

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 SETH A. CURTIS
Deputy Attorney General
4 State Bar No. 236263
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-4979
Facsimile: (916) 324-5567
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/16-14477

13 **ENVIRO SMOG INC.**
14 **ELIZABETH ANN HUYNH,**
PRESIDENT, SECRETARY, TREASURER

A C C U S A T I O N

15 **DBA**
16 **ENVIRO SMOG TEST ONLY**
2373 N. Wilson Way
Stockton, CA 95205
17 **Automotive Repair Dealer Registration**
No. ARD 270617
18 **Smog Check Test Only Station License**
No. TC 270617
19

20 **DBA**
21 **WEST LANE SMOG**
2373 N. Wilson Way
Stockton, CA 95205

22 and

23 3943 N. West Lane Ste. A
Stockton, CA 95204

24
25 **Automotive Repair Dealer Registration**
No. ARD 279862
26 **Smog Check Test Only Station License**
No. TC 279862
27
28

1 **NAKRONG SITHI**
2 265 E. Churchill St.
3 Stockton, CA 95204

4 and

5 125 West Essex Street
6 Stockton, CA 95204

7 **Smog Check Inspector (EO) License**
8 **No. 630383**

9 **ALEXANDER RICHARD-RUED**
10 **DELGADILLO**

11 2220 Porter Way
12 Stockton, CA 95207

13 **Smog Check Inspector (EO) License**
14 **No. 630904 (formerly Advanced Emission**
15 **Specialist Technician License No. EA**
16 **630904)**

17 **Smog Check Repair Technician (EI) License**
18 **No. 630904**

19 **ABEL DANIEL HERNANDEZ**

20 2022 Beau Pre Street
21 Stockton, CA 95206

22 **Smog Check Inspector (EO) License**
23 **No. 630197 (formerly Advanced Emission**
24 **Specialist Technician License No. EA**
25 **630197)**

26 Respondents.

27 Patrick Dorais ("Complainant") alleges:

28 **PARTIES**

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

Enviro Smog Inc., dba Enviro Smog Test Only

2. On or about October 22, 2012, the Bureau issued Automotive Repair Dealer Registration Number ARD 270617 to Enviro Smog Inc., with Elizabeth Ann Huynh, as its President, Secretary, and Treasurer ("Respondent Enviro Smog"), doing business as Enviro Smog Test Only. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2017, unless renewed.

1 3. On or about November 20, 2012, the Bureau issued Smog Check Test Only Station
2 License Number TC 270617 to Respondent Enviro Smog. The Smog Check Test Only Station
3 License was in full force and effect at all times relevant to the charges brought herein and will
4 expire on October 31, 2017, unless renewed.

5 **Enviro Smog Inc., dba West Lane Smog**

6 4. On or about April 9, 2015, the Bureau issued Automotive Repair Dealer Registration
7 Number ARD 279862 to Respondent Enviro Smog, doing business as West Lane Smog. The
8 Automotive Repair Dealer Registration expired on April 30, 2017, and has not been renewed.

9 5. On or about May 5, 2015, the Bureau issued Smog Check Test Only Station License
10 Number TC 279862 to Respondent Enviro Smog. The Smog Check Test Only Station License
11 expired on April 30, 2017, and has not been renewed.

12 **Smog Technician Licenses**

13 6. On or about August 11, 2008, the Bureau issued Advanced Emission Specialist (EA)
14 Technician License Number 630383 to Nakrong Sithi ("Respondent Sithi"). Respondent Sithi's
15 Advanced Specialist Technician License was due to expire on April 30, 2014. On or about
16 April 28, 2014, the license was renewed as Smog Check Inspector (EO) License Number 630383.
17 The Smog Check Inspector (EO) License was in full force and effect at all times relevant to the
18 charges brought herein and will expire on April 30, 2018, unless renewed.

19 7. On or about March 23, 2009, the Bureau issued Advanced Emission Specialist (EA)
20 Technician License Number 630904 to Alexander Richard-Rued Delgadillo ("Respondent
21 Delgadillo"). Respondent Delgadillo's Advanced Specialist Technician License was due to
22 expire on June 30, 2013. On or about June 6, 2013, the license was renewed as Smog Check
23 Inspector (EO) License Number 630904 and Smog Check Repair Technician (EI) License
24 Number 630904. The Smog Check Inspector (EO) License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on June 30, 2019, unless renewed. The
26 Smog Check Repair Technician (EI) License expired on June 30, 2015, and has not been
27 renewed.
28

8. On or about May 12, 2008, the Bureau issued Advanced Emission Specialist (EA) Technician License Number 630197 to Abel Daniel Hernandez (“Respondent Hernandez”). Respondent Hernandez’s Advanced Specialist Technician License was due to expire on March 31, 2014. On or about March 13, 2014, the license was renewed as Smog Check Inspector (EO) License Number 630197. The Smog Check Inspector (EO) License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2018, unless renewed.

JURISDICTION

9. This Accusation is brought before the Bureau under the authority of the following laws.

10. Business and Professions Code (“Code”) section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

11. Code section 9884.13 provides, in pertinent part, that 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.

12. Code section 118(b) states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

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

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

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

8 16. Health & Saf. Code section 44072.8 states:

9 When a license has been revoked or suspended following a hearing under this
10 article, any additional license issued under this chapter in the name of the licensee
may be likewise revoked or suspended by the director.

11 **STATUTORY AND REGULATORY PROVISIONS**

12 17. Code section 9884.7 states, in pertinent part:

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

17 (1) Making or authorizing in any manner or by any means whatever any
18 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.

19 ...

20 (4) Any other conduct that constitutes fraud.

21 ...

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

23 ...

24 (b) Except as provided for in subdivision (c), if an automotive repair dealer
25 operates more than one place of business in this state, the director pursuant to
26 subdivision (a) shall only suspend, revoke, or place on probation the registration of
27 the specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

28 //

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

6
7 18. Health & Saf. Code section 44072.2 states, in pertinent part:

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

11 (a) Violates any section of this chapter [the Motor Vehicle Inspection
12 Program (Health and Safety Code, § 44000, et seq.)] and the regulations adopted
13 pursuant to it, which related to the licensed activities.

14 ...

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

17 (d) Commits any act involving dishonesty, fraud, or deceit whereby another
18 is injured.

19 ...

