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

12 In the Matter of the Accusation Against:

Case No. **79/16-130**

13 **DA VINCI PERFORMANCE,**
14 **dba FAST LANE AUTO**
15 **REZA KIANERSI, PRES./SEC./TREAS.**
16 **4434 N. Blackstone Avenue**
17 **Fresno, CA 93726**

A C C U S A T I O N
(Smog Check)

18 **Automotive Repair Dealer Reg. No. ARD 276088**
19 **Smog Check Station License No. RC 276088**

20 **and**

21 **REZA KIANERSI**
22 **4434 N. Blackstone Avenue**
23 **Fresno, CA 93726**

24 **Smog Check Inspector License No. EO 637251**

25 **Respondents.**

26 Complainant alleges:

27 **PARTIES**

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

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1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
2 of jurisdiction to proceed with disciplinary action.

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 Code section 44072.8 states that when a license has been revoked or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

6 **STATUTORY PROVISIONS**

7 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

8 (a) The director, where the automotive repair dealer cannot show there
9 was a bona fide error, may deny, suspend, revoke, or place on probation the
10 registration of an automotive repair dealer for any of the following acts or omissions
11 related to the conduct of the business of the automotive repair dealer, which are done
12 by the automotive repair dealer or any automotive technician, employee, partner,
13 officer, or member of the automotive repair dealer.

14 (1) Making or authorizing in any manner or by any means whatever any
15 statement written or oral which is untrue or misleading, and which is known, or which
16 by the exercise of reasonable care should be known, to be untrue or misleading.

17

18 (4) Any other conduct that constitutes fraud.

19

20 (c) Notwithstanding subdivision (b), the director may suspend, revoke or
21 place on probation the registration for all places of business operated in this state by
22 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
23 engaged in a course of repeated and willful violations of this chapter, or regulations
24 adopted pursuant to it.

25 11. Bus. & Prof. Code section 22, subdivision (a), states:

26 "Board" as used in any provision of this Code, refers to the board in
27 which the administration of the provision is vested, and unless otherwise expressly
28 provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
"license" includes "registration" and "certificate."

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1 REVIEW OF OIS TEST DATA FOR FAST LANE AUTO

2 **Background**

3 16. On March 9, 2015, California’s Smog Check Program was updated to keep pace with
4 ever-advancing technology. The statewide regulatory change requires the use of an On-Board
5 Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in
6 all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid
7 vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data
8 Acquisition Device (DAD), computer, bar code scanner, and printer.

9 17. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
10 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
11 the BAR-OIS computer and the vehicle’s diagnostic link connector. The bar code scanner is used
12 to input technician information, the vehicle identification number, and DMV renewal
13 information. The vehicle identification number (VIN) that is physically present on all vehicles is
14 required to be programmed into the vehicle’s On-Board Diagnostics – Generation II (OBD II) on
15 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in
16 earlier model-years. The electronically programmed VIN is referred to as the “eVIN”, is captured
17 by the Bureau during a smog check inspection, and must match the physical VIN on the vehicle.
18 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection
19 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data
20 retrieved and recorded during an OIS smog check includes the eVIN, the communication
21 protocol¹, and the number of Parameter Identifications (PID’s)².

22 _____
23 ¹ The OBD II communication protocol describes the specified communication “language”
24 used by the OBD II computer to communicate to scan tools and other devices such as the BAR-
25 OIS. The communication protocol is programmed into the OBD II computer during manufacture
26 and does not change.

27 ² PID’s are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
28 example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID count is the
number of data points reported by the OBD II computer, is programmed during manufacture, and
does not change. Each make and model vehicle reports a specific number of PID counts; i.e., the
PID count does not vary for that make and model vehicle.

