

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 CHAR SACHSON
Supervising Deputy Attorney General
State Bar No. 161032
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 510-3513
Facsimile: (415) 703-5480
6 *Attorneys for Complainant Bureau of Automotive Repair*

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

11 In the Matter of the Accusation Against:

Case Number: 7917-1198

12 **CHEVREM CORPORATION**
13 **d.b.a WALNUT CREEK STAR SMOG**
14 **FATIH TEKIN, PRESIDENT/SECRETARY/**
15 **TREASURER**
16 **690 Ygnacio Road #3**
17 **Walnut Creek, CA 94596**

ACCUSATION

18 **Automotive Repair Dealer No. ARD 221700**
19 **Smog Check, Test Only, License No. TC 221700**

20 **FATIH TEKIN**
21 **5200 Telegraph Avenue**
22 **Oakland, CA 94609**

23 **Mailing address:**
24 **121 Diamond Court**
25 **Hercules, CA 94547**

26 **Smog Check Inspector License No. EO 26524**

27 **ALI NADIR GUNGOR**
28 **10439 San Pablo Avenue, Unit A**
El Cerrito, CA 94530

Mailing address:
1921 Delaware Street, Apt. 5
Berkeley, CA 94709

Smog Check Inspector License No. EO 634506

///

///

1 **ERSIN IRIC**
2 **3550 Pacific Ave #602**
3 **Livermore, CA 94550**

4 **Smog Check Inspector License No. EO 635356**

5 Respondents.

6
7 Complainant alleges:

8 **PARTIES**

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

11 **Automotive Repair Dealer Registration – Respondent Walnut Creek Star Smog**

12 2.e In 2002, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer
13 Registration Number ARD 221700 (Registration) to Chevrem Corporation, Fatih Tekin,
14 President/Secretary/Treasurer d.b.a. Walnut Creek Star Smog (Respondent Walnut Creek Star
15 Smog). The Registration was in full force and effect at all times relevant to the charges brought
16 herein and will expire on May 31, 2019, unless renewed.

17 **Smog Check Test Only Station License – Respondent Walnut Creek Star Smog**

18 3. On or about June 21, 2002, the Bureau issued Smog Check, Test Only, Station
19 License Number TC 221700 to Respondent Walnut Creek Star Smog. The License was in full
20 force and effect at all times relevant to the charges brought herein and will expire on May 31,
21 2019, unless renewed.

22 4.e On or about May 31, 2013, the Bureau issued a STAR Certificate to Responde
23 Walnut Creek Star Smog. The STAR Certificate was in full force and effect at all times relevant
24 to the charges brought herein and will remain active unless the Automotive Repair Dealer
25 registration and/or Smog Check Station license is revoked, canceled, licenses become delinquent
26 or certification is invalidated.

27 ///

28 ///

1 **Smog Check Inspector Licenses**

2 5. In 2003, the Bureau issued Advanced Emission Specialist Technician Licensee
3 Number EA 26524 to Fatih Tekin (Respondent Tekin). The Advanced Emission Specialist
4 Technician License expired on January 30, 2014. Pursuant to California Code of Regulations, title
5 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election,
6 as Smog Check Inspector License Number EO 26524, effective January 30, 2014.¹ The Smog
7 Check Inspector License was in full force and effect at all times relevant to the charges brought
8 herein and will expire on January 31, 2020, unless renewed.

9 6. On or about July 18, 2012, the Bureau issued Advanced Emission Specialiste
10 Technician License Number EA 634506 to Ali Nadir Gungor (Respondent Gungor). The
11 Advanced Emission Specialist Technician License was cancelled on April 16, 2014. Pursuant to
12 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
13 renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO
14 634506, effective April 16, 2014. The Smog Check Inspector License was in full force and effect
15 at all times relevant to the charges brought herein and will expire on July 31, 2020, unless
16 renewed.

17 7.e On or about March 29, 2013, the Bureau issued Advanced Emission Specialiste
18 Technician License Number EA 635356 to Ersin Iric (Respondent Iric). The Advanced Emission
19 Spécialist Technician License was cancelled on November 10, 2014. Pursuant to California Code
20 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
21 Respondent's election, as Smog Check Inspector License Number EO 635356, effective
22 November 10, 2014. The Smog Check Inspector License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on October 31, 2020, unless renewed.

24 8. "Respondents" shall refer to Respondents Gungor and Iric collectively.