20 (g) Fails to make and keep records showing his or her transactions as a
21 licensee, or fails to have those records available for inspection by the director or his
22 or her duly authorized representative for a period of not less than three years after
23 completion of any transaction to which the records refer, or refuses to comply with
24 a written request of the director to make the records available for inspection.

25 19. Health & Saf. Code section 44072.10(c) states, in pertinent part:

26 The department shall revoke the license of any smog check technician or
27 station licensee who fraudulently certifies vehicles or participates in the fraudulent
28 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
the following:

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

20. Health & Saf. Code section 44024.5(a), states:

The department shall compile and maintain statistical and emissions profiles
and data from motor vehicles that are subject to the motor vehicle inspection
program. The department may use data from any source, including remote sensing
data, in use data, and other motor vehicle inspection program data, to develop and
confirm the validity of the profiles, to evaluate the program, and to assess the
performance of smog check stations. The department shall undertake these
requirements directly or seek a qualified vendor for these services.

1 21. Health & Saf. Code section 44037 states, in pertinent part:

2 (a) The department shall compile and maintain records, using the sampling
3 methodology necessary to ensure their scientific validity and reliability, of tests and
4 repairs performed by qualified smog check technicians at licensed smog check
5 stations pursuant to this chapter on all of the following information:

6 (1) The motor vehicle identification information and the test data collected at
7 the station.

8 ...

9 (5) Data received and compiled through the use of the centralized computer
10 database and computer network to be established pursuant to Section 44037.1, and
11 any other information determined to be essential by the department for program
12 enhancement to achieve greater efficiency, consumer protection, cost-effectiveness,
13 convenience, or emission reductions . . .

14 22. Health & Saf. Code section 44037.1 states, in pertinent part:

15 (a) On or before January 1, 1995, the department shall design and establish the
16 equipment necessary to operate a centralized computer data base and computer
17 network that is readily accessible by all licensed smog check technicians on a real
18 time basis.

19 (b) The centralized computer data base and network shall be designed with all
20 of the following capabilities:

21 ...

22 (2) To provide smog check technicians and the department with information as
23 to the date and result of prior smog check tests performed on each vehicle to
24 discourage vehicle owners from shopping for certificates of compliance and to permit
25 the department to identify smog check stations for further investigation as potential
26 violators of this chapter.

27 (3) To provide the department with data on the failure rates and repair
28 effectiveness for vehicles of each make and model year on a statewide basis, and by
29 smog check station and technician, to facilitate identification of smog check stations
30 and technicians as potential violators of this chapter.

31 ...

32 (8) To be compatible with the department's recordkeeping and compilation
33 requirements established by Section 44037.

34 ...

35 (c) After January 1, 1995, each smog check station shall transmit vehicle data
36 emission test results to the department's centralized data base. Each smog check
37 station shall also transmit vehicle data and emission measurements made before and
38 after repair . . .

23. California Code of Regulations, title 16 (“Regulations”), section 3340.17 states, in pertinent part:

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's centralized database . . .

COST RECOVERY

24. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

UPDATED SMOG CHECK PROGRAM - ON BOARD DIAGNOSTIC SYSTEM

25. On March 9, 2015, California's Smog Check Program was updated to keep pace with ever-advancing technology. The program update requires the use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles instead of the BAR-97 emission inspection system (EIS) used for most model year 1999 and older gasoline and hybrid vehicles and 1997 and older diesel vehicles. The BAR-OIS system consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer.

26. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used to input technician information, the vehicle identification number, and DMV renewal information. The vehicle identification number (VIN) that is physically present on all vehicles is required to be programmed into the vehicle's On-Board Diagnostics -- Generation II (OBD II) on 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in earlier model-years. The electronically programmed VIN, referred to as the "eVIN", is captured by the Bureau during a smog check inspection and should match the physical VIN on the vehicle.

1 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection
2 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data
3 retrieved and recorded during an OIS smog check includes the eVIN, the communication
4 protocol,¹ and the number of Parameter Identifications (PID's)².

5 27. As with the BAR-97 EIS, the technician also performs a visual and functional test on
6 the vehicle. The visual inspection of the emission control components verifies the required
7 emission control devices are present and properly connected and a functional test is performed of
8 the malfunction indicator light. The OIS software makes the determination whether or not the
9 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

10 **BACKGROUND FACTS – ENVIRO SMOG TEST ONLY**

11 **Review of OIS Test Data**

12 28. Bureau Representative "M.A." reviewed BAR-OIS test data pertaining to smog
13 inspections conducted at Respondent's Enviro Smog Test Only facility. M.A. found that
14 Respondent performed smog inspections on three vehicles identified below using a method
15 known as "clean plugging",³ resulting in the issuance of fraudulent certificates of compliance for
16 the vehicles.

17 **Vehicle #1**

18 29. BAR-OIS test data showed that on October 27, 2015, Respondent Delgadillo
19 performed a smog inspection on a 2007 Chevrolet Tahoe K1500 (Vehicle 1), resulting in the
20 issuance of Certificate of Compliance No. PY743554C. The BAR-OIS test details for Vehicle 1
21 showed that the eVIN recorded during the inspection did not match the VIN for Vehicle 1. M.A.

22 ¹ The OBD II communication protocol describes the specific manufacturer/vehicle
23 communication "language" used by the OBD II computer to communicate to scan tools and other
24 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II
computer during manufacture and does not change.

25 ² PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
26 example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID count is the
number of data points reported by the OBD II computer and is programmed during manufacture.

27 ³ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
28 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog
certificate of compliance to another vehicle that is not in compliance with the Smog Check
Program and/or is not present for testing.

1 reviewed the Comparative OIS Test Data for 2007 Chevrolet Tahoe K1500 vehicles and found
2 that the PID count recorded during the smog inspection on Vehicle 1 was not consistent with the
3 PID count for that make and model.

4 30. The Bureau's VID data showed that on February 4, 2016, Respondent Hernandez
5 performed a smog inspection at Respondent's facility on a 2006 Chevrolet Tahoe K2500HD. The
6 eVIN transmitted to the VID was the same eVIN that was recorded during the smog inspection on
7 Vehicle 1.

8 31. M.A. concluded that Respondent Delgadillo used the 2006 Chevrolet Tahoe
9 K2500HD's properly functioning OBD II system during the October 27, 2015, smog inspection
10 on Vehicle 1, resulting in the issuance of a fraudulent smog certificate of compliance for that
11 vehicle.

