

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

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

11
12 In the Matter of the Accusation Against:

Case No. 79/16-134

13 **ALAMEDA SMOG CHECK INC., JAMIE**
ELAINE SARGENT, President, Secretary,
14 **Treasurer, dba SPEEDY SMOG**
15 **1726 Park St., #A**
Alameda, CA 94501

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
ARD 270439

17 **Smog Check, Test Only, Station License No.**
18 **TC 270439**

19
20 Respondent.

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about October 2, 2012, the Bureau of Automotive Repair issued Automotive
26 Repair Dealer Registration Number ARD 270439 to Alameda Smog Check, Inc., Jamie Elaine
27 Sargent, President, Secretary, Treasurer, dba Speedy Smog ("Respondent") The Automotive
28

1 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought
2 in this Accusation and will expire on October 31, 2016, unless renewed.

3 3. On or about October 22, 2012, the Bureau of Automotive Repair issued Smog Check,
4 Test Only License Number TC 270439 to Alameda Smog Check, Inc., Jamie Elaine Sargent,
5 President, Secretary, Treasurer, dba Speedy Smog ("Respondent") The Smog Check, Test Only
6 Station License was in full force and effect at all times relevant to the charges brought in this
7 Accusation and will expire on October 31, 2016, unless renewed.

8 JURISDICTION

9 4. This Accusation is brought before the Director of the Department of Consumer
10 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

11 5. Business and Professions Code ("Code") section 118, subdivision (b), provides that
12 the expiration of a license shall not deprive the Director of jurisdiction to proceed with a
13 disciplinary action during the period within which the license may be renewed, restored, reissued
14 or reinstated.

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

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

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

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

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

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

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

8 14. Section 44012 of the Health and Safety Code states, in pertinent part:

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

13

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

18 15. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:

19 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
20 section 3340.45.

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

23 . . .

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

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

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

3 “(2) A functional inspection of emission control systems as specified in the Smog Check
4 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
5 operation.”

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

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

9 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
10 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
11 3340.42 of this article.”

12 **COST RECOVERY**

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

19 **FACTUAL ALLEGATIONS**

20 18. On November 18, 2015, Bureau representative Matthew Rodriguez reviewed the OIS
21 smog check data for vehicles inspected and certified by Speedy Smog, for the period between
22 December 4, 2013 and November 30, 2015. During Rodriguez' investigation, he accessed the
23 Vehicle Information Database (“VID”), and performed a focused review of BAR-OIS (“On Board
24 Diagnostic Inspection System”) test data for Speedy Smog. BAR-OIS test data is the OBD (“On
25 Board Diagnostics System”) information transmitted during a smog inspection from the computer
26 of the vehicle being inspected to the BAR-OIS. Beginning March 9, 2015, California's Smog
27 Check Program was updated and now requires smog inspectors and stations to use the BAR-OIS
28 computer system during smog inspections, for most model year 2000 and newer gasoline and

1 hybrid vehicles, and most 1998 and new diesel vehicles. The BAR-OIS consists of a BAR-
2 certified Data Acquisition Device (“DAD”), computer, bar code scanner, and printer. The DAD
3 serves as an on-board diagnostic (“OBD”) scan tool. The DAD is an interface box that connects
4 the computer containing the BAR-OIS software to the diagnostic link connector (“DLC”) of the
5 vehicle being inspected. When requested by the BAR-OIS software, the DAD retrieves data from
6 the vehicle’s on-board computer system (“OBD II”).

7 19. The information obtained by the BAR-OIS software during a smog inspection is
8 organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS
9 Test Detail. The BAR-OIS Test Detail contains information segregated into eight different
10 blocks titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII
11 Details, OBDII Readiness Monitor Status, and OBDII DTC Details. For the purposes of
12 Rodriguez’ investigation of Respondent, he focused on information in the “Vehicle” and “OBDII
13 Details” blocks because they contain a unique combination of information for the vehicle being
14 inspected and “like vehicles” inspected. Like vehicles are vehicles of the same manufacturer,
15 model, and model year that were inspected on the BAR-OIS. The unique combination of
16 information analyzed by Rodriguez includes the eVIN (“Electronic Vehicle Identification
17 Number”), PID (“Parameter Identification”) count, and communication protocol. Rodriguez
18 compared the eVIN, communication protocol, and PID count for a vehicle that was certified to
19 like vehicles.

