

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 CHAR SACHSON
Supervising Deputy Attorney General
State Bar No. 161032
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 510-3513
Facsimile: (415) 703-5480
6 *Attorneys for Complainant Bureau of Automotive Repair*

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

11 In the Matter of the Accusation Against:

Case Number: 79/17-1202

ACCUSATION

12 **CHEVREM CORPORATION**
d.b.a **CLEAR BLUE TEST ONLY SMOG STATION**
13 **FATIH TEKIN, PRESIDENT/SECRETARY/**
TREASURER
14 **2850 Crow Canyon Road**
San Ramon, CA 94583

15 **Automotive Repair Dealer No. ARD 241700**
Smog Check, Test Only, License No. TC 241700

16 **FATIH TEKIN**
17 **5200 Telegraph Avenue**
Oakland, CA 94609

18 **Smog Check Inspector License No. EO 26524**

19 **Mailing address:**
20 **121 Diamond Court**
Hercules, CA 94547

21 **EFE YUSUF ERTAS**
22 **1130 Detroit Avenue**
Concord, CA 94520

23 **Smog Check Inspector License No. EO 634957**

24 **SHAHZAD MARK**
25 **5 The Trees Drive**
Concord, CA 94518

26 **Smog Check Inspector License No. EO 136985**
27
28

1 UGUR UZUNSOY
2 3725 San Leandro Street
3 Oakland, CA 94601

4 Smog Check Inspector License No. EO 630349

5 Respondents.

6 Complainant alleges:

7 **PARTIES**

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

10 **Automotive Repair Dealer Registration – Respondent Clear Blue Test Only Smog**
11 **Station**

12 2. In or about 2005, the Bureau of Automotive Repair (Bureau) issued Automotive
13 Repair Dealer Registration Number ARD 241700 (Registration) to Chevrem Corporation, Fatih
14 Tekin, President/Secretary/Treasurer d.b.a. Clear Blue Test Only Smog Station (Respondent
15 Clear Blue Test Only Smog Station). The Registration was in full force and effect at all times
16 relevant to the charges brought herein and will expire on September 30, 2019, unless renewed.

17 **Smog Check Test Only Station License – Respondent Clear Blue Test Only Smog**
18 **Station**

19 3. On or about February 16, 2006, the Bureau issued Smog Check, Test Only, Station
20 License Number TC 241700 to Respondent Clear Blue Test Only Smog Station. The License
21 was in full force and effect at all times relevant to the charges brought herein and will expire on
22 September 30, 2019, unless renewed.

23 4. On or about January 8, 2013, the Bureau issued a STAR Certificate to Respondent
24 Clear Blue Test Only Smog Station. The STAR Certificate was in full force and effect at all
25 times relevant to the charges brought herein and will remain active unless the Automotive Repair
26 Dealer registration and/or Smog Check Station license is revoked, canceled, licenses become
27 delinquent or certification is invalidated.
28

1 **Smog Check Inspector Licenses**

2 5. In 2003, the Bureau issued Advanced Emission Specialist Technician License
3 Number EA 26524 to Fatih Tekin (Respondent Tekin). The Advanced Emission Specialist
4 Technician License expired on January 30, 2014. Pursuant to California Code of Regulations, title
5 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election,
6 as Smog Check Inspector License Number EO 26524, effective January 30, 2014.¹ The Smog
7 Check Inspector License was in full force and effect at all times relevant to the charges brought
8 herein and will expire on January 31, 2020, unless renewed.

9 6. On or about November 15, 2012, the Bureau issued Smog Check Inspector License
10 Number EO 634957 to Efe Yusuf Ertas (Respondent Ertas). The Smog Check Inspector License
11 was in full force and effect at all times relevant to the charges brought herein and will expire on
12 November 30, 2020, unless renewed.

13 7. In 2003, the Bureau issued Advanced Emission Specialist Technician License
14 Number EA 136985 to Shahzad Mark (Respondent Mark). The Advanced Emission Specialist
15 Technician License expired on January 31, 2013. Pursuant to California Code of Regulations, title
16 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election,
17 as Smog Check Inspector License Number EO 136985; effective January 31, 2013. The Smog
18 Check Inspector License was in full force and effect at all times relevant to the charges brought
19 herein and will expire on January 31, 2019, unless renewed.

