

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

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

In the Matter of the Accusation Against:

**ENTERPRISE SMOG;
ROLUN DRANEY, OWNER,
2742 Main Street
Riverside, CA 92501,**

**Automotive Repair Dealer Registration
License No. ARD 263731
Smog Check Test Only Station License No.
TC 263731;**

**MICHAEL KEVIN MCCUTCHEON
8990 19th Street #369
Rancho Cucamonga, CA 91701**

**Smog Check Inspector License No. EO
636018;**

Respondents.

Case No. 79/15-19

**DEFAULT DECISION AND ORDER AS
TO RESPONDENT MICHAEL KEVIN
MCCUTCHEON ONLY**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 12, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation

1 No. 79/15-19 against Michael Kevin McCutcheon (“Respondent”) and others, before the Director
2 of Consumer Affairs. (Accusation and Proof of Service attached as Exhibit A.)

3 2. On or about September 11, 2013, the Bureau of Automotive Repair (“Bureau”) issued
4 Smog Check Inspector License No. EO 636018 to Respondent. The Smog Check Inspector
5 License was in full force and effect at all times relevant to the charges brought in Accusation No.
6 79/15-19 and will expire on February 29, 2016, unless renewed

7 3. On or about August 14, 2014, Respondent was served by Certified and First Class
8 Mail copies of the Accusation No. 79/15-19, Statement to Respondent, Notice of Defense,
9 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
10 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
11 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
12 address of record was and is: 8990 19th Street #369 Rancho Cucamonga, CA 91701.

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
15 124.

16 5. The aforementioned documents were not returned by the U.S. Postal Service.
17 Respondent did not complete a Certified Mail Receipt.

18 6. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 79/15-19.

27 8. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

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

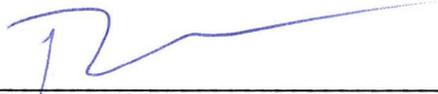
ORDER

IT IS SO ORDERED that Smog Check Inspector License No. EO 636018, heretofore issued to Respondent Michael Kevin McCutcheon, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 24, 2015.

It is so ORDERED January 5, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

SD2014707058
70950348.DOCX
Attachment:
Exhibit A: Accusation with Proof of Service

Exhibit A

Accusation with Proof of Service

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 WILLIAM A. BUESS
Deputy Attorney General
4 State Bar No. 134958
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2039
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

13
14 **ENTERPRISE SMOG; Rolun Draney,**
Owner,
15 **2742 Main Street**
Riverside, CA 92501,

16
17 **Automotive Repair Dealer Registration**
License No. ARD 263731
18 **Smog Check Test Only Station License No.**
TC 263731;

19
20 **MICHAEL KEVIN MCCUTCHEON**
8990 19th Street #369
21 **Rancho Cucamonga, CA 91701**

22 **Smog Check Inspector License No.**
EO 636018;

23 Respondents.

Case No. 79/15-19

ACCUSATION

(SMOG CHECK)

24
25 Complainant alleges:
26
27
28

1 **PARTIES**

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

4 **ENTERPRISE SMOG; ROLUN DRANEY, OWNER**

5 2. On or about January 10, 2011, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 263731 to Rolun Draney, dba Enterprise Smog
7 ("Respondent"). The Automotive Repair Dealer Registration was in full force and effect at all
8 times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

9 3. On or about March 30, 2012, the Bureau of Automotive Repair issued Smog Check-
10 Test Only Station License Number TC 263731 to Rolun Draney, dba Enterprise Smog
11 ("Respondent"). The Smog Check-Test Only Station License was in full force and effect at all
12 times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

13 4. On or about January 28, 2013, the Bureau of Automotive Repair issued STAR Station
14 Certification to Rolun Draney, dba Enterprise Smog ("Respondent"). The STAR Station
15 Certification was in full force and effect at all times relevant to the charges brought herein.

16 **MICHAEL KEVIN MCCUTCHEON, SMOG CHECK INSPECTOR**

17 5. On or about September 11, 2013, the Bureau of Automotive Repair issued Smog
18 Check Inspector license no. EO 636018 to Michael Kevin McCutcheon ("Respondent"). The
19 Smog Check Inspector license was in full force and effect at all times relevant to the charges
20 brought herein and will expire on February 29, 2016, unless renewed.¹

21 **JURISDICTION**

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

24 7. Section 477 of the Business and Professions Code ("Code") provides, in pertinent
25 part, that "Board" includes "bureau," "commission," "committee," "department," "division,"

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 "examining committee," "program," and "agency." "License" includes certificate, registration or
2 other means to engage in a business or profession regulated by the Code.