12 **Vehicle #2**

13 32. BAR-OIS test data showed that on April 1, 2016, Respondent Delgadillo performed a
14 smog inspection on a 2006 Ford Expedition LTD (Vehicle 2), resulting in the issuance of
15 Certificate of Compliance No. ZB429317C. The BAR-OIS test details for Vehicle 2 showed that
16 the eVIN recorded during the inspection did not match the VIN for Vehicle 2.

17 33. The Bureau's VID data showed that on April 1, 2016, a smog inspection was
18 performed by Respondent Delgadillo at Respondent's facility on a 2006 Ford Mustang GT with
19 the same eVIN that was recorded during the smog inspection on Vehicle 2.

20 34. M.A. concluded that Respondent Delgadillo used the 2006 Ford Mustang GT's
21 properly functioning OBD II system during the April 1, 2016, smog inspection on Vehicle 2,
22 resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

23 **Vehicle #3**

24 35. BAR-OIS test data showed that on December 9, 2016, Respondent Hernandez
25 performed a smog inspection on a 2000 Ford Taurus SES (Vehicle 3), resulting in the issuance of
26 Certificate of Compliance No. ZL649238C. M.A. reviewed the Comparative OIS Test Data for
27 2000 Ford Taurus SES vehicles and found that the communication protocol and PID count
28

1 recorded during the smog check on Vehicle 3 were not consistent with the communication
2 protocol and PID count for that make and model.

3 36. The Bureau's VID data also showed that on February 16, 2016, a smog inspection
4 was performed by another licensed smog check facility on Vehicle 3. The communication
5 protocol and PID count were consistent with expected values for that make and model.

6 37. M.A. concluded that the DAD was not connected to Vehicle 3 during the
7 December 9, 2016, smog inspection, resulting in the issuance of a fraudulent smog certificate of
8 compliance.

9 **Field Visit**

10 38. On or about August 24, 2016, during a field visit to Respondent's Enviro Smog Inc.
11 facility, M.A. requested Respondent's records pertaining to Vehicle 2, set forth in paragraphs 34
12 through 36, above. Respondent Delgadillo was unable to locate, and Respondent failed to provide
13 the Bureau with, the invoice or VIR for that vehicle.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 39. Respondent Enviro Smog's registration is subject to discipline pursuant to Code
17 section 9884.7(a)(1), in that Respondent made or authorized statements which Respondent knew
18 or in the exercise of reasonable care should have known to be untrue or misleading. Specifically,
19 Respondent Enviro Smog certified that Vehicles 1 through 3, identified in paragraphs 31 through
20 39 above, passed inspection and were in compliance with applicable laws and regulations. In fact,
21 Respondent Enviro Smog conducted, or caused to be conducted, smog inspections on the vehicles
22 using clean-plugging methods, in that Respondent Enviro Smog substituted different vehicles
23 during the inspections in order to issue smog certificates of compliance for the vehicles, and did
24 not test or inspect the vehicles as required by Health & Saf. Code section 44012.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 40. Respondent Enviro Smog's registration is subject to discipline pursuant to Code
28 section 9884.7(a)(4), in that Respondent Enviro Smog committed acts that constitute fraud by

1 issuing electronic smog certificates of compliance for Vehicles 1 through 3, identified in
2 paragraphs 31 through 39 above, without ensuring that bona fide inspections were performed of
3 the emission control devices and systems on the vehicles, thereby depriving the People of the
4 State of California of the protection afforded by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

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

7 41. Respondent Enviro Smog's smog check station license is subject to discipline
8 pursuant to Health & Saf. Code section 44072.2(a), in that regarding Vehicles 1 through 3,
9 identified in paragraphs 31 through 39 above, Respondent Enviro Smog failed to comply with the
10 following sections of that Code, as follows:

11 a. **Section 44012(a)**: Respondent Enviro Smog failed to ensure that the emission
12 control tests were performed on the vehicles in accordance with procedures prescribed by the
13 department.

14 b. **Section 44015**: Respondent Enviro Smog issued electronic smog certificates of
15 compliance for the vehicles without ensuring that the vehicles were properly tested and inspected
16 to determine if they were in compliance with Health & Saf. Code section 44012.

17 **FOURTH CAUSE FOR DISCIPLINE**

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

19 42. Respondent Enviro Smog's smog check station license is subject to discipline
20 pursuant to Health & Saf. Code section 44072.2(c), in that Respondent failed to comply with
21 Regulations, as follows:

22 a. **Section 3340.15(e)**: Respondent Enviro Smog, as a licensee, failed to make, keep or
23 make available for inspection by the Bureau, copies of the vehicle inspection reports and invoices
24 for the smog inspection on Vehicle 2, as set forth in paragraph 40, above.

25 b. **Section 3340.35(c)**: Respondent Enviro Smog issued electronic smog certificates of
26 compliance for Vehicles 1 through 3, identified in paragraphs 31 through 39 above, even though
27 the vehicles had not been inspected in accordance with Regulation section 3340.42.

1 c. **Section 3340.42:** Respondent Enviro Smog failed to ensure that the required smog
2 tests were conducted on Vehicles 1 through 3, identified in paragraphs 31 through 39 above, in
3 accordance with the Bureau's specifications.

4 **FIFTH CAUSE FOR DISCIPLINE**

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

6 43. Respondent Enviro Smog's Smog Check Station license is subject to discipline
7 pursuant to Health & Saf. Code section 44072.2(d), in that Respondent Enviro Smog committed
8 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
9 certificates of compliance for Vehicles 1 through 3, identified in paragraphs 31 through 39 above,
10 without ensuring that a bona fide inspection was performed of the emission control devices and
11 systems on the vehicles, thereby depriving the people of the State of California of the protection
12 afforded by the Motor Vehicle Inspection Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Vehicle Inspection Reports and Invoices)**

15 44. Respondent Enviro Smog's smog check station license is subject to discipline
16 pursuant to Health & Saf. Code section 44072.2(g), in that Respondent Enviro Smog, as a
17 licensee, failed to make, keep, or make available for inspection by the Bureau, copies of the
18 vehicle inspection reports and invoices for the smog inspection on Vehicle 2, as set forth in
19 paragraph 40, above.

20 **SEVENTH CAUSE FOR DISCIPLINE**

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

22 45. Respondent Delgadillo's smog check inspector license is subject to discipline
23 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent Delgadillo violated
24 section 44012 of that Code. Specifically, Respondent Delgadillo failed to perform the emission
25 control tests on Vehicles 1 and 2, identified in paragraphs 31 through 36 above, in accord with
26 procedures prescribed by the department.

