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8
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. 79/16-11174

13 **BRYAN A. WHITE,**
14 **DBA FIC SMOG**
322 N. El Camino Real Suite C
Encinitas, CA 92024

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
ARD 225452
16 **Smog Check Test Only Station License No.**
TC 225452,

17
18 **and**

19 **BRYAN ANTHONY WHITE**
322 N. El Camino Real Suite C
Encinitas, CA 92024

20 **Smog Check Inspector License No.**
21 **EO 146945**
22 **Smog Check Repair Technician License No.**
EI 146945

23 **and**

24 **JOE HOANG FARRIES**
25 322 N. El Camino Real Suite C
Encinitas, CA 92024

26 **Mailing Address:**
27 1441 Reed Ave.
San Diego, CA 92109
28

1 **Smog Check Inspector License No.**
2 **EO 152881**

3 Respondents.

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5 Complainant alleges:

6 **PARTIES**

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

9 **Bryan A. White, dba FIC Smog**

10 2. In 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer
11 Registration Number ARD 225452 to Bryan A. White, dba FIC Smog, (Respondent). The
12 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
13 charges brought herein and will expire on December 31, 2018, unless renewed.

14 3. On or about March 13, 2003, the Bureau of Automotive Repair issued Smog Check-
15 Test Only Station License Number TC 225452 to Bryan A. White, dba FIC Smog, (Respondent).
16 The Smog Check-Test Only Station License was in full force and effect at all times relevant to the
17 charges brought herein and will expire on December 31, 2018, unless renewed.

18 4. FIC Smog became a STAR certified testing facility on May 31, 2013. The STAR
19 certification will remain active unless the Automotive Repair Dealer Registration and/or Smog
20 Check, Test Only Station License are revoked, cancelled, become delinquent, or the certification
21 is otherwise invalidated.

22 **Bryan Anthony White**

23 5. In 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist
24 Technician License Number EA 146945 to Bryan Anthony White (Respondent White). The
25 Advanced Emission Specialist Technician License was cancelled on March 19, 2013. Pursuant to
26 California Code of Regulations, title 16 section 3340.28(e), said license was renewed pursuant to
27 Respondent White's election as Smog Check Inspector License Number EO 146945, and Smog
28 Check Repair Technician Number EI 146945. The Smog Check Inspector License was in full

1 force and effect at all times relevant to the charges brought herein and will expire on March 31,
2 2019, unless renewed. The Smog Check Repair Technician expired on March 31, 2015, and has
3 not been renewed.¹

4 **Joe Hoang Farries**

5 6. In 2006, the Bureau of Automotive Repair issued Advanced Emission Specialist
6 Technician License Number EA 152881 to Joe Hoang Farries (Respondent Farries). The
7 Advanced Emission Specialist Technician License was cancelled on May 12, 2014. Pursuant to
8 California Code of Regulations, title 16 section 3340.28(e), said license was renewed pursuant to
9 Respondent Farries' election as Smog Check Inspector License Number EO 152881. The Smog
10 Check Inspector License was in full force and effect at all times relevant to the charges brought
11 herein and will expire on May 31, 2020, unless renewed.

12 **JURISDICTION**

13 7. This Accusation is brought before the Director of the Department of Consumer
14 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
15 All references are to the Business and Professions Code (Code) unless otherwise stated.

16 8. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
17 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed
18 with a disciplinary action during the period within which the license may be renewed, restored,
19 reissued or reinstated.

20 9. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
21 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
22 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
23 registration temporarily or permanently.

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25 ///

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 10. Section 9884.20 of the Code states:

2 All accusations against automotive repair dealers shall be filed within three
3 years after the performance of the act or omission alleged as the ground for
4 disciplinary action, except that with respect to an accusation alleging fraud or
5 misrepresentation as a ground for disciplinary action, the accusation may be filed
6 within two years after the discovery, by the bureau, of the alleged facts constituting
7 the fraud or misrepresentation.

8 11. Section 9884.22 of the Code, subdivision (a) states, in pertinent part:

9 (a) Notwithstanding any other provision of law, the director may revoke,
10 suspend, or deny at any time any registration required by this article on any of the
11 grounds for disciplinary action provided in this article. The proceedings under this
12 article shall be conducted in accordance with Chapter 5 (commencing with Section
13 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
14 shall have all the powers granted therein.