25 ///

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

JURISDICTION

1
2 9.e This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

4 10. Business and Professions Code (Code) section 118, subdivision(b) states that “the
5 suspension, expiration, or forfeiture by operation of law of a license issued by a board in the
6 department, or its suspension, forfeiture, or cancellation by order of the board or by order of a
7 court of law, or its surrender without the written consent of the board, shall not, during any period
8 in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to
9 institute or continue a disciplinary proceeding against the licensee upon any ground provided by
10 law or to enter an order suspending or revoking the license or otherwise taking disciplinary action
11 against the licensee on any such ground.”

12 11.e Code section 9884.13 provides, in pertinent part, that the expiration of a valide
13 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
14 proceeding against an automotive repair dealer or to render a decision invalidating a registration
15 temporarily or permanently.

STATUTORY AND REGULATORY PROVISIONS

16
17 12.e Section 9884.7 of the Code states, in pertinent part:

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

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

26 . . .

27 (4)Any other conduct that constitutes fraud.e

28 . . .

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

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

8 13.e Section 44002 of the Health and Safety Code provides, in pertinent part, that the
9 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
10 the Motor Vehicle Inspection Program.

11 14.e Section 44012 of the Health and Safety Code, in pertinent part, states:

12 "The test at the smog check stations shall be performed in accordance with procedures
13 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
14 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
15 and shall ensure all of the following:

16 . . .
17 "(f) A visual or functional check is made of emission control devices specified by the
18 department, including the catalytic converter in those instances in which the department
19 determines it to be necessary to meet the findings of Section 44001. . . The visual or functional
20 check shall be performed in accordance with procedures prescribed by the department.

21 . . ."
22 15.e Section 44015 of the Health and Safety Code, subdivision (b) provides that if a
23 vehicle meets the requirements of Section 44012, a smog check station licensed to issue
24 certificates shall issue a certificate of compliance or a certificate of noncompliance.

25 16.e Section 44032 of the Health and Safety Code, provides that no person shall perform,
26 for compensation, tests or repairs of emission control devices or systems of motor vehicles
27 required by this chapter unless the person performing the test or repair is a qualified smog check
28 technician and the test or repair is performed at a licensed smog check station. Qualified

1 technicians shall perform tests of emission control devices and systems in accordance with
2 Section 44012.

3 17.e Section **44059** of the Health and Safety Code states, in pertinent part:

4 "The willful making of any false statement or entry with regard to a material matter in any
5 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
6 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
7 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

8 18.e Section **44072.2** of the Health and Safety Code states, in pertinent part:

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

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

15 . . .

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

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

18 . . .

19 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
20 activity for which he or she is licensed."

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

25 20.e Section **44072.8** of the Health and Safety Code states:

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

1 21.e Section **44072.10, subdivision (c)** of the Health and Safety Code states:e

2 "(c) The department shall revoke the license of any smog check technician or station
3 licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of
4 vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

5 (1) Clean piping, as defined by the department. . ."

6 22.e California Code of Regulations, title 16, section **3340.24, subdivision (c)** states:e

7 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
8 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
9 certificate of noncompliance."

10 23.e California Code of Regulations, title 16, section **3340.30, subdivision (a)** states:e

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

13 "(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
14 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
15 article."

16 . . .

17 24.e California Code of Regulations, title 16, section **3340.35, subdivision (c)** states:e

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

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

24 "(2) Sales tax shall not be assessed on the price of certificates.

25 . . ."

26 25.e California Code of Regulations, title 16, section **3340.41, subdivision (c)** states:e

27 "(c) No person shall enter into the emissions inspection system any vehicle identification
28 information or emission control system identification data for any vehicle other than the one

1 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
2 information about the vehicle being tested."

3 26.e California Code of Regulations, title 16, section **3340.42, subdivision (b)(2)**, states,
4 in pertinent part that "Smog check inspection methods are prescribed in the Smog Check Manual,
5 referenced by section 3340.45."

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

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

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

13 27.e California Code of Regulations, title 16, section **3340.45**, states:

14 (a)All Smog Check inspections shall be performed in accordance with requirements and
15 procedures prescribed in the following:

16 (1)Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
17 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

18 (2)Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
19 manual shall become effective on or after January 1, 2013.

20 28.e California Code of Regulations, title 16, **section 3373** states:

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

26 COSTS

27 29.e Section **125.3** of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 FACTUAL SUMMARY

6 30.e California's Smog Check Program requires the owners of most motor vehicles in
7 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
8 every two years when renewing their registration and also when the vehicle's title is transferred.
9 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
10 which are licensed by the Bureau.

