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

In the Matter of the Accusation Against:

SMOGTECH MCHENRY
HELI VILLASENOR, OWNER
1313 McHenry Avenue
Modesto, CA 95350

Automotive Repair Dealer Reg. No. ARD 268112
Smog Check, Test Only, Station License No. TC 268112,

CHARTER WAY SMOG
HELI VILLASENOR, OWNER
1449 Turnpike, Suite A
Stockton, CA 95206

Automotive Repair Dealer Reg. No. ARD 265170
Smog Check, Test Only, Station License No. TC 265170

SMOGTECH AIRPORT
HELI VILLASENOR, OWNER
430 N. Airport Way, #A
Stockton, CA 95205

Automotive Repair Dealer Reg. No. ARD 269777
Smog Check, Repair Station License No. RC 269777

SMOG TECH 2
HELI VILLASENOR, OWNER
7277 N. Pacific Avenue, #2
Stockton, CA 95207

Automotive Repair Dealer Reg. No. ARD 267654
Smog Check, Test Only, Station License No. TC 267654,

SMOGTECH TRACY
HELI VILLASENOR, OWNER
24588 S. MacArthur Drive
Tracy, CA 95376

Automotive Repair Dealer Reg. No. ARD 275318
Smog Check, Test Only, Station License No. TC 275318

and

HELI VILLASENOR
1449 Turnpike Road

Case No. 79/15-88

OAH No. 2015030064

Stockton, CA 95206

Smog Check Inspector License No. EO 630941
Smog Check Repair Technician License No. EI 630941 (formerly Advanced Emission Specialist Technician License No. EA 630941)

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of the following licenses shall commence on the effective date of this decision:

1. Automotive Repair Dealer Reg. No. ARD 268112 and Smog Check, Test Only, Station License No. TC 268112 issued to Smogtech McHenry.

2. Automotive Repair Dealer Reg. No. ARD 265170 and Smog Check, Test Only, Station License No. TC 265170 issued to Charter Way Smog.

3. Automotive Repair Dealer Reg. No. ARD 269777 and Smog Check, Repair Station License No. RC 269777 issued to Smogtech Airport.

4. Automotive Repair Dealer Reg. No. ARD 267654 and Smog Check, Test Only, Station License No. TC 267654 issued to Smog Tech 2.

5. Automotive Repair Dealer Reg. No. ARD 275318 and Smog Check, Test Only, Station License No. TC 275318 issued to Smogtech Tracy.

6. Smog Check Inspector License No. EO 630941 and Smog Check Repair Technician License No. EI 630941 (formerly Advanced Emission Specialist Technician License No. EA 630941) issued to Heli Villasenor.

This Decision shall become effective October 3, 2017.

DATED: 8/23/17

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

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
State Bar No. 197268
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5333
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Accusation Against: **SMOGTECH McHENRY** **HELI VILLASENOR, OWNER** **1313 McHenry Avenue** **Modesto, CA 95350** **Automotive Repair Dealer Reg. No. ARD 268112** **Smog Check, Test Only, Station License No. TC 268112,** **CHARTER WAY SMOG** **HELI VILLASENOR, OWNER** **1449 Turnpike, Suite A** **Stockton, CA 95206** **Automotive Repair Dealer Reg. No. ARD 265170** **Smog Check, Test Only, Station License No. TC 265170,** **SMOGTECH AIRPORT** **HELI VILLASENOR, OWNER** **430 N. Airport Way, #A** **Stockton, CA 95205** **Automotive Repair Dealer Reg. No. ARD 269777** **Smog Check, Repair, Station License No. RC 269777,** **SMOG TECH 2** **HELI VILLASENOR, OWNER** **7277 N. Pacific Avenue, #2** **Stockton, CA 95207** **Automotive Repair Dealer Reg. No. ARD 267654** **Smog Check, Test Only, Station License No. TC 267654,**	Case No. 79/15-88 OAH No. 2015030064 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

SMOGTECH TRACY
HELI VILLASENOR, OWNER
24588 S. MacArthur Drive
Tracy, CA 95376

Automotive Repair Dealer Reg. No. ARD 275318
Smog Check, Test Only, Station License No. TC 275318,

and

HELI VILLASENOR
1449 Turnpike Road
Stockton, CA 95206

Smog Check Inspector License No. EO 630941
Smog Check Repair Technician License No. EI 630941
(formerly Advanced Emission Specialist Technician License No. EA 630941)

Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Karen R. Denvir, Deputy Attorney General.

2. Smogtech McHenry, Charter Way Smog, Smogtech Airport, Smog Tech 2, Smogtech Tracy, and Heli Villasenor ("Respondent") is represented in this proceeding by attorney Vittoria M. Bossi, whose address is: Law Offices of Vittoria Bossi, 445 West Weber Avenue, Suite 217, Stockton, CA 95203.

Smogtech McHenry

3. On or about February 27, 2012, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 268112 ("Registration No. 268112") to Heli Villasenor ("Respondent"), owner of Smogtech McHenry. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2016, unless renewed.

4. On or about June 12, 2012, the Director issued Smog Check, Test Only, Station License Number TC 268112 ("Smog Check Station License No. 268112") to Respondent. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2016, unless renewed.

Charter Way Smog

5. On or about May 19, 2011, the Director issued Automotive Repair Dealer Registration Number ARD 265170 ("Registration No. 265170") to Respondent, owner of Charter Way Smog. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2016, unless renewed.

6. On or about June 7, 2011, the Director issued Smog Check, Test Only, Station License Number TC 265170 ("Smog Check Station License No. 265170") to Respondent. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2016, unless renewed.

Smogtech Airport

7. On or about July 30, 2012, the Director issued Automotive Repair Dealer Registration Number ARD 269777 ("Registration No. 269777") to Respondent, owner of Smogtech Airport. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2016, unless renewed.

8. On or about December 19, 2013, the Director issued Smog Check, Repair, Station License Number RC 269777 ("Smog Check Station License No. 269777") to Respondent. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2016, unless renewed.

Smog Tech 2

9. On or about January 6, 2012, the Director issued Automotive Repair Dealer Registration Number ARD 267654 ("Registration No. 267654") to Respondent, owner of Smog Tech 2. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and was due to expire on January 31, 2016 but was canceled on May 26, 2015.

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10. On or about January 23, 2012, the Director issued Smog Check, Test Only, Station License Number TC 267654 ("Smog Check Station License No. 267654") to Respondent. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and was due to expire on January 31, 2016 but was canceled on May 26, 2015.

Smogtech Tracy

11. On or about January 21, 2014, the Director issued Automotive Repair Dealer Registration Number ARD 275318 ("Registration No. 275318") to Respondent, owner of Smogtech Tracy. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

12. On or about February 3, 2014, the Director issued Smog Check, Test Only, Station License Number TC 275318 ("Smog Check Station License No. 275318") to Respondent. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

Heli Villasenor

13. On or about April 10, 2009, the Director issued Advanced Emission Specialist Technician License Number EA 630941 to Respondent. Respondent's advanced emission specialist technician license was due to expire on October 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO 630941, effective October 31, 2012, and Smog Check Repair Technician License Number EI 630941, effective November 1, 2012.[1] Respondent's Smog Check Inspector License and Smog Check Repair Technician License will expire on October 31, 2016, unless renewed.

