

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

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

EASY BAY SMOG
ERIC MOISES GARCIA, Partner
DANIEL GARCIA, Partner
DANIEL GARCIA, aka DANIEL GARCIA
TORRES, Partner
5660 Main Street, Ste. 102
Oakley, CA 94561
Automotive Repair Dealer Registration No.:
ARD 252615
Smog Check, Test Only, Station License No.:
TC 252615

and

ERIC MOISES GARCIA
7258 Brentwood Blvd
Brentwood, CA 94513
Smog Check Inspector License No. EO 153742
Smog Check Repair Technician License No.
EI 153742,

Respondents.

Case No.: 79/15-98

OAH No.: 2017071177

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective April 27, 2018.

DATED: 3/23/18



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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

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

Case No. 79/15-98.

OAH No. 2017071177

EAST BAY SMOG, ERIC MOISES
GARCIA, PARTNER, DANIEL GARCIA,
PARTNER, DANIEL GARCIA, ALSO
KNOWN AS DANIEL GARCIA TORRES,
PARTNER
Automotive Repair Dealer Registration No.
ARD 252615; Smog Check, Test Only;
Station License No. TC 252615,

and

ERIC MOISES GARCIA
Smog Check Inspector License No.
EO 153742; Smog Check Repair Technician
License No. EI 153742,

Respondents.

PROPOSED DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of
Administrative Hearings, heard this matter on December 5, 2017, in Oakland, California.

Deputy Attorney General Maretta Ward represented the complainant, Patrick Dorais,
Chief of the Bureau of Automotive Repair.

William D. Ferreira, Attorney at Law, represented respondent East Bay Smog and
respondent Eric Moises Garcia. Partners Eric Moises Garcia and Daniel Garcia were
present; Daniel Garcia aka Daniel Garcia Torres was not present. The record was left open
until December 18, 2017, for complainant to submit a letter regarding the disposition
requested of the Bureau for respondent Hugo Camacho. The respondents were allowed until
January 12, 2018, to submit a response to complainant's letter regarding the Bureau's

disposition request for respondent Hugo Camacho. On December 18, 2017, the complainant submitted its letter requesting that Hugo Camacho be stricken from the prayer of the Accusation and Petition to Revoke Probation. The respondents did not submit any opposition to complainant's request to strike Camacho from the Accusation and Petition to Revoke Probation. Therefore, Camacho is removed as a respondent in this matter. The matter was submitted on January 12, 2018.

FACTUAL FINDINGS

East Bay Smog

1. Respondents Eric Moises Garcia, Partner, Daniel Garcia, Partner, and Daniel Garcia, aka Daniel Garcia Torres, Partner are the owners of East Bay Smog, located in Brentwood, California. As owners of the facility, respondents hold Automotive Repair License Registration Number ARD 252615. The facility has been licensed since November 21, 2007. The license expired on October 31, 2017.

2. On December 19, 2007, the Bureau issued Smog Check, Test Only, Station License Number TC 252615 to Respondent East Bay Smog. Respondent's Smog Check License was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2017.

3. On May 31, 2013, the Bureau issued a STAR Station Certification to Respondent East Bay Smog. The STAR Station Certification was in full force and effect at all times relevant to the charges brought herein. However, the STAR Certification was invalidated on August 26, 2016, as a result of the final decision in case number 79/11-89.

Eric Moises Garcia

4. In 2006, respondent Eric Moises Garcia was issued Advanced Emission Specialist Technician License Number EO 153742. Respondent's Advanced Emission Specialist Technician License was due to expire on April 30, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (3)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. The licenses expired on April 30, 2016.

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.

