

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

In the Matter of the Accusation Against:

**DATASERVE, INC. dba SMOGSTERS;
HEMLATA SOMANI, President;
ANIL SOMANI, Secretary/Treasurer**
6928 Reseda Blvd
Reseda, CA 91355

Case No. 79/12-174

OAH No. 2013030754

Automotive Repair Dealer Registration
No. ARD 263697
Smog Check Test Only Station License No.
TC 263697

Respondents.

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 _____

NOV 08 2013

DATED: October 16, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON
Deputy Attorney General
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Attorneys for Complainant
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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No. 79/12-174

12 **DATASERVE, INC. dba SMOGSTERS;**
13 **HEMLATA SOMANI, President;**
ANIL SOMANI, Secretary/ Treasurer
14 6928 Reseda Blvd
Reseda, CA 91335
15 **Automotive Repair Dealer Registration No.**
ARD 263697
16 **Smog Check Test Only Station License No.**
TC 263697

OAH No. 2013030754

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 Respondents.
18

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

21 **PARTIES**

22 1. Patrick Dorais (Complainant) is the Acting Chief of the Bureau of Automotive
23 Repair. He was preceded by John Wallauch, who brought this action solely in his official
24 capacity as Chief. Both are represented in this matter by Kamala D. Harris, Attorney General of
25 the State of California, by Terrence M. Mason, Deputy Attorney General.

26 2. Respondent Dataserve, Inc. dba Smogsters, with Hemlata Somani, President, and
27 Anil Somani, Secretary/ Treasurer (Respondent) is represented in this proceeding by attorney
28 William Ferreira, whose address is: William Ferreira, Automotive Defense Specialists, 582

1 Market Street, Suite 1608, San Francisco, CA 94104.

2 3. On or about December 31, 2010, the Bureau of Automotive Repair issued
3 Automotive Repair Dealer Registration No. ARD 263697 to Dataserve, Inc. dba Smogsters, with
4 Hemlata Somani, President, and Anil Somani, Secretary/ Treasurer. The Automotive Repair
5 Dealer Registration was in full force and effect at all times relevant to the charges brought in
6 Accusation No. 79/12-174 and will expire on December 31, 2013, unless renewed.

7 4. On or about January 11, 2011, the Bureau of Automotive Repair issued Smog Check
8 Test Only Station License No. TC 263697 to Dataserve, Inc. dba Smogsters, with Hemlata
9 Somani, President, and Anil Somani, Secretary/ Treasurer. The Smog Check Test Only Station
10 License was in full force and effect at all times relevant to the charges brought in Accusation No.
11 79/12-174 and will expire on December 13, 2013, unless renewed.

12 JURISDICTION

13 4. Accusation No. 79/12-174 was filed before the Director of Consumer Affairs
14 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
15 Respondent. The Accusation and all other statutorily required documents were properly served
16 on Respondent on August 7, 2012. Respondent timely filed its Notice of Defense contesting the
17 Accusation.

18 5. A copy of Accusation No. 79/12-174 is attached as Exhibit A and incorporated herein
19 by reference.

20 ADVISEMENT AND WAIVERS

21 6. Respondent has carefully read, fully discussed with counsel, and understands the
22 charges and allegations in Accusation No. 79/12-174. Respondent has also carefully read, fully
23 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
24 Order.

25 7. Respondent is fully aware of its legal rights in this matter, including the right to a
26 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
27 its own expense; the right to confront and cross-examine the witnesses against them; the right to
28 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel

1 the attendance of witnesses and the production of documents; the right to reconsideration and
2 court review of an adverse decision; and all other rights accorded by the California
3 Administrative Procedure Act and other applicable laws.

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

6 CULPABILITY

7 9. Respondent admits the truth of each and every charge and allegation in Accusation
8 No. 79/12-174.

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

12 CONTINGENCY

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

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

26 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Director may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

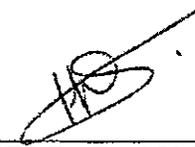
8 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 263697
9 and Smog Check Test Only Station License No. TC 263697 issued to Respondent Dataserve, Inc.
10 dba Smogsters, with Hemlata Somani, President, and Anil Somani, Secretary/ Treasurer are both
11 revoked.

12 Should Respondent Dataserve, Inc. dba Smogsters, its President, Hemlata Somani, or its
13 Secretary/ Treasurer, Anil Somani in the future apply for any license issued by the Bureau or re-
14 apply for any license previously issued by the Bureau, they shall first reimburse the Bureau's
15 costs of investigation and enforcement in Case No. 79/12-174 in the amount of \$16,176.61.

16 **ACCEPTANCE**

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
18 discussed it with my attorney, William Ferreira. I understand the stipulation and the effect it will
19 have on my Automotive Repair Dealer Registration, and Smog Check Test Only Station License.
20 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
21 intelligently, and agree to be bound by the Decision and Order of the Director of Consumer
22 Affairs.

23
24 DATED: 08/20/2013


HEMLATA SOMANI, President
DATASERVE, INC. dba SMOGSTERS
Respondent

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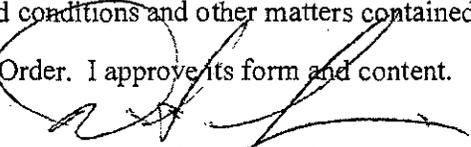
DATED: 08/19/2013



ANIL SOMANI, Secretary/ Treasurer
DATASERVE, INC. dba SMOGSTERS
Respondent

I have read and fully discussed with Respondent Dataserve, Inc. dba Smogsters, Hemlata Somani, and Anil Somani the terms and conditions and other matters contained in the above stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/19/13



WILLIAM FERREIRA
Attorney for Respondent

ENDORSEMENT

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

DATED: 8/21/13

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



TERRENCE M. MASON
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 79/12-174

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Attorneys for Complainant

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

In the Matter of the Accusation Against:

**DATASERVE, INC. DBA
SMOGSTERS
6928 Reseda Blvd
Reseda, CA 91335**
Mailing Address:
**4840 Ariano Drive
Cypress, CA 91335
HEMLATA SOMANI, PRES
ANIL SOMANI, SEC/TRES**

Automotive Repair Dealer Registration No.
ARD 263697
Smog Check Test Only Station License No.
TC 263697,

and

**JOSE IGNACIO LANDEROS
7256 Vanalden Ave
Reseda, CA 91335**

Advanced Emission Specialist Technician
License No. EA 631840

Respondents.

Case No. 79/12-174

**ACCUSATION
SMOG CHECK**

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1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about December 31, 2010, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 263697 ("registration") to Dataserve, Inc. doing business as
8 Smogsters ("Respondent Smogsters"), with Hemlata Somani as President and Anil Somani as
9 Secretary and Treasurer. The automotive repair dealer registration was in full force and effect at
10 all times relevant to the charges brought herein and will expire on December 31, 2012, unless
11 renewed.

12 **Smog Check Test Only Station License**

13 3. On or about January 11, 2011, the Bureau issued Smog Check Test Only Station
14 License Number TC 263697 ("station license") to Respondent Smogsters. The station license
15 was in full force and effect at all times relevant to the charges brought herein and will expire on
16 December 31, 2012, unless renewed.

17 **Advanced Emission Specialist Technician License**

18 4. On or about March 8, 2010, the Bureau issued Advanced Emission Specialist
19 Technician License Number EA 631840 ("technician license") to Jose Ignacio Landeros
20 ("Respondent Landeros"). The technician license was in full force and effect at all times relevant
21 to the charges brought herein and will expire on November 30, 2013, unless renewed.

22 **STATUTORY PROVISIONS**

23 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
24 part:

25 (a) The director, where the automotive repair dealer cannot show there
26 was a bona fide error, may deny, suspend, revoke, or place on probation the
27 registration of an automotive repair dealer for any of the following acts or omissions
28 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 (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
2 by the exercise of reasonable care should be known, to be untrue or misleading.

3 (4) Any other conduct that constitutes fraud.

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

5 (b) Except as provided for in subdivision (c), if an automotive repair
dealer operates more than one place of business in this state, the director pursuant to
6 subdivision (a) shall only suspend, revoke, or place on probation the registration of
the specific place of business which has violated any of the provisions of this chapter.
7 This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

8 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
9 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,
10 engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

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

16 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
17 "commission," "committee," "department," "division," "examining committee," "program," and
18 "agency." "License" includes certificate, registration or other means to engage in a business or
19 profession regulated by the Code.

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

23 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

5 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
6 expiration or suspension of a license by operation of law, or by order or decision of the Director
7 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
8 the Director of jurisdiction to proceed with disciplinary action.

9 11. Section 44072.8 of the Health and Safety Code states:

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

13 COST RECOVERY

14 12. Code section 125.3 provides, in pertinent part, that a Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 SURVEILLANCE OPERATION NOVEMBER 21, 2011

19 13. On or about November 21, 2011, the Bureau performed a videotaped surveillance
20 operation at Respondent Smogster's facility. The surveillance operations and information
21 obtained from the Bureau's Vehicle Identification Data ("VID") revealed that Respondent
22 Landeros performed two (2) smog inspections that resulted in the issuance of electronic
23 certificates of compliance for the vehicles set forth in Table 1, below, certifying that he had tested
24 and inspected those vehicles and that the vehicles were in compliance with applicable laws and
25 regulations. In fact, Respondent Landeros performed the smog inspections using the clean piping
26 method¹ by using the tail pipe emissions of vehicles other than the vehicles being certified, in
27 order to issue the certificates of compliance.