11 31.e The Smog Check inspection in certain Enhanced areas of the state is an Acceleration
12 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
13 as a BAR 97. This is a computer based five-gas analyzer that measures hydrocarbons, carbon
14 monoxide, oxides of nitrogen, carbon dioxide, and oxygen. The inspection involves a test of the
15 vehicle's tailpipe emissions on a dynamometer. In Basic areas of the state, or depending on a
16 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
17 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
18 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
19 (RPM).

20 32.e The inspector also performs visual and functional tests on the vehicle as outlined in
21 the Smog Check Manual. The visual inspection of the emission control components verifies the
22 required emission control devices are present and properly connected. Functional tests are also
23 performed which, depending on the vehicle, may include checking the ignition timing,
24 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
25 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
26 cap.

27 33.e On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
28 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission

1 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
2 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.

3 34.e The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
4 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
5 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
6 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
7 vehicle. The bar code scanner is used to input technician information, the vehicle identification
8 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
9 Reports.

10 35.e Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
11 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
12 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
13 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
14 number of specific data values each PCM uses related to emissions controls.

15 36.e As part of the BAR-OIS smog inspections, the technician also performs a visual and
16 functional test on the vehicle being inspected. The visual inspection of the emission control
17 components verifies the required emission control devices are present and properly connected and
18 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
19 makes the determination whether or not the vehicle passes the inspection based on the results of
20 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
21 compliance is issued. The information from the smog inspection is then transmitted to the
22 Vehicle Information Data (VID).

23 37.e The Bureau can access the VID to view test data on smog check inspections
24 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
25 particular vehicle which has been tested.

26 38.e The Bureau has become aware of methods some Smog Check stations and Smog
27 Check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog
28

1 Check test on their own, or in some instances, are not even present during the time the test is
2 performed.

3 39.e One method is known as "clean plugging." Clean plugging is the act of using one
4 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
5 or diagnostic information for the purpose or fraudulently issue a smog certificate of compliance to
6 a vehicle that is not in smog compliance and/or not present for testing. The vehicle being tested is
7 not the one being issued the certificate of compliance.e

8 40. The Bureau initiated an investigation of Respondent Walnut Creek Star Smog.e
9 Beginning on or about November 26, 2014 and continuing until about September 24, 2015
10 Respondents² were found to have performed four fraudulent smog inspections using clean-
11 plugging methods. Clean-plugging is the practice of testing one OBD II system (a system that
12 would pass the smog inspection), for the purpose of fraudulently issuing a smog certificate of
13 compliance to another vehicle that would not pass the smog inspection and/or is not present for
14 testing. The vehicle receiving the certificate of compliance is not actually tested during the smog
15 inspection.

16 41.e A Bureau representative reviewed data for four clean plugged vehicles inspected by
17 Respondents Gungor and Iric and certified by Respondent Walnut Creek Star Smog. The data
18 revealed that the four vehicles that were purportedly tested by Respondents were not and could
19 not have been connected to the DAD when they were being certified because the OBD-II data
20 purportedly transmitted by those vehicles could not have been transmitted by those vehicles.

21 42.e Respondents clean plugged and issued fraudulent certificates of compliance to thee
22 following four vehicles:

23 ///

24 ///

25 ///

26 ///

27 _____
28 ² Respondents Gungor and Iric performed the smog tests on behalf of Respondent Walnut
Creek Star Smog.

1 a)e Clean Plug# 1 - 2007 Toyota Camry CE/LE/XLE/SE, VIN: 4T1BE46K67U643879,e
 2 CA license number 5YLS675, performed by Respondent Gungor on November 26, 2014:

Certificate #	eVIN	Protocol	PID count
PM642507C			
Fraudulent Passing Inspection (11/26/2014)	JTMBK31V775026395	ICAN11bt5	<u>46</u>
Expected OBDII Value	4T1BE46K67U643879	ICAN11bt5	<u>39</u>

8
 9 b)e Clean Plug #2 – 2005 Toyota 4Runner LTD, VIN:JTEBU17R558030168, CAe
 10 license number 6GTC785, performed by Respondent Iric on December 3, 2014:

Certificate #	eVIN	Protocol	PID count
YL916852C			
Fraudulent Passing Inspection (12/03/2014)	STEMU52N98Z568271	ICAN11bt5	<u>46</u>
Expected OBDII Value	JTEBU17R558030168	ICAN11bt5	<u>44</u>