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

JURISDICTION

14. Accusation No. 79/15-88 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 16, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

15. A copy of Accusation No. 79/15-88 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

16. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 79/15-88. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

17. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

18. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

19. Respondent admits the truth of each and every charge and allegation in Accusation No. 79/15-88.

20. Respondent agrees that his Automotive Repair Dealer Registrations, Smog Check Test Only Licenses, Smog Check Repair Station License, Smog Check Inspector License and

Smog Check Repair Technician License are subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

21. This stipulation shall be subject to approval by the Director of Consumer Affairs or the Director's designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

22. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

23. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

24. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 268112 and Smog Check, Test Only, Station License No. TC 268112 issued to Smogtech McHenry; Automotive Repair Dealer Registration No. ARD 265170 and Smog Check, Test Only, Station License No. TC 265170 issued to Charter Way Smog; Automotive Repair Dealer Registration No. ARD 269777 and Smog Check, Repair, Station License No. RC 269777 issued to Smogtech Airport; Automotive Repair Dealer Registration No. ARD 267654 and Smog Check, Test Only, Station License No. TC 267654 issued to Smog Tech 2; Automotive Repair Dealer Registration No. ARD 275318 and Smog Check, Test Only, Station License No. TC 275318 issued to Smogtech Tracy; Smog Check Inspector License No. EO 630941 and Smog Check Repair Technician No. EI 630941 issued to Heli Villasenor (Respondent) are revoked. However, the revocations are stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 268112 and Smog Check, Test Only, Station License issued to Smogtech McHenry are suspended for thirty (30) days. Automotive Repair Dealer Registration No. ARD 265170 and Smog Check, Test Only, Station License No. TC 265170 issued to Charter Way Smog are suspended for thirty (30) days. Automotive Repair Dealer Registration No. ARD 269777 and Smog Check, Repair, Station License No. RC 269777 issued to Smogtech Airport are suspended for thirty (30) days. Automotive Repair Dealer Registration No. ARD 267654 and Smog Check, Test Only, Station License No. TC 267654 issued to Smog Tech 2 are suspended for thirty (30) days. Automotive Repair Dealer Registration No. ARD 275318 and Smog Check, Test Only, Station License No. TC 275318 issued to Smogtech Tracy are suspended for thirty (30) days. Smog Check Inspector License No. EO 630941 and Smog Check Repair Technician No. EI 630941 issued to Heli Villasenor are suspended for thirty (30) days.

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 the 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 Respondent has 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 registrations or suspend or revoke the licenses.

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 shall attend and successfully complete the 72 hour BAR Specified Diagnostic and Repair Training. 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 the 180-day period, Respondents' registrations and licenses shall be immediately suspended until such proof is received.

11. **Restrictions.** During the period of probation, Respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has 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.** Payment to the Bureau of the amount of $33,722.19 in cost recovery is to be paid in thirty-six (36) consecutive, equal monthly installments with the final payment due twelve (12) months before the termination of probation. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's registrations and licenses 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Vittoria M. Bossi. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registrations; Smog Check, Test Only, Station Licenses; Smog Check, Repair, Station License; Smog Check Inspector License and Smog Check Repair Technician License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 4/3/17

HELI VILLASENOR, OWNER OF SMOGTECH MCHENRY, CHARTER WAY SMOG, SMOGTECH AIRPORT, SMOG TECH 2, AND SMOGTECH TRACY
Respondent

Exhibit A

Accusation No. 79/15-88

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
State Bar No. 197268
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5333
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Accusation Against:

SMOGTECH McHENRY
HELI VILLASENOR, OWNER
1313 McHenry Avenue
Modesto, CA 95350

Automotive Repair Dealer Reg. No. ARD 268112
Smog Check, Test Only, Station License No. TC 268112,

CHARTER WAY SMOG
HELI VILLASENOR, OWNER
1449 Turnpike, Suite A
Stockton, CA 95206

Automotive Repair Dealer Reg. No. ARD 265170
Smog Check, Test Only, Station License No. TC 265170,

SMOGTECH AIRPORT
HELI VILLASENOR, OWNER
430 N. Airport Way, #A
Stockton, CA 95205

Automotive Repair Dealer Reg. No. ARD 269777
Smog Check, Repair, Station License No. RC 269777,

SMOG TECH 2
HELI VILLASENOR, OWNER
7277 N. Pacific Avenue, #2
Stockton, CA 95207

Automotive Repair Dealer Reg. No. ARD 267654
Smog Check, Test Only, Station License No. TC 267654,

Case No. 79/15-88

ACCUSATION

(Smog Check)

SMOGTECH TRACY
HELI VILLASENOR, OWNER
24588 S. MacArthur Drive
Tracy, CA 95376

Automotive Repair Dealer Reg. No. ARD 275318
Smog Check, Test Only, Station License No. TC 275318,

and

HELI VILLASENOR
1449 Turnpike Road
Stockton, CA 95206

Smog Check Inspector License No. EO 630941
Smog Check Repair Technician License No. EI 630941
(formerly Advanced Emission Specialist Technician License No. EA 630941)

Respondents.

Complainant alleges:

PARTIES

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

Smogtech McHenry

2. On or about February 27, 2012, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 268112 ("Registration No. 268112") to Heli Villasenor ("Respondent"), owner of Smogtech McHenry. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

3. On or about June 12, 2012, the Director issued Smog Check, Test Only, Station License Number TC 268112 ("Smog Check Station License No. 268112") to Respondent. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

Charter Way Smog

4. On or about May 19, 2011, the Director issued Automotive Repair Dealer Registration Number ARD 265170 ("Registration No. 265170") to Respondent, owner of Charter

Way Smog. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

5. On or about June 7, 2011, the Director issued Smog Check, Test Only, Station License Number TC 265170 ("Smog Check Station License No. 265170") to Respondent. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

Smogtech Airport

6. On or about July 30, 2012, the Director issued Automotive Repair Dealer Registration Number ARD 269777 ("Registration No. 269777") to Respondent, owner of Smogtech Airport. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless renewed.

7. On or about December 19, 2013, the Director issued Smog Check, Repair, Station License Number RC 269777 ("Smog Check Station License No. 269777") to Respondent. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless renewed.

Smog Tech 2

8. On or about January 6, 2012, the Director issued Automotive Repair Dealer Registration Number ARD 267654 ("Registration No. 267654") to Respondent, owner of Smog Tech 2. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

9. On or about January 23, 2012, the Director issued Smog Check, Test Only, Station License Number TC 267654 ("smog check station license") to Respondent. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

Smogtech Tracy

10. On or about January 21, 2014, the Director issued Automotive Repair Dealer Registration Number ARD 275318 ("registration") to Respondent, owner of Smogtech Tracy.

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Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

11. On or about February 3, 2014, the Director issued Smog Check, Test Only, Station License Number TC 275318 ("smog check station license") to Respondent. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

Heli Villasenor

12. On or about April 10, 2009, the Director issued Advanced Emission Specialist Technician License Number EA 630941 to Respondent. Respondent's advanced emission specialist technician license was due to expire on October 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO 630941 and Smog Check Repair Technician License Number EI 630941, effective July 17, 2012.[1] Respondent's Smog Check Inspector License will expire on October 31, 2016, unless renewed. Respondent's Smog Check Repair Technician License expired on October 31, 2014, and has not been renewed.

JURISDICTION

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

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

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

[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.

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

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

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

STATUTORY AND REGULATORY PROVISIONS

19. Bus. & Prof. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) 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.
>
> . . . .
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (4) Any other conduct that constitutes fraud.
>
> . . . .
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
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> . . . .

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

20. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost . . .

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

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

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

23. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

. . . .

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

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

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24. California Code of Regulations, title 16, section ("Regulation") 3340.16, subdivision (a), states that "[a] smog check test-only station shall meet the requirements for equipment and materials as specified in the Smog Check Manual referenced in section 3340.45."

25. Regulation 3340.45 states:

> (a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:
>
> (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.
>
> (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual shall become effective on or after January 1, 2013.

26. Regulation 3371 states, in pertinent part:

> No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading . . .

27. Regulation 3372 states:

> In determining whether any advertisement, statement, or representation is false or misleading, it shall be considered in its entirety as it would be read or heard by persons to whom it is designed to appeal. An advertisement, statement, or representation shall be considered to be false or misleading if it tends to deceive the public or impose upon credulous or ignorant persons.

28. Regulation 3372.1 states, in pertinent part:

> An automotive repair dealer shall not advertise automotive service at a price which is misleading. Price advertising is misleading in circumstances which include but are not limited to the following:
>
> . . . .
>
> (b) The advertisement for service has the capacity to mislead the public as to the extent that anticipated parts, labor or other services are included in the advertised price; or
>
> . . . .
>
> (d) The automotive repair dealer knows or should know that the advertised service cannot usually be performed in a good and workmanlike manner without additional parts, services or labor; provided, however, that an advertisement which clearly and conspicuously discloses that additional labor, parts or services are often needed will, to that extent, not be regarded as misleading. Any such disclosure statement shall indicate that many instances of performance of the service involve extra cost and, if the automotive dealer reasonably expects that the extra cost will be

more than 25% of the advertised costs, that the extra cost may be substantial. The type size of the disclosure statement shall be at least 1/2 the type size used in the advertised price and the statement shall either be shown near the price or shall be prominently footnoted through use of an asterisk or similar reference.

29. Regulation 3373 states:

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

COST RECOVERY

30. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

BACKGROUND

31. On or about March 4, 2011, the Bureau sent ET (electronic transmission) Blast # 30743, entitled "Proper Advertising of Smog Check Inspections", to all licensed smog check stations.[2] The ET blast stated, in part, as follows:

> Electronic Transmission must be included in the cost of a Smog Check Inspection.
>
> For many consumers, price is often a key determinant when selecting a station to perform a Smog Check inspection on their vehicle. Many stations recognize this fact and use advertising to promote their business.
>
> When advertising this service, shops must include all the fees the customer must pay in order to complete an inspection. This includes all electronic transmission charges. Unlike the Smog Check certificate of compliance that is only issued upon a passing inspection, electronic transmission is not an optional component of the Smog Check inspection and therefore must be included in the overall advertised price for an advertisement to be in compliance with Title 16, California Code of Regulations section 3372.1. Simply put, this means that a Smog Check inspection cannot be done without the electronic communication to the Vehicle Information Database, and therefore is not an option on which consumers can make a price decision.

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[2] ET blasts are transmitted or sent through the smog check station's EIS (emissions inspection system).

> Any additional fees for services that may be extra depending on the type of vehicle being inspected must also be disclosed in the advertisement. The consumer should be able to determine if any additional costs may apply to their vehicle inspection . . .

32. On or about October 17, 2013, Bureau representatives met with Respondent at his facility, Smogtech McHenry, after receiving a complaint from a consumer, alleging that Respondent had charged him $30 more than his advertised price of $24.75 for a smog inspection. The consumer was informed following the inspection that his vehicle needed an additional test, a low pressure fuel evaporation test ("LPFET")[3], which cost extra as indicated in fine print on Respondent's internet advertisement/coupon. The representatives reviewed Respondent's ad with him. Respondent was offering smog check inspections at Smogtech McHenry at a cost of $24.75 for "most cars". The ad stated in fine print near the advertised price that vehicles for model years 1976 to 1995 would be "extra" if an LPFET was needed. Respondent told the representatives that he charged an additional $30 to perform the LPFET test and that this price was posted on a sign in his office. Respondent's sign read as follows:

> ATTENTION SMOG CHECK CUSTOMERS. As of December 1, 2007, the State of California is now requiring a low pressure test (LPFET) of your vehicle's fuel evaporative control system (EVAP). Testing required on most model year vehicles 1976 thru 1995 in addition to the state required Smog Check. The ADDITIONAL FEE for this test is $30.

The representatives advised Respondent that he needed to include the specific cost for the LPFET test on his advertising.

CONSUMER COMPLAINT (D.S.): 1992 PONTIAC BONNEVILLE

33. On or about November 19, 2013, D.S. took her 1992 Pontiac Bonneville to Respondent's facility, Smogtech McHenry, for a smog inspection. D.S. presented Respondent's employee with an advertisement/coupon for Smogtech McHenry. Respondent was offering a smog check "starting" at $21.75 plus $8.25 for a certificate. The ad stated in fine print near the advertised price that the facility would "do LPFET test if needed". The employee took the coupon and asked D.S. to wait in the customer waiting area. The employee pulled the vehicle

[3] The LPFET functional test is required on most 1976 to 1995 vehicles. The smog check technician is required to follow the procedures set forth in the Bureau's Smog Check Inspection Procedures Manual to determine if the vehicle requires an LPFET test.

into the service stall, then returned later and told D.S. that the vehicle needed an LPFET test for an additional $30. D.S. questioned the employee about the extra cost. The employee showed D.S. the sign in the office regarding the additional fee for the LPFET test. D.S. authorized the facility to proceed with the inspection since the vehicle was already in the service stall. After the inspection was completed, D.S. paid the facility $60 and received copies of a vehicle inspection report ("VIR") and an invoice.

FIRST CAUSE FOR DISCIPLINE

(False Advertising)

34. Respondent's Registration No. 268112 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Regulation 3371:** Respondent published, uttered, or made, or caused to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading, as follows: Respondent represented on his advertisement/coupon that the smog inspection would cost $21.75 plus $8.25 for the certificate and that his facility would perform the LPFET test if needed, but failed to state that the LPFET test would cost an additional $30.

b. **Regulation 3372.1, subdivision (b):** Respondent advertised the smog inspection at a price which was misleading, as set forth in subparagraph (a) above.

c. **Regulation 3372.1, subdivision (d):** Respondent failed to ensure that the type size of the disclosure statement, described in subparagraph (a) above, was one half the print size used in the advertised price of the smog inspection.

CONSUMER COMPLAINT (L.Y.): 2001 TOYOTA RAV 4

35. On or about October 28, 2013, L.Y. took her 2001 Toyota Rav 4 to Respondent's facility, Charter Way Smog, for a smog inspection after seeing Respondent's advertisement/coupon in the *Penny Saver*. Respondent was offering smog check inspections at Charter Way Smog for $31.75 plus $8.25 for a certificate, for a total of "$40 out the door". L.Y. met with Respondent's smog technician, Angel Magno ("Magno"), and showed him the coupon

on her cellphone. Magno would not honor the coupon, but did offer L.Y. a $40 discount on the regular price of $84.75. L.Y. signed and received a copy of a written estimate in the amount of $53 ($44.75 for the inspection and $8.25 for the certificate). After the inspection was completed, Magno informed L.Y. that the vehicle failed due to incomplete monitors. Magno gave L.Y. an invoice in the amount of $84.75 and a VIR. The VIR indicated that the vehicle had failed the OBD System Check. L.Y. paid Magno $84.75 and left the facility.

36. On or about October 31, 2013, L.T. took the vehicle to Toyota Town located in Stockton to determine why it had failed the inspection. Toyota Town had the vehicle retested at Hammer Lane Smog Center. The vehicle passed the smog inspection without any repairs performed on the vehicle.

37. On or about November 4, 2013, L.T. filed a complaint against Charter Way Smog with the Bureau.

38. On or about January 8, 2014, a Bureau representative made a field visit to Charter Way Smog and obtained copies of their repair records on the vehicle, including a copy of the invoice. The facility's copy of the invoice showed that the original estimate price for the smog inspection was $53 and that the estimate had been revised to $84.75. The representative was also given a refund check in the amount of $84.75 made payable to L.T.

SECOND CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

39. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent represented on the invoice given to the Bureau that the original estimate price for the smog inspection on L.T.'s 2001 Toyota Rav 4 had been revised to $84.75. In fact, L.T. had not authorized the facility to exceed the $53 estimate price for the inspection on the vehicle.

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THIRD CAUSE FOR DISCIPLINE

(False Advertising)

40. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading, as follows: Respondent represented on the *Penny Saver* advertisement/coupon that the smog inspection would cost $31.75 plus $8.25 for a certificate, for a total of "$40 out the door". In fact, Respondent's smog technician, Magno, charged L.T. a total of $84.75 for the smog inspection on her 2001 Toyota Rav 4.

FOURTH CAUSE FOR DISCIPLINE

(Violations of the Code)

41. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code, in a material respect, as follows: Respondent's smog technician, Magno, exceeded the original estimate price of $53 for the smog inspection on L.T.'s 2001 Toyota Rav 4 without L.T.'s oral or written consent.

CONSUMER COMPLAINT (G.A.): 1984 NISSAN PICKUP

42. On or about January 4, 2014, G.A. took his 1984 Nissan pickup to Respondent's facility, Charter Way Smog, for a smog inspection after seeing Respondent's advertisement on a van parked in front of the business. Respondent was offering smog inspections for $29.99 plus "cert" plus "LPFET". Respondent's smog technician, David Bower ("Bower"), informed G.A. that the vehicle required an LPFET test, which would be an additional $30. Bower told G.A. that it would cost a total of $70 for the inspection, including the certificate if the vehicle passed. Bower did not give G.A. a written estimate. After the inspection was completed, Bower told G.A. that the test now cost $114.75 because the vehicle failed due to the ignition timing and the fuel cap, which was defective. Bower provided G.A. with copies of a VIR, an invoice in the

amount of $114.75, and a receipt showing that Bower charged G.A.'s credit card a total of $116.75. Bower told G.A. that he only needed to have the timing failure repaired because the facility did not have the correct fuel cap adapter to test the vehicle's fuel cap.

43. Later that same day (January 4, 2014), G.A. took the vehicle to Golden State Auto Repair to have it retested and repaired if necessary. Smog technician Andy Chung informed G.A. that the ignition timing on the vehicle was not out of adjustment and the fuel cap was not defective. The vehicle passed the smog inspection.

44. On or about January 11, 2014, G.A. filed a complaint with the Bureau.

45. On or about February 21, 2014, a representative of the Bureau conducted a station inspection at Charter Way Smog. The representative found that Respondent did not have the required fuel cap adapter guide and was missing the gray and purple fuel cap adapters. The gray fuel cap adapter was the correct adapter for G.A.'s vehicle and was needed for the fuel cap functional test. Respondent provided the representative with a refund check in the amount of $36.75 made payable to G.A.

FIFTH CAUSE FOR DISCIPLINE

(Fraud)

46. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows: Respondent's smog technician, Bower, obtained G.A.'s authorization for performing a smog inspection on his 1984 Nissan pickup at a cost of $70, including the certificate if the vehicle passed the inspection, then charged Bower a total of $116.75 for the inspection, claiming that the additional fees were necessary because the vehicle failed the ignition timing test and fuel cap functional test. In fact, Bower had not authorized any additional fees for the ignition timing test or the fuel cap functional test. Further, the vehicle had passed a smog inspection performed at Golden State Auto Repair subsequent to the test conducted at Charter Way Smog, as set forth in paragraph 43 above.

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SIXTH CAUSE FOR DISCIPLINE

(Violations of the Code)

47. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code, in a material respect, as follows: Respondent's smog technician, Bower, exceeded the original estimate price of $70 for the smog inspection on G.A.'s 1984 Nissan pickup without G.A.'s oral or written consent.

SEVENTH CAUSE FOR DISCIPLINE

(False Advertising)

48. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Regulation 3371:** Respondent published, uttered, or made, or caused to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading, as follows: Respondent represented on the advertisement located on the van that he was offering smog inspections for $29.99 plus "cert", plus "LPFET", but failed to state the cost of the certificate ($8.25) and the LPFET test ($30).

b. **Regulation 3372.1, subdivision (b):** Respondent advertised the smog inspection at a price which was misleading, as set forth in subparagraph (a) above.

EIGHTH CAUSE FOR DISCIPLINE

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

49. Respondent's Smog Check Station License No. 265170 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **3340.16, subdivision (a):** Respondent failed to maintain the required equipment and materials as specified in the Smog Check Manual, specifically, the required Waekon Fuel Cap

Adapter Guide and the gray and purple adapters. The gray adapter was required to test G.A.'s 1984 Nissan pickup, as set forth in paragraph 45 above.

b. **Regulation 3340.45:** Respondent failed to comply with the requirements and procedures specified in the Smog Check Manual, specifically section 1.8.0 (Equipment and Reference Materials), as follows: Respondent failed to reject G.A.'s 1984 Nissan pickup before starting the inspection in that Respondent lacked the equipment, tools, and/or reference materials necessary to perform the required fuel cap functional test on the vehicle.

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

50. Respondent's Smog Check Station License No. 265170 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured, as set forth in paragraph 46 above.

UNDERCOVER OPERATION #1: 2007 CHEVROLET

51. On or about February 27, 2014, a representative of the Bureau, acting in an undercover capacity ("operator"), took the Bureau's 2007 Chevrolet to Respondent's facility, Smog Tech 2. The operator met with Respondent's smog check technician, Nakrong Sithi ("Sithi"), and requested a smog inspection. Sithi began preparing a work order and pointed to the price sign on the wall. Sithi told the operator that the inspection would cost $74.75 plus an additional $10 because the 2007 Chevrolet was a sport utility vehicle ("SUV"). The operator presented Sithi with an advertisement/coupon from the internet website *smogtechcalifornia.com*. Respondent was offering smog check inspections for $21.75 "most cars". The ad indicated that the facility would smog "all makes and models", cars, trucks, SUV's, motorhomes, and heavy duty vehicles. Sithi told the operator that the coupon was only good for their Tracy store. Sithi explained that their Tracy store had just opened last month and that they were using the coupon to help them get the business going. Sithi told the operator that he would only charge him $29.75 plus an additional $10 because the vehicle was an SUV and that the total cost would be $48, including the certificate if the vehicle passed the inspection. The operator agreed to the price.

Sithi had the operator sign the work order, but did not give him a copy. After the inspection was completed, Sithi told the operator that the vehicle passed. The operator paid the facility $48 and was given copies of an invoice and a VIR.

TENTH CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

52. Respondent's Registration No. 267654 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent's smog technician, Sithi, failed to provide the operator with a copy of the work order as soon as he signed the document.

ELEVENTH CAUSE FOR DISCIPLINE

(False Advertising)

53. Respondent's Registration No. 267654 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading , as follows: Respondent represented on the internet advertisement/coupon that the smog inspection would cost $21.75 "most cars", and that the facility would smog "all makes and models", cars, trucks, SUV's, motorhomes, and heavy duty vehicles. In fact, Respondent's smog technician, Sithi, charged the operator $39.75 for the smog inspection on the Bureau's 2007 Chevrolet.

UNDERCOVER OPERATION #2: 1990 CHEVROLET

54. On or about February 27, 2014, a representative of the Bureau, acting in an undercover capacity ("operator"), took the Bureau's 1990 Chevrolet to Respondent's facility, Charter Way Smog. The operator had an advertisement/coupon offering smog inspections at Charter Way Smog for $39.75 "out the door". The ad stated in fine print near the advertised price "'95 and older vehicles LPFET extra".

55. The operator requested a smog inspection and provided Respondent with a DMV billing notice for the vehicle. Respondent asked the operator for the coupon. The operator gave Respondent the coupon and the keys to the vehicle. Respondent drove the vehicle into the

inspection bay. The operator went into the office and observed Respondent scan the DMV billing notice and make entries into the EIS. Respondent came into the office and asked the operator to fill out the upper portion of a written estimate. The operator looked at the estimate and noticed that it had a $30.75 charge for the inspection, a $15 charge for an LPFET test, and an $8.25 charge for a smog certificate. The operator pointed out to Respondent that the advertised price for the smog check was $39. Respondent told the operator that there were two tests that needed to be performed on the vehicle, the smog test and the LPFET test, and that the extra charge was for the LPFET test. The operator signed and received a copy of the estimate. Later, the operator observed Respondent perform the smog inspection. Respondent connected the LPFET test equipment to the vehicle, then ran the vehicle on the dynamometer while performing the LPFET test. After the smog inspection was completed, Respondent told the operator that the vehicle passed. The operator paid Respondent $54 and received copies of an invoice and a VIR.

TWELFTH CAUSE FOR DISCIPLINE

(False Advertising)

56. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Regulation 3371:** Respondent published, uttered, or made, or caused to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading , as follows: Respondent represented on his advertisement/coupon that the smog inspection would cost $39.75 "out the door" and stated "'95 and older vehicles LPFET extra", but failed to specify that the LPFET test would cost an additional $15.

b. **Regulation 3372.1, subdivision (b):** Respondent advertised the smog inspection at a price which was misleading, as set forth in subparagraph (a) above.

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c. Regulation 3372.1, subdivision (d): Respondent failed to ensure that the type size of the disclosure statement, described in subparagraph (a) above, was one half the print size used in the advertised price of the smog inspection.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

57. Respondent's Smog Check Station License No. 265170 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the LPFET test on the Bureau's 1990 Chevrolet in accordance with procedures prescribed by the department in that he ran the emission test with the LPFET equipment connected to the vehicle.

FOURTEENTH CAUSE FOR DISCIPLINE

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

58. Respondent's Smog Check Station License No. 265170 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with Regulation 3340.42, as follows: Respondent failed to conduct the required smog tests, specifically, the LPFET test, on the Bureau's 1990 Chevrolet in accordance with the Bureau's specifications.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

59. Respondent's technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the LPFET test on the Bureau's 1990 Chevrolet in accordance with procedures prescribed by the department, as set forth in paragraph 57 above.

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SIXTEENTH CAUSE FOR DISCIPLINE

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

60. Respondent's technician licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1990 Chevrolet in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1990 Chevrolet in accordance with the Bureau's specifications.

UNDERCOVER OPERATION #3: 1992 TOYOTA

61. On or about February 27, 2014, a representative of the Bureau, acting in an undercover capacity ("operator"), took the Bureau's 1992 Toyota to Respondent's facility, Smogtech Airport. The ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer's specifications. The operator met with Respondent's employee, "Lorenzo", and requested a smog inspection. Lorenzo asked the operator for the DMV renewal notice for the vehicle. The operator gave Lorenzo the renewal notice as well as an advertisement/coupon offering smog inspections at Smogtech Airport for $31.75 plus $8.25 for the certificate. The ad stated in fine print that the facility would "do LPFET test if needed". The operator asked Lorenzo if he would honor the coupon. Lorenzo replied "Yes". Lorenzo did not have the operator sign a repair order or give him a written estimate. After the inspection was completed, Lorenzo had the operator sign a repair order, then gave him a copy. Lorenzo told the operator that the vehicle failed the inspection because the ignition timing was out of specifications. Lorenzo stated that the amount due for the inspection was $61.75. The operator asked Lorenzo if he had been given the coupon price for the inspection. Lorenzo said "yes", then told the operator that he had charged him $31.75 for the smog inspection and an additional $30 for the LPFET test, which was required for the vehicle. The operator paid Lorenzo $61.75 and received copies of an invoice and a VIR.

The operator also received a copy of an estimate (the document had been placed on the dashboard of the vehicle).

SEVENTEENTH CAUSE FOR DISCIPLINE

(False Advertising)

62. Respondent's Registration No. 269777 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Regulation 3371**: Respondent published, uttered, or made, or caused to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading , as follows: Respondent represented on his advertisement/coupon that the smog inspection would cost $31.75 plus $8.25 for the certificate and that his facility would perform the LPFET test if needed, but failed to state that the LPFET test would cost an additional $30.

b. **Regulation 3372.1, subdivision (b)**: Respondent advertised the smog inspection at a price which was misleading, as set forth in subparagraph (a) above.

c. **Regulation 3372.1, subdivision (d)**: Respondent failed to ensure that the type size of the disclosure statement, described in subparagraph (a) above, was one half the print size used in the advertised price of the smog inspection.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

63. Respondent's Registration No. 269777 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code, in a material respect, as follows: Respondent's employee, Lorenzo, failed to provide the operator with a written estimate prior to performing the smog inspection on the Bureau's 1992 Toyota.

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UNDERCOVER OPERATION #4: 1992 TOYOTA

64. On or about February 27, 2014, a representative of the Bureau, acting in an undercover capacity ("operator"), took the Bureau's 1992 Toyota (the vehicle involved in the third undercover operation), to Respondent's facility, Smogtech McHenry. The ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer's specifications. The operator met with a male employee and requested a smog inspection. The employee asked the operator if he had a coupon. The operator handed the employee an advertisement/coupon from the *Modesto Book of Savings*. Respondent was offering smog inspections at Smogtech McHenry for $21.75 plus $8.25 for the certificate. The ad stated in fine print that the facility would "do LPFET test if needed". The employee told the operator that the inspection would cost $21.75 plus the certificate, then stated that the vehicle required an additional test for the fuel evaporation system which would cost an additional $30. The operator authorized the price for the inspection.

65. Later, the operator observed smog technician Trung Nguyen ("Nguyen") drive the vehicle into the inspection bay and begin the inspection. While Nguyen was accelerating the vehicle on the dynamometer, an employee brought the operator a repair order. The employee had the operator sign the repair order, but did not give him a copy. The operator continued to observe Nguyen from the waiting room. Nguyen had just completed the Acceleration Simulation Mode portion of the smog inspection. Nguyen opened the vehicle hood and removed the tachometer lead. Nguyen looked under the hood for less than a minute, then closed the hood. Nguyen went to the EIS and entered information into the system The operator never saw Nguyen use a timing light to check the ignition timing on the vehicle (the videotape of the undercover operation confirmed that Nguyen had not used a timing light during the inspection). Later, Nguyen told the operator that the vehicle passed the inspection. The operator paid Nguyen $60 and received copies of an invoice and a VIR. The operator returned to the vehicle and found a copy of the signed repair order on the passenger seat. That same day, electronic smog Certificate of Compliance No. [redacted] was issued for the vehicle.

66. On March 11, 2014, the Bureau inspected the vehicle and found that the ignition timing still was not adjusted to manufacturer's specifications.

NINETEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

67. Respondent's Registration No. 268112 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent's technician, Nguyen, certified that the Bureau's 1992 Toyota had passed the smog inspection and was in compliance with applicable laws and regulations. In fact, the ignition timing was not adjusted to manufacturer's specifications and as such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

TWENTIETH CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

68. Respondent's Registration No. 268112 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent's employee failed to provide the operator with a copy of the repair order as soon as the operator signed the document.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

69. Respondent's Registration No. 268112 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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TWENTY-SECOND CAUSE FOR DISCIPLINE

(False Advertising)

70. Respondent's Registration No. 268112 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Regulation 3371:** Respondent published, uttered, or made, or caused to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading, as follows: Respondent represented on his advertisement/coupon that the smog inspection would cost $21.75 plus $8.25 for the certificate and that his facility would perform the LPFET test if needed, but failed to state that the LPFET test would cost an additional $30.

b. **Regulation 3372.1, subdivision (b):** Respondent advertised the smog inspection at a price which was misleading, as set forth in subparagraph (a) above.

c. **Regulation 3372.1, subdivision (d):** Respondent failed to ensure that the type size of the disclosure statement, described in subparagraph (a) above, was one half the print size used in the advertised price of the smog inspection.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

71. Respondent's Smog Check Station License No. 268112 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012, subdivision (f):** Respondent failed to ensure that the functional tests of the emission control systems and devices on the Bureau's 1992 Toyota were performed in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

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TWENTY-FOURTH CAUSE FOR DISCIPLINE

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

72. Respondent's Smog Check Station License No. 268112 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following sections of California Code of Regulations, title 16:

a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota even though the vehicle had not been inspected in accordance with section 3340.42.

b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were conducted on the Bureau's 1992 Toyota in accordance with the Bureau's specifications.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

73. Respondent's Smog Check Station License No. 268112 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1992 Toyota without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

CONSUMER COMPLAINT (J.F.): 1994 FORD RANGER

74. On or about February 27, 2014, J.F. asked his brother-in-law, J.L., to take his (J.F.'s) 1994 Ford Ranger to Respondent's facility, Smogtech Airport, for a smog inspection after seeing Respondent's advertisement/coupon on the internet. Respondent was offering smog inspections at Smogtech Airport for $31.75 plus $8.25 for the certificate. The ad stated in fine print that the facility would "do LPFET test if needed". J.L. called Smogtech Airport and asked the individual who answered the phone if the truck qualified for the advertised price. The individual told J.L. that the vehicle did qualify and asked him to bring the coupon with him to the facility. When J.L.

arrived at Smogtech Airport, he was informed that the vehicle did not qualify for the coupon price because it needed a special EVAP test (LPFET test), which cost an additional $30. J.L. was given a written estimate in the amount of $83 for the smog inspection. After the inspection was completed, J.L. was informed that the vehicle failed. J.L. paid the facility $76.75 and received copies of an invoice and a VIR. The VIR indicated that the vehicle failed the inspection due to the ignition timing, the OBD System Checks, Other Emission Related Components, and liquid fuel leaks, and that the inspection had been performed by smog technician Jose Cruz ("Cruz").

75. On or about March 13, 2014, the Bureau received a complaint from J.F., alleging, among other things, that Respondent failed to specify the cost for the EVAP test on his advertisement.

76. On or about March 21, 2014, a representative of the Bureau made a field visit to the facility and met with the service manager, Lorenzo Lomeli, and Cruz. The representative reviewed the VIR and invoice with Cruz and asked him to explain why the vehicle failed the smog inspection for the ignition timing, liquid fuel leaks, OBD system checks, and Other Emission Related Components. Cruz could not remember where he found the liquid fuel leak, and told the representative that the failure of the Other Emission Related Components was probably tail pipe smoke.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(False Advertising)

77. Respondent's Registration No. 269777 is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Regulation 3371:** Respondent published, uttered, or made, or caused to be published, uttered, or made false or misleading statements or advertisements which are known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading, as follows: Respondent represented on his advertisement/coupon that the smog inspection would cost $31.75 plus $8.25 for the certificate and that his facility would perform the LPFET test if needed, but failed to state that the LPFET test would cost an additional $30.

b. **Regulation 3372.1, subdivision (b):** Respondent advertised the smog inspection at a price which was misleading, as set forth in subparagraph (a) above.

c. **Regulation 3372.1, subdivision (d):** Respondent failed to ensure that the type size of the disclosure statement, described in subparagraph (a) above, was one half the print size used in the advertised price of the smog inspection.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

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

78. Respondent's Smog Check Station License No. 269777 is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with Regulation 3340.45 in the following respects:

a. Respondent failed to comply with the requirements and procedures specified in section 1.3.3. (Liquid Fuel Leak Inspection [Gasoline Only]) of the Smog Check Manual, as follows: Respondent's smog technician, Cruz, failed J.F.'s 1994 Ford Ranger for liquid fuel leaks, as set forth in paragraphs 74 and 76 above, but failed to indicate on the VIR the location of the liquid fuel leak.

b. Respondent failed to comply with the requirements and procedures specified in section 1.3.4 (Visible Smoke Test) of the Smog Check Manual, as follows: Respondent's smog technician, Cruz, failed J.F.'s 1994 Ford Ranger for Other Emission Related Components, which Cruz stated was tail pipe smoke, as set forth in paragraph 76 above, but failed to document the failure of the visible smoke test or the tail pipe smoke on the VIR (in the Other Emission Related Components section) and the invoice given to J.L. Further, Cruz failed to provide J.L. with the visible smoke test failure information sheet.

MATTERS IN AGGRAVATION

79. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges as follows:

a. On or about November 22, 2013, the Bureau issued Citation No. C2014-0336 against Respondent for violating Health & Saf. Code section 44012, subdivision (f). On or about October

29, 2013, Respondent issued a certificate of compliance to a Bureau undercover vehicle with an unapproved aftermarket performance chip device. The Bureau assessed a civil penalty of $1,000 against Respondent for the violation. Respondent requested an informal appeal conference on January 21, 2014. The citation was affirmed and reissued on February 26, 2014. Respondent paid the citation on April 14, 2014.

b. On or about January 17, 2014, the Bureau issued Citation No. [redacted] against Respondent for violating Health & Saf. Code section 44012, subdivision (f). On or about November 25, 2013, Respondent issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed a civil penalty of $1,000 against Respondent for the violation. Respondent appealed the citation. The citation is currently pending.

OTHER MATTERS

80. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Heli Villasenor, owner of Smogtech McHenry, Charter Way Smog, Smogtech Airport, Smog Tech 2, and Smogtech Tracy, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

81. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 268112, issued to Heli Villasenor, owner of Smogtech McHenry, is revoked or suspended, any additional license issued under this chapter in the name of said licensee, including, but not limited to, Smog Check, Test Only, Station License Number TC 267654, issued to Heli Villasenor, owner of Smog Tech 2, and Smog Check, Test Only, Station License Number TC 275318, issued to Heli Villasenor, owner of Smogtech Tracy, may be likewise revoked or suspended by the Director.

82. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 265170, issued to Heli Villasenor, owner of Charter Way Smog, is revoked or suspended, any additional license issued under this chapter in the name of said licensee,

including, but not limited to, Smog Check, Test Only, Station License Number TC 267654, issued to Heli Villasenor, owner of Smog Tech 2, and Smog Check, Test Only, Station License Number TC 275318, issued to Heli Villasenor, owner of Smogtech Tracy, may be likewise revoked or suspended by the Director.

83. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Repair, Station License Number RC 269777, issued to Heli Villasenor, owner of Smogtech Airport, is revoked or suspended, any additional license issued under this chapter in the name of said licensee, including, but not limited to, Smog Check, Test Only, Station License Number TC 267654, issued to Heli Villasenor, owner of Smog Tech 2, and Smog Check, Test Only, Station License Number TC 275318, issued to Heli Villasenor, owner of Smogtech Tracy, may be likewise revoked or suspended by the Director.

84. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License Number EO 630941 and Smog Check Repair Technician License No. EI 630941, issued to Heli Villasenor, are revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 268112, issued to Heli Villasenor, owner of Smogtech McHenry;

2. Revoking or suspending Automotive Repair Dealer Registration Number ARD 265170, issued to Heli Villasenor, owner of Charter Way Smog;

3. Revoking or suspending Automotive Repair Dealer Registration Number ARD 269777, issued to Heli Villasenor, owner of Smogtech Airport;

4. Revoking or suspending Automotive Repair Dealer Registration Number ARD 267654, issued to Heli Villasenor, owner of Smog Tech 2;

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5. Revoking or suspending any other automotive repair dealer registration issued to Heli Villasenor, including, but not limited to Automotive Repair Dealer Registration Number ARD 275318, issued to Heli Villasenor, owner of Smogtech Tracy;

6. Revoking or suspending Smog Check, Test Only, Station License Number TC 268112, issued to Heli Villasenor, owner of Smogtech McHenry;

7. Revoking or suspending Smog Check, Test Only, Station License Number TC 265170, issued to Heli Villasenor, owner of Charter Way Smog;

8. Revoking or suspending Smog Check, Repair, Station License Number RC 269777, issued to Heli Villasenor, owner of Smogtech Airport;

9. Revoking or suspending Smog Check Inspector License Number EO 630941 and Smog Check Repair Technician License No. EI 630941, issued to Heli Villasenor;

10. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Heli Villasenor, including, but not limited to, Smog Check, Test Only, Station License Number TC 267654, issued to Heli Villasenor, owner of Smog Tech 2, and Smog Check, Test Only, Station License Number TC 275318, issued to Heli Villasenor, owner of Smogtech Tracy;

11. Ordering Heli Villasenor, individually, and as owner of Smogtech McHenry, Charter Way Smog, Smogtech Airport, Smog Tech 2, and Smogtech Tracy, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: December 23, 2014

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

SA2014116780

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
State Bar No. 197268
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5333
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **CHARTER WAY SMOG** **HELI VILLASENOR** **Smog Check, Test and Repair, Station License Applicant** Respondent.	Case No. 79/15-111 OAH No. 2015070062 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Karen R. Denvir, Deputy Attorney General.

2. Respondent Heli Villasenor ("Respondent") is represented in this proceeding by attorney Vittoria M. Bossi, whose address is: Law Offices of Vittoria Bossi, 445 West Weber Avenue, Suite 217, Stockton, CA 95203.

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3. On or about October 16, 2014, Respondent, owner of Charter Way Smog, Automotive Repair Dealer Registration No. ARD 265170, filed an application dated October 14, 2014, with the Bureau to obtain a Smog Check, Test and Repair, Station License. The Bureau denied the application on November 18, 2014.

JURISDICTION

4. Statement of Issues No. 79/15-111 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on April 30, 2015.

5. A copy of Statement of Issues No. 79/15-111 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 79/15-111. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 79/15-111.

10. Respondent agrees that his Smog Check, Test and Repair, Station License is subject to denial and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Director of Consumer Affairs or the Director's designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the application of Respondent Heli Villasenor, owner of Charter Way Smog, for licensure is hereby granted. Upon successful completion of all requirements for a Smog Check, Test and Repair, Station License, a license shall be issued to Respondent. The Smog Check, Test and Repair, Station License shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of five (5) years, on the following terms and conditions.

1. **Actual Suspension.** The Smog Check, Test and Repair, Station License issued to Respondent is suspended for thirty (30) days.

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 the 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 Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard suspend or revoke the license.

9. **False and Misleading Advertising.** If the Statement of Issues 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. **Restrictions.** During the period of probation, Respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Vittoria M. Bossi. I understand the stipulation and the effect it will have on my Smog Check, Test and Repair, Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 4/3/17

HELI VILLASENOR
Respondent

I have read and fully discussed with Respondent Heli Villasenor the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4/3/17

Vittoria M. Bossi
Attorney for Respondent

Amanda Rmentol for Vittoria Bossi

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs

Dated: 4/3/17

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

Karen Denvir

KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 79/15-111

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
State Bar No. 197268
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5333
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **CHARTER WAY SMOG** **HELI VILLASENOR** **Smog Check, Test and Repair, Station License Applicant** Respondent.	Case No. 79/15-111 **STATEMENT OF ISSUES** **(Smog Check)**

Complainant alleges:

PARTIES

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

2. On or about October 16, 2014, the Bureau received an application for a smog check, test and repair, station license from Heli Villasenor ("Respondent"), owner of Charter Way Smog. On or about October 14, 2014, Respondent certified under penalty of perjury that all statements made in the application were true and correct. The Bureau denied the application on November 18, 2014.

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REGISTRATION/LICENSE INFORMATION

Charter Way Smog

3. On or about May 19, 2011, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 265170 ("registration") to Respondent, owner of Charter Way Smog. The registration will expire on May 31, 2015, unless renewed.

4. On or about June 7, 2011, the Director issued Smog Check, Test Only, Station License Number TC 265170 ("smog check station license") to Respondent. The smog check station license will expire on May 31, 2015, unless renewed.

Smogtech McHenry

5. On or about February 27, 2012, the Director issued Automotive Repair Dealer Registration Number ARD 268112 ("registration") to Respondent, owner of Smogtech McHenry. The registration will expire on February 29, 2016, unless renewed.

6. On or about June 12, 2012, the Director issued Smog Check, Test Only, Station License Number TC 268112 ("smog check station license") to Respondent. The smog check station license will expire on February 29, 2016, unless renewed.

Smogtech Airport

7. On or about July 30, 2012, the Director issued Automotive Repair Dealer Registration Number ARD 269777 ("registration") to Respondent, owner of Smogtech Airport. The registration will expire on July 31, 2015, unless renewed.

8. On or about December 19, 2013, the Director issued Smog Check, Repair, Station License Number RC 269777 ("smog check station license") to Respondent. The smog check station license will expire on July 31, 2015, unless renewed.

Smog Tech 2

9. On or about January 6, 2012, the Director issued Automotive Repair Dealer Registration Number ARD 267654 ("registration") to Respondent, owner of Smog Tech 2. Respondent's registration will expire on January 31, 2016, unless renewed.

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10. On or about January 23, 2012, the Director issued Smog Check, Test Only, Station License Number TC 267654 ("smog check station license") to Respondent. Respondent's smog check station license will expire on January 31, 2016, unless renewed.

11. On or about November 22, 2013, the Bureau issued Citation No. C2014-0336 against Respondent, as owner of Smog Tech 2, for violating Health and Safety Code ("Health & Saf. Code") section 44012, subdivision (f). On or about October 29, 2013, Respondent issued a certificate of compliance to a Bureau undercover vehicle with an unapproved aftermarket performance chip device. The Bureau assessed a civil penalty of $1,000 against Respondent for the violation. Respondent requested an informal appeal conference on January 21, 2014. The citation was affirmed and reissued on February 26, 2014. Respondent paid the citation on April 14, 2014.

Smogtech Tracy

12. On or about January 21, 2014, the Director issued Automotive Repair Dealer Registration Number ARD 275318 ("registration") to Respondent, owner of Smogtech Tracy. Respondent's registration will expire on January 31, 2016, unless renewed.

13. On or about February 3, 2014, the Director issued Smog Check, Test Only, Station License Number TC 275318 ("smog check station license") to Respondent. Respondent's smog check station license will expire on January 31, 2016, unless renewed.

Heli Villasenor

14. On or about April 10, 2009, the Director issued Advanced Emission Specialist Technician License Number EA 630941 to Respondent. Respondent's advanced emission specialist technician license was due to expire on October 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO 630941 and Smog Check Repair Technician License Number EI 630941, effective November 1, 2012.[1] Respondent's

[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.

Smog Check Inspector License and Smog Check Repair Technician License will expire on October 31, 2016, unless renewed.

STATUTORY PROVISIONS

15. Health & Saf. Code section 44072 provides, in pertinent part, that the Director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1.

16. Health & Saf. Code section 44072.1 states, in pertinent part:

> The director may deny a license if the applicant, or any partner, officer, or director thereof, does any of the following:
>
> . . . .
>
> (c) Has committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.
>
> (d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefitted . . .

17. Health & Saf. Code section 44072.2 states, in pertinent part:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> . . . .
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

18. Health & Saf. Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

19. Business and Professions Code ("Bus. & Prof. Code") section 480 states, in pertinent part:

> (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

. . . .

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

. . . .

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

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

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

FIRST CAUSE FOR DENIAL

(Acts Warranting Denial of Application: Accusation No. 79/15-88)

21. Respondent's application for a smog check, test and repair, station license is subject to denial pursuant to Health & Saf. Code sections 44072 and 44072.1, subdivision (c), in that he committed acts which are grounds for revocation of Smog Check, Test Only, Station License Number TC 265170, Smog Check, Test Only, Station License Number TC 268112, Smog Check, Repair, Station License Number RC 269777, Smog Check, Test Only, Station License Number TC 267654, Smog Check, Test Only, Station License Number TC 275318, Smog Check Inspector License Number EO 630941, and Smog Check Repair Technician License Number EI 630941, pursuant to Health & Saf. Code sections 44072.2, subdivision (a) [failure to comply with Health & Saf. Code sections 44012, subdivision (f); and 44015]; subdivision (c) [failure to comply with California Code of Regulations, title 16, sections 3340.16, subdivision (a); 3340.30, subdivision (a); 3340.35, subdivision (c); 3340.42; and 3340.45]; and subdivision (d) [dishonesty, fraud or deceit], as set forth in Accusation No. 79/15-88 filed on December 23, 2014, which is currently pending.