

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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 **6928 Reseda Blvd**
Reseda, CA 91335
14 **Mailing Address:**
4840 Ariano Drive
15 **Cypress, CA 91335**
HEMLATA SOMANI, PRES
16 **ANIL SOMANI, SEC/TRES**

A C C U S A T I O N
S M O G C H E C K

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

19 **and**

20 **JOSE IGNACIO LANDEROS**
21 **7256 Vanalden Ave**
22 **Reseda, CA 91335**

23 **Advanced Emission Specialist Technician**
License No. EA 631840

24 Respondents.

25
26 ///

27 ///

28 ///

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

9 (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
10 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
11 adopted pursuant to it.

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.

28 ///

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

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

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

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

9 When a license has been revoked or suspended following a hearing under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

11 COST RECOVERY

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

16 **SURVEILLANCE OPERATION NOVEMBER 21, 2011**

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

26 ¹ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 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.

///

///

///

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.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 
 JOHN WALLAUCH
 Chief
 Bureau of Automotive Repair
 Department of Consumer Affairs
 State of California
 Complainant

JOSE IGNACIO LANDEROS