

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

In the Matter of the Accusation Against:

**SMOG CENTER LLC,
dba, GREEN SMOG CHECK
INDRANIL VIKAS CHITRE, LEIBOFF
FAMILY TRUST, ANGELA LESLIE
D'AGOSTA, MEMBERS**
2126 Hamner Ave., Unit 102
Norco, CA 92860

22041 Constanso St, Apt 103
Woodland Hills, CA 91364

Automotive Repair Dealer Registration No.:
ARD 282268
Smog Check-Test Only Station License No.: TC
282268,

and

TAYLOR A. ZAPPULLA
811 Drake Ave.
Claremont, CA 91711

Smog Check Inspector License No.: EO 637331

Respondents.

Case No.: 79/17-20391

OAH No.: 2018100570

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DECISION

The attached Stipulated Settlement and Disciplinary Order AS TO RESPONDENT SMOG CENTER LLC, dba, GREEN SMOG CHECK INDRANIL VIKAS CHITRE, LEIBOFF FAMILY TRUST, ANGELA LESLIE D'AGOSTA, MEMBERS, ONLY is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. May 14, 2019.

DATED:

April 4, 2019



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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8

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

13
14 In the Matter of the Accusation Against:

15 **SMOG CENTER LLC, DBA GREEN**
16 **SMOG CHECK, INDRANIL VIKAS**
17 **CHITRE, LEIBOFF FAMILY TRUST,**
ANGELA LESLIE D'AGOSTA,
MEMBERS

18 **2126 Hamner Ave., Unit 102**
19 **Norco, CA 92860**

20 **22041 Costanso St, Apt 103**
Woodland Hills, CA 91364

21 **Automotive Repair Dealer Registration No.**
22 **ARD 282268**
Smog Check-Test Only Station License No.
23 **TC 282268**

24 Respondent.
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Case No. 79/17-20391

OAH No. 2018100570

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
5 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
6 Xavier Becerra, Attorney General of the State of California, by Molly E. Selway, Deputy
7 Attorney General.

8 2. Respondent Smog Center LLC, dba Green Smog Check, Indranil Vikas Chitre,
9 Leiboff Family Trust, Angela Leslie D'Agosta, Members, (Respondent) is representing itself in
10 this proceeding and has chosen not to exercise its right to be represented by counsel.

11 3. On or about December 16, 2015, the Bureau issued Automotive Repair Dealer
12 Registration No. ARD 282268 to Respondent. The Automotive Repair Dealer Registration was
13 in full force and effect at all times relevant to the charges brought in Accusation No. 79/17-
14 20391, and will expire on December 31, 2019, unless renewed.

15 4. On or about December 29, 2015, the Bureau issued Smog Check-Test Only Station
16 License No. TC 282268 to Respondent. The Smog Check-Test Only Station License was in full
17 force and effect at all times relevant to the charges brought in Accusation No. 79/17-20391, and
18 will expire on December 31, 2019, unless renewed.

19 JURISDICTION

20 5. Accusation No. 79/17-20391 was filed before the Director, and is currently pending
21 against Respondent. The Accusation and all other statutorily required documents were properly
22 served on Respondent on May 29, 2018. Respondent timely filed its Notice of Defense
23 contesting the Accusation.

24 6. A copy of Accusation No. 79/17-20391 is attached as exhibit A and incorporated
25 herein by reference.

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1 ADVISEMENT AND WAIVERS

2 7. Respondent has carefully read, and understands the charges and allegations in
3 Accusation No. 79/17-20391. Respondent has also carefully read, and understands the effects of
4 this Stipulated Settlement and Disciplinary Order.

5 8. Respondent is fully aware of its legal rights in this matter, including the right to a
6 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
7 its own expense; the right to confront and cross-examine the witnesses against them; the right to
8 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
9 the attendance of witnesses and the production of documents; the right to reconsideration and
10 court review of an adverse decision; and all other rights accorded by the California
11 Administrative Procedure Act and other applicable laws.

12 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
13 every right set forth above.

14 CULPABILITY

15 10. Respondent admits the truth of each and every charge and allegation in Accusation
16 No. 79/17-20391.

17 11. Respondent agrees that its Automotive Repair Dealer Registrations and Smog Check-
18 Test Only Station Licenses are subject to discipline and they agree to be bound by the Director's
19 probationary terms as set forth in the Disciplinary Order below.

20 RESERVATION

21 12. The admissions made by Respondent herein are only for the purposes of this
22 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
23 Automotive Repair, or other professional licensing agency is involved, and shall not be
24 admissible in any other criminal or civil proceeding.

