

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 MOLLY E. SELWAY
Deputy Attorney General
4 State Bar No. 234519
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9082
7 Facsimile: (619) 645-2031
Attorneys for Complainant

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. 79/17-15021

13
14 **FUTURE INNOVATIONS, LLC; ANNA**
ADELE THORNTON-POPP AND
15 **MICHAEL ALAN POPP, MEMBERS DBA**
M & M SMOG CHECK TEST ONLY
16 **23253 Madero, Suite A114**
Mission Viejo, CA 92691

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
ARD280063
18 **Smog Check, Test Only Station License No.**
TC280063

19 and

20 **RONALD ALBERT SHARP JR.**
21 **PO Box 1781**
Burbank, CA 91507

22 **116 Ave Del Grulla, #B**
23 **San Clemente, CA 92672**

24
25 **Smog Check Inspector License No.**
EO637584

26 Respondents.

1 Complainant alleges:

2 PARTIES

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

5 2. On or about April 27, 2015, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 280063 to Future Innovations, LLC, dba M&M Smog
7 Test Only; Anna Adele Thornton-Popp; Michael Alan Popp (Respondent M & M). The
8 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on April 30, 2018, unless renewed.

10 3. On or about May 5, 2015, the Bureau of Automotive Repair issued Smog Check Test
11 Only Station License, Number TC 280063 to Future Innovations, LLC, dba M&M Smog Test
12 Only; Anna Adele Thornton-Popp; Michael Alan Popp (Respondent M & M). The Smog Check
13 Test Only Station License was in full force and effect at all times relevant to the charges brought
14 herein and will expire on April 30, 2018, unless renewed.

15 4. On or about December 1, 2014, the Bureau of Automotive Repair issued Smog Check
16 Inspector License Number EO 637584 to Ronald Albert Sharp, Jr. (Respondent Sharp). The
17 Smog Check Inspector License was in full force and effect at all times relevant to the charges
18 brought herein and will expire on April 30, 2019, unless renewed.

19 JURISDICTION

20 5. This Accusation is brought before the Director of the Department of Consumer
21 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
22 All references are to the business code unless otherwise stated.

23 6. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
24 "License" includes certificate, registration or other means to engage in a business or
25 profession regulated by the Code.

26 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
27 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
28 the Motor Vehicle Inspection Program.

1 8. Section 44072.4 of the Health and Safety Code states:

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

4 (a) Imposing probation upon terms and conditions to be set forth by the
5 director.

6 (b) Suspending the license.

7 (c) Revoking the license.

8 9. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

21 11. Section 44072.7 of the Health and Safety Code states:

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

27 12. Section 44072.8 of the Health and Safety Code states:

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

13. Section 44072.10 of the Health and Safety Code states:

(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee, pending a hearing conducted pursuant to subdivision (e), may 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:

(1) Fraud.

(2) Tampering.

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

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

...

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

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

(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.

14. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:

Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

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

conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct that constitutes fraud.

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

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

22. Section 44012 of the Health and Safety Code states:

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

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

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

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle

1 mode or loaded mode are tested in accordance with procedures prescribed by the
2 department. In determining how loaded mode and evaporative emissions testing
3 shall be conducted, the department shall ensure that the emission reduction targets
4 for the enhanced program are met.

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

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

15 (f) A visual or functional check is made of emission control devices
16 specified by the department, including the catalytic converter in those instances in
17 which the department determines it to be necessary to meet the findings of Section
18 44001. The visual or functional check shall be performed in accordance with
19 procedures prescribed by the department.

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

23 (h) An analysis of pass and fail rates of vehicles subject to an onboard
24 diagnostic test and a tailpipe test to assess whether any vehicles passing their
25 onboard diagnostic test have, or would have, failed a tailpipe test, and whether any
26 vehicles failing their onboard diagnostic test have or would have passed a tailpipe
27 test.

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

23. Section 44015 of the Health and Safety Code states:

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

(1) A vehicle that has been tampered with.

....

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

4 24. Section 44059 of the Health and Safety Code states:

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

10 COSTS

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

17 CLEAN PLUGGING

18 26. At all times alleged in this Accusation, Respondent Sharp was acting in the course
19 and within the scope of a technician, employee, partner, officer, or member of Respondent M &
20 M Smog Check.

21 27. The On-Board Diagnostics -- Generation II (OBD II) communication protocol
22 describes the specified communication "language" used by the OBD II system electronic control
23 unit to communicate to scan tools and other devices such as the On-Board Diagnostic Inspection
24 System (OIS). The communication protocol is programmed into the OBD II system electronic
25 control unit during manufacture and does not change.

