

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

In the Matter of the Accusation Against:

**ENTERPRISE SMOG;
ROLUN DRANEY, OWNER**
Automotive Repair Dealer Registration
License No. ARD 263731
Smog Check Test Only Station License No
TC 263731;

MICHAEL KEVIN MCCUTCHEON
Smog Check Inspector License No.
EO 636018

Case Nos. 79/15-19

OAH No. 2014100103

Respondents.

ORDER ADOPTING AND AMENDING PROPOSED DECISION IN PART

On August 19, 2015, Administrative Law Judge (ALJ) Carla Nasoff issued a proposed decision regarding the Accusation against respondents Rolun Draney and Enterprise Smog. The proposed decision found that there is cause to discipline respondents regarding the allegations of "clean plugging" as laid out in the Accusation. After review of the proposed decision, the Director adopts the proposed decision with the exception of the revocation of respondent Draney's Automotive Repair Dealer Registration (ARD), and respondent Enterprise Smog's Smog Check Test Only Station License (TC). The proposed decision does not contain any information indicating that respondents Draney and Enterprise Smog have been disciplined or cited before. Additionally, the Accusation is based upon one instance of "clean plugging" committed by respondent McCutcheon. There is no evidence in the proposed decision that respondents directed respondent McCutcheon to commit the "clean plugging" or knew of the conduct prior to the investigation. McCutcheon no longer is employed by respondents. Respondents Draney and Enterprise Smog fully cooperated with the investigation. Given these mitigating circumstances, a stayed revocation with a probationary period is appropriate.

Pursuant to Government Code section 11517 (C)(2)(b), the penalties of revocation are not adopted, and the balance of the proposed decision is adopted. Respondent Draney's ARD license No. 263731 and respondent Enterprise Smog's TC license No. 263731 are revoked,

immediately stayed and placed under probation for two (2) years on the following terms and conditions:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- e. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and opportunity to be heard, lift the stay of revocation causing respondent's license to be revoked.

This Decision shall become effective on December 24, 2015

DATED:

November 25, 2015



Tamara Colson
Assistant General Counsel
Department of Consumer Affairs

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ENTERPRISE SMOG; ROLUN DRANEY,
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Respondents.

Case No. 79/15-19

OAH No. 2014100103

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 22, 2015, in San Diego, California.

William A Buess, Deputy Attorney General, represented complainant, Patrick Dorais, Chief of the Bureau of Automotive Repair.

Rolun Draney represented himself and Enterprise Smog. Michael Kevin McCutcheon was not present.

The matter was submitted on July 22, 2015.

FACTUAL FINDINGS

1. On January 10, 2011, the bureau issued Rolun Draney, dba Enterprise Smog, Automotive Repair Dealer Registration No. ARD 263731. The registration expired on January 31, 2015.

2. On March 30, 2012, the bureau issued Rolun Draney, dba Enterprise Smog, Smog Check-Test Only License No. TC 263731. The license expired on January 31, 2015.

3. On September 11, 2013, the bureau issued Michael Kevin McCutcheon Smog Check Inspector License No. EO 636018. Mr. McCutcheon worked as a technician for Enterprise Smog in 2013. On February 24, 2015, Mr. McCutcheon's Smog Check license was revoked.¹

4. On August 14, 2014, the bureau filed and served accusation, Case No. 79/15-19, that alleged the respondents made untrue or misleading statements, engaged in dishonest fraudulent or deceitful conduct, and violated the rules and regulations of the motor vehicle inspection program.

5. On August 26, 2014, Mr. Draney, on behalf of himself and Enterprise Smog, filed a notice of defense and requested a hearing.

Smog Check Process

6. A licensed smog check station issues an electronic certificate of compliance when a vehicle that is being tested passes a smog check inspection. A certificate of compliance cannot be issued until a vehicle passes a smog check inspection.

7. A smog check inspection is conducted by using a computer-based device known as an emission inspection system (EIS). Each EIS is capable of communicating online with a statewide database. Information entered into an EIS concerning a smog check inspection is stored in the EIS and in the statewide database.

8. An EIS is activated when a licensed smog check technician enters his or her unique personal identification number. Thereafter, the technician inputs information pertaining to the vehicle being inspected.

9. One component of the smog check test is called the On Board Diagnostic Generation II (OBDII) functional test. During the OBDII functional test, the technician is required to connect an interface cable from the EIS to a diagnostic link connector (DLC) that is located inside the vehicle. Through the DLC, the EIS automatically retrieves information from the vehicle's on-board computer about how the vehicle's emission control system is working. If the vehicle fails the OBDII functional test, it will fail the overall inspection.

10. "Clean Plugging" is the act of using another vehicle's properly functioning OBDII system, or a separate device, to generate a passing diagnostic reading for the purpose of issuing a fraudulent smog certificate to vehicles that are not in smog compliance.

¹ On February 24, 2015, the bureau issued a Default Decision and Order as to respondent Michael McCutcheon. Mr. McCutcheon did not file a notice of defense to the accusation.

11. When a technician completes an inspection, the EIS generates a written report, known as a vehicle inspection report (VIR), which contains a description of the vehicle and the results of the inspection. If the vehicle has passed the smog check test, an electronic certificate of compliance is issued automatically to the California Department of Motor Vehicles. If the vehicle does not pass the smog check inspection, the vehicle must be repaired and retested.

The Bureau's Undercover Operation of December 11-12, 2013

12. Steven M. Gauronski is a Program Representative II with the bureau and is assigned to conduct undercover operations. He has significant experience in the automobile industry, including experience related to smog testing.