3 8. Section 9884.7 of the Code states in pertinent part:

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

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

12 ...

13 (4) Any other conduct which constitutes fraud.

14 ...

15 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
16 than one place of business in this state, the director pursuant to subdivision (a) shall only
17 invalidate temporarily or permanently the registration of the specific place of business which has
18 violated any of the provisions of this chapter. This violation, or action by the director, shall not
19 affect in any manner the right of the automotive repair dealer to operate his or her other places of
20 business.

21 (c) Notwithstanding subdivision (b), the director may invalidate temporarily or
22 permanently, the registration for all places of business operated in this state by an automotive
23 repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of
24 repeated and willful violations of this chapter, or regulations adopted pursuant to it."

25 9. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
26 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
27 proceeding against an automotive repair dealer or to render a decision invalidating a registration
28 temporarily or permanently.

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

5 14. Section 9884.8 of the Code states: “All work done by an automotive repair dealer,
6 including all warranty work, shall be recorded on an invoice and shall describe all service work
7 done and parts supplied. Service work and parts shall be listed separately on the invoice, which
8 shall also state separately the subtotal prices for service work and for parts, not including sales
9 tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or
10 reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component
11 system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state
12 that fact. The invoice shall include a statement indicating whether any crash parts are original
13 equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash
14 parts. One copy of the invoice shall be given to the customer and one copy shall be retained by
15 the automotive repair dealer.”

16 15. Health and Safety Code Section 44012 provides, in pertinent part: “The test at the
17 smog check stations shall be performed in accordance with procedures prescribed by the
18 department, pursuant to Section 44013, ...”

19 16. Health and Safety Code Section 44015 provides, in pertinent part: “...(b) If a vehicle
20 meets the requirements of Section 44012, a smog check station licensed to issue certificates shall
21 issue a certificate of compliance or a certificate of noncompliance.”

22 17. Health and Safety Code Section 44032 provides: “... Qualified technicians shall
23 perform tests of emission control devices and systems in accordance with Section 44012.”

24 18. Health and Safety Code Section 44072.10 states, in pertinent part: “...(c) The
25 department shall revoke the license of any smog check technician or station licensee who
26 fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A
27 Fraudulent inspection includes, but is not limited to, all of the following:

28 ...

1 (4) Intentional or willful violation of this chapter or any regulation, standard, or
2 procedure of the department implementing this chapter.”

3 19. Health and Safety Code section 44072.2 provides in pertinent part: “The director may
4 suspend, revoke, or take other disciplinary action against a license as provided in this article if the
5 licensee, or any partner, officer, or director thereof, does any of the following: (a) Violates any
6 section of this chapter [the Motor Vehicle Inspection Program (Health and Safety Code section
7 44000, et seq.)] and the regulations adopted pursuant to it, which are related to the licensed
8 activities.

9 ...

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

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

13 ...

14 (h) Violates or attempts to violate the provisions of this chapter relating to the
15 particular activity for which he or she is licensed.”

16 REGULATORY PROVISIONS

17 20. California Code of Regulations, title 16, section 3340.24(c) provides: “The bureau
18 may suspend or revoke the license of or pursue other legal action against a licensee, if the
19 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
20 certificate of noncompliance.”

21 21. California Code of Regulations, title 16, section 3340.30 provides, in pertinent part:
22 “A licensed smog check inspector and/or repair technician shall comply with the following
23 requirements at all times while licensed:

24 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of
25 the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of
26 this article. ...”

27 22. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:...

28

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

5 23. California Code of Regulations, title 16, section 3340.41(c) provides: "(c) No person
6 shall enter into the emissions inspection system any vehicle identification information or emission
7 control system identification data for any vehicle other than the one being tested. Nor shall any
8 person knowingly enter into the emissions inspection system any false information about the
9 vehicle being tested."

10 24. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part,
11 that "[S]mog check inspection methods are prescribed in the Smog Check manual referenced by
12 section 3340.45."

13 ...