16
 17 c) Clean Plug #3 – 2001 Toyota Tundra/SR5, VIN: 5TBRT341X1S168559, CAe
 18 license number 6N22916, performed by Respondent Iric on January 18, 2015:

Certificate #	eVIN	Protocol	PID count
PO368351C			
Fraudulent Passing Inspection (01/18/2015)	5TDZA22C74S042322	I914	<u>21</u>
Expected OBDII Value	Not Reported	I914	<u>20</u>

24
 25 ///
 26 ///
 27 ///
 28 ///

1 d) Clean Plug #4 – 2009 Volkswagen Jetta TDI, VIN: 3VWRL71K49M039379, CAe
2 license number 6FVX261, performed by Respondent Gungor on September 24, 2015:

3

Certificate #	eVIN	Protocol	PID count
PW705023C			
Fraudulent Passing Inspection (09/24/2015)	Not Reported	KWPS	<u>9</u>
Expected OBDII Value	3VWRL71K49M039379	ICAN11bt5	<u>31, 31/12,</u> <u>31/12/15, 31/14</u> or 31/9

4
5
6
7
8

9 **FIRST CAUSE FOR DISCIPLINE**
10 **(Misleading Statements - Registration)**

11 43.e Respondent Walnut Creek Star Smog has subjected its registration to discipline under
12 Code section 9884.7, subdivision (a)(1), in that it made statements which it knew or which by
13 exercise of reasonable care it should have known were untrue or misleading, as set forth above in
14 paragraphs 40-42, above. Respondents fraudulently purported to test the four vehicles, and
15 certified that the four vehicles passed inspection and were in compliance with applicable laws and
16 regulations. In fact, Respondents conducted the inspections on those vehicles using clean-
17 plugging methods.

18 **SECOND CAUSE FOR DISCIPLINE**
19 **(Fraud - Registration)**

20 44. Respondent Walnut Creek Star Smog has subjected its registration to discipline under
21 Code section 9884.7, subdivision (a)(4), in that it committed acts which constitute fraud, as set
22 forth above in paragraphs 40-42, above.

23 **THIRD CAUSE FOR DISCIPLINE**
24 **(Failure to Comply with the Provisions of the Automotive Repair Act)**

25 45.e Respondent Walnut Creek Star Smog has subjected its registration to discipline under
26 Code section 9884.7, subdivision (a)(6), in that it failed in a material respect to comply with the
27 provisions of this chapter or regulations adopted, as set forth above in paragraphs 40-42, above.

28 ///

///

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program – Smog Check Station License)

1 46.e Respondent Walnut Creek Star Smog has subjected its station license to discipline
2 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that it
3 violated sections of that Code and applicable regulations, as set forth above in paragraphs 40-42,
4 as follows:
5

6 a. **Section 44012:** Respondent Walnut Creek Star Smog failed to ensure that three
7 emission control tests were performed on those vehicles in accordance with procedures prescribed
8 by the department.

9 b. **Section 44012, subdivision (f):** Respondent Walnut Creek Star Smog failed to
10 perform a visual or functional check of emission control devices on those vehicles in accordance
11 with procedures prescribed by the department.

12 c. **Section 44015, subdivision (b):** Respondent Walnut Creek Star Smog issued
13 electronic smog certificates of compliance but failed to ensure that the vehicles were properly
14 tested and inspected to determine if the emission control tests performed on those vehicles in
15 accordance with procedures prescribed by the department.

16 d.e **Section 44059:** Respondent Walnut Creek Star Smog willfully made false entries for
17 the electronic certificates of compliance by certifying that those vehicles had been inspected as
18 required when, in fact, they had not.

19 e. **Section 3340.35, subdivision (c):** Respondent Walnut Creek Star Smog failed to
20 ensure that the emission control tests were performed on those vehicles in accordance with
21 procedures prescribed by the department.

22 f. **Section 3340.42, subdivision (b)(2):** Respondent Walnut Creek Star Smog failed to
23 conduct a functional inspection of emission control systems for vehicles as specified in the Smog
24 Check Manual, referenced by California Code of Regulations, title 16, section 3340.45.

25 g. **Section 3340.45, subdivision (a)(2):** Respondent Walnut Creek Star Smog failed to
26 conduct the required smog tests and inspections on those vehicles in accordance with the
27 Bureau's specifications.
28

1 e. **Section 3340.30, subdivision (a):** Respondent Gungor failed to inspect and test those
2 vehicles in accordance with Health and Safety Code section 44012 and California code of
3 Regulations title 16, section 3340.42.