13. On November 6, 2013, Mr. Gauronski inspected a bureau-owned 2002 Honda Accord vehicle (Accord) and verified that the vehicle would fail the Smog Check inspection due to an OBD II communication failure. Mr. Gauronski created the OBD II communication failure by opening the wire to the on board diagnostics data link electrical connector and installing a tamper indicator at the open connector. With this defect, the Accord could not pass the visual inspection portion of the smog test.

14. On December 11, 2013, Steve P. Koch, a Program Representative I, gave the undercover operator custody of the Accord and instructed her to take the Accord to Enterprise Smog to obtain a smog inspection.

15. The undercover operator drove the Accord to Enterprise Smog. She testified that she spoke with "Mike" who conducted the smog test. The undercover operator testified that she saw the computer screen of the smog machine read "No Communication." According to the undercover operator, Mike told her there was something wrong with the vehicle and it could be expensive to fix. She was instructed to return the next day because the smog shop was busy.

16. On December 12, 2013, the undercover operator drove the Accord to Enterprise Smog, recognized Mike from the previous day, and again requested a smog test. She observed Mike plug a cable into the driver's side of the vehicle screen and a metal tip into the vehicle's tail pipe. According to the undercover operator, Mike instructed her to make sure nobody sneaked up on him. Mike drove the vehicle on the rollers slowly for 1-2 minutes, told her that he shouldn't have been doing what he was doing, and then charged the undercover operator \$150 instead of the customary \$50. The undercover operator paid \$150 in cash but the invoice copy she received stated she paid \$50. The undercover operator received a Certificate of Compliance.

17. Mr. Koch downloaded the information about the smog inspection from the bureau's Vehicle Identification Database (VID) and confirmed that Enterprise Smog reported the Accord vehicle passed the smog check inspection and issued a Certificate of Compliance. The vehicle was returned to the bureau and secured.

18. On December 17, 2013, Mr. Gauronski re-inspected the Accord and found the tamper indicator was intact. He verified the Accord could not pass the OBII functional test of a smog inspection because of an OBDII communication failure.

Respondent's Testimony

19. Rulon Draney received a Bachelor's degree in Statistical Marketing from San Diego State University in 1974. For the past 40 years he has been involved in automotive repair and marketing. He is the majority owner of Impact Sales and Marketing for auto body accessories and owns a body shop in Riverside, California. In 2012, he opened Enterprise Smog. In 2013 Mr. McCutcheon was an independent contractor who worked as a technician for three months at Enterprise Smog. Mr. McCutcheon was on duty when the Accord was brought in for the smog inspection. According to Mr. Draney, Mr. McCutcheon was fired for having a substance abuse problem before Mr. Draney was aware of the bureau's investigation.

20. In 2014 Mr. Draney became aware of the bureau's investigation and fully cooperated. Mr. Draney testified that he has never performed a smog test or prepared a VIR report and was not present at the smog shop on December 11 or 12, 2013. He testified that the manager on duty that day should have supervised his technician. "I have worked in the auto industry for 40 years and there was never any issues or complaints against me My supervision in this case was not as good as I would have liked. I had one bad apple." He closed Enterprise Smog in 2014 because it was not profitable. He let his ARD registration and his TC license expire. Mr. Draney testified that although he could pay the investigation and prosecution costs requested, he would like to be placed on probation and attend any classes the bureau requested. Although Mr. Draney was not certain if he wanted to own another smog shop, he wanted to have the ability to do so in the future.

Cost Recovery

21. The bureau filed a Certificate of Prosecution Costs by the Attorney General's office seeking to recover the prosecution costs of \$12,373.44 pursuant to Business and Professions Code section 125.3. This amount is reduced as discussed below in paragraph 23.

LEGAL CONCLUSIONS

Disciplinary Statutes and Regulations

1. Business and Professions Code section 9884.7 provides:
 - (a) The director . . . may deny, suspend or revoke or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the

automotive repair dealer or any automotive technician, employee, officer, or member of the automotive repair dealer.

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

¶ . . . ¶

(4) Any other conduct that constitutes fraud.

¶ . . . ¶

(6) Failure in any material respect to comply with the provision of this chapter or regulations adopted pursuant to it.

2. The expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently. (Bus. & Prof. Code § 9884.13.)

3. All work done by an automotive repair dealer shall be recorded on an invoice and shall describe all service work performed. (Bus. & Prof. Code § 9884.8.)

4. The department shall have the sole and exclusive authority for developing and implementing the motor vehicle inspection program under the Automotive Repair Act. (Health & Saf. Code § 44002.)

5. Smog check inspections are performed in accordance with the department's requirements. (Health & Saf. Code § 44012.)

6. If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance. (Health & Saf. Code § 44015, subd. (b).)

7. Health and Safety Code section 44032 provides:

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

Section 44012.

8. 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 clean piping; tampering with the emission control system or test analyzer system; tampering the vehicle to falsely pass or falsely fail an inspection; or intentional or willful violation of any regulation, standard or procedure of the department. (Health & Saf. Code § 44072, subd. (c) (1-4).)

9. The director may suspend, revoke, or take other disciplinary action against a license if the licensee violates any of the regulations adopted by the director or commits any act involving dishonesty, fraud, or deceit. (Health & Saf. Code § 44072.2.)

10. The expiration of a license by operation of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against, the licensee, or to render a decision suspending or revoking the license. (Health & Saf. Code § 44072.6.)

11. When a license has been revoked or suspended following a hearing, any additional license issued may be likewise revoked or suspended by the director. (Health & Saf. Code § 44072.8.)

12. The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance. (Cal. Code Regs., tit. 16, § 3340.24, subd. (c).)

13. A licensed smog check inspector and or repair technician shall comply with the inspection, testing and repair of vehicles in accordance with Health and Safety Code sections 44012, 44035 and 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

14. 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 Health and Safety Code section 3340.42, and has all the required emission control equipment and devices installed and functioning correctly. (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

15. No person shall enter into the emissions inspection system any data for any vehicle other than the one being tested and shall not knowingly enter into the emissions inspection system any false information about the vehicle being tested. (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

16. Smog check inspection methods are prescribed in the Smog Check manual. An OBD-focused test shall be the test method used to inspect gasoline-powered vehicles

2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer. (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3).)