15 12. Health and Safety Code section 44002 provides, in pertinent part, that the Director
16 has all the powers and authority granted under the Automotive Repair Act for enforcing the
17 Motor Vehicle Inspection Program.

18 13. Health and Safety Code section 44072.4 states:

19 The director may take disciplinary action against any licensee after a hearing as provided in
20 this article by any of the following:

- 21 (a) Imposing probation upon terms and conditions to be set forth by the director.
22 (b) Suspending the license.
23 (c) Revoking the license.

24 14. Health and Safety Code section 44072.6 provides, in pertinent part, that the
25 expiration or suspension of a license by operation of law, or by order or decision of the Director
26 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
27 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
28 proceedings against the licensee, or to render a decision suspending or revoking the license.

 15. Health and Safety Code section 44072.7 states:

 All accusations against licensees shall be filed within three years after the act
 or omission alleged as the ground for disciplinary action, except that with respect
 to an accusation alleging a violation of subdivision (d) of Section 44072.2, the
 accusation may be filed within two years after the discovery by the bureau of the
 alleged facts constituting the fraud or misrepresentation prohibited by that section.

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1 20. Section 44012 of the Health and Safety Code states:

2 The test at the smog check stations shall be performed in accordance with
3 procedures prescribed by the department and may require loaded mode
4 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
5 vehicle's onboard diagnostic system, or other appropriate test procedures as
6 determined by the department in consultation with the state board. The
7 department shall implement testing using onboard diagnostic systems, in lieu of
8 loaded mode dynamometer or two-speed idle testing, on model year 2000 and
9 newer vehicles only, beginning no earlier than January 1, 2013. However, the
10 department, in consultation with the state board, may prescribe alternative test
11 procedures that include loaded mode dynamometer or two-speed idle testing for
12 vehicles with onboard diagnostic systems that the department and the state board
13 determine exhibit operational problems. The department shall ensure, as
14 appropriate to the test method, the following:

15 (a) Emission control systems required by state and federal law are
16 reducing excess emissions in accordance with the standards adopted pursuant to
17 subdivisions (a) and (c) of Section 44013.

18 (b) Motor vehicles are preconditioned to ensure representative and
19 stabilized operation of the vehicle's emission control system.

20 (c) For other than diesel-powered vehicles, the vehicle's exhaust
21 emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of
22 nitrogen in an idle mode or loaded mode are tested in accordance with procedures
23 prescribed by the department. In determining how loaded mode and evaporative
24 emissions testing shall be conducted, the department shall ensure that the
25 emission reduction targets for the enhanced program are met.

26 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
27 system and crankcase ventilation system are tested to reduce any nonexhaust
28 sources of volatile organic compound emissions, in accordance with procedures
29 prescribed by the department.

30 (e) For diesel-powered vehicles, a visual inspection is made of emission
31 control devices and the vehicle's exhaust emissions are tested in accordance with
32 procedures prescribed by the department, that may include, but are not limited to,
33 onboard diagnostic testing. The test may include testing of emissions of any or all
34 of the pollutants specified in subdivision (c) and, upon the adoption of applicable
35 standards, measurement of emissions of smoke or particulates, or both.

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

41 (g) A determination as to whether the motor vehicle complies with the
42 emission standards for that vehicle's class and model-year as prescribed by the
43 department.

44 (h) An analysis of pass and fail rates of vehicles subject to an onboard
45 diagnostic test and a tailpipe test to assess whether any vehicles passing their
46 onboard diagnostic test have, or would have, failed a tailpipe test, and whether

1 any vehicles failing their onboard diagnostic test have or would have passed a
2 tailpipe test.

3 (i) The test procedures may authorize smog check stations to refuse the
4 testing of a vehicle that would be unsafe to test, or that cannot physically be
5 inspected, as specified by the department by regulation. The refusal to test a
6 vehicle for those reasons shall not excuse or exempt the vehicle from compliance
7 with all applicable requirements of this chapter.