4 f.e **Section 3340.41, subdivision (c):** Respondent Gungor entered vehicle identification
5 information for a vehicle other than the one being tested into the emissions inspection system.
6 Respondent Gungor knowingly entered false information about the vehicle being tested into the
7 emissions inspection system.

8 g.e **Section 3340.42, subdivision (b)(2):** Respondent Gungor failed to conduct a
9 functional inspection of emission control systems for vehicles as specified in the Smog Check
10 Manual, referenced by California Code of Regulations, title 16, section 3340.45.

11 h. **Section 3340.45, subdivision (a)(2):** Respondent Gungor failed to perform smog
12 check inspections in accordance with requirements and procedures prescribed in the Smog Check
13 Inspection Manual.

14 **SEVENTH CAUSE FOR DISCIPLINE**
(Dishonesty, Fraud or Deceit – Smog Check Inspector License)

15 49.e Respondent Gungor subjected his Smog Check Inspector License to discipline under
16 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
17 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
18 certificates of compliance for vehicles without performing bona fide inspections of the emission
19 control devices and systems on the vehicles, thereby depriving the People of the State of
20 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
21 in paragraphs 40-42.

22 **EIGHTH CAUSE FOR DISCIPLINE**
23 **(Violations of the Motor Vehicle Inspection Program:**
24 **Smog Check Inspector License - Iric)**

25 50.e Respondent Iric has subjected his Smog Check Inspector license to discipline under
26 Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
27 violated sections of that Code and applicable regulations, as set forth above in paragraphs 40-42,
28 as follows:

1 a.e **Section 44012:** Respondent Iric failed to ensure that the emission control tests were
2 performed on those vehicles in accordance with procedures prescribed by the department.

3 b.e **Section 44012, subdivision (f):** Respondent Iric failed to perform a visual ore
4 functional check of emission control devices on those vehicles in accordance with procedures
5 prescribed by the department.

6 c. **Section 44032:** Respondent Iric failed to perform tests of emission control devicese
7 and systems on those vehicles in accordance with Section 44012.

8 d. **Section 44059:** Respondent Iric willfully made false entries for the electronic
9 certificates of compliance by certifying that those vehicles had been inspected as required when,
10 in fact, they had not.

11 e. **Section 3340.30, subdivision (a):** Respondent Iric failed to inspect and test those
12 vehicles in accordance with Health and Safety Code section 44012 and California code of
13 Regulations title 16, section 3340.42.

14 f.e **Section 3340.41, subdivision (c):** Respondent Iric entered vehicle identificatione
15 information for a vehicle other than the one being tested into the emissions inspection system.
16 Respondent Iric knowingly entered false information about the vehicle being tested into the
17 emissions inspection system.

18 g. **Section 3340.42, subdivision (b)(2):** Respondent Iric failed to conduct a functional
19 inspection of emission control systems for vehicles as specified in the Smog Check Manual,
20 referenced by California Code of Regulations, title 16, section 3340.45.

21 h. **Section 3340.45, subdivision (a)(2):** Respondent Iric failed to perform smog checke
22 inspections in accordance with requirements and procedures prescribed in the Smog Check
23 Inspection Manual.

24 **NINTH CAUSE FOR DISCIPLINE**
25 **(Dishonesty, Fraud or Deceit – Smog Check Inspector License)**

26 51.e Respondent Iric subjected his Smog Check Inspector License to discipline undere
27 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
28 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic

1 certificates of compliance for vehicles without performing bona fide inspections of the emission
2 control devices and systems on the vehicles, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
4 in paragraphs 40-42.

5 **OTHER MATTERS**

6 52.o Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
7 or place on probation the registration for all places of business operated in this state by
8 Respondent Walnut Creek Star Smog, upon a finding that Respondent Walnut Creek Star Smog
9 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
10 pertaining to an automotive repair dealer.

11 53.o Pursuant to Health & Safety Code section 44072.8, if Respondent Walnut Creek Star
12 Smog's Station License is revoked or suspended, any additional license issued under Chapter 5 of
13 Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
14 revoked or suspended by the director.

15 54.o Pursuant to Health & Safety Code section 44072.8, if Respondent Gungor's Smogo
16 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
17 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
18 likewise revoked or suspended by the director.