20 8. On July 25, 2008, the Bureau issued Advanced Emission Specialist Technician
21 License Number EA 630349 to Ugur Uzunsoy (Respondent Uzunsoy). The Advanced Emission
22 Specialist Technician License was due to expire on July 31, 2012, however, the license was
23 cancelled on July 24, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28,
24 subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog Check
25 Inspector License Number EO 630349; effective July 24, 2012. The Smog Check Inspector
26

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, 3340.28, 3340.29 and
28 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 and/or Smog Check Repair Technician (EI) license.

1 License was in full force and effect at all times relevant to the charges brought herein and will
2 expire on July 31, 2020, unless renewed.

3 9. "Respondents" shall refer to Respondents Ertas, Mark, and Uzunsoy collectively.

4 JURISDICTION

5 10. This Accusation is brought before the Director of the Department of Consumer
6 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

7 11. Business and Professions Code (Code) section 118, subdivision(b) states that "the
8 suspension, expiration, or forfeiture by operation of law of a license issued by a board in the
9 department, or its suspension, forfeiture, or cancellation by order of the board or by order of a
10 court of law, or its surrender without the written consent of the board, shall not, during any period
11 in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to
12 institute or continue a disciplinary proceeding against the licensee upon any ground provided by
13 law or to enter an order suspending or revoking the license or otherwise taking disciplinary action
14 against the licensee on any such ground."

15 12. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
16 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
17 proceeding against an automotive repair dealer or to render a decision invalidating a registration
18 temporarily or permanently.

19 STATUTORY AND REGULATORY PROVISIONS

20 13. Section 9884.7 of the Code states, in pertinent part:

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

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

1
2 (4) Any other conduct that constitutes fraud.
3

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

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

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

14 15. Section 44012 of the Health and Safety Code, in pertinent part, states:

15 "The test at the smog check stations shall be performed in accordance with procedures
16 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
17 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
18 and shall ensure all of the following:
19

20 "(f) A visual or functional check is made of emission control devices specified by the
21 department, including the catalytic converter in those instances in which the department
22 determines it to be necessary to meet the findings of Section 44001. The visual or functional
23 check shall be performed in accordance with procedures prescribed by the department.
24"

25 16. Section 44015 of the Health and Safety Code, subdivision (b) provides that if a
26 vehicle meets the requirements of Section 44012, a smog check station licensed to issue
27 certificates shall issue a certificate of compliance or a certificate of noncompliance.
28 ///

1 17. Section 44032 of the Health and Safety Code, provides that no person shall perform,
2 for compensation, tests or repairs of emission control devices or systems of motor vehicles
3 required by this chapter unless the person performing the test or repair is a qualified smog check
4 technician and the test or repair is performed at a licensed smog check station. Qualified
5 technicians shall perform tests of emission control devices and systems in accordance with
6 Section 44012.

7 18. Section 44059 of the Health and Safety Code states, in pertinent part:

8 "The willful making of any false statement or entry with regard to a material matter in any
9 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
10 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
11 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

12 19. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

19 . . .

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

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

22 . . .

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

25 20. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
26 expiration or suspension of a license by operation of law, or by order or decision of the Director
27 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
28 the Director of jurisdiction to proceed with disciplinary action.

1 21. Section **44072.8** of the Health and Safety Code states:

2 "When a license has been revoked or suspended following a hearing under this article, any
3 additional license issued under this chapter in the name of the licensee may be likewise revoked
4 or suspended by the director."

5 22. Section **44072.10, subdivision (c)** of the Health and Safety Code states:

6 "(c) The department shall revoke the license of any smog check technician or station
7 licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of
8 vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

9 (1) Clean piping, as defined by the department. . ."

10 23. California Code of Regulations, title 16, section **3340.24, subdivision (c)** states:

11 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
12 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
13 certificate of noncompliance."

14 24. California Code of Regulations, title 16, section **3340.30, subdivision (a)** states:

15 "A licensed smog check inspector and/or repair technician shall comply with the following
16 requirements at all times while licensed:

17 "(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
18 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
19 article."

20 . . .
21 25. California Code of Regulations, title 16, section **3340.35, subdivision (c)** states:

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

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

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

1 ..."

2 26. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

3 "(c) No person shall enter into the emissions inspection system any vehicle identification

4 information or emission control system identification data for any vehicle other than the one

5 being tested. Nor shall any person knowingly enter into the emissions inspection system any false

6 information about the vehicle being tested."