8
9 21. Health and Safety Code section 44015 states, in pertinent part:

10 (a) A licensed smog check station shall not issue a certificate of
11 compliance, except as authorized by this chapter, to any vehicle that meets the
12 following criteria:

13 (1) A vehicle that has been tampered with.

14

15 (b) If a vehicle meets the requirements of Section 44012, a smog check
16 station licensed to issue certificates shall issue a certificate of compliance or a
17 certificate of noncompliance.

18

19 22. Health and Safety Code section 44032 states:

20 No person shall perform, for compensation, tests or repairs of emission
21 control devices or systems of motor vehicles required by this chapter unless the
22 person performing the test or repair is a qualified smog check technician and the
23 test or repair is performed at a licensed smog check station. Qualified technicians
24 shall perform tests of emission control devices and systems in accordance with
25 Section 44012.

26 23. Section 44035 of the Health and Safety Code states:

27 (a) A smog check station's license or a qualified smog check technician's
28 qualification may be suspended or revoked by the department, after a hearing, for
failure to meet or maintain the standards prescribed for qualification, equipment,
performance, or conduct. The department shall adopt rules and regulations
governing the suspension, revocation, and reinstatement of licenses and
qualifications and the conduct of the hearings.

(b) The department or its representatives, including quality assurance
inspectors, shall be provided access to licensed stations for the purpose of
examining property, station equipment, repair orders, emissions equipment
maintenance records, and any emission inspection items, as defined by the
department.

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1 24. Health and Safety Code section 44072.2 states:

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

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

6

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

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

11

12 25. Health and Safety Code 44072.10 states, in pertinent part:

13 (a) Notwithstanding Sections 44072 and 44072.4, the director, or the
14 director's designee, pending a hearing conducted pursuant to subdivision (e), may
15 temporarily suspend any smog check station or technician's license issued under
 this chapter, for a period not to exceed 60 days, if the department determines that
 the licensee's conduct would endanger the public health, safety, or welfare before
 the matter could be heard pursuant to subdivision (e), based upon reasonable
 evidence of any of the following:

16 (1) Fraud.

17 (2) Tampering.

18 (3) Intentional or willful violation of this chapter or any regulation,
19 standard, or procedure of the department implementing this chapter.

20 (4) A pattern or regular practice of violating this chapter or any regulation,
21 standard, or procedure of the department implementing this chapter.

22 ...

23 (c) The department shall revoke the license of any smog check technician
24 or station licensee who fraudulently certifies vehicles or participates in the
25 fraudulent inspection of vehicles. A fraudulent inspection includes, but is not
26 limited to, all of the following:

27 (1) Clean piping, as defined by the department.

28 (2) Tampering with a vehicle emission control system or test analyzer
 system.

 (3) Tampering with a vehicle in a manner that would cause the vehicle to
 falsely pass or falsely fail an inspection.

 (4) Intentional or willful violation of this chapter or any regulation, standard, or
 procedure of the department implementing this chapter.

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REGULATORY PROVISIONS

26. California Code of Regulations, title 16, section 3340.24, sub-division (c) states:

(c) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

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

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

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

(b) A licensed technician shall maintain on file with the bureau a correct mailing address pursuant to section 3303.3 of Article 1 of this Chapter.

28. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

...

29. California Code of Regulations, title 16, section 3340.41, sub-division (c) states:

(c) No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

30. California Code of Regulations, title 16, section 3340.42, states:

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

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

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of

1 this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM)
2 test equipment, including a chassis dynamometer, certified by the bureau.

3 On and after March 31, 2010, exhaust emissions from a vehicle subject to
4 this inspection shall be measured and compared to the emissions standards shown
5 in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards
6 (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference.
7 If the emissions standards for a specific vehicle are not included in this table then
8 the exhaust emissions shall be compared to the emissions standards set forth in
9 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if
10 all of its measured emissions are less than or equal to the applicable emission
11 standards specified in the applicable table.

12 (2) A two-speed idle mode test shall be the test method used to inspect
13 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program
14 areas of the state, except in those areas of the state where the enhanced program
15 has been implemented. The two-speed idle mode test shall measure hydrocarbon,
16 carbon monoxide and carbon dioxide emissions at high RPM and again at idle
17 RPM, as contained in the bureau's specifications referenced in subsection (a) of
18 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this
19 inspection shall be measured and compared to the emission standards set forth in
20 this section and as shown in Table III. A vehicle passes the two-speed idle mode
21 test if all of its measured emissions are less than or equal to the applicable
22 emissions standards specified in Table III.