17. No automotive repair dealer or individual in charge shall, in filling out an invoice or record, withhold information that would cause the document to be false or misleading or deceive customers, prospective customers, or the public. (Cal. Code Regs., tit. 16, § 3373.)

18. The principle that a licensee will be held liable for the acts of its agents is one that has been applied whether the agent is an independent contractor or an employee. *California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal. 4th 284, at 296. The objective of an administrative proceeding relating to a possible license suspension is to protect the public and determine whether a licensee has exercised his privilege in derogation of the public interest. If a licensee were not liable for the actions of his independent contractor, effective regulation would be impossible. *Borg-Warner Protective Services Corp. v Superior Court* (1999) 75 Cal App. 4th 1203 at 1211.

19. In this matter, Mr. McCutcheon was an independent contractor for Enterprise Smog. Mr. Draney, as owner of Enterprise Smog, could not delegate the daily operations of his smog business to Mr. McCutcheon and become immune to disciplinary action by the licensing authority.

Disciplinary Guidelines

20. The bureau's Guidelines for Disciplinary Penalties and Terms of Probation (05/1997) provide criteria to consider in determining the appropriate level of discipline, including: respondent's prior disciplinary record and evidence of mitigation. Mr. Draney did not have any prior citations or accusations filed against him. Mr. Draney fired Mr. McCutcheon before Mr. Draney was aware of the bureau's investigation. Mr. Draney let his license and registration expire and no longer owns a smog shop. Based on the numerous statutory violations, which include acts of fraud; misleading statements; improper inspection and improper issuance of Certificate of Compliance; the maximum penalty of revocation is warranted in this case in order to protect the public.

Evaluation

21. Cause exists to discipline respondent Rolun Draney, owner, dba Enterprise Smog's Automotive Repair Dealer Registration number ARD 263731, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1) and (6), section 9884.4.8; Health and Safety Code section 44012; and California Code of Regulations, title 16, section 3340.41, subdivision (c), and section 3373, in that Mr. McCutcheon, the Enterprise Smog's technician, made statements that he knew to be untrue or misleading by certifying the Accord had passed a smog check inspection and was in compliance with all applicable laws and regulations. Mr. McCutcheon utilized a "clean plugging" method to issue a VIR and Smog Certificate of Compliance for a vehicle that had not been properly tested and inspected. Mr.

McCutcheon issued an inaccurate invoice in the amount of \$50 when the bureau operator paid \$150 for the smog check and certificate. Mr. Draney and Enterprise Smog are responsible for the acts of their agent.

22. Cause exists to discipline respondent Rolun Draney, owner, dba Enterprise Smog's, Automotive Repair number ARD 263731, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), section 9884.8; Health and Safety Code sections 44012 and 44072, subdivision (d); and California Code of Regulations, title 16, sections 3340.41, subdivision (c), section 3340.35, subdivision (c) and 3373, in that Mr. McCutcheon fraudulently issued a VIR and an electronic Smog Certificate of Compliance for the Accord by utilizing a "clean plugging" method. Mr. McCutcheon issued an inaccurate invoice in the amount of \$50 when the bureau operator paid \$150 for the smog check and certificate.

23. Cause exists to discipline respondent Rolun Draney, owner, dba Enterprise Smog's, Smog Check Test Only Station License number TC 263731, pursuant to Business and Professions Code section 9887.4, subdivision, (a)(1)(4), section 9884.8; Health and Safety Code section 44072.2, subdivisions (a)(d) and (h), section 44012, section 44015, subdivision (b), and California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), 3340.41, subdivision (c), 3340.42 and 3373 in that Mr. McCutcheon fraudulently issued an inaccurate VIR and Smog Certificate of Compliance. The Accord was not properly tested and inspected as required by Health and Safety Code section 44012. Mr. McCutcheon issued an inaccurate invoice in the amount of \$50 when the bureau operator paid \$150 for the smog check and certificate.

24. Cause exists to discipline respondent Rolun Draney, owner, dba Enterprise Smog's, Smog Check, Test Only Station License number TC 263731 pursuant to Health and Safety Code section 44072.2, subdivisions (a)(c)(d) and (h), California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.30, subdivision (a), 3340.35, subdivision (c), 3340.41, subdivision (c), 3340.42, and 3373 in that Mr. McCutcheon improperly conducted a smog check and inspection of the Accord, entered false information into the EIS by utilizing a "clean plugging" method, falsely issued a VIR, falsely issued a Certificate of Compliance and issued an inaccurate invoice. Mr. Draney and Enterprise Smog failed to comply with regulations pursuant to the Motor Vehicle Inspection Program.

25. Cause exists to discipline respondent Rolun Draney, owner, dba Enterprise Smog's, Smog Check, Test Only, Station License number TC 263731 pursuant to Health and Safety Code section 44072.2, subdivision (d) and California Code of Regulations, title 16, section 3340.41, subdivision (c), section 3340.24, subdivision (c), sections 3340.35, 3340.42 and 3373 in that Mr. McCutcheon committed a dishonest and deceitful act when he issued a false VIR and an electronic smog Certificate of Compliance for the Accord without performing a bona fide smog check, and issued a false invoice thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Cost Recovery

26. The bureau seeks recovery of the reasonable costs of investigation and prosecution in the amount of \$12,373.44. *Zuckerman v State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is similar to Bus. & Prof. Code, § 125.3) did not violate due process. But, it required the bureau to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.” The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the merits of his position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation in *Zuckerman* contains substantially the same language as that is set forth in Business and Professions Code section 125.3.