7 27. California Code of Regulations, title 16, section 3340.42, subdivision (b)(2), states,

8 in pertinent part that "Smog check inspection methods are prescribed in the Smog Check Manual,

9 referenced by section 3340.45."

10 (b) In addition to subsection (a), all vehicles subject to the smog check program shall

11 receive the following:

12 (1) A visual inspection of emission control components and systems to verify the vehicle's

13 emission control systems are properly installed.

14 (2) A functional inspection of emission control systems as specified in the Smog Check

15 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper

16 operation.

17 ..."

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

19 (a) All Smog Check inspections shall be performed in accordance with requirements and

20 procedures prescribed in the following:

21 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby

22 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

23 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This

24 manual shall become effective on or after January 1, 2013.

25 29. California Code of Regulations, title 16, section 3373 states:

26 "No automotive repair dealer or individual in charge shall, in filling out an estimate,

27 invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter,

28 withhold therefrom or insert therein any statement or information which will cause any such

1 document to be false or misleading, or where the tendency or effect thereby would be to mislead
2 or deceive customers, prospective customers, or the public."

3 COSTS

4 30. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 FACTUAL SUMMARY

11 31. California's Smog Check Program requires the owners of most motor vehicles in
12 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
13 every two years when renewing their registration and also when the vehicle's title is transferred.
14 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
15 which are licensed by the Bureau.

16 32. The Smog Check inspection in certain Enhanced areas of the state is an Acceleration
17 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
18 as a BAR 97. This is a computer based five-gas analyzer that measures hydrocarbons, carbon
19 monoxide, oxides of nitrogen, carbon dioxide, and oxygen. The inspection involves a test of the
20 vehicle's tailpipe emissions on a dynamometer. In Basic areas of the state, or depending on a
21 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
22 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
23 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
24 (RPM).

25 33. The inspector also performs visual and functional tests on the vehicle as outlined in
26 the Smog Check Manual. The visual inspection of the emission control components verifies the
27 required emission control devices are present and properly connected. Functional tests are also
28 performed which, depending on the vehicle, may include checking the ignition timing,

1 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
2 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
3 cap.

4 34. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
5 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
6 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
7 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.

8 35. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
9 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
10 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
11 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
12 vehicle. The bar code scanner is used to input technician information, the vehicle identification
13 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
14 Reports.

15 36. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
16 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
17 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
18 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
19 number of specific data values each PCM uses related to emissions controls.

20 37. As part of the BAR-OIS smog inspections, the technician also performs a visual and
21 functional test on the vehicle being inspected. The visual inspection of the emission control
22 components verifies the required emission control devices are present and properly connected and
23 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
24 makes the determination whether or not the vehicle passes the inspection based on the results of
25 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
26 compliance is issued. The information from the smog inspection is then transmitted to the
27 Vehicle Information Data (VID).

28 ///

1 38. The Bureau can access the VID to view test data on smog check inspections
2 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
3 particular vehicle which has been tested.

4 39. The Bureau has become aware of methods some Smog Check stations and Smog
5 Check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog
6 Check test on their own, or in some instances, are not even present during the time the test is
7 performed.

8 40. One method is known as "clean plugging." Clean plugging is the act of using one
9 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
10 or diagnostic information for the purpose or fraudulently issue a smog certificate of compliance to
11 a vehicle that is not in smog compliance and/or not present for testing. The vehicle being tested is
12 not the one being issued the certificate of compliance.

13 41. The Bureau initiated an investigation of Respondent Clear Blue Test Only Smog
14 Station. Beginning on or about December 19, 2014 and continuing until about May 21, 2017,
15 Respondents² were found to have performed five fraudulent smog inspections using clean-
16 plugging methods. Clean-plugging is the practice of testing one OBD II system (a system that
17 would pass the smog inspection), for the purpose of fraudulently issuing a smog certificate of
18 compliance to another vehicle that would not pass the smog inspection and/or is not present for
19 testing. The vehicle receiving the certificate of compliance is not actually tested during the smog
20 inspection.

21 42. A Bureau representative reviewed data for five clean plugged vehicles inspected by
22 Respondents Ertas, Mark, and Uzunsoy and certified by Respondent Clear Blue Test Only Smog
23 Station. The data revealed that the five vehicles that were purportedly tested by Respondents were
24 not and could not have been connected to the DAD when they were being certified because the
25 OBD-II data purportedly transmitted by those vehicles could not have been transmitted by those
26 vehicles.