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

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

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

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

(c) The bureau may require any combination of the inspection methods in
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and
Safety Code section 44014.7 as a means of identifying potential operational
problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational
problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross
polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter
emissions standards included in the tables described in subsection (a), as
applicable.

1 (2) Vehicles with emission levels exceeding the emission standards for
2 gross polluters during an initial inspection will be considered gross polluters and
the provisions pertaining to gross polluting vehicles will apply, including, but not
limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

3 (3) A gross polluting vehicle shall not be passed or issued a certificate of
4 compliance until the vehicle's emissions are reduced to or below the applicable
5 emissions standards for the vehicle included in the tables described in subsection
(a), as applicable. However, the provisions described in section 44017 of the
Health and Safety Code may apply.

6 (4) This subsection applies in all program areas statewide to vehicles
7 requiring inspection pursuant to sections 44005 and 44011 of the Health and
Safety Code.

8 31. California Code of Regulations, title 16, section 3340.45 states:

9 (a) All Smog Check inspections shall be performed in accordance with
10 requirements and procedures prescribed in the following:

11 (1) Smog Check Inspection Procedures Manual, dated August 2009,
which is hereby incorporated by reference. This manual shall be in effect until
subparagraph (2) is implemented.

12 (2) Smog Check Manual, dated 2013, which is hereby incorporated by
reference. This manual shall become effective on or after January 1, 2013.

13
14 32. California Code of Regulations, title 16, section 3373, states:

15 No automotive repair dealer or individual in charge shall, in filling out an
16 estimate, invoice, or work order, or record required to be maintained by section
3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
17 information which will cause any such document to be false or misleading, or
where the tendency or effect thereby would be to mislead or deceive customers,
18 prospective customers, or the public.

19 **COST RECOVERY**

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

26 **CLEAN PLUGGING**

27 34. Between February 2016, and March 2017, the Bureau investigator reviewed
28 current OIS test results transmitted into the Bureau's Vehicle Information Database (VID) by FIC

1 Smog. The test data revealed anomalies consistent with fraudulent smog check activities,
2 specifically with reference to results for inspections purportedly performed on the Smog Check
3 On-Board Diagnostic Inspection System (OIS)² between February 19, 2016, and March 6, 2017.

4 35. The VIN that is physically present on all vehicles is required to be programmed
5 into the vehicle's OBD-OIS on 2005 and newer vehicles, and on many occasions was
6 programmed into the OBD II system electronic control unit in earlier model-years. This
7 electronically programmed Vehicle Identification Number, also known as the "eVIN," is captured
8 by BAR during a Smog Check, and should match the physical Vehicle Identification Number on
9 the vehicle.

10 36. The OBD II communication protocol describes the specified communication
11 "language" used by the OBD II system electronic control unit to communicate to scan tools and
12 other devices such as the OBD-OIS. The communication protocol is programmed into the OBD
13 II system electronic control unit during manufacture and does not change.

14 37. Parameter Identifications (PIDs) are data points reported by the OBD II system
15 electronic control unit (ECU) to the scan tool or On-Board Diagnostic Inspection System.
16 Examples of PIDs are engine speed (rpm), vehicle speed, engine temperature, and other input and
17 output values utilized by the OBD II system electronic control unit. The PIDs count is the
18 number of data points reported by the OBD II system ECU, and is programmed during
19 manufacture.

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21
22 ² The On-Board Diagnostic Inspection System (OIS) is a Smog Check testing system to
23 certify 2000 model year vehicles and newer. The OIS consists of a BAR-certified Data
24 Acquisition Device (DAD) and other equipment including a computer, bar code scanner, and
25 printer. The OIS uses the California BAR-OIS software to communicate with the BAR's central
26 database through an Internet connection. The bar code scanner is used to input technician,
27 Vehicle Identification Number (VIN), and DMV renewal information. The printer provides a
28 Vehicle Inspection Report containing inspection results for motorists and a Smog Check
Certificate of Compliance number for passing vehicles. The Inspector is required to connect the
Data Acquisition Device to the vehicle to be certified. The Data Acquisition Device is an On
Board Diagnostic scan tool that, when requested by the California BAR-OIS software, retrieves
On Board Diagnostic data from the vehicle. The Data Acquisition Device connects to the
vehicle's on-board computer through the vehicle's diagnostic link connector (DLC). The Data
Acquisition Device is the only BAR-certified component of the OIS.