1 **Factual Allegations**

2 18. In or about October 2015, Bureau Representative E. L. reviewed OIS test data
3 pertaining to smog inspections conducted at Respondent Da Vinci's facility. E. L. found that
4 Respondent Kianersi performed smog inspections on the seven vehicles identified below using a
5 method known as "clean plugging",³ resulting in the issuance of fraudulent certificates of
6 compliance for the vehicles. E. L. also found that the same eVIN was recorded during the
7 inspections on Vehicles 3 through 7.

8 19. Information from the Bureau's vehicle information database ("VID") showed that on
9 May 25, 2015 and October 20, 2015, Respondent Kianersi performed smog inspections on a 2005
10 Chevrolet Trailblazer, and that the eVIN transmitted to the VID was the same eVIN that was
11 recorded during the inspections on Vehicles 3 through 7. Further, the communication protocol
12 and PID count recorded during the inspection on the 2005 Chevrolet Trailblazer were consistent
13 with the communication protocols and PID counts recorded during the inspection on Vehicles 3
14 through 7. E. L. concluded that Respondent Kianersi used the 2005 Chevrolet Trailblazer's
15 properly functioning OBD II system during the inspections on Vehicles 3 through 7.

16 20. On or about October 20, 2015, E. L. made a field visit to the facility and observed a
17 2005 Chevrolet Trailblazer in the parking lot. E. L. determined the VIN number for the vehicle
18 and found it was the same VIN number that was used to certify Vehicles 3 through 7. That same
19 day, E. L. received information showing that the 2005 Chevrolet Trailblazer had been purchased
20 by Respondent Kianersi under the business name Fast Lane Auto on March 25, 2015.

21 **Vehicle 1:**

22 21. The OIS test data showed that on March 9, 2015, Respondent Kianersi performed a
23 smog inspection on a 2003 Honda Accord EX ("Vehicle 1"), resulting in the issuance of
24 electronic Smog Certificate of Compliance No. YP408851C. The OIS test details for Vehicle 1

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26 ³ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
27 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog
28 certificate of compliance to another vehicle that is not in compliance with the Smog Check
Program and/or is not present for testing.

1 showed that the eVIN recorded during the inspection did not match the physical VIN on the
2 vehicle. E. L. reviewed the Comparative OIS Test Data for 2003 Honda Accord EX vehicles and
3 found that the PID count recorded during the smog check on Vehicle 1 was not consistent with
4 the PID count for that make and model vehicle. E. L. concluded that the DAD was not connected
5 to Vehicle 1 during the smog inspection, resulting in the issuance of a fraudulent certificate of
6 compliance for the vehicle.

7 22. The Bureau's VID data showed that on March 8, 2015, Respondent Kianersi
8 performed a smog inspection on a 2007 Pontiac Vibe, and that the eVIN transmitted to the VID
9 was the same eVIN that was recorded during the inspection on Vehicle 1. Further, the
10 communication protocol and PID count recorded during the inspection on the 2007 Pontiac Vibe
11 were consistent with the communication protocol and PID count recorded during the inspection
12 on Vehicle 1. E. L. concluded that Respondent Kianersi used the 2007 Pontiac Vibe's properly
13 functioning OBD II system during the inspection on Vehicle 1.

14 **Vehicle 2:**

15 23. The OIS test data showed that on May 11, 2015, Respondent Kianersi performed a
16 smog inspection on a 2001 Chevrolet Impala LS ("Vehicle 2"), resulting in the issuance of
17 electronic Smog Certificate of Compliance No. YR327222C. The OIS test details for Vehicle 2
18 showed that the eVIN recorded during the inspection did not match the physical VIN on the
19 vehicle. E. L. reviewed the Comparative OIS Test Data for 2001 Chevrolet Impala LS vehicles
20 and found that the communication protocol and PID count recorded during the smog check on
21 Vehicle 2 were not consistent with the communication protocol and PID count for that make and
22 model vehicle. E. L. concluded that the DAD was not connected to Vehicle 2 during the smog
23 inspection, resulting in the issuance of a fraudulent certificate of compliance for the vehicle.