Decision and Order in Case No. 79/11-89

5. On June 13, 2014, respondent East Bay Smog and respondent Eric Moises Garcia signed a stipulated settlement and disciplinary order effective July 23, 2014, in case number 79/11-89. In this stipulated settlement agreement, respondent East Bay Smog and respondent Eric Moises Garcia agreed to the factual allegations, summarized as follows: On May 28, 2010, an undercover operator with the Bureau took the Bureau's 2001 Chrysler 300M to respondent East Bay Smog and requested a smog inspection. The positive crankcase ventilation (PCV) valve had been removed from the vehicle and the PCV hose was disconnected. Respondent Eric Moises Garcia had the operator sign and fill in the customer information on a work order, but did not provide her with a copy or a written estimate for the inspection. After the inspection was completed, the operator paid respondent Eric Moises Garcia \$67 and received copies of an invoice and a vehicle inspection report (VIR). The VIR indicated that respondent Eric Moises Garcia had performed the smog inspection on the vehicle. An electronic smog Certificate of Compliance No. NU233674C was issued for the vehicle. On June 7, 2010, the Bureau inspected the vehicle and found that the PCV valve was still missing and the PCV hose was still disconnected.

6. Pursuant to the stipulated settlement and disciplinary order, respondent East Bay Smog's ARD Registration and Smog Check Station License and Eric Garcia's Smog Inspector and Smog Check Technician licenses were revoked, stayed with three years probation, on terms and conditions, which included a 15-day suspension and payment of \$7,000 in cost recovery. The disciplinary order also imposed the following conditions:

2. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
4. **Reporting.** Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
5. **Report Financial Interest.** Within 30 days of the effective date of this action, report any financial interest which

any partners, officers, or owners of the Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

6. Random Inspections. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

7. Jurisdiction. If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until final decision on the accusation, and the period of probation shall be extended until such decision.

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

9. False and Misleading Advertising. If the accusation involves false and misleading advertising, during the period of probation, Respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

10. Continuing Education Courses. During the period of probation, Respondent Eric Moises Garcia shall attend and successfully complete a Bureau Certified Licensed Inspector Training Course (Level II). Said course shall be completed and proof of completion submitted to the Bureau within 180 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within 180-day period, Respondent's license shall be immediately suspended until such proof is received.

11. Restrictions. During the period of probation, Respondents shall not perform any form of smog inspection, or emission system diagnosis or report, until Respondents have purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the

availability of the equipment for inspection by a BAR representative.

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

7. Respondent East Bay Smog and respondent Eric Moises Garcia attended the first probation conference on July 24, 2014, to discuss the methods by which respondent East Bay Smog and respondent Eric Moises Garcia planned to achieve and maintain compliance with the terms and conditions of probation. The plan and compliance requirements were discussed and the following recommendations were made by the Bureau.

1. The order for the ownership of East Bay Smog and/or Licensed Smog Inspector/Smog Check Repair Technician, Eric Moises Garcia to pay jointly or severally the Director of the Department of Consumer Affairs \$7,000.00 for investigative recovery costs. This is to be paid in 24 monthly installments of \$291.66 with full payment to be received no later than 12 months before probation terminates. The first payment was due 7/23/14. Bureau records show no payments have been received as of today's date.

2. The order for Eric Moises Garcia to attend and successfully complete a Bureau Certified Training Course (Level II) with proof of completion submitted to the Bureau within 180 days of the effective date of the decision and order. Bureau records show that proof of completion has not been received as of the date of this conference.

3. William Ferreira was advised that failure of East Bay Smog to comply with the Automotive Repair Act, Smog Check Program, terms and conditions of probation, and other applicable laws and regulations may result in disciplinary action which could jeopardize the Automotive Repair Dealer's registration and Smog Check Station License.

[¶] . . . [¶]

8. Respondent East Bay Smog and respondent Eric Moises Garcia attended a second probation conference on November 13, 2014, to discuss the methods by which respondent East Bay Smog and respondent Eric Moises Garcia had achieved or planned to achieve and maintain compliance with the terms and conditions of probation. Respondent Eric Moises Garcia advised the Bureau that he had taken the required Smog Check technician training and he would supervise the facility. The Bureau also discussed in detail the following items:

1. The order for the ownership of East Bay Smog and/or Licensed Smog Inspector/Smog Check Repair Technician, Eric Moises Garcia to pay jointly or severally the Director of the Department of Consumer Affairs \$7,000.00 for investigative recovery costs. This is to be paid in 24 monthly equal installments of \$291.66 with full payment to be received no later than 12 months before probation terminates. The first payment was due 7/23/14. As of 11/13/14, East Bay Smog should have made a total of four payments equaling \$1166.64. As of 11/13/14, BAR records show one payment of \$700.00 was received on 9/9/14. East Bay Smog is delinquent \$466.64. Not complying with the payment schedule is considered a violation of the terms and conditions of East Bay Smog's probation and is cause for temporary or permanent invalidation of East Bay Smog's registration and/or suspension or revocation of East Bay Smog's Station license.