27
28 ² Respondents Ertas, Mark and Uzunsoy performed the smog tests on behalf of
Respondent Clear Blue Test Only Smog Station.

43. Respondents clean plugged and issued fraudulent certificates of compliance to the following five vehicles:

a) Clean Plug# 1 - 2006 Toyota Corolla CE/LE/S, VIN:1NXBR32E26Z609693, CA license number 5RZN981, performed by Respondent Ertas on December 19, 2014:

Certificate #	eVIN	Protocol	PID count
PM825731C			
Fraudulent Passing Inspection (12/19/2014)	4T1BK3EK6AU104593	ICAN11bt5	<u>47/17</u>
Expected OBDII Value	1NXBR32E26Z609693	I914	<u>18</u>

b) Clean Plug #2 - 2007 Honda Civic LX, VIN:1HGFA16597L119109, CA license number 5ZMT067, performed by Respondent Ertas on April 12, 2015:

Certificate #	eVIN	Protocol	PID count
PQ694856C			
Fraudulent Passing Inspection (04/12/2015)	1HGCP3F86CA038159	ICAN29bt5	<u>44</u>
Expected OBDII Value	1HGFA16597L119109	ICAN29bt5	<u>39/19</u>

c) Clean Plug #3 - 2002 Toyota Sienna LE, VIN: 4T3ZF13C82U430570, CA license number 4VGA193, performed by Respondent Mark on December 31, 2016:

Certificate #	eVIN	Protocol	PID count
ZN230261C			
Fraudulent Passing Inspection (12/31/2016)	JTHBJ46G382195429	ICAN11bt5	<u>46/17</u>
Expected OBDII Value	Not Reported	I914	<u>20</u>

///

///

d) Clean Plug #4 – 2007 Honda Accord EX, VIN: 1HGCM56797A067155, CA license number 5ZKG114, performed by Respondent Mark on March 20, 2017:

Certificate # ZR579623C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (03/20/2017)	5FNYP4H58EB031868	ICAN29bt5	<u>45/20</u>
Expected OBDII Value	1HGCM56797A067155	I914	<u>21</u>

e) Clean Plug #5 – 2011 Toyota Sienna LE, VIN: 5TDKK3DC8BS157705, CA license number 6SDS232, performed by Respondent Uzunsoy on May 21, 2017:

Certificate # ZV511688C	eVIN	Protocol	PID count
Fraudulent Passing Inspection (05/21/2017)	JTNBE46K873128503	ICAN11bt5	<u>39</u>
Expected OBDII Value	5TDKK3DC8BS157705	ICAN11bt5	<u>47/17 or 47/20</u>

FIRST CAUSE FOR DISCIPLINE
(Misleading Statements - Registration)

44. Respondent Clear Blue Clear Blue Test Only Smog Station has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading, as set forth above in paragraphs 41-43, above. Respondents fraudulently purported to test the five vehicles, and certified that the five vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean-plugging methods.

///

///

///

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

45. Respondent Clear Blue Test Only Smog Station has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that it committed acts which constitute fraud, as set forth above in paragraphs 41-43, above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Provisions of the Automotive Repair Act)

46. Respondent Clear Blue Test Only Smog Station has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that it failed in a material respect to comply with the provisions of this chapter or regulations adopted, as set forth above in paragraphs 41-43, above.

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program – Smog Check Station License)

47. Respondent Clear Blue Test Only Smog Station has subjected its station license to discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that it violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43, as follows:

a. **Section 44012:** Respondent Clear Blue Test Only Smog Station failed to ensure that the emission control tests were performed on those vehicles in accordance with procedures prescribed by the department.

b. **Section 44012, subdivision (f):** Respondent Clear Blue Test Only Smog Station failed to perform a visual or functional check of emission control devices on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent Clear Blue Test Only Smog Station issued electronic smog certificates of compliance but failed to ensure that the vehicles were properly tested and inspected to determine if the emission control tests performed on those vehicles in accordance with procedures prescribed by the department.

d. **Section 44059:** Respondent Clear Blue Test Only Smog Station willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

1 e. Section 3340.35, subdivision (c): Respondent Clear Blue Test Only Smog Station
2 failed to conduct the required smog tests and inspections on those vehicles in accordance with the
3 Bureau's specifications.

