

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

In the Matter of the Accusation Against:

**ACE SMOG CHECK TEST ONLY CENTER  
AND OIL CHANGE**  
**GARY Y. TSUJIUCHI, Owner**  
1501 E. Edinger Avenue.  
Santa Ana, California 92705

Automotive Repair Dealer Registration No.  
ARD 236267

Smog Check Test Only Station License No  
TC 236267

Case No. 79/12-44

OAH No. 2011120511

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.

This Decision shall become effective 11/9/12.

DATED: October 22, 2012

  
\_\_\_\_\_  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN  
Deputy Attorney General  
4 State Bar No. 103312  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2617  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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:

Case No. 79/12-44

12 **ACE SMOG CHECK TEST ONLY**  
13 **CENTER AND OIL CHANGE**  
14 **GARY Y. TSUJIUCHI, Owner**  
15 **1501 E. Edinger Avenue**  
16 **Santa Ana, California 92705**

OAH No. 2011120511

17 **STIPULATED SETTLEMENT**  
18 **AND DISCIPLINARY ORDER**

19 **Automotive Repair Dealer Registration No.**  
20 **ARD 236267**

21 **Smog Check Test Only Station License No.**  
22 **TC 236267**

23 Respondent.

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

26 PARTIES

27 1. Complainant John Wallauch is the Chief of the Bureau of Automotive Repair. He  
28 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 G. Michael German, Deputy Attorney  
General.



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

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

5 CULPABILITY

6 9. Respondent admits the truth of each and every charge and allegation in Accusation  
7 No. 79/12-44.

8 10. Respondent agrees that his ARD registration and station license are subject to  
9 discipline and he agrees to be bound by the Director's probationary terms as set forth in the  
10 Disciplinary Order below.

11 CONTINGENCY

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

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

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 236267,  
8 and Smog Check Test Only Station License No. TC 236267, issued to Respondent Gary Y.  
9 Tsujiuchi are revoked. However, the revocation is stayed and Respondent is placed on probation  
10 for three years on the following terms and conditions.

11 1. **Obey All Laws.** Respondent shall comply with all statutes, regulations and rules  
12 governing automotive inspections, estimates and repairs.

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

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

21 4. **Random Inspections.** Respondent shall provide Bureau representatives unrestricted  
22 access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of  
23 completion.

24 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of  
25 probation, the Director shall have continuing jurisdiction over this matter until the final decision  
26 on the accusation, and the period of probation shall be extended until such decision.

27 6. **Violation of Probation.** Should the Director determine that Respondent has failed to  
28 comply with the terms and conditions of probation, the Director may, after giving notice and

1 opportunity to be heard temporarily or permanently invalidate the registration and suspend or  
2 revoke the licenses.

3 7. **Restrictions.** During the period of probation, Respondent shall not perform any form  
4 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,  
5 installed, and maintained the diagnostic and repair equipment prescribed by Bureau necessary to  
6 properly perform such work, and the Bureau has been given 10 days notice of the availability of  
7 the equipment for inspection by a Bureau representative.

8 8. **Cost Recovery.** Respondent shall pay the Bureau \$11,192.02, which represents the  
9 investigation and enforcement costs incurred by the Bureau in this case to date, in 24 installments  
10 of \$466.33 each commencing on the effective date of this Decision. Full payment to the Bureau  
11 of this amount shall be received no later than 12 months before probation terminates. Failure to  
12 complete payment of cost recovery within this time frame shall constitute a violation of probation  
13 which may subject Respondent's ARD registration, and station and technician licenses to outright  
14 revocation; however, the Director or the Director's Bureau designee may elect to continue  
15 probation until such time as reimbursement of the entire cost recovery amount has been made to  
16 the Bureau.

17 ACCEPTANCE

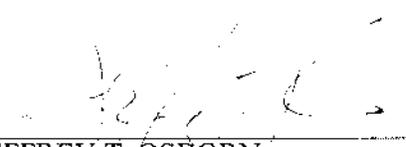
18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
19 discussed it with my attorney, Jeffrey T. Osborn. I understand the stipulation and the effect it will  
20 have on my Automotive Repair Dealer Registration and Smog Check Test Only Station License.  
21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

24  
25 DATED: 8/27/12

  
26 GARY Y. TSUJUCHI, DBA ACE SMOG CHECK  
27 TEST ONLY CENTER AND OIL CHANGE  
28 Individually and as Owner, Respondent

1 I have read and fully discussed with Respondent Gary Y. Tsujiuchi the terms and  
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
3 I approve its form and content.

4  
5 DATED: 8-29-12

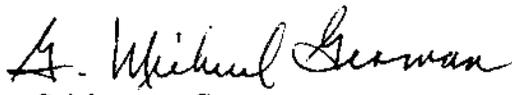
  
6 JEFFREY T. OSBORN  
7 Attorney for Respondent

8 ENDORSEMENT

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

11 Dated: 9-7-12

KAMALA D. HARRIS  
Attorney General of California



14 G. MICHAEL GERMAN  
15 Deputy Attorney General  
16 *Attorneys for Complainant*

17  
18  
19  
20  
21  
22  
23  
24  
25 SD2011800582  
26 70598220.doc

**Exhibit A**

**First Amended Accusation No. 79/12-44**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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:

Case No. 79/12-44

12 **ACE SMOG CHECK TEST ONLY CENTER**  
13 **AND OIL CHANGE**

OAH No. 2011120511

14 **GARY Y. TSUJIUCHI, Owner**

**FIRST AMENDED**

15 **1501 E. Edinger Avenue**

16 **Santa Ana, California 92705**

**ACCUSATION**

17 **Automotive Repair Dealer Registration No. ARD**  
18 **236267**

19 **Smog Check Test Only Station License Number**  
20 **No. TC 236267**

Respondent.

21 Sherry Mehl ("Complainant") alleges:

22 **PARTIES**

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

25 2. In or about 2004, the Bureau issued Automotive Repair Dealer Registration Number  
26 ARD 236267 ("registration") to Gary Y. Tsujiuchi ("Respondent"), doing business as ACE Smog  
27 Check Test Only Center and Oil Change. The registration was in full force and effect at all times  
28 relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.





1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **UNDERCOVER OPERATION – JANUARY 28, 2011**

4 11. On or about January 28, 2011, a Bureau undercover operator (“operator”) drove a  
5 Bureau-documented 1991 Toyota truck to Respondent’s facility and requested a smog inspection.  
6 The vehicle could not pass a smog inspection because the vehicle’s air suction system  
7 components were missing. The operator signed a work order but did not receive a copy.  
8 Licensed smog technician Nicholas Ashley (Advanced Emission Specialist Technician License  
9 No. EA 153424) performed the smog inspection and issued electronic Certificate of Compliance  
10 No. WR661676, certifying that he had tested and inspected the vehicle and that the vehicle was in  
11 compliance with applicable laws and regulations. In fact, the vehicle could not have passed the  
12 visual portion of the smog inspection because the vehicle’s air suction system components were  
13 missing.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 12. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,  
17 subdivision (a)(1), in that on or about January 28, 2011, he made or authorized statements which  
18 he knew or in the exercise of reasonable care should have known to be untrue by certifying that  
19 the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not  
20 have passed the visual portion of the smog inspection because the vehicle’s air suction system  
21 components were missing.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 13. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,  
25 subdivision (a)(4), in that on or about January 28, 2011, he committed acts which constitute fraud  
26 by issuing electronic Certificate of Compliance No. WR661676 for the vehicle without  
27 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
28

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

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Provide a Copy of a Signed Document)**

5 14. Respondent's registration is subject to discipline under Code section 9884.7,  
6 subdivision (a)(3), in that on or about January 28, 2011, Respondent failed to provide the operator  
7 with a copy of the estimate as soon as the operator signed the document.

8 **FOURTH CAUSE FOR DISCIPLINE**

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

10 15. Respondent's station license is subject to discipline pursuant to Health & Safety  
11 Code section 44072.2, subdivision (a), in that on or about January 28, 2011, he failed to comply  
12 with the following sections of that Code:

13 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
14 control devices and systems required by law were installed and functioning correctly in  
15 accordance with test procedures.

16 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control  
17 tests on the vehicle in accordance with procedures prescribed by the department.

18 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
19 Compliance No. WR661676 for the vehicle without properly testing and inspecting the vehicle to  
20 determine if it was in compliance with Health & Safety Code section 44012.

21 **FIFTH CAUSE FOR DISCIPLINE**

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

23 16. Respondent's station license is subject to discipline pursuant to Health & Safety  
24 Code section 44072.2, subdivision (c), in that on or about January 28, 2011, he failed to comply  
25 with provisions of California Code of Regulations, title 16, as follows:

26 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
27 Compliance No. WR661676 for the vehicle even though the vehicle had not been inspected in  
28 accordance with section 3340.42.



1 system on the vehicle being tested and issued a certificate of compliance. The Bureau assessed a  
2 civil penalty of \$1,000. Respondent complied with this citation on February 19, 2009.

3 c. On or about August 10, 2010, the Bureau issued Citation No. C2011-0162 to  
4 Respondent against his registration and station licenses for violations of Health and Safety Code  
5 section 44012(f) (failure to perform a visual/functional check of emission control devices  
6 according to procedures prescribed by the department), and California Code of Regulations, title  
7 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly  
8 tested). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition  
9 timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of  
10 \$1,500. Respondent complied with this citation on September 16, 2010.

11 d. On or about November 3, 2010, the Bureau issued Citation No. C2011-0576 to  
12 Respondent against his registration and station licenses for violations of Health and Safety Code  
13 section 44012(f) (failure to perform a visual/functional check of emission control devices  
14 according to procedures prescribed by the department), and California Code of Regulations, title  
15 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly  
16 tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel  
17 evaporative canister. The Bureau assessed a civil penalty of \$2,500. Respondent complied with  
18 this citation on December 30, 2010.

19 e. On or about June 1, 2007, the Bureau issued Citation No. M07-0970 to Respondent  
20 against his technician license for violations of Health and Safety Code section 44032 (failure to  
21 perform tests and inspections in accordance with Health and Safety Code section 44012), and  
22 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in  
23 accordance with Health and Safety Code sections 44012 and 44035, and California Code of  
24 Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to a  
25 consumer vehicle that was missing the positive crankcase ventilation system. Respondent was  
26 required to attend a 16-hour training course. On or about July 3, 2007, Respondent completed the  
27 required training course.

28

1 f. On or about January 6, 2009, the Bureau issued Citation No. M09-0813 to  
2 Respondent against his technician license for violations of Health and Safety Code section 44032  
3 (failure to perform tests and inspections in accordance with Health and Safety Code section  
4 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair  
5 vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California  
6 Code of Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to  
7 a consumer vehicle, utilizing the low pressure fuel evaporative tester's calibration tank instead of  
8 the fuel evaporative control system on the vehicle being tested and issued a certificate of  
9 compliance. Respondent was required to attend a 16-hour training course. On or about  
10 February 22, 2009, Respondent completed the required training course.

11 g. On or about August 10, 2010, the Bureau issued Citation No. M2011-0163 to  
12 Respondent against his technician license for violations of Health and Safety Code section 44032  
13 (failure to perform tests and inspections in accordance with Health and Safety Code section  
14 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair  
15 vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California  
16 Code of Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to  
17 a Bureau vehicle with the ignition timing adjusted beyond specification. Respondent was  
18 required to attend a 16-hour training course. On or about October 11, 2010, Respondent  
19 completed the required training course.

20 h. On or about November 3, 2010, the Bureau issued Citation No. M2011-0577 to  
21 Respondent against his technician license for violations of Health and Safety Code section 44032  
22 (failure to perform tests and inspections in accordance with Health and Safety Code section  
23 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair  
24 vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California  
25 Code of Regulations, title 16, section 3340.42). Respondent issued a certificate of compliance to  
26 a Bureau vehicle that was missing fuel evaporative canister. Respondent was required to attend a  
27 68-hour training course. On or about January 31, 2011, Respondent completed the required  
28 training course.

1 **OTHER MATTERS**

2 19. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
3 probation the registrations for all places of business operated in this state by Gary Y. Tsujiuchi,  
4 upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws  
5 and regulations pertaining to an automotive repair dealer.

6 20. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only  
7 Station License Number TC 236267, issued to Gary Y. Tsujiuchi, doing business ACE Smog  
8 Check Test Only Center and Oil Change, is revoked or suspended, any additional license issued  
9 under this chapter in the name of said licenscc may be likewise revoked or suspended by the  
10 director.

11 **PRAYER**

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

14 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
15 Registration No. ARD 236267, issued to Gary Y. Tsujiuchi, doing business as ACE Smog Check  
16 Test Only Center and Oil Change;

17 2. Revoking or suspending any other automotive repair dealer registration issued to  
18 Gary Y. Tsujiuchi;

19 3. Revoking or suspending Smog Check Test Only Station License Number TC  
20 236267, issued to Gary Y. Tsujiuchi, doing business as ACE Smog Check Test Only Center and  
21 Oil Change;

22 4. Revoking or suspending any additional license issued under Chapter 5 of the  
23 Health and Safety Code in the name of Gary Y. Tsujiuchi;

24 5. Ordering Gary Y. Tsujiuchi to pay the Director of Consumer Affairs the  
25 reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
26 125.3; and,

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

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

DATED: July 25, 2012

*for* A. Michael Gorman  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2011800582