

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 KIM M. SETTLES  
Deputy Attorney General  
4 State Bar No. 116945  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2138  
Facsimile: (510) 622-2270  
7 E-mail: kim.settles@doj.ca.gov  
*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/16-147

13 **MICHAEL JAMES ESPINOZA, OWNER**  
14 **DOING BUSINESS AS A DISCOUNT**  
**SMOG CHECK CENTER #1**  
15 **1051 Airway Blvd.**  
**Livermore, CA 94551**

**A C C U S A T I O N**

16 **Automotive Repair Dealer Registration No.**  
**ARD 243376**

17 **Smog Check Station License No. TC 243376**

18 **MICHAEL JAMES ESPINOZA**  
19 **1051 Airway Blvd.**  
**Livermore, CA 94551**

20 **Smog Check Inspector License No. EO**  
21 **141208**

22 **Smog Check Repair Technician License No.**  
23 **E1141208**

24 Respondent.

25 Complainant alleges:

26 **PARTIES**

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



1 registration temporarily or permanently.

2 8. Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
3 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
4 Automotive Repair Act.

5 9. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
6 license by operation of law by order or decision of the Director or a court of law, or the voluntary  
7 surrender of a license shall not deprive the director of jurisdiction to proceed with any disciplinary  
8 proceedings.

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

12 11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
13 expiration or suspension of a license by operation of law, or by order or decision of the Director of  
14 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the  
15 Director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings  
16 against the licensee, or to render a decision suspending or revoking the license.

17 **STATUTORY/REGULATORY PROVISIONS**

18 12. Section 9884.7 of the Code states:

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

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

27 . . . .

28 (4) Any other conduct which constitutes fraud.

1 . . . .

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

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

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

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

11 . . . .

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

13 14. Section 44032 of the Health and Safety Code states:

14 "No person shall perform, for compensation, tests or repairs of emission control devices or  
15 systems of motor vehicles required by this chapter unless the person performing the test or repair  
16 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
17 station. Qualified technicians shall perform tests of emission control devices and systems in  
18 accordance with Section 44012."

19 15. Section 44012 of the Health and Safety Code states, in pertinent part:

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

24 . . . .

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

1 16. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:  
2 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by  
3 section 3340.45.

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

6 . . .

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

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

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

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

17 17. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

18 "A smog check technician shall comply with the following requirements at all times while  
19 licensed.

20 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
21 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
22 3340.42 of this article."

23 **COST RECOVERY**

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

1 included in a stipulated settlement.

2 **FACTUAL ALLEGATIONS**

3 19. On November 18, 2015, Bureau representative Matthew Rodriguez reviewed the OIS  
4 (“On Board Diagnostic Inspection System”) smog check data for vehicles inspected and certified  
5 by A Discount Smog Check Center #1, for the period between December 4, 2013 and November  
6 30, 2015. During Rodriguez’ investigation, he accessed the Vehicle Information Database  
7 (“VID”), and performed a focused review of BAR-OIS test data for A Discount Smog Check  
8 Center #1. BAR-OIS test data is the OBD (“On Board Diagnostics System”) information  
9 transmitted during a smog inspection from the computer of the vehicle being inspected to the  
10 BAR-OIS. Beginning March 9, 2015, California’s Smog Check Program was updated and now  
11 requires smog inspectors and stations to use the BAR-OIS computer system during smog  
12 inspections, for most model year 2000 and newer gasoline and hybrid vehicles, and most 1998 and  
13 new diesel vehicles. The BAR-OIS consists of a BAR-certified Data Acquisition Device (“DAD”),  
14 computer, bar code scanner, and printer. The DAD serves as an on-board diagnostic (“OBD”)  
15 scan tool. The DAD is an interface box that connects the computer containing the BAR-OIS  
16 software to the diagnostic link connector (“DLC”) of the vehicle being inspected. When requested  
17 by the BAR-OIS software, the DAD retrieves data from the vehicle’s on-board computer system  
18 (“OBD II”).

19 20. The information obtained by the BAR-OIS software during a smog inspection is  
20 organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS  
21 Test Detail. The BAR-OIS Test Detail contains information segregated into eight different blocks  
22 titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII Details,  
23 OBDII Readiness Monitor Status, and OBDII DTC Details. For the purposes of Rodriguez’  
24 investigation of Respondent A Discount Smog Check Center #1, he focused on information in the  
25 “Vehicle” and “OBDII Details” blocks because they contain a unique combination of information  
26 for the vehicle being inspected and “like vehicles” inspected. Like vehicles are vehicles of the same  
27 manufacturer, model, and model year that were inspected on the BAR-OIS. The unique  
28 combination of information analyzed by Rodriguez includes the eVIN (“Electronic Vehicle

1 Identification Number”), PID (“Parameter Identification”) count, and communication protocol.  
2 Rodriguez compared the eVIN, communication protocol, and PID count for a vehicle that was  
3 certified to like vehicles.

4 21. Rodriguez identified a 2001 Mazda MVP Wagon certified by Respondents, A  
5 Discount Smog Check Center #1 and Mark Thomas Espinoza, on August 12, 2015, using the  
6 OBDII of a 2011 Ford Edge ESL. The OIS Data transmitted during Mark Thomas Espinoza’s  
7 inspection showed a discrepancy in the communication protocol and PID, the smog check  
8 inspection test history for the Mazda MPV Wagon, and the OIS Inspection data for the 2011 Ford  
9 Edge SEL.

