

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

In the Matter of the Accusation Against:

FAST SMOG

3030 S. Winchester Blvd., #A
Campbell, CA 95008

ERIK M. JOYCE, OWNER

Automotive Repair Dealer Registration No.
ARD 248304

Smog Check-Test Only Station License No.
TC 248304

Respondent.

Case No. 79/14-29

OAH No. 2014061101

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective November 14, 2014.

DATED October 27, 2014


TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
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7 *Attorneys for Complainant*

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

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14 **3030 S. Winchester Blvd., #A**
Campbell, CA 95008
15 **ERIK M. JOYCE, OWNER**

OAH No. 2014061101

16 **STIPULATED SETTLEMENT AND**
17 **DISCIPLINARY ORDER**

18 **Automotive Repair Dealer Registration No.**
19 **ARD248304**
20 **Smog Check-Test Only Station License No.**
21 **TC248304**

22 Respondent.

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

25 PARTIES

26 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
27 brought this action solely in his official capacity and is represented in this matter by Kamala D.
28 Harris, Attorney General of the State of California, by Susana A. Gonzales, Deputy Attorney
General.

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1 court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

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

5 CULPABILITY

6 10. Respondent admits the truth of each and every charge and allegation in Accusation
7 No. 79/14-29.

8 11. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check
9 Test Only Station License are subject to discipline and he agrees to be bound by the Director's
10 probationary terms as set forth in the Disciplinary Order below.

11 CIRCUMSTANCES IN MITIGATION

12 12. Respondent Erik M. Joyce, doing business as Fast Smog has never been the subject of
13 any disciplinary action. It is admitting responsibility at an early stage in the proceedings.

14 CONTINGENCY

15 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
16 the Director's designee. Respondent understands and agrees that counsel for Complainant and
17 the staff of the Bureau of Automotive Repair may communicate directly with the Director and
18 staff of the Department of Consumer Affairs regarding this stipulation and settlement, without
19 notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent
20 understands and agrees that it may not withdraw its agreement or seek to rescind the stipulation
21 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
22 stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
23 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
24 the parties, and the Director shall not be disqualified from further action by having considered
25 this matter.

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

1 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
2 maintaining compliance with the terms and conditions of probation.

3 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
4 any financial interest which any partners, officers, or owners of the Respondent facility may have
5 in any other business required to be registered pursuant to Section 9884.6 of the Business and
6 Professions Code.

7 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
8 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

9 7. **Jurisdiction.** If an Accusation is filed against Respondent during the term of
10 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
11 until the final decision on the accusation, and the period of probation shall be extended until such
12 decision.

13 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
14 Respondent has failed to comply with the terms and conditions of probation, the Department may,
15 after giving notice and opportunity to be heard temporarily or permanently invalidate the
16 Automotive Repair Dealer Registration or suspend or revoke the Smog Check-Test Only Station
17 License.

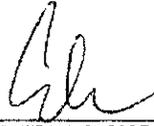
18 9. **Restrictions.** During the period of probation, Respondent shall not perform any form
19 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
20 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
21 properly perform such work, and BAR has been given 10 days notice of the availability of the
22 equipment for inspection by a BAR representative.

23 10. **Cost Recovery.** Respondent shall pay the Bureau its costs of investigation and
24 prosecution in this matter in the amount of \$6,202.13. Payment shall be received in twenty four
25 (24), consecutive, equal installments with the final payment due twelve (12) months before the
26 termination of probation. Failure to complete payment of cost recovery within this time frame
27 shall constitute a violation of probation which may subject Respondent's license and registration
28 to outright revocation; however, the Director or the Director's Bureau of Automotive Repair

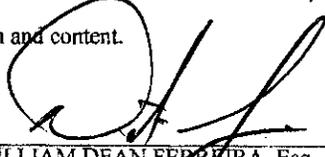
1 designee may elect to continue probation until such time as reimbursement of the entire cost
2 recovery amount has been made to the Bureau.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, William Dean Ferreira, Esq. I understand the stipulation and the
6 effect it will have on my Automotive Repair Dealer Registration and Smog Check-Test Only
7 Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
8 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of
9 Consumer Affairs.

10
11
12 DATED: 9/15/14 
13 ERIK M. JOYCE, doing business as FAST SMOG
14 Respondent

15 I have read and fully discussed with Respondent Erik M. Joyce, doing business as Fast
16 Smog the terms and conditions and other matters contained in the above Stipulated Settlement
17 and Disciplinary Order. I approve its form and content.

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19 DATED: 9/22/14 
20 WILLIAM DEAN FERREIRA, Esq.
21 Attorney for Respondent

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ENDORSEMENT

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

Dated: 9/25/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



SUSANA A. GONZALES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-29

1 KAMALA D. HARRIS
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Supervising Deputy Attorney General
3 SUSANA A. GONZALES
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14 **ERIK M. JOYCE, OWNER**
Automotive Repair Dealer Registration No.
15 **ARD248304**
Smog Check-Test Only Station License No.
16 **TC248304**

ACCUSATION

Smog Check

17 Respondent.

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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 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

(Fraud)

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

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

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

13 THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

22 b. Code section 44015, subdivision (b): On or about April 3, 2013, Respondent issued
23 Certificate of Compliance No. [REDACTED] for the Bureau's 1992 Toyota without properly
24 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section
25 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
28

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.

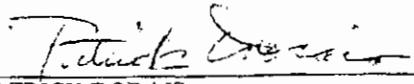
3 34. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
4 License Number TC248304, issued to Erik M. Joyce, doing business as Fast Smog, is revoked or
5 suspended, any additional license issued under this chapter in this name may be likewise revoked
6 or suspended by the director.

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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