

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

In the Matter of the Accusation Against:

ECONOMY SMOG
MARK A. PRICE, OWNER
1019 Norboe Avenue
Corcoran, California 93212

Automotive Repair Dealer No. ARD 234152
Smog Check Station No. RC 234152

MARK ALLEN PRICE
1630 Brewer Avenue
Corcoran, California 93212

Smog Check Inspector License NO.
EO 138552 (formerly Advanced Emission
Specialist Technician License No. EA
138552)

Case No. 79/15-13

OAH No. 2014120060

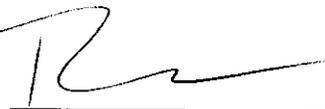
Respondents.

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.

This Decision shall become effective April 23, 2015.

DATED: April 2, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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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 Accusation Against:
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18 **Smog Check Inspector License No.**
19 **EO138552 (formerly Advanced Emission**
Specialist Technician License No. EA
20 **138552)**
21 Respondents.

Case No. 79/15-13

OAH No. 2014120060

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

22
23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 PARTIES

26 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
27 brought this action solely in his official capacity and is represented in this matter by Kamala D.
28

1 Harris, Attorney General of the State of California, by Elena L. Almanzo, Deputy Attorney
2 General.

3 2. Respondent Economy Smog; Mark A. Price, Owner ("Respondent") is representing
4 himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

5 3. On or about July 1, 2004, the Director of Consumer Affairs ("Director") issued
6 Automotive Repair Dealer Registration Number ARD 234152 to Mark A. Price ("Respondent"),
7 as owner of Economy Smog. The automotive repair dealer registration was in full force and
8 effect at all times relevant to the charge brought herein and will expire on June 30, 2015, unless
9 renewed.

10 4. On or about June 9, 2008, the Bureau issued Smog Check Station License Number
11 RC 234152 to Respondent. The smog check station license was in full force and effect at all times
12 relevant to the charge brought herein and will expire on June 30, 2015, unless renewed.

13 5. In or around 2002, the Bureau issued Advanced Emission Specialist Technician
14 License Number EA 138552 to Mark Allen Price, also known as Mark A. Price. Respondent's
15 advanced emission specialist technician license was due to expire on April 30, 2014. Pursuant to
16 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
17 renewed, pursuant to Respondent's election, as Smog Inspector License No. EO 138552.
18 Respondent's smog inspector license will expire on April 30, 2016, unless renewed.¹

19 JURISDICTION

20 6. Accusation No. 79/15-13 was filed before the Director of Consumer Affairs
21 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
22 Respondent. The Accusation and all other statutorily required documents were properly served
23 on Respondents on August 8, 2014. Respondents timely filed their Notice of Defense contesting
24 the Accusation.

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 (E1) license.

1 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
2 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
3 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
4 Director shall not be disqualified from further action by having considered this matter.

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

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

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

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 234152,
19 Smog Check Station License No. 234152 issued to Respondent Economy Smog; Mark A. Price,
20 Owner (Respondent) is revoked.

21 IT IS FURTHER ORDERED that Smog Check Inspector License No. EO138552 issued to
22 Respondent, Mark A. Price, (Respondent) is revoked

23 However, the revocations are stayed and Respondent 's Automotive Repair Dealer
24 Registration, Smog Check Station License and Smog Check Inspector License are placed on
25 probation for three (3) years on the following terms and conditions.

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

28 2. **Reporting.** Respondent or Respondent's authorized representative must report in

1 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
2 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
3 maintaining compliance with the terms and conditions of probation.

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

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

10 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of
11 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
12 until the final decision on the accusation, and the period of probation shall be extended until such
13 decision.

14 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
15 Respondent has failed to comply with the terms and conditions of probation, the Department may,
16 after giving notice and opportunity to be heard revoke the license.

17 7. **Continuing Education Courses.** During the period of probation, Respondent shall
18 attend and successfully complete a 68 hour Bureau certified training course in diagnosis and
19 repair of emission systems failures and engine performance, applicable to the class of license held
20 by the Respondent. Said course shall be completed and proof of completion submitted to the
21 Bureau within 60 days of the effective date of this decision and order. If proof of completion of
22 the course is not furnished to the Bureau within the 60-day period, Respondents' license shall be
23 immediately suspended until such proof is received.

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

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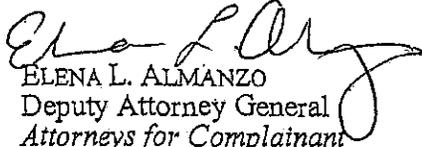
ENDORSEMENT

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

Dated: 2/5/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General


ELENA L. ALMANZO
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/15-13

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Case No. *79/15-13*

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14 **MARK A. PRICE, OWNER**
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ACCUSATION

15 **Automotive Repair Dealer No. ARD 234152**
16 **Smog Check Station No. RC 234152**

17 **MARK ALLEN PRICE**
1630 Brewer Avenue
18 Corcoran, California 93212

19 **Smog Check Inspector License No.**
20 **EO138552 (formerly Advanced Emission**
Specialist Technician License No. EA
21 **138552**

22 Respondent.

23 Patrick Dorais ("Complainant") alleges:

24 **PARTIES**

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

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

6 12. Code section 9884.8 states, in pertinent part:

7 All work done by an automotive repair dealer, including all warranty work, shall be
8 recorded on an invoice and shall describe all service work done and parts supplied. Service
9 work and parts shall be listed separately on the invoice, which shall also state separately
10 the subtotal prices for service work and for parts, not including sales tax, and shall state
11 separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned
12 parts are supplied, the invoice shall clearly state that fact. . . .

13 13. Code section 9884.9, subdivision (a), states in pertinent part:

14 The automotive repair dealer shall give to the customer a written estimated price for
15 labor and parts necessary for a specific job. No work shall be done and no charges shall
16 accrue before authorization to proceed is obtained from the customer.

17 14. Code section 22, subdivision (a), states:

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

22 15. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
23 "commission," "committee," "department," "division," "examining committee," "program," and
24 "agency." "License" includes certificate, registration or other means to engage in a business or
25 profession regulated by the Code.

26 16. Health & Safety Code section 44072.2 states, in pertinent part:

27 The director may suspend, revoke, or take other disciplinary action against a
28 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 & Safety Code § 44000, et seq.)] and the regulations adopted pursuant to it,
which related to the licensed activities.

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

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

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17. Health & Safety Code section 44072.10 states, in pertinent part:

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

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

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

19. California Code of Regulations, title 16, section 3356, states, in pertinent part:

(a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:

(1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records. If the automotive repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

(d) The automotive repair dealer shall give the customer a legible copy of the invoice and shall retain a legible copy as part of the automotive repair dealer's records pursuant to Section 9884.11 of the Business and Professions Code and Section 3358 of this article.

COST RECOVERY

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

UNDERCOVER OPERATION

21. On or about January 24, 2014, a Bureau undercover operator (the "operator") took the Bureau's 1994 Pontiac to Respondent's facility, Economy Smog, and requested a smog inspection. Respondent told the operator to enter his name and address on a blank sales form that did not include Respondent's name, location, automotive repair dealer registration number of the vehicle, or the odometer reading, and the operator did so. Respondent then looked at the form and

1 told the operator to sign it, which he did. Respondent told the operator that the smog inspection
2 would cost \$49.95 plus the certificate. The operator did not receive a written estimate before
3 Respondent performed work on the vehicle or a copy of the document he signed.

4 22. While waiting for the vehicle, the operator observed an individual, who appeared to
5 be assisting respondent, put the emissions inspection system ("EIS") unit exhaust probe into the
6 tail pipe of the vehicle and raise the vehicle's RPM until Respondent stated "that's good". The
7 assistant then removed the exhaust probe and raised the hood. Respondent asked the assistant
8 whether an evaporative emission canister was installed on the vehicle or if anything was missing,
9 modified, or disconnected. The assistant relayed to Respondent that an evaporative emission
10 canister was mounted under the vehicle and nothing was missing, modified, or disconnected.
11 When the assistant told Respondent that the vehicle had an electronic EGR (exhaust gas
12 recirculation system) valve, Respondent retorted that they don't check electronic ones, and
13 continued entering data into the EIS unit. The assistant put the EIS unit exhaust probe back into
14 the tail pipe of the vehicle and removed it a few minutes later. The operator observed that, aside
15 from performing a fuel cap integrity test and entering data into the EIS unit, Respondent did not
16 perform any part of the smog inspection.

17 23. Respondent pronounced the smog inspection complete and told the operator it cost
18 \$58. He provided the operator with a copy of invoice [REDACTED] and a vehicle inspection report.

19 24. The Bureau obtained information from the vehicle information database showing that
20 Respondent performed a smog inspection on the 1994 Pontiac on January 24, 2014, resulting in
21 the issuance of electronic smog Certificate of Compliance No. [REDACTED]

22 25. The Bureau determined that the certificate of compliance was fraudulently issued in
23 that the vehicle was precluded from passing a lawful smog inspection because the exhaust gas
24 recirculation system was non-functional.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 26. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the
5 exercise of reasonable care should have known to be untrue or misleading. Specifically,
6 Respondent certified under penalty of perjury that the Bureau's 1994 Pontiac had passed a smog
7 inspection and was in compliance with applicable laws and regulations. In fact, the vehicle was
8 precluded from passing a lawful smog inspection because the exhaust gas recirculation system
9 was non-functional and the vehicle would not pass the inspection required by Health & Safety
10 Code section 44012.

11 SECOND CAUSE FOR DISCIPLINE

12 (Fraud)

13 27. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
14 subdivision (a)(4), in that Respondent committed an act that constitutes fraud by issuing an
15 electronic smog certificate of compliance for the Bureau's 1994 Pontiac without ensuring that a
16 bona fide inspection was performed of the emission control devices and systems on the vehicle,
17 thereby depriving the people of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

19 THIRD CAUSE FOR DISCIPLINE

20 (Failure to Comply With Code)

21 28. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
22 subdivision (a)(6), in that regarding the Bureau's 1994 Pontiac, Respondent failed to comply with
23 provisions of Code section 9884.9, subdivision (a), by failing to provide the operator with a
24 written estimate before performing the smog inspection on the Bureau's 1994 Pontiac, as set forth
25 in paragraph 21, above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Regulations)

3 29. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(6), in that regarding the Bureau's 1994 Pontiac, Respondent, failed to materially
5 comply with California Code of Regulations, title 16, as follows:

6 a. Section 3356, subdivision (a)(1): Respondent failed to show his automotive repair
7 dealer registration number, business name, and address on Invoice No. [REDACTED]

8 b. Section 3356, subdivision (d): Respondent failed to provide the operator with a
9 legible copy of Invoice No. [REDACTED]

10 **FIFTH CAUSE FOR DISCIPLINE**

11 (Failure to Record Odometer Reading on Work Order)

12 30. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
13 subdivision (a)(2), in that Respondent caused or allowed a customer to sign a work order that did
14 not state the automobile's odometer reading at the time of repair, as set forth in paragraph 21,
15 above.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 (Motor Vehicle Inspection Program – Code Violations)

18 31. Respondent's smog check station license is subject to discipline pursuant to Health &
19 Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions
20 of that Code, as follows:

21 a. Section 44012, subdivision (a): Respondent failed to ensure that the emission
22 control tests were performed on the Bureau's 1994 Pontiac in accordance with procedures
23 prescribed by the department.

24 b. Section 44015: Respondent issued an electronic smog certificate of compliance for
25 the Bureau's 1994 Pontiac without ensuring that the vehicle was properly tested and inspected to
26 determine if it was in compliance with Health & Safety Code section 44012.

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1 precluded from passing a lawful smog inspection because the exhaust gas recirculation system
2 was non-functional

3 **TENTH CAUSE FOR DISCIPLINE**

4 (Motor Vehicle Inspection Program - Regulation Violations)

5 35. Respondent's technician license is subject to discipline pursuant to Health & Safety
6 Code section 44072.2, subdivision (c), in that on or about January 24, 2014, regarding the
7 Bureau's 1994 Pontiac, Respondent failed to comply with provisions of California Code of
8 Regulations, title 16 ("Regulations"), as follows:

9 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the vehicle in
10 accordance with Health & Safety Code section 44012.

11 b. **Section 3341.41, subdivision (c)**: Respondent knowingly entered false information
12 into the emission inspection system.

13 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the vehicle
14 in accordance with the Bureau's specifications.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 (Dishonesty, Fraud, or Deceit)

17 36. Respondent's technician license is subject to discipline pursuant to Health & Safety
18 Code section 44072.2, subdivision (d), in that on or about January 24, 2014, Respondent
19 committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing an
20 electronic smog certificate of compliance for the Bureau's 1994 Pontiac without performing a
21 bona fide inspection of the emission control devices and systems on the vehicle, thereby
22 depriving the people of the State of California of the protection afforded by the Motor Vehicle
23 Inspection Program.

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1 MATTERS IN AGGRAVATION

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

4 **Economy Smog**

5 a. On or about August 3, 2010, the Bureau issued Citation No. C2011-0116 against
6 Respondent for violation of Health & Safety Code section 44012, subdivision (f), (failure to
7 perform a visual/functional check of emission control devices according to procedures prescribed
8 by the department) and California Code of Regulations, title 16 ("Regulation"), section 3340.35,
9 subdivision (c), (issuing a certificate of compliance to a vehicle that was improperly tested). On
10 July 9, 2010, Respondent issued a certificate of compliance to a Bureau undercover vehicle with
11 the ignition timing adjusted beyond specifications and failed to perform the exhaust gas
12 recirculation valve functional test. The Bureau assessed civil penalties totaling \$500 against
13 Respondent for the violations. Respondent paid the fine on February 3, 2011.

14 b. On or about August 30, 2011, the Bureau issued Citation No. C2012-0192 against
15 Respondent for violation of Health & Safety Code sections 44012, subdivision (f). On August 3,
16 2011, Respondent issued a certificate of compliance to a Bureau undercover vehicle with a
17 missing air injection reactor (AIR) system exhaust tubes and check valves. The Bureau assessed
18 civil penalties totaling \$1,500 against Respondent for the violations. Respondent paid the fine on
19 January 6, 2014.

20 c. On or about June 25, 2012, the Bureau issued Citation No. C2012-1845 against
21 Respondent for violation of Health & Safety Code section 44012, subdivision (f). On May 17,
22 2012, Respondent issued a certificate of compliance to a Bureau undercover vehicle with a
23 missing positive crankcase ventilation valve, vacuum hose, and crankcase vent breather hose.
24 The Bureau assessed civil penalties totaling \$1,500 against Respondent for the violations.
25 Respondent paid the fine on August 16, 2013.

26 **Mark Allen Price**

27 d. On or about August 3, 2010, the Bureau issued Citation No. M2011-0117 against
28 Respondent for violations of Health & Safety Code section 44032 (qualified technicians shall

1 perform tests of emission control systems and devices in accordance with Health & Safety Code
2 section 44012), and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test,
3 and repair vehicles in accordance with Health & Safety Code sections 44012 and 44035, and
4 Regulation 3340.42). On July 9, 2010, Respondent issued a certificate of compliance to a Bureau
5 undercover vehicle with the ignition timing adjusted beyond specifications and failed to perform
6 the exhaust gas recirculation valve functional test. Respondent was directed to complete an 8
7 hour training course and to submit proof of completion to the Bureau within 30 days from receipt
8 of the citation. Respondent completed the training on January 12, 2011.

9 **OTHER MATTERS**

10 38. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
11 place on probation the registration for all places of business operated in this state by Respondent
12 Mark A. Price, owner of Economy Smog, upon a finding that said Respondent has, or is, engaged
13 in a course of repeated and willful violations of the laws and regulations pertaining to an
14 automotive repair dealer.

15 ///

16 39. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
17 Number RC 234152, issued to Mark A. Price, owner of Economy Smog, is revoked or suspended,
18 any additional license issued under this chapter in the name of Mark A. Price may be likewise
19 revoked or suspended by the Director.

20 40. Under Health & Safety Code section 44072.8, if Respondent's Smog Check
21 Inspector License No. EO 138552 (formerly Advanced Emission Specialist Technician License
22 No. EA 138552), is revoked or suspended, any additional license issued under this chapter in the
23 name of Respondent Mark A. Price may likewise be revoked or suspended.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 234152, issued to Mark A. Price, as owner of Economy Smog;