4 f. Section 3340.42, subdivision (b)(2): Respondent Clear Blue Test Only Smog
5 Station failed to conduct a functional inspection of emission control systems for vehicles as
6 specified in the Smog Check Manual, referenced by California Code of Regulations, title 16,
7 section 3340.45.

8 g. Section 3340.45, subdivision (a)(2): Respondent Clear Blue Test Only Smog Station
9 failed to perform smog check inspections in accordance with requirements and procedures
10 prescribed in the Smog Check Inspection Manual.

11 h. Section 3373: Respondent Clear Blue Test Only Smog Station created a false or
12 misleading work order by issuing the fraudulent certificates of compliance for the five vehicles.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud or Deceit – Smog Check Station License)**

15 48. Respondent Clear Blue Test Only Smog Station subjected its station license to
16 discipline under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that it
17 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
18 electronic certificates of compliance for vehicles without performing bona fide inspections of the
19 emission control devices and systems on the vehicles, thereby depriving the People of the State of
20 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
21 in paragraphs 41-43, above.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Motor Vehicle Inspection Program:
24 Smog Check Inspector License - Ertas)**

25 49. Respondent Ertas has subjected his Smog Check Inspector license to discipline under
26 Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
27 violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43,
28 as follows:

///

1 a. **Section 44012:** Respondent Ertas failed to ensure that the emission control tests were
2 performed on those vehicles in accordance with procedures prescribed by the department.

3 b. **Section 44012, subdivision (f):** Respondent Ertas failed to perform a visual or
4 functional check of emission control devices on those vehicles in accordance with procedures
5 prescribed by the department.

6 c. **Section 44032:** Respondent Ertas failed to perform tests of emission control devices
7 and systems on those vehicles in accordance with Section 44012.

8 d. **Section 44059:** Respondent Ertas willfully made false entries for the electronic
9 certificates of compliance by certifying that those vehicles had been inspected as required when,
10 in fact, they had not.

11 e. **Section 3340.30, subdivision (a):** Respondent Ertas failed to inspect and test those
12 vehicles in accordance with Health and Safety Code section 44012 and California Code of
13 Regulations title 16, section 3340.42.

14 f. **Section 3340.41, subdivision (c):** Respondent Ertas entered vehicle identification
15 information for a vehicle other than the one being tested into the emissions inspection system.
16 Respondent Ertas knowingly entered false information about the vehicle being tested into the
17 emissions inspection system.

18 g. **Section 3340.42, subdivision (b)(2):** Respondent Ertas failed to conduct a functional
19 inspection of emission control systems for vehicles as specified in the Smog Check Manual,
20 referenced by California Code of Regulations, title 16, section 3340.45.

21 h. **Section 3340.45, subdivision (a)(2):** Respondent Ertas failed to perform smog check
22 inspections in accordance with requirements and procedures prescribed in the Smog Check
23 Inspection Manual.

24 **SEVENTH CAUSE FOR DISCIPLINE**

(Dishonesty, Fraud or Deceit – Smog Check Inspector License)

25 50. Respondent Ertas subjected his Smog Check Inspector License to discipline under
26 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
27 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
28

1 certificates of compliance for vehicles without performing bona fide inspections of the emission
2 control devices and systems on the vehicles, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
4 in paragraphs 41-43.

5 **EIGHTH CAUSE FOR DISCIPLINE**
6 **(Violations of the Motor Vehicle Inspection Program;**
7 **Smog Check Inspector License - Mark)**

8 51. Respondent Mark has subjected his Smog Check Inspector license to discipline under
9 Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
10 violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43,
11 as follows:

12 a. **Section 44012:** Respondent Mark failed to ensure that the emission control tests
13 were performed on those vehicles in accordance with procedures prescribed by the department.

14 b. **Section 44012, subdivision (f):** Respondent Mark failed to perform a visual or
15 functional check of emission control devices on those vehicles in accordance with procedures
16 prescribed by the department.

17 c. **Section 44032:** Respondent Mark failed to perform tests of emission control devices
18 and systems on those vehicles in accordance with Section 44012.

19 d. **Section 44059:** Respondent Mark willfully made false entries for the electronic
20 certificates of compliance by certifying that those vehicles had been inspected as required when,
21 in fact, they had not.

22 e. **Section 3340.30, subdivision (a):** Respondent Mark failed to inspect and test those
23 vehicles in accordance with Health and Safety Code section 44012 and California Code of
24 Regulations title 16, section 3340.42.

25 f. **Section 3340.41, subdivision (c):** Respondent Mark entered vehicle identification
26 information for a vehicle other than the one being tested into the emissions inspection system.
27 Respondent Mark knowingly entered false information about the vehicle being tested into the
28 emissions inspection system.

1 g. **Section 3340.42, subdivision (b)(2):** Respondent Mark failed to conduct a functional
2 inspection of emission control systems for vehicles as specified in the Smog Check Manual,
3 referenced by California Code of Regulations, title 16, section 3340.45.

4 h. **Section 3340.45, subdivision (a)(2):** Respondent Mark failed to perform smog check
5 inspections in accordance with requirements and procedures prescribed in the Smog Check
6 Inspection Manual.

7 **NINTH CAUSE FOR DISCIPLINE**
8 **(Dishonesty, Fraud or Deceit – Smog Check Inspector License)**

9 52. Respondent Mark subjected his Smog Check Inspector License to discipline under
10 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
11 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
12 certificates of compliance for vehicles without performing bona fide inspections of the emission
13 control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
15 in paragraphs 41-43.

16 **TENTH CAUSE FOR DISCIPLINE**
17 **(Violations of the Motor Vehicle Inspection Program:**
18 **Smog Check Inspector License - Uzunsoy)**

19 53. Respondent Uzunsoy has subjected his Smog Check Inspector license to discipline
20 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
21 violated sections of that Code and applicable regulations, as set forth above in paragraphs 41-43,
22 as follows:

23 a. **Section 44012:** Respondent Uzunsoy failed to ensure that the emission control tests
24 were performed on those vehicles in accordance with procedures prescribed by the department.

25 b. **Section 44012, subdivision (f):** Respondent Uzunsoy failed to perform a visual or
26 functional check of emission control devices on those vehicles in accordance with procedures
27 prescribed by the department.

28 c. **Section 44032:** Respondent Uzunsoy failed to perform tests of emission control
devices and systems on those vehicles in accordance with Section 44012.

1 d. **Section 44059:** Respondent Uzunsoy willfully made false entries for the electronic
2 certificates of compliance by certifying that those vehicles had been inspected as required when,
3 in fact, they had not.

4 e. **Section 3340.30, subdivision (a):** Respondent Uzunsoy failed to inspect and test
5 those vehicles in accordance with Health and Safety Code section 44012 and California Code of
6 Regulations title 16, section 3340.42.

7 f. **Section 3340.41, subdivision (c):** Respondent Uzunsoy entered vehicle
8 identification information for a vehicle other than the one being tested into the emissions
9 inspection system. Respondent Uzunsoy knowingly entered false information about the vehicle
10 being tested into the emissions inspection system.

11 g. **Section 3340.42, subdivision (b)(2):** Respondent Uzunsoy failed to conduct a
12 functional inspection of emission control systems for vehicles as specified in the Smog Check
13 Manual, referenced by California Code of Regulations, title 16, section 3340.45.

14 h. **Section 3340.45, subdivision (a)(2):** Respondent Uzunsoy failed to perform smog
15 check inspections in accordance with requirements and procedures prescribed in the Smog Check
16 Inspection Manual.

17 **ELEVENTH CAUSE FOR DISCIPLINE**
(Dishonesty, Fraud or Deceit – Smog Check Inspector License)

18 54. Respondent Uzunsoy subjected his Smog Check Inspector License to discipline under
19 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
20 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
21 certificates of compliance for vehicles without performing bona fide inspections of the emission
22 control devices and systems on the vehicles, thereby depriving the People of the State of
23 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
24 in paragraphs 41-43.

25 **OTHER MATTERS**

26 55. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
27 or place on probation the registration for all places of business operated in this state by
28

1 Respondent Clear Blue Test Only Smog Station, upon a finding that Respondent Clear Blue Test
2 Only Smog Station has, or is, engaged in a course of repeated and willful violations of the laws
3 and regulations pertaining to an automotive repair dealer.

4 56. Pursuant to Health & Safety Code section 44072.8, if Respondent Clear Blue Test
5 Only Smog Station's Station License is revoked or suspended, any additional license issued under
6 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may
7 be likewise revoked or suspended by the director.

8 57. Pursuant to Health & Safety Code section 44072.8, if Respondent Tekin's Smog
9 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
10 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
11 likewise revoked or suspended by the director.

12 58. Pursuant to Health & Safety Code section 44072.8, if Respondent Ertas's Smog
13 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
14 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
15 likewise revoked or suspended by the director.

16 59. Pursuant to Health & Safety Code section 44072.8, if Respondent Mark's Smog
17 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
18 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
19 likewise revoked or suspended by the director.

20 60. Pursuant to Health & Safety Code section 44072.8, if Respondent Uzunsoy's Smog
21 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
22 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
23 likewise revoked or suspended by the director.

24 DISCIPLINE CONSIDERATIONS

25 61. To determine the degree of discipline, if any, to be imposed on Respondent Clear
26 Blue Test Only Smog Station, Complainant alleges that on or about June 27, 2003, in a prior
27 action, an accusation was filed on Gurnur International Corporation and its President, Fatih
28 Tekin, d.b.a. GIC Smog Station for causing the issuance of 13 fraudulent Smog Check Inspection

1 Certificates of Compliance to be issued. The business name for GIC Smog Station was changed
2 to Walnut Creek Star Smog and ownership of the facility is under Chevrem Corporation with
3 Fatih Tekin as President. On December 6, 2004, the Department of Consumer Affairs adopted a
4 decision in the matter of Accusation 79/04-00 which revoked GIC Smog Station's Smog Check
5 Station licenses and Automotive Repair Dealer registrations. However, the revocations were
6 stayed and the stations were placed on three years probation.

7 62. To determine the degree of discipline, if any, to be imposed on Respondent Clear
8 Blue Test Only Smog Station, Complainant alleges that on or about September 21, 2005, in a
9 prior action, Chevrem Corporation and its President, Fatih Tekin, d.b.a. Clear Blue Test Only
10 Smog Station applied for an Automotive Repair Dealer Registration and a Smog Check Station
11 License. The parties stipulated that Accusation 79/04-00 was deemed to constitute a Statement of
12 Issues for the purpose of the denial of Respondent's application. The parties entered into a
13 stipulation and agreement which was adopted as a decision and order only to the Statement of
14 Issues against Fatih Tekin. On January 30, 2006, the Director of the Department of Consumer
15 Affairs adopted a decision and order issuing an Automotive Repair Dealer Registration and a
16 Smog Check Station License to Respondent and immediately revoking the licenses, with the
17 revocations stayed, following the terms and conditions of probation as set forth in Accusation
18 79/04-00.

19 63. To determine the degree of discipline, if any, to be imposed on Respondent Clear
20 Blue Test Only Smog Station, Complainant alleges that on or about September 15, 2008, in a
21 prior action, an accusation was filed on Chevrem Corporation and its President, Fatih Tekin,
22 d.b.a. Clear Blue Test Only Smog Station, Clear Blue Test Only Smog Station 2, Clear Blue Test
23 Only Station 3, Test Only Smog Station II, and GIC Smog Station for causing the issuance of 13
24 fraudulent Smog Check Inspection Certificates of Compliance. On April 6, 2009, the Department
25 of Consumer Affairs adopted a decision in the matter of Accusation 79/09-21 which revoked all
26 Smog Check Station licenses and Automotive Repair Dealer registrations for each facility.
27 However, the revocations were stayed and the stations were placed on five years probation. In
28 addition, each station was suspended anywhere from 5 to 45 days.

1 64. To determine the degree of discipline, if any, to be imposed on Respondent Clear
2 Blue Test Only Smog Station, Complainant alleges that on or about September 14, 2015, in a
3 prior action, the Bureau issued Citation Number C2015-2133 and ordered Respondent to pay a
4 \$1,500.00 fine. The citation was based on Respondent's issuance of a certificate of compliance to
5 a vehicle using the BAR97 procedure when an OBD Inspection System was required. The citation
6 was modified to an Order of Abatement. That Citation is now final and is incorporated by
7 reference as if fully set forth.

8 65. To determine the degree of discipline, if any, to be imposed on Respondent Ertas,
9 Complainant alleges that on or about July 10, 2015, in a prior action, the Bureau issued Citation
10 Number M2015-1701 directing him to complete an 8-hour BAR certified training course in that
11 he issued a certificate of compliance to a Bureau of Automotive Repair undercover vehicle with a
12 defective fuel evaporative canister. That Citation is now final and is incorporated by reference as
13 if fully set forth.

