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

11 In the Matter of the Accusation Against:

Case No. 79/18-1945

12 **VIKRAMDEEP SINGH RANDHAWA –**  
13 **PRESIDENT/SECRETARY/TREASURER,**  
14 **BAYSMOGSTERS, INC. dba CHEAP**  
15 **SMOG TEST**  
1205 Petaluma Hill Road  
Santa Rosa, CA 95404

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

16 Mailing Address  
31995 Trevor St.  
17 Hayward, CA 94544

18 **Automotive Repair Dealer Registration No.**  
ARD 283472  
19 **Smog Check, Test Only Station No. TC**  
20 **283472**

21 **MARIO ITURBE**  
1317 Stroven Lane  
22 Santa Rosa, CA 95407

23 **Smog Check Inspector License No. EO**  
**635295**

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1 **ANTOINE DE SHAWN BRACY SR.**  
2 **P.O. Box 2183**  
3 **Suisun, CA 94533**

4 **Smog Check Inspector License No. EO**  
5 **634177**

6 **Smog Check Repair Technician License No.**  
7 **EI 634177 (former Advanced Emission**  
8 **Specialist License No. EA634177)**

9 Respondents.

10 Complainant alleges:

### 11 PARTIES

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

14 2. On or about April 28, 2016, the Bureau issued Automotive Repair Dealer Registration  
15 Number ARD 283472 to Vikramdeep Singh Randhawa – President/Secretary/Treasurer,  
16 Baysmogsters, Inc. dba Cheap Smog Test (Respondent Baysmogsters). The Automotive Repair  
17 Dealer Registration was in full force and effect at all times relevant to the charges brought in this  
18 Accusation and will expire on April 30, 2019, unless renewed.

19 3. On or about May 12, 2016, the Bureau issued Smog Check, Test Only Station  
20 Number TC 283472 to Respondent Baysmogsters. The Smog Check, Test Only Station number  
21 was in full force and effect at all times relevant to the charges brought in this Accusation and will  
22 expire on April 30, 2019, unless renewed.

23 4. On or about March 11, 2013, the Bureau issued Smog Check Inspector License No.  
24 EO 635295 to Mario Iturbe (Respondent Iturbe). The smog check inspector license was in full  
25 force and effect at all times relevant to the charges brought in this Accusation and will expire on  
26 May 31, 2019, unless renewed.

27 5. On or about April 4, 2012, the Bureau issued Advanced Emission Specialist  
28 Technician License Number EA 634177 to Antoine De Shawn Bracy Sr. (Respondent Bracy).  
Respondent Bracy's advanced emission specialist technician license was due to expire on March

1 31, 2014, but was cancelled on March 5, 2014. Pursuant to California Code of Regulations, title  
2 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Bracy's  
3 election, as Smog Check Inspector License EO 634177 and Smog Check Repair Technician  
4 License EI 634177, effective March 5, 2014.<sup>1</sup> Respondent Bracy's Smog Check Inspector  
5 License was in full force and effect at all times relevant to the charges brought in this Accusation  
6 and will expire on March 31, 2020, unless renewed. Respondent Bracy's Smog Check Repair  
7 Technician License was in full force and effect at all times relevant to the charges brought in this  
8 Accusation and expired on March 31, 2016.

### 9 JURISDICTION

10 6. This Accusation is brought before the Director of the Department of Consumer  
11 Affairs (Director) for the Bureau under the authority of the following laws.

12 7. Section 9884.13 of the Business and Professions Code provides, in pertinent part, that  
13 the expiration of a valid registration shall not deprive the Director or chief of jurisdiction to  
14 proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision  
15 invalidating a registration temporarily or permanently.

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

19 9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
20 expiration or suspension of a license by operation of law, or by order or decision of the Director,  
21 or a court of law, or the voluntary surrender of the license, shall not deprive the Director of  
22 jurisdiction to proceed with disciplinary action.

23 10. Section 44072.8 of the Health and Safety Code states: "When a license has been  
24 revoked or suspended following a hearing under this article, any additional license issued under  
25 this chapter in the name of the licensee may be likewise revoked or suspended by the director."

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

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1       “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which  
2 related to the licensed activities.

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

5       “(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.”

6       15. California Code of Regulations, title 16, section 3340.24, subdivision (c) states: “The  
7 bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the  
8 licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of  
9 noncompliance.”

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

11       “A licensed smog check inspector and/or repair technician shall comply with the following  
12 requirements at all times while licensed:

13       “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the  
14 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this  
15 article.”