27
28 //

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 46. Respondent Delgadillo's smog check inspector license is subject to discipline
4 pursuant to Health & Saf. Code section 44072.2(c), in that regarding Vehicles 1 and 2, identified
5 in paragraphs 31 through 36 above, he failed to comply with provisions of the Regulations, as
6 follows:

7 a. **Section 3340.30(a)**: Respondent Delgadillo failed to inspect and test the vehicles in
8 accordance with Health & Saf. Code sections 44012 and 44035, and Regulations, section
9 3340.42.

10 b. **Section 3340.42**: Respondent Delgadillo failed to conduct the required smog tests on
11 the vehicles in accordance with the Bureau's specifications.

12 **NINTH CAUSE FOR DISCIPLINE**

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

14 47. Respondent Delgadillo's smog check inspector and smog check repair technician
15 licenses are subject to discipline pursuant to Health & Saf. Code section 44072.2(d), in that he
16 committed dishonest, fraudulent, or deceitful acts whereby another was injured by using false
17 information for electronic smog certificates of compliance issued for Vehicles 1 and 2, identified
18 in paragraphs 31 through 36 above, thereby failing to performing bona fide inspections of the
19 emission control devices and systems on the vehicles and depriving the people of the State of
20 California of the protection afforded by the Motor Vehicle Inspection Program.

21 **TENTH CAUSE FOR DISCIPLINE**

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

23 48. Respondent Hernandez's smog check inspector license is subject to discipline
24 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent Hernandez violated
25 section 44012 of that Code. Specifically, Respondent Hernandez failed to perform the emission
26 control tests on Vehicle 3, identified in paragraphs 37 through 39 above, in accord with
27 procedures prescribed by the department.

28 //

1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 49. Respondent Hernandez's smog check inspector license is subject to discipline
4 pursuant to Health & Saf. Code section 44072.2(c), in that regarding Vehicle 3, identified in
5 paragraphs 37 through 39 above, he failed to comply with provisions of the Regulations, as
6 follows:

7 a. **Section 3340.30(a)**: Respondent Hernandez failed to inspect and test the vehicle in
8 accordance with Health & Saf. Code sections 44012 and 44035, and Regulations, section
9 3340.42.

10 b. **Section 3340.42**: Respondent Hernandez failed to conduct the required smog tests on
11 the vehicle in accordance with the Bureau's specifications.

12 **TWELFTH CAUSE FOR DISCIPLINE**

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

14 50. Respondent Hernandez's smog check inspector license is subject to discipline
15 pursuant to Health & Saf. Code section 44072.2(d), in that he committed dishonest, fraudulent, or
16 deceitful acts whereby another was injured by using false information for electronic smog
17 certificates of compliance issued for Vehicle 3, identified in paragraphs 37 through 39 above,
18 thereby failing to performing bona fide inspections of the emission control devices and systems
19 on the vehicles and depriving the people of the State of California of the protection afforded by
20 the Motor Vehicle Inspection Program.

21 **BACKGROUND FACTS – WEST LANE**

22 **Review of OIS Test Data**

23 51. Bureau Representative "M.A." reviewed BAR-OIS test data pertaining to smog
24 inspections conducted at Respondent's West Lane facility. M.A. found that Respondent
25 performed smog inspections on thirteen vehicles identified below using a method known as clean
26 plugging, resulting in the issuance of fraudulent certificates of compliance for the vehicles.

27
28 //

1 **Vehicle #1**

2 52. BAR-OIS test data showed that on January 6, 2016, Respondent Sithi performed a
3 smog inspection on a 2002 Chevrolet Silverado K2500 HD (Vehicle 1), resulting in the issuance
4 of Certificate of Compliance No. YV567005C. M.A. reviewed the Comparative OIS Test Data
5 for 2002 Chevrolet Silverado K2500 HD vehicles and found that the PID count recorded during
6 the smog inspection on Vehicle 1 was not consistent with the PID count for that make and model.

7 53. The Bureau's VID data also showed that on July 18, 2016, and August 12, 2016, a
8 smog inspection was performed by another licensed smog check facility on Vehicle 1. The
9 communication protocol and PID count were consistent with expected values for that make and
10 model.

11 54. The Bureau's VID data showed that on October 1, 2015, a smog inspection was
12 performed at another facility on a 2001 Chevrolet Silverado K2500 HD. The eVIN transmitted to
13 the VID was the same eVIN that was recorded during the smog inspection on Vehicle 1.

14 55. M.A. concluded that Respondent Sithi used the 2001 Chevrolet Silverado K2500
15 HD's properly functioning OBD II system during the January 6, 2016, smog inspection on
16 Vehicle 1, resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

17 **Vehicle #2**

18 56. BAR-OIS test data showed that on January 9, 2016, Respondent Sithi performed a
19 smog inspection on a 2004 Toyota Tacoma Prerunner Double Cab (Vehicle 2), resulting in the
20 issuance of Certificate of Compliance No. YV567043C. M.A. reviewed the Comparative OIS
21 Test Data for 2004 Tacoma Prerunner Double Cab vehicles and found that the communication
22 protocol and PID count recorded during the smog check on Vehicle 3 were not consistent with the
23 communication protocol and PID count for that make and model.

24 57. The Bureau's VID data also showed that on January 5, 2016, Vehicle 2 failed to pass
25 a smog inspection performed by Respondent Sithi at Respondent's facility. The communication
26 protocol and PID count were consistent with expected values for that make and model.

27 58. M.A. concluded that the DAD was not connected to Vehicle 2, on January 9, 2016,
28 resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

1 **Vehicle #3**

2 59. BAR-OIS test data showed that on April 9, 2016, Respondent Sithi performed a smog
3 inspection on a 2001 Chevrolet C1500 Suburban (Vehicle 3), resulting in the issuance of
4 Certificate of Compliance No. ZB485529C. The BAR-OIS test details for Vehicle 3 showed that
5 the eVIN recorded during the inspection did not match the VIN for Vehicle 3. M.A. reviewed the
6 Comparative OIS Test Data for 2001 Chevrolet C1500 Suburban vehicles and found that the
7 communication protocol and PID count recorded during the smog check on Vehicle 3 were not
8 consistent with the communication protocol and PID count for that make and model.