20 20. Rodriguez identified two vehicles certified by Respondents Speedy Smog and Mark
21 Thomas Espinoza between March 16, 2015 and March 29, 2015, that failed to transmit the
22 expected eVIN, protocol, and PID count. The data transmitted during Respondent Mark Thomas
23 Espinoza’s inspections either differed from the OIS data the vehicles transmitted during other
24 inspections, or the data was inconsistent with the OIS data transmitted by “like vehicles”
25 inspected, or both.

26 21. Rodriguez’ review of the BAR-OIS data for the vehicles certified by Respondents
27 Speedy Smog and Mark Thomas Espinoza during the above-referenced time period revealed a
28 pattern of fraudulent smog inspections that resulted in the issuance of fraudulent certificates of

1 compliance. There were two instances in which Respondent Mark Thomas Espinoza certified
2 vehicles by fraudulently using the OBDII system of another vehicle. Respondent Mark Thomas
3 Espinoza therefore clean plugged two vehicles, resulting in Respondent Speedy Smog issuing two
4 fraudulent Certificate of Compliance between March 16, 2015 and March 29, 2015. The details
5 of each instance of clean plugging is as follows:

6 **22. Clean Plug Number 1:**

7 a. Rodriguez' review of the OBDII Test Data contained in the BAR's VID indicated
8 that on March 16, 2015, Respondent, Mark Thomas Espinoza inspected a 2001 Cadillac Seville
9 SLS, VIN #1G6KS54Y31U117214, and Respondent, Speedy Smog issued smog Certificate of
10 Compliance #YP468088C. The OIS Test Data for the Cadillac Seville SLS shows eVIN
11 #2LNBL8EV3BX763147, the communication protocol is listed as ICAN11bt500, and the PID
12 count was 47. Comparative OIS Test Data shows that similar 2001 Cadillac Seville SLS's
13 report the eVIN, the expected communication protocol is listed as JVPW, and the expected PID
14 count is 21.

15 b. Further review of Respondent, Speedy Smog's OIS Inspection Data for March 16,
16 2015, showed that Respondent, Mark Thomas Espinoza inspected and certified a 2011 Lincoln
17 Town Car Executive L. The OIS Test Details for the Lincoln Town Car matched the eVIN, the
18 communication protocol and the PID count that was reported on the certifying inspection of the
19 Cadillac Seville SLS at Respondent, Speedy Smog on March 16, 2015.

20 **23. Clean Plug Number 2:**

21 a. Rodriguez' review of the OBDII Test Data contained in the BAR's VID indicated
22 that on March 29, 2015, Respondent, Mark Thomas Espinoza inspected a 2005 Chevrolet
23 Trailblazer LS/LT, VIN #1GNDS13S752154559, and Respondent, Speedy Smog issued smog
24 Certificate of Compliance #YP670992C. The OIS Test Data for the Chevrolet Trailblazer LS/LT
25 shows no eVIN was reported, the communication protocol is listed as I9140808, and the PID
26 count was 17. Comparative OIS Test Data shows that similar 2005 Chevrolet Trailblazer LS/LT's
27 report the eVIN, the expected communication protocol is listed as JVPW, and the expected PID
28 count is 19.

1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 270439, issued to Alameda Smog Check, Inc., Jamie Elaine Sargent, president, dba Speedy
3 Smog;

4 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
5 270439, issued to Alameda Smog Check Inc., Jaime Elaine Sargent, president, dba Speedy Smog;

6 3. Ordering Jaime Elaine Sargent to pay the Bureau of Automotive Repair the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

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

10 DATED: 7-11-16

Patrick Dorais by Doug Baratt
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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