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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 and Petition to
Revoke Probation Against:

Case No. 79/24-9673

13 **DAVIS TEST ONLY SMOG TESTING,**
14 **DBA CITRUS HEIGHTS STAR SMOG**
15 **RONALD WALLINE, PRESIDENT**
8420 Auburn Blvd. B
16 Citrus Heights, CA 95610

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 **Automotive Repair Dealer Registration No.**
18 **ARD 263636**

19 **Smog Check Test and Repair Station**
20 **License No. RC 263636**

21 Respondent.

22 **PARTIES**

23 1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
24 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair
25 (Bureau), Department of Consumer Affairs.

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1 **Automotive Repair Dealer Registration**

2 2. On or about November 4, 2010, the Bureau issued Automotive Repair Dealer Number
3 ARD 263636 (registration) to Davis Test Only Smog Testing, doing business as Citrus Heights
4 Star Smog (Respondent C.H. Smog), with Ronald Walline, A.K.A. Ron Dean Walline, A.K.A
5 Ron D. Walline, (Respondent R. Walline) as the President, and Daniel Lawrence McGarry
6 (Respondent McGarry) as the Responsible Managing Employee. The license was in effect at all
7 times relevant to the charges brought herein and will expire on November 30, 2025, unless
8 renewed.

9 **Smog Check Station**

10 3. On or about June 12, 2015, the Bureau issued Smog Check Test and Repair Station
11 Number RC 263636 (station license) to Respondent C.H. Smog. The station license was in effect
12 at all times relevant to the charges brought herein and will expire on November 30, 2025, unless
13 renewed.

14 **OTHER LICENSES**

15 4. On or about January 16, 2014, the Bureau issued Automotive Repair Dealer Number
16 ARD 275297 to Davis Test Only Smog Testing dba Lincoln Star Smog which was cancelled and
17 expired on January 31, 2021.

18 5. The Bureau issued Smog Check Test and Repair Station Number RC 275297 to Davis
19 Test Only Smog dba Lincoln Star Smog which was cancelled and expired on January 31, 2021.

20 6. On or about September 30, 2014, the Bureau issued Automotive Repair Dealer
21 Number ARD 278039 to Davis Test Only Smog dba North Beale Star Smog which was cancelled
22 and expired on September 30, 2019.

23 7. The Bureau issued Smog Check Test and Repair Station Number RC 278039 to Davis
24 Test Only Smog dba North Beale Star Smog which was cancelled and expired on September 30,
25 2019.

26 **PRIOR DISCIPLINE**

27 8. Pursuant to a Stipulated Settlement and Disciplinary Order, in a disciplinary action
28 entitled, *"In the Matter of the Accusation Against: Davis Test Only Smog Testing, dba Citrus*

1 *Heights Star Smog, Daniel McGarry, aka Daniel Lawrence McGarry, Case No. 77/17-18174,"*
2 the Bureau adopted a Decision and Order effective July 14, 2022, wherein Respondent C.H.
3 Smog's Automotive Repair Dealer Registration Number ARD 263636 and Smog Check Test and
4 Repair Station License Number RC 263636 were revoked. However, the revocation was stayed
5 and Respondent C.H. Smog was placed on probation for a period of three years under terms and
6 conditions.¹ (Exhibit A) The Decision and Order was based on the following: On or about June
7 20, 2017, Respondent McGarry was found guilty by a jury of violating Penal Code section 245,
8 subdivision (a)(4) (assault by means of force likely to produce great bodily injury), a felony. The
9 circumstances of the crime were that on or about July 12, 2014, Respondent McGarry assaulted a
10 customer at Respondent C.H. Smog facility following a dispute over payment for a failed smog
11 inspection.

12 **JURISDICTION**

13 9. This Accusation is brought before the Director of the Department of Consumer
14 Affairs (Director) for the Bureau, under the authority of the following laws. All section
15 references are to the Business and Professions Code (Code) unless otherwise indicated.

16 10. Code section 9884.7 provides, in pertinent part, that the Director may revoke an
17 automotive repair dealer registration.

18 11. 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 12. Code section 118, subdivision (b), provides that suspension, expiration, surrender, or
23 cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

26 13. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
27 "commission," "committee," "department," "division," "examining committee," "program," and

28 ¹ Due to expire on July 14, 2025.

1 “agency.” “License” includes certificate, registration or other means to engage in a business or
2 profession regulated by the Code.

3 14. Health and Safety Code section 44002 provides, in pertinent part, that the Director
4 has all the powers and authority granted under the Automotive Repair Act for enforcing the
5 Motor Vehicle Inspection Program.

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

10 16. Health and Safety Code section 44072.8 states that when a license has been revoked
11 or suspended following a hearing under this article, any additional license issued under this
12 chapter in the name of the licensee may be likewise revoked or suspended by the director.

13 **STATUTORY PROVISIONS**

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

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

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

24

25 (4) Any other conduct which constitutes fraud.

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27 (6) Failure in any material respect to comply with the provisions of this
28 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
regulations adopted pursuant to it.

(b) Except as provided for in subdivision (c), if an automotive repair dealer
operates more than one place of business in this state, the director pursuant to
subdivision (a) shall only suspend, revoke, or place on probation the registration of
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.

1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
2 place on probation, the registration for all places of business operated in this state by
3 an 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.

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12 18. Code section 9884.8 states:

13 All work done by an automotive repair dealer, including all warranty work,
14 shall be recorded on an invoice and shall describe all service work done and parts
15 supplied. Service work and parts shall be listed separately on the invoice, which shall
16 also state separately the subtotal prices for service work and for parts, not including
17 sales tax, and shall state separately the sales tax, if any, applicable to each. If any
18 used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that
19 fact. If a part of a component system is composed of new and used, rebuilt or
20 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
21 a statement indicating whether any crash parts are original equipment manufacturer
22 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
23 of the invoice shall be given to the customer and one copy shall be retained by the
24 automotive repair dealer.

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28 19. Health and Safety Code section 44072.2 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:

....

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

REGULATORY PROVISIONS

20. California Code of Regulations, title 16, section 3340.35 states, in pertinent 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. The
following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by
the licensed station; and

(2) Sales tax shall not be assessed on the price of certificate.

COST RECOVERY

21. Code section 125.3 provides, in pertinent part, that the 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, 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.

BACKGROUND INFORMATION

22. On or about May 13, 2024, a Bureau representative (representative) performed a station inspection at Respondent C.H. Smog's facility. During the inspection, the representative requested a copy of 12 invoices to review. A sign posted inside the facility stated, "Any vehicle passing the smog inspection must pay \$8.25 at the conclusion of the inspection. This is paid to the State of California and collected by us." The representative reviewed the 12 invoices provided by Respondent C.H. Smog and found that it was charging consumers a \$1.75 transfer fee and \$8.25 for a certificate of compliance when vehicles failed a smog check inspection.

23. On or about May 20, 2024, a representative held a probation conference with Respondent R. Walline and his attorney Linda Foster. During the probation conference, Respondent C.H. Smog agreed to remove the \$1.75 transfer fee and the \$8.25 charge for a certificate of compliance when a vehicle fails a smog check inspection.

24. On or about August 15, 2024, a representative conducted a field visit at Respondent C.H. Smog's facility and requested invoices and inspection reports that were performed after May 23, 2024.