24 24. The Bureau's VID data showed that on April 24, 2015, Respondent Kianersi
25 performed a smog inspection on a 2007 Chrysler 300, and that the eVIN transmitted to the VID
26 was the same eVIN that was recorded during the inspection on Vehicle 2. Further, the
27 communication protocol and PID count recorded during the inspection on the 2007 Chrysler 300
28 were consistent with the communication protocol and PID count recorded during the inspection

1 on Vehicle 2. E. L. concluded that Respondent Kianersi used the 2007 Chrysler 300's properly
2 functioning OBD II system during the inspection on Vehicle 2.

3 **Vehicle 3:**

4 25. The OIS test data showed that on July 3, 2015, Respondent Kianersi performed a
5 smog inspection on a 2004 Mercedes-Benz C240 ("Vehicle 3"), resulting in the issuance of
6 electronic Smog Certificate of Compliance No. YT083420C. E. L. reviewed the Comparative
7 OIS Test Data for 2004 Mercedes-Benz C240 vehicles and found that the communication
8 protocol and PID count recorded during the smog check on Vehicle 3 were not consistent with the
9 communication protocol and PID count for that make and model vehicle. E. L. concluded that the
10 DAD was not connected to Vehicle 3 during the smog inspection, resulting in the issuance of a
11 fraudulent certificate of compliance for the vehicle. Further, Respondent Kianersi used the 2005
12 Chevrolet Trailblazer to certify Vehicle 3.

13 **Vehicle 4:**

14 26. The OIS test data showed that on August 20, 2015, Respondent Kianersi performed a
15 smog inspection on a 2001 Chevrolet S10 ("Vehicle 4"), resulting in the issuance of electronic
16 Smog Certificate of Compliance No. PU499776C. E. L. reviewed the Comparative OIS Test
17 Data for 2001 Chevrolet S10 vehicles and found that the PID count recorded during the smog
18 check on Vehicle 4 was not consistent with the PID count for that make and model vehicle.
19 E. L. concluded that the DAD was not connected to Vehicle 4 during the smog inspection,
20 resulting in the issuance of a fraudulent certificate of compliance for the vehicle. Further,
21 Respondent Kianersi used the 2005 Chevrolet Trailblazer to certify Vehicle 4.

22 **Vehicle 5:**

23 27. The OIS test data showed that on September 23, 2015, Respondent Kianersi
24 performed a smog inspection on a 2002 Ford Focus LX ("Vehicle 5"), resulting in the issuance of
25 electronic Smog Certificate of Compliance No. PW545703C. E. L. reviewed the Comparative
26 OIS Test Data for 2002 Ford Focus LX vehicles and found that the communication protocol and
27 PID count recorded during the smog check on Vehicle 5 were not consistent with the
28 communication protocol and PID count for that make and model vehicle. E. L. concluded that the

1 DAD was not connected to Vehicle 5 during the smog inspection, resulting in the issuance of a
2 fraudulent certificate of compliance for the vehicle. Further, Respondent Kianersi used the 2005
3 Chevrolet Trailblazer to certify Vehicle 5.

4 **Vehicle 6:**

5 28. The OIS test data showed that on September 26, 2015, Respondent Kianersi
6 performed a smog inspection on a 2006 Jeep Liberty Sport ("Vehicle 6"), resulting in the issuance
7 of electronic Smog Certificate of Compliance No. PW545708C. E. L. reviewed the Comparative
8 OIS Test Data for 2006 Jeep Liberty Sport vehicles and found that the communication protocol
9 and PID count recorded during the smog check on Vehicle 6 were not consistent with the
10 communication protocol and PID count for that make and model vehicle. E. L. concluded that the
11 DAD was not connected to Vehicle 6 during the smog inspection, resulting in the issuance of a
12 fraudulent certificate of compliance for the vehicle. Further, Respondent Kianersi used the 2005
13 Chevrolet Trailblazer to certify Vehicle 6.

14 **Vehicle 7:**

15 29. The OIS test data showed that on October 7, 2015, Respondent Kianersi performed a
16 smog inspection on a 2002 Mitsubishi Eclipse Spyder GS ("Vehicle 7"), resulting in the issuance
17 of electronic Smog Certificate of Compliance No. PW545715C. E. L. reviewed the Comparative
18 OIS Test Data for 2002 Mitsubishi Eclipse Spyder GS vehicles and found that the communication
19 protocol and PID count recorded during the smog check on Vehicle 7 were not consistent with the
20 communication protocol and PID count for that make and model vehicle. E. L. concluded that the
21 DAD was not connected to Vehicle 7 during the smog inspection, resulting in the issuance of a
22 fraudulent certificate of compliance for the vehicle. Further, Respondent Kianersi used the 2005
23 Chevrolet Trailblazer to certify Vehicle 7.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Untrue or Misleading Statements)**

26 30. Respondent Da Vinci's registration is subject to disciplinary action pursuant to Bus.
27 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
28 statements which it knew or in the exercise of reasonable care should have known to be untrue or

1 misleading, as follows: Respondent Da Vinci's smog check inspector, Respondent Kianersi,
2 certified that Vehicles 1 through 7, identified in paragraphs 21 to 29 above, had passed inspection
3 and were in compliance with applicable laws and regulations. In fact, Respondent Kianersi
4 conducted the smog inspections on the vehicles using clean-plugging methods in that he
5 substituted or used the 2005 Chevrolet Trailblazer or a different vehicle during the inspections in
6 order to issue smog certificates of compliance for the vehicles, and did not test or inspect the
7 vehicles as required by Health & Saf. Code section 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 31. Respondent Da Vinci's registration is subject to disciplinary action pursuant to Bus.
11 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
12 constitute fraud by issuing electronic smog certificates of compliance for Vehicles 1 through 7,
13 identified in paragraphs 21 to 29 above, without ensuring that bona fide inspections were
14 performed of the emission control devices and systems on the vehicles, thereby depriving the
15 People of the State of California of the protection afforded by the Motor Vehicle Inspection
16 Program.

17 **THIRD CAUSE FOR DISCIPLINE**

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

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

22 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
23 performed on Vehicles 1 through 7, identified in paragraphs 21 to 29 above, in accordance with
24 procedures prescribed by the department.

25 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
26 Vehicles 1 through 7, identified in paragraphs 21 to 29 above, without ensuring that the vehicles
27 were properly tested and inspected to determine if they were in compliance with Health & Saf.
28 Code section 44012.

1 Auto, is revoked or suspended, any additional license issued under this chapter in the name of
2 said licensee may be likewise revoked or suspended by the Director.

3 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
4 Number EO 637251, issued to Respondent Reza Kianersi, is revoked or suspended, any
5 additional license issued under this chapter in the name of said licensee may be likewise revoked
6 or suspended by the Director.

7 **PRAYER**

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

10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 276088, issued to Da Vinci Performance, doing business as Fast Lane Auto;

12 2. Revoking or suspending any other automotive repair dealer registration issued to Da
13 Vinci Performance;

14 3. Revoking or suspending Smog Check Station License Number RC 276088, issued to
15 Da Vinci Performance, doing business as Fast Lane Auto;

16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Da Vinci Performance;

18 5. Revoking or suspending Smog Check Inspector License Number EO 637251, issued
19 to Reza Kianersi;

20 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Reza Kianersi;

22 7. Ordering Da Vinci Performance, doing business as Fast Lane Auto, and Reza
23 Kianersi to pay the Director of Consumer Affairs the reasonable costs of the investigation and
24 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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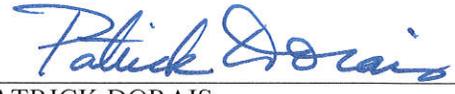
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8. Taking such other and further action as deemed necessary and proper.

DATED: May 24, 2016



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

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