smog inspection due to the Motor Home's
3 ignition timing being adjusted beyond specifications. During the re-inspection by the Bureau it
4 was found that Respondent Camacho had failed to remove the Low Pressure Fuel Evaporative
5 Tester (LPFET) fuel filler neck adaptor from the fuel filler neck and reinstall the fuel cap of the
6 1984 Chevrolet Motor Home.

7 23. The VIR provided by Respondent East Bay Smog and the BAR97 Test Detail
8 retrieved from the BAR's Vehicle Information Database (VID) show that although no Smog
9 Certificate of Compliance was issued, Camacho performed an improper smog inspection. The
10 VIR and BAR97 Test Detail show that Camacho entered "Pass" at 6 degrees BTDC into the
11 Emission Inspection System (EIS) for the functional check of the ignition timing, when in fact the
12 ignition timing was adjusted to 16 degrees BTDC.

13 24. The VIR and BAR97 Test Detail also show that Camacho entered "Fail" into the EIS
14 for the functional check of the exhaust gas recirculation (EGR) system, when the EGR system
15 was in fact operating correctly as verified by Bureau's documentation of the Motor Home.

16 **B. Undercover Operation June 11, 2015**

17 25. On June 11, 2015, an undercover operator for the Bureau conducted a documented
18 undercover vehicle operation at East Bay Smog to confirm compliance with the terms and
19 conditions of Respondents' probation and the Smog Check Program. The Bureau vehicle had a
20 missing PAIR/Air Suction System Reed Valve, Air Intake Hose and Exhaust Pipe Tube. A
21 Bureau operator traveled to Respondent East Bay Smog's facility and requested a smog
22 inspection from licensed Smog Check Inspector Hugo Camacho for a 1992 Toyota. The operator
23 returned to Respondent Camacho the LPFET fuel filler neck adaptor. The operator requested a
24 smog inspection. Respondent stated the EIS was not working but if the operator could return at
25 1330 the EIS should be repaired by then.

26 The operator later returned to Respondent facility and requested a smog inspection from
27 Respondent Camacho. The operator was provided with a work order and asked to fill in the
28 customer information and sign the work order. The operator was provided a written estimate and

1 observed Respondent Camacho perform the smog inspection. After the inspection was completed
2 the operator paid Respondent Camacho \$77.00 and received a copy of invoice number [REDACTED]
3 and a VIR.

4 26. Upon re-inspection by the Bureau, it was verified that the Toyota remained in the
5 same condition that existed prior to the smog inspection. The Toyota still failed a smog
6 inspection due to the Toyota's missing PAIR/Air Suction System Reed Valve Assembly.

7 27. The VIR provided by Respondent East Bay Smog and the BAR97 Test Detail
8 retrieved from the BAR's VID showed that Smog Certificate of Compliance [REDACTED] was
9 issued to the 1992 Toyota Pickup by License Smog Check Station, Respondent East Bay Smog
10 and Licensed Smog Check Inspector, Respondent Camacho.

11 **C. Failure to Follow OBD Inspection System Implementation**

12 28. On March 9, 2015, the Bureau of Automotive Repair implemented a statewide
13 regulatory change requiring the use of the On Board Diagnostic Inspection System (OIS) in
14 testing 2000 model year and newer gas powered vehicles 14,000 GVWR and under and 1998 and
15 newer diesel powered vehicles 14,000 GWVR and under.

16 29. The industry was advised numerous times about the implementation of the new
17 testing requirements through a formal letter and ET blasts. The BAR's Information Database
18 show that Respondent East Bay Smog registered an OIS on September 24, 2014. The BAR's
19 VID shows that on June 23, 2015, Respondent East Bay Smog, and License Smog Check
20 Inspector Respondent Camacho performed an improper smog inspection and issued Smog
21 Certificate of Compliance [REDACTED] to a 1999 Ford Diesel, utilizing an EIS when the Ford
22 should have been tested and certified utilizing an OIS.

23 **D. Record of Smog Certificate Purchases**

24 30. Bureau of Automotive Repair records show that certificate numbers PS479258 and
25 PS479291 were purchased and issued by Respondent East Bay Smog.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (False and Misleading Statements)

3 31. Respondent East Bay Smog's Registration is subject to disciplinary action pursuant to
4 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
5 statement which he knew or in the exercise of reasonable care should have known to be untrue or
6 misleading, as follows: Respondent East Bay Smog entered "pass" at 6 degrees BTDC into the
7 Emission Inspection System (EIS) for the functional check of the ignition timing on the Bureau
8 vehicle 1984 Chevrolet Motor Home when in fact the ignition timing was adjusted to 16 degrees
9 BTDC.