9 60. The Bureau's VID data also showed that on April 13, 2015, a smog inspection was
10 performed by another licensed smog check facility on Vehicle 3. The communication protocol
11 and PID count were consistent with expected values for that make and model.

12 61. M.A. concluded that the DAD was not connected to Vehicle 3 during the April 9,
13 2016, smog inspection, resulting in the issuance of a fraudulent smog certificate of compliance.

14 **Vehicle #4**

15 62. BAR-OIS test data showed that on April 30, 2016, Respondent Sithi performed a
16 smog inspection on a 2001 Lexus IS 300 (Vehicle 4), resulting in the issuance of Certificate of
17 Compliance No. ZD378255C. M.A. reviewed the Comparative OIS Test Data for 2001 Lexus IS
18 300 vehicles and found that the communication protocol and PID count recorded during the smog
19 check on Vehicle 4 were not consistent with the communication protocol and PID count for that
20 make and model.

21 63. The Bureau's VID data also showed that on April 20, 2016, Vehicle 4 failed a smog
22 inspection performed by another licensed smog check facility. The communication protocol and
23 PID count were consistent with expected values for that make and model.

24 64. The Bureau's VID data showed that on July 3, 2015, Respondent Sithi performed a
25 smog inspection at Respondent's facility on a 2007 Toyota Avalon XL/XLS/Tour/Ltd. The eVIN
26 transmitted to the VID was the same eVIN that was recorded during the smog inspection on
27 Vehicle 4.
28

1 65. M.A. concluded that Respondent Sithi used the 2007 Toyota Avalon
2 XL/XLS/Tour/Ltd's properly functioning OBD II system during the April 30, 2016, smog
3 inspection on Vehicle 4, resulting in the issuance of a fraudulent smog certificate of compliance
4 for that vehicle.

5 **Vehicle #5**

6 66. BAR-OIS test data showed that on May 6, 2016, Respondent Sithi performed a smog
7 inspection on a 2002 Ford Explorer Sport Trac (Vehicle 5), resulting in the issuance of Certificate
8 of Compliance No. ZD378286C. The BAR-OIS test details for Vehicle 5 showed that the eVIN
9 recorded during the inspection did not match the VIN for Vehicle 5. M.A. reviewed the
10 Comparative OIS Test Data for 2002 Ford Explorer Sport Trac vehicles and found that the
11 communication protocol and PID count recorded during the smog check on Vehicle 5 were not
12 consistent with the communication protocol and PID count for that make and model.

13 67. The Bureau's VID data showed that on July 11, 2015, a smog inspection was
14 performed on a 2009 Pontiac Vibe GT at another facility. The eVIN transmitted to the VID was
15 the same eVIN that was recorded during the smog inspection on Vehicle 5.

16 68. M.A. concluded that Respondent Sithi used the 2009 Pontiac Vibe GT's properly
17 functioning OBD II system during the May 6, 2016, smog inspection on Vehicle 5, resulting in
18 the issuance of a fraudulent smog certificate of compliance for that vehicle.

19 **Vehicle #6**

20 69. BAR-OIS test data showed that on May 21, 2016, Respondent Sithi performed a
21 smog inspection on a 2006 Honda Civic Hybrid (Vehicle 6), resulting in the issuance of
22 Certificate of Compliance No. ZD847280C. The BAR-OIS test details for Vehicle 6 showed that
23 the eVIN recorded during the inspection did not match the VIN for Vehicle 6. M.A. reviewed the
24 Comparative OIS Test Data for 2006 Honda Civic Hybrid vehicles and found that the
25 communication protocol and PID count recorded during the smog check on Vehicle 6 was not
26 consistent with the communication protocol and PID count for that make and model.

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1 70. The Bureau's VID data also showed that on May 10, 2016, a smog inspection was
2 performed on Vehicle 6 by another licensed smog check facility. The communication protocol
3 and PID count were consistent with expected values for that make and model.

4 71. M.A. concluded that the DAD was not connected to Vehicle 6 during the May 21,
5 2016, smog inspection, resulting in the issuance of a fraudulent smog certificate of compliance.

6 **Vehicle #7**

7 72. BAR-OIS test data showed that on May 21, 2016, Respondent Sithi performed a
8 smog inspection on a 2003 BMW 745i (Vehicle 7), resulting in the issuance of Certificate of
9 Compliance No. ZD847282C. M.A. reviewed the Comparative OIS Test Data for 2003 BMW
10 745i vehicles and found that the communication protocol and PID count recorded during the
11 smog check on Vehicle 7 were not consistent with the communication protocol and PID count for
12 that make and model.

13 73. The Bureau's VID data also showed that on March 29, 2016, Vehicle 7 failed a smog
14 inspection performed by another licensed smog check facility. The communication protocol and
15 PID count were consistent with expected values for that make and model.

16 74. M.A. concluded that the DAD was not connected to Vehicle 7 during the May 21,
17 2016, smog inspection, resulting in the issuance of a fraudulent smog certificate of compliance.

18 **Vehicle #8**

19 75. BAR-OIS test data showed that on May 28, 2016, Respondent Sithi performed a
20 smog inspection on a 2004 Chevrolet Impala (Vehicle 8), resulting in the issuance of Certificate
21 of Compliance No. ZF054229C. The BAR-OIS test details for Vehicle 8 showed that the eVIN
22 recorded during the inspection did not match the VIN for Vehicle 8. M.A. reviewed the
23 Comparative OIS Test Data for 2004 Chevrolet Impala vehicles and found that the
24 communication protocol and PID count recorded during the smog check on Vehicle 8 were not
25 consistent with the communication protocol and PID count for that make and model.

26 76. The Bureau's VID data showed that on June 11, 2015, a smog inspection was
27 performed on a 2008 Chevrolet Impala LS at West Lane's facility. The eVIN transmitted to the
28 VID was the same eVIN that was recorded during the smog inspection on Vehicle 8.

1 77. M.A. concluded that Respondent Sithi used the 2008 Chevrolet Impala LS' properly
2 functioning OBD II system during the May 28, 2016, smog inspection on Vehicle 8, resulting in
3 the issuance of a fraudulent smog certificate of compliance for that vehicle.