The *Zuckerman* factors have been applied to this case. Mr. Draney used the hearing process to obtain a reduction in the severity of the discipline imposed; he had a subjective good faith belief in the merits of his position and raised a colorable challenge to the proposed discipline. Mr. Draney testified that he had the financial ability to make payments and fully cooperated with the bureau’s investigation. Mr. McCutcheon license was revoked before the hearing. Four of the nine causes for discipline were against Mr. McCutcheon. Considering the foregoing, it is reasonable to require Mr. Draney to pay a portion of the costs. Mr. Draney shall pay the bureau’s cost of investigation and enforcement in the amount of \$5,500.

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ORDER

1. Automotive Repair Dealer Registration number ARD 263731 issued to Rolun Draney, owner, dba Enterprise Smog, is revoked.
2. Smog Check Test Only Station License number TC 263731 issued to Rolun Draney, owner, dba Enterprise Smog, is revoked.
3. Rolun Draney shall pay the bureau \$5,500 for the costs of investigation and enforcement of his case pursuant to Business and Professions Code section 125.3.

DATED: August 19, 2015


CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings

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

11
12 In the Matter of the Accusation Against:

Case No. 79/15-19

13 **ENTERPRISE SMOG; Rolun Draney,**
14 **Owner,**
15 **2742 Main Street**
16 **Riverside, CA 92501,**

ACCUSATION

(SMOG CHECK)

17 **Automotive Repair Dealer Registration**
18 **License No. ARD 263731**
19 **Smog Check Test Only Station License No.**
20 **TC 263731;**

21 **MICHAEL KEVIN MCCUTCHEON**
22 **8990 19th Street #369**
23 **Rancho Cucamonga, CA 91701**

24 **Smog Check Inspector License No.**
25 **EO 636018;**

26 Respondents.

27 Complainant alleges:
28



1 **PARTIES**

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

4 **ENTERPRISE SMOG; ROLUN DRANEY, OWNER**

5 2. On or about January 10, 2011, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 263731 to Rolun Draney, dba Enterprise Smog
7 ("Respondent"). The Automotive Repair Dealer Registration was in full force and effect at all
8 times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

9 3. On or about March 30, 2012, the Bureau of Automotive Repair issued Smog Check-
10 Test Only Station License Number TC 263731 to Rolun Draney, dba Enterprise Smog
11 ("Respondent"). The Smog Check-Test Only Station License was in full force and effect at all
12 times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

13 4. On or about January 28, 2013, the Bureau of Automotive Repair issued STAR Station
14 Certification to Rolun Draney, dba Enterprise Smog ("Respondent"). The STAR Station
15 Certification was in full force and effect at all times relevant to the charges brought herein.

16 **MICHAEL KEVIN MCCUTCHEON, SMOG CHECK INSPECTOR**

17 5. On or about September 11, 2013, the Bureau of Automotive Repair issued Smog
18 Check Inspector license no. EO 636018 to Michael Kevin McCutcheon ("Respondent"). The
19 Smog Check Inspector license was in full force and effect at all times relevant to the charges
20 brought herein and will expire on February 29, 2016, unless renewed.¹

21 **JURISDICTION**

22 6. This Accusation is brought before the Director of Consumer Affairs (Director) for the
23 Bureau of Automotive Repair, under the authority of the following laws.

24 7. Section 477 of the Business and Professions Code ("Code") provides, in pertinent
25 part, that "Board" includes "bureau," "commission," "committee," "department," "division,"

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician ("EA") license and Basic Area ("EB") Technician license to
Smog Check Inspector ("EO") license and/or Smog Check Repair Technician ("EI") license.

1 "examining committee," "program," and "agency." "License" includes certificate, registration or
2 other means to engage in a business or profession regulated by the Code.

3 8. Section 9884.7 of the Code states in pertinent part:

4 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
5 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
6 dealer for any of the following acts or omissions related to the conduct of the business of the
7 automotive repair dealer, which are done by the automotive repair dealer or any automotive
8 technician, employee, partner, officer, or member of the automotive repair dealer.

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

12 ...

13 (4) Any other conduct which constitutes fraud.

14 ...

15 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
16 than one place of business in this state, the director pursuant to subdivision (a) shall only
17 invalidate temporarily or permanently the registration of the specific place of business which has
18 violated any of the provisions of this chapter. This violation, or action by the director, shall not
19 affect in any manner the right of the automotive repair dealer to operate his or her other places of
20 business.

21 (c) Notwithstanding subdivision (b), the director may invalidate temporarily or
22 permanently, the registration for all places of business operated in this state by an automotive
23 repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of
24 repeated and willful violations of this chapter, or regulations adopted pursuant to it."

25 9. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
26 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
27 proceeding against an automotive repair dealer or to render a decision invalidating a registration
28 temporarily or permanently.

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

5 14. Section 9884.8 of the Code states: “All work done by an automotive repair dealer,
6 including all warranty work, shall be recorded on an invoice and shall describe all service work
7 done and parts supplied. Service work and parts shall be listed separately on the invoice, which
8 shall also state separately the subtotal prices for service work and for parts, not including sales
9 tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or
10 reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component
11 system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state
12 that fact. The invoice shall include a statement indicating whether any crash parts are original
13 equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash
14 parts. One copy of the invoice shall be given to the customer and one copy shall be retained by
15 the automotive repair dealer.”

16 15. Health and Safety Code Section 44012 provides, in pertinent part: “The test at the
17 smog check stations shall be performed in accordance with procedures prescribed by the
18 department, pursuant to Section 44013, ...”