16       17. California Code of Regulations, title 16, section 3340.35, subdivision (c) states: “A  
17 licensed station shall issue a certificate of compliance or noncompliance to the owner or operator  
18 of any vehicle that has been inspected in accordance with the procedures specified in section  
19 3340.42 of this article and has all the required emission control equipment and devices installed  
20 and functioning correctly.”

21       18. California Code of Regulations, title 16, section 3340.41, subdivision (c) states: “No  
22 person shall enter into the emissions inspection system any vehicle identification information or  
23 emission control system identification data for any vehicle other than the one being tested. Nor  
24 shall any person knowingly enter into the emissions inspection system any false information  
25 about the vehicle being tested.”

26       19. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part:

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

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

• • •

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

“(b) In addition to subsection (a), all vehicles subject to the smog check 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.”

## COSTS

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

## FACTUAL SUMMARY

21. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission Inspection System (EIS) for testing of 2000 model year and newer gas powered vehicles 14,000 Gross Vehicle Weight Rating and under.

22. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves On Board Diagnostic-generation II (OBD II) data from the vehicle's OBD II computer. The DAD connects

1 the BAR OIS computer to the vehicle's diagnostic link connector (DLC). The bar code scanner is  
2 used to input technician information, the vehicle identification number (VIN), and DMV renewal  
3 information. The printer is used to print Vehicle Inspection Reports.

4 23. The VIN that is physically present on all vehicles is also required to be programmed  
5 into the vehicle's OBD II computer on 2005 and newer vehicles, and on many occasions was  
6 programmed into the OBD II computer in earlier model years. This electronically programmed  
7 VIN is referred to as the "eVIN" and is captured during a smog inspection. The eVIN should  
8 match the physical VIN on the vehicle.

9 24. The OBD II communication protocol describes the specified communication  
10 language used by the OBD II computer to communicate with the scan tools and other devices  
11 such as the BAR-OIS. The communication protocol is programmed into the OBD II computer  
12 during manufacture of the vehicle and does not change.

13 25. Parameter Identifications (PIDs) are data points reported by a vehicle's OBD II  
14 system. Each make and model of vehicle reports a specific number of PIDs when it is being  
15 tested by the BAR-OIS. The PID Count is the number of data points reported by the OBD II  
16 system. The PIDs and PID Count are programmed during the manufacture of a vehicle.

17 26. Data retrieved and recorded during a BAR-OIS smog inspection include the eVIN,  
18 the communication protocol, and the PID Count. This information is transmitted to the vehicle  
19 information database during a smog inspection.

20 27. In or around January 2018, the Bureau initiated an investigation of Respondent  
21 Baysmogsters. Beginning on or about February 9, 2017, and continuing until on or about January  
22 22, 2018, Respondents were found to have performed five (5) fraudulent smog inspections using  
23 clean-plugging methods. Clean-plugging is the practice of testing one OBD II system that would  
24 pass the smog inspection for the purpose of fraudulently issuing a smog certificate of compliance  
25 to another vehicle that would not pass the smog inspection and/or is not present for testing. The  
26 vehicle receiving the certificate of compliance is not actually tested by the DAD during the smog  
27 inspection.

28 28. A Bureau representative reviewed data for the vehicles inspected and certified by

1 Respondents. The data revealed that the five vehicles that were purportedly tested by  
2 Respondents were not and could not have been connected to the DAD when they were being  
3 certified because the OBD II data purportedly transmitted by those vehicles could not have been  
4 transmitted by those vehicles.

5 29. The PID Counts for the five vehicles purportedly being tested did not match the  
6 expected PID Counts for those vehicles. The eVINs and communication protocols for the five  
7 vehicles purportedly being tested were not what they should have been.

8 30. Respondent Iturbe clean-plugged three (3) vehicles, resulting in the issuance of three  
9 fraudulent Smog Check Certificates of Compliance. The vehicles were clean-plugged as follows:

Clean Plug 1	Cert. # ZP453635C	eVIN	Protocol	PID Count
	Fraudulent Inspection 2/9/2017	WVWPD63B04E062106	KWPS	18/5
	Expected Value <sup>2</sup>	1G4HP52K134153876	JVPW	19
Clean Plug 2	Cert. # ZR082153C	eVIN	Protocol	PID Count
	Fraudulent Inspection 3/4/2017	WVWEK73CX7P095084	ICAN11bt5	37/14
	Expected Value	Not expected	I914	18 or 18/5
Clean Plug 3	Cert. # HJ528533C	eVIN	Protocol	PID Count
	Fraudulent Inspection 11/24/2017	4S4BRBCC9E3324761	ICAN11bt5	46/3
	Expected Value	Not expected	I914	18

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28 <sup>2</sup> Expected value is the value recorded for "like vehicles" inspected.



31. Respondent Bracy clean-plugged two (2) vehicles, resulting in the issuance of two fraudulent Smog Check Certificates of Compliance. The vehicles were clean-plugged as follows:

Clean Plug	Cert. #	eVIN	Protocol	PID Count
4	ZZ085294C			
	Fraudulent Inspection 7/7/2017	JF2SJAHC2FH823955	ICAN11bt5	48/3
	Expected Value	JF1SG67625H705561	KWPF	19 or 19/3
Clean Plug	Cert. #	eVIN	Protocol	PID Count
5	HL623947C			
	Fraudulent Inspection 1/22/2018	IFBNE31L26HA32349	ICAN11bt5	46
	Expected Value	IFTNS24L51HA87641	JPWM	19

#### FIRST CAUSE FOR DISCIPLINE

##### (Misleading Statements - Registration)

32. Respondent Baysmogsters has subjected its registration to discipline under section 9884.7, subdivision (a)(1) of the Code, in that it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading, as set forth above in paragraphs 27-31. Respondent Baysmogsters purported to test the five vehicles and certified that the vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean-plugging methods.

#### SECOND CAUSE FOR DISCIPLINE

##### (Fraud - Registration)

33. Respondent Baysmogsters has subjected its registration to discipline under section 9884.7, subdivision (a)(4) of the Code, in that it committed acts which constitute fraud, as set forth above in paragraphs 27-31.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program – Station License)**

3 34. Respondent Baysmogsters has subjected its station license to discipline under Health  
4 and Safety Code section 44072.2, subdivisions (a) and (c), in that it violated sections of that Code  
5 and applicable regulations, as set forth above in paragraphs 27-31, as follows:

6 a. **Health and Safety Code Section 44012:** Respondent Baysmogsters failed to ensure  
7 that the emission control tests were performed on the vehicles in accordance with procedures  
8 prescribed by the Department.

9 b. **California Code of Regulations, title 16, Section 3340.24, subdivision (c):**  
10 Respondent Baysmogsters falsely or fraudulently issued electronic certificates of compliance for  
11 the vehicles without performing bona fide inspections of the emission control devices and  
12 systems on the vehicles as required by Health and Safety Code section 44012.

13 c. **California Code of Regulations, title 16, Section 3340.35, subdivision (c):**  
14 Respondent Baysmogsters issued electronic certificates of compliance to the vehicles even though  
15 the vehicles had not been inspected in accordance with section 3340.42.

16 d. **California Code of Regulations, title 16, Section 3340.42:** Respondent  
17 Baysmogsters failed to conduct the required smog tests and inspections on the vehicles in  
18 accordance with the Bureau's specifications.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Dishonesty, Fraud, or Deceit – Station License)**

21 35. Respondent Baysmogsters has subjected its station license to discipline under Health  
22 and Safety Code section 44072.2, subdivision (d), in that it committed acts involving dishonesty,  
23 fraud, or deceit whereby another was injured by issuing electronic certificates of compliance to  
24 vehicles without performing bona fide inspections of the emission control devices and systems on  
25 those vehicles, thereby depriving the People of the State of California of the protection afforded  
26 by the Motor Vehicle Inspection Program, as set forth above in paragraphs 27-31.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program – Smog Check Licenses)**

3 36. Respondent Iturbe and Respondent Bracy have subjected their Smog Check Inspector  
4 and Smog Check Repair Technician Licenses to discipline under Health and Safety Code section  
5 44072.2, subdivisions (a) and (c), in that they violated sections of that Code and applicable  
6 regulations, as set forth above in paragraphs 27-31, as follows:

7 a. **Health and Safety Code Section 44012:** Respondent Iturbe and Respondent Bracy  
8 failed to ensure that the emission control tests were performed on the vehicles in accordance with  
9 procedures prescribed by the Department.

10 b. **Health and Safety Code Section 44059:** Respondent Iturbe and Respondent Bracy  
11 willfully made false entries on the electronic certificates of compliance by certifying that the five  
12 vehicles had been inspected as required when, in fact, they had not.

13 c. **California Code of Regulations, title 16, Section 3340.30, subdivision (a):**  
14 Respondent Iturbe and Respondent Bracy failed to inspect and test the vehicles in accordance  
15 with Health and Safety Code section 44012.

16 d. **California Code of Regulations, title 16, Section 3340.41, subdivision (c):**  
17 Respondent Iturbe and Respondent Bracy entered into the emissions inspection system vehicle  
18 identification information or emission control system identification data for vehicles other than  
19 the ones being tested, and/or they knowingly entered into the emissions inspection system false  
20 information about the vehicles being tested.

21 e. **California Code of Regulations, title 16, Section 3340.42:** Respondent Iturbe and  
22 Respondent Bracy failed to conduct the required smog tests and inspections on the vehicles in  
23 accordance with the Bureau's specifications.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud, or Deceit – Smog Check Licenses)**

26 37. Respondent Iturbe and Respondent Bracy have subjected their Smog Check Inspector  
27 and Smog Check Repair Technician Licenses to discipline under Health and Safety Code section  
28 44072.2, subdivision (d), in that they committed acts involving dishonesty, fraud, or deceit

1 whereby another was injured when they willfully made false entries on the electronic certificates  
2 of compliance and certified that the vehicles had been inspected as required when, in fact, they  
3 had not, as set forth above in paragraphs 27-31.

#### 4 DISCIPLINE CONSIDERATIONS

5 38. To determine the degree of discipline, if any, to be imposed on Respondent  
6 Baysmogsters, Complainant alleges that on or about December 23, 2016, the Bureau issued  
7 Citation No. C2016-2417 to Respondent Baysmogsters. The Citation became effective on  
8 February 23, 2017. That Citation is now final and is incorporated by reference as if fully set forth  
9 in this Accusation.

10 39. To determine the degree of discipline, if any, to be imposed on Respondent Iturbe,  
11 Complainant alleges that on or about December 23, 2016, the Bureau issued Citation No. M2016-  
12 2418 to Respondent Iturbe. The Citation became effective on February 23, 2017. That Citation is  
13 now final and is incorporated by reference as if fully set forth in this Accusation.

#### 14 OTHER MATTERS

15 40. Pursuant to section 9884.7, subdivision (c) of the Code, the Director may suspend,  
16 revoke, or place on probation the registrations for all places of business operated in this state by  
17 Respondent Baysmogsters upon a finding that Respondent Baysmogsters has, or is, engaged in a  
18 course of repeated and willful violations of the laws and regulations pertaining to an automotive  
19 repair dealer.

20 41. Pursuant to Health & Safety Code section 44072.8, if Respondent Baysmogsters's  
21 Station License is revoked or suspended, any additional license issued under Chapter 5 of Part 5  
22 of Division 26 of the Health and Safety Code in the name of Respondent Baysmogsters may be  
23 likewise revoked or suspended by the Director.

24 42. Pursuant to Health & Safety Code section 44072.8, if Respondent Iturbe's and  
25 Respondent Bracy's Smog Check Inspector Licenses or Smog Check Repair Technician Licenses  
26 are revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26  
27 of the Health and Safety Code in the name of Respondent Iturbe or Respondent Bracy may be  
28 likewise revoked or suspended by the Director.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
3 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
5 283472 issued to Vikramdeep Singh Randhawa – President/Secretary/Treasurer, Baysmogsters,  
6 Inc. dba Cheap Smog Test;

7 2. Revoking or suspending Smog Check Test Only Station License Number TC 283472  
8 issued to Vikramdeep Singh Randhawa – President/Secretary/Treasurer, Baysmogsters, Inc. dba  
9 Cheap Smog Test;

10 3. Revoking or suspending any additional Automotive Repair Dealer registrations or  
11 Smog Check Station licenses issued to Vikramdeep Singh Randhawa –  
12 President/Secretary/Treasurer, Baysmogsters, Inc. dba Cheap Smog Test;

13 4. Revoking or suspending Smog Check Inspector License EO 635295 issued to Mario  
14 Iturbe;

15 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
16 Division 26 of the Health and Safety Code in the name of Mario Iturbe;

17 6. Revoking or suspending Smog Check Inspector License EO 634177 and Smog Check  
18 Repair Technician License EI 634177 issued to Antoine De Shawn Bracy Sr.;

19 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
20 Division 26 of the Health and Safety Code in the name of Antoine De Shawn Bracy Sr.;

21 8. Ordering Vikramdeep Singh Randhawa – President/Secretary/Treasurer,  
22 Baysmogsters, Inc. dba Cheap Smog Test, to pay the Bureau of Automotive Repair the reasonable  
23 costs of the investigation and enforcement of this case pursuant to Business and Professions Code  
24 section 125.3;

25 9. Ordering Mario Iturbe to pay the Bureau of Automotive Repair the reasonable costs  
26 of the investigation and enforcement of this case pursuant to Business and Professions Code  
27 section 125.3;

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1           10.   Ordering Antoine De Shawn Bracy Sr. to pay the Bureau of Automotive Repair the  
2 reasonable costs of the investigation and enforcement of this case pursuant to Business and  
3 Professions Code section 125.3;

4           11.   Taking such other and further action as deemed necessary and proper.

5  
6 DATED:

*May 22, 2018*

*Patrick Dorais*

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

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