19 55.o Pursuant to Health & Safety Code section 44072.8, if Respondent Iric's Smog Check
20 Inspector License is revoked or suspended, any additional license issued under Chapter 5 of Part
21 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
22 revoked or suspended by the director.

23 **DISCIPLINE CONSIDERATIONS**

24 56.o To determine the degree of discipline, if any, to be imposed on Walnut Creek Star
25 Smog, Complainant alleges that on or about June 27, 2003, in a prior action, an accusation was
26 filed on Gurnur International Corporation and its President, Fatih Tekin, d.b.a. GIC Smog Station
27 for causing the issuance of 13 fraudulent Smog Check Inspection Certificates of Compliance to
28 be issued. The business name for GIC Smog Station was changed to Walnut Creek Star Smog and

1 ownership of the facility is under Chevrem Corporation with Fatih Tekin as President. On
2 December 6, 2004, the Department of Consumer Affairs adopted a decision in the matter of
3 Accusation 79/04-00 which revoked GIC Smog Station's Smog Check Station licenses and
4 Automotive Repair Dealer registrations. However, the revocations were stayed and the stations
5 were placed on three years probation.

6 57.o To determine the degree of discipline, if any, to be imposed on Walnut Creek Staro
7 Smog, Complainant alleges that on or about September 15, 2008, in a prior action, an accusation
8 was filed on Chevrem Corporation and its President, Fatih Tekin, d.b.a. Clear Blue Test Only
9 Smog Station, Clear Blue Test Only Smog Station 2, Clear Blue Test Only Station 3, Test Onlyo
10 Smog Station II, and GIC Smog Station for causing the issuance of 13 fraudulent Smog Check
11 Inspection Certificates of Compliance. On April 6, 2009, the Department of Consumer Affairs
12 adopted a decision in the matter of Accusation 79/09-21 which revoked all Smog Check Station
13 licenses and Automotive Repair Dealer registrations for each facility. However, the revocations
14 were stayed and the stations were placed on five years probation. In addition, each station was
15 suspended anywhere from 5 to 45 days.

16 58.o To determine the degree of discipline, if any, to be imposed on Respondent Iric,o
17 Complainant alleges that on or about March 11, 2015, in a prior action, the Bureau issued Citation
18 Number M2015-0172 and ordered Respondent to complete an 8-hour training course in that he
19 failed to follow inspection procedures. That Citation is now final and is incorporated by reference
20 as if fully set forth.

21
22 **PRAYER**

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

25 1.o Revoking or suspending Automotive Repair Dealer Registration Number ARDo
26 221700, issued to Chevrem Corporation, Fatih Tekin, President, doing business as Walnut Creek
27 Star Smog;

28 ///

1 2.e Revoking or suspending Smog Check Test Only Station License Number TCe
2 221700, issued to Chevrem Corporation, Fatih Tekin, President, doing business as Walnut Creek
3 Star Smog;

4 3.e Revoking or suspending any additional Automotive Repair Dealer Registration,e
5 Smog Check Station License, Smog Check Inspector License, or Smog Check Repair Technician
6 license, issued to Chevrem Corporation, Fatih Tekin, President;

7 4.e Ordering Chevrem Corporation, Fatih Tekin, President to pay the Bureau of
8 Automotive Repair the reasonable costs of the investigation and enforcement of this case,e
9 pursuant to Business and Professions Code section 125.3;

10 5.e Revoking or suspending Smog Check Inspector License EO 26524 issued to Fatihe
11 Tekin;

12 6. Revoking or suspending any additional Smog Check Station License, Smog Checke
13 Inspector License, or Smog Check Repair Technician License, issued to Fatih Tekin;

14 7.e Ordering Fatih Tekin to pay the Bureau of Automotive Repair the reasonable costse
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3;

17 8.e Revoking or suspending Smog Check Inspector License EO 634506 issued to Alie
18 Nadir Gungor;

19 9.e Revoking or suspending any additional Smog Check Station License, Smog Checke
20 Inspector License, or Smog Check Repair Technician License, issued to Ali Nadir Gungor;

21 10.e Ordering Ali Nadir Gungor to pay the Bureau of Automotive Repair thee
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code section 125.3;

24 11.e Revoking or suspending Smog Check Inspector License EO 635356 issued toe
25 Ersin Iric;

26 12.e Revoking or suspending any additional Smog Check Station License, Smog Checke
27 Inspector License, or Smog Check Repair Technician License, issued to Ersin Iric;

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. Ordering Ersin Iric to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: February 19, 2019

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