25 CONTINGENCY

26 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
27 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
28 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of

1 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
2 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
3 that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the
4 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
5 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
6 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
7 Director shall not be disqualified from further action by having considered this matter.

8 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
9 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
10 signatures thereto, shall have the same force and effect as the originals.

11 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
14 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
16 writing executed by an authorized representative of each of the parties.

17 16. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Director may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 282268
22 and Smog Check-Test Only Station License No. TC 282268 issued to Respondent Smog Center
23 LLC, dba Green Smog Check, Indranil Vikas Chitre, Leiboff Family Trust, Angela Leslie
24 D'Agosta, Members ("Respondent") are revoked. However, the revocation is stayed and
25 Respondent is placed on probation for five (5) years on the following terms and conditions.

26 IT IS FURTHER HEREBY ORDERED that Automotive Repair Dealer Registration Nos.
27 ARD 275273, ARD 275792 and ARD 286297 and Smog Check-Test Only Station License Nos.
28 TC 275273, TC 275792 and TC 286297 issued to Respondent are revoked. However, the

1 revocation is stayed and Respondent is placed on probation for three (3) years on the following
2 terms and conditions.

3 IT IS FURTHER HEREBY ORDERED that if Automotive Repair Dealer Registration No.
4 ARD 275032 and Smog Check-Test Only Station License No. TC 275032 is/are renewed by
5 December 31, 2021, the license(s) will be revoked, however, the revocation will be stayed and
6 Respondent will be placed on probation for three years that will commence on the date of
7 renewal.

8 1. **Obey All Laws.** During the period of probation, Respondent shall comply with all
9 federal and state statutes, regulations and rules governing all BAR registrations and licenses held
10 by Respondent.

11 2. **Posting of Sign.** During the period of suspension, Respondent shall prominently post
12 a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension
13 and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed
14 in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall
15 be approved by BAR and shall remain posted during the entire period of actual suspension.

16 3. **Quarterly Reporting.** During the period of probation, Respondent shall report either
17 by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no
18 more frequently than once each calendar quarter, on the methods used and success achieved in
19 maintaining compliance with the terms and conditions of probation.

20 4. **Report Financial Interests.** Respondent shall, within 30 days of the effective date
21 of the decision and within 30 days from the date of any request by BAR during the period of
22 probation, report any financial interest which any Respondent or any partners, officers, or owners
23 of any Respondent facility may have in any other business required to be registered pursuant to
24 Section 9884.6 of the Business and Professions Code.

25 5. **Access to Examine Vehicles and Records.** Respondent shall provide BAR
26 representatives unrestricted access to examine all vehicles (including parts) undergoing service,
27 inspection, or repairs, up to and including the point of completion. Respondent shall also provide
28 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

1 **6. Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of
2 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction
3 of California, Respondent shall notify BAR in writing within 10 days of the dates of departure
4 and return, and of the dates of cessation and resumption of business in California. All provisions
5 of probation other than cost reimbursement requirements, restitution requirements, training
6 requirements, and that Respondent obey all laws, shall be held in abeyance during any period of
7 time of 30 days or more in which Respondent is not residing or engaging in business within the
8 jurisdiction of California. All provisions of probation shall recommence on the effective date of
9 resumption of business in California. Any period of time of 30 days or more in which Respondent
10 is not residing or engaging in business within the jurisdiction of California shall not apply to the
11 reduction of this probationary period or to any period of actual suspension not previously
12 completed. Tolling is not available if business or work relevant to the probationary license or
13 registration is conducted or performed during the tolling period.

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

19 **8. Maintain Valid License.** Respondent shall, at all times while on probation, maintain
20 a current and active registration and/or license(s) with BAR, including any period during which
21 suspension or probation is tolled. If Respondent's registration or license is expired at the time the
22 decision becomes effective, the registration or license must be renewed by Respondent within 30
23 days of that date. If Respondent's registration or license expires during a term of probation, by
24 operation of law or otherwise, then upon renewal Respondent's registration or license shall be
25 subject to any and all terms and conditions of probation not previously satisfied. Failure to
26 maintain a current and active registration and/or license during the period of probation shall also
27 constitute a violation of probation.

28 ///

1 9. **Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair \$2,038.68
2 for the reasonable costs of the investigation and enforcement of case No. 79/17-20391.
3 Respondent shall make such payment as follows: Forty-eight (48) equal installments with the last
4 payment due twelve (12) months prior to the end of probation. Any agreement for a scheduled
5 payment plan shall require full payment to be completed no later than six (6) months before
6 probation terminates. Respondent shall make payment by check or money order payable to the
7 Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost
8 recovery payment for case No. 79/17-20391. Any order for payment of cost recovery shall
9 remain in effect whether or not probation is tolled. Probation shall not terminate until full cost
10 recovery payment has been made. BAR reserves the right to pursue any other lawful measures in
11 collecting on the costs ordered and past due, in addition to taking action based upon the violation
12 of probation.

13 10. **Completion of Probation.** Upon successful completion of probation, Respondent's
14 affected registration and/or license will be fully restored or issued without restriction, if
15 Respondent meets all current requirements for registration or licensure and has paid all
16 outstanding fees, monetary penalties, or cost recovery owed to BAR.

17 11. **License Surrender.** Following the effective date of a decision that orders a stay of
18 invalidation or revocation, if Respondent ceases business operations or is otherwise unable to
19 satisfy the terms and conditions of probation, Respondent may request that the stay be vacated.
20 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right
21 to evaluate the Respondent's request and to exercise discretion whether to grant the request or
22 take any other action deemed appropriate or reasonable under the circumstances. Upon formal
23 granting of the request, the Director will vacate the stay order and carry out the disciplinary order
24 provided in the decision. Respondent may not petition the Director for reinstatement of the
25 surrendered registration and/or license, or apply for a new registration or license under the
26 jurisdiction of BAR at any time before the date of the originally scheduled completion of
27 probation. If Respondent applies to BAR for a registration or license at any time after that date,
28 Respondent must meet all current requirements for registration or licensure and pay all

1 outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

2 12. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 282268 and
3 Smog Check-Test Only Station License No. TC 282268 are suspended for 7 consecutive days
4 beginning on the effective date of the Decision and Order.

5 ACCEPTANCE

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
7 stipulation and the effect it will have on my Automotive Repair Dealer Registrations, and Smog
8 Check-Test Only Station Licenses. I enter into this Stipulated Settlement and Disciplinary Order
9 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
10 Director of Consumer Affairs.

11
12 DATED: 3/6/19



13 SMOG CENTER LLC, DBA GREEN SMOG
14 CHECK, INDRANIL VIKAS CHITRE, LEIBOFF
15 FAMILY TRUST, ANGELA LESLIE D'AGOSTA
16 *Respondent*

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Director of Consumer Affairs.

20 Dated: 3/22/19

21 Respectfully submitted,

22 XAVIER BECERRA
23 Attorney General of California
24 GREGORY J. SALUTE
25 Supervising Deputy Attorney General



26 MOLLY E. SELWAY
27 Deputy Attorney General
28 *Attorneys for Complainant*

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Exhibit A

Accusation No. 79/17-20391

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Attorneys for Complainant

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14 **SMOG CHECK, INDRANIL VIKAS**
15 **CHITRE, LEIBOFF FAMILY TRUST,**
ANGELA LESLIE D'AGOSTA,
MEMBERS

A C C U S A T I O N

16 **2126 Hamner Ave., Unit 102**
17 **Norco, CA 92860**

18 **22041 Constanso St, Apt 103**
Woodland Hills, CA 91364

19 **Automotive Repair Dealer Registration No.**
20 **ARD 282268**

21 **Smog Check-Test Only Station License No.**
22 **TC 282268,**

23 **and**

24 **TAYLOR A. ZAPPULLA**
25 **811 Drake Ave.**
26 **Claremont, CA 91711**

27 **Smog Check Inspector License No. EO**
28 **637331**

Respondents.

1 Complainant alleges:

2 PARTIES

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

5 2. On or about December 16, 2015, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 282268 to Smog Center LLC, dba Green Smog Check,
7 Indranil Vikas Chitre, Leiboff Family Trust, Angela Leslie D'Agosta, Members (Respondent Green
8 Smog Check). The Automotive Repair Dealer Registration was in full force and effect at all times
9 relevant to the charges brought herein and will expire on December 31, 2018, unless renewed.

10 3. On or about December 29, 2015, the Bureau of Automotive Repair issued Smog
11 Check-Test Only Station License Number TC 282268 to Smog Center LLC, dba Green Smog
12 Check, Indranil Vikas Chitre, Leiboff Family Trust, Angela Leslie D'Agosta, Members
13 (Respondent Green Smog Check). The Smog Check-Test Only Station License was in full force
14 and effect at all times relevant to the charges brought herein and will expire on December 31,
15 2018, unless renewed.