2. The probation compliance inspection on 10/22/14 and follow-up inspection conducted on 11/6/14 were discussed.

The inspection on 10/22/14 found East Bay Smog had the following alleged deficiencies:

- East Bay Smog appeared to not be providing customers with written estimates
- East Bay Smog did not have the required LPFET operator manual
- Automotive related business cards displayed

The follow-up inspection on 11/6/14 found East Bay Smog had corrected most, but not all noted deficiencies. The following deficiency remained:

- East Bay Smog failed to obtain a copy of the LPFET operator manual

Eric Garcia and William Ferreira were advised the deficiencies noted during these inspection[s] are considered a violation of the terms and conditions of East Bay Smog's probation.

3. Eric Moises Garcia and William Ferreira were advised that failure of East Bay Smog to comply with the Automotive Repair Act, Smog Check Program, terms and conditions of probation, and other applicable laws and regulations may result in disciplinary action which could jeopardize the Automotive Repair Dealer's registration and Smog Check Station License.

New Violation June 8, 2015

9. On June 8, 2015, an undercover operator (operator) for the Bureau drove a 1984 Chevrolet Motor Home (Motor Home) to respondent East Bay Smog and requested a smog inspection. The operator signed a work order and received a written estimate. The odometer reading was not listed on the written estimate. A smog technician, Hugo Camacho (Camacho), who was employed by respondent, conducted a smog inspection on the Motor Home. Camacho informed the operator that he did not have the tools necessary to remove the engine cover to perform the inspection. Camacho advised the operator that if the operator removed the engine cover then he could perform the inspection. The operator left respondent's facility and returned after removing the engine cover from the Motor Home. The operator observed Camacho perform the smog inspection.

10. Prior to the time that the Motor Home was used in the operation, Bureau personnel had the ignition timing adjusted ten degrees further advanced from the factory specification of six degrees Before Top Dead Center (BTDC).

11. Camacho informed the operator of the Motor Home that it had failed the smog inspection because the exhaust gas recirculation (EGR) did not work and the EVAP system failed to pass the test. Camacho informed the operator that the Motor Home probably had a leak in the fuel tank. The operator paid Camacho \$96.75 and received a copy of Invoice No. 034686 and a Vehicle Inspection Report (VIR).

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

13. The VIR provided by respondent's facility and the BAR97 Test Detail retrieved from the BAR's Vehicle Information Database (VID) show that although no Smog Certificate of Compliance was issued, Camacho performed an improper smog inspection. The VIR and BAR97 Test Detail show that Camacho entered "Pass" at 6 degrees BTDC into the Emission Inspection System (EIS) for the functional check of the ignition timing, when the ignition timing was adjusted to 16 degrees BTDC.

14. The VIR and BAR97 Test Detail also show that Camacho entered "Fail" into the EIS for the functional check of the EGR system, when the EGR system was operating correctly as verified by the Bureau's documentation of the Motor Home.

New Violation – June 11, 2015

15. On June 11, 2015, an undercover operator (operator) for the Bureau drove a 1992 Toyota Pickup to respondent's facility and requested a smog inspection. Smog technician Camacho told the operator that the facility's EIS was not working but if the operator could return at 1:30 PM the EIS would be repaired by then. The operator returned later, signed a work order and received a written estimate. Smog technician Camacho conducted a smog inspection on the 1992 Toyota Pickup. The operator paid Camacho \$77 and received a copy of Invoice No. 034725 and a VIR.

16. Prior to the time that the 1992 Toyota Pickup was used in the operation, Bureau personnel had removed the PAIR/Air Suction System Reed Valve, Air Intake Hose and Exhaust Pipe Tube.

17. Upon re-inspection the Bureau verified that the 1992 Toyota Pickup remained in the same condition that existed prior to the smog inspection. The 1992 Toyota still failed a proper smog inspection due to the 1992 Toyota Pickup's missing PAIR/Air Suction System Reed Valve Assembly.

18. The VIR and BAR97 Test Detail showed that Camacho provided Smog Certificate of Compliance [REDACTED] for the 1992 Toyota Pickup.

New Violation – June 23, 2015

19. As of March 9, 2015, smog check stations are required to use an OBD Inspection System (OIS) to perform smog inspections of all 2000 model year and newer gas powered vehicles with a gross vehicle weight of 14,000 pounds and under and 1998 and newer diesel powered vehicles 14,000 pounds and under. The BAR97 must not be used to inspect these vehicles. The Bureau sent "ET Blasts," which are electronic messages sent directly to the smog inspection equipment, on January 7, 2015, February 6, 2015, and March 4, 2015. The ET Blasts were addressed to "All licensed stations" and notified them of the policy.

20. The OIS equipment will not work on vehicles that are older than model year 2000. The BAR97 equipment, however, will enable a smog technician to perform an inspection on a model year 2000 or newer vehicle, even though such an inspection is no longer allowed.

21. The BAR's VID shows that respondent East Bay Smog registered an OIS on September 24, 2014. The BAR's VID shows that on June 23, 2015, respondent's facility and smog technician Camacho performed an improper smog inspection and issued Smog Certificate of Compliance #PS479291C to a 1999 Ford Diesel, utilizing an Emissions Inspection System (EIS)/BAR97 when the Ford Diesel should have been tested and certified utilizing an OIS.

22. Bureau records show that certificate numbers [REDACTED] and [REDACTED] were purchased and issued by respondent East Bay Smog.

Respondents' Evidence

23. Respondent East Bay Smog and respondent Eric Moises Garcia paid the \$7,000 for investigative recovery costs; however, they did not pay the \$7,000 in 24 monthly equal installments of \$291.66. The total amount was not paid in full until two months after the balance was due, which was 12 months before the end of the respondent East Bay Smog's and respondent Eric Moises Garcia's probation on July 23, 2016.

24. Respondent East Bay Smog has been in business for ten years, but currently is not in operation due to the pending revocation of probation. Respondent East Bay Smog closed its facility in August 2016 when it lost its STAR Certification.

25. Daniel Garcia has been a licensed technician for over ten years and has had no citations as a smog technician.

26. Daniel Garcia hired Camacho and watched him for two weeks to evaluate his skills then allowed him to perform smog inspections on his own. Daniel Garcia reviewed Camacho's license history to determine that he had no prior disciplinary actions when he was hired. Camacho appeared to be competent and Daniel Garcia never saw any signs of problems with his skills and knowledge. Daniel Garcia reviewed Camacho's invoices every day to be sure that they were correct.

27. Camacho was respondent East Bay Smog's only employee and he performed all the smog checks that are the subject of the Accusation and Petition to Revoke Probation. Camacho was first licensed on April 21, 2014, and was a licensed smog technician for only just over a year when he performed all the incorrect smog inspections. Camacho received a citation for his violations and was ordered to take a level one class and pay a fine.

28. Daniel Garcia was not present at respondent East Bay Smog's facility when Camacho performed the three smog inspections.

29. Respondent East Bay Smog, through Daniel Garcia, fired Camacho immediately upon learning that he had performed the three incorrect smog inspections. The respondent East Bay Smog and Daniel Garcia would not have allowed Camacho to perform smog inspections if they had known that he was not properly trained.

30. Daniel Garcia attempted to fix all the issues regarding the facility and in particular he tried to obtain the LPFET Operator Manual. He asked three or four different shops for a copy of the manual. Daniel Garcia finally obtained the manual and had it copied and placed in respondent East Bay Smog's facility two days after the second inspection by the Bureau.

31. Daniel Garcia will be the only one working at the respondent facility if the facility is allowed to stay in business. Currently respondent East Bay Smog is not leasing any premises for its business, and all its equipment is at its old leased premises.