28 ¹ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
compliance or are not present in the smog check area during the time of the certification.

Table 1

Date and Test Times	Vehicle Certified	Certificate No.	Vehicle Actually Tested
1. 11/21/2011 1201 hours to 1208 hours	1977 Chevrolet Blazer, VIN# CKL187F112785302RIW	OI412984C	Orange Colored Nissan Pickup, License No. 8B36238
2. 11/21/2011 1215 hours to 1225 hours	1984 Chevrolet S-10 Blazer, VIN# 1G8CT18B2E81374891HGN423	OI412985C	Orange Colored Nissan Pickup, License No. 8B36238

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent Smogster's registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that on or about November 21, 2011, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading by issuing electronic certificates of compliance to the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

15. Respondent Smogster's registration is subject to discipline under Code section 9884.7, subdivision (a)(4), in that on or about November 21, 2011, it committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 above, it committed acts involving dishonesty, fraud or deceit whereby another was injured by
2 issuing electronic certificates of compliance for those vehicles without performing bona fide
3 inspections of the emission control devices and systems on those vehicles, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program)**

8 19. Respondent Landeros has subjected his technician license to discipline under Health
9 and Safety Code section 44072.2, subdivision (a), in that on or about November 21, 2011,
10 regarding the vehicles set forth in Table 1 above, he violated sections of that Code, as follows:

11 a. **Section 44012, subdivision (a):** Respondent Landeros failed to determine that all
12 emission control devices and systems required by law were installed and functioning correctly in
13 accordance with test procedures.

14 b. **Section 44012, subdivision (f):** Respondent Landeros failed to perform emission
15 control tests on those vehicles in accordance with procedures prescribed by the department.

16 c. **Section 44032:** Respondent Landeros failed to perform tests of the emission control
17 devices and systems on those vehicles in accordance with section 44012 of that Code, in that the
18 vehicles had been clean piped.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

21 20. Respondent Landeros has subjected his technician license to discipline under Health
22 and Safety Code section 44072.2, subdivision (c), in that on or about November 21, 2011,
23 regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of
24 Regulations, title 16, as follows:

25 a. **Section 3340.30, subdivision (a):** Respondent Landeros failed to inspect and test
26 those vehicles in accordance with Health and Safety Code section 44012.

27 b. **Section 3340.41, subdivision (c):** Respondent Landeros entered false information
28 into the Emission Inspection System for the electronic certificates of compliance by entering

1 vehicle identification information or emission control information for vehicles other than the
2 vehicles being certified.

3 d. **Section 3340.42:** Respondent Landeros failed to conduct the required smog tests and
4 inspections on those vehicles in accordance with the Bureau's specifications.

5 **EIGHTH CAUSE FOR DISCIPLINE**

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

7 21. Respondent Landeros has subjected his technician license to discipline under Health
8 and Safety Code section 44072.2, subdivision (d), in that on or about November 21, 2011, he
9 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
10 electronic certificates of compliance for the vehicles set forth in Table 1, above, without
11 performing bona fide inspections of the emission control devices and systems on those vehicles,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program.

14 **OTHER MATTERS**

15 31. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
16 or permanently or refuse to validate, the registrations for all places of business operated in this
17 state by Dataserve, Inc., upon a finding that it has, or is, engaged in a course of repeated and
18 willful violations of the laws and regulations pertaining to an automotive repair dealer.

19 32. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
20 License Number TC 263697, issued to Dataserve, Inc., doing business as Smogsters, is revoked
21 or suspended, any additional license issued under this chapter in the name of said licensee may be
22 likewise revoked or suspended by the director.

23 33. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
24 Technician License Number EA 631840, issued to Jose Ignacio Landeros is revoked or
25 suspended, any additional license issued under this chapter in the name of said licensee may be
26 likewise revoked or suspended by the director.

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PRAYER

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

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 263697, issued to Dataserve, Inc., doing business as Smogsters;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Dataserve, Inc.;

3. Revoking or suspending Smog Check Test Only Station License Number TC 263697, issued to Dataserve, Inc., doing business as Smogsters;

4. Revoking or suspending any additional license issued under this chapter in the name of Dataserve, Inc.;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 631840, issued to Jose Ignacio Landeros

6. Revoking or suspending any additional license issued under this chapter in the name of Jose Ignacio Landeros;

7. Ordering Dataserve, Inc., and Jose Ignacio Landeros to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 6/27/12

John Wallauch by Doug Balata
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DOUG BALATA

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