16 4. On or about September 22, 2014, the Bureau of Automotive Repair issued Smog
17 Check Inspector License Number EO 637331 to Taylor A. Zappulla (Respondent Zappulla). The
18 Smog Check Inspector License was in full force and effect at all times relevant to the charges
19 brought herein and will expire on June 30, 2018, unless renewed.

20 JURISDICTION

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

23 6. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
24" "License" includes certificate, registration or other means to engage in a business or
25 profession regulated by the Code.

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1 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
3 the Motor Vehicle Inspection Program.

4 8. Section 44072.4 of the Health and Safety Code states:

5 The director may take disciplinary action against any licensee after a hearing
6 as provided in this article by any of the following:

7 (a) Imposing probation upon terms and conditions to be set forth by the
8 director.

9 (b) Suspending the license.

10 (c) Revoking the license.

11 9. Section 44072.2 of the Health and Safety Code states:

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

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

18 ...

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

20 ...

21 10. 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 of
23 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
24 Director of jurisdiction to proceed with disciplinary action.

25 11. Section 44072.7 of the Health and Safety Code states:

26 All accusations against licensees shall be filed within three years after the act
27 or omission alleged as the ground for disciplinary action, except that with respect to
28 an accusation alleging a violation of subdivision (d) of Section 44072.2, the
accusation may be filed within two years after the discovery by the bureau of the
alleged facts constituting the fraud or misrepresentation prohibited by that section.

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12. 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.

13. Section 44072.10 of the Health and Safety Code states:

(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee, pending a hearing conducted pursuant to subdivision (e), may temporarily suspend any smog check station or technician's license issued under this chapter, for a period not to exceed 60 days, if the department determines that the licensee's conduct would endanger the public health, safety, or welfare before the matter could be heard pursuant to subdivision (e), based upon reasonable evidence of any of the following:

(1) Fraud.

(2) Tampering.

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

(4) A pattern or regular practice of violating this chapter or any regulation, standard, or procedure of the department implementing this chapter.

...

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

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

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

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

14. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:

Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

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21. Section 9884.7 of the Code states:

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

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

...

(4) Any other conduct that constitutes fraud.

...

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

...

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

22. Section 44012 of the Health and Safety Code states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

1 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
2 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle
3 mode or loaded mode are tested in accordance with procedures prescribed by the
4 department. In determining how loaded mode and evaporative emissions testing
shall be conducted, the department shall ensure that the emission reduction targets
for the enhanced program are met.

5 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
6 system and crankcase ventilation system are tested to reduce any nonexhaust
7 sources of volatile organic compound emissions, in accordance with procedures
prescribed by the department.

8 (e) For diesel-powered vehicles, a visual inspection is made of emission
9 control devices and the vehicle's exhaust emissions are tested in accordance with
10 procedures prescribed by the department, that may include, but are not limited to,
onboard diagnostic testing. The test may include testing of emissions of any or all
11 of the pollutants specified in subdivision (c) and, upon the adoption of applicable
standards, measurement of emissions of smoke or particulates, or both.

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

15 (g) A determination as to whether the motor vehicle complies with the
16 emission standards for that vehicle's class and model-year as prescribed by the
department.

17 (h) An analysis of pass and fail rates of vehicles subject to an onboard
18 diagnostic test and a tailpipe test to assess whether any vehicles passing their
onboard diagnostic test have, or would have, failed a tailpipe test, and whether any
19 vehicles failing their onboard diagnostic test have or would have passed a tailpipe
20 test.

21 (i) The test procedures may authorize smog check stations to refuse the
22 testing of a vehicle that would be unsafe to test, or that cannot physically be
inspected, as specified by the department by regulation. The refusal to test a vehicle
23 for those reasons shall not excuse or exempt the vehicle from compliance with all
applicable requirements of this chapter.

24 23. Section 44015 of the Health and Safety Code states:

25 (a) A licensed smog check station shall not issue a certificate of compliance,
26 except as authorized by this chapter, to any vehicle that meets the following
criteria:

27 (1) A vehicle that has been tampered with.
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(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

24. Section 44059 of the Health and Safety Code states:

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

REGULATORY PROVISIONS

25. California Code of Regulations, title 16, section 3340.24, subdivision (c) states:

....

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

26. California Code of Regulations, title 16, section 3340.30 states:

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

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

27. California Code of Regulations, title 16, section 3340.35 provides, in pertinent part, that a licensed station shall issue a certificate of compliance . . . 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.

28. California Code of Regulations, title 16, section 3340.41 states, in part:

....

(b) No person shall enter into the emissions inspection system any access or qualification number other than as authorized by the bureau, nor in any way tamper with the emissions inspection system.

