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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. 79/15-92

12 **SMOGMAN; MICHAEL MAGDY**
13 **ASHAM, Owner**
14 **7431 Rosedale Highway, Suite B**
Bakersfield, CA 93308

OAH No. 2015020014

A C C U S A T I O N

15 **909 Woodmont Drive**
16 **Bakersfield, CA 93312**

17 **Automotive Repair Dealer Registration No.**
ARD 272800
18 **Smog Check, Test Only, Station License No.**
TC 272800

19 **MICHAEL MAGDY ASHAM**
20 **909 Woodmont Drive**
Bakersfield, CA 93312

21 **Smog Check Inspector License No. EO**
635055

22 Respondents.
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25 Complainant alleges:

26 **PARTIES**

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

1 onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle
2 testing, on model year 2000 and newer vehicles only, beginning no earlier than January
3 1, 2013. However, the department, in consultation with the state board, may prescribe
4 alternative test procedures that include loaded mode dynamometer or two-speed idle
5 testing for vehicles with onboard diagnostic systems that the department and the state
6 board determine exhibit operational problems. The department shall ensure, as
7 appropriate to the test method, the following:

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

11

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

18 13. Health and Safety Code Section 44015 states, in pertinent part:

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

22 14. Health and Safety Code Section 44032 states, in pertinent part:

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

28 15. Health and Safety Code Section 44059 states:

The willful making of any false statement or entry with regard to a material matter in
any oath, affidavit, certificate of compliance or noncompliance, or application form
which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of
Division 3 of the Business and Professions Code, constitutes perjury and is punishable
as provided in the Penal Code.

16. Health and Safety Code section 44072.2 states:

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

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

. . . .

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 another is injured.

3

4 (h) Violates or attempts to violate the provisions of this chapter relating to the
particular activity for which he or she is licensed.

5 17. Health and Safety Code section 44072.8 states:

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

8 **REGULATORY PROVISIONS**

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10 18. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides that
11 “[t]he bureau may suspend or revoke the license of or pursue other legal action against a licensee,
12 if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of
13 noncompliance.”

14 19. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides, in
15 pertinent part, that a licensed technician shall inspect, test and repair vehicles in accordance with
16 section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and
17 section 3340.42 of the California Code of Regulations.

18 20. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in
19 pertinent part, that a licensed station shall issue a certificate of compliance or noncompliance to the
20 owner or operator of any vehicle that has been inspected in accordance with the procedures
21 specified in section 3340.42 of the California Code of Regulations and have all the required
22 emission control equipment and devices installed and functioning correctly.

23 21. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides that
24 no person shall enter into the emissions inspection system any vehicle identification information or
25 emission control system identification data for any vehicle other than the one being tested. Nor
26 shall any person knowingly enter any false information about the vehicle being tested into the
27 emissions inspection system.

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1 **COST RECOVERY**

2 22. Section 125.3 provides, in pertinent part, that a Board may request the administrative
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 **VIDEO SURVEILLANCE OPERATION OF OCTOBER 7-8, 2014**

7 23. Between October 7, 2014 and October 8, 2014, representatives of the Bureau
8 conducted a video surveillance operation of Respondent Smogman's smog check facility. The
9 surveillance operation and information obtained from the BAR's Vehicle Information Database
10 ("VID")² revealed that Respondent Smogman through the actions of Respondent Asham
11 performed twenty-three (23) smog inspections that resulted in the issuance of electronic
12 certificates of compliance for the vehicles set forth in the below table, certifying that Respondent
13 Smogman and Respondent Asham (collectively, "Respondents") had tested and inspected those
14 vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact,
15 Respondents performed the smog inspections using the clean piping³ method by utilizing the tail
16 pipe emissions of vehicles other than the vehicles being certified as well as the clean plugging⁴
17 method by plugging the Bar 97 OBDII connector into the OBDII system of vehicles other than the
18 vehicles being certified in order to issue the electronic certificates of compliance.

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23 ² The VID reveals a variety of information concerning each test conducted at Smogman,
including information the advanced emission specialist technician license number of the technician
24 who conducted the test, date of the test, and the start and end times of the test.

25 ³ Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means
the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a
certificate of compliance for another vehicle.

26 ⁴ To clean plug, a smog technician either enters vehicle information into the EIS for the
27 vehicle he wishes to certify and then performs a complete smog inspection on a different (properly
28 functioning) vehicle; or performs an incomplete smog inspection on the vehicle he wishes to certify
and then plugs the OBDII connector from the BAR 97 EIS into a vehicle believed to have a
functioning OBDII system.

