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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 First Amended Accusation
Against:

Case No. 79/13-16

13 **SMOG CHECK ONLY**
14 **FRANK H. SAKAMOTO, OWNER**
15 **9913 Bloomington Avenue**
Bloomington, CA 92316

FIRST AMENDED ACCUSATION
(Smog Check)

16 **Automotive Repair Dealer Reg. No. ARD 260323**
17 **Smog Check, Test Only, Station License No.**
TC 260323

18 **and**

19 **FRANK H. SAKAMOTO**
20 **9728 Carob Avenue, #D**
Fontana, CA 92335

21 **Advanced Emission Specialist Technician**
22 **License No. EA 631798 (to be redesignated upon**
renewal as EO 631798 and/or EI 631798)

23 Respondents.

24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

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

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1 Program (Health and Saf. Code § 44000, et seq.)) and the regulations adopted
2 pursuant to it, which related to the licensed activities.

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

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

8 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or
9 suspended following a hearing under this article, any additional license issued under this chapter
10 in the name of the licensee may be likewise revoked or suspended by the director.

11 14. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
12 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
13 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
14 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

15 **COST RECOVERY**

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

20 **VID DATA REVIEW**

21 16. In or about March 2012, a representative of the Bureau initiated an investigation
22 against Respondent based on a review of information from the Bureau's Vehicle Information
23 Database ("VID"), which indicated that Respondent may be engaging in fraudulent smog check
24 activities. On March 5, 2012, the representative conducted a detailed review of VID data for all
25 smog inspections performed at Respondent's facility for the period of August 1, 2011, through
26 March 5, 2012. The representative found that vehicles 1 through 14 identified below, all of which
27 were tested by Respondent, recorded certain diagnostic trouble codes (hereinafter "code") during
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1 the OBD II tests². The representative obtained information indicating that the codes were not
 2 applicable to the vehicles. The Bureau concluded that Respondent performed the smog
 3 inspections on the vehicles using a different vehicle during the OBD II tests, a method known as
 4 "clean plugging",³ resulting in the issuance of fraudulent certificates of compliance for the
 5 vehicles.

Date & Time of Inspection	Vehicle Certified	Certificate No.
1. 08/02/2011 14:27 – 14:37	2001 Toyota Camry; License No. 4TJF132	WX538503C
2. 08/02/2011 15:06 – 15:13	2001 Honda Accord; License No. 6JBZ853	WX538506C
3. 08/02/2011 15:17 – 15:25	2000 Honda Civic; License No. 6JEA626	WX538507C
4. 08/31/2011 12:31 – 12:42	2001 Ford Focus; License No. 5RKN984	WX965897C
5. 08/31/2011 13:28 – 13:40	1997 Chevrolet G35 Van; License No. 5R23305	WX965899C
6. 08/31/2011 13:53 – 14:00	1996 Nissan 240SX; License No. 5FXA331	WX965900C
7. 10/13/2011 10:37 – 10:44	1999 Chevrolet S10 2WD; License No. 8S59855	WZ755159C
8. 10/22/2011 11:30 – 11:45	1999 Honda Civic; License No. 4FZL955	WZ755198C
9. 12/27/2011 14:35 – 14:47	1998 Jeep Grand Cherokee; License No. 4CUJ228	XB820212C
10. 01/23/2012 14:20 – 14:40	2004 Ford Ranger 2WD; License No. 7M67676	XD216145C
11. 01/30/2012 15:05 – 15:12	1998 Dodge Neon; License No. 4CDS181	XD418856C

21 ² The On Board Diagnostics (OBD II) functional test is an automated function of the
 22 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
 23 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
 24 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
 information from the vehicle's on-board computer about the status of the readiness indicators,
 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
 functional test, it will fail the overall inspection.

25 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
 26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
 27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
 control system or component failure.

12. 02/18/2012 13:18 – 13:26	2000 Dodge Dakota pickup 2WD; License No. 7F09868	XD794952C
13. 02/18/2012 14:28 – 14:36	1999 Toyota Camry Solara; License No. 4EMJ561	XD794956C
14. 02/23/2012 14:17 – 14:45	1998 Nissan Frontier; License No. 8L69755	XD884452C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent 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 certified that vehicles 1 through 14, identified in paragraph 16 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.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 14, identified in paragraph 16 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

19. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

1 a. **Section 44012:** Respondent failed to perform the emission control tests on vehicles 1
2 through 14, identified in paragraph 16 above, in accordance with procedures prescribed by the
3 department.

4 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
5 vehicles 1 through 14, identified in paragraph 16 above, without properly testing and inspecting
6 the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations Pursuant**
9 **to the Motor Vehicle Inspection Program)**

10 20. Respondent's smog check station license is subject to disciplinary action pursuant to
11 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
12 provisions of California Code of Regulations, title 16, as follows:

13 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
14 compliance for vehicles 1 through 14, identified in paragraph 16 above, even though the vehicles
15 had not been inspected in accordance with section 3340.42.

16 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
17 through 14, identified in paragraph 16 above, in accordance with the Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent's smog check station license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
22 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
23 compliance for vehicles 1 through 14, identified in paragraph 16 above, without performing bona
24 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
25 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program.

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1 **OTHER MATTERS**

2 25. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 suspend, revoke, or place on probation the registration for all places of business operated in this
4 state by Respondent Frank H. Sakamoto, owner of Smog Check Only, upon a finding that
5 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
6 regulations pertaining to an automotive repair dealer.

7 26. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
8 License Number TC 260323, issued to Respondent Frank H. Sakamoto, owner of Smog Check
9 Only, is revoked or suspended, any additional license issued under this chapter in the name of
10 said licensee may be likewise revoked or suspended by the director.

11 27. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 631798, issued to Respondent Frank H. Sakamoto, currently
13 designated as EA 631798 and as redesignated upon timely renewal as EO 631798 and/or EI
14 631798, is/are revoked or suspended, any additional license issued under this chapter in the name
15 of said licensee may be likewise revoked or suspended by the Director.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 260323, issued to Frank H. Sakamoto, owner of Smog Check Only;

21 2. Revoking or suspending any other automotive repair dealer registration issued to
22 Frank H. Sakamoto;

23 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
24 260323, issued to Frank H. Sakamoto, owner of Smog Check Only;

25 4. Revoking or suspending Advanced Emission Specialist Technician License Number
26 EA 631798, issued to Frank H. Sakamoto; currently designated as EA 631798 and as
27 redesignated upon timely renewal as EO 631798 and/or EI 631798;

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5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Frank H. Sakamoto;

6. Ordering Frank H. Sakamoto, individually, and as owner of Smog Check Only, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: September 18, 2013 

Patrick Dorais
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

LA2012507003