

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

In the Matter of the Amended Accusation Against:

**ASHTON, CASELLA & ASSOCIATES,  
INC., d.b.a. PACIFIC SMOG,  
KENNETH ASHTON, President**  
2039 Del Monte Blvd.  
Seaside, CA 93955

Case No. 79/14-116

OAH No. 2014050527

Automotive Repair Dealer Registration No.  
ARD 214292

Smog Check, Test Only, Station License No.  
TC 214292

Respondent.

**DECISION**

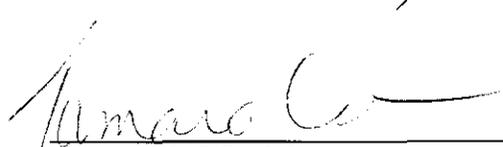
The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter; except that the following typographical error is corrected as follows:

Page 2, line 16: The date the Accusation and other statutorily required documents were properly served on Respondent is corrected to read "April 21, 2014" instead of "April 15, 2014."

The suspension of Automotive Repair Dealer Registration No. ARD 214292 and Smog Check, Test Only, Station License No. TC 214292 shall commence on the effective date of this Decision.

This Decision shall become effective December 2, 2014

DATED: December 7, 2014

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 CHAR SACHSON  
Deputy Attorney General  
4 State Bar No. 161032  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5558  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
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 Amended Accusation  
12 Against:

13 **ASHTON, CASELLA & ASSOCIATES,**  
14 **INC., d.b.a. PACIFIC SMOG,**  
15 **KENNETH ASHTON, President**  
16 **2039 Del Monte Blvd.**  
17 **Seaside, CA 93955**

18 **Automotive Repair Dealer Registration No.**  
19 **ARD 214292**

20 **Smog Check, Test Only, Station License No.**  
21 **TC 214292**

22 Respondent.

Case No. 79/14-116

OAH No. 2014050527

23 **STIPULATED SETTLEMENT AND**  
24 **DISCIPLINARY ORDER**

25 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
26 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of  
27 Automotive Repair, the parties hereby agree to the following Stipulated Settlement and  
28 Disciplinary Order which will be submitted to the Director for the Director's approval and  
adoption as the final disposition of the Accusation.

PARTIES

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



1 court review of an adverse decision; and all other rights accorded by the California  
2 Administrative Procedure Act and other applicable laws.

3 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
4 every right set forth above.

#### 5 CULPABILITY

6 10. Respondent admits the truth of each and every charge and allegation in Accusation  
7 No. 79/14-116.

8 11. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check,  
9 Test Only Station License are subject to discipline and it agrees to be bound by the Director's  
10 probationary terms as set forth in the Disciplinary Order below.

#### 11 CIRCUMSTANCES IN MITIGATION

12 12. Respondent Ashton, Casella & Associates, Inc., D.B.A. Pacific Smog, Kenneth  
13 Ashton, President has never been the subject of any disciplinary action. It is admitting  
14 responsibility at an early stage in the proceedings.

#### 15 CONTINGENCY

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

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



1 maintaining compliance with the terms and conditions of probation.

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

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

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

12       8.    **Violation of Probation.** Should the Director of Consumer Affairs determine that  
13 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
14 after giving notice and opportunity to be heard temporarily or permanently invalidate the  
15 registration and/or suspend or revoke the license.

16       9.    **Cost Recovery.** The Bureau's its full investigative costs in the amount of \$7,280.68  
17 shall be payable in twenty four (24) consecutive, equal installments with the final payment due  
18 twelve (12) months before the termination of probation. Failure to complete payment of cost  
19 recovery within this time frame shall constitute a violation of probation which may subject  
20 Respondent's license/registration to outright revocation; however, the Director or the Director's  
21 Bureau of Automotive Repair designee may elect to continue probation until such time as  
22 reimbursement of the entire cost recovery amount has been made to the Bureau.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check, Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 06/19/2014

  
ASHTON, CASELLA & ASSOCIATES, INC., D.B.A.  
PACIFIC SMOG, KENNETH ASHTON,  
PRESIDENT  
Respondent

ENDORSEMENT

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

Dated: 9/3/14

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General  
  
CHAR SACHSON  
Deputy Attorney General  
*Attorneys for Complainant*

**Exhibit A**

**Accusation No. 79/14-116**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 CHAR SACHSON  
Deputy Attorney General  
4 State Bar No. 161032  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5558  
6 Facsimile: (415) 703-5480  
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14 **KENNETH ASHTON, President**  
**2039 Del Monte Blvd.**  
15 **Seaside, CA 93955**  
16  
**26966 Laureles Grade Road**  
**Carmel Valley, CA 93924**  
17  
**Automotive Repair Dealer Registration No.**  
**ARD 214292**  
18 **Smog Check, Test Only, Station License No.**  
**TC 214292**  
19  
20 Respondent.

Case No. 79/14-116  
**AMENDED ACCUSATION**

21 Complainant alleges:

22 **PARTIES**

23  
24 1. Patrick Dorais (Complainant) brings this Amended Accusation solely in his official  
25 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

26 *///*

27 *///*

28 *///*

1 LICENSE INFORMATION

2 **Automotive Repair Dealer Registration Number ARD 214292**

3 2. On or about January 11, 2001, the Bureau of Automotive Repair issued Automotive  
4 Repair Dealer Registration Number ARD 214292 to Kenneth Ashton as President of Pacific  
5 Smog (Respondent Pacific Smog). The Automotive Repair Dealer Registration was in full force  
6 and effect at all times relevant to the charges brought herein and will expire on December 31,  
7 2014, unless renewed.

8 **Smog Check, Test Only, Station License Number TC 214292**

9 3. On or about May 15, 2009, the Bureau of Automotive Repair issued Smog Check,  
10 Test Only, Station License Number TC 214292 to Respondent Pacific Smog. The Smog Check,  
11 Test Only, Station License was in full force and effect at all times relevant to the charges brought  
12 herein and will expire on December 31, 2014, unless renewed.

13 JURISDICTION

14 4. This Amended Accusation is brought before the Director of Consumer Affairs  
15 (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

16 5. Business and Professions Code (Code) section 9884.7 provides that the Director may  
17 revoke an automotive repair dealer registration.

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

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

25 8. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration  
26 or suspension of a license by operation of law, or by order or decision of the Director of  
27 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the  
28 Director of jurisdiction to proceed with disciplinary action.



1 the customer. The bureau may specify in regulation the procedures to be followed  
2 by an automotive repair dealer when an authorization or consent for an increase in  
3 the original estimated price is provided by electronic mail or facsimile  
4 transmission. If that consent is oral, the dealer shall make a notation on the work  
5 order of the date, time, name of person authorizing the additional repairs and  
6 telephone number called, if any, together with a specification of the additional  
7 parts and labor and the total additional cost . . .

8 11. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"  
9 "commission," "committee," "department," "division," "examining committee," "program," and  
10 "agency." "License" includes certificate, registration or other means to engage in a business or  
11 profession regulated by the Code.

12 12. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
13 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
14 the Motor Vehicle Inspection Program.

15 13. Section 44012 of the Health and Safety Code states:

16 The test at the smog check stations shall be performed in accordance with  
17 procedures prescribed by the department, pursuant to Section 44013, shall require,  
18 at a minimum, loaded mode dynamometer testing in enhanced areas, and  
19 two-speed testing in all other program areas, and shall ensure all of the following:

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

25 14. Section 44015(b) of the Health and Safety Code states:

26 "If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
27 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

28 15. Section 44032 of the Health and Safety Code states:

"No person shall perform, for compensation, tests or repairs of emission control devices or  
systems of motor vehicles required by this chapter unless the person performing the test or repair  
is a qualified smog check technician and the test or repair is performed at a licensed smog check  
station. Qualified technicians shall perform tests of emission control devices and systems in  
accordance with Section 44012."

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16. Section 44059 of the Health and Safety Code states:

"The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

17. Section 44072.2 of the Health and Safety Code states:

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

- (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
- (c) Violates any of the regulations adopted by the director pursuant to this chapter.
- (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

18. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

"A smog check technician shall comply with the following requirements at all times while licensed.

- (a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

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

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

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

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

..."

20. California Code of Regulations, title 16, section 3340.41, states, in pertinent part:

"(c) No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

..."

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

"Smog check stations and smog check technicians shall conduct tests and inspections in accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in subsections (a) and (b) of Section 3340.17 . . .

..."

**COST RECOVERY**

22. Bus. & Prof. 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.

**SUMMARY OF FACTS**

23. On or about November 6, 2013, a Bureau representative documented a 1988 Honda to fail a smog inspection for a missing Air Injection System (AIS). On or about December 4, 2013, a Bureau operator drove the vehicle to Respondent's facility and requested a smog inspection. The operator signed a work order but did not receive an estimate copy. The inspection was performed and the operator paid \$57.00 and received a copy of the estimate with invoice number [REDACTED] as well as a Vehicle Inspection Report with certificate of compliance number [REDACTED] indicating that the vehicle passed. The vehicle could not have passed a smog inspection, as its AIS was removed.

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**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

24. Respondent Pacific Smog's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about December 4, 2013, it made statements which it knew or which by exercise of reasonable care should have known to be untrue or misleading by issuing electronic Certificate of Compliance No. [REDACTED] for the 1988 Honda, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, it could not have passed the visual portion of the smog inspection because the vehicle's Air Injection System had been removed.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

25. Respondent Pacific Smog's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about December 4, 2013, it committed acts constituting fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 1988 Honda without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Comply with Code)**

26. Respondent Pacific Smog has subjected its registration to discipline pursuant to Code section 9884.7, subdivision (a)(6), in that on or about December 4, 2013, Respondent failed to comply with the following section of that code:

a. **Section 9884.9, subdivision (a):** Respondent Pacific Smog failed to provide the operator with a written estimated price for parts and labor for a specific job.

**FOURTH CAUSE FOR DISCIPLINE**

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

27. Respondent Pacific Smog's station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about December 4, 2013,

1 regarding the 1988 Honda, it failed to comply with the following sections of that Code:

2 a. **Section 44012, subdivision (f):** Respondent Pacific Smog failed to perform  
3 emission control inspections on the vehicle in accordance with procedures prescribed by the  
4 department.

5 b. **Section 44015, subdivision (b):** Respondent Pacific Smog issued electronic  
6 Certificate of Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle  
7 to determine if it was in compliance with Health & Safety Code section 44012.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations)**

10 28. Respondent Pacific Smog's station license is subject to discipline pursuant to Health  
11 & Safety Code section 44072.2, subdivision (c), in that on or about December 4, 2013, regarding  
12 the 1988 Honda, it failed to comply with provisions of California Code of Regulations, title 16, as  
13 follows:

14 a. **Section 3340.35, subdivision (c):** Respondent Pacific Smog issued electronic  
15 Certificate of Compliance No. [REDACTED] for the vehicle even though the vehicle had not been  
16 inspected in accordance with section 3340.42.

17 b. **Section 3340.41, subdivision (c):** Respondent Pacific Smog entered false  
18 information into the Emission Inspection System unit by entering "Pass" for the visual portion of  
19 the inspection when, in fact, the vehicle's Air Injection System was missing.

20 c. **Section 3340.42:** Respondent Pacific Smog failed to perform an emission control  
21 inspection on the vehicle in accordance with procedures prescribed by the department.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 29. Respondent Pacific Smog's station license is subject to discipline pursuant to Health  
25 & Safety Code section 44072.2, subdivision (d), in that on or about December 4, 2013, regarding  
26 the 1988 Honda, it committed dishonest, fraudulent or deceitful acts whereby another is injured  
27 by issuing electronic Certificate of Compliance No. PA993693 for the vehicle without performing  
28 a bona fide inspection of the emission control devices and systems on the vehicle, thereby

1 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
2 Inspection Program.

3 **PRIOR CITATIONS**

4 30. To determine the degree of discipline, if any, to be imposed on the Respondent  
5 Pacific Smog, Complainant alleges the following:

6 a. On or about October 5, 2009, the Bureau issued Citation No. C2010-0330 against  
7 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$500.00 against  
8 Respondent Pacific Smog for the violations. Respondent complied with this citation on  
9 November 2, 2009.

10 b. On or about June 28, 2012, the Bureau issued Citation No. C2012-1868 against  
11 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$1500.00 against  
12 Respondent Pacific Smog for the violations. Respondent complied with this citation on July 20,  
13 2012.

14 c. On or about February 22, 2013, the Bureau issued Citation No. C2013-0562 against  
15 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$2500.00 against  
16 Respondent Pacific Smog for the violations. Respondent complied with this citation on April 4,  
17 2013.

18 d. On or about July 17, 2013, the Bureau issued Citation No. C2014-0040 against  
19 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$3500.00 against  
20 Respondent Pacific Smog for the violations. Respondent complied with this citation on August  
21 23, 2013.

22 **DISCIPLINE CONSIDERATIONS**

23 31. To determine the degree of discipline, if any, to be imposed on Respondent Pacific  
24 Smog, Complainant alleges that on or about June 20, 2007, in a prior disciplinary action entitled  
25 *In the Matter of the Accusation Against Respondent Ashton Casella & Associates, INC, d.b.a.*  
26 *Pacific Smog, Kenneth William Ashton, President*, before the Bureau of Automotive Repair, in  
27 Case Number 79/07-26. Respondent's Automotive Dealer Registration and Smog Check Station  
28 License were revoked, stayed, and placed on probation for three years. The Smog Check Station

1 License was suspended for 12 days, and Respondent was ordered to pay cost recovery in the  
2 amount of \$5,000.00. That decision is now final and is incorporated by reference as if fully set  
3 forth.

4 **OTHER MATTERS**

5 32. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
6 probation the registrations for all places of business operated in this state by Pacific Smog,  
7 Kenneth Ashton - President, upon a finding that he has, or is, engaged in a course of repeated and  
8 willful violation of the laws and regulations pertaining to an automotive repair dealer.

9 33. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only  
10 Station License Number TC 214292, issued to Ashton, Casella and Associates, Inc., Kenneth  
11 Ashton - President, doing business as Pacific Smog, is revoked or suspended, any additional  
12 license issued under this chapter in the name of said licensees may be likewise revoked or  
13 suspended by the director.

14 **PRAYER**

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

17 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
18 Registration No. ARD 214292, issued to Ashton, Casella and Associates, Inc., Kenneth Ashton -  
19 President, doing business as Pacific Smog;

20 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
21 registration issued to Ashton, Casella and Associates, Inc., Kenneth Ashton - President;

22 3. Revoking or suspending Smog Check Test Only Station License Number TC 214292,  
23 issued to Ashton, Casella and Associates, Inc., Kenneth Ashton - President, doing business as  
24 Pacific Smog;

25 4. Revoking or suspending any additional license issued to Ashton, Casella and  
26 Associates, Inc., Kenneth Ashton - President under Chapter 5 of the Health and Safety Code,  
27 pursuant to Health and Safety Code section 44072.8;

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8. Ordering Ashton, Casella and Associates, Inc. to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: April 21, 2014



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

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TC 214292**

Respondent.

Case No. 79/14-116

OAH No. 2014050527

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Director of Consumer Affairs and the Bureau of Automotive Repair as the Decision and Order in the above entitled matter.

This Decision shall become effective on \_\_\_\_\_.

It is so ORDERED \_\_\_\_\_.

\_\_\_\_\_  
FOR THE DIRECTOR OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR