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

12 In the Matter of the Accusation Against:

Case No. *79/14-29*

13 **FAST SMOG**
14 **3030 S. Winchester Blvd., #A**
15 **Campbell, CA 95008**
16 **ERIK M. JOYCE, OWNER**
Automotive Repair Dealer Registration No.
ARD248304
Smog Check-Test Only Station License No.
TC248304

ACCUSATION

Smog Check

17 Respondent.

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19
20 Complainant alleges:

21 PARTIES

- 22 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
23 the Acting Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
- 24 2. On or about November 20, 2006, the Bureau of Automotive Repair issued
25 Automotive Repair Dealer Registration Number ARD248304 to Erik M. Joyce, doing business as
26 Fast Smog (Respondent). The license expires on or about November 30, 2013, unless renewed.

1 11. Code section 477 provides, in pertinent part, that “Board” includes “bureau,”
2 “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and
3 “agency.” “License” includes certificate, registration or other means to engage in a business or
4 profession regulated by the code.

5 STATUTORY AND REGULATORY PROVISIONS

6 12. Section 9884.7 of the Code states:

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

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

15 . . .

16 “(4) Any other conduct that constitutes fraud.

17 . . .

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

20 13. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

21 “No person shall enter into the emissions inspection system any vehicle identification
22 information or emission control system identification data for any vehicle other than the one being
23 tested. Nor shall any person knowingly enter into the emissions inspection system any false
24 information about the vehicle being tested.”

25 14. California Code of Regulations, title 16, section 3340.42, states that smog check
26 stations and smog check technicians shall conduct tests and inspections in accordance with the
27 Bureau’s BAR-97 Emissions Inspection System Specifications referenced in subsections (a) and
28 (b) of Section 3340.17, as well as section 3340.42.

1 15. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

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

6 16. Health and Safety Code section 44012 states, in pertinent part:

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

18 . . .

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

23 17. Health and Safety Code section 44015, states, in pertinent part:

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

26 "(1) A vehicle that has been tampered with.

27 "(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of
28 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision

1 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error
2 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,
3 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a
4 referee or another smog check station.

5 “(3) A vehicle that, prior to repairs, has been initially identified by the smog check station
6 as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated
7 test-only facility, or a test-and-repair station that is both licensed and certified pursuant to
8 Sections 44014 and 44014.2.

9 “(4) A vehicle described in subdivision (c).

10 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
11 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”

12 18. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

19 . . .

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

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

22 COST RECOVERY

23 19. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
24 administrative law judge to direct a licensee found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

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UNDERCOVER OPERATION – APRIL 3, 2013

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2 20. On or about April 3, 2013, a Bureau undercover operator (“operator”) drove a Bureau
3 documented 1992 Toyota to Respondent’s facility and requested a smog inspection. The Pulsed
4 Secondary Air Injection System (“PAIR”)/Air Suction System Reed Valve, Air Intake Hose, and
5 Exhaust Pipe Tube on the Toyota had previously been removed, causing the vehicle to be
6 incapable of passing a smog inspection. An Advanced Emission Specialist Technician
7 (“technician”) at Fast Smog performed the inspection. Respondent issued Certificate of
8 Compliance No. [REDACTED], wherein the technician certified that he had tested and inspected the
9 vehicle and that it was in compliance with applicable laws and regulations. The operator paid the
10 technician \$60.00 and was provided with a copy of Invoice number [REDACTED] and a Vehicle
11 Inspection Report (“VIR”).

12 21. Between April 10, 2013, and April 12, 2013, after the undercover operation, the
13 Bureau re-inspected the Toyota and verified that the PAIR/Air Suction System Reed Valve
14 assembly and pipe were still missing from the vehicle. The Bureau performed a smog inspection
15 and verified that the Toyota still failed the smog inspection due to the missing PAIR/Air Suction
16 System Reed Valve assembly and pipe. Thus, the 1992 Toyota could not have passed the visual
17 portion of a properly performed smog inspection on April 3, 2013, because the PAIR/Air Suction
18 System Reed Valve assembly and pipe had been removed.

FIRST CAUSE FOR DISCIPLINE

(Untrue Misleading Statements)

(Bus. & Prof. Code § 9884.7, subd. (a)(1))

19
20
21 22. Respondent has subjected its registration to disciplinary action under Code section
22 9884.7, subdivision (a)(1), in that on or about April 3, 2013, Respondent made or authorized
23 statements which it knew or by the exercise of reasonable care should have known to be untrue or
24 misleading, as follows:

25 23. On or about April 3, 2013, Respondent’s technician certified under penalty of perjury
26 on the VIR that the Bureau’s 1992 Toyota had passed the inspection and was in compliance with
27 applicable laws and regulations and issued electronic Certificate of Compliance No. [REDACTED]
28 In fact, the vehicle’s PAIR/Air Suction System Reed Valve assembly and pipe system had been

1 removed and the Toyota could not have passed the visual portion of the smog inspection required
2 by Health and Safety Code section 44012. The circumstances are set forth in paragraphs 20 and
3 21, above.

4 SECOND CAUSE FOR DISCIPLINE

5 (Fraud)

6 (Bus. & Prof. Code § 9884.7, subd. (a)(4))

7 24. Respondent has subjected its registration to discipline under Code section 9884.7,
8 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

9 25. On or about April 3, 2013, Respondent issued electronic Certificate of Compliance
10 No. [REDACTED] for the Bureau's 1992 Toyota without ensuring that a bona fide inspection of the
11 vehicle's emissions control devices and systems had been performed. Respondent's actions
12 deprived the People of the State of California of the protection afforded by the Motor Vehicle
13 Inspection Program. The details are set forth in paragraphs 20 and 21, above.

14 THIRD CAUSE FOR DISCIPLINE

15 (Violations of the Motor Vehicle Inspection Program)

16 (Health & Saf. Code § 44072.2, subd. (a))

17 26. Respondent has subjected its station license to discipline under Health and Safety
18 Code section 44072.2, subdivision (a), by failing to comply with sections of the Health and Safety
19 Code as follows:

20 a. **Code section 44012, subdivision (f):** On or about April 3, 2013, Respondent failed
21 to perform emission control inspections on the Bureau's 1992 Toyota in accordance with the
22 procedures prescribed by the department. The circumstances are set forth in paragraphs 20 and
23 21, above.

24 b. **Code section 44015, subdivision (b):** On or about April 3, 2013, Respondent issued
25 Certificate of Compliance No. [REDACTED] for the Bureau's 1992 Toyota without properly
26 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section
27 44012. The circumstances are set forth in paragraphs 20 and 21, above.

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FOURTH CAUSE FOR DISCIPLINE
(Failure to Comply with Regulations)
(Health & Saf. Code § 44072.2, subd. (c))

27. Respondent has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with the California Code of Regulations, title 16, in the following material respects:

a. **Section 3340.25, subdivision (c):** On or about April 3, 2013, Respondent issued Certificate of Compliance No. [REDACTED] for the Bureau’s 1992 Toyota even though the vehicle had not been inspected in accordance with California Code of Regulations, section 3340.42. The circumstances are set forth in paragraphs 20 and 21, above.

b. **Section 3340.41, subdivision (c):** On or about April 3, 2013, Respondent entered false information into the Emission Inspection System unit by entering “Pass” for the visual portion of the inspection when the vehicle’s PAIR/Air Suction System Reed Valve assembly and pipe were missing. The circumstances are set forth in paragraphs 20 and 21, above.

c. **Section 3340.42:** On or about April 3, 2013, Respondent failed to perform an emission control inspection on the Bureau’s 1992 Toyota in accordance with the procedures prescribed by the department. The circumstances are set forth in paragraphs 20 and 21, above.

FIFTH CAUSE FOR DISCIPLINE
(Dishonesty, Fraud, or Deceit)
(Health & Saf. Code § 44072.2, subd. (d))

28. Respondent has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 3, 2013, Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured when it issued electronic Certificate of Compliance No. [REDACTED] for the Bureau’s 1992 Toyota without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 PRIOR CITATIONS

2 29. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges the following:

4 30. On or about May 29, 2009, the Bureau issued Citation No. C09-1371 against
5 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to
6 perform a visual/functional check of emission control devices according to procedures prescribed
7 by the department), and California Code of Regulations, title 16, section 3340.35, subdivision (c)
8 (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a
9 certificate of compliance to a Bureau undercover vehicle with a missing Positive Crankcase
10 Ventilation system. The Bureau assessed civil penalties totaling \$500 against Respondent for the
11 violations. Respondent complied with this citation on June 24, 2009.

12 31. On or about May 16, 2011, the Bureau issued Citation No. C2011-1301 against
13 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to
14 perform a visual/functional check of emission control devices according to procedures prescribed
15 by the department), for issuing a certificate of compliance to a Bureau undercover vehicle with a
16 missing Positive Crankcase Ventilation system. The Bureau assessed a civil penalty of \$1,500.00
17 against Respondent for the violation. Respondent complied with this citation on August 2, 2011.

18 32. On or about August 20, 2012, the Bureau issued Citation No. C2013-0193 against
19 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to
20 perform a visual/functional check of emission control devices according to procedures prescribed
21 by the department), for issuing a certificate of compliance to a Bureau undercover vehicle with a
22 missing Secondary Air Injection Reactor system. The Bureau assessed a civil penalty of
23 \$1,500.00 against Respondent for the violation. This citation was appealed on October 5, 2012,
24 and the matter was submitted after an administrative hearing on September 17, 2013.

25 OTHER MATTERS

26 33. Under Code section 9984.7, subdivision (c), the director may suspend, revoke, or
27 place on probation the registrations for all places of business operated in this state by Respondent
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1 upon a finding that he has or is engaged in a course of repeated and willful violation of the laws
2 and regulations pertaining to an automotive repair dealer.

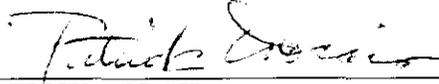
3 34. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
4 License Number TC248304, issued to Erik M. Joyce, doing business as Fast Smog, is revoked or
5 suspended, any additional license issued under this chapter in this name may be likewise revoked
6 or suspended by the director.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
9 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 10 1. Revoking or suspending Automotive Repair Dealer Registration Number
11 ARD248304, issued to Erik M. Joyce, doing business as Fast Smog;
- 12 2. Revoking or suspending any other automotive repair dealer registration issued to Erik
13 M. Joyce;
- 14 3. Revoking or suspending Smog Check-Test Only Station License Number TC248304,
15 issued to Erik M. Joyce, doing business as Fast Smog;
- 16 4. Revoking or suspending any additional license issued in the name of Erik M. Joyce
17 under Chapter 5 of the Health and Safety Code
- 18 5. Ordering Erik M. Joyce to pay the Bureau of Automotive Repair the reasonable costs
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 125.3;
- 21 6. Taking such other and further action as deemed necessary and proper.

22
23 DATED: September 24, 2013


24 PATRICK DORAIS
25 Acting Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

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