1 38. The Bureau investigator documented eight (8) vehicles certified by FIC Smog
2 between February 19, 2016, and March 6, 2017, using Respondent Farries' Smog Check
3 Technician license number and OIS access code, with one or more discrepancies in the eVIN,
4 vehicle communication protocols, and or PIDs. All eight vehicles that are identified below had
5 information stored in the VID that did not apply to those vehicles. Respondent Farries issued the
6 eight fraudulent Certificates of Compliance to those vehicles as follows:

7 (a) **Clean Plug #1**

8 OIS Test Detail data indicates that on February 19, 2016, a 2002 Chrysler Sebring passed
9 an OIS inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
10 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
11 that an incorrect eVIN for this vehicle was transmitted, the transmitted communication protocol
12 was JPWM, and the transmitted PID count was 20.

13 Comparative OIS test data of other 2002 Chrysler Sebrings reveals that no eVIN is
14 transmitted, the expected communication protocol is I914 and the expected PID count is 20.
15 Additionally, the OIS Test Data shows that a 2000 Ford Expedition was the vehicle actually used
16 to generate the fraudulent Smog Certificate of Compliance for the 2002 Chrysler Sebring. The
17 2004 Ford Expedition was certified by Respondent Farries that same day, and the OIS Test Data
18 for the 2000 Ford Expedition matches what was inputted by Respondent Farries for the 2002
19 Chrysler Sebring. The discrepancies in the OIS Test Data prove that the OIS Data Acquisition
20 Device (DAD) *was not* connected to the 2002 Chrysler Sebring being certified, causing the
21 issuance of illegal smog Certificate of Compliance.

22 (b) **Clean Plug #2**

23 OIS Test Detail data indicates that on March 8, 2016, a 2004 Porsche 911 passed an OIS
24 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
25 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
26 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
27 and the transmitted PID count was 20/1.

1 Comparative OIS test data of other 2004 Porsche 911s reveals the correct eVIN is
2 transmitted, the expected communication protocol is I914 and the expected PID count is 23. The
3 discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was not*
4 connected to the 2004 Porsche 911 being certified, causing the issuance of illegal smog
5 Certificate of Compliance.

6 (c) **Clean Plug #3**

7 OIS Test Detail data indicates that on June 7, 2016, a 2007 Ford Mustang passed an OIS
8 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
9 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
10 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
11 and the transmitted PID count was 16.

12 Comparative OIS test data of other 2007 Ford Mustangs reveals the correct eVIN is
13 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
14 42 or 44. Additionally, OIS Test Data shows that the same 2007 Ford Mustang was inspected on
15 August 28, 2015, and failed the inspection. During that inspection, the correct eVIN was
16 transmitted for the vehicle, along with a communication protocol of ICAN11bt5, and a PID count
17 of 44. The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device
18 (DAD) *was not* connected to the 2007 Ford Mustang being certified, causing the issuance of
19 illegal smog Certificate of Compliance.

20 (d) **Clean Plug #4**

21 OIS Test Detail data indicates that on June 18, 2016, a 2010 Mercedes-Benz E550 passed
22 an OIS inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
23 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
24 that an incorrect eVIN for this vehicle was transmitted, the transmitted communication protocol
25 was ICAN11bt5, and the transmitted PID count was 46/12.

26 Comparative OIS test data of other 2010 Mercedes-Benz E550s reveals the correct eVIN is
27 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
28 47/12. OIS Test Data reveals that the same 2010 Mercedes-Benz E550 was inspected on March

21, 2016. During that inspection, the correct eVIN was transmitted, along with the correct communication protocol and the expected PID count. OIS Test Data also reveals that a 2010 Mercedes-Benz GL 450 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2010 Mercedes-Benz E550. The eVIN for the 2010 Mercedes-Benz GL 450 was the same eVIN used to fraudulently certify the 2010 Mercedes-Benz E 550 on June 18, 2016.