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Test Date	Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
10/7/14	1042-1049	2000 Dodge Ram 1500 (8D91042)	2001 BMW 330I (5KFD295)	YL020971C
10/7/14	1053-1059	2000 GMC Sonoma (7S91583)	2001 BMW 330I (5KFD295)	YL020972C
10/7/14	1152-1200	2003 Mitsubishi Lancer (5MCG362)	1997 Toyota Camry (6GSC828)	YL020973C
10/7/14	1206-1213	1991 Nissan Pickup (4J87514)	1997 Toyota Camry (6GSC828)	YL020974C
10/7/14	1248-1254	1996 Chevrolet Impala (4VDG967)	1997 Toyota Camry (6GSC828)	YL020976C
10/7/14	1334-1343	2002 Chevrolet Impala VIN 2G1WF52E929248490	1997 Toyota Camry (6GSC828)	YL020978C
10/7/14	1615-1624	1999 Honda Civic (5ZUR527)	1993 Toyota Pickup (4N53523) and 1997 Toyota Camry (6GSC828)	YL020980C
10/7/14	1731-1739	1983 Toyota Pickup (18971G1)	1997 Toyota Camry (6GSC828)	YL020985C
10/7/14	1758-1804	1986 Chevrolet Monte Carlo (6LQF111)	1997 Toyota Camry (6GSC828)	YL020987C
10/7/14	1807-1815	1996 Geo Prizm (3SVK048)	1997 Toyota Camry (6GSC828)	YL020988C
10/7/14	1834-1842	2003 Chrysler Voyager (5ATF459)	00's model GMC Sonoma (Lic: N/A) and 1997 Toyota Camry (6GSC828)	YL020989C
10/7/14	1846-1851	1996 Mercedes S500 (3RJY295)	1997 Toyota Camry (6GSC828)	YL020990C
10/8/14	0650-0659	1989 Nissan Pickup (3W08616)	1997 Toyota Camry (6GSC828)	YL020991C
10/8/14	0703-0713	1995 Honda Civic (3MQR015)	1997 Toyota Camry (6GSC828)	YL020992C
10/8/14	0718-0725	2005 Honda Civic (6VCZ068)	00's model GMC Sonoma (Lic: N/A)	YL020993C
10/8/14	0729-0736	1999 Ford Mustang (5RDR318)	00's model GMC Sonoma (Lic: N/A)	YL020994C
10/8/14	0742-0748	2007 Ford Mustang VIN: 1ZVFT82H175216579	00's model GMC Sonoma (Lic: N/A)	YL020995C

10/8/14	0752-0800	2002 Suzuki Grand Vitara (4ZNW687)	1997 Toyota Camry (6GSC828)	YL020996C
10/8/14	0811-0818 and 1132-1140 ⁵	1999 Honda Civic (4GKM457)	1997 Toyota Camry (6GSC828)	YL020997C
10/8/14	1153-1200	1995 Toyota Camry (6VIN895)	1997 Toyota Camry (6GSC828)	YL020998C
10/8/14	1204-1214	2004 Ford Taurus (DP822EK)	00's model GMC Sonoma (Lic: N/A)	YL020999C
10/8/14	1218-1226	2000 Ford Mustang (5RKK125)	00's model GMC Sonoma (Lic: N/A)	YL021000C
10/8/14	1410-1420	1996 Toyota Camry (6WVT376)	00's model GMC Sonoma (Lic: N/A)	YL091502C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent Smogman's automotive repair dealer registration is subject to discipline pursuant to section 9884.7, subdivision (a)(1), in that on or about October 7 and 8, 2014, Respondent Smogman made statements which it knew or which by exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Smogman's inspector, Respondent Asham, certified that the vehicles identified in paragraph 23 above had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Asham used clean piping and clean plugging methods in order to issue certificates for those vehicles and did not test or inspect the vehicles as required by Health and Safety Code § 44012. Complainant refers to, and by this reference incorporates, the information contained in paragraph 23 and the attached table as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent Smogman's automotive repair dealer registration is subject to discipline pursuant to section 9884.7, subdivision (a)(4), in that on or about October 7 and 8, 2014,

⁵ A test of the 1999 Honda Civic began at approximately 08:11 but was incomplete. A second test began at approximately 11:32 and a certificate of compliance was issued after this second test. Respondents clean piped this vehicle twice, but only one certificate of compliance was issued.