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

6

7 29. California Code of Regulations, title 16, section 3340.42 provides, in part, that smog
8 check stations and smog check technicians shall conduct tests and inspections in accordance with
9 the Bureau's BAR 97 Emission Inspection System Specifications and/or the On Board Data
10 Inspection System referenced in subsections (a) and (b) of Section 3340.17.

11 30. California Code of Regulations, title 16, section 3340.42.2 states:

12 (c) Starting on or after January 1, 2013, OBD equipped vehicles shall fail
13 the OBD inspection if any one of the following conditions occurs as applicable to the
14 vehicle:

15 ...

16 (7) The vehicle's OBD system data is inappropriate for the vehicle being
17 tested;

18 (8) The vehicle's OBD system data does not match the original equipment
19 manufacturer (OEM) or an Air Resources Board (ARB) exempted OBD software
20 configuration....

21 COSTS

22 31. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.

28 CLEAN PLUGGING

32. At all times alleged in this Accusation, Respondent Zappulla was acting in the course
and within the scope of a technician, employee, partner, officer, or member of Respondent Green
Smog Check.

///

1 33. The On-Board Diagnostics – Generation II (OBD II) communication protocol
2 describes the specified communication “language” used by the OBD II system electronic control
3 unit to communicate to scan tools and other devices such as the On-Board Diagnostic Inspection
4 System (OIS). The communication protocol is programmed into the OBD II system electronic
5 control unit during manufacture and does not change.

6 34. Parameter Identifications (PID) are data points reported by the OBD II system
7 electronic control unit to the scan tool or OIS. Examples of PIDs are engine speed (rpm), vehicle
8 speed, engine temperature, and other input and output values utilized by the OBD II system
9 electronic control unit. The PID count is the number of data points reported by the OBD II
10 system electronic control unit and is programmed during manufacture.

11 35. The Vehicle Identification Number (VIN) that is physically present on all vehicles is
12 also required to be programmed into the vehicle’s OBD II on 2005 and newer vehicles, and on
13 many occasions was programmed into the OBD II system electronic control unit in earlier model-
14 years. This electronically programmed VIN, also known as the “eVIN,” is captured by BAR during
15 a Smog Check, and should match the physical VIN on the vehicle.

16 36. During a Bureau representative’s review of Respondents’ certified test results in the
17 Vehicle Information Database (VID) for inspections purportedly performed on the OIS between
18 January 2017, and December 2017, six (6) vehicles identified below had deviations in one or more
19 of the following: eVIN, incorrect vehicle communication protocol, and/or incorrect PID count.
20 This indicates that the vehicles receiving smog certificates were fraudulently tested during the
21 smog check inspection by a method known as Clean Plugging.¹ A detailed explanation of each
22 fraudulent smog check is as follows:

23 **37. Clean Plug No. 1:**

24 On or about January 5, 2017, between 12:25 p.m. and 12:44 p.m., a 2002 Ford Mustang,
25 VIN 1FAPP44412F119823, CA License 6LTP816 was inspected. A Certificate of Compliance

26 ¹ To “clean plug” a vehicle, the technician uses another vehicle’s properly functioning OBD
27 II system, or another source, to generate passing diagnostic readings for the purpose of issuing
28 fraudulent smog certificates of compliance to vehicles that are not in smog compliance or not
present during the certified test.

1 was issued by Respondent Green Smog Check using license EO 637331, belonging to Smog
2 Check Inspector Zappulla. OIS Test Details for the 2002 Ford Mustang showed an incorrect
3 eVIN reported as 1ZVHT80NX95110328, the protocol reported as ICAN11bt5, and the PID
4 count was 47. Comparative OIS Test Data for One Thousand (1000)² 2002 Ford Mustang
5 vehicles shows that 98.4% report the correct eVIN, have a communication protocol of JPWM,
6 and report a PID count of 21.

7 On or about June 17, 2015, another licensed smog check facility performed a smog check
8 inspection on the 2002 Ford Mustang, VIN 1FAPP44412F119823, CA License 6LTP816. The
9 OIS Test Data shows the vehicle failed the inspection, transmitted the correct eVIN, had the
10 expected communication protocol JPWM, and transmitted a PID count of 21.

11 The OIS Test Data shows that a 2009 Ford Mustang, VIN 1ZVHT80NX95110328, was the
12 vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2002 Ford
13 Mustang. The 2009 Ford Mustang was certified under Respondent Zappulla on the same day,
14 January 5, 2017, as the fraudulent inspection of the 2002 Ford Mustang. The OIS Test Data
15 transmitted for the 2009 Ford Mustang matches the OIS Test Data for the fraudulent inspection of
16 the 2002 Ford Mustang for the eVIN, Protocol and PID count.

17 The discrepancies in the OIS Test Data prove that Green Smog Check's OIS Data
18 Acquisition Device (DAD) was not connected to the 2002 Ford Mustang being certified, resulting
19 in the issuance of a fraudulent Certificate of Compliance.

20 **38. Clean Plug No. 2:**

21 On or about August 8, 2017, between 1:12 p.m. and 1:19 p.m., a 2002 GMC Yukon XL
22 C1500, VIN 1GKEC16T22J235277, CA License No. 4WJH464 was inspected. A Certificate of
23 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
24 Smog Check Inspector Zappulla. OIS Test Details for the 2002 GMC Yukon XL C1500 showed
25 an incorrect eVIN reported as 1GCRCE01CZ306997, the protocol reported as ICAN11bt5, and
26 the PID count was 45|7|8. Comparative OIS Test Data for Seven Hundred Six (706), 2002 GMC

27 ² This number is based on the most recent available total number of similar vehicles tested
28 statewide, or up to one thousand (1000).

1 Yukon XL C1500 vehicles shows that 96% report the correct eVIN, have a communication
2 protocol of JVPW, and report a PID count of 22.

3 On or about May 16, 2017, another licensed smog check facility performed a smog check
4 inspection on the 2002 GMC Yukon XL C1500, VIN 1GKEC16T22J235277, CA License No.
5 4WJH464. The OIS Test Details shows the vehicle failed the inspection, transmitted the correct
6 eVIN, had the expected communication protocol JVPW and transmitted a PID count of 22.

7 The OIS Test Data shows that a 2012 Chevrolet Silverado C1500 LT, VIN
8 1GCRSE01CZ306997, was the vehicle used to generate the fraudulent Smog Certificate of
9 Compliance for the 2002 GMC Yukon XL C1500. The 2012 Chevrolet Silverado C1500 LT was
10 certified under Respondent Green Smog Check using license EO 637331, belonging to Smog
11 Check Inspector Zappulla on or about August 5, 2017. The OIS Test Data transmitted for the
12 2012 Chevrolet Silverado C1500 LT matches the OIS Test Data for the fraudulent inspection of
13 the 2002 GMC Yukon XL C1500 for the eVIN, Protocol and PID Count.

14 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
15 connected to the 2002 GMC Yukon XL C1500 being certified, resulting in the issuance of a
16 fraudulent Certificate of Compliance.

17 **39. Clean Plug No. 3:**

18 On or about November 10, 2017, between 8:26 a.m. and 8:33 a.m., a 2005 Toyota Prius,
19 VIN JTDKB20U653111322, CA License No. 5RRW679 was inspected. A Certificate of
20 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
21 Smog Check Inspector Zappulla. OIS Test Details for the 2005 Toyota Prius showed an incorrect
22 eVIN reported as 1HGCR2F32FA150065, the protocol reported as ICAN29bt5, and the PID
23 count was 39. Comparative OIS Test Data for One Thousand (1000) 2005 Toyota Prius vehicles
24 shows that 100% report the correct eVIN, have a communication protocol of ICAN11bt5, and
25 report a PID count of 34, or 37|21|17, or 37|21|5.

26 On or about March 17, 2016, another licensed smog check facility performed a smog check
27 inspection on the 2005 Toyota Prius, VIN JTDKB20U653111322, CA License No. 5RRW679.

1 The OIS Test Details shows the vehicle transmitted the correct eVIN, had the expected
2 communication protocol ICAN11bt5 and transmitted a PID count of 37|21|17.

3 The DMV registration information indicates VIN 1HGCR2F32FA150065 corresponds to a
4 2015 Honda Accord, and not a 2005 Toyota Prius.

5 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
6 connected to the 2005 Toyota Prius being certified, resulting in the issuance of a fraudulent
7 Certificate of Compliance.

8 **40. Clean Plug No. 4:**

9 On or about November 10, 2017, between 1:51 p.m. and 1:55 p.m., a 2001 Ford Escape
10 XLT, VIN 1FMYU03171KF92686, CA License No. 4SJL573 was inspected. A Certificate of
11 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
12 Smog Check Inspector Zappulla. OIS Test Details for the 2001 Ford Escape XLT showed an
13 incorrect eVIN reported as 1HGCR2F32FA150065, the protocol reported as ICAN29bt5, and the
14 PID count was 39. Comparative OIS Test Data for One Thousand (1000) 2001 Ford Escape XLT
15 vehicles shows that 98% report the correct eVIN, have a communication protocol of JPWM, and
16 report a PID count of 20.