25. On or about August 23, 2024, a representative made a field visit to Respondent C.H. Smog's facility and spoke with Respondent R. Walline. Respondent R. Walline provided the representative with the invoices and inspection reports that he had requested during the August 15, 2024, field visit. The representative reviewed the invoices and found eight invoices wherein consumers were charged \$8.25 for a smog certificate when the vehicle did not pass the smog inspection, as more particularly set forth below:

Year	Make	Lic. Plate	VIN
2012	Honda	6WME804	2HGFB2F80CH528104
2019	Ford	02397U2	1FT7W2BT6KED94299

1990	Toyota	4D52550	JT4RN02P4L7001876
2004	Toyota	8GZK121	1NXBR32E84Z193081
2005	Dodge	09461R1	1D7HU18D35S143496
2024	Chevrolet		1GB4YSEY3RF337796
2012	Dodge	7ASZ953	2C3CDXCT6CH120535
2007	Toyota	8GJF150	JTKDE167670152736

UNDERCOVER OPERATION NO. 1 – CHEVROLET

26. On or about May 23, 2024, a Bureau undercover operator (operator) drove a Chevrolet to Respondent C.H. Smog's facility and requested a smog inspection. The operator was greeted by technician D.R. D.R. had the operator complete information on the estimate and told him that the inspection cost \$79.99. The operator gave D.R. \$80 in cash and was provided with a copy of the estimate. D.R. began the inspection. D.R. told the operator that the vehicle would not pass the smog inspection because the EGR² was missing. Respondent C.H. Smog charged the operator \$8.25 for a smog certificate that was not issued.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

27. Respondent C.H. Smog's registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that, Respondent C.H. Smog made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent C.H. Smog charged consumers a fee of \$8.25 for smog certificates that were not issued due to the vehicle failing the smog inspection, as more particularly set forth above in paragraphs 21 through 26.

b. Respondent C.H. Smog charged consumers a separate fee on the invoices for electronic communications with the smog check database, as more particularly set for the above in paragraphs 21 and 22.

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² Exhaust Gas Recirculation

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraudulent Acts)**

3 28. Respondent C.H. Smog's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(4), in that, it committed acts which constitute fraud, as follows:

5 a. Respondent C.H. Smog charged consumers a fee of \$8.25 for smog certificates
6 that were not issued due to the vehicle failing the smog inspection, as more particularly set forth
7 above in paragraphs 21 through 26.

8 b. Respondent C.H. Smog charged consumers a separate fee on the invoices for
9 electronic communications with the smog check database, as more particularly set for the above
10 in paragraphs 21 and 22.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Provisions of the Automotive Repair Act)**

13 29. Respondent C.H. Smog's registration is subject to discipline under Code section
14 9884.7, subdivision (a)(6), in that, it failed to comply with the provisions of that Code, in the
15 following material respects:

16 a. **Section 9884.8:** Respondent C.H. Smog charged consumers separately on
17 invoices for an electronic transfer fee related to electronic communications with the smog check
18 database, as more particularly set forth above in paragraphs 21 and 22.

19 **FOURTH CAUSE FOR DISCIPLINE**

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

21 30. Respondent C.H. Smog's registration is subject to discipline pursuant to Code section
22 9884.7, subdivision (a)(6), in that, it failed to comply with provisions of California Code of
23 Regulations, title 16, in the following material respects:

24 a. **Section 3340.35:** Respondent C.H. Smog charged consumers for smog
25 certificates when vehicles failed a smog check inspection, and when Respondent C.H. Smog is
26 not charged a certificate fee. Therefore, Respondent C.H. Smog cannot charge a fee to the
27 consumer when the consumer did not receive a smog certificate, as more particularly set forth
28 above in paragraphs 21 and 22.

1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent C.H. Smog's station license is subject to disciplinary action pursuant to
4 Health and Safety Code section 44072.2, subdivision (d), in that Respondent C.H. Smog
5 committed dishonest, fraudulent, or deceitful acts whereby another was injured, as more
6 particularly set forth above in paragraphs 21 through 26.

7 **PETITION TO REVOKE PROBATION**

8 32. At all times after the effective date of Respondent C.H. Smog's probation, Condition
9 7 stated:

10 If Respondent violates or fails to comply with the terms and conditions of
11 probation in any respect, the Director, after giving notice and opportunity to be heard
12 may set aside the stay order and carry out the disciplinary order provided in the
13 decision. Once Respondent is served notice of BAR's intent to set aside the stay, the
14 Director shall maintain jurisdiction, and the period of probation shall be extended
15 until final resolution of the matter.