The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was not* connected to the 2010 Mercedes-Benz E550 being certified, causing the issuance of illegal smog Certificate of Compliance.

(e) Clean Plug #5

OIS Test Detail data indicates that on October 8, 2016, a 2002 BMW M3 passed an OIS inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914, and the transmitted PID count was 17/1.

Comparative OIS test data of other 2002 BMW M3s reveals the correct eVIN is transmitted, the expected communication protocol is I914 and the expected PID count is 23, 23/1, 24, or 24/1. Additionally, OIS Test Data reveals that the same 2002 BMW M3 was inspected on November 1, 2014. During that inspection, the correct eVIN was transmitted, the communication protocol was I914, and the PID count was 23. The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was not* connected to the 2002 BMW M3 being certified, causing the issuance of illegal smog Certificate of Compliance.

(f) Clean Plug #6

OIS Test Detail data indicates that on December 7, 2016, a 2004 Mazda RX8 passed an OIS inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914, and the transmitted PID count was 18.

1 Comparative OIS test data of other 2004 Mazda RX8s reveals the correct eVIN is
2 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
3 35/8, 37/13, or 37/8. Additionally, OIS Test Data reveals that the same 2004 Mazda RX8 was
4 inspected on September 19, 2016, and failed the inspection. During that inspection, the correct
5 eVIN was transmitted, the communication protocol was ICAN11bt5, and the PID count was 37/8.
6 The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was*
7 *not* connected to the 2004 Mazda RX8 being certified, causing the issuance of illegal smog
8 Certificate of Compliance.

9 (g) **Clean Plug #7**

10 OIS Test Detail data indicates that on March 4, 2017, a 2002 Ford Explorer passed an OIS
11 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
12 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
13 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
14 and the transmitted PID count was 19.

15 Comparative OIS test data of other 2002 Ford Explorers reveals the correct eVIN is
16 transmitted, the expected communication protocol is JPWM, and the expected PID count is 22.
17 Additionally, OIS Test Data reveals that the same 2002 Ford Explorer was inspected on
18 December 17, 2016, and failed the inspection. During that inspection, the correct eVIN was
19 transmitted, the communication protocol was JPWM, and the PID count was 22. The
20 discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was not*
21 connected to the 2002 Ford Explorer being certified, causing the issuance of illegal smog
22 Certificate of Compliance.

23 (h) **Clean Plug #8**

24 OIS Test Detail data indicates that on March 6, 2017, a 2009 BMW M3 passed an OIS
25 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
26 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
27 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
28 and the transmitted PID count was 20.

1 Comparative OIS test data of other 2009 BMW M3s reveals the correct eVIN is
2 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
3 16, 44, 44/16, 46, 46/16, 48, or 48/16. Additionally, OIS Test Data reveals that the same 2009
4 BMW M3 was inspected on March 1, 2017, and failed the inspection. During that inspection, the
5 correct eVIN was transmitted, the communication protocol was ICAN11bt5, and the PID count
6 was 48. The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device
7 (DAD) *was not* connected to the 2009 BMW M3 being certified, causing the issuance of illegal
8 smog Certificate of Compliance.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 39. Respondent White's Automotive Repair Dealer Registration for FIC Smog, ARD
12 225452, is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in
13 that White made or authorized statements that he knew or in the exercise of reasonable care
14 should have known were untrue or misleading, as follows: White certified that the vehicles
15 described in paragraph 38, above, had passed inspection and were in compliance with applicable
16 laws and regulations. In fact, White conducted inspections on the vehicles using clean-plugging
17 methods in order to issue smog certificates of compliance for the vehicles, and did not actually
18 test or inspect the vehicles as required by Health and Safety Code section 44012.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 40. Respondent White's Automotive Repair Dealer Registration for FIC Smog, ARD
22 225452, is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in
23 that White committed acts that constitute fraud by issuing electronic smog certificates of
24 compliance for the vehicles described in paragraph 38, above, without performing bona fide
25 inspections of the emission control devices and systems on the vehicles, thereby depriving the
26 People of the State of California of the protection afforded by the Motor Vehicle Inspection
27 Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

3 41. Respondent White's Smog Check Test-Only Station license for FIC Smog, TC
4 225452, is subject to disciplinary action pursuant to Health and Safety Code section 44072.2,
5 subdivision (a), in that White failed to comply with provisions of the Health and Safety Code, as
6 set forth in paragraph 38, above.

