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7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
9 **STATE OF CALIFORNIA**

10  
11 In the Matter of the Accusation Against:

Case No. 79/16-42

12 **SIMON FAMILY SMOG; ANDRE ALI**  
**FRANCOIS II, OWNER**  
13 4600 South Western Avenue, #C  
Los Angeles, CA 90062

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

14  
15 Automotive Repair Dealer Registration No.  
ARD 277067  
16 Smog Check Station License No. TC 277067

17 **and**

18 **THOMAS HARPER III**  
4707 8<sup>th</sup> Avenue  
19 Los Angeles, CA 90043

20 Smog Check Inspector License No. EO 637002

21  
22  
23  
24 Complainant alleges:

25 **PARTIES**

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



**STATUTORY PROVISIONS**

9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions 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) 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 by the exercise of reasonable care should be known, to be untrue or misleading.

....

(4) Any other conduct that constitutes fraud.

....

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

....

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

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

11. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.





22. On or about June 2, 2015, Bureau representative Mario Salas initiated an investigation in which he reviewed OIS Test Data for Simon Family Smog which revealed vehicles that had been certified with a pattern of: differences between the VIN on the certified vehicle and the electronic VIN (eVIN) that was transmitted as part of the smog inspection; incorrect vehicle communication protocols; and incorrect communication Protocol and Parameter ID (PID) counts. The data from the certified vehicles were compared to data of similar vehicles of the same year, make, and model. The data comparison showed multiple discrepancies with fourteen (14) vehicles that were all certified with either missing eVINs, incorrect vehicle communication protocols, and incorrect PID counts, which confirms the vehicles receiving smog certificates were fraudulently tested during the smog inspection using the clean plugging method.<sup>1</sup>

The following chart illustrates the documented clean plugging activities of Respondent Harper between March 16, 2015 and June 17, 2015.

Test Date	Vehicle Certified & VIN #	Certificate No.	Details*
03/16/2015	2003 Toyota Camry VIN # 4T1BF32K73U552515	PQ137409C	Test data does not support this vehicle.
03/20/2015	2001 Toyota Camry VIN # JT2BF28K710301139	PQ137422C	Test data does not support this vehicle.
03/21/2015	2009 Dodge Charger SXT VIN # 2B3KA33V79H540499	PQ137426C	Test data does not support this vehicle.

<sup>1</sup> Clean plugging refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

1	03/24/2015	2000 Nissan Pathfinder VIN # JN8AR07S3YW415246	PQ137436C	Test data does not support this vehicle.
2				
3				
4	03/24/15	2006 Suzuki Forenza Premium VIN # KL5JJ56Z76K310735	PQ137438C	Test data does not support this vehicle.
5				
6				
7				
8	04/01/2015	2005 Chrysler 300 VIN # 2C3JA43R45H134715	YP763810C	Test data does not support this vehicle.
9				
10				
11				
12	04/07/2015	2005 Kia Sorento VIN# KNDJD733455409605	YP763820C	Test data does not support this vehicle.
13				
14				
15	04/20/2015	2008 Audi A4 Quattro AWD VIN # WAUDH78E28A041865	YR058716C	Test data does not support this vehicle.
16				
17				
18				
19				
20	04/20/2015	2006 Dodge Charger VIN # 2B3KA43G16H295296	YR058717C	Test data does not support this vehicle.
21				
22				
23				
24	04/21/2015	2008 Chevrolet Aveo/LS VIN # KL1TD66628B094387	YR058723C	Test data does not support this vehicle.
25				
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28				

1	05/18/2015	2008 Buick Lacrosse CX VIN # 2G4WC582881301891	PS244337C	Test data does not support this vehicle.
2	06/06/2015	2007 Chrysler 300 VIN # 2C3KA43R37H805105	YR919562C	Test data does not support this vehicle.
3	06/12/2015	2007 Jeep Wrangler VIN # 1J4GB59137L111579	YR919580C	Test data does not support this vehicle.
4	06/17/2015	2005 Ford Explorer VIN # 1FMZU63E15UA20985	YR919588C	Test data does not support this vehicle.
5				

\* All vehicles certified by Respondent Thomas Harper III.

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

23. Respondent Francois' Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Francois certified that the 14 vehicles identified in paragraph 22 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012. Complainant refers to, and by this reference incorporates, the allegations contained in paragraph 22, as though set forth fully herein.





1 without performing bona fide inspections of the emission control devices and systems on the  
2 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
3 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the  
4 allegations contained in paragraph 22, as though set forth fully herein.

5 **SEVENTH CAUSE FOR DISCIPLINE**

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

7 29. Respondent Harper's Smog Check Inspector License is subject to disciplinary action  
8 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with  
9 section 44012 of that Code in a material respect, as follows: Respondent Harper failed to perform  
10 the emission control tests on the 14 vehicles identified in paragraph 22 above, in accordance with  
11 procedures prescribed by the department. Complainant refers to, and by this reference  
12 incorporates, the allegations contained in paragraph 22, as though set forth fully herein.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant**  
15 **to the Motor Vehicle Inspection Program)**

16 30. Respondent Harper's Smog Check Inspector License is subject to disciplinary action  
17 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
18 comply with the following sections of the California Code of Regulations, title 16:

19 **Section 3340.24, subdivision (c):** Respondent Harper falsely or fraudulently issued  
20 electronic smog certificates of compliance for the 14 vehicles identified in paragraph 22 above.

21 **Section 3340.30, subdivision (a):** Respondent Harper failed to inspect and test the 14  
22 vehicles identified in paragraph 22 above, in accordance with Health & Saf. Code sections 44012  
23 and 44035, and California Code of Regulations, title 16, section 3340.42.

24 **Section 3340.42:** Respondent Harper failed to conduct the required smog tests on the 14  
25 vehicles identified in paragraph 22 above, in accordance with the Bureau's specifications.

26 Complainant refers to, and by this reference incorporates, the allegations contained in  
27 paragraph 22, as though set forth fully herein.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Harper's Smog Check Inspector License is subject to disciplinary action  
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest,  
5 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates  
6 of compliance for the 14 vehicles identified in paragraph 22 above, without performing bona fide  
7 inspections of the emission control devices and systems on the vehicles, thereby depriving the  
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
10 paragraph 22, as though set forth fully herein.

11 **OTHER MATTERS**

12 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
13 suspend, revoke, or place on probation the registration for all places of business operated in this  
14 state by Respondent Simon Family Smog; Andre Francois, II upon a finding that he has, or is,  
15 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an  
16 automotive repair dealer.

17 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station  
18 License No. TC 277067, issued to Respondent Simon Family Smog; Andre Francois, II, is  
19 revoked or suspended, any additional license issued under this chapter in the name of said  
20 licensee may be likewise revoked or suspended by the director.

21 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
22 No. EO 637002, issued to Respondent Thomas Harper, III is revoked or suspended, any additional  
23 license issued under this chapter in the name of said licensee may be likewise revoked or  
24 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 or suspending Automotive Repair Dealer Registration No. ARD 277067 issued to Simon Family Smog; Andre Ali Francois II;

2. Revoking or suspending any other automotive repair dealer registration issued to Andre Ali Francois II;

3. Revoking or suspending Smog Check Test Only Station License No. TC 277067 issued to Simon Family Smog; Andre Ali Francois II;

4. Revoking or suspending Smog Check Inspector License No. EO 637002 issued to Thomas Harper III;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Thomas Harper III;

6. Ordering Andre Ali Francois II and Thomas Harper III 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;

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

DATED: 12-22-15

Patrick Dorais by Doug Balatti  
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*  
DOUG BALATTI  
Assist. Chief

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