

**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

Case No. 79/15-88

OAH No. 2015030064

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

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.

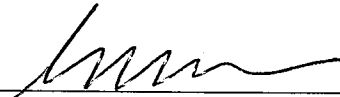
The suspension of the following licenses shall commence on the effective date of this decision:

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

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHEMAN
Supervising Deputy Attorney General
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Deputy Attorney General
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Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/15-88

13 **SMOGTECH McHENRY**
HELI VILLASENOR, OWNER
14 1313 McHenry Avenue
Modesto, CA 95350

OAH No. 2015030064

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

**STIPULATED
SETTLEMENT AND
DISCIPLINARY ORDER**

17 **CHARTER WAY SMOG**
HELI VILLASENOR, OWNER
18 1449 Turnpike, Suite A
Stockton, CA 95206

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

21 **SMOGTECH AIRPORT**
HELI VILLASENOR, OWNER
22 430 N. Airport Way, #A
Stockton, CA 95205

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

25 **SMOG TECH 2**
HELI VILLASENOR, OWNER
26 7277 N. Pacific Avenue, #2
Stockton, CA 95207

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

1 **SMOGTECH TRACY**
2 **HELI VILLASENOR, OWNER**
3 **24588 S. MacArthur Drive**
4 **Tracy, CA 95376**

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

7 **and**

8 **HELI VILLASENOR**
9 **1449 Turnpike Road**
10 **Stockton, CA 95206**

11 **Smog Check Inspector License No. EO 630941**
12 **Smog Check Repair Technician License No. EI 630941**
13 **(formerly Advanced Emission Specialist Technician**
14 **License No. EA 630941)**

15 **Respondents.**

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

18 **PARTIES**

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

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

27 **Smogtech McHenry**

28 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.

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

5 **Charter Way Smog**

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

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

14 **Smogtech Airport**

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

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

23 **Smog Tech 2**

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

28 ///

1 10. On or about January 23, 2012, the Director issued Smog Check, Test Only, Station
2 License Number TC 267654 ("Smog Check Station License No. 267654") to Respondent.
3 Respondent's smog check station license was in full force and effect at all times relevant to the
4 charges brought herein and was due to expire on January 31, 2016 but was canceled on May 26,
5 2015.

6 **Smogtech Tracy**

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

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

15 **Heli Villasenor**

16 13. On or about April 10, 2009, the Director issued Advanced Emission Specialist
17 Technician License Number EA 630941 to Respondent. Respondent's advanced emission
18 specialist technician license was due to expire on October 31, 2012. Pursuant to California Code
19 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
20 Respondent's election, as Smog Check Inspector License Number EO 630941, effective October
21 31, 2012, and Smog Check Repair Technician License Number EI 630941, effective November 1,
22 2012.¹ Respondent's Smog Check Inspector License and Smog Check Repair Technician License
23 will expire on October 31, 2016, unless renewed.

24 ///

25 ///

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

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

3 CONTINGENCY

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

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

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

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

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28 ///

DISCIPLINARY ORDER

1
2 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 268112
3 and Smog Check, Test Only, Station License No. TC 268112 issued to Smogtech McHenry;
4 Automotive Repair Dealer Registration No. ARD 265170 and Smog Check, Test Only, Station
5 License No. TC 265170 issued to Charter Way Smog; Automotive Repair Dealer Registration
6 No. ARD 269777 and Smog Check, Repair, Station License No. RC 269777 issued to Smogtech
7 Airport; Automotive Repair Dealer Registration No. ARD 267654 and Smog Check, Test Only,
8 Station License No. TC 267654 issued to Smog Tech 2; Automotive Repair Dealer Registration
9 No. ARD 275318 and Smog Check, Test Only, Station License No. TC 275318 issued to
10 Smogtech Tracy; Smog Check Inspector License No. EO 630941 and Smog Check Repair
11 Technician No. EI 630941 issued to Heli Villasenor (Respondent) are revoked. However, the
12 revocations are stayed and Respondent is placed on probation for five (5) years on the following
13 terms and conditions.

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

26 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
27 automotive inspections, estimates and repairs.

28 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning

1 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
2 conspicuously displayed in a location open to and frequented by customers and shall remain
3 posted during the entire period of actual suspension.

4 4. **Reporting.** Respondent or Respondent's authorized representative must report in
5 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
6 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
7 maintaining compliance with the terms and conditions of probation.

8 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
9 any financial interest which any partners, officers, or owners of the Respondent facility may have
10 in any other business required to be registered pursuant to Section 9884.6 of the Business and
11 Professions Code.