7 a. **Health and Safety Code section 44012, subdivision (a):** White failed to ensure that
8 all emission control devices and systems required by law for the vehicles described in paragraph
9 38, above, were installed and functioning correctly in accordance with procedures prescribed by
10 the department.

11 b. **Health and Safety Code section 44012, subdivision (f):** White failed to ensure that
12 the emission control tests were performed on the vehicles described in paragraph 38, above, in
13 accordance with procedures prescribed by the department.

14 c. **Health and Safety Code section 44015, subdivision (b):** White issued electronic
15 smog certificates for the vehicles described in paragraph 38, above, without ensuring that the
16 vehicles were properly tested and inspected to determine if it was in compliance with Health and
17 Safety Code section 44012.

18 d. **Health and Safety Code section 44059:** White willfully made false entries for
19 electronic certificates of compliance for the vehicles described in paragraph 38, above, by
20 certifying the vehicles had been inspected as required when, in fact, they had not.

21 **FOURTH CAUSE FOR DISCIPLINE**

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

23 42. Respondent White's Smog Check Test-Only Station license for FIC Smog, TC
24 225452, is subject to disciplinary action pursuant to Health and Safety Code section 44072.2,
25 subdivision (c), in that White failed to comply with provisions of California Code of Regulations,
26 Title 16, as set forth in paragraph 38, above.

27 a. **Section 3340.24, subdivision (c):** White falsely or fraudulently issued electronic
28 smog certificates of compliance for the vehicles described in paragraph 38, above.

1 b. **Section 3340.35, subdivision (c):** White issued electronic smog certificates of
2 compliance for the vehicles described in paragraph 38, above, even though the vehicles had not
3 been inspected in accordance with section 3340.42.

4 c. **Section 3340.42:** White failed to ensure that the required smog tests were conducted
5 on the vehicles described in paragraph 38, above, in accordance with the Bureau's specifications.

6 d. **Section 3373:** White created a false and misleading record by issuing a document that
7 was false and misleading.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 43. Respondent White's Smog Check Test-Only Station license for FIC Smog, TC
11 225452, is subject to disciplinary action pursuant to Health and Safety Code section 44072.2,
12 subdivision (d), in that White committed dishonest, fraudulent, or deceitful acts whereby another
13 is injured by issuing electronic smog certificates of compliance for the vehicles described in
14 paragraph 38, above, without performing bona fide inspections of the emission control devices
15 and systems on the vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 44. Respondent Farries' Smog Check Inspector license no. EO 152881 is subject to
20 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
21 Farries failed to comply with the following provisions of the Health and Safety Code:

22 a. **Health and Safety Code section 44032:** Farries failed to ensure that all emission
23 control devices and systems required by law for the vehicles described in paragraph 38, above,
24 were installed and functioning correctly in accordance with test procedures.

25 b. **Health and Safety Code section 44059:** Farries willfully made false entries for
26 electronic certificates of compliance for the vehicles described in paragraph 38, above, by
27 certifying that those vehicles have been inspected is required when, in fact, they had not.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Use Proper Test Methods Pursuant to the Motor Vehicle Inspection Program)**

3 45. Respondent Farries's Smog Check Inspector license no. EO 152881 is subject to
4 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
5 Farries failed to comply with the following provisions of California Code of Regulations, Title
6 16:

7 a. **Section 3430, subdivision (a):** Farries failed to inspect and test the vehicles
8 described in paragraph 38, above, in accordance with Health and Safety Code sections 44012 and
9 44035, and CCR section 3340.42.

10 b. **Section 3340.41, subdivision (c):** Farries intentionally permitted false information
11 about the vehicles described in paragraph 38, above, to be entered into the department's
12 Emissions Inspection System.