1 Respondent Smogman committed acts constituting fraud by issuing certificates of compliance for
2 the vehicles identified in the table attached to paragraph 23 above without performing a bona fide
3 inspection of the emission control devices and systems on the vehicles, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program. Complainant refers to, and by this reference incorporates, the information contained in
6 paragraph 23 and the attached table as though set forth fully.

7 **THIRD CAUSE FOR DISCIPLINE**

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

9 26. Respondent Smogman's smog check station license is subject to discipline pursuant to
10 Health & Safety Code section 44072.2, subdivision (a), in that on or about October 7 and 8, 2014,
11 Respondent Smogman failed to comply with the following sections of the Health & Safety Code:

12 a. **Section 44012:** Respondent Smogman failed to perform the emission control tests on
13 the vehicles identified in the table attached to paragraph 23 above in accordance with procedures
14 prescribed by the department.

15 b. **Section 44015:** Respondent Smogman issued electronic certificates of compliance for
16 the vehicles identified in the table attached to paragraph 23 above without properly inspecting the
17 vehicles to determine if it was in compliance with Health & Safety Code section 44012.

18 c. **Section 44059:** Respondent Smogman, through its technician Respondent Asham,
19 willfully made false entries in the EIS, resulting in the issuance of fraudulent certificates of
20 compliance for the vehicles identified in paragraph 23 above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Adopted**

23 **Pursuant to the Motor Vehicle Inspection Program)**

24 27. Respondent Smogman's smog check station license is subject to discipline pursuant to
25 Health & Safety Code section 44072.2, subdivision (c), in that on or about October 7 and 8, 2014,
26 Respondent Smogman failed to comply with provisions of California Code of Regulations, title 16,
27 for the vehicles identified in paragraph 23 above, as follows:

28 a. **Section 3340.24, subdivision (c):** Respondent Asham falsely or fraudulently issued

1 attached to paragraph 23 above without performing bona fide inspections of the emission control
2 devices and systems on the vehicles, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
4 reference incorporates, the information contained in paragraph 23 and the attached table as though
5 set forth fully.

6 **DISCIPLINARY CONSIDERATIONS**

7 32. To determine the degree of discipline, if any, to be imposed on Respondent Smogman,
8 Complainant alleges that on or about November 15, 2013, the Bureau of Automotive Repair
9 issued Citation Number C2014-0321 to Respondent Smogman and ordered Respondent Smogman
10 to pay a fine of \$1,000.00. That Citation is now final and is incorporated by reference as if fully
11 set forth.

12 33. To determine the degree of discipline, if any, to be imposed on Respondent Asham,
13 Complainant alleges that on or about November 15, 2013, the Bureau of Automotive Repair
14 issued Citation Number M2014-0322 to Respondent Asham and ordered Respondent Asham to
15 complete an eight (8) hour Bureau of Automotive Repair Certified Training Course. That Citation
16 is now final and is incorporated by reference as if fully set forth.

17 **OTHER MATTERS**

18 34. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
19 Director may suspend, revoke or place on probation the registration for all places of business
20 operated in this state by Michael Magdy Asham, owner of Respondent Smogman, upon a finding
21 that Respondent Smogman has, or is, engaged in a course of repeated and willful violations of the
22 laws and regulations pertaining to an automotive repair dealer.

23 35. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
24 License Number TC 272800, issued to Michael Magdy Asham, owner of Respondent Smogman, is
25 revoked or suspended, any additional license issued under this chapter in the name of said licensee
26 may be likewise revoked or suspended by the Director.

27 36. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
28 Number EO 635055, issued to Michael Magdy Asham, is revoked or suspended, any additional

1 license issued under this chapter in the name of said licensee may be likewise revoked or
2 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 272800 issued Michael Magdy Asham, owner of Smogman;
 - 8 2. Revoking or suspending any other automotive repair dealer registration issued to
9 Michael Magdy Asham;
 - 10 3. Revoking or suspending Smog Check Test Only Station License Number TC 272800,
11 issued to Michael Magdy Asham, owner of Smogman;
 - 12 4. Revoking or suspending Smog Check Inspector License Number EO 635055 issued to
13 Michael Magdy Asham;
 - 14 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Michael Magdy Asham;
 - 16 6. Ordering Michael Magdy Asham, individually, and as owner of Smogman, to pay the
17 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
18 case, pursuant to Business and Professions Code section 125.3; and,
 - 19 7. Taking such other and further action as deemed necessary and proper.
- 20
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22 DATED: March 6, 2015

PAT DORAIS by Doug BALATTI
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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