4 **Vehicle #9**

5 78. BAR-OIS test data showed that on June 18, 2016, Respondent Sithi performed a
6 smog inspection on a 2000 Lexus GS 400 (Vehicle 9), resulting in the issuance of Certificate of
7 Compliance No. ZF576800C. The BAR-OIS test details for Vehicle 9 showed that the eVIN
8 recorded during the inspection did not match the VIN for Vehicle 9. M.A. reviewed the
9 Comparative OIS Test Data for 2000 Lexus GS 400 vehicles and found that the communication
10 protocol and PID count recorded during the smog check on Vehicle 9 were not consistent with the
11 communication protocol and PID count for that make and model.

12 79. M.A. concluded that the DAD was not connected to Vehicle 9 during the June 18,
13 2016, smog inspection, resulting in the issuance of a fraudulent smog certificate of compliance.

14 **Vehicle #10**

15 80. BAR-OIS test data showed that on July 23, 2016, Respondent Sithi performed a smog
16 inspection on a 2001 Mitsubishi Galant ES (Vehicle 10), resulting in the issuance of Certificate of
17 Compliance No. ZH155691C. The BAR-OIS test details for Vehicle 10 showed that the eVIN
18 recorded during the inspection did not match the VIN for Vehicle 10. M.A. reviewed the
19 Comparative OIS Test Data for 2001 Mitsubishi Galant ES vehicles and found that the PID count
20 recorded during the smog check on Vehicle 10 was not consistent with the PID count for that
21 make and model.

22 81. The Bureau's VID data also showed that on October 8, 2014, a smog inspection was
23 performed by another licensed smog check facility on Vehicle 10. The communication protocol
24 and PID count were consistent with expected values for that make and model.

25 82. The Bureau's VID data showed that on June 4, 2016, a smog inspection was
26 performed by Respondent Sithi on a 2006 Honda Accord LX at West Lane's facility. The eVIN
27 transmitted to the VID was the same eVIN that was recorded during the smog inspection on
28 Vehicle 10.

1 83. M.A. concluded that Respondent Sithi used the 2006 Honda Accord LX's properly
2 functioning OBD II system during the July 23, 2016, smog inspection on Vehicle 10, resulting in
3 the issuance of a fraudulent smog certificate of compliance for that vehicle.

4 **Vehicle #11**

5 84. BAR-OIS test data showed that on July 23, 2016, Respondent Sithi performed a smog
6 inspection on a 2001 Chevrolet Tahoe K1500 (Vehicle 11), resulting in the issuance of Certificate
7 of Compliance No. ZH155697C. The BAR-OIS test details for Vehicle 11 showed that the eVIN
8 recorded during the inspection did not match the VIN for Vehicle 11. M.A. reviewed the
9 Comparative OIS Test Data for Chevrolet Tahoe K1500 vehicles and found that the PID count
10 recorded during the smog check on Vehicle 11 was not consistent with the PID count for that
11 make and model.

12 85. The Bureau's VID data showed that on October 1, 2015, a smog inspection was
13 performed by another smog check facility on a 2001 Chevrolet Silverado K2500HD. The eVIN
14 transmitted to the VID was the same eVIN that was recorded during the smog inspection on
15 Vehicle 11.

16 86. M.A. concluded that Respondent Sithi used the 2001 Chevrolet Silverado
17 K2500HD's properly functioning OBD II system during the July 23, 2016, smog inspection on
18 Vehicle 11, resulting in the issuance of a fraudulent smog certificate of compliance for that
19 vehicle.

20 **Vehicle #12**

21 87. BAR-OIS test data showed that on August 2, 2016, Respondent Sithi performed a
22 smog inspection on a 2008 Volkswagen Jetta Wolfsburg Edition (Vehicle 12), resulting in the
23 issuance of Certificate of Compliance No. ZH742705C. The BAR-OIS test details for Vehicle 12
24 showed that the eVIN recorded during the inspection did not match the VIN for Vehicle 12.
25 M.A. reviewed the Comparative OIS Test Data for 2008 Volkswagen Jetta Wolfsburg Edition
26 vehicles and found that the PID count recorded during the smog check on Vehicle 12 was not
27 consistent with the PID count for that make and model.

1 88. The Bureau's VID data also showed that on March 1, 2016, Vehicle 12 failed a smog
2 inspection performed by Respondent's facility. The communication protocol and PID count were
3 consistent with expected values for that make and model.

4 89. The Bureau's VID data showed that on October 22, 2015, Respondent Sithi
5 performed a smog inspection at Respondent's facility on a 2004 Dodge Durango Limited. The
6 eVIN transmitted to the VID was the same eVIN that was recorded during the smog inspection on
7 Vehicle 12.

8 90. M.A. concluded that Respondent Sithi used the 2004 Dodge Durango Limited's
9 properly functioning OBD II system during the August 2, 2016, smog inspection on Vehicle 12,
10 resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

11 **Vehicle #13**

12 91. BAR-OIS test data showed that on September 7, 2016, Respondent Sithi performed a
13 smog inspection on a 2002 Chevrolet Malibu (Vehicle 13), resulting in the issuance of Certificate
14 of Compliance No. ZJ676500C. The BAR-OIS test details for Vehicle 13 showed that the eVIN
15 recorded during the inspection did not match the VIN for Vehicle 13. M.A. reviewed the
16 Comparative OIS Test Data for 2002 Chevrolet Malibu vehicles and found that the
17 communication protocol and PID count recorded during the smog check on Vehicle 13 were not
18 consistent with the communication protocol and PID count for that make and model.

19 92. The Bureau's VID data also showed that on December 7, 2015, a smog inspection
20 was performed on Vehicle 13 by another licensed smog check facility. The communication
21 protocol and PID count were consistent with expected values for that make and model.

22 93. The Bureau's VID data showed that on September 7, 2016, Respondent Sithi
23 performed a smog inspection at Respondent's facility on a 2008 Saturn Aura XE. The eVIN
24 transmitted to the VID was the same eVIN that was recorded during the smog inspection on
25 Vehicle 13.

26 94. M.A. concluded that Respondent Sithi used the 2008 Saturn Aura XE's properly
27 functioning OBD II system during the September 7, 2016, smog inspection on Vehicle 13,
28 resulting in the issuance of a fraudulent smog certificate of compliance for that vehicle.

1 **Field Visit**

2 95. On or about August 24, 2016, during a field visit to Respondent Enviro Smog's West
3 Lane facility, M.A. requested Respondent Enviro Smog's records pertaining to Vehicles 1
4 through 3, identified in paragraphs 54 through 63; Vehicles 5 through 7, paragraphs 68 through
5 76; Vehicle 10, paragraphs 82 through 85; and, Vehicle 12, paragraphs 89 through 92, above.
6 Respondent Sithi was unable to locate, and Respondent Enviro Smog never provided the Bureau
7 with, the invoice or VIR for those vehicles.