26 28. Parameter Identifications (PID) are data points reported by the OBD II system
27 electronic control unit to the scan tool or OIS. Examples of PIDs are engine speed (rpm), vehicle
28 speed, engine temperature, and other input and output values utilized by the OBD II system
electronic control unit. The PID count is the number of data points reported by the OBD II system
electronic control unit and is programmed during manufacture.

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

30. During a Bureau representative's review of Respondents' certified test results in the Vehicle Information Database (VID) for inspections purportedly performed on the OIS between June 2016 and September 2017, eight (8) vehicles identified below had deviations in one or more of the following: eVIN, incorrect vehicle communication protocol, and/or incorrect PID count. This indicates that the vehicles receiving smog certificates were fraudulently tested during the smog check inspection by a method known as Clean Plugging.¹ A detailed explanation of each fraudulent smog check is as follows:

31. **Clean Plug No. 1:**

On June 28, 2016, between 9:15 a.m. and 9:20 a.m., a 2002 Volvo S60 [VIN YV1RS61R422191425, CA License No. 4YXF869] was inspected. A Certificate of Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to Smog Check Inspector Sharp. OIS Test Details showed an eVIN reported of YV1622FS0C2053213, the protocol reported ICANI1bt5, and the PID count was 36/16. Comparative OIS Test Data for One Thousand (1000)², 2002 Volvo S60 vehicles shows that 95.9% do not report the eVIN, have a communication protocol of I914, and report a PID count of 17 or 17/7.

DMV registration information indicates VIN #YV1622FS0C2053213 corresponds to a 2012 Volvo vehicle, not a 2002 Volvo S60. The discrepancies in the OIS Test Data prove that M & M Smog's OIS Data Acquisition Device (DAD) was not connected to the 2002 Volvo S60 being certified, resulting in the issuance of a fraudulent Certificate of Compliance.

¹ To "clean plug" a vehicle, the technician uses another vehicle's properly functioning OBD II system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance or not present during the certified test.

² This number is based on the most recent available total number of similar vehicles tested statewide, or up to one thousand (1000).

1 32. Clean Plug No. 2:

2 On July 5, 2016, between 12:19 p.m. and 12:26 p.m., a 2002 Mercedes-Benz C230K,
3 [VIN# WDBRN47J92A223079, CA License No. 5WWV526] was inspected. A Certificate of
4 Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to
5 Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as
6 WDDGF56X28F011790, the protocol reported ICAN11bt5, and the PID count was 45/12.
7 Comparative OIS Test Data for One Thousand (1000), 2002 Mercedes-Benz C230K vehicles
8 shows that 96.3% do not report the eVIN, have a communication protocol of KWPF and report a
9 PID count of 17.

10 The OIS Test Data shows that a 2008 Mercedes-Benz C350, VIN WDDGF56X28F011790
11 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2002
12 Mercedes-Benz C230K. The 2008 Mercedes-Benz C350 was certified by Smog Check Inspector
13 Sharp at M & M Smog on August 23, 2016. The OIS Test Data transmitted for the 2008
14 Mercedes-Benz C350 matches the OIS Test Data for the fraudulent inspection of the 2002
15 Mercedes-Benz C230K for the eVIN, Protocol and PID count. The discrepancies in the OIS Test
16 Data prove that M & M Smog's OIS DAD was not connected to the 2002 Mercedes-Benz C230K
17 being certified, resulting in the issuance of a fraudulent Certificate of Compliance.

18 33. Clean Plug No. 3:

19 On July 20, 2016, between 12:12 p.m. and 12:15 p.m., a 2003 Ford Mustang Cobra SVT,
20 [VIN# 1FAFP49Y33F301861, CA License No. 4YDY689] was inspected. A Certificate of
21 Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to
22 Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as
23 1FTYR44E38PA56233, the protocol reported ICAN11bt5, and the PID count was 40.
24 Comparative OIS Test Data for Two Hundred Fourteen (214), 2003 Ford Mustang Cobra SVT
25 vehicles shows that 88.3% have an eVIN reported, have a communication protocol of JPWM and
26 report a PID count of 20 or 21 or 23.