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11 **SECOND CAUSE FOR DISCIPLINE**

12 (Failure to Record Odometer)

13 32. Respondent East Bay Smog's Registration is subject disciplinary action pursuant to
14 Bus. & Prof. Code section 9884.7, subdivision (a)(2), in that Respondent's technician failed to
15 record the odometer reading on the signed work order for the Bureau vehicle 1984 Chevrolet
16 Tioga Class C Motor Home.

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18 **THIRD CAUSE FOR DISCIPLINE**

19 (Fraud)

20 33. Respondent East Bay Smog's Registration is subject to disciplinary action pursuant to
21 Bus. & Prof. Code section 9884.7, subdivisions (a)(4), in that Respondent committed an act that
22 constituted fraud by entering "pass" at 6 degrees BTDC into the Emission Inspection System
23 (EIS) for the functional check of the ignition timing on the Bureau vehicle 1984 Chevrolet Tioga
24 Class C Motor Home when in fact the ignition timing was adjusted to 16 degrees BTDC.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Violations of Motor Vehicle Inspection Program)

3 34. Respondent East Bay Smog's Smog Check Station license is subject to disciplinary
4 action pursuant to Health & Safety Code section 44072.2 subdivision (a), in that during the smog
5 check for the 1984 Chevrolet Tioga Class C Motor Home Respondent's technician failed to
6 comply with the following sections of that Code:

7 a. **Section 44012, subdivision (f):** Respondent East Bay Smog failed to perform a
8 visual or functional inspection of the emission control devices as prescribed by the department.

9 b. **Section 44015, subdivision (b):** Respondent East Bay Smog issued a
10 Certificate of Compliance which did not meet the requirements of section 44012 as prescribed by
11 the department.

12
13 **FIFTH CAUSE FOR DISCIPLINE**

14 (Failure to Comply with Regulation of Motive Vehicle Inspection Program)

15 35. Respondent East Bay Smog's Smog Check Station license is subject to discipline
16 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent while
17 conducting a smog on the Bureau's 1984 Motor Home, failed to comply with the provisions of
18 California Code of Regulations, title 16 as follows:

19 a. **Section 3340.35, subdivision (c):** Respondent East Bay Smog issued a certificate of
20 compliance to a vehicle which had not been inspected in accordance with 3340.42 and did not
21 have the required emissions control devising installed and functioning.

22 b. **Section 3340.42, subdivision (b)(1):** Respondent East Bay Smog failed to perform a
23 visual inspection of the emissions control systems on the vehicle as specified in the department
24 Smog Check Manual.

25 c. **Section 3340.45:** Respondent East Bay Smog failed to conduct a smog check in
26 accordance with requirements and procedures specified in the Smog Check Manual.

27 d. **Section 3373:** Respondent provided false and misleading records regarding the smog
28 check conducted on the Bureau's 1984 Motor Home.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 (False and Misleading Statements)

3 36. Respondent East Bay Smog's Registration is subject to disciplinary action pursuant to
4 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
5 statement which he knew or in the exercise of reasonable care should have known to be untrue or
6 misleading, as follows: Respondent certified under penalty of perjury on the vehicle inspection
7 report that the Bureau's 1992 Toyota Pickup had passed the inspection and was in compliance
8 with applicable laws and regulations. In fact, the PAIR/Air Suction System Reed Valve Air
9 Intake Hose and Exhaust Pipe Tube was still missing and as such, the vehicle would not pass the
10 inspection required by Health & Safety Code section.

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12 **SEVENTH CAUSE FOR DISCIPLINE**

13 (Fraud)

14 37. Respondent East Bay Smog's Registration is subject to disciplinary action pursuant to
15 Bus. & Prof. Code section 9884.7, subdivisions (a)(4), in that Respondent committed an act that
16 constituted fraud by issuing a VIR that indicated the Bureau's 1992 Toyota P/U had passed the
17 inspection and was in compliance with applicable laws and regulations. In fact, the PAIR/Air
18 Suction System Reed Valve Air Intake Hose and Exhaust Pipe Tube was still missing and as
19 such, the vehicle would not pass the inspection required by Health & Safety Code section 44012.