17 On or about July 31, 2017, another licensed smog check facility performed a smog check
18 inspection on the 2001 Ford Escape XLT, VIN 1FMYU03171KF92686, CA License No.
19 4SJL573. The OIS Test Details shows the vehicle failed the inspection, transmitted the correct
20 eVIN, had the expected communication protocol JPWM and transmitted a PID count of 20.

21 The DMV registration information indicates VIN 1HGCR2F32FA150065 corresponds to a
22 2015 Honda Accord, and not a 2001 Ford Escape XLT.

23 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
24 connected to the 2001 Ford Escape XLT being certified, resulting in the issuance of a fraudulent
25 Certificate of Compliance.

26 ///

27 ///

28 ///

1 **41. Clean Plug No. 5:**

2 On or about November 18, 2017, between 11:34 a.m. and 11:39 a.m., a 2000 Mercedes-
3 Benz S 500, VIN WDBNG75J4YA101803, CA License No. PGAW was inspected. A Certificate
4 of Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging
5 to Smog Check Inspector Zappulla. OIS Test Details for the 2000 Mercedes-Benz S 500 showed
6 an incorrect eVIN reported as 1HGCR2F32FA150065, the protocol reported as ICAN29bt5, and
7 the PID count was 39. Comparative OIS Test Data for One Thousand (1000), 2000 Mercedes-
8 Benz S 500 vehicles shows that 98.7% do not report an eVIN, have a communication protocol of
9 I914, and report a PID count of 21.

10 On or about June 25, 2016, another licensed smog check facility performed a smog check
11 inspection on the 2000 Mercedes-Benz S 500, VIN WDBNG75J4YA101803, CA License No.
12 PGAW. The OIS Test Details shows the vehicle did not transmit an eVIN, had the expected
13 communication protocol I914 and transmitted a PID count of 21.

14 DMV registration information indicates VIN 1HGCR2F32FA150065 corresponds to a 2015
15 Honda Accord, not a 2000 Mercedes-Benz S 500.

16 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
17 connected to the 2000 Mercedes-Benz S 500 being certified, resulting in the issuance of a
18 fraudulent Certificate of Compliance.

19 **42. Clean Plug No. 6:**

20 On or about December 11, 2017, between 1:05 p.m. and 1:09 p.m., a 2005 Chevrolet Astro,
21 VIN 1GNDM19X65B111750, CA License No. 5LDU460 was inspected. A Certificate of
22 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
23 Smog Check Inspector Zappulla. OIS Test Details for the 2005 Chevrolet Astro showed an eVIN
24 was not reported, the protocol reported as I914, and the PID count was 16. Comparative OIS
25 Test Data for Seven Hundred Sixty-Two (762), 2005 Chevrolet Astro vehicles shows that 99.2%
26 report the eVIN, have a communication protocol of JVPW, and report a PID count of 21.

27 ///

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1 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
2 connected to the 2005 Chevrolet Astro being certified, resulting in the issuance of a fraudulent
3 Certificate of Compliance.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statement)**

6 43. Complainant re-alleges and incorporates by reference the allegations set forth above in
7 the foregoing paragraphs.

8 44. Respondent Green Smog Check's Registration is subject to disciplinary action under
9 section 9884.7, subdivision (a)(1), in that Respondent Green Smog Check made or authorized
10 statements which Respondent Green Smog Check knew or in the exercise of reasonable care
11 should have known to be untrue or misleading.

12 45. Respondent Green Smog Check certified that the vehicles listed in paragraphs 37-42,
13 had passed inspection and were in compliance with all applicable laws and regulations, when in
14 fact and in truth, Respondent Green Smog Check inspected the vehicles using the clean plugging
15 method to issue fraudulent certificates of compliance.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Violation of Motor Vehicle Inspection Program)**

18 46. Complainant re-alleges and incorporates by reference the allegations set forth above in
19 the foregoing paragraphs.

20 47. Respondent Green Smog Check's Smog Check Station License is subject to
21 disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that
22 Respondent Green Smog Check failed to comply with the following sections of that Code:

23 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
24 on the vehicles listed in paragraphs 37-42, in accordance with procedures prescribed by the
25 Department.

26 b. **Section 44015, subd. (a) and (b)**: issued a certificate of compliance for the vehicles
27 listed in paragraphs 37-42, without properly testing and inspecting them to determine if they were
28 in compliance with Health & Safety Code section 44012.