19 16. Health and Safety Code Section 44015 provides, in pertinent part: “...(b) If a vehicle
20 meets the requirements of Section 44012, a smog check station licensed to issue certificates shall
21 issue a certificate of compliance or a certificate of noncompliance.”

22 17. Health and Safety Code Section 44032 provides: “... Qualified technicians shall
23 perform tests of emission control devices and systems in accordance with Section 44012.”

24 18. Health and Safety Code Section 44072.10 states, in pertinent part: “...(c) The
25 department shall revoke the license of any smog check technician or station licensee who
26 fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A
27 Fraudulent inspection includes, but is not limited to, all of the following:

28 ...

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

3 19. Health and Safety Code section 44072.2 provides in pertinent part: “The director may
4 suspend, revoke, or take other disciplinary action against a license as provided in this article if the
5 licensee, or any partner, officer, or director thereof, does any of the following: (a) Violates any
6 section of this chapter [the Motor Vehicle Inspection Program (Health and Safety Code section
7 44000, et seq.)] and the regulations adopted pursuant to it, which are related to the licensed
8 activities.

9 ...

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

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

13 ...

14 (h) Violates or attempts to violate the provisions of this chapter relating to the
15 particular activity for which he or she is licensed.”

16 REGULATORY PROVISIONS

17 20. California Code of Regulations, title 16, section 3340.24(c) provides: “The bureau
18 may suspend or revoke the license of or pursue other legal action against a licensee, if the
19 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
20 certificate of noncompliance.”

21 21. California Code of Regulations, title 16, section 3340.30 provides, in pertinent part:
22 “A licensed smog check inspector and/or repair technician shall comply with the following
23 requirements at all times while licensed:

24 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of
25 the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of
26 this article. ...”

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

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

5 23. California Code of Regulations, title 16, section 3340.41(c) provides: “(c) No person
6 shall enter into the emissions inspection system any vehicle identification information or emission
7 control system identification data for any vehicle other than the one being tested. Nor shall any
8 person knowingly enter into the emissions inspection system any false information about the
9 vehicle being tested.”

10 24. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part,
11 that “[S]mog check inspection methods are prescribed in the Smog Check manual referenced by
12 section 3340.45.”

13 ...

14 (a)(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
15 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
16 The OBD test failure criteria are specified in section 3340.42.2.”²

17 25. California Code of Regulations, title 16, section 3373, states:

18 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
19 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
20 withhold therefrom or insert therein any statement or information which will cause any such
21 document to be false or misleading, or where the tendency or effect thereby would be to mislead
22 or deceive customers, prospective customers, or the public.”

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24 _____
25 ² The On Board Diagnostic, generation II (“OBDII”) functional test is an automated
26 function of the BAR-97 analyzer. During the OBDII functional test, the technician is required to
27 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link connector (“DLC”)
28 which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
retrieves information from the vehicle’s on-board computer about the status of the readiness
indicators, trouble codes, and the Malfunction Indicator Light (“MIL”). If the vehicle fails the
OBDII functional test, it will fail the overall inspection.

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COST RECOVERY

26. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL BACKGROUND

27. During the last quarter of calendar year 2013, the Bureau received an anonymous tip that Enterprise Smog was performing fraudulent smog check inspections by utilizing a device to pass the OBDII functional portion of a smog test, known as "Clean Plugging".³ Based on the anonymous tip information, the Bureau of Automotive Repair decided to conduct an investigation of Respondent, Enterprise Smog.

UNDERCOVER OPERATION DECEMBER 11-12, 2013

28. In November 2013, a Bureau technician prepared a Bureau 2002 Honda (hereinafter "Bureau undercover vehicle") to fail Smog Check inspections due to an OBDII communication failure.

29. On December 11, 2013, a Bureau operator drove the undercover vehicle to Enterprise Smog in Riverside for a Smog Test. The operator informed an Enterprise Smog technician identified as "Mike", that she needed a smog test and asked for a technician named "Brandon". The operator informed Mike that Brandon helped her before because her vehicle "wouldn't read". Mike informed the operator that Brandon no longer worked at Enterprise, but he could help the operator. When asked by Mike, she informed him that Brandon charged her \$150.00 the last time. Mike informed the operator that he could do the test for that fee also. The operator saw Mike feed a cable into the vehicle. When Mike asked the operator for the paperwork while

³ "Clean Plugging" involves using another vehicle's properly functioning On Board Diagnostic generation II, ("OBDII"), system or a separate device to generate passing diagnostic readings for the purpose of issuing a fraudulent smog certificate to vehicles that are not in smog compliance and/or not present for testing.

1 standing in the vicinity of the smog machine, the operator noted that the screen was red and
2 reported something concerning, "no communication". After that preliminary check, Mike
3 informed the operator that the vehicle would have to be returned the next day and he could "get it
4 to work".

5 30. The operator returned the undercover vehicle to Enterprise Smog on December 12,
6 2013, for the Smog Test and waited for the test to be completed. The operator observed the test
7 being conducted. The operator observed the Enterprise Smog technician Mike utilizing a small
8 device, having plugged a cable into the small device. The operator did not observe Mike plug the
9 cable into the undercover vehicle. Afterwards, the operator spoke with Mike concerning the
10 \$150.00 charge for the test. During the conversation, Mike commented to the operator to the
11 effect that he should not be doing this.

12 31. When the Enterprise Smog technician Mike returned the vehicle to the operator after
13 the operator paid \$150.00, he gave the operator a pink and a yellow copy of invoice [REDACTED] Both
14 copies of the invoice showed a charge of \$50.00. The Enterprise Smog technician also gave the
15 operator a Vehicle Inspection Report ("VIR") indicating that the undercover vehicle passed the
16 "enhanced Smog Check inspection" and noting the issuance of Smog Check Certificate of
17 Compliance, number [REDACTED] 1, with DMV ID number: [REDACTED]. The VIR indicated
18 that the Smog Check was performed by Enterprise Smog technician, Michael McCutcheon,
19 EO636018.

20 32. On December 17 and 19, 2013, the Bureau technician who initially prepared the
21 undercover vehicle with an OBD communication failure, re-inspected the vehicle. During the re-
22 inspection, the Bureau technician performed a Two Speed Idle ("TSI") test and Acceleration
23 Simulation Mode ("ASM") test and noted that the undercover vehicle failed the inspection
24 because of an OBDII communication failure. The technician concluded that the undercover
25 vehicle was not eligible to receive a smog check Certificate of Compliance in its condition.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 33. Respondent Enterprise Smog's, Rolun Draney, Owner, Automotive Repair Dealer
4 Registration number ARD 263731, is subject to disciplinary action for violations under Business
5 and Professions Code section 9884.7, subdivision (a)(1) and (a)(6), Business and Professions
6 Code section 9884.8, Health and Safety Code section 44012, et seq., and California Code of
7 Regulations, Title 16, Sections 3340.41(c), and 3373 in that Respondent McCutcheon made or
8 authorized a statement which he knew or in the exercise of reasonable care should have known to
9 be untrue or misleading, by certifying that the Bureau's undercover vehicle had passed the Smog
10 Check inspection conducted and was in compliance with all applicable laws and regulations.
11 The circumstances are as follows and as more fully set forth in paragraphs 27-32 herein above
12 and incorporated herein by this reference:

13 a. On December 12, 2013, Respondent McCutcheon utilized a "clean plugging" method
14 to issue a VIR and Smog Certificate of Compliance for the Bureau undercover vehicle that had
15 not been properly tested and inspected as required by Health and Safety Code section 44012, et
16 seq.

17 b. On December 12, 2013, Respondent issued Invoice number [REDACTED] reporting a "Grand
18 Total" of \$50.00 tendered for the Smog Test and Certificate when the actual amount paid by the
19 Bureau operator was \$150.00.

20 **SECOND CAUSE FOR DISCIPLINE**

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

22 34. Respondent Enterprise Smog's, Rolun Draney, Owner, Automotive Repair Dealer
23 Registration number ARD 263731, is subject to disciplinary action for violations under Business
24 and Professions Code section 9884.7, subdivision (a)(4), Business and Professions Code section
25 9884.8, Health and Safety Code sections 44012 and 44072(d), and California Code of
26 Regulations, Title 16, sections 3340.41(c), 3340.35(c), and 3373 in that Respondent Enterprise
27 Smog and Respondent McCutcheon falsely or fraudulently issued a VIR and an electronic Smog
28 Certificate of Compliance, number [REDACTED] for the Bureau undercover vehicle, without

1 properly performing a Smog Check and inspection of the emission control devices and systems
2 on the undercover vehicle, thereby depriving the People of the State of California of the
3 protections afforded by the Motor Vehicle Inspection Program (Health and Safety Code Section
4 44000, et seq.) The circumstances are as follows and as more fully set forth in paragraphs 27-32
5 herein above and incorporated herein by this reference:

6 a. On December 12, 2013, Respondent McCutcheon utilized a "clean plugging" method
7 to issue an inaccurate VIR and smog Certificate of Compliance for the Bureau undercover vehicle
8 that had not been properly tested and inspected as required by Health and Safety Code section
9 44012.

10 b. Respondent Enterprise Smog issued Invoice number [REDACTED], dated December 12, 2013,
11 indicating a "Grand Total" for the smog check in the amount of \$50.00 when the Bureau operator
12 actually paid Enterprise Smog technician Mike \$150.00 for the smog check and certificate.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 35. Respondent Enterprise Smog's, Rolun Draney, Owner, Smog Check, Test Only,
16 Station License number TC 263731, is subject to disciplinary action for violations under Business
17 and Professions Code sections 9887.4(a)(1) and (a)(4), and 9884.8, Health and Safety Code
18 sections 44072.2, subdivisions (a), (d), and (h), 44012, et seq., and 44015(b), and California Code
19 of Regulations, title 16, sections 3340.24(c), 3340.35(c), 3340.41(c), 3340.42, and 3373 in that
20 Respondent Enterprise Smog and Respondent McCutcheon falsely or fraudulently caused a VIR
21 and a smog Certificate of Compliance to be issued for the Bureau undercover vehicle that had not
22 been properly tested and inspected as required as required by Health and Safety Code Section
23 44012, et seq., and were compensated for the smog test and certificate. The circumstances are as
24 follows and as more fully set forth in paragraphs 27-32 herein above and incorporated herein by
25 this reference:

26 a. On or about December 12, 2013, Respondent McCutcheon utilized a "clean
27 plugging" method to issue an inaccurate VIR and Smog Certificate of Compliance for the Bureau
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1 undercover vehicle that had not been properly tested and inspected as required by Health and
2 Safety Code section 44012, et seq.

3 b. Respondent McCutcheon took \$150.00 in payment for the smog test and certificate
4 and issued an Enterprise Smog Invoice, Number [REDACTED] that reported a "Grand Total" payment of
5 \$50.00.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Regulations Pursuant**
8 **to the Motor Vehicle Inspection Program)**

9 36. Respondent Enterprise Smog's, Rolun Draney, Owner, Smog Check, Test Only,
10 Station License number TC 263731, is subject to disciplinary action for violations under Health,
11 and Safety Code section 44072.2, subdivisions (a), (c), (d), and (h), and California Code of
12 Regulations, Title 16, sections 3340.24(c), 3340.30(a), 3340.35(c), 3340.41(c), 3340.42, and 3373
13 in that Respondent Enterprise Smog and Respondent McCutcheon improperly conducted a smog
14 check and inspection of the Bureau undercover vehicle and falsely or fraudulently issued a VIR
15 and a Certificate of Compliance and an inaccurate invoice for the Bureau undercover vehicle that
16 had not been properly tested and inspected as required by Health and Safety Code Section 44012,
17 et seq., and did not comply with the regulations adopted pursuant to the Motor Vehicle Inspection
18 Program; Health and Safety Code section 44000, et seq. The circumstances are as follows and as
19 fully set forth in paragraphs 27-32 herein above and incorporated herein by this reference:

20 a. On or about December 12, 2013, Respondent McCutcheon utilized a "clean
21 plugging" method to conduct a Smog Check and Inspection and to issue a Smog Certificate of
22 Compliance for the Bureau undercover vehicle that had not been properly tested and inspected as
23 required by Health and Safety Code section 44012, et seq.

24 b. Section 3340.30(a): Respondent Enterprise Smog's technician, Respondent
25 McCutcheon, failed to inspect and test in accordance with Health and Safety Code Sections
26 44012 and 44035, and California Code of Regulations, Title 16, section 3340.42.

27 c. Section 3340.24(c): Respondent Enterprise Smog falsely or fraudulently issued an
28 electronic smog Certificate of Compliance for the Bureau undercover vehicle.

1 d. Section 3340.35(c): Respondent Enterprise Smog issued the smog Certificate of
2 Compliance for the Bureau undercover vehicle despite that the vehicle had not been inspected in
3 accordance with section 3340.42.

4 e. Section 3340.41(c): Respondent Enterprise Smog's technician, Respondent
5 McCutcheon, entered false information into the Emission Inspection System ("EIS") by utilizing
6 a "clean plugging" method during the testing of the Bureau's undercover vehicle.

7 f. Section 3340.42: Respondent Enterprise Smog failed to conduct the required smog
8 test on the Bureau undercover vehicle according to the Bureau's specifications.

9 g. Section 3373: Respondent Enterprise Smog and its technician, McCutcheon, made
10 false or misleading records regarding the Bureau undercover vehicle including falsely or
11 fraudulently issuing a VIR, a smog Certificate of Compliance, and a false invoice without
12 performing a bona fide smog check and inspection of the Bureau undercover vehicle thereby
13 causing such documents or reports to be false or misleading, or where the tendency or effect
14 thereby would be to mislead or deceive customers, prospective customers, or the public.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Dishonesty, Fraud or Deceit)

17 37. Respondent Enterprise Smog's, Rolun Draney Owner, Smog Check, Test Only,
18 Station License number TC 263731, is subject to disciplinary action pursuant to Health and
19 Safety Code section 44072.2(d) and California Code of Regulations, title 16, sections 3340.41(c),
20 3340.24(c), 3340.35, 3340.42, and 3373, in that Respondent committed a dishonest, fraudulent or
21 deceitful act whereby another is injured by issuing a false VIR and an electronic smog Certificate
22 of Compliance for the Bureau undercover vehicle without performing a bona fide smog check and
23 inspection of the emission control devices and systems, and issuing a false invoice thereby
24 depriving the People of the State of California of the protection afforded by the Motor Vehicle
25 Inspection Program. The circumstances are as follows and as set forth in paragraphs 27-32 herein
26 above and incorporated herein by this reference:

1 a. Respondent McCutcheon failed to conduct a bona fide smog check and inspection by
2 utilizing a "clean plugging" method during the inspection of the Bureau undercover vehicle and
3 then falsely or fraudulently issuing a false VIR and a false smog Certification of Compliance.

4 b. Respondent McCutcheon took \$150.00 in payment for the smog test and certificate
5 and caused to issue the Enterprise Smog invoice number [REDACTED] showing a "Grand Total" payment
6 made of \$50.00.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 38. Respondent, Michael Kevin McCutcheon's Smog Check Inspector License number
10 EO 636018, is subject to disciplinary action pursuant to Business and Professions Code Section
11 9884.7(a)(1) and (a)(6), Business and Professions Code section 9884.8, California Code of
12 Regulations, title 16, sections 3340.24(c), 3340.35(c), 3340.41(c), 3340.42, and 3373, and Health
13 and Safety Code sections 44012, et seq., 44015(b), 44072.10(c)(4), 44032, and 4472.2(a), (c), (d),
14 and (h), in that Respondent conducted a smog check and inspection on the Bureau undercover
15 vehicle utilizing a "clean plugging" method and issued a false VIR, a false smog Certificate of
16 Compliance for the Bureau undercover vehicle, and a false invoice. The circumstances are as
17 follows and as set forth in paragraphs 27-32 herein above and incorporated herein by this
18 reference:

19 a. On December 12, 2013, Respondent failed to perform bona fide tests and inspections
20 on the Bureau undercover vehicle using a "clean plugging" method during the test and inspection.
21 Respondent caused a false VIR and Certificate of Compliance to be issued indicating that the
22 Bureau undercover vehicle showing that the undercover vehicle passed the enhanced Smog
23 Check inspection.

24 b. Respondent took a fee of \$150.00 for the smog test and certificate but caused
25 Enterprise Smog invoice number [REDACTED] to issue listing a "Grand Total" payment for the smog test
26 and certificate of \$50.00.