20
21 **EIGHTH CAUSE FOR DISCIPLINE**

22 (Violations of Motor Vehicle Inspection Program)

23 38. Respondent East Bay Smog's Smog Check Station license is subject to disciplinary
24 action pursuant to Health & Safety Code section 44072.2 subdivision (a), in that during the smog
25 check for the Bureau's 1992 Toyota Pickup Respondent's technician failed to comply with the
26 following sections of that Code:

27 a. **Section 44012, subdivision (f):** Respondent East Bay Smog failed to perform a
28 visual or functional inspection of the emission control devices as prescribed by the department.

1 b. **Section 44015, subdivision (b):** Respondent East Bay Smog issued a
2 Certificate of Compliance which did not meet the requirements of section 44012 as prescribed by
3 the department.

4
5 **NINTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Regulation of Motive Vehicle Inspection Program)**

7 39. Respondent East Bay Smog's smog check station license is subject to discipline
8 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent while
9 conducting a smog on the Bureau's 1992 Toyota P/U, failed to comply with the provisions of
10 California Code of Regulations, title 16 as follows:

11 a. **Section 3340.35, subdivision (c):** Respondent East Bay Smog issued a certificate of
12 compliance to a vehicle which had not been inspected in accordance with 3340.42 and did not
13 have the required emissions control devising installed and functioning.

14 b. **Section 3340.42, subdivision (b)(1):** Respondent East Bay Smog failed to perform a
15 visual inspection of the emissions control systems on the vehicle as specified in the department
16 Smog Check Manual.

17 c. **Section 3340.45:** Respondent East Bay Smog failed to conduct a smog check in
18 accordance with requirements and procedures specified in the Smog Check Manual.

19 d. **Section 3373:** Respondent provided false and misleading records regarding the smog
20 check conducted on the Bureau's 1992 Toyota.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 (False and Misleading Statements)

3 40. Respondent East Bay Smog's Registration is subject to disciplinary action pursuant to
4 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
5 statement which he knew or in the exercise of reasonable care should have known to be untrue or
6 misleading, as follows: Respondent certified under penalty of perjury on the vehicle inspection
7 report that the Bureau's 1999 Ford Diesel passed a smog inspection. However, said smog
8 inspection was conducted utilizing an EIS machine when the 1999 Ford Diesel should have been
9 tested and certified utilizing an OIS machine.

10
11 **ELEVENTH CAUSE FOR DISCIPLINE**

12 (Fraud)

13 41. Respondent East Bay Smog's Registration is subject to disciplinary action pursuant to
14 Bus. & Prof. Code section 9884.7, subdivisions (a)(4), in that Respondent committed an act that
15 constituted fraud by issuing a VIR that indicated the 1999 Ford Diesel passed a smog inspection.
16 However, said smog inspection was conducted utilizing an EIS machine when the 1999 Ford
17 Diesel should have been tested and certified utilizing an OIS machine.

18
19 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

20 42. This Petition to Revoke Probation is brought before the Director of Consumer Affairs
21 (Director) for the Bureau of Automotive Repair under Probation Term and Condition Number(s)
22 2, 8 and 12 of the Decision and Order Accusation Against East Bay Smog and Eric Moises
23 Garcia, Case No. 79/11-89. Those term and conditions state, in pertinent part:

24 Condition 2: **Obey All Laws.** Comply with all statutes, regulations and rules governing
25 automotive inspections, estimates and repairs.

26 Condition 8: **Violation of Probation.** Should the Director of Consumer Affairs determine
27 that Respondents have failed to comply with the terms and conditions of probation, the
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1 Department may, after giving notice and opportunity to be heard, temporarily or permanently
2 invalidate the registration of Respondent(s) and/or suspend or revoke Respondent(s) license(s).

3 Condition 12: **Cost Recovery.** Respondents shall be jointly and severally liable for costs in
4 the amount of \$7,000.00. Payments shall be made in 24 monthly equal installments. Payment to
5 the Bureau of the full amount of cost recovery shall be received no later than 12 months before
6 probation terminates. Failure to complete payment of cost recovery within this time frame shall
7 constitute a violation of probation which may subject Respondents to outright revocation;
8 however, the Director or the Director's Bureau of Automotive Repair designee may elect to
9 continue probation until such time as reimbursement of the entire cost recovery amount has been
10 made to the Bureau.

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Factual Background

43. On October 22, 2014, a Bureau representative performed a Probation Compliance Inspection at Respondent East Bay Smog facility. The inspection found the following deficiencies. (1) Respondent East Bay Smog was not providing customer with written estimates (2) Respondent East Bay Smog did not have the required LPLET operator manual (3) Respondent East Bay Smog did not have an extension cord for use with the EIS cooling fan as needed (4) Respondent East Bay Smog was found displaying automotive related business cards.

44. On November 6, 2014, Bureau representative performed a Probation Compliance Inspection, follow up at Respondent East Bay Smog did not have the required LPFET operator manual.

45. On November 13, 2014, Bureau representative conducted a Probation Conference with the attorney for Respondent East Bay Smog. Respondent Eric Moises Garcia was also present. During the conference Respondent Eric Moises Garcia was informed of the following information (1) Current copy of the Laws & Regulations , available at the website and the *Bennet v. Hays* decision and Writ It Right booklet; (2) A station inspection and/or undercover operation may be conducted to confirm continued compliance with the law; (3) Future violations of the health and safety code would lead to additional civil penalties and if action continue further legal actions; (4) That Respondent East Bay Smog and Respondent Eric Moises Garcia were delinquent in the amount of \$466.64 towards the investigation costs as outlined in the terms of probation; (5) That Respondent East Bay Smog and Respondent Eric Moises Garcia were deficient in several areas during a Probation Compliance Inspection and follow-up Inspection conducted prior to the Probation.

46. Respondents and their counsel were advised that the deficiencies found during inspections and failure to comply with the payment schedule were violations of the terms and conditions of probation.

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1 **FIRST CAUSE TO REVOKE PROBATION**

2 (Violation of Condition 2)

3 47. At all times after the effective date of Respondent's probation, Condition No. 2
4 stated that Respondents were required to obey all laws.

5 48. Respondents' probation is subject to revocation because they failed to comply with
6 Probation Condition 2, referenced above in paragraphs 19 through 30. The facts and
7 circumstances regarding this violation are as follows: Respondents continued to violate laws
8 pertaining to the Motor Vehicle Act by conducted smog checks that were not in accordance with
9 applicable laws.

10
11 **SECOND CAUSE TO REVOKE PROBATION**

12 (Violation of Condition 8)

13 49. At all times after the effective date of Respondent's probation, Condition 8 stated:
14 that if Respondents failed to comply with the terms of probation their license may be temporality
15 or permanently invalidated

16 50. Respondents' probation is subject to revocation because they failed to comply with
17 Probation Condition 8, referenced above. The facts and circumstances regarding this violation
18 are as follows: Respondents continued to violate laws pertaining to the Motor Vehicle Act by
19 conducted smog checks that were not in accordance with applicable laws. As previously set forth
20 in paragraphs 19 through 30.

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THIRD CAUSE TO REVOKE PROBATION

(Violation of Condition 12)

51. At all times after the effective date of Respondent's probation, Condition 12 stated:
Respondent were required to make monthly payment of costs as part of their probation.

52. Respondents' probation is subject to revocation because they failed to comply with
Probation Condition 12, referenced above. The facts and circumstances regarding this violation
are as follows: Respondents did not make timely payments of costs, pursuant to the requirements
of probation and became delinquent as reference above in paragraphs 43.

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PRAYER

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

1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case No. 79/11-89 and imposing the disciplinary order that was stayed thereby revoking Automotive Repair Dealer Registration No. ARD 252615 issued to Respondent East Bay Smog, with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as Daniel Garcia Torres, as partners;

2. Revoking the probation that was granted by the Bureau of Automotive Repair in Case No. 79/11-89 and imposing the disciplinary order that was stayed thereby revoking Smog Check, Test Only, Station License No. TC 252615 issued to Respondent East Bay Smog, with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as Daniel Garcia Torres, as partners;

3. Revoking or suspending any other Automotive Repair Dealer Registration issued to Respondent East Bay Smog, with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as Daniel Garcia Torres, as partners and/or individually;

4. Revoking or suspending any other Smog Check, Test Only, Station License issued to Respondent East Bay Smog, with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as Daniel Garcia Torres, as partners and/or individually;

5. Revoking or suspending STAR Station Certification issued to Respondent East Bay Smog, with Eric Moises Garcia, Daniel Garcia and Daniel Garcia, also known as Daniel Garcia Torres, as partners.

6. Revoking or suspending Smog Check Inspector License Number EO 636787 issued to Respondent Hugo Camacho.

7. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Hugo Camacho.

1 8. Ordering Respondents East Bay Smog, with Eric Moises Garcia, Daniel Garcia and
2 Daniel Garcia, also known as Daniel Garcia Torres, as partners and Respondent Hugo Camacho
3 to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement
4 of this case, pursuant to Business and Professions Code section 125.3; and

5 9. Taking such other and further action as deemed necessary and proper.
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9 DATED: May 24, 2017


PATRICK DORAIS

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

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