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

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

18 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
19 Respondent has failed to comply with the terms and conditions of probation, the Department may,
20 after giving notice and opportunity to be heard temporarily or permanently invalidate the
21 registrations or suspend or revoke the licenses.

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

25 10. **Continuing Education Courses.** During the period of probation, Respondent shall
26 attend and successfully complete the 72 hour BAR Specified Diagnostic and Repair Training.
27 Said course shall be completed and proof of completion submitted to the Bureau within 180 days
28 of the effective date of this decision and order. If proof of completion of the course is not

1 furnished to the Bureau within the 180-day period, Respondents' registrations and licenses shall
2 be immediately suspended until such proof is received.

3 11. **Restrictions.** During the period of probation, Respondent shall not perform any form
4 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
5 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
6 properly perform such work, and BAR has been given 10 days notice of the availability of the
7 equipment for inspection by a BAR representative.

8 12. **Cost Recovery.** Payment to the Bureau of the amount of \$33,722.19 in cost
9 recovery is to be paid in thirty-six (36) consecutive, equal monthly installments with the final
10 payment due twelve (12) months before the termination of probation. Failure to complete
11 payment of cost recovery within this time frame shall constitute a violation of probation which
12 may subject Respondent's registrations and licenses to outright revocation; however, the Director
13 or the Director's Bureau of Automotive Repair designee may elect to continue probation until
14 such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

15
16 **ACCEPTANCE**

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

24
25 DATED: 4/3/17

Hel Villaseñor

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

Exhibit A

Accusation No. 79/15-88

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
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6 Telephone: (916) 324-5333
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
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Smog Check, Test Only, Station License No. TC 268112,
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17 **CHARTER WAY SMOG**
HELI VILLASENOR, OWNER
18 **1449 Turnpike, Suite A**
Stockton, CA 95206
19 **Automotive Repair Dealer Reg. No. ARD 265170**
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21 **SMOGTECH AIRPORT**
HELI VILLASENOR, OWNER
22 **430 N. Airport Way, #A**
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23 **Automotive Repair Dealer Reg. No. ARD 269777**
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25 **SMOG TECH 2**
HELI VILLASENOR, OWNER
26 **7277 N. Pacific Avenue, #2**
Stockton, CA 95207
27 **Automotive Repair Dealer Reg. No. ARD 267654**
Smog Check, Test Only, Station License No. TC 267654,
28

Case No. 79/15-88

ACCUSATION
(Smog Check)

1 **SMOGTECH TRACY**
2 **HELI VILLASENOR, OWNER**
3 **24588 S. MacArthur Drive**
4 **Tracy, CA 95376**

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

7 **and**

8 **HELI VILLASENOR**
9 **1449 Turnpike Road**
10 **Stockton, CA 95206**

11 **Smog Check Inspector License No. EO 630941**
12 **Smog Check Repair Technician License No. EI 630941**
13 **(formerly Advanced Emission Specialist Technician**
14 **License No. EA 630941)**

15 Respondents.

16 Complainant alleges:

17 **PARTIES**

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

20 **Smogtech McHenry**

21 2. On or about February 27, 2012, the Director of Consumer Affairs ("Director") issued
22 Automotive Repair Dealer Registration Number ARD 268112 ("Registration No. 268112") to
23 Heli Villasenor ("Respondent"), owner of Smogtech McHenry. The registration was in full force
24 and effect at all times relevant to the charges brought herein and will expire on February 28,
25 2015, unless renewed.

26 3. On or about June 12, 2012, the Director issued Smog Check, Test Only, Station
27 License Number TC 268112 ("Smog Check Station License No. 268112") to Respondent. The
28 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

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

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

7 **Smogtech Airport**

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

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

16 **Smog Tech 2**

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

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

25 **Smogtech Tracy**

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

28 ///

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

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

7 **Heli Villasenor**

8 12. On or about April 10, 2009, the Director issued Advanced Emission Specialist
9 Technician License Number EA 630941 to Respondent. Respondent's advanced emission
10 specialist technician license was due to expire on October 31, 2012. Pursuant to California Code
11 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
12 Respondent's election, as Smog Check Inspector License Number EO 630941 and Smog Check
13 Repair Technician License Number EI 630941, effective July 17, 2012.¹ Respondent's Smog
14 Check Inspector License will expire on October 31, 2016, unless renewed. Respondent's Smog
15 Check Repair Technician License expired on October 31, 2014, and has not been renewed.

16 **JURISDICTION**

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

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

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

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

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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 . . .

///

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

4 25. Regulation 3340.45 states:

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

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

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

12 26. Regulation 3371 states, in pertinent part:

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

17 27. Regulation 3372 states:

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

23 28. Regulation 3372.1 states, in pertinent part:

24 An automotive repair dealer shall not advertise automotive service at a
25 price which is misleading. Price advertising is misleading in circumstances which
26 include but are not limited to the following:

27

28 (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

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

5 29. Regulation 3373 states:

6 No automotive repair dealer or individual in charge shall, in filling out an
7 estimate, invoice, or work order, or record required to be maintained by section
8 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
9 information which will cause any such document to be false or misleading, or where
10 the tendency or effect thereby would be to mislead or deceive customers, prospective
11 customers, or the public.

12 COST RECOVERY

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

17 BACKGROUND

18 31. On or about March 4, 2011, the Bureau sent ET (electronic transmission) Blast
19 # 30743, entitled "Proper Advertising of Smog Check Inspections", to all licensed smog check
20 stations.² The ET blast stated, in part, as follows:

21 Electronic Transmission must be included in the cost of a Smog Check
22 Inspection.

23 For many consumers, price is often a key determinant when selecting a
24 station to perform a Smog Check inspection on their vehicle. Many stations recognize
25 this fact and use advertising to promote their business.

26 When advertising this service, shops must include all the fees the
27 customer must pay in order to complete an inspection. This includes all electronic
28 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).

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

5 32. On or about October 17, 2013, Bureau representatives met with Respondent at his
6 facility, Smogtech McHenry, after receiving a complaint from a consumer, alleging that
7 Respondent had charged him \$30 more than his advertised price of \$24.75 for a smog inspection.
8 The consumer was informed following the inspection that his vehicle needed an additional test, a
9 low pressure fuel evaporation test ("LPFET")³, which cost extra as indicated in fine print on
10 Respondent's internet advertisement/coupon. The representatives reviewed Respondent's ad with
11 him. Respondent was offering smog check inspections at Smogtech McHenry at a cost of \$24.75
12 for "most cars". The ad stated in fine print near the advertised price that vehicles for model years
13 1976 to 1995 would be "extra" if an LPFET was needed. Respondent told the representatives that
14 he charged an additional \$30 to perform the LPFET test and that this price was posted on a sign in
15 his office. Respondent's sign read as follows:

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

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

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

24 33. On or about November 19, 2013, D.S. took her 1992 Pontiac Bonneville to
25 Respondent's facility, Smogtech McHenry, for a smog inspection. D.S. presented Respondent's
26 employee with an advertisement/coupon for Smogtech McHenry. Respondent was offering a
27 smog check "starting" at \$21.75 plus \$8.25 for a certificate. The ad stated in fine print near the
28 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.

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

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(False Advertising)**

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

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

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

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

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

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

1 on her cellphone. Magno would not honor the coupon, but did offer L.Y. a \$40 discount on the
2 regular price of \$84.75. L.Y. signed and received a copy of a written estimate in the amount of
3 \$53 (\$44.75 for the inspection and \$8.25 for the certificate). After the inspection was completed,
4 Magno informed L.Y. that the vehicle failed due to incomplete monitors. Magno gave L.Y. an
5 invoice in the amount of \$84.75 and a VIR. The VIR indicated that the vehicle had failed the
6 OBD System Check. L.Y. paid Magno \$84.75 and left the facility.

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

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

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

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 39. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to
21 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
22 statement which he knew or in the exercise of reasonable care should have known to be untrue or
23 misleading, as follows: Respondent represented on the invoice given to the Bureau that the
24 original estimate price for the smog inspection on L.T.'s 2001 Toyota Rav 4 had been revised to
25 \$84.75. In fact, L.T. had not authorized the facility to exceed the \$53 estimate price for the
26 inspection on the vehicle.

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1 amount of \$114.75, and a receipt showing that Bower charged G.A.'s credit card a total of
2 \$116.75. Bower told G.A. that he only needed to have the timing failure repaired because the
3 facility did not have the correct fuel cap adapter to test the vehicle's fuel cap.