13 c. **Section 3340.42:** Farries failed to conduct the required smog tests on the vehicles
14 described in paragraph 38, above, in accordance with the Bureau's specifications.

15 **EIGHTH CAUSE FOR DISCIPLINE**

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

17 46. Respondent Farries's Smog Check Inspector license no. EO 152881 is subject to
18 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
19 Farries committed dishonest, fraudulent, or deceitful acts whereby another is injured by causing
20 an electronic certificate of compliance to be issued for the vehicles described in paragraph 38,
21 above, without performing bona fide inspections of the emission control devices and systems on
22 the vehicles, thereby depriving the People of the State of California of the protection afforded by
23 the Motor Vehicle Inspection Program.

24 **DISCIPLINARY CONSIDERATIONS**

25 47. On February 20, 2018, in the San Diego Superior Court, case number SCN
26 380551, Respondent Farries pled guilty to a violation of Vehicle Code section 4463(a)(2),
27 admitting that he knowingly and unlawfully and with the intent to defraud passed a certificate
28 knowing it to be altered. As part of the plea agreement, the court ordered that Respondent Farries

1 conduct no smog inspections for three years. At the sentencing hearing on March 21, 2018, the
2 court reduced the conviction to a misdemeanor. Respondent Farries was required to serve 17
3 days in county jail, including good behavior credits, with an additional 180 days stayed pending
4 successful completion of probation. Respondent Farries probation includes a Fourth Amendment
5 waiver, to expire on March 20, 2021, various fines and fees, and an order not to engage "in any
6 employment involving smog certifications."

7 48. A citation was issued to Respondent Farries' Advanced Emission Specialist
8 Technician License on October 19, 2010. Respondent Farries was required to complete a 68-hour
9 training course.

10 49. A citation was issued to Respondent Farries' Advanced Emission Specialist
11 Technician License on August 22, 2007. Respondent Farries was required to complete a 16-hour
12 training course.

13 50. A citation was issued to Respondent Farries' Advanced Emission Specialist
14 Technician License on May 23, 2007. Respondent Farries was required to complete an 8-hour
15 training course.

16 **OTHER MATTERS**

17 51. Under Code section 9884.7, subdivision (c), the Director may invalidate
18 temporarily or permanently or refuse to validate, the registrations for all places of business
19 operated in this state by an automotive repair dealer upon a finding that the automotive repair
20 dealer has engaged in a course of repeated and willful violations of the laws and regulations
21 pertaining to an automotive repair dealer.

22 52. Under Health and Safety Code section 44072.8, if Smog Check Test-Only Station
23 License Number TC 225452, issued to Bryan Anthony White, doing business as FIC Smog, is
24 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 in
25 the name of said licensee may be likewise revoked or suspended by the director.

26 53. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
27 Number EO 152881, issued to Joe Hoang Farries, is revoked or suspended, any additional license
28


1 issued under Chapter 5 of Part 5 of Division 26 in the name of said licensee may be likewise
2 revoked or suspended by the director.

3 **PRAYER**

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

- 6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 225452, issued to Bryan A. White dba FIC Smog;
- 8 2. Revoking or suspending Smog Check-Test Only Station License Number TC 225452,
9 issued to Bryan A. White dba FIC Smog;
- 10 3. Revoking or suspending Smog Check Inspector License Number EO 146945, issued
11 to Bryan Anthony White;
- 12 4. Revoking or suspending Smog Check Repair Technician Number EI 146945, issued
13 to Bryan Anthony White;
- 14 5. Revoking or suspending any additional license under Chapter 5 of Part 5 of Division
15 26 in the name of Bryan Anthony White;
- 16 6. Revoking or suspending Smog Check Inspector License Number EO 152881, issued
17 to Joe Hoang Farries;
- 18 7. Revoking or suspending any additional license under Chapter 5 of Part 5 of Division
19 26 in the name of Joe Hoang Farries;
- 20 8. Ordering Bryan Anthony White and Joe Hoang Farries to pay the Bureau of
21 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
22 pursuant to Business and Professions Code section 125.3; and,
- 23 9. Taking such other and further action as deemed necessary and proper.

24
25 DATED: June 29, 2018


PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant