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9 **BEFORE THE**
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. 79/14-40

13 **JASON SHOREES, OWNER**
14 **DBA, ABC SMOG #2**
15 **1415 South Santa Fe Avenue**
Vista, CA 92084

ACCUSATION
(SMOG CHECK)

16 **Automotive Repair Dealer Registration No. ARD 256880**
17 **Smog Check Test Only Station License No. TC256880**
18 **Smog Check Inspector License No. EO 152782(formerly**
19 **Advanced Emission Specialist Technician License No. EA**
152782)

Respondent.

20 Complainant alleges:

21 **PARTIES**

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

25 **LICENSE INFORMATION**

26 **Automotive Repair Dealer Registration No. ARD 256880**

27 2. On or about December 8, 2008, the Bureau issued Automotive Repair Dealer
28 Registration Number ARD 256880 ("registration") to Jason Shorees (Respondent), doing business

1 as ABC Smog #2. The registration was in full force and effect at all times relevant to the charges
2 brought herein and will expire on November 30, 2013, unless renewed.

3 **Smog Check Test Only Station License No. TC 256880**

4 3. On or about December 16, 2008, the Bureau issued Smog Check Test Only Station
5 License Number TC 256880 ("station license") to Respondent. The station license was in full
6 force and effect at all times relevant to the charges brought herein and will expire on November
7 30, 2013, unless renewed.

8 **Smog Check Inspector License No. EO 152782**

9 4. In or about 2006, the Director issued Advanced Emission Specialist Technician
10 License Number EA 152782 to Respondent. Shorees' advanced emission specialist technician
11 license was due to expire on September 30, 2013. Pursuant to California Code of Regulations,
12 title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Shorees' election,
13 as Smog Check Inspector License Number EO 152782 ("inspector license"), effective September
14 30, 2013. Respondent's inspector license will expire on September 30, 2015, unless renewed.¹

15 **JURISDICTION**

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

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

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

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 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 8. Code section 118, subdivision (b) states:

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

11 9. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
12 '[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
13 Specialist license issued prior to the effective date of this regulation, the licensee may apply to
14 renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

15 **STATUTORY PROVISIONS**

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

20 11. Section 9884.7 states, in pertinent part:

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

28 (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 the exercise of reasonable care should be known, to be untrue
or misleading.

...

(3) Failing or refusing to give to a customer a copy of any document
requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

...

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

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

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

15 12. Code section 9884.9, subdivision (a), states, in pertinent part:

16 (a) The automotive repair dealer shall give to the customer a written
17 estimated price for labor and parts necessary for a specific job. No work shall
18 be done and no charges shall accrue before authorization to proceed is obtained
19 from the customer. No charge shall be made for work done or parts supplied in
20 excess of the estimated price without the oral or written consent of the
21 customer that shall be obtained at some time after it is determined that the
22 estimated price is insufficient and before the work not estimated is done or the
23 parts not estimated are supplied. Written consent or authorization for an
24 increase in the original estimated price may be provided by electronic mail or
25 facsimile transmission from the customer. The bureau may specify in
26 regulation the procedures to be followed by an automotive repair dealer when
27 an authorization or consent for an increase in the original estimated price is
28 provided by electronic mail or facsimile transmission. If that consent is oral,
the dealer shall make a notation on the work order of the date, time, name of
person authorizing the additional repairs and telephone number called, if any,
together with a specification of the additional parts and labor and the total
additional cost . . .

13. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

15. Section 44072.8 of the Health and Safety Code states:

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

REGULATIONS

16. California Code of Regulations (CCR), title 16, section 3340.35 states, in relevant part:

...

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

17. CCR, title 16, section 3340.41 states, in relevant part:

...

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

...

18. CCR, title 16, section 3340.42 states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

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1 (a) All vehicles subject to a smog check inspection, shall receive one of the
2 following test methods:

3 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999
4 model-year vehicle, except diesel-powered, registered in the enhanced program
5 areas of the state. The loaded-mode test shall measure hydrocarbon, carbon
6 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the
bureau's specifications referenced in subsection (a) of Section 3340.17 of this
article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
equipment, including a chassis dynamometer, certified by the bureau.

7 On and after March 31, 2010, exhaust emissions from a vehicle subject to this
8 inspection shall be measured and compared to the emissions standards shown in
9 the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints)
Table, dated March 2010, which is hereby incorporated by reference. If the
emissions standards for a specific vehicle are not included in this table then the

10 exhaust emissions shall be compared to the emissions standards set forth in
11 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all
of its measured emissions are less than or equal to the applicable emission
standards specified in the applicable table.

12 (2) A two-speed idle mode test shall be the test method used to inspect 1976 -
13 1999 model-year vehicles, except diesel-powered, registered in all program areas
14 of the state, except in those areas of the state where the enhanced program has
been implemented. The two-speed idle mode test shall measure hydrocarbon,
15 carbon monoxide and carbon dioxide emissions at high RPM and again at idle
RPM, as contained in the bureau's specifications referenced in subsection (a) of
16 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this
inspection shall be measured and compared to the emission standards set forth in
17 this section and as shown in TABLE III. A vehicle passes the two-speed idle mode
test if all of its measured emissions are less than or equal to the applicable
emissions standards specified in Table III.

18 (3) An OBD-focused test, shall be the test method used to inspect gasoline-
19 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
20 model-year and newer. The OBD test failure criteria are specified in section
3340.42.2.

21 (b) In addition to subsection (a), all vehicles subject to the smog check
program shall receive the following:

22 (1) A visual inspection of emission control components and systems to verify
23 the vehicle's emission control systems are properly installed.

24 (2) A functional inspection of emission control systems as specified in the
25 Smog Check Manual, referenced by section 3340.45, which may include an OBD
test, to verify their proper operation.

26 (c) The bureau may require any combination of the inspection methods in
sections (a) and (b) under any of the following circumstances:

27 (1) Vehicles that the department randomly selects pursuant to Health and
28 Safety Code section 44014.7 as a means of identifying potential operational
problems with vehicle OBD systems.

1 (2) Vehicles identified by the bureau as being operationally or physically
2 incompatible with inspection equipment.

3 (3) Vehicles with OBD systems that have demonstrated operational problems.

4 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
5 standards are as follows:

6 (1) A gross polluter means a vehicle with excess hydrocarbon, carbon
7 monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
8 standards included in the tables described in subsection (a), as applicable.

9 (2) Vehicles with emission levels exceeding the emission standards for gross
10 polluters during an initial inspection will be considered gross polluters and the
11 provisions pertaining to gross polluting vehicles will apply, including, but not
12 limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

13 (3) A gross polluting vehicle shall not be passed or issued a certificate of
14 compliance until the vehicle's emissions are reduced to or below the applicable
15 emissions standards for the vehicle included in the tables described in subsection
16 (a), as applicable. However, the provisions described in section 44017 of the
17 Health and Safety Code may apply.

18 (4) This subsection applies in all program areas statewide to vehicles requiring
19 inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

20 19. CCR, title 16, section 3340.30, subdivision (a) states:

21 A licensed smog check inspector and/or repair technician shall comply with the
22 following requirements at all times while licensed:

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

26 COST RECOVERY

27 20. Code section 125.3 provides, in pertinent part, that a Board may request the
28 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.

29 UNDERCOVER OPERATION – SEPTEMBER 19, 2012

30 21. On or about September 19, 2012, a Bureau undercover operator (“operator”) drove a
31 Bureau documented 1993 Mazda (“Mazda”) to ABC Smog #2 and requested a smog inspection.
32 The Mazda was documented with a defective fuel vapor hose, rendering the vehicle incapable of
33 passing a properly performed smog inspection. Respondent performed the smog inspection and

1 issued electronic Certificate of Compliance No. [REDACTED] for the Mazda. The operator paid
2 Respondent \$70 and was provided with a copy of Invoice No. [REDACTED] and a Vehicle Inspection
3 Report. By issuing Certificate of Compliance No. [REDACTED] to the Mazda, Respondent certified
4 he had tested and inspected the Mazda, and that it was in compliance with applicable laws and
5 regulations when, in fact, the vehicle could not have passed the Low Pressure Fuel Evaporative
6 Test (LPFET) portion of the smog inspection because of the defective fuel vapor hose.
7 Furthermore, the undercover vehicle was equipped with a video camera that shows the fuel cap
8 was not removed during the smog inspection. The Vehicle Inspection Report shows "Pass" was
9 entered into the EIS for the LPFET and Fuel Cap Visual and Functional tests when these tests
10 could not have been performed without removing the fuel cap.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 22. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
14 that on or about September 19, 2012, he made statements which he knew or which by exercise of
15 reasonable care should have known to be untrue or misleading by issuing electronic Certificate of
16 Compliance No. [REDACTED] for the Mazda, certifying that the vehicle was in compliance with
17 applicable laws and regulations when, in fact, it could not have passed the Low Pressure Fuel
18 Evaporative Test (LPFET) portion of the smog inspection because of the defective fuel vapor
19 hose. In addition, the fuel cap visual and functional tests, as well as the LPFET, were not
20 performed on the Mazda, as set forth in paragraph 21, which is incorporated here by this
21 reference.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 23. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
25 that on or about September 19, 2012, he committed acts constituting fraud by issuing electronic
26 Certificate of Compliance No. [REDACTED] for the Mazda without performing a bona fide
27 inspection of the emission control devices and systems on the vehicle, thereby depriving the

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1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program, as set forth in paragraph 21, which is incorporated here by this reference.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 24. Respondent's station license is subject to discipline pursuant to Health & Safety Code
6 section 44072.2, subdivision (a), in that on or about September 19, 2012, regarding the Mazda, as
7 set forth in paragraph 21, which is incorporated here by this reference, he failed to comply with
8 the following sections of that Code:

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

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

14 **FOURTH CAUSE FOR DISCIPLINE**

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

16 25. Respondent's station license is subject to discipline pursuant to Health & Safety Code
17 section 44072.2, subdivision (c), in that on or about September 19, 2012, regarding the Mazda, as
18 set forth in paragraph 21, which is incorporated here by this reference, he failed to comply with
19 provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
21 Compliance No. [REDACTED] for the Mazda even though the vehicle had not been inspected in
22 accordance with section 3340.42.

23 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the
24 Emission Inspection System unit by entering "Pass" for the visual and functional tests of the fuel
25 cap, as well as entering "Pass" for the LPFET when, in fact, the video recording shows these tests
26 were not performed.

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

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FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

26. Respondent's station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about September 19, 2012, regarding the Mazda, as set forth in paragraph 21, which is incorporated here by this reference, he committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No. [REDACTED] for the Mazda without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

27. Respondent's inspector license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about September 19, 2012, regarding the Mazda, as set forth in paragraph 21, which is incorporated here by this reference, he violated the following sections of that Code:

- a. **Section 44012, subdivision (f):** Respondent failed to perform emission control inspections on the vehicle in accordance with procedures prescribed by the department.
- b. **Section 44032:** Respondent failed to perform an inspection of the emission control devices and systems on the vehicle in accordance with section 44012 of that Code.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

28. Respondent's inspector license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about September 19, 2012, regarding the Mazda, as set forth in paragraph 21, which is incorporated here by this reference, he violated the following sections of the California Code of Regulations, title 16:

- a. **Section 3340.30, subdivision (a):** Respondent failed to perform the emission control inspection in accordance with Health and Safety Code section 44012.

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1 determine that emission control devices and systems required by State and Federal law are
2 installed and functioning correctly in accordance with test procedures), and California Code of
3 Regulations section 3340.35(c) (issuing a Certificate of Compliance to a vehicle that was
4 improperly tested).The Bureau assessed civil penalties totaling \$1500 against Respondent for the
5 violations. Respondent complied with this citation on February 1, 2011.

6 c. On or about March 22, 2012, the Bureau issued Citation No. C2012-1267 against
7 Respondent's station license for violating Health and Safety Code section 44012(f) (failure to
8 perform a visual/functional check of emission control devices according to procedures prescribed
9 by the department). The Bureau assessed civil penalties totaling \$1,500 against Respondent for
10 the violations. This citation was appealed on April 30, 2012. Respondent complied with this
11 citation on August 16, 2013.

12 **Smog Check Inspector License Number EO 152782**

13 d. On or about June 29, 2007, the Bureau issued Citation No. M07-1068 against
14 Respondent's technician license for violating Health and Safety Code section 44032 (qualified
15 technicians shall perform tests of emission control systems and devices in accordance with Health
16 and Safety Code section 44012), and California Code of Regulations section 3340.30(a)
17 (qualified technicians shall inspect, test, and repair vehicles in accordance with Health and Safety
18 Code sections 44012, 44035 and CCR, title 16, section 3340.42). Respondent was required to
19 attend an 8-hour training course. On or about August 13, 2007, Respondent completed the
20 required training course.

21 e. On or about September 11, 2007, the Bureau issued Citation No. M08-0226 against
22 Respondent's technician license for violating Health and Safety Code section 44032 (qualified
23 technicians shall perform tests of emission control systems and devices in accordance with Health
24 and Safety Code section 44012), and CCR, title 16, section 3340.30(a) (qualified technicians shall
25 inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012, and
26 CCR, title 16, section 3340.42). Respondent was required to attend a 16-hour training course. On
27 or about November 10, 2007, Respondent completed the required training course.

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1 f. On or about March 24, 2008, the Bureau issued Citation No. M08-0825 against
2 Respondent's technician license for violating Health and Safety Code section 44032 (qualified
3 technicians shall perform tests of emission control systems and devices in accordance with Health
4 and Safety Code section 44012), and CCR, title 16, section 3340.30(a) (qualified technicians shall
5 inspect, test, and repair vehicles in accordance with Health and Safety Code sections and CCR,
6 title 16, section 3340.42). Respondent was required to attend a 68-hour training course. On or
7 about August 20, 2008, Respondent completed the required training course.

8 g. On or about November 15, 2010, the Bureau issued Citation No. M2011-0616 against
9 Respondent's technician license for violating Health and Safety Code section 44032 (qualified
10 technicians shall perform tests of emission control systems and devices in accordance with Health
11 and Safety Code section 44012), and CCR, title section 3340.30(a) (qualified technicians shall
12 inspect, test, and repair vehicles in accordance with sections Health and Safety Code sections
13 44012 and 44035, and CCR, title 16, section 3340.42). Respondent was required to attend a 16-
14 hour training course. On or about January 20, 2011, Respondent completed the required training
15 course.

16 **OTHER MATTERS**

17 31. Pursuant to Code section 9884.7(c), the Director may suspend, revoke, or place on
18 probation the registrations for all places of business operated in this state by Jason Shorees, upon
19 a finding that he has, or is, engaged in a course of repeated and willful violation of the laws and
20 regulations pertaining to an automotive repair dealer.

21 32. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
22 Station License Number TC 256880, issued to Jason Shorees, doing business as ABC Smog #2, is
23 revoked or suspended, any additional license issued under the chapter in the name of said
24 licensees may be likewise revoked or suspended by the director.

25 33. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
26 License Number EO 152782, issued to Jason Shorees, is revoked or suspended, any additional
27 license issued under the chapter in the name of said licensee may be likewise revoked or
28 suspended by the director.

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PRAYER

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

1. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration No. ARD 256880 issued to Jason Shorees, doing business as ABC Smog #2;
2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Jason Shorees;
3. Revoking or suspending Smog Check Test Only Station License Number TC 256880, issued to Jason Shorees, doing business as ABC Smog #2;
4. Revoking or suspending any additional license issued to Jason Shorees under Chapter 5 of the Health and Safety Code;
5. Revoking or suspending Smog Check Inspector License Number EO 152782 issued to Jason Shorees;
6. Ordering Jason Shorees to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
7. Taking such other and further action as deemed necessary and proper.

DATED: October 18, 2013


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