14 66. To determine the degree of discipline, if any, to be imposed on Respondent Ertas,
15 Complainant alleges that on or about December 15, 2016, in a prior action, the Bureau issued
16 Citation Number M2016-2352 in that he issued a certificate of compliance to a vehicle using the
17 BAR97 procedure when an OBD Inspection System was required. That Citation is now final and
18 is incorporated by reference as if fully set forth.

19 67. To determine the degree of discipline, if any, to be imposed on Respondent Mark,
20 Complainant alleges that on or about January 13, 2010, in a prior action, the Bureau issued
21 Citation Number M2010-0668 for violating Health and Safety Code section 44032 in that he
22 issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing
23 adjusted beyond specifications. That Citation is now final and is incorporated by reference as if
24 fully set forth.

25 68. To determine the degree of discipline, if any, to be imposed on Respondent Mark,
26 Complainant alleges that on or about October 27, 2014, in a prior action, the Bureau issued
27 Citation Number M2014-1317 directing him to complete an 8-hour BAR certified training course
28 in that he issued a certificate of compliance to a Bureau undercover vehicle with a missing Pulsed

1 Secondary Air Injection (PAIR) System. That Citation is now final and is incorporated by
2 reference as if fully set forth.

3 69. To determine the degree of discipline, if any, to be imposed on Respondent Uzunsoy,
4 Complainant alleges that on or about August 4, 2015, in a prior action, the Bureau issued Citation
5 Number M2015-1842. The citation ordered Respondent to cease and desist from violating Health
6 and Safety Code section 44032 in that he issued a certificate of compliance using the BAR97
7 method when an OBD Inspection System (OIS) is required. That Citation is now final and is
8 incorporated by reference as if fully set forth.

9
10 PRAYER

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

13 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
14 241700, issued to Chevrem Corporation, Fatih Tekin, President, doing business as Clear Blue
15 Test Only Smog Station;

16 2. Revoking or suspending Smog Check Test Only Station License Number TC
17 241700, issued to Chevrem Corporation, Fatih Tekin, President, doing business as Clear Blue
18 Test Only Smog Station;

19 3. Revoking or suspending any additional Automotive Repair Dealer Registration,
20 Smog Check Station License, Smog Check Inspector License, or Smog Check Repair Technician
21 license, issued to Chevrem Corporation;

22 4. Ordering Chevrem Corporation to pay the Bureau of Automotive Repair the
23 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
24 Professions Code section 125.3;

25 5. Revoking or suspending Smog Check Inspector License EO 26524 issued to Fatih
26 Tekin;

27 6. Revoking or suspending any additional Smog Check Station License, Smog Check
28 Inspector License, or Smog Check Repair Technician License, issued to Fatih Tekin;

1 7. Ordering Fatih Tekin to pay the Bureau of Automotive Repair the reasonable costs
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section.125.3;

4 8. Revoking or suspending Smog Check Inspector License EO 634957 issued to Efe
5 Yusuf Ertas;

6 9. Revoking or suspending any additional Smog Check Station License, Smog Check
7 Inspector License, or Smog Check Repair Technician License, issued to Efe Yusuf Ertas;

8 10. Ordering Efe Yusuf Ertas to pay the Bureau of Automotive Repair the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;

11 11. Revoking or suspending Smog Check Inspector License EO 136985 issued to
12 Shahzad Mark;

13 12. Revoking or suspending any additional Smog Check Station License, Smog Check
14 Inspector License, or Smog Check Repair Technician License, issued to Shahzad Mark;

15 13. Ordering Shahzad Mark to pay the Bureau of Automotive Repair the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3;

18 14. Revoking or suspending Smog Check Inspector License EO 630349 issued to
19 Ugur Uzunsoy;

20 15. Revoking or suspending any additional Smog Check Station License, Smog Check
21 Inspector License, or Smog Check Repair Technician License, issued to Ugur Uzunsoy;

22 16. Ordering Ugur Uzunsoy to pay the Bureau of Automotive Repair the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions
24 Code section 125.3;

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. Taking such other and further action as deemed necessary and proper.

DATED: 12-28-18

Patrick Dorais by Doug Balala
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant