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

In the Matter of the Accusation Against:

**JOHN D. GIBSON
d.b.a. CALIFORNIA SMOG ONLY
443 So. Wilson Way
Stockton, CA 95205**

**Automotive Repair Dealer Registration No.
252545
Smog Check Station License No. 252545**

Respondent.

Case No. 79/14-60

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 22, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/14-60 (Accusation) against John D. Gibson (Respondent) d.b.a. California Smog Only before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. On or about October 22, 2007, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. 252545 (Registration) to Respondent. The Registration expired on October 31, 2010, and has not been renewed.

1 3. On or about November 15, 2007, the Bureau of Automotive Repair issued Smog
2 Check Station License No. 252545 (License) to Respondent. The License expired on October 31,
3 2010, and has not been renewed.

4 4. On or about December 18, 2013, Respondent was served by Certified and First Class
5 Mail copies of the Accusation, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
7 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
8 required to be reported and maintained with the Bureau. Respondent's address of record was and
9 is: 443 So. Wilson Way, Stockton, CA 95205.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 6. On or about January 10, 2014, the aforementioned documents were returned by the
14 U.S. Postal Service marked "Not Deliverable." The address on the documents was the same as
15 the address on file with the Bureau. Respondent failed to maintain an updated address with the
16 Bureau and the Bureau has made attempts to serve the Respondent at the address on file.
17 Respondent has not made himself available for service and therefore, has not availed himself of
18 his right to file a notice of defense and appear at hearing.

19 7. Government Code section 11506 states, in pertinent part:

20 (c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts
22 of the accusation not expressly admitted. Failure to file a notice of defense shall
23 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
24 may nevertheless grant a hearing.

25 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
26 of the Accusation, and therefore waived his right to a hearing on the merits of the Accusation.

27 9. Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

Exhibit A

Accusation

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Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
4 State Bar No. 193338
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5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **JOHN D. GIBSON**
13 **dba CALIFORNIA SMOG ONLY**
14 **443 So. Wilson Way**
Stockton, CA 95205
15 **Automotive Repair Dealer Registration No. ARD**
252545
16 **Smog Check Station License No. TC 252545**
17 Respondent.

Case No. **79/14-60**

ACCUSATION

18
19 Patrick Dorais ("Complainant") alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On or about October 22, 2007, the Bureau issued Automotive Repair Dealer
25 Registration Number ARD 252545 ("registration") to John D. Gibson ("Respondent"), doing
26 business as California Smog Only. The registration expired on October 31, 2010, and has not
27 been renewed.

28 ///

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

3 **CAUSE FOR DISCIPLINE**

4 **(Failure to Pay Administrative Fine)**

5 10. Respondent has subjected his station license to discipline pursuant to Health and
6 Safety Code section 44050, subdivision (e), in that on or about February 3, 2010, the Bureau
7 issued Citation No. C2010-0799 to Respondent against his station license for violations of Health
8 and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
9 emission control devices according to procedures prescribed by the department) and California
10 Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a
11 certificate of compliance to a vehicle that has not been inspected in accordance with procedures
12 specified in section 3340.42). On or about March 10, 2010, the Bureau served Respondent with
13 the citation, which required Respondent to pay a fine in the amount of \$2,000. Respondent
14 appealed the citation on April 6, 2010. Respondent failed to appear for the hearing scheduled on
15 May 19, 2011. The citation became effective on September 30, 2011. Respondent failed to
16 submit payment.

17 **OTHER MATTERS**

18 11. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
19 License Number TC 252545, issued to John D. Gibson, is revoked or suspended, any additional
20 license issued under this chapter in the name of said licensee may be likewise revoked or
21 suspended by the director.

22 **PRAYER**

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

25 1. Revoking or suspending Smog Check Test Only Station License Number TC 252545,
26 issued to John D. Gibson, doing business as California Smog Only;

27 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
28 and Safety Code in the name of John D. Gibson;

1 3. Ordering John D. Gibson to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3; and,

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

5 DATED: November 22, 2013

Patrick Dorais

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

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