

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

In the Matter of the Accusation Against:

Case No. 79/10-83

TAILPIPES SMOG TEST CENTERS, INC.
dba TAILPIPES SMOG TEST CENTER
JEFFREY R. STOWERS, President
2830 Northgate Blvd.
Sacramento, California 95833

Mailing Address:

10433 Folsom Blvd.
Rancho Cordova, California 95670
Automotive Repair Dealer Registration
No. ARD 230405
Smog Check, Test Only, Station License
No. TC 230405

TAILPIPES SMOG TEST CENTERS, INC.
dba TAILPIPES SMOG TEST CENTER
JEFFREY R. STOWERS, President
4701 San Juan Avenue
Fair Oaks, California 95628

Mailing Address:

10433 Folsom Blvd.
Rancho Cordova, California 95670

Automotive Repair Dealer Registration
No. ARD 226900
Smog Check, Test Only, Station License
No. TC 226900

TAILPIPES SMOG TEST CENTERS, INC.
dba TAILPIPES SMOG TEST CENTER
JEFFREY R. STOWERS, President
5851 Fair Oaks Blvd.
Carmichael, California 95608

Automotive Repair Dealer Registration
No. ARD 222099
Smog Check, Test Only, Station License
No. TC 222099

TAILPIPES SMOG TEST CENTERS, INC.
dba TAILPIPES SMOG TEST CENTER
JEFFREY R. STOWERS, President
625 Vernon Street
Roseville, California 95678

Automotive Repair Dealer Registration
No. ARD 212270
Smog Check, Test Only, Station License
No. TC 212270

and

VIRASANE KEOONLA
8613 Oldwoods Way

Sacramento, California 95828

Advanced Emission Specialist Technician
License No. EA 142363


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 only as to respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes Smog Test Center, Jeffrey R. Stowers, President, Automotive Repair Dealer Registration No. ARD 230405, Automotive Repair Dealer Registration No. ARD 226900, Automotive Repair Dealer Registration No. ARD 222099, Automotive Repair Dealer Registration No. ARD 212270, Smog Check, Test Only, Station License No. TC 230405, and Smog Check, Test Only, Station License No. TC 226900, Smog Check, Test Only, Station License No. TC 222099, Smog Check, Test Only, Station License No. TC 212270.

This Decision shall become effective 6/20/11.

DATED: May 16, 2011


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
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Sacramento, CA 94244-2550
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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. 79/10-83

13 **TAILPIPES SMOG TEST CENTERS, INC., dba**
14 **TAILPIPES SMOG TEST CENTER, JEFFREY**
15 **R. STOWERS, PRESIDENT**
2830 Northgate Blvd.
Sacramento, California 95833

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Mailing Address:
10433 Folsom Blvd
Rancho Cordova, California 95670
17 Automotive Repair Dealer Reg. No. ARD 230405
Smog Check, Test Only, Station License No.
TC 230405

18 **TAILPIPES SMOG TEST CENTERS, INC. dba**
19 **TAILPIPES SMOG TEST CENTER**
20 **JEFFREY R. STOWERS, PRESIDENT**
4701 San Juan Avenue
Fair Oaks, California 95628

21 Mailing Address:
10433 Folsom Blvd
22 Rancho Cordova, California 95670
Automotive Repair Dealer Reg. No. ARD 226900
23 Smog Check, Test Only, Station License No.
TC 26900

24 And

25 **VIRASANE KEOONLA**
26 8613 Oldwoods Way
Sacramento, California 95828
27 Advanced Emission Specialist Technician License
No. EA 142363

28 Respondents.

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

3 PARTIES

4 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair,
5 Department of Consumer Affairs, State of California. She brought this action solely in her
6 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
7 State of California, by Sterling A. Smith, Deputy Attorney General.