1 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
2 equipment, performance, or conduct by failing to properly perform a smog inspection on the
3 vehicles listed in paragraphs 37-42 or certifying that such tests had been performed, when in fact
4 they were never performed.

5 **THIRD CAUSE FOR DISCIPLINE**

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

7 48. Complainant re-alleges and incorporates by reference the allegations set forth above in
8 the foregoing paragraphs.

9 49. Respondent Green Smog Check's Smog Check Station License is subject to
10 disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that
11 Respondent Green Smog Check failed to comply with the following sections of Title 16, California
12 Code of Regulations:

13 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles listed in
14 paragraphs 37-42, in accordance with the procedures specified in section 3340.42 of the
15 Regulations and failed to ensure that the vehicles had all the required emission control equipment
16 and devices installed and functioning correctly.

17 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
18 System false information about the vehicles listed in paragraphs 37-42, providing results for smog
19 inspections which were not actually performed.

20 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles listed in
21 paragraphs 37-42, in accordance with the Bureau's specifications.

22 d. **Section 3340.45**: failed to conduct the required smog tests on the vehicles listed in
23 paragraphs 37-42, in accordance with the Smog Check Manual, dated 2013.

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 50. Complainant re-alleges and incorporates by reference the allegations set forth above in
27 the foregoing paragraphs.

28

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 54. Complainant re-alleges and incorporates by reference the allegations set forth above in
4 the foregoing paragraphs.

5 55. Respondent Zappulla's license is subject to disciplinary action under Health and Safety
6 Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that Respondent
7 Zappulla failed to comply with the following sections of Title 16, California Code of Regulations:

8 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles listed in
9 paragraphs 37-42, in accordance with the procedures specified in section 3340.42 of the
10 Regulations and failed to ensure that the vehicles listed in paragraphs 37-42, had all the required
11 emission control equipment and devices installed and functioning correctly.

12 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
13 System false information about the vehicles listed in paragraphs 37-42, providing results for smog
14 inspections which were not actually performed.

15 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles listed in
16 paragraphs 37-42, in accordance with the Bureau's specifications.

17 d. **Section 3340.45**: failed to conduct the required smog tests on the vehicles listed in
18 paragraphs 37-42, in accordance with the Smog Check Manual, dated 2013.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 56. Complainant re-alleges and incorporates by reference the allegations set forth above in
22 the foregoing paragraphs.

23 57. Respondent Zappulla's license is subject to disciplinary action under Health and Safety
24 Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Respondent
25 Zappulla committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a
26 smog certificate of compliance for the vehicles listed in paragraphs 37-42, without performing
27 bona fide inspections of the emission control devices and systems on the vehicles, thereby
28

1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **OTHER MATTERS**

4 58. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or
5 place on probation the registration for all places of business operated in this State by Respondent
6 Green Smog Check upon a finding that Respondent has, or is, engaged in a course of repeated and
7 willful violations of the laws and regulations pertaining to an automotive repair dealer.

8 59. Under Health & Safety Code section 44072.8, if Respondent Green Smog Check's
9 Smog Check Station License is revoked or suspended, the Director may likewise revoke or
10 suspend any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and
11 Safety Code in the name of Respondent Green Smog Check.

12 60. Under Health & Safety Code section 44072.8, if Respondent Zappulla's Smog Check
13 Inspector License is revoked or suspended, the Director may likewise revoke or suspend any
14 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in
15 the name of Respondent Zappulla.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 282268, issued to Smog Center LLC, dba Green Smog Check, Indranil Vikas Chitre, Leiboff
21 Family Trust, Angela Leslie D'Agosta, Members;

22 2. Revoking or suspending any other ARD registrations in the name of Smog Center,
23 LLC;

24 3. Revoking or suspending Smog Check-Test Only Station License Number TC 282268,
25 issued to Smog Center LLC, dba Green Smog Check, Indranil Vikas Chitre, Leiboff Family Trust,
26 Angela Leslie D'Agosta, Members;

27 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
28 Division 26 of the Health and Safety Code in the name of Smog Center, LLC;

1 5. Revoking or suspending Smog Check Inspector License Number EO 637331, issued
2 to Taylor A. Zappulla;

3 6. 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 Taylor A. Zappulla;

5 7. Ordering Smog Center LLC, dba Green Smog Check, Indranil Vikas Chitre, Leiboff
6 Family Trust, Angela Leslie D'Agosta, Members and Taylor A. Zappulla to pay the Bureau of
7 Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant
8 to Business and Professions Code section 125.3; and,

9 8. Taking such other and further action as deemed necessary and proper.

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DATED: May 25, 2018



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

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