16 33. Respondent C.H. Smog's probation is subject to revocation, in that it violated
17 probation as set forth below:

18 **FIRST CAUSE TO REVOKE PROBATION**

19 **(Failure to Obey All Laws)**

20 34. At all times after the effective date of Respondent C.H. Smog's probation, Condition
21 1 stated:

22 During the period of probation, Respondent shall comply with all federal and
23 state statutes, regulations and rules governing all BAR registrations and licenses held
24 by Respondent.

25 35. Respondent C.H. Smog's probation is subject to revocation by failing to comply with
26 Condition 1, in that it violated federal and state statutes, regulations and rules governing all BAR
27 registrations and licenses held by Respondent C.H. Smog, as more particularly set forth above in
28 paragraphs 21 through 27.

29 **MATTERS IN AGGRAVATION**

30 36. To determine the degree of discipline, if any, to be imposed on Respondent Davis
31 Test Only Smog Testing, Complainant alleges as follows:

1 37. On or about May 2, 2013, the Bureau issued Citation No. C2013-0638 against
2 Respondent, doing business as Citrus Heights Star Smog, for violating Health & Safety Code
3 section 44012, subdivision (f). On or about March 20, 2013, Respondent issued a certificate of
4 compliance to a Bureau undercover vehicle with a disconnected air injection reactor (AIR) pump.
5 The Bureau assessed a civil penalty of \$1,000 against Respondent for the violation. Respondent
6 appealed the citation on July 10, 2013. On July 22, 2014, Respondent filed a Writ of Mandate and
7 Request for Stay. On July 24, 2014, the writ/stay was denied and the citation became final.
8 Respondent paid the fine on September 9, 2014.

9 38. On or about March 7, 2017, the Bureau issued Citation No. C2017-585 against
10 Respondent, doing business as North Beale Star Smog, for violating Health & Safety Code
11 section 44012. On or about January 23, 2017, Respondent issued a certificate of compliance to a
12 Bureau undercover vehicle with missing or modified Evaporative Emissions System components.
13 The Bureau assessed a civil penalty of \$1,000 against Respondent for the violation. The citation
14 became effective on June 16, 2017.

15 **OTHER MATTERS**

16 39. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke,
17 or place on probation the registrations for all places of business operated in this state by Davis
18 Test Only Smog Testing, upon a finding that they have or are engaged in a course of repeated and
19 willful violation of the laws and regulations pertaining to an automotive repair dealer.

20 40. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test and Repair
21 Station License Number RC 263636, issued to Davis Test Only Smog Testing, doing business as
22 Citrus Heights Star Smog, is revoked or suspended, any additional license issued under Health
23 and Safety Code, Division 26, Part 5, Chapter 5 in the name of said licensee may be likewise
24 revoked 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:
28

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 263636, issued to Davis Test Only Smog Testing, doing business as Citrus Heights Star Smog;

2. Revoking probation and reimposing the order of revocation of Automotive Repair Dealer Registration Number ARD 263636, and Smog Check Test and Repair Station License Number RC 263636, issued to Davis Test Only Smog Testing, doing business as Citrus Heights Star Smog;

3. Revoking or suspending any other automotive repair dealer registration issued to Davis Test Only Smog Testing;

4. Revoking or suspending Smog Check Test and Repair Station License Number RC 263636, issued to Davis Test Only Smog Testing, doing business as Citrus Heights Star Smog;

5. Revoking or suspending any additional license issued under Health and Safety Code, Division 26, Part 5, Chapter 5 in the name of Davis Test Only Smog Testing;

6. Ordering Davis Test Only Smog Testing to pay the Bureau of Automotive Repair 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: As of Digital Signature Date

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

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