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

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

9 45. On or about February 21, 2014, a representative of the Bureau conducted a station
10 inspection at Charter Way Smog. The representative found that Respondent did not have the
11 required fuel cap adapter guide and was missing the gray and purple fuel cap adapters. The gray
12 fuel cap adapter was the correct adapter for G.A.'s vehicle and was needed for the fuel cap
13 functional test. Respondent provided the representative with a refund check in the amount of
14 \$36.75 made payable to G.A.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Fraud)

17 46. Respondent's Registration No. 265170 is subject to disciplinary action pursuant to
18 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts
19 constituting fraud, as follows: Respondent's smog technician, Bower, obtained G.A.'s
20 authorization for performing a smog inspection on his 1984 Nissan pickup at a cost of \$70,
21 including the certificate if the vehicle passed the inspection, then charged Bower a total of
22 \$116.75 for the inspection, claiming that the additional fees were necessary because the vehicle
23 failed the ignition timing test and fuel cap functional test. In fact, Bower had not authorized any
24 additional fees for the ignition timing test or the fuel cap functional test. Further, the vehicle had
25 passed a smog inspection performed at Golden State Auto Repair subsequent to the test
26 conducted at Charter Way Smog, as set forth in paragraph 43 above.

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1 Adapter Guide and the gray and purple adapters. The gray adapter was required to test G.A.'s
2 1984 Nissan pickup, as set forth in paragraph 45 above.

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

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Dishonesty, Fraud or Deceit)**

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

14 **UNDERCOVER OPERATION #1: 2007 CHEVROLET**

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

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

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Provide Customer with Copy of Signed Document)**

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

9 **ELEVENTH CAUSE FOR DISCIPLINE**

10 **(False Advertising)**

11 53. Respondent's Registration No. 267654 is subject to disciplinary action pursuant to
12 Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
13 Regulation 3371 by publishing, uttering, or making, or causing to be published, uttered, or made
14 false or misleading statements or advertisements which are known to be false or misleading, or
15 which by the exercise of reasonable care should be known to be false or misleading, as follows:
16 Respondent represented on the internet advertisement/coupon that the smog inspection would cost
17 \$21.75 "most cars", and that the facility would smog "all makes and models", cars, trucks,
18 SUV's, motorhomes, and heavy duty vehicles. In fact, Respondent's smog technician, Sithi,
19 charged the operator \$39.75 for the smog inspection on the Bureau's 2007 Chevrolet.

20 **UNDERCOVER OPERATION #2: 1990 CHEVROLET**

21 54. On or about February 27, 2014, a representative of the Bureau, acting in an
22 undercover capacity ("operator"), took the Bureau's 1990 Chevrolet to Respondent's facility,
23 Charter Way Smog. The operator had an advertisement/coupon offering smog inspections at
24 Charter Way Smog for \$39.75 "out the door". The ad stated in fine print near the advertised price
25 "'95 and older vehicles LPFET extra".

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

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

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(False Advertising)**

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

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

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

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

4 **THIRTEENTH CAUSE FOR DISCIPLINE**

5 **(Violations of the Motor Vehicle Inspection Program)**

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

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

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

20 **FIFTEENTH CAUSE FOR DISCIPLINE**

21 **(Violations of the Motor Vehicle Inspection Program)**

22 59. Respondent's technician licenses are subject to disciplinary action pursuant to Health
23 & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
24 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the LPFET test on
25 the Bureau's 1990 Chevrolet in accordance with procedures prescribed by the department, as set
26 forth in paragraph 57 above.

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

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

4 (False Advertising)

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

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

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

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

19 **EIGHTEENTH CAUSE FOR DISCIPLINE**

20 (Violations of the Code)

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

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UNDERCOVER OPERATION #4: 1992 TOYOTA

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

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

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

1 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

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

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

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

12 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit)**

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

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

22 74. On or about February 27, 2014, J.F. asked his brother-in-law, J.L., to take his (J.F.'s)
23 1994 Ford Ranger to Respondent's facility, Smogtech Airport, for a smog inspection after seeing
24 Respondent's advertisement/coupon on the internet. Respondent was offering smog inspections
25 at Smogtech Airport for \$31.75 plus \$8.25 for the certificate. The ad stated in fine print that the
26 facility would "do LPFET test if needed". J.L. called Smogtech Airport and asked the individual
27 who answered the phone if the truck qualified for the advertised price. The individual told J.L.
28 that the vehicle did qualify and asked him to bring the coupon with him to the facility. When J.L.

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

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

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

18 TWENTY-SIXTH CAUSE FOR DISCIPLINE

19 (False Advertising)

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

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

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

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

12 OTHER MATTERS

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

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

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

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

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

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

16 P R A Y E R

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 268112, issued to Heli Villasenor, owner of Smogtech McHenry;

21 2. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 265170, issued to Heli Villasenor, owner of Charter Way Smog;

23 3. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 269777, issued to Heli Villasenor, owner of Smogtech Airport;

25 4. Revoking or suspending Automotive Repair Dealer Registration Number ARD
26 267654, issued to Heli Villasenor, owner of Smog Tech 2;

27 ///

28 ///

1 5. Revoking or suspending any other automotive repair dealer registration issued to Heli
2 Villasenor, including, but not limited to Automotive Repair Dealer Registration Number ARD
3 275318, issued to Heli Villasenor, owner of Smogtech Tracy;

4 6. Revoking or suspending Smog Check, Test Only, Station License Number TC
5 268112, issued to Heli Villasenor, owner of Smogtech McHenry;

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

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

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

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

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

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

22
23 DATED: December 23, 2014



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

24
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26
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28 SA2014116780

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2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
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4 State Bar No. 197268
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5 P.O. Box 944255
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6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
12 Against:

13 **CHARTER WAY SMOG**
14 **HELI VILLASENOR**

15 **Smog Check, Test and Repair, Station**
16 **License Applicant**

16 Respondent.

Case No. 79/15-111

OAH No. 2015070062

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

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

20 **PARTIES**

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

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

28 ///

1 **DISCIPLINARY ORDER**

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

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

10 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
11 automotive inspections, estimates and repairs.

12 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
13 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
14 conspicuously displayed in a location open to and frequented by customers and shall remain
15 posted during the entire period of actual suspension.

16 4. **Reporting.** Respondent or Respondent's authorized representative must report in
17 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
18 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
19 maintaining compliance with the terms and conditions of probation.

20 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
21 any financial interest which any partners, officers, or owners of the Respondent facility may have
22 in any other business required to be registered pursuant to Section 9884.6 of the Business and
23 Professions Code.

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

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

1 decision.

2 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
3 Respondent has failed to comply with the terms and conditions of probation, the Department may,
4 after giving notice and opportunity to be heard suspend or revoke the license.

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

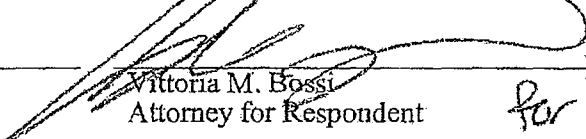

8 10. **Restrictions.** During the period of probation, Respondent shall not perform any form
9 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
10 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
11 properly perform such work, and BAR has been given 10 days notice of the availability of the
12 equipment for inspection by a BAR representative.

13 **ACCEPTANCE**

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

19
20 DATED: 4/3/17 
21 HELI VILLASEÑOR
22 Respondent

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

26 DATED: 4/3/17  
27 Vittoria M. Bossi Annunziata Pimentel
28 Attorney for Respondent for Vittoria Bossi

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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 R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 79/15-111

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3 KAREN R. DENVIR
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7 Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:

Case No. 79/15-111

13 **CHARTER WAY SMOG**
14 **HELI VILLASENOR**

15 **Smog Check, Test and Repair, Station License**
16 **Applicant**

STATEMENT OF ISSUES

(Smog Check)

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about October 16, 2014, the Bureau received an application for a smog check,
23 test and repair, station license from Heli Villasenor ("Respondent"), owner of Charter Way Smog.
24 On or about October 14, 2014, Respondent certified under penalty of perjury that all statements
25 made in the application were true and correct. The Bureau denied the application on November
26 18, 2014.

27 ///

28 ///

1 REGISTRATION/LICENSE INFORMATION

2 **Charter Way Smog**

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

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

9 **Smogtech McHenry**

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

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

16 **Smogtech Airport**

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

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

23 **Smog Tech 2**

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

27 ///

28 ///

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

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

12 **Smogtech Tracy**

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

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

19 **Heli Villasenor**

20 14. On or about April 10, 2009, the Director issued Advanced Emission Specialist
21 Technician License Number EA 630941 to Respondent. Respondent's advanced emission
22 specialist technician license was due to expire on October 31, 2012. Pursuant to California Code
23 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
24 Respondent's election, as Smog Check Inspector License Number EO 630941 and Smog Check
25 Repair Technician License Number EI 630941, effective November 1, 2012.¹ Respondent's

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

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

3 STATUTORY PROVISIONS

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

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

7 The director may deny a license if the applicant, or any partner, officer, or
8 director thereof, does any of the following:

9

10 (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.

11 (d) Has committed any act involving dishonesty, fraud, or deceit whereby
12 another is injured or whereby the applicant has benefitted . . .

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

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

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

18

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

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

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

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

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

1
2 (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 (3)(A) Done any act that if done by a licentiate of the business or
4 profession in question, would be grounds for suspension or revocation of license.

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

7
8 (d) A board may deny a license regulated by this code on the ground that
9 the applicant knowingly made a false statement of fact that is required to be revealed
in the application for the license.

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

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

14 **FIRST CAUSE FOR DENIAL**

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

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