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

10
11 In the Matter of the Accusation Against:

Case No. 79/15-20

12 **DONS PRO TECHNOLOGY**
AUTOMOTIVE REPAIR;
13 **DONALD RAY MITCHAM, OWNER**
230 E TEHACHAPI BLVD
14 TEHACHAPI, CA 93561-1733

ACCUSATION
smog check

15 **Automotive Repair Dealer Registration No.**
ARD 231015
16 **Smog Check Station License No. RC 231015,**

17 **and**

18 **DONALD RAY MITCHAM**
PO BOX 1807
19 **TEHACHAPI, CA 93581-1807**

20 **Smog Check Inspector License No.**
EO 3149
21 **Smog Check Repair Technician License No.**
22 **EI 3149 (formerly Advanced Emission**
Specialist Technician License No.
23 **EA 3149)**

24 Respondents.

25 Complainant alleges:

26 **PARTIES**

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

1 6. Code section 9884.7² provides, in part, that the Director may revoke an automotive
2 repair dealer registration.

3 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
4 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
5 proceeding against an automotive repair dealer or to render a decision invalidating a registration
6 temporarily or permanently.

7 8. Code section 22, subdivision (a) states:

8 "(a) 'Board' as used in any provisions of this Code, refers to the board in
9 which the administration of the provision is vested, and unless otherwise expressly
10 provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
11 'examining committee,' 'program,' and 'agency.'

12 9. Code section 477 states:

13 "As used in this division:

14 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,'
15 'division,' 'examining committee,' 'program,' and 'agency.'

16 "(b) 'License' includes certificate, registration or other means to engage in
17 a business or profession regulated by this code."

18 10. Health and Safety Code section 44072.8 states:

19 "When a license has been revoked or suspended following a hearing under this article
20 [Motor Vehicle Inspection Program], any additional license issued under this chapter in the name
21 of the licensee may be likewise revoked or suspended by the director."

22 STATUTES

23 11. Section 9884.7 of the Code states, in pertinent part:

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

² All section references are to the Business and Professions Code, unless otherwise noted.

1 ...

2 "(3) Failing or refusing to give to a customer a copy of any document requiring his or her
3 signature, as soon as the customer signs the document.

4 "(4) Any other conduct that constitutes fraud.

5 ...

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

10 12. Health and Safety Code section 44012 states, in pertinent part:

11 "The test at the smog check stations shall be performed in accordance with procedures
12 prescribed by the department and may require loaded mode dynamometer testing in enhanced
13 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
14 appropriate test procedures as determined by the department in consultation with the state board.
15 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
16 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
17 no earlier than January 1, 2013. However, the department, in consultation with the state board,
18 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
19 idle testing for vehicles with onboard diagnostic systems that the department and the state board
20 determine exhibit operational problems. The department shall ensure, as appropriate to the test
21 method, the following:

22 ...

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

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1 and devices installed and functioning correctly. The following conditions shall apply:

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

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

5 18. California Code of Regulations, title 16, section 3340.42 states:

6 "Smog check inspection methods are prescribed in the Smog Check Manual,
7 referenced by section 3340.45.

8 "(a) All vehicles subject to a smog check inspection, shall receive one of
9 the following test methods:

10 "(1) A loaded-mode test shall be the test method used to inspect 1976 -
11 1999 model-year vehicle, except diesel-powered, registered in the enhanced program
12 areas of the state. The loaded-mode test shall measure hydrocarbon, carbon
13 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the
14 bureau's specifications referenced in subsection (a) of Section 3340.17 of this article.
15 The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
16 including a chassis dynamometer, certified by the bureau.

17 "On and after March 31, 2010, exhaust emissions from a vehicle subject
18 to this inspection shall be measured and compared to the emissions standards shown
19 in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints)
20 Table, dated March 2010, which is hereby incorporated by reference. If the emissions
21 standards for a specific vehicle are not included in this table then the exhaust
22 emissions shall be compared to the emissions standards set forth in TABLE I or
23 TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
24 emissions are less than or equal to the applicable emission standards specified in the
25 applicable table.

26 "(2) A two-speed idle mode test shall be the test method used to inspect
27 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program
28 areas of the state, except in those areas of the state where the enhanced program has
been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon
monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as
contained in the bureau's specifications referenced in subsection (a) of Section
3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
shall be measured and compared to the emission standards set forth in this section and
as shown in Table III. A vehicle passes the two-speed idle mode test if all of its
measured emissions are less than or equal to the applicable emissions standards
specified in Table III.

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

"(b) In addition to subsection (a), all vehicles subject to the smog check
program shall receive the following:

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program – Respondent Dons Pro Technology)**

3 24. Respondent Dons Pro Technology's Station License is subject to disciplinary action
4 under Health and Safety Code section 44072.2, subdivision (a) in that on or about August 13,
5 2013, Respondent Dons Pro Technology failed to comply with provisions of the Motor Vehicle
6 Inspection Program. The facts and circumstances, which include by reference Paragraphs 20
7 through 21, are as follows:

8 (a) **Health and Safety Code section 44012, subdivision (f):** Respondent failed to
9 perform a functional test of the ignition timing on the Bureau's 1990 Honda.

10 (b) **Health and Safety Code section 44015, subdivision (b):** Respondent issued
11 electronic Certificate of Compliance No. [REDACTED] to the Bureau's 1990 Honda without
12 properly inspecting the ignition timing.

13 **FOURTH CAUSE OF ACTION**

14 **(Failure to Comply with Regulations – Respondent Dons Pro Technology)**

15 25. Respondent Dons Pro Technology's Station License is subject to disciplinary action
16 under Health and Safety Code section 44072.2, subdivision (c) in that on or about August 13,
17 2013, Respondent Dons Pro Technology failed to comply with following regulations adopted
18 pursuant to the Motor Vehicle Inspection Program:

19 (a) **California Code of Regulations, title 16, section 3340.42:** Respondent failed
20 to perform properly a functional test of the ignition timing on the Bureau's 1990 Honda prior to
21 issuing a Certificate of Compliance. Complainant incorporates by reference Paragraphs 20
22 through 21, above.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Violation of the Motor Vehicle Inspection Program – Respondent Mitcham)**

25 26. Respondent Mitcham's Technician Licenses are subject to disciplinary action under
26 Health and Safety section 44072.2, subdivision (c) in that on or about August 13, 2013,
27 Respondent Mitcham failed to comply with provisions of the Motion Vehicle Inspection Program.
28 The facts and circumstances, which include by reference Paragraphs 20 through 21, are as

1 follows:

2 (a) **Health and Safety Code section 44032:** Respondent Mitcham fail to perform
3 properly the test of the emission control devices and systems of the Bureau's 1990 Honda in
4 accordance with Health and Safety Code section 44012 when he failed to perform properly the
5 functional test of the ignition timing prior to issuing a Certificate of Compliance.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Regulations – Respondent Mitcham)**

8 27. Respondent Mitcham's Technician Licenses are subject to disciplinary action under
9 Health and Safety section 44072.2, subdivision (c), in that on or about August 13, 2013,
10 Respondent failed to comply with the following regulations adopted pursuant to the Motor
11 Vehicle Inspection Program:

12 (a) **California Code of Regulations, title 16, section 3340.30, subdivision (a):**
13 Respondent Mitcham failed to inspect, test, or repair a vehicle in accordance with Health and
14 Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section
15 3340.42 because he because failed to perform properly the functional test portion the smog check
16 by failing to check the ignition timing on the Bureau's 1990 Honda prior to issuing a Certificate of
17 Compliance. Complainant incorporates by reference Paragraphs 20 through 21, above.

18 **UNDERCOVER OPERATION #2: 1992 CHEVROLET**

19 28. On or about October 16, 2013, an undercover operator for the Bureau (operator) took
20 the Bureau's 1992 Chevrolet to Respondent Dons Pro Technology and requested a smog
21 inspection. The ignition timing specification of the 1992 Chevrolet is required to be 10 degrees
22 Before Top Dead Center (BTDC) with a 3 degree plus or minus tolerance. The ignition timing
23 had been adjusted to 20 degrees BTDC which is beyond specification, thereby rendering the
24 vehicle incapable of passing a smog inspection.

25 29. The operator signed a written estimate for the smog check, but was not given a copy
26 of the written estimate. Respondent Mitcham performed the smog inspection and issued
27 Certificate of Compliance [REDACTED] After the smog inspection was complete, the operator
28 was informed that the vehicle passed the smog inspection. The operator paid Respondent

1 Mitcham \$70.95 and was provided with a copy of the Certificate of Compliance, the invoice
2 [REDACTED] and a Vehicle Inspection Report.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Fraud – Respondent Dons Pro Technology)**

5 30. Respondent Dons Pro Technology's ARD Registration is subject to disciplinary action
6 under Code section 9884.7, subdivision (a)(4) and Respondent Dons Pro Technology's Station
7 License is subject to disciplinary action under Health and Safety Code section 44072.2,
8 subdivision (d) in that on or about October 16, 2013, Respondent Dons Pro Technology
9 committed fraud when the shop knowingly received and retained payment for a smog check that
10 was not performed properly. Complainant incorporates by reference Paragraphs 28 through 29,
11 above.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Violation of the Automotive Repair Act – Respondent Dons Pro Technology)**

14 31. Respondent Dons Pro Technology is subject to disciplinary action under Code section
15 9884.7, subdivision (a)(3) in that Respondent Dons Pro Technology failed to provide the operator
16 of the Bureau's 1992 Chevrolet with a copy of the signed estimate as soon as it was signed.
17 Complainant incorporates by reference Paragraphs 28 through 29, above.

18 **NINTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program – Respondent Dons Pro Technology)**

20 32. Respondent Dons Pro Technology's Station License is subject to disciplinary action
21 under Health and Safety Code section 44072.2, subdivision (a) in that on or about October 16,
22 2013, Respondent Dons Pro Technology failed to comply with provisions of the Motor Vehicle
23 Inspection Program. The facts and circumstances, which include by reference Paragraphs 28
24 through 29, are as follows:

25 (a) **Health and Safety Code section 44012, subdivision (f):** Respondent failed to
26 perform a functional test of the ignition timing of the Bureau's 1992 Chevrolet.

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1 (b) **Health and Safety Code section 44015, subdivision (b)**: Respondent issued
2 electronic Certificate of Compliance No. [REDACTED] to the Bureau's 1992 Chevrolet without
3 properly inspecting the ignition timing.

4 **TENTH CAUSE OF ACTION**

5 **(Failure to Comply with Regulations – Respondent Dons Pro Technology)**

6 33. Respondent Dons Pro Technology's Station License is subject to disciplinary action
7 under Health and Safety Code section 44072.2, subdivision (c) in that on or about October 16,
8 2013, Respondent Dons Pro Technology failed to comply with following regulations adopted
9 pursuant to the Motor Vehicle Inspection Program:

10 (a) **California Code of Regulations, title 16, section 3340.42**: Respondent failed
11 to perform properly a functional test of the ignition timing on the Bureau's 1992 Chevrolet prior to
12 issuing a Certificate of Compliance. Complainant incorporates by reference Paragraphs 28
13 through 29, above.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Violations of the Motor Vehicle Inspection Program – Respondent Mitcham)**

16 34. Respondent Mitcham's Technician Licenses are subject to disciplinary action under
17 Health and Safety section 44072.2, subdivision (c) in that on or about October 16, 2013,
18 Respondent Mitcham failed to comply with provisions of the Motor Vehicle Inspection Program.
19 The facts and circumstances, which include by reference Paragraphs 28 through 29, are as
20 follows:

21 (a) **Health and Safety Code section 44032**: Respondent Mitcham fail to perform
22 properly the test of the emission control devices and systems of the Bureau's 1992 Chevrolet in
23 accordance with Health and Safety Code section 44012 when he failed to perform properly the
24 functional test of the ignition timing prior to issuing a Certificate of Compliance.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations – Respondent Mitcham)**

3 35. Respondent Mitcham's Technician Licenses are subject to disciplinary action under
4 Health and Safety section 44072.2, subdivision (c) in that on or about October 16, 2013,
5 Respondent failed to comply with the following regulations adopted pursuant to the Motor
6 Vehicle Inspection Program:

7 (a) **California Code of Regulations, title 16, section 3340.30, subdivision (a):**

8 Respondent Mitcham failed to inspect, test, or repair a vehicle in accordance with Health and
9 Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section
10 3340.42 because he because failed to perform properly the functional test portion the smog check
11 by failing to check the ignition timing on the Bureau's 1992 Chevrolet prior to issuing a
12 Certificate of Compliance. Complainant incorporates by reference Paragraphs 28 through 29,
13 above.

14 **DISCIPLINE CONSIDERATIONS: PRIOR CITATIONS**

15 36. To determine the degree of discipline, if any, to be imposed on Respondent,
16 Complainant alleges the following:

17 (a) On or about October 11, 2010, the Bureau issued Citation No C2011-0424 to
18 Respondent Dons Pro Technology for violating Health and Safety Code section 44012,
19 subdivision (f) [failure to determine that emission control devices and systems required by State
20 and Federal law are installed and functioning correctly in accordance with test procedures] and
21 California Code of Regulations, title 16, section 3340.35, subdivision (c) [issuing a Certificate of
22 Compliance to a vehicle that was improperly tested]. The basis for the Citation was that on or
23 about September 21, 2010, Respondent Dons Pro Technology issued a Certificate of Compliance
24 to a Bureau undercover vehicle with a missing Air Injection System. The Bureau assessed civil
25 penalties totaling \$1,000.00. Respondent Dons Pro Technology appealed the Citation and the
26 Citation was sustained on or about July 23, 2012 with the penalties reduced to \$500.00. The
27 Citation was paid on January 24, 2013.

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1 (b) On or about October 11, 2010, the Bureau issued Citation No. M2011-0425 to
2 Respondent Mitcham for violating Health and Safety Code section 44032 [qualified technicians
3 shall perform tests of emission control systems and devices in accordance with section 44012
4 H&S] and California Code of Regulations, title 16, section 3340.30, subdivision (a) [qualified
5 technicians shall inspect, test, and repair vehicles in accordance with 44012 H&S, 44035 H&S,
6 and 3340.42 CCR]. The basis for the Citation was that on or about September 21, 2010,
7 Respondent Mitcham issued a Certificate of Compliance to a Bureau undercover vehicle with a
8 missing Air Injection System. The Bureau directed Respondent Mitcham to attend an 8 hour
9 training course. The Citation training was completed on December 5, 2010. Respondent
10 Mitcham appealed the Citation and the Citation was sustained on or about July 23, 2012.

11 (c) On or about June 9, 2011, the Bureau issued Citation No C2011-1471 to Respondent
12 Dons Pro Technology for violating Health and Safety Code section 44012, subdivision (f) [failure
13 to determine that emission control devices and systems required by State and Federal law are
14 installed and functioning correctly in accordance with test procedures] and California Code of
15 Regulations, title 16, section 3340.35, subdivision (c) [issuing a Certificate of Compliance to a
16 vehicle that was improperly tested]. The basis for the Citation was that on or about May 18 2011,
17 Respondent Dons Pro Technology issued a Certificate of Compliance to a Bureau undercover
18 vehicle with a missing Exhaust Gas Recirculation Valve. The Bureau assessed civil penalties
19 totaling \$1,500.00. The Citation was paid on September 6, 2011.

20 (d) On or about June 9, 2011, the Bureau issued Citation No. M2011-1472 to Respondent
21 Mitcham for violating Health and Safety Code section 44032 [qualified technicians shall perform
22 tests of emission control systems and devices in accordance with section 44012 H&S] and
23 California Code of Regulations, title 16, section 3340.30, subdivision (a) [qualified technicians
24 shall inspect, test, and repair vehicles in accordance with 44012 H&S, 44035 H&S, and 3340.42
25 CCR]. The basis for the Citation was that on or about May 18 2011, Respondent Dons Pro
26 Technology issued a Certificate of Compliance to a Bureau undercover vehicle with a missing
27 Exhaust Gas Recirculation Valve. The Bureau directed Respondent Mitcham to attend a 16 hour
28 training course. The Citation training was completed on August 28, 2011.

1 **OTHER MATTERS**

2 37. Pursuant to section 9884.7, subdivision (c), the director may suspend, revoke, or place
3 on probation the registrations for all places of business operated in this state by Donald Ray
4 Mitcham, owner, doing business as Dons Pro Technology Automotive Repair upon a finding that
5 Donald Ray Mitcham has, or is, engaged in a course of repeated and willful violations of the laws
6 and regulations pertaining to an automotive repair dealer.

7 38. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
8 Number RC 231015, issued to Donald Ray Mitcham, owner, doing business as Dons Pro
9 Technology Automotive Repair, is revoked or suspended, any additional license issued under this
10 chapter in the name of said licensees may be likewise revoked or suspended by the director.

11 39. Pursuant to Health and Safety Code section 44072.8, if Respondent Donald Ray
12 Mitcham's Technician Licenses, currently designated as EO 3149 and EI 3149, are revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 **PRAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number
19 ARD 231015, issued to Donald Ray Mitcham, owner, doing business as Don's Pro Technology
20 Automotive Repair.

21 2. Revoking or suspending Smog Check Station License Number RC 231015, issued to
22 Donald Ray Mitcham, owner, doing business as Don's Pro Technology Automotive Repair;

23 3. Revoking or suspending Smog Check Inspector License Number EO 3149, issued to
24 Donald Ray Mitcham;

25 4. Revoking or suspending Smog Check Repair Technician License Number EI 3149,
26 issued to Donald Ray Mitcham;

27 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
28 and Safety Code in the name of Donald Ray Mitcham;

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6. Ordering Donald Ray Mitcham to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: August 14, 2014 Patrick Dorais

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

DOJ Matter ID: LA2014511032
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