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3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 39. Respondent, Michael Kevin McCutcheon's Smog Check Inspector License number
6 EO 636018, is subject to disciplinary action pursuant to Business and Professions Code Section
7 9884.7(a)(4) and Health and Safety Code Sections 44032 and 44072.2(d), California Code of
8 Regulations, title 16, sections 3340.24(c), 3340.35(c), 3340.41(c), 3340.42, and 3373, in that
9 Respondent caused to be falsely or fraudulently issued a false VIR and falsely or fraudulently
10 caused to be issued a false smog Certificate of Compliance for the Bureau undercover vehicle
11 after performing a non-bona fide smog check and inspection utilizing a "clean plugging" method
12 and thereby depriving the People of the State of California of the protections afforded by the
13 Motor Vehicle Inspection Program. The circumstances are as follows and as fully set forth in
14 paragraphs 27-32 herein above and incorporated herein by this reference:

15 a. On December 12, 2013, Respondent McCutcheon conducted a non-bona fide smog
16 check and inspection on the Bureau undercover vehicle utilizing a "clean plugging" method.
17 Respondent caused a false VIR and a false smog Certificate of Compliance to be issued for the
18 Bureau undercover vehicle based on the non-bona fide inspection.

19 b. On December 12, 2013, Respondent McCutcheon took \$150.00 in payment from the
20 Bureau operator for the smog test and certificate and issued Enterprise Smog invoice number
21 [REDACTED] reporting a "Grand Total" payment for the smog test and certificate of \$50.00.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 40. Respondent, Michael McCutcheon's Smog Check Inspector License, EO636018, is
25 subject to disciplinary action pursuant to Health and Safety Code sections 44032 and 44072(a)
26 and Health and Safety Code section 44012 et seq., in that Respondent performed a non-bona fide
27 smog check and inspection on the Bureau undercover vehicle by utilizing a "clean plugging"
28 method and by issuing a false VIR, a false Certificate of Compliance and a false invoice thereby
depriving the People of the State of California of the protections afforded by the Motor Vehicle

1 Inspection Program. The circumstances are as follows and as set forth in paragraphs 27-32 herein
2 above and incorporated herein by this reference.

3 a. Section 44012(a): Respondent failed to ensure that all emission control devices and
4 systems required by law for the Bureau undercover vehicle were installed and functioning
5 correctly in accordance with proper test procedures.

6 b. Section 44012(f): Respondent failed to perform the emission control tests on the
7 Bureau undercover vehicle in accordance with procedures prescribed by the department.

8 c. Section 44015(b): Respondent issued an electronic smog Certificate of Compliance
9 for the Bureau undercover vehicle without properly testing and inspecting the vehicle to
10 determine if it was in compliance with Health and Safety Code section 44012.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant to the**
13 **Motor Vehicle Inspection Program)**

14 41. Respondent, Michael McCutcheon's Smog Check Inspector License, number EO
15 636018 is subject to disciplinary action pursuant to Health and Safety Code sections 44032 and
16 44072.2(c) and California Code of Regulations, title 16, sections 3340.24(c), 3340.30(a),
17 3340.35(c), 3340.41(c), 3340.42, and 3373 in that Respondent failed to conduct a bona fide smog
18 check and inspection but rather utilized a "clean plugging" method for the Bureau undercover
19 vehicle smog test and issued a false VIR, a false Certificate of Compliance, and a false invoice.

20 The circumstances are as follows and as fully set forth in paragraphs 27-32 herein above
21 and incorporated herein by this reference.

22 a. Section 3340.24(c): Respondent falsely or fraudulently issued a VIR, an electronic
23 smog Certificate of Compliance number [REDACTED], and Enterprise Smog invoice number [REDACTED]

24 b. Section 3340.30(a): Respondent failed to inspect and test the Bureau undercover
25 vehicle in accordance with Health and Safety Code section 44012, et seq., section 44032, section
26 44035, 44072.10.

27 c. Section 3340.35(c): Respondent issued a Certificate of Compliance for the Bureau
28 undercover vehicle that had not been inspected in accordance with the procedures specified in

1 section 3340.42 or had all required emission control equipment and devices installed and
2 functioning correctly.

3 d. Section 3340.41(c): Respondent entered into the emissions inspection system vehicle
4 identification information or emission control system identification data other than for the Bureau
5 undercover vehicle.

6 e. Section 3340.42: Respondent failed to conduct the required smog test on the Bureau
7 undercover vehicle in accordance with the Bureau's specifications.

8 f. Section 3373: Respondent inserted data in the Enterprise Smog invoice number [REDACTED]
9 a statement or information which caused the document to be false or misleading and had the
10 tendency or effect to mislead or deceive customers, prospective customers, or the public.

11 OTHER MATTERS

12 42. Pursuant to Business and Professions Code section 9884.7(c), the Director may
13 suspend, revoke or place on probation the registration for all places of business operated in this
14 state by Respondent Rolun Draney, owner of Enterprise Smog, upon a finding that Respondent
15 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
16 pertaining to an automotive repair dealer.

17 43. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
18 Station License number TC 263731, issued to Rolun Draney, owner of Enterprise Smog, is
19 revoked or suspended, any additional license issued under this chapter in the name of said
20 licensee may be likewise revoked or suspended by the Director.

21 44. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Inspector
22 license number EO 636018, issued to Michael Kevin McCutcheon, is revoked or suspended, any
23 additional license issued under this chapter in the name of said licensee may be likewise revoked
24 or suspended by the Director.


25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of Consumer Affairs issue a decision:
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1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 263731, issued to Rolun Draney, dba Enterprise Smog;
2. Revoking or suspending any other Automotive Repair Dealer registration issued to Rolun Draney;
3. Revoking or suspending Smog Check-Test Only Station License Number TC 263731, issued to Rolun Draney, dba Enterprise Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Rolun Draney, in addition to, Smog Check-Test Only Station License number TC 263731;
5. Revoking or suspending Smog Check Inspector License Number EO 636018, issued to Michael Kevin McCutcheon;
6. Revoking or suspending any additional license issued to Michael Kevin McCutcheon under the appropriate chapter of the Health and Safety Code;
7. Ordering Enterprise Smog, Rolun Draney, Owner, and/or Michael Kevin McCutcheon to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
8. Taking such other and further action as deemed necessary and proper.

DATED: August 12, 2014


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

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