8 96. During that same field visit, M.A. noted a 2015 Toyota Scion FR-S, was parked at
9 Respondent Enviro Smog's facility. M.A. noted that the license plate for that vehicle is associated
10 with the VIN Number belonging to the vehicle that Respondent Sithi used to clean plug Vehicles
11 2 and 3, identified in paragraphs 56 through 61; Vehicles 6 and 7, paragraphs 69 through 74; and,
12 Vehicle 9, paragraphs 78 and 79, above.

13 **THIRTEENTH CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 97. Respondent Enviro Smog's registration is subject to discipline pursuant to Code
16 section 9884.7(a)(1), in that Respondent Enviro Smog made or authorized statements which
17 Respondent Enviro Smog knew or in the exercise of reasonable care should have known to be
18 untrue or misleading. Specifically, Respondent Enviro Smog certified that Vehicles 1 through 13,
19 identified in paragraphs 54 through 96 above, passed inspection and were in compliance with
20 applicable laws and regulations. In fact, Respondent Enviro Smog conducted, or caused to be
21 conducted, smog inspections on the vehicles using clean-plugging methods, in that Respondent
22 Enviro Smog substituted different vehicles during the inspections in order to issue smog
23 certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by
24 Health & Saf. Code section 44012.

25 **FOURTEENTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 98. Respondent Enviro Smog's registration is subject to discipline pursuant to Code
28 section 9884.7(a)(4), in that Respondent Enviro Smog committed acts that constitute fraud by

1 issuing electronic smog certificates of compliance for Vehicles 1 through 13, identified in
2 paragraphs 54 through 96 above, without ensuring that bona fide inspections were performed of
3 the emission control devices and systems on the vehicles, thereby depriving the People of the
4 State of California of the protection afforded by the Motor Vehicle Inspection Program.

5 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

7 99. Respondent Enviro Smog's smog check station license is subject to discipline
8 pursuant to Health & Saf. Code section 44072.2(a), in that regarding Vehicles 1 through 13,
9 identified in paragraphs 54 through 96 above, Respondent Enviro Smog failed to comply with the
10 following sections of that Code, as follows:

11 a. **Section 44012(a)**: Respondent Enviro Smog failed to ensure that the emission
12 control tests were performed on the vehicles in accordance with procedures prescribed by the
13 department.

14 b. **Section 44015**: Respondent Enviro Smog issued electronic smog certificates of
15 compliance for the vehicles without ensuring that the vehicles were properly tested and inspected
16 to determine if they were in compliance with Health & Saf. Code section 44012.

17 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

19 100. Respondent Enviro Smog's smog check station license is subject to discipline
20 pursuant to Health & Saf. Code section 44072.2(c), in that Respondent Enviro Smog failed to
21 comply with Regulations, as follows:

22 a. **Section 3340.15(e)**: Respondent Enviro Smog, as a licensee, failed to make, keep or
23 make available for inspection by the Bureau, copies of the vehicle inspection reports and invoices
24 for the smog inspection on Vehicles 1 through 3, 5 through 7, 10, and 12, as set forth in
25 paragraph 97, above.

26 b. **Section 3340.35(c)**: Respondent Enviro Smog issued electronic smog certificates of
27 compliance for Vehicles 1 through 13, identified in paragraphs 54 through 96 above, even though
28 the vehicles had not been inspected in accordance with Regulation section 3340.42.

1 c. **Section 3340.42:** Respondent Enviro Smog failed to ensure that the required smog
2 tests were conducted on Vehicles 1 through 13, identified in paragraphs 54 through 96 above, in
3 accordance with the Bureau's specifications.

4 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

6 101. Respondent Enviro Smog's smog check station license is subject to discipline
7 pursuant to Health & Saf. Code section 44072.2(d), in that Respondent Enviro Smog committed
8 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
9 certificates of compliance for Vehicles 1 through 13, identified in paragraphs 54 through 96
10 above, without ensuring that a bona fide inspection was performed of the emission control
11 devices and systems on the vehicles, thereby depriving the people of the State of California of the
12 protection afforded by the Motor Vehicle Inspection Program.

13 **EIGHTEENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Vehicle Inspection Reports and Invoices)**

15 102. Respondent Enviro Smog's smog check station license is subject to discipline
16 pursuant to Health & Saf. Code section 44072.2(g), in that Respondent Enviro Smog, as a
17 licensee, failed to make, keep, or make available for inspection by the Bureau, copies of the
18 vehicle inspection reports and invoices for the smog inspection on Vehicles 1 through 3, 5
19 through 7, 10, and 12, as set forth in paragraph 97, above.

20 **NINETEENTH CAUSE FOR DISCIPLINE**

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

22 103. Respondent Sithi's smog check inspector license is subject to discipline pursuant to
23 Health & Saf. Code section 44072.2(a), in that Respondent Sithi violated section 44012 of that
24 Code. Specifically, Respondent Sithi failed to perform the emission control tests on Vehicles 1
25 through 13, identified in paragraphs 54 through 96 above, in accord with procedures prescribed
26 by the department.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

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

3 104. Respondent Sithi's smog check inspector license is subject to discipline pursuant to
4 Health & Saf. Code section 44072.2(c), in that regarding Vehicles 1 through 13, identified in
5 paragraphs 54 through 96 above, he failed to comply with provisions of the Regulations, as
6 follows:

7 a. **Section 3340.30(a)**: Respondent Sithi failed to inspect and test the vehicles in
8 accordance with Health & Saf. Code sections 44012 and 44035, and Regulations, section
9 3340.42.

10 b. **Section 3340.42**: Respondent Sithi failed to conduct the required smog tests on the
11 vehicles in accordance with the Bureau's specifications.

12 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

14 105. Respondent Sithi's smog check inspector license is subject to discipline pursuant to
15 Health & Saf. Code section 44072.2(d), in that he committed dishonest, fraudulent, or deceitful
16 acts whereby another was injured by using false information for electronic smog certificates of
17 compliance issued for Vehicles 1 through 13, identified in paragraphs 54 through 96 above,
18 thereby failing to performing bona fide inspections of the emission control devices and systems
19 on the vehicles and depriving the people of the State of California of the protection afforded by
20 the Motor Vehicle Inspection Program.

21 **MATTERS IN AGGRAVATION**

22 106. To determine the degree of discipline, if any, to be imposed, Complainant alleges as
23 follows:

24 **Respondent Enviro Smog Inc.**

25 107. On or about June 10, 2015, the Bureau issued Citation No. C2015-0843 against
26 Respondent for violating Health & Saf. Code section 44012 (failure to follow smog check
27 procedures prescribed by the Department of Consumer Affairs). On or about May 6, 2015,
28 Respondent issued a certificate of compliance to a 2004 Ford Taurus using the BAR97 test when

1 an OIS test was required. The Bureau assessed civil penalties totaling \$1,000 against Respondent
2 for the violation. Respondent appealed the citation, and on or about September 2, 2015, the
3 citation was affirmed and the penalty reduced to a Notice of Abatement.

4 **Respondent Delgadillo**

5 108. On or about June 10, 2015, the Bureau issued Citation No. M2015-0844 against
6 Respondent Delgadillo for violating Health & Saf. Code section 44032 (qualified technicians
7 shall perform tests of emission control systems and devices in accordance with Health & Saf.
8 Code section 44012). On or about May 6, 2015, Respondent Delgadillo issued a certificate of
9 compliance to a 2004 Ford Taurus using the BAR97 test when an OIS test was required. The
10 Bureau issued an Order of Abatement. Respondent appealed the citation, and on or about
11 September 2, 2015, the citation was affirmed.

12 **Respondent Sithi**

13 109. On or about April 23, 2010, the Bureau issued Citation No. M2010-1121 against
14 Respondent Sithi for violating Health & Saf. Code section 44032 (qualified technicians shall
15 perform tests of emission control systems and devices in accordance with Health & Saf. Code
16 section 44012). On or about April 5, 2010, Respondent Sithi issued a certificate of compliance to
17 a bureau undercover vehicle with a missing positive crankcase ventilation (PCV) valve.
18 Respondent Sithi was directed to complete an eight-hour training course, which he completed on
19 or about June 8, 2010. Respondent appealed the citation and the citation was affirmed, effective
20 September 30, 2011.

21 **OTHER MATTERS**

22 110. Under Code section 9884.7(c), the Director may invalidate temporarily or
23 permanently or refuse to validate, the registrations for all places of business operated in this state
24 by Enviro Smog, Inc., doing business as Enviro Smog Test Only, upon a finding that it has, or is,
25 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
26 automotive repair dealer.

27 111. Under Health & Saf. Code section 44072.8, if Smog Check, Test Only Station
28 License No. TC 270617, issued to Enviro Smog, Inc., doing business as Enviro Smog Test Only,

1 is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 in
2 the name of said licensee may be likewise revoked or suspended by the director.

3 112. Under Code section 9884.7(c), the Director may invalidate temporarily or
4 permanently or refuse to validate, the registrations for all places of business operated in this state
5 by Enviro Smog, Inc., doing business as West Lane Smog, upon a finding that it has, or is,
6 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
7 automotive repair dealer.

8 113. Under Health & Saf. Code section 44072.8, if Smog Check, Test Only Station
9 License No. TC 279862, issued to Enviro Smog, Inc., doing business as West Lane Smog, is
10 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 in
11 the name of said licensee may be likewise revoked or suspended by the director.

12 114. Under Health & Saf. Code section 44072.8, if Smog Check Inspector (EO) License
13 No. 630904 or Smog Check Repair technician (EI) License No. 630904 issued to Alexander
14 Richard-Rued Delgadillo is revoked or suspended, then any additional license issued under
15 Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be
16 likewise revoked or suspended by the Director.

17 115. Under Health & Saf. Code section 44072.8, if Smog Check Inspector (EO) License
18 No. 630197 issued to Abel Daniel Hernandez is revoked or suspended, then any additional license
19 issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said
20 licensee may be likewise revoked or suspended by the Director.

21 116. Under Health & Saf. Code section 44072.8, if Smog Check Inspector (EO) License
22 No. 630383 issued to Nakrong Sithi is revoked or suspended, then any additional license issued
23 under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee
24 may be likewise revoked or suspended by the Director.

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1 PRAYER

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

4 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 270617,
5 issued to Enviro Smog Inc., doing business as Enviro Smog Test Only;

6 2. Revoking or suspending any other automotive repair dealer registration issued to
7 Enviro Smog Inc., doing business as Enviro Smog Test Only;

8 3. Revoking or suspending Smog Check Station License No. TC 270617, issued to
9 Enviro Smog Inc., doing business as Enviro Smog Test Only;

10 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
11 Division 26 of the Health and Safety Code in the name of Enviro Smog Inc., doing business as
12 Enviro Smog Test Only;

13 5. Revoking or suspending Automotive Repair Dealer Registration No. ARD 279862,
14 issued to Enviro Smog Inc., doing business as West Lane Smog;

15 6. Revoking or suspending any other automotive repair dealer registration issued to
16 Enviro Smog Inc., doing business as West Lane Smog;

17 7. Revoking or suspending Smog Check Station License No. TC 279862, issued to
18 Enviro Smog Inc., doing business as West Lane Smog;

19 8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
20 Division 26 of the Health and Safety Code in the name of Enviro Smog Inc., doing business as
21 West Lane Smog;

22 9. Revoking or suspending Smog Check Repair Technician (EI) License No. 630904
23 issued to Alexander Richard-Rued Delgadillo;

24 10. Revoking or suspending Smog Check Inspector (EO) License No. 630904 issued to
25 Alexander Richard-Rued Delgadillo;

26 11. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
27 Division 26 of the Health and Safety Code in the name of Alexander Richard Rued Delgadillo;
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1 12. Revoking or suspending Smog Check Inspector (EO) License No. 630197 issued to
2 Abel Daniel Hernandez;

3 13. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
4 Division 26 of the Health and Safety Code in the name of Abel Daniel Hernandez;

5 14. Revoking or suspending Smog Check Inspector (EO) License No. 630383 issued to
6 Nakrong Sithi;

7 15. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
8 Division 26 of the Health and Safety Code in the name of Nakrong Sithi;

9 16. Ordering Enviro Smog Inc., Nakrong Sithi, Alexander Richard-Rued Delgadillo, and
10 Abel Daniel Hernandez to pay the Bureau of Automotive Repair the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3; and,

13 17. Taking such other and further action as deemed necessary and proper.

14
15 DATED: September 7, 2017 Patrick Doraïs

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

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