14 (a)(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
15 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
16 The OBD test failure criteria are specified in section 3340.42.2."²

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

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

23 ///

24 _____
25 ² The On Board Diagnostic, generation II ("OBDII") functional test is an automated
26 function of the BAR-97 analyzer. During the OBDII functional test, the technician is required to
27 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link connector ("DLC")
28 which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the Malfunction Indicator Light ("MIL"). If the vehicle fails the
OBDII functional test, it will fail the overall inspection.

1 **COST RECOVERY**

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

8 **FACTUAL BACKGROUND**

9 27. During the last quarter of calendar year 2013, the Bureau received an anonymous tip
10 that Enterprise Smog was performing fraudulent smog check inspections by utilizing a device to
11 pass the OBDII functional portion of a smog test, known as "Clean Plugging".³ Based on the
12 anonymous tip information, the Bureau of Automotive Repair decided to conduct an investigation
13 of Respondent, Enterprise Smog.

14 **UNDERCOVER OPERATION DECEMBER 11-12, 2013**

15 28. In November 2013, a Bureau technician prepared a Bureau 2002 Honda (hereinafter
16 "Bureau undercover vehicle") to fail Smog Check inspections due to an OBDII communication
17 failure.

18 29. On December 11, 2013, a Bureau operator drove the undercover vehicle to Enterprise
19 Smog in Riverside for a Smog Test. The operator informed an Enterprise Smog technician
20 identified as "Mike", that she needed a smog test and asked for a technician named "Brandon".
21 The operator informed Mike that Brandon helped her before because her vehicle "wouldn't read".
22 Mike informed the operator that Brandon no longer worked at Enterprise, but he could help the
23 operator. When asked by Mike, she informed him that Brandon charged her \$150.00 the last
24 time. Mike informed the operator that he could do the test for that fee also. The operator saw
25 Mike feed a cable into the vehicle. When Mike asked the operator for the paperwork while

26 ³ "Clean Plugging" involves using another vehicle's properly functioning On Board
27 Diagnostic generation II, ("OBDII"), system or a separate device to generate passing diagnostic
28 readings for the purpose of issuing a fraudulent smog certificate to vehicles that are not in smog
compliance and/or not present for testing.

1 standing in the vicinity of the smog machine, the operator noted that the screen was red and
2 reported something concerning, "no communication". After that preliminary check, Mike
3 informed the operator that the vehicle would have to be returned the next day and he could "get it
4 to work".

5 30. The operator returned the undercover vehicle to Enterprise Smog on December 12,
6 2013, for the Smog Test and waited for the test to be completed. The operator observed the test
7 being conducted. The operator observed the Enterprise Smog technician Mike utilizing a small
8 device, having plugged a cable into the small device. The operator did not observe Mike plug the
9 cable into the undercover vehicle. Afterwards, the operator spoke with Mike concerning the
10 \$150.00 charge for the test. During the conversation, Mike commented to the operator to the
11 effect that he should not be doing this.

12 31. When the Enterprise Smog technician Mike returned the vehicle to the operator after
13 the operator paid \$150.00, he gave the operator a pink and a yellow copy of invoice [REDACTED]. Both
14 copies of the invoice showed a charge of \$50.00. The Enterprise Smog technician also gave the
15 operator a Vehicle Inspection Report ("VIR") indicating that the undercover vehicle passed the
16 "enhanced Smog Check inspection" and noting the issuance of Smog Check Certificate of
17 Compliance, number [REDACTED], with DMV ID number: [REDACTED]. The VIR indicated
18 that the Smog Check was performed by Enterprise Smog technician, Michael McCutcheon,
19 EO636018.

20 32. On December 17 and 19, 2013, the Bureau technician who initially prepared the
21 undercover vehicle with an OBD communication failure, re-inspected the vehicle. During the re-
22 inspection, the Bureau technician performed a Two Speed Idle ("TSI") test and Acceleration
23 Simulation Mode ("ASM") test and noted that the undercover vehicle failed the inspection
24 because of an OBDII communication failure. The technician concluded that the undercover
25 vehicle was not eligible to receive a smog check Certificate of Compliance in its condition.

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 33. Respondent Enterprise Smog's, Rolun Draney, Owner, Automotive Repair Dealer
4 Registration number ARD 263731, is subject to disciplinary action for violations under Business
5 and Professions Code section 9884.7, subdivision (a)(1) and (a)(6), Business and Professions
6 Code section 9884.8, Health and Safety Code section 44012, et seq., and California Code of
7 Regulations, Title 16, Sections 3340.41(c), and 3373 in that Respondent McCutcheon made or
8 authorized a statement which he knew or in the exercise of reasonable care should have known to
9 be untrue or misleading, by certifying that the Bureau's undercover vehicle had passed the Smog
10 Check inspection conducted and was in compliance with all applicable laws and regulations.
11 The circumstances are as follows and as more fully set forth in paragraphs 27-32 herein above
12 and incorporated herein by this reference:

13 a. On December 12, 2013, Respondent McCutcheon utilized a "clean plugging" method
14 to issue a VIR and Smog Certificate of Compliance for the Bureau undercover vehicle that had
15 not been properly tested and inspected as required by Health and Safety Code section 44012, et
16 seq.

17 b. On December 12, 2013, Respondent issued Invoice number [REDACTED] reporting a "Grand
18 Total" of \$50.00 tendered for the Smog Test and Certificate when the actual amount paid by the
19 Bureau operator was \$150.00.

20 **SECOND CAUSE FOR DISCIPLINE**

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

22 34. Respondent Enterprise Smog's, Rolun Draney, Owner, Automotive Repair Dealer
23 Registration number ARD 263731, is subject to disciplinary action for violations under Business
24 and Professions Code section 9884.7, subdivision (a)(4), Business and Professions Code section
25 9884.8, Health and Safety Code sections 44012 and 44072(d), and California Code of
26 Regulations, Title 16, sections 3340.41(c), 3340.35(c), and 3373 in that Respondent Enterprise
27 Smog and Respondent McCutcheon falsely or fraudulently issued a VIR and an electronic Smog
28 Certificate of Compliance, number [REDACTED] for the Bureau undercover vehicle, without

1 properly performing a Smog Check and inspection of the emission control devices and systems
2 on the undercover vehicle, thereby depriving the People of the State of California of the
3 protections afforded by the Motor Vehicle Inspection Program (Health and Safety Code Section
4 44000, et seq.) The circumstances are as follows and as more fully set forth in paragraphs 27-32
5 herein above and incorporated herein by this reference:

6 a. On December 12, 2013, Respondent McCutcheon utilized a "clean plugging" method
7 to issue an inaccurate VIR and smog Certificate of Compliance for the Bureau undercover vehicle
8 that had not been properly tested and inspected as required by Health and Safety Code section
9 44012.

10 b. Respondent Enterprise Smog issued Invoice number [REDACTED] dated December 12, 2013,
11 indicating a "Grand Total" for the smog check in the amount of \$50.00 when the Bureau operator
12 actually paid Enterprise Smog technician Mike \$150.00 for the smog check and certificate.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 35. Respondent Enterprise Smog's, Rolun Draney, Owner, Smog Check, Test Only,
16 Station License number TC 263731, is subject to disciplinary action for violations under Business
17 and Professions Code sections 9887.4(a)(1) and (a)(4), and 9884.8, Health and Safety Code
18 sections 44072.2, subdivisions (a), (d), and (h), 44012, et seq., and 44015(b), and California Code
19 of Regulations, title 16, sections 3340.24(c), 3340.35(c), 3340.41(c), 3340.42, and 3373 in that
20 Respondent Enterprise Smog and Respondent McCutcheon falsely or fraudulently caused a VIR
21 and a smog Certificate of Compliance to be issued for the Bureau undercover vehicle that had not
22 been properly tested and inspected as required as required by Health and Safety Code Section
23 44012, et seq., and were compensated for the smog test and certificate. The circumstances are as
24 follows and as more fully set forth in paragraphs 27-32 herein above and incorporated herein by
25 this reference:

26 a. On or about December 12, 2013, Respondent McCutcheon utilized a "clean
27 plugging" method to issue an inaccurate VIR and Smog Certificate of Compliance for the Bureau
28

1 undercover vehicle that had not been properly tested and inspected as required by Health and
2 Safety Code section 44012, et seq.

3 b. Respondent McCutcheon took \$150.00 in payment for the smog test and certificate
4 and issued an Enterprise Smog Invoice, Number [REDACTED] that reported a "Grand Total" payment of
5 \$50.00.

6 **FOURTH CAUSE FOR DISCIPLINE**
7 **(Failure to Comply with Regulations Pursuant**
8 **to the Motor Vehicle Inspection Program)**

9 36. Respondent Enterprise Smog's, Rolun Draney, Owner, Smog Check, Test Only,
10 Station License number TC 263731, is subject to disciplinary action for violations under Health
11 and Safety Code section 44072.2, subdivisions (a), (c), (d), and (h), and California Code of
12 Regulations, Title 16, sections 3340.24(c), 3340.30(a), 3340.35(c), 3340.41(c), 3340.42, and 3373
13 in that Respondent Enterprise Smog and Respondent McCutcheon improperly conducted a smog
14 check and inspection of the Bureau undercover vehicle and falsely or fraudulently issued a VIR
15 and a Certificate of Compliance and an inaccurate invoice for the Bureau undercover vehicle that
16 had not been properly tested and inspected as required by Health and Safety Code Section 44012,
17 et seq., and did not comply with the regulations adopted pursuant to the Motor Vehicle Inspection
18 Program; Health and Safety Code section 44000, et seq. The circumstances are as follows and as
19 fully set forth in paragraphs 27-32 herein above and incorporated herein by this reference:

20 a. On or about December 12, 2013, Respondent McCutcheon utilized a "clean
21 plugging" method to conduct a Smog Check and Inspection and to issue a Smog Certificate of
22 Compliance for the Bureau undercover vehicle that had not been properly tested and inspected as
23 required by Health and Safety Code section 44012, et seq.

24 b. Section 3340.30(a): Respondent Enterprise Smog's technician, Respondent
25 McCutcheon, failed to inspect and test in accordance with Health and Safety Code Sections
26 44012 and 44035, and California Code of Regulations, Title 16, section 3340.42.

27 c. Section 3340.24(c): Respondent Enterprise Smog falsely or fraudulently issued an
28 electronic smog Certificate of Compliance for the Bureau undercover vehicle.

1 d. Section 3340.35(c): Respondent Enterprise Smog issued the smog Certificate of
2 Compliance for the Bureau undercover vehicle despite that the vehicle had not been inspected in
3 accordance with section 3340.42.

4 e. Section 3340.41(c): Respondent Enterprise Smog's technician, Respondent
5 McCutcheon, entered false information into the Emission Inspection System ("EIS") by utilizing
6 a "clean plugging" method during the testing of the Bureau's undercover vehicle.

7 f. Section 3340.42: Respondent Enterprise Smog failed to conduct the required smog
8 test on the Bureau undercover vehicle according to the Bureau's specifications.

9 g. Section 3373: Respondent Enterprise Smog and its technician, McCutcheon, made
10 false or misleading records regarding the Bureau undercover vehicle including falsely or
11 fraudulently issuing a VIR, a smog Certificate of Compliance, and a false invoice without
12 performing a bona fide smog check and inspection of the Bureau undercover vehicle thereby
13 causing such documents or reports to be false or misleading, or where the tendency or effect
14 thereby would be to mislead or deceive customers, prospective customers, or the public.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 37. Respondent Enterprise Smog's, Rolun Draney Owner, Smog Check, Test Only,
18 Station License number TC 263731, is subject to disciplinary action pursuant to Health and
19 Safety Code section 44072.2(d) and California Code of Regulations, title 16, sections 3340.41(c),
20 3340.24(c), 3340.35, 3340.42, and 3373, in that Respondent committed a dishonest, fraudulent or
21 deceitful act whereby another is injured by issuing a false VIR and an electronic smog Certificate
22 of Compliance for the Bureau undercover vehicle without performing a bona fide smog check and
23 inspection of the emission control devices and systems, and issuing a false invoice thereby
24 depriving the People of the State of California of the protection afforded by the Motor Vehicle
25 Inspection Program. The circumstances are as follows and as set forth in paragraphs 27-32 herein
26 above and incorporated herein by this reference:
27
28

1 a. Respondent McCutcheon failed to conduct a bona fide smog check and inspection by
2 utilizing a "clean plugging" method during the inspection of the Bureau undercover vehicle and
3 then falsely or fraudulently issuing a false VIR and a false smog Certification of Compliance.

4 b. Respondent McCutcheon took \$150.00 in payment for the smog test and certificate
5 and caused to issue the Enterprise Smog invoice number [REDACTED] showing a "Grand Total" payment
6 made of \$50.00.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 38. Respondent, Michael Kevin McCutcheon's Smog Check Inspector License number
10 EO 636018, is subject to disciplinary action pursuant to Business and Professions Code Section
11 9884.7(a)(1) and (a)(6), Business and Professions Code section 9884.8, California Code of
12 Regulations, title 16, sections 3340.24(c), 3340.35(c), 3340.41(c), 3340.42, and 3373, and Health
13 and Safety Code sections 44012, et seq., 44015(b), 44072.10(c)(4), 44032, and 4472.2(a), (c), (d),
14 and (h), in that Respondent conducted a smog check and inspection on the Bureau undercover
15 vehicle utilizing a "clean plugging" method and issued a false VIR, a false smog Certificate of
16 Compliance for the Bureau undercover vehicle, and a false invoice. The circumstances are as
17 follows and as set forth in paragraphs 27-32 herein above and incorporated herein by this
18 reference:

19 a. On December 12, 2013, Respondent failed to perform bona fide tests and inspections
20 on the Bureau undercover vehicle using a "clean plugging" method during the test and inspection.
21 Respondent caused a false VIR and Certificate of Compliance to be issued indicating that the
22 Bureau undercover vehicle showing that the undercover vehicle passed the enhanced Smog
23 Check inspection.

24 b. Respondent took a fee of \$150.00 for the smog test and certificate but caused
25 Enterprise Smog invoice number [REDACTED] to issue listing a "Grand Total" payment for the smog test
26 and certificate of \$50.00.

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 39. Respondent, Michael Kevin McCutcheon's Smog Check Inspector License number
4 EO 636018, is subject to disciplinary action pursuant to Business and Professions Code Section
5 9884.7(a)(4) and Health and Safety Code Sections 44032 and 44072.2(d), California Code of
6 Regulations, title 16, sections 3340.24(c), 3340.35(c), 3340.41(c), 3340.42, and 3373, in that
7 Respondent caused to be falsely or fraudulently issued a false VIR and falsely or fraudulently
8 caused to be issued a false smog Certificate of Compliance for the Bureau undercover vehicle
9 after performing a non-bona fide smog check and inspection utilizing a "clean plugging" method
10 and thereby depriving the People of the State of California of the protections afforded by the
11 Motor Vehicle Inspection Program. The circumstances are as follows and as fully set forth in
12 paragraphs 27-32 herein above and incorporated herein by this reference:

13 a. On December 12, 2013, Respondent McCutcheon conducted a non-bona fide smog
14 check and inspection on the Bureau undercover vehicle utilizing a "clean plugging" method.
15 Respondent caused a false VIR and a false smog Certificate of Compliance to be issued for the
16 Bureau undercover vehicle based on the non-bona fide inspection.

17 b. On December 12, 2013, Respondent McCutcheon took \$150.00 in payment from the
18 Bureau operator for the smog test and certificate and issued Enterprise Smog invoice number
19 [REDACTED] reporting a "Grand Total" payment for the smog test and certificate of \$50.00.

20 **EIGHTH CAUSE FOR DISCIPLINE**

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

22 40. Respondent, Michael McCutcheon's Smog Check Inspector License, EO636018, is
23 subject to disciplinary action pursuant to Health and Safety Code sections 44032 and 44072(a)
24 and Health and Safety Code section 44012 et seq., in that Respondent performed a non-bona fide
25 smog check and inspection on the Bureau undercover vehicle by utilizing a "clean plugging"
26 method and by issuing a false VIR, a false Certificate of Compliance and a false invoice thereby
27 depriving the People of the State of California of the protections afforded by the Motor Vehicle
28

1 Inspection Program. The circumstances are as follows and as set forth in paragraphs 27-32 herein
2 above and incorporated herein by this reference.

3 a. Section 44012(a): Respondent failed to ensure that all emission control devices and
4 systems required by law for the Bureau undercover vehicle were installed and functioning
5 correctly in accordance with proper test procedures.

6 b. Section 44012(f): Respondent failed to perform the emission control tests on the
7 Bureau undercover vehicle in accordance with procedures prescribed by the department.

8 c. Section 44015(b): Respondent issued an electronic smog Certificate of Compliance
9 for the Bureau undercover vehicle without properly testing and inspecting the vehicle to
10 determine if it was in compliance with Health and Safety Code section 44012.

11 **NINTH CAUSE FOR DISCIPLINE**

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

14 41. Respondent, Michael McCutcheon's Smog Check Inspector License, number EO
15 636018 is subject to disciplinary action pursuant to Health and Safety Code sections 44032 and
16 44072.2(c) and California Code of Regulations, title 16, sections 3340.24(c), 3340.30(a),
17 3340.35(c), 3340.41(c), 3340.42, and 3373 in that Respondent failed to conduct a bona fide smog
18 check and inspection but rather utilized a "clean plugging" method for the Bureau undercover
19 vehicle smog test and issued a false VIR, a false Certificate of Compliance, and a false invoice.

20 The circumstances are as follows and as fully set forth in paragraphs 27-32 herein above
21 and incorporated herein by this reference.

22 a. Section 3340.24(c): Respondent falsely or fraudulently issued a VIR, an electronic
23 smog Certificate of Compliance number [REDACTED] and Enterprise Smog invoice number [REDACTED]

24 b. Section 3340.30(a): Respondent failed to inspect and test the Bureau undercover
25 vehicle in accordance with Health and Safety Code section 44012, et seq., section 44032, section
26 44035, 44072.10.

27 c. Section 3340.35(c): Respondent issued a Certificate of Compliance for the Bureau
28 undercover vehicle that had not been inspected in accordance with the procedures specified in

1 section 3340.42 or had all required emission control equipment and devices installed and
2 functioning correctly.

3 d. Section 3340.41(c): Respondent entered into the emissions inspection system vehicle
4 identification information or emission control system identification data other than for the Bureau
5 undercover vehicle.

6 e. Section 3340.42: Respondent failed to conduct the required smog test on the Bureau
7 undercover vehicle in accordance with the Bureau's specifications.

8 f. Section 3373: Respondent inserted data in the Enterprise Smog invoice number [REDACTED]
9 a statement or information which caused the document to be false or misleading and had the
10 tendency or effect to mislead or deceive customers, prospective customers, or the public.

11 OTHER MATTERS

12 42. Pursuant to Business and Professions Code section 9884.7(c), the Director may
13 suspend, revoke or place on probation the registration for all places of business operated in this
14 state by Respondent Rolun Draney, owner of Enterprise Smog, upon a finding that Respondent
15 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
16 pertaining to an automotive repair dealer.

17 43. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
18 Station License number TC 263731, issued to Rolun Draney, owner of Enterprise Smog, is
19 revoked or suspended, any additional license issued under this chapter in the name of said
20 licensee may be likewise revoked or suspended by the Director.

21 44. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Inspector
22 license number EO 636018, issued to Michael Kevin McCutcheon, is revoked or suspended, any
23 additional license issued under this chapter in the name of said licensee may be likewise revoked
24 or suspended by the Director.

25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of Consumer Affairs issue a decision:
28

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 263731, issued to Rolun Draney, dba Enterprise Smog;
- 3 2. Revoking or suspending any other Automotive Repair Dealer registration issued to
4 Rolun Draney;
- 5 3. Revoking or suspending Smog Check-Test Only Station License Number TC 263731,
6 issued to Rolun Draney, dba Enterprise Smog;
- 7 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
8 and Safety Code in the name of Rolun Draney, in addition to, Smog Check-Test Only Station
9 License number TC 263731;
- 10 5. Revoking or suspending Smog Check Inspector License Number EO 636018, issued
11 to Michael Kevin McCutcheon;
- 12 6. Revoking or suspending any additional license issued to Michael Kevin McCutcheon
13 under the appropriate chapter of the Health and Safety Code;
- 14 7. Ordering Enterprise Smog, Rolun Draney, Owner, and/or Michael Kevin
15 McCutcheon to pay the Bureau of Automotive Repair the reasonable costs of the investigation
16 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 8. Taking such other and further action as deemed necessary and proper.
- 18
19
20

21 DATED: August 12, 2014


22 PATRICK DORAIS
23 Chief
24 Bureau of Automotive Repair
25 Department of Consumer Affairs
26 State of California
27 Complainant

26 SD2014707058
27 70904653.docx*