27 The OIS Test Data shows that a 2008 Ford Ranger, VIN 1FTYR44E38PA56233 was the
28 vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2003 Ford

1 Mustang Cobra SVT. The 2008 Ford Ranger was certified under Smog Check Inspector Sharp at
2 M & M Smog on the same day, July 20, 2016. The OIS Test Data transmitted for the 2008 Ford
3 Ranger matches the OIS Test Data for the fraudulent inspection of the 2003 Ford Mustang Cobra
4 SVT for the eVIN, Protocol and PID count. The discrepancies in the OIS Test Data prove that M
5 & M Smog's OIS DAD was not connected to the 2003 Ford Mustang Cobra SVT being certified,
6 resulting in the issuance of a fraudulent Certificate of Compliance.

7 **34. Clean Plug No. 4:**

8 On September 14, 2016, between 9:25 a.m. and 9:29 a.m., a 2005 Mercedes-Benz C230K,
9 [VIN# WDBRF40J65F669575] was inspected. A Certificate of Compliance was issued by
10 Respondent M & M Smog using license EO 637584, belonging to Smog Check Inspector Sharp.
11 OIS Test Details showed the eVIN was transmitted as 4JGBF71EX8A389077, the protocol
12 reported ICAN11bt5, and the PID count was 44/12. Comparative OIS Test Data for One
13 Thousand (1000), 2005 Mercedes-Benz C230K vehicles shows that 99.9% have an eVIN
14 reported, have a communication protocol of KWPF and report a PID count of 17 or 20.

15 The OIS Test Data shows that a 2008 Mercedes-Benz GL450 4 Matic, VIN
16 4JGBF71EX8A389077, was the vehicle used to generate the fraudulent Smog Certificate of
17 Compliance for the 2005 Mercedes-Benz C230K. The 2008 Mercedes-Benz GL450 4 Matic was
18 certified under Smog Check Inspector Sharp at M & M Smog on the same day, September 14,
19 2016, as the fraudulent inspection of the 2005 Mercedes-Benz C230K. The OIS Test Data
20 transmitted for the 2008 Mercedes-Benz GL450 4 Matic matches the OIS Test Data for the
21 fraudulent inspection of the 2005 Mercedes-Benz C230K for the eVin, Protocol and PID count.
22 The discrepancies in the OIS Test Data prove that M & M Smog's OIS DAD was not connected
23 to the 2005 Mercedes-Benz C230K being certified, resulting in the issuance of a fraudulent
24 Certificate of Compliance.

25 **35. Clean Plug No. 5:**

26 On December 23, 2016, between 2:08 p.m. and 2:11 p.m., a 2000 Mercedes-Benz S 500,
27 [VIN# WDBNG75J3YA090602, CA License No. 7ANZ656] was inspected. A Certificate of
28 Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to

1 Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as
2 WDBUF56X07B069365, the protocol reported ICAN11bt5, and the PID count was 44.
3 Comparative OIS Test Data for One Thousand (1000), 2000 Mercedes-Benz S 500 vehicles
4 shows that 97.2% do not have an eVIN reported, have a communication protocol of I914 and
5 report a PID count of 21.

6 The OIS Test Data shows that a 2007 Mercedes-Benz E 350, VIN WDBUF56X07B069365,
7 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2000
8 Mercedes-Benz S 500. The 2007 Mercedes-Benz E 350 was certified under Smog Check
9 Inspector Sharp at M & M Smog on the same day, December 23, 2016, as the fraudulent
10 inspection of the 2000 Mercedes-Benz S 500. The OIS Test Data transmitted for the 2007
11 Mercedes-Benz E 350 matches the OIS Test Data for the fraudulent inspection of the 2000
12 Mercedes-Benz S 500 for the eVIN, Protocol and PID count. The discrepancies in the OIS Test
13 Data prove that M & M Smog's OIS DAD was not connected to the 2000 Mercedes-Benz S 500
14 being certified, resulting in the issuance of a fraudulent Certificate of Compliance.

15 **36. Clean Plug No. 6:**

16 On March 31, 2017, between 12:41 p.m. and 12:47 p.m., a 2009 Jaguar XF Luxury, [VIN#
17 SAJWA05B49HR24104, CA License No. 7JMV381] was inspected. A Certificate of
18 Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to
19 Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as
20 SAJEA01T23FM81318, the protocol reported I914, and the PID count was 25. Comparative OIS
21 Test Data for Three Hundred Eighty-Seven (387), 2009 Jaguar XF Luxury vehicles shows that
22 98.4% have an eVIN reported, have a communication protocol of ICAN11bt5 and report a PID
23 count of 43/16.

24 The OIS Test Data shows that a 2003 Jaguar S Type, VIN SAJEA01T23FM81318, was the
25 vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2009 Jaguar XF
26 Luxury. The 2003 Jaguar S Type was certified under Smog Check Inspector Sharp at M & M
27 Smog on the same day, March 31, 2017, as the fraudulent inspection of the 2009 Jaguar XF
28 Luxury. The OIS Test Data transmitted for the 2003 Jaguar S Type matches the OIS Test Data for

1 the fraudulent inspection of the 2009 Jaguar XF Luxury for the eVIN, Protocol and PID count. The
2 discrepancies in the OIS Test Data prove that M & M Smog's OIS DAD was not connected to the
3 2009 Jaguar XF Luxury being certified, resulting in the issuance of a fraudulent Certificate of
4 Compliance.

5 37. Clean Plug No. 7:

6 On July 27, 2017, between 2:14 p.m. and 2:19 p.m., a 2007 Chevrolet Express G2500,
7 [VIN# 1GCGG25V771243352, CA License No. 8J06160] was inspected. A Certificate of
8 Compliance was issued by Respondent M & M Smog using license EO 637584, belonging to
9 Smog Check Inspector Sharp. OIS Test Details showed the eVIN was transmitted as
10 1GCZGFBAXA1105426, the protocol reported ICAN11bt5, and the PID count was 44/7.
11 Comparative OIS Test Data for One Thousand (1000), 2007 Chevrolet Express G2500 vehicles
12 shows that 98.2% have an eVIN reported, have a communication protocol of JVPW and report a
13 PID count of 22.

14 On August 3, 2015, another licensed Smog Check facility performed a Smog Check
15 Inspection on the 2007 Chevrolet Express G2500, [VIN# 1GCGG25V771243352, CA License
16 No. 8J06160]. The OIS Test Details shows the vehicle transmitted the correct eVIN, had the
17 expected communication protocol JVPW, and transmitted a PID count of 22.

18 The OIS Test Data shows that a 2010 Chevrolet Express G2500, VIN
19 1GCZGFBAXA1105426, was the vehicle used to generate the fraudulent Smog Certificate of
20 Compliance for the 2007 Chevrolet Express G2500. The 2010 Chevrolet Express G2500 was
21 certified under Smog Check Inspector Sharp at M & M Smog on January 18, 2017, as the
22 fraudulent inspection of the 2007 Chevrolet Express G2500. The OIS Test Data transmitted for
23 the 2010 Chevrolet Express G2500 matches the OIS Test Data for the fraudulent inspection of the
24 2007 Chevrolet Express G2500 for the eVIN, Protocol and PID count. The discrepancies in the
25 OIS Test Data prove that M & M Smog's OIS DAD was not connected to the 2007 Chevrolet
26 Express G2500 being certified, resulting in the issuance of a fraudulent Certificate of Compliance.

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1 Regulations and failed to ensure that the vehicles had all the required emission control equipment
2 and devices installed and functioning correctly.

3 b. Section 3340.41, subdivision (c): knowingly entered into the Emissions Inspection
4 System false information about the vehicles listed in paragraphs 31-38, providing results for smog
5 inspections which were not actually performed.

6 c. Section 3340.42: failed to conduct the required smog tests on the vehicles listed in
7 paragraphs 31-38, in accordance with the Bureau's specifications.

8 d. Section 3340.45: failed to conduct the required smog tests on the vehicles listed in
9 paragraphs 31-38, in accordance with the Smog Check Manual, dated 2013.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Dishonesty, Fraud, or Deceit)

12 46. Complainant re-alleges and incorporates by reference the allegations set forth above
13 in the foregoing paragraphs.

14 47. Respondent M & M Smog's Registration is subject to disciplinary action under Code
15 section 9884.7, subdivision (a)(4) and Respondent M & M Smog's Smog Check Station License
16 is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a)
17 and (c) and 44072.2, subdivision (d), in that Respondent M & M Smog committed dishonest,
18 fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of
19 compliance for the vehicles listed in paragraphs 31-38 without performing bona fide inspections
20 of the emission control devices and systems on the vehicles, thereby depriving the People of the
21 State of California of the protection afforded by the Motor Vehicle Inspection Program.

22 FIFTH CAUSE FOR DISCIPLINE

23 (Violation of Motor Vehicle Inspection Program)

24 48. Complainant re-alleges and incorporates by reference the allegations set forth above
25 in the foregoing paragraphs.

26 49. Respondent Sharp's Smog Check Inspector License is subject to disciplinary action
27 under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,
28

subdivision (a), in that Respondent Sharp failed to comply with the following sections of that Code:

a. Section 44012: failed to perform the tests of the emission control systems and devices on the vehicles listed in paragraphs 31-38, in accordance with procedures prescribed by the Department.

b. Section 44015, subd. (a) and (b): issued a certificate of compliance for the vehicles listed in paragraphs 31-38, without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

c. Section 44035: failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicles listed in paragraphs 31-38, or certifying that such tests had been performed, when in fact they were never performed.

d. Section 44032: failed to test emission control devices and systems in accordance with Section 44012 on the vehicles listed in paragraphs 31-38.

SIXTH CAUSE FOR DISCIPLINE

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

50. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

51. Respondent Sharp's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that Respondent Sharp failed to comply with the following sections of Title 16, California Code of Regulations:

a. Section 3340.35, subdivision (c): failed to inspect and test the vehicles listed in paragraphs 31-38, in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles listed in paragraphs 31-38, had all the required emission control equipment and devices installed and functioning correctly.

1 b. Section 3340.41, subdivision (c): knowingly entered into the Emissions Inspection
2 System false information about the vehicles listed in paragraphs 31-38, providing results for smog
3 inspections which were not actually performed.

4 c. Section 3340.42: failed to conduct the required smog tests on the vehicles listed in
5 paragraphs 31-38, in accordance with the Bureau's specifications.

6 d. Section 3340.45: failed to conduct the required smog tests on the vehicles listed in
7 paragraphs 31-38, in accordance with the Smog Check Manual, dated 2013.

8 SEVENTH CAUSE FOR DISCIPLINE

9 (Dishonesty, Fraud, or Deceit)

10 52. Complainant re-alleges and incorporates by reference the allegations set forth above
11 in the foregoing paragraphs.

12 53. Respondent Sharp's Smog Check Inspector License is subject to disciplinary action
13 under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision
14 (d), in that Respondent Sharp committed dishonest, fraudulent, or deceitful acts whereby another
15 is injured by issuing a smog certificate of compliance for the vehicles listed in paragraphs 31-38,
16 without performing bona fide inspections of the emission control devices and systems on the
17 vehicles, thereby depriving the People of the State of California of the protection afforded by the
18 Motor Vehicle Inspection Program.

19 OTHER MATTERS

20 54. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or
21 place on probation the registration for all places of business operated in this State by Respondent
22 M & M Smog upon a finding that Respondent has, or is, engaged in a course of repeated and
23 willful violations of the laws and regulations pertaining to an automotive repair dealer.

24 55. Under Health & Safety Code section 44072.8, if Respondent M & M Smog's Smog
25 Check Station License is revoked or suspended, the Director may likewise revoke or suspend any
26 additional license issued under Chapter 5 of part 5 of Division 26 of the Health and Safety Code
27 in the name of Respondent M & M Smog.

56. Under Health & Safety Code section 44072.8, if Respondent Sharp's Smog Check Inspector License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of part 5 of Division 26 of the Health and Safety Code in the name of Respondent Sharp.

DISCIPLINE CONSIDERATIONS

57. To determine the degree of discipline, if any, to be imposed on Respondent Sharp, Complainant alleges that on or about June 16, 2015, the Bureau of Automotive Repair issued Citation Number M2015-1306, for his action in violation of section 44032 of the Health and Safety code. Respondent Sharp unlawfully Smog Check inspected and certified a vehicle using the BAR-97 when the OIS test was required.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 280063, issued to Future Innovations, LLC, dba M&M Smog Test Only; Anna Adele Thornton-Popp; Michael Alan Popp;

2. Revoking or suspending any other Automotive Repair Dealer Registration issued Anna Adele Thornton-Popp or Michael Alan Popp;

3. Revoking or suspending Smog Check Test Only Station License, Number TC 280063, issued to Future Innovations, LLC, dba M&M Smog Test Only; Anna Adele Thornton-Popp; Michael Alan Popp;

4. Revoking any additional license under Chapter 5 of Part 5 of Division 26 of the Health and Safety code in the name of Future Innovations, LLC, dba M&M Smog Test Only; Anna Adele Thornton-Popp; Michael Alan Popp;

5. Revoking or suspending Smog Check Inspector License Number EO 637584, issued to Ronald Albert Sharp, Jr.;

6. Revoked any additional license under Chapter 5 of Part 5 of Division 26 of the Health and Safety code in the name of Ronald Albert Sharp, Jr.;

1 7. Ordering Anna Adele Thornton-Popp, Michael Alan Popp and Ronald Albert Sharp,
2 Jr. to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
3 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

March 30, 2018

Patrick Doraïs

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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