10 22. Rodriguez’ review of the BAR-OIS data for the Mazda MVP Wagon certified by  
11 Respondents, A Discount Smog Check Center #1 and Mark Thomas Espinoza, as set forth in  
12 paragraph 32, above, constitutes a fraudulent smog inspection that resulted in the issuance of a  
13 fraudulent certificate of compliance. Respondent, Mark Thomas Espinoza therefore clean plugged  
14 the Mazda MVP Wagon, resulting in Respondent, A Discount Smog Check Center #1 issuing a  
15 fraudulent Certificate of Compliance on August 12, 2015.

16 23. Rodriguez identified a 1999 Ford F350 Diesel certified by Respondents, A Discount  
17 Smog Check Center #1 and Michael James Espinoza on May 18, 2015, using an EIS (“Emission  
18 Inspection System”) when and inspection using an OIS was required.

19 **FIRST CAUSE FOR DISCIPLINE**

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

21 24. Respondent, Michael James Espinoza has subjected his Smog Check Inspector and  
22 Smog Check Repair Technician Licenses to disciplinary action pursuant to Health and Safety Code  
23 section 44072.2, subdivision (a) and (c), in that he failed to perform a smog inspection in  
24 accordance with procedures prescribed by the department, as set forth in paragraph 23, above.

25 The circumstances are as follows:

26 a. **Health & Safety Code, section 44012:** Respondent, Michael James Espinoza failed  
27 to follow test procedures prescribed by the department when he issued a certificate of certification  
28

1 to a vehicle, using the Emission Inspection System ("EIS") when the vehicle was required to be  
2 certified using the On Board Diagnostic Inspection System.

3 **b. Health & Safety Code, section 44032:** Respondent, Michael James Espinoza failed  
4 to ensure that the emission control tests were performed in accordance with the procedures  
5 prescribed by the department.

6 **c. Cal. Code Regs., tit. 16, section 3340.30, subdivision (a):** Respondent, Michael  
7 James Espinoza failed to inspect and test a vehicle in accordance with Health & Safety Code  
8 sections 44012.

9 **d. Cal. Code Regs., tit. 16, section 3340.42, subdivision (a)(3):** Respondent, Michael  
10 James Espinoza failed to perform an OBD-focused test on gasoline powered vehicles 2000 model  
11 year and newer and diesel-powered vehicles 1998 model year and newer.

12 **SECOND CAUSE FOR DISCIPLINE**

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

14 25. Respondent, Michael James Espinoza has subjected his Smog Check Inspector and  
15 Smog Check Repair Technician Licenses to disciplinary action pursuant to Health and Safety Code  
16 section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud, or deceit,  
17 whereby another was injured, when he failed to perform an OBD-focused test as required, and  
18 instead performed a smog test using the EIS, as set forth in paragraphs 23, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Making or Authorizing Untrue or Misleading Statements)**

21 26. Respondent, Michael James Espinoza, owner, doing business as A Discount Smog  
22 Check, has subjected its Automotive Repair Dealer Registration and Smog Check Center #1  
23 Station License to disciplinary action pursuant to Business and Professions Code section 9884.7,  
24 subdivision (a)(1), in that it issued two fraudulent certificates of compliance and failed to comply  
25 with the Automotive Repair Act as set forth in paragraphs 21-23, above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 27. Respondent, Michael James Espinoza, owner, doing business as A Discount Smog  
4 Check Center #1, has subjected its Automotive Repair Dealer Registration and Smog Check  
5 Station License to disciplinary action pursuant to Business and Professions Code section 9884.7,  
6 subdivision (a)(4), in that it issued two fraudulent certificates of compliance as set forth in  
7 paragraphs 21-23, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with the Automotive Repair Act)**

10 28. Respondent, Michael James Espinoza, owner, doing business as A Discount Smog  
11 Check Center #1, has subjected its Automotive Repair Dealer Registration and Smog Check  
12 Station License to disciplinary action pursuant to Business and Professions Code section 9884.7,  
13 subdivision (a)(6) and Health and Safety Code section 44072.2, subdivisions (a) and (c), in that it  
14 failed to comply with the Automotive Repair Act and sections of the Code and applicable  
15 regulations as set forth in paragraphs 21-23 , above. The violations are as follows:

16 a. **Health & Safety Code, section 44012:** Respondent, Michael James Espinoza,  
17 owner, doing business as A Discount Smog Check Center #1, failed to follow test procedures  
18 prescribed by the department when it issued a certificate of compliance to a vehicle, using the  
19 Emission Inspection System ("EIS") when the vehicle was required to be certified using the On  
20 Board Diagnostic Inspection System.

21 b. **Health & Safety Code, section 44012, subdivision (f):** Respondent, Michael James  
22 Espinoza, owner, doing business as A Discount Smog Check Center #1, failed to follow test  
23 procedures in accordance with the OIS specifications when it failed to properly conduct the  
24 functional portion of the smog inspection by failing to connect two vehicles to the BAR-OIS when  
25 they were being certified.

26 c. **Health & Safety Code, section 44032:** Respondent, Michael James Espinoza,  
27 owner, doing business as A Discount Smog Check Center #1, failed to ensure that the emission  
28 control tests were performed in accordance with the procedures prescribed by the department.



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

DATED: 7-12-16

 FOR

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

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