32. Respondent East Bay Smog does not believe that it should be held responsible for the acts of its employee, Camacho, and they should not be held liable for his violations. Furthermore, respondents believe their actions were only negligent and that neither their acts, nor their employee's acts were performed with any intent to commit fraud.

33. Daniel Garcia is not working as a smog technician currently but would like to continue to be a smog technician in the future. Currently Daniel Garcia is working part-time at his parents' restaurant in Brentwood, California.

34. Respondent Eric Moises Garcia was working part-time for the respondent East Bay Smog facility as the person in charge of financial matters. He made sure that the respondent East Bay Smog paid the investigative costs in the amount of \$7,000 due to the Bureau.

Costs

35. In connection with the prosecution of this accusation and petition to revoke probation, the Department of Justice billed the Bureau \$10,712.50 for legal services. These charges are supported by a declaration that complies with the requirements of California Code of Regulations, title 1, section 1042. This amount is deemed to be reasonable.

LEGAL CONCLUSIONS

First Cause for Discipline (False and Misleading Statements)

1. Business and Professions Code section 9884.7, subdivision (a)(1), provides that the Bureau may suspend or revoke the registration of an automotive repair dealer for making or authorizing in any manner or by any means whatever any statement, written or

oral, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. Respondent East Bay Smog entered "pass" at 6 degrees BTDC into the Emission Inspection System (EIS) for the functional check of the ignition timing of the Bureau's 1984 Chevrolet Motor Home when the ignition timing was adjusted to 16 degrees BTDC. Cause for discipline of respondent's ARD Registration was established by the matters set forth in Factual Findings 9 through 14.

Second Cause for Discipline (Failure to Record Odometer)

2. Business and Professions Code section 9884.7, subdivision (a)(2), provides that the Bureau may suspend or revoke the registration of an automotive repair dealer for causing or allowing a customer to sign any work order that does not state the odometer reading at the time of repair. Cause for discipline was established by the matters set forth in Factual Finding 9.

Third Cause for Discipline (Fraud)

3. Business and Professions Code section 9884.7, subdivision (a)(4), provides that the Bureau may suspend or revoke the registration of an automotive repair dealer for any conduct which constitutes fraud. Respondent East Bay Smog entered "pass" at 6 degrees BTDC into the Emission Inspection System (EIS) for the functional check of the ignition timing on the Bureau's 1984 Chevrolet Motor Home when the ignition timing was adjusted to 16 degrees BTDC. Cause for discipline was established by the matters set forth in Factual Findings 10, 12, and 13.

Fourth Cause for Discipline (Violations of Motor Vehicle Inspection Program)

4. Health and Safety Code section 44072.2, subdivision (a), provides that the Bureau may suspend or revoke the Smog Check Station license if the licensee, or any partner, officer, or director thereof, violates any section of the Motor Vehicle Inspection Program. During the smog check for the 1984 Chevrolet Motor Home, respondent's technician failed to comply with Health and Safety Code sections 44012, subdivision (f). The smog technician failed to properly perform a visual or functional inspection of the emission control devices as prescribed by the department. Although no Certificate of Compliance was issued, the smog technician performed an improper smog inspection that did not meet the requirements of section 44012, subdivision (f), as prescribed by the Bureau. Cause for discipline was established by the matters set forth in Factual Findings 10, 12, 13, and 14.

Fifth Cause for Discipline (Failure to Comply with Regulation of Motor Vehicle Inspection Program)

5. Health and Safety Code section 44072.2, subdivision (c), and California Code of Regulations, title 16, sections 3340.35, subdivision (c), 3340.42, subdivision (b)(1), 3340.45, and 3373, provide that the Bureau may suspend or revoke the Smog Check Station License of a facility that issued a certificate of compliance to a vehicle that has not been

properly inspected or does not have properly functioning emissions control devices, or that failed to perform a visual inspection of the emissions control systems on the vehicle as specified in the department's Smog Check Manual, or that provided false and misleading records regarding a smog check. Cause for discipline of respondent East Bay Smog's ARD Registration and Smog Check Station License exists by the matters set forth in Factual Findings 9 through 14.

Sixth Cause for Discipline (False and Misleading Statements)

6. Business and Professions Code section 9884.7, subdivision (a)(1), provides that the Bureau may suspend or revoke the registration of an automotive repair dealer for making or authorizing in any manner or by any means whatever any statement, written or oral, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. Respondent East Bay Smog certified under penalty of perjury on the vehicle inspection report that the Bureau's 1992 Toyota Pickup had passed the inspection and was in compliance with applicable laws and regulations. However, the PAIR/Air suction System Reed Valve Air Intake Hose and Exhaust Pipe Tube were missing and the vehicle should not have passed a proper California Smog Inspection. Cause for discipline of respondent East Bay Smog's ARD Registration exists by the matters set forth in Factual Findings 15 through 18.

Seventh Cause for Discipline (Fraud)

7. Business and Professions Code section 9884.7, subdivision (a)(4), provides that the Bureau may suspend or revoke the registration of an automotive repair dealer for any other conduct which constitutes fraud. Respondent East Bay Smog committed an act that constituted fraud by issuing a VIR that indicated the Bureau's 1992 Toyota Pickup had passed the inspection and was in compliance with applicable laws and regulations. (Health & Saf. Code, §44012.) Cause for discipline of respondent East Bay Smog's ARD Registration exists by the matters set forth in Factual Findings 15 through 18.

Eighth Cause for Discipline (Violations of Motor Vehicle Inspection Program)

8. Health and Safety Code sections 44012, subdivision (f), and 44072.2, subdivision (a), provide that the Bureau may suspend or revoke the Smog Check Station License of a facility for failing to perform a visual inspection of a vehicle's emission control devices pursuant to the Bureau's procedures. Health and Safety Code section 44015, subdivision (b), provides that if a vehicle meets the requirements of section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance. Respondent East Bay Smog's technician failed to comply with these sections when he issued a smog certificate on the Bureau's 1992 Toyota Pickup. Cause for discipline of respondent East Bay Smog's Smog Check Station License exists by the matters set forth in Factual Findings 15 through 18.

Ninth Cause for Discipline (Failure to Comply with Regulations of Motor Vehicle Inspection Program)

9. Health and Safety Code section 44072.2, subdivision (c), and California Code of Regulations, title 16, sections 3340.35, subdivision (c), 3340.45, and 3373, provide that the Bureau may suspend or revoke the Smog Check Station License of a facility that issued a certificate of compliance to a vehicle that has not been properly inspected or does not have properly functioning emissions control devices; or that failed to perform a visual inspection of the emissions control systems on the vehicle as specified in the Smog Check Manual, or that provided false and misleading records regarding a smog check inspection. Cause for discipline of respondent East Bay Smog's Smog Check Station License in relation to the inspection of the 1992 Toyota Pickup exists by the matters set forth in Factual Findings 15 through 18.

Tenth Cause for Discipline (False and Misleading Statements)

10. Business and Professions Code section 9884.7, subdivision (a)(1), provides that the Bureau may suspend or revoke the registration of an automotive repair dealer for making or authorizing in any manner or by any means whatever any statement, written or oral, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. Respondent East Bay Smog certified under penalty of perjury on the vehicle inspection report that the Bureau's 1999 Ford Diesel had passed the smog inspection and was in compliance with applicable laws and regulations. However, said smog inspection was conducted utilizing an EIS machine when the 1999 Ford Diesel should have been tested and certified utilizing an OIS machine. Cause for discipline of respondent East Bay Smog's ARD Registration exists by the matters set forth in Factual Findings 19 through 22.

Eleventh Cause for Discipline (Fraud)

11. Business and Professions Code section 9884.7, subdivision (a)(4), provides that the Bureau may suspend or revoke the registration of an automotive repair dealer for any other conduct which constitutes fraud. Respondent East Bay Smog committed an act that constituted fraud by issuing a VIR that indicated the Bureau's 1999 Ford Diesel passed a smog inspection and was in compliance with applicable laws and regulations. (Health & Saf. Code, § 44012.) Cause for discipline of respondent East Bay Smog's ARD Registration exists by the matters set forth in Factual Findings 19 through 22.

First Cause to Revoke Probation (Violation of Condition 2)

12. Condition 2 of the terms of probation for respondent East Bay Smog's ARD Registration, Smog Check Station License, and respondent Eric Moises Garcia's Smog Check Inspector License and Smog Technician License required them to comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs. As set forth in Factual Findings 9 through 22 and Legal Conclusions 1 through 11, respondent

East Bay Smog violated this term by performing improper smog inspections on June 8, 2015, June 11, 2015, and June 23, 2015.

Second Cause to Revoke Probation (Violation of Condition 8)

13. Condition 8 of the terms of probation of respondent East Bay Smog's ARD Registration, and respondent Eric Moises Garcia's Smog Check Station License, Smog Check Inspector License and Smog Technician License provides that should the Director of Consumer Affairs determine that respondents have failed to comply with the terms and conditions of probation, the Bureau may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration of respondents licenses. As set forth in Factual Findings 9 through 22, respondent East Bay Smog violated this term by performing improper smog inspections on June 8, 2015, June 11, 2015, and June 23, 2015, and the Bureau may temporarily or permanently invalidate the registration of respondents' licenses.

Third Cause to Revoke Probation (Violation of Condition 12)

14. Condition 12 of the terms of probation for respondent East Bay Smog's ARD Registration, and respondent Eric Moises Garcia's Smog Check Station License, Smog Check Inspector License and Smog Technician License required respondent East Bay Smog and respondent Eric Moises Garcia to jointly and severally be liable for costs in the amount of \$7,000. Payments were to be made in 24 monthly equal installments and payment to the Bureau of the full month of the cost recovery had to be received no later than 12 months before probation terminated. As set forth in Factual Findings 7, 8, and 23, respondent East Bay Smog and respondent Eric Moises Garcia violated this term by not making timely payments of costs, pursuant to the requirements of probation and became delinquent as set forth in Factual Findings 23. However, respondent East Bay Smog and respondent Eric Moises Garcia did make the full payment two months after the required due date.

15. The terms of probation for respondent East Bay Smog's ARD Registration, Smog Check Station License, and respondent Eric Moises Garcia's Smog Check Inspector License and Smog Technician License required them to comply with all statutes, regulations, and rules governing automotive inspections, estimates and repairs. The respondent East Bay Smog violated conditions 2, 8, and 12, and respondent Eric Moises Garcia violated condition number 12 of the Decision and Order on Accusation Against East Bay Smog and Eric Moises Garcia, Case No. 79/11-89.

16. The Bureau does not seek discipline against the Smog Check Inspector and Smog Check Repair Technician licenses of respondent Eric Moises Garcia. Respondent Eric Moises Garcia was on probation; however, there is insufficient cause to revoke his Inspector and Smog Check Repair Technician licenses for his only violation, failing to timely pay costs. Respondent Eric Moises Garcia did not perform any of the smog inspections subject to this accusation and petition to revoke probation.

Discussion

17. Owners of smog testing stations are held to a high standard under Health and Safety Code section 44012. Even when they undertake to perform every test correctly, they are still liable for the errors of the smog technicians they employ. California courts have upheld enforcement provisions of this type. In *Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192, a licensed pharmacy was held liable for the acts of an employee who sold pharmaceuticals without a doctor's authorization. There the court said if "a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license." Similarly, in *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165, the court noted that a licensee "may not insulate himself from regulation by electing to function through employees or independent contractors." There, the court found the holder of an agricultural pest license responsible for his employee's negligent dumping of pesticides. In assigning liability to the licensee, the court noted that it was holding the licensee "to the conduct prescribed by [the] statute for operating his licensed business."

Respondent East Bay Smog and respondent Eric Moises Garcia do not feel they should be responsible for the errors of their technician. The Health and Safety Code, however, expressly states smog station owners have the duty to oversee the issuance of vehicle inspection reports, even though smog technicians are separately licensed and can be separately cited for violations. The statute does not provide any discretion for an administrative law judge to absolve a station owner of liability when the station's technician has, as here, improperly performed smog inspections.

18. Respondent East Bay Smog demonstrated a pattern of failing to properly perform smog inspections. Despite a previous disciplinary action, this conduct has persisted. Although the evidence did not establish that respondent East Bay Smog is willfully violating the Bureau's regulations, it appears unable to comply with them. Protection of the public compels revocation of East Bay Smog's Automotive Repair Dealer Registration and Smog Check Station Licenses. It would be against the public interest to permit respondent East Bay Smog to continue to operate the facility or to perform smog inspections.

Costs

19. 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 cost 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.

Respondent East Bay Smog has been found to have negligently violated the laws and regulations of the Motor Vehicle Inspection Program. Respondent East Bay Smog violated the terms of probation. Respondent Eric Moises Garcia violated probation but his one violation was minor. Therefore, costs are imposed only against respondent East Bay Smog. Considering that respondent East Bay Smog has substantially completed the terms and conditions of its probation, however, and is no longer open as a facility, there are grounds to reduce the costs in this matter. The costs in this matter are reduced to \$5,356.25.

ORDER

1. The petition to revoke probation concerning Automotive Repair Dealer Registration No. ARD 252615 and Smog Check Test Only Station License No. TC 252615, issued to respondents Eric Moises Garcia, Partner, Daniel Garcia, Partner, Daniel Garcia, aka Daniel Garcia Torres, Partner, doing business as East Bay Smog, is granted.
2. Automotive Repair Dealer Registration No. ARD 252615, issued to respondent East Bay Smog, Eric Moises Garcia, Partner, Daniel Garcia, Partner, Daniel Garcia, aka Daniel Garcia Torres, Partner, is revoked. Any other ARD Registrations issued to respondent East Bay Smog, Eric Moises Garcia, Partner, Daniel Garcia, aka Daniel Garcia Torres, Partner, is revoked.
3. Smog Check, Test Only, Station License No. TC 252615, issued to respondent East Bay Smog, Eric Moises Garcia, Partner, Daniel Garcia, Partner, Daniel Garcia, aka Daniel Garcia Torres, Partner, is revoked. Any other Smog Station License issued to respondent East Bay Smog, Eric Moises Garcia, Partner, Daniel Garcia, aka Daniel Garcia Torres, Partner, is revoked.
4. The STAR Station Certification issued to respondent East Bay Smog, Eric Moises Garcia, Partner, Daniel Garcia, Partner, Daniel Garcia, aka Daniel Garcia Torres, Partner, is revoked.
5. The Petition to Revoke Probation as to respondent Eric Moises Garcia is denied. Smog Check Inspector License No. EO 153742 and Smog Check Repair Technician License No. EI 153742 issued to Eric Moises Garcia are not revoked.
6. Respondent East Bay Smog 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 \$5,356.25.

DATED: February 1, 2018

DocuSigned by:
Adrienne Miller
EBA1415E8C7B42A...

ADRIENNE J. MILLER
Administrative Law Judge
Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10
11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No. 79/15-98

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

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.

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,
27
28

1 subdivision (e) ¹, the license was renewed, pursuant to Respondent's election, as Smog Check
2 Inspector License Number EI 153742 and Smog Check Repair Technician License Number EO
3 153742, effective April 30, 2014. Respondent Garcia's licenses expired on April 30, 2016.

4 **Hugo Camacho**

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

9 **DECISION AND ORDER**

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

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 **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.

24 ...

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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 No. [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 034725
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 GVWR 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 [REDACTED] and
25 [REDACTED] 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.

10
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.

17
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 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.

11 SEVENTH CAUSE FOR DISCIPLINE

12 (Fraud)

13 37. 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 Bureau's 1992 Toyota P/U had passed the
16 inspection and was in compliance with applicable laws and regulations. In fact, the PAIR/Air
17 Suction System Reed Valve Air Intake Hose and Exhaust Pipe Tube was still missing and as
18 such, the vehicle would not pass the inspection required by Health & Safety Code section 44012.
19

20 EIGHTH CAUSE FOR DISCIPLINE

21 (Violations of Motor Vehicle Inspection Program)

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

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
28

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.

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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 X
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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