8 2. Respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes Smog Test Center and
9 Jeffrey R. Stowers, President (Respondent) are represented in this proceeding by attorney
10 Michael B. Levin, whose address is: 3727 Camino del Rio South, Suite 200, San Diego,
11 California 92108

12 3. On or about November 7, 2003, the Bureau of Automotive Repair (Bureau) issued
13 Automotive Repair Dealer Registration No. ARD 230405 to Respondent Tailpipes Smog Test
14 Centers, Inc., dba Tailpipes Smog Test Center, with Jeffrey R. Stowers as its President
15 (Respondent), for the premises located at 2830 Northgate Blvd., Sacramento, California 95670.
16 The Automotive Repair Dealer Registration expired on October 31, 2009, and has not been
17 renewed.

18 4. On or about December 2, 2003, the Bureau issued Smog Check, Test Only, Station
19 License No. TC 230405 to Respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes Smog
20 Test Center, with Jeffrey R. Stowers as its President (Respondent), for the premises located at
21 2830 Northgate Blvd., Sacramento, California 95670. The Smog Check, Test Only, Station
22 License expired on October 31, 2009, and has not been renewed.

23 5. On or about March 23, 2003, the Bureau issued Automotive Repair Dealer
24 Registration No. ARD 226900 to Respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes
25 Smog Test Center (Respondent), with Jeffrey R. Stowers as its President, for the premises located
26 at 4701 San Juan Avenue, Fair Oaks, California 95628. The Automotive Repair Dealer
27 Registration expired on March 31, 2010, and has not been renewed.

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6. On or about April 21, 2003, the Bureau issued Smog Check, Test Only, Station License No. TC 226900 to Respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes Smog Test Center (Respondent), with Jeffrey R. Stowers as its President, for the premises located at 4701 San Juan Avenue, Fair Oaks, California 95628. The Smog Check, Test Only, Station License expired on March 31, 2010, and has not been renewed.

7. Respondent is also the holder of Automobile Repair Dealer Registration No. ARD 222099 and Smog Check, Test Only, Station License No. TC 222099 for the premises located at 5851 Fair Oaks Blvd., Carmichael, California 95608. These licenses will expire on June 30, 2011, unless renewed.

8. Respondent is also the holder of Automobile Repair Dealer Registration No. ARD 212270 and Smog Check, Test Only, Station License No. TC 212270 for the premises located at 625 Vernon Street, Roseville, California 95678. These licenses will expire on August 31, 2011, unless renewed.

JURISDICTION

9. Accusation No. 79/10-83 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondents on June 23, 2010. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation No. 79/10-83 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

10. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 79/10-83. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

11. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against them; the right to

1 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
2 the attendance of witnesses and the production of documents; the right to reconsideration and
3 court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

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

7 CULPABILITY

8 13. Respondent admits the truth of each and every charge and allegation in Accusation
9 No. 79/10-83. Such admissions, and any other admissions which may be express, implied,
10 general or specific are for the purpose of discipline and do not constitute admissions for any other
11 purpose or in any third party civil, criminal, administrative proceedings or other proceeding in
12 which the Department of Consumer Affairs or the Bureau of Automotive Repair is not a party.

13 14. Respondent agrees that its Automotive Repair Dealer Registrations and Smog Check,
14 Test Only, Station Licenses are subject to discipline and agrees to be bound by the Director of
15 Consumer Affairs (Director)'s terms as set forth in the Disciplinary Order below.

16 CONTINGENCY

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

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16. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Smog Check, Test Only, Station License No. TC 230405 and TC 226900, and each of them, issued to Respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes Smog Test Center (Respondent), are revoked outright. From and after the effective date of the Decision, Respondent shall lose all rights and privileges as a smog check station at the locations at 2830 Northgate Blvd., Sacramento, California 95670 and at 4701 San Juan Avenue, Fair Oaks, California 95628, and as to those locations, shall have no right to lawfully perform smog testing or any other act requiring a smog check station license.

IT IS FURTHER ORDERED that Automotive Repair Dealer Registration Nos. ARD 230405 and 226900, and each of them, issued to Respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes Smog Test Center, are revoked outright. From and after the effective date of the Decision, Respondent shall lose all rights and privileges as an automobile repair dealer at the locations at 2830 Northgate Blvd., Sacramento, California 95670 and at 4701 San Juan Avenue, Fair Oaks, California 95628, and as to those locations, shall have no right to lawfully perform any act requiring an automobile repair dealer registration.

/ / /

1 IT IS FURTHER ORDERED that Automotive Repair Dealer Registration
2 No. ARD 222099, Automotive Repair Dealer Registration No. ARD 212270, Smog Check, Test
3 Only, Station License No. TC 222099, Smog Check, Test Only, Station License No. 212270, and
4 each of them, issued to Respondent Tailpipes Smog Test Centers, Inc., dba Tailpipes Smog Test
5 Center, is revoked. However, as to said licenses, revocation is stayed and Respondent is placed on
6 probation for three (3) years on the following terms and conditions.

7 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 222099,
8 Automobile Repair Dealer Registration No. ARD 212270, Smog Check, Test Only, Station
9 License No. TC 222099 and Smog Check, Test Only, Station License No. 212270, and each of
10 them is suspended for five (5) consecutive business days beginning on the effective date of the
11 decision.

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

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

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

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

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

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

5 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
6 Respondent has failed to comply with the terms and conditions of probation, the Department may,
7 after giving notice and opportunity to be heard suspend or revoke Automobile Repair Dealer
8 Registration No. ARD 212270, Automobile Repair Dealer Registration No. ARD 222099, Smog
9 Check, Test Only, Station License No. 212270 and Smog Check, Test Only, Station License
10 No. 222099.

11 9. **Cost Recovery.** Payment to the Bureau \$7,212.50, which is seventy-five percent
12 (75%) of the costs of investigation and prosecution. Said amount shall be paid in full to the
13 Bureau not later than six (6) months before probation terminates. Failure to complete payment of
14 cost recovery within this time frame shall constitute a violation of probation which may subject
15 Respondent's automotive repair dealer registrations to outright revocation; however, the Director
16 or the Director's Bureau of Automotive Repair designee may elect to continue probation until
17 such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

18 ACCEPTANCE

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


25 TAILPIPES SMOG TEST CENTERS, INC.,
26 DBA TAILPIPES SMOG TEST CENTER

27 DATED: 27 APR 2011

28 By: JEFFREY R. STOWERS
 President of Respondent

1 I have read and fully discussed with Respondent Tailpipes Smog Test Centers, Inc., dba
2 Tailpipes Smog Test Center the terms and conditions and other matters contained in the above
3 Stipulated Settlement and Disciplinary Order. I approve its form and content.

4 DATED: 4/28/11

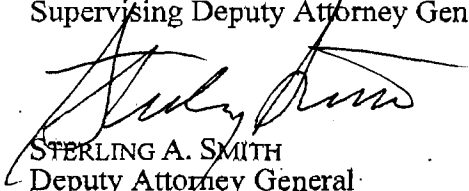

MICHAEL B. LEVIN
Attorney for Respondent

6
7 ENDORSEMENT

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

10 DATED: 4/29/2011

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General


STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/10-83

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
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7 *Attorneys for Complainant*

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

79/10-83

11 In the Matter of the Accusation Against:

Case No.

12 **TAILPIPES SMOG TEST CENTERS, INC.,**
13 **dba TAILPIPES SMOG TEST CENTER**
14 **JEFFERY R. STOWERS, PRESIDENT**
2830 Northgate Blvd.
Sacramento, CA 95833

A C C U S A T I O N

(Smog Check)

15 Mailing Address:
10433 Folsom Blvd.
16 Rancho Cordova, CA 95670
Automotive Repair Dealer Reg. No. ARD 230405
17 Smog Check, Test Only, Station License No. TC 230405,

18 **TAILPIPES SMOG TEST CENTERS, INC.,**
19 **dba TAILPIPES SMOG TEST CENTER**
20 **JEFFERY R. STOWERS, PRESIDENT**
4701 San Juan Ave.
Fair Oaks, CA 95628
21 Mailing Address:
10433 Folsom Blvd.
Rancho Cordova, CA 95670
22 Automotive Repair Dealer Reg. No. ARD 226900
Smog Check, Test Only, Station License No. TC 226900,

23 and

24 **VIRASANE KEOONLA**
25 8613 Oldwoods Way
Sacramento, CA 95828
26 Advanced Emission Specialist Technician License No.
EA 142363

27 Respondents.
28

1 Complainant alleges:

2 **PARTIES**

3 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
4 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

5 **Tailpipes Smog Test Centers, Inc. dba Tailpipes Smog Test Center (Sacramento)**

6 2. On or about November 7, 2003, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 230405 (hereinafter "registration") to
8 Tailpipes Smog Test Centers, Inc. ("Respondent TSTC"), doing business as Tailpipes Smog Test
9 Center, with Jefferey R. Stowers as president. Respondent's registration expired on October 31,
10 2009.

11 3. On or about December 2, 2003, the Director issued Smog Check, Test Only, Station
12 License Number TC 230405 (hereinafter "smog check station license") to Respondent TSTC.
13 Respondent's smog check station license expired on October 31, 2009.

14 **Tailpipes Smog Test Centers, Inc. dba Tailpipes Smog Test Center (Fair Oaks)**

15 4. On or about March 28, 2003, the Director issued Automotive Repair Dealer
16 Registration Number ARD 226900 (hereinafter "registration") to Respondent TSTC, doing
17 business as Tailpipes Smog Test Center, with Jefferey R. Stowers as president. Respondent's
18 registration expired on March 31, 2010.

19 5. On or about April 21, 2003, the Director issued Smog Check, Test Only, Station
20 License Number TC 226900 (hereinafter "smog check station license") to Respondent TSTC.
21 Respondent's smog check station license expired on March 31, 2010.

22 **Virasane Keonla**

23 6. In or about 2001, the Director issued Advanced Emission Specialist Technician
24 License Number EA 142363 (hereinafter "technician license") to Virasane Keonla ("Respondent
25 Keonla or "Keonla"). Respondent's technician license expired on May 31, 2009.

26 **JURISDICTION**

27 7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
28 the Director may invalidate an automotive repair dealer registration.

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

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

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

12 STATUTORY PROVISIONS

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

14 (a) The director, where the automotive repair dealer cannot show there
15 was a bona fide error, may refuse to validate, or may invalidate temporarily or
16 permanently, the registration of an automotive repair dealer for any of the following
17 acts or omissions related to the conduct of the business of the automotive repair
18 dealer, which are done by the automotive repair dealer or any automotive technician,
19 employee, partner, officer, or member of the automotive repair dealer.

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

23

24 (4) Any other conduct which constitutes fraud.

25

26 (c) Notwithstanding subdivision (b), the director may refuse to validate,
27 or may invalidate temporarily or permanently, the registration for all places of
28 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.

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12. 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."

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

14. 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 sections 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 . . .

15. Health & Saf. 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:

(1) Clean piping, as defined by the department.

....

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

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

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1 17. Vehicle Code section 27156 states, in pertinent part:

2

3 (b) No person shall operate or leave standing upon any highway any
4 motor vehicle which is required to be equipped with a motor vehicle pollution control
5 device under Part 5 (commencing with Section 43000) of Division 26 of the Health
6 and Safety Code or any other certified motor vehicle pollution control device required
7 by any other state law or any rule or regulation adopted pursuant to that law, or
8 required to be equipped with a motor vehicle pollution control device pursuant to the
National Emission Standards Act (42 U.S.C. Secs. 1857f-1 to 1857f-7, inclusive) and
the standards and regulations adopted pursuant to that federal act, unless the motor
vehicle is equipped with the required motor vehicle pollution control device which is
correctly installed and in operating condition. No person shall disconnect, modify, or
alter any such required device.

9 (c) No person shall install, sell, offer for sale, or advertise any device,
10 apparatus, or mechanism intended for use with, or as a part of, any required motor
11 vehicle pollution control device or system which alters or modifies the original design
or performance of any such motor vehicle pollution control device or system.

12 (d) If the court finds that a person has willfully violated this section, the
13 court shall impose the maximum fine that may be imposed in the case, and no part of
the fine may be suspended . . .

14 COST RECOVERY

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

19 FRAUDULENT SMOG CERTIFICATES

20 19. On or about April 13, 2009, Joshua Burkey ("Burkey") placed an advertisement on
21 craigslist online classifieds, indicating that he had a 1990 Volvo 760 Wagon equipped with a
22 1991 Mustang Ford 5.0 302 fuel injected engine and an AOD automatic transmission (hereinafter
23 "Volvo") for sale. The advertisement stated, "Buyer can smog (or for the right deal it can be
24 smogged)".

25 20. That same day, a representative of the Bureau (hereinafter "representative") called the
26 telephone number listed in the advertisement and spoke with Burkey. The representative told
27 Burkey that he was interested in purchasing the Volvo; however, the advertisement did not list a
28 price for the vehicle. The representative asked Burkey how much he wanted for the vehicle and

1 Burkey replied \$2,500. Burkey stated that the Volvo was equipped with an engine from a 1991
2 Ford Mustang. The representative asked Burkey if the Volvo would pass the California
3 Emissions Inspection. Burkey told the representative that the vehicle would not pass the
4 inspection, but he knew a friend who could obtain a passing emissions inspection for the vehicle.
5 The representative stated that he wanted to inspect the vehicle and take it for a test drive. Burkey
6 agreed to meet with the representative on April 14, 2009.

7 21. On April 14, 2009, the representative met with Burkey and inspected the Volvo. The
8 representative noted that the engine was a Ford small block, and asked Burkey why the vehicle
9 did not have a passing emissions inspection. Burkey told the representative that the Volvo's
10 engine was not the correct engine for the vehicle, that the catalytic converters, speed sensor, and
11 check engine lamp were not installed on the Volvo, and that the Volvo required an inspection by
12 the State Emissions Referee, which he did not obtain. The representative took the Volvo for a test
13 drive accompanied by Burkey. Later, the representative told Burkey that he was interested in
14 purchasing the vehicle and asked Burkey when he could expect to receive the passing emissions
15 inspection. Burkey told the representative that he could have the inspection performed later that
16 day. The representative asked Burkey how he would obtain the inspection. Burkey stated that he
17 would take the vehicle information to a friend and that a different vehicle would be used to
18 perform the inspection. The representative asked Burkey to contact him when the inspection was
19 performed and he would purchase the vehicle.

20 22. On April 28, 2009, the representative and another employee of the Bureau met with
21 Burkey. Burkey provided the representative with a vehicle inspection report ("VIR") dated April
22 25, 2009. The representative asked Burkey how he obtained the passing emissions inspection.
23 Burkey stated that he took the vehicle information and registration paperwork to a friend.
24 Burkey's friend waited for a like vehicle to arrive at the testing facility and used it to obtain the
25 inspection. The representative paid Burkey \$2,500 for the Volvo. Burkey completed and signed
26 a Department of Motor Vehicles Bill of Sale and gave it to the representative along with a copy of
27 the vehicle registration, a Certificate of Title showing the vehicle's owner as T.S., miscellaneous
28 parts purchase receipts, and a repair invoice from SVS Automotive Corporation ("SVS") in

1 Sacramento, California. Burkey told the representative that he could not obtain a Certificate of
2 Title in his name because he was unable to obtain a passing emissions inspection for the
3 registration transfer. The representative reviewed the repair invoice from SVS. Burkey stated
4 that SVS had inspected the Volvo and found that the vehicle speed sensor was missing and the
5 check engine lamp was not functioning. Burkey also stated that the catalytic converters were not
6 installed on the Volvo and were sitting in the trunk. Burkey gave the representative the keys to
7 the Volvo.

8 23. Later that same day, the representative reviewed the VIR and information from the
9 Bureau's Vehicle Information Database ("VID"). The VID data and VIR indicated that on April
10 25, 2009, between 1555 and 1605 hours, Respondent Keonla had smog tested and inspected the
11 Volvo, resulting in the issuance of electronic smog Certificate of Compliance No. NK032420C.
12 The inspection had been conducted at Respondent TSTC's facility, Tailpipes Smog Test Center,
13 located in Sacramento.

14 24. On May 4, 2009, the Bureau inspected the Volvo and performed a California
15 Emissions Inspection on the vehicle. The Volvo failed the inspection due to high emissions
16 readings and missing, modified, and disconnected emissions control equipment.

17 25. On June 3, 2009, representatives of the Bureau met with Respondent Keonla.
18 Keonla admitted that he performed a smog inspection on the Volvo on April 25, 2009, using
19 clean piping methods¹, that he knew the vehicle was not in a condition to pass the smog
20 inspection, that he used his personal vehicle, a Mitsubishi pickup, to perform the clean piping,
21 and that the Volvo was not present at the facility during the smog inspection. Keonla also
22 admitted that he clean piped another vehicle, a 1994 Acura Integra ("Acura"), on May 22, 2009,
23 that he knew the Acura was not in a condition to pass a smog inspection, that he used a Honda
24 Civic to clean pipe the Acura, and that the Acura was not present at the facility during the
25 inspection.

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27 ¹ Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),
28 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to
cause the EIS to issue a certificate of compliance for another vehicle.

1 26. Later that same day, the representative reviewed information from the Bureau's VID.
2 The VID data indicated that on May 22, 2009, between 1028 and 1034 hours, Keonla had smog
3 tested and inspected the Acura, resulting in the issuance of electronic smog Certificate of
4 Compliance No. NK412166C. The smog inspection was conducted at Respondent TSTC's
5 facility, Tailpipes Smog Test Center, located in Fair Oaks, California. The representative went to
6 Respondent's Fair Oaks facility and obtained copies of an invoice and VIR for the Acura.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 27. Respondent TSTC's registrations are subject to disciplinary action pursuant to Bus. &
10 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
11 which it knew or in the exercise of reasonable care should have known to be untrue or
12 misleading, as follows:

13 a. Respondent TSTC's technician, Respondent Keonla, certified under penalty of
14 perjury on the VIR dated April 25, 2009, that he performed the smog inspection on the 1990
15 Volvo 760 Wagon in accordance with all Bureau requirements and that the vehicle had passed
16 inspection and was in compliance with applicable laws and regulations. In fact, Respondent
17 Keonla conducted the inspection using clean piping methods in order to issue a certificate for the
18 vehicle, and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.
19 Further, the wiring to the sensors and other emission related components were modified, the
20 catalytic converters and air injection system were missing, the fuel evaporative controls were
21 disconnected, the vehicle failed the functional ignition timing test, the Malfunction Indicator Lamp
22 (MIL) came on during the inspection, and the exhaust emissions were high. As such, the vehicle
23 would not pass the inspection required by Health & Saf. Code section 44012.

24 b. Respondent TSTC's technician, Respondent Keonla, certified under penalty of
25 perjury on the VIR dated April 25, 2009, that the 1990 Volvo 760 Wagon was equipped with a
26 2.3 liter engine. In fact, the Volvo was equipped with a 5.0 liter engine.

27 c. Respondent TSTC's technician, Respondent Keonla, certified under penalty of
28 perjury on the VIR dated May 22, 2009, that he performed the smog inspection on the 1994

1 Acura Integra in accordance with all Bureau requirements and that the vehicle had passed
2 inspection and was in compliance with applicable laws and regulations. In fact, Respondent
3 Keoonla conducted the inspection using clean piping methods in order to issue a certificate for the
4 vehicle, and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 28. Respondent TSTC's registrations are subject to disciplinary action pursuant to Bus. &
8 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute
9 fraud by issuing electronic smog certificates of compliance for the 1990 Volvo 760 Wagon and
10 1994 Acura Integra without performing bona fide inspections of the emission control devices and
11 systems on the vehicles, thereby depriving the People of the State of California of the protection
12 afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 29. Respondent TSTC's smog check station licenses are subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
17 comply with provisions of that Code, as follows:

18 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
19 performed on the 1990 Volvo 760 Wagon and 1994 Acura Integra in accordance with procedures
20 prescribed by the department.

21 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for the
22 1990 Volvo 760 Wagon and 1994 Acura Integra without properly testing and inspecting the
23 vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 30. Respondent TSTC's smog check station licenses are subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent TSTC falsely or fraudulently issued
8 electronic smog certificates of compliance for the 1990 Volvo 760 Wagon and 1994 Acura
9 Integra.

10 b. **Section 3340.35, subdivision (c):** Respondent TSTC issued electronic smog
11 certificates of compliance for the 1990 Volvo 760 Wagon and 1994 Acura Integra even though
12 the vehicles had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.41, subdivision (c):** Respondent TSTC permitted its smog check
14 technician, Respondent Keoonla, to enter false information into the Emissions Inspection System
15 ("EIS") by entering vehicle identification information or emission control system identification
16 data for vehicles other than the ones being tested.

17 d. **Section 3340.42:** Respondent TSTC failed to ensure that the required smog tests
18 were conducted on the 1990 Volvo 760 Wagon and 1994 Acura Integra in accordance with the
19 Bureau's specifications.

20 **FIFTH CAUSE FOR DISCIPLINE**

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

22 31. Respondent TSTC's smog check station licenses are subject to disciplinary action
23 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
24 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
25 certificates of compliance for the 1990 Volvo 760 Wagon and 1994 Acura Integra without
26 performing bona fide inspections of the emission control devices and systems on the vehicles,
27 thereby depriving the People of the State of California of the protection afforded by the Motor
28 Vehicle Inspection Program.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent Keoonla's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
5 provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the 1990
7 Volvo 760 Wagon and 1994 Acura Integra in accordance with procedures prescribed by the
8 department.

9 b. **Section 44059:** Respondent willfully made false entries on the VIR's dated April 25,
10 2009, and May 22, 2009, as set forth in paragraph 27 above.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant**

13 **to the Motor Vehicle Inspection Program)**

14 33. Respondent Keoonla's technician license is subject to disciplinary action pursuant to
15 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
16 provisions of California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
18 electronic smog certificates of compliance for the 1990 Volvo 760 Wagon and 1994 Acura
19 Integra.

20 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1990
21 Volvo 760 Wagon and 1994 Acura Integra in accordance with Health & Saf. Code sections 44012
22 and 44035, and California Code of Regulations, title 16, section 3340.42.

23 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
24 by entering vehicle identification information or emission control system identification data for
25 vehicles other than the ones being tested.

26 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1990
27 Volvo 760 Wagon and 1994 Acura Integra in accordance With the Bureau's specifications.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent Keonla's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
5 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
6 compliance for the 1990 Volvo 760 Wagon and 1994 Acura Integra without performing bona fide
7 inspections of the emission control devices and systems on the vehicles, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **UNDERCOVER OPERATION: 1991 PONTIAC 6000**

11 35. On June 24, 2009, an undercover operator with the Bureau (hereinafter "operator")
12 took the Bureau's 1991 Pontiac 6000 to Respondent TSTC's facility, Tailpipes Smog Test Center,
13 located in Sacramento, California, and requested a smog inspection. The vacuum supply hose on
14 the manifold absolute pressure (MAP) sensor on the Bureau-documented vehicle was damaged,
15 causing the MIL to illuminate on the dashboard. After the inspection was performed, the operator
16 paid the facility \$63 and received copies of an invoice and VIR. The VIR indicated that the
17 vehicle passed the inspection, resulting in the issuance of electronic smog Certificate of
18 Compliance No. NK838364C.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 36. Respondent TSTC's Automotive Repair Dealer Registration Number ARD 230405 is
22 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in
23 that Respondent made or authorized a statement which it knew or in the exercise of reasonable
24 care should have known to be untrue or misleading, as follows: Respondent TSTC's technician,
25 Wayne Powell ("Powell"), certified under penalty of perjury on the VIR that the Bureau's 1991
26 Pontiac 6000 had passed inspection and was in compliance with applicable laws and regulations.
27 In fact, the vacuum supply hose on the MAP sensor was damaged. As such, the vehicle would
28 not pass the inspection required by Health & Saf. Code section 44012.

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 37. Respondent TSTC's Automotive Repair Dealer Registration Number ARD 230405 is
4 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in
5 that it committed an act which constitutes fraud, as follows: Respondent issued an electronic
6 smog certificate of compliance for the Bureau's 1991 Pontiac 6000 without performing a bona
7 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

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

12 38. Respondent TSTC's Smog Check, Test Only, Station License Number TC 230405 is
13 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
14 that Respondent failed to comply with the following sections of that Code:

15 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
16 performed on the Bureau's 1991 Pontiac 6000 in accordance with procedures prescribed by the
17 department.

18 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
19 the Bureau's 1991 Pontiac 6000 without properly testing and inspecting the vehicle to determine
20 if it was in compliance with Health & Saf. Code section 44012.

21 **TWELFTH CAUSE FOR DISCIPLINE**

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

24 39. Respondent TSTC's Smog Check, Test Only, Station License Number TC 230405 is
25 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in

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1 that Respondent failed to comply with the provisions of California Code of Regulations, title 16,
2 as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent TSTC falsely or fraudulently issued
4 an electronic smog certificate of compliance for the Bureau's 1991 Pontiac 6000.

5 b. **Section 3340.35, subdivision (c):** Respondent TSTC issued an electronic smog
6 certificate of compliance for the Bureau's 1991 Pontiac 6000 even though the vehicle had not
7 been inspected in accordance with Health & Saf. Code section 3340.42.

8 c. **3340.41, subdivision (c):** Respondent TSTC permitted its technician, Powell, to
9 knowingly enter into the EIS false information about the Bureau's 1991 Pontiac 6000.

10 d. **Section 3340.42:** Respondent TSTC failed to ensure that the required smog tests
11 were conducted on the Bureau's 1991 Pontiac 6000 in accordance with the Bureau's
12 specifications.

13 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

15 40. Respondent TSTC's Smog Check, Test Only, Station License Number TC 230405 is
16 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
17 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
18 issuing an electronic smog certificate of compliance for the Bureau's 1991 Pontiac 6000 without
19 performing a bona fide inspection of the emission control devices and systems on the vehicle,
20 thereby depriving the People of the State of California of the protection afforded by the Motor
21 Vehicle Inspection Program.

22 **OTHER MATTERS**

23 41. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
24 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
25 business operated in this state by Respondent Tailpipes Smog Test Centers, Inc., doing business
26 as Tailpipes Smog Test Center, upon a finding that Respondent has, or is, engaged in a course of
27 repeated and willful violations of the laws and regulations pertaining to an automotive repair
28 dealer.

42. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 230405, issued to Respondent Tailpipes Smog Test Centers, Inc., doing business as Tailpipes Smog Test Center, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

43. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 226900, issued to Respondent Tailpipes Smog Test Centers, Inc., doing business as Tailpipes Smog Test Center, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

44. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 142363, issued to Virasane Keonla, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 230405, issued to Tailpipes Smog Test Centers, Inc., doing business as Tailpipes Smog Test Center;

2. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 226900, issued to Tailpipes Smog Test Centers, Inc., doing business as Tailpipes Smog Test Center;

3. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Tailpipes Smog Test Centers, Inc.;

4. Revoking or suspending Smog Check, Test Only, Station License Number TC 230405, issued to Tailpipes Smog Test Centers, Inc., doing business as Tailpipes Smog Test Center;

1 5. Revoking or suspending Smog Check, Test Only, Station License Number TC
2 226900, issued to Tailpipes Smog Test Centers, Inc., doing business as Tailpipes Smog Test
3 Center;

4 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
5 and Safety Code in the name of Tailpipes Smog Test Centers, Inc.;

6 7. Revoking or suspending Advanced Emission Specialist Technician License Number
7 EA 142363, issued to Virasane Keonla;

8 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
9 and Safety Code in the name of Virasane Keonla;

10 9. Ordering Tailpipes Smog Test Centers, Inc., doing business as Tailpipes Smog Test
11 Center, and Virasane Keonla to pay the Director of Consumer Affairs the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

14 10. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 6/